

REDEVELOPMENT AGREEMENT

BY AND BETWEEN

THE BOROUGH OF DUNELLEN

AND

120-126 NORTH AVENUE URBAN RENEWAL, LLC

FOR

BLOCK 1, LOTS 19, 20, & 21

120-126 NORTH AVENUE

IN THE

**BOROUGH OF DUNELLEN
MIDDLESEX COUNTY, NEW JERSEY**

DATED AS OF SEPTEMBER 7, 2022

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This **REDEVELOPMENT AGREEMENT** (the “**Agreement**”), is made as of the 7th day of September, 2022, by and between the **BOROUGH OF DUNELLEN** with offices located at 355 North Avenue, Dunellen, New Jersey 08812 (the “**Borough**”) and **120-126 NORTH AVENUE URBAN RENEWAL LLC**, with offices located at 5 Corporate Drive, Suite 100, Central Valley, New York 10917 (the “**Redeveloper**”); each of the Borough and the Redeveloper hereinafter a “**Party**”, and collectively, the “**Parties**”).

SECTION 1. RECITALS

WHEREAS, the Borough is a political subdivision of the State of New Jersey (the “**State**”), located in the County of Middlesex; and

WHEREAS, on May 5, 2003, the Borough Council of the Borough (the “**Borough Council**”) designated, along with other properties, Block 1, Lots 19, 20, and 21 as a non-condemnation area in need of redevelopment (the “**Project Site**”) in accordance with the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq. (the “**Redevelopment Law**”); and

WHEREAS, the Borough Council duly adopted a redevelopment plan for the Project Site, along with other properties, entitled, “Dunellen Downtown Redevelopment Plan Phase 1”, dated May 16, 2016 and most recently amended June 7, 2021 and entitled “Amended and Restated Dunellen Downtown Redevelopment Plan Phase 1”, (as the same may be amended and supplemented from time to time, the “**Redevelopment Plan**”); and

WHEREAS, Redeveloper is formed as a limited liability company and as an urban renewal entity under the laws of the State, and is the contract purchaser of the Project Site; and

WHEREAS, on March 1, 2021, the Borough Council adopted Resolution #5-B, naming the Redeveloper as redeveloper of the Project Site and authorizing the execution of a conditional redeveloper’s agreement with respect thereto (the “**Conditional Redeveloper’s Agreement**”); and

WHEREAS, the Redeveloper has proposed to undertake the following actions, in accordance with the terms of this Agreement, the Redevelopment Plan and that certain Settlement Agreement defined below: (i) acquire the Project Site; (ii) design, develop, finance, construct, operate, and maintain a multi-use development including one, three-story building containing a total of 33 residential units consisting of 17 one-bedroom units, 14 two-bedroom units and 2 three-bedroom units, and including 5 units affordable to very low-, low- and moderate -income households, along with associated amenities and site improvements; (iii) a ground floor commercial space of 2,192 square feet; (iv) 35 surface parking spaces for use by the residents and visitors to the commercial space and including 8 (eight) electric vehicle charging station (43 parking spaces are required by the Redevelopment Plan, therefore the Redeveloper will provide a payment in lieu of parking in accordance with Section 4.10 herein); (v) a Fifty Thousand Dollar (\$50,000.00) contribution to the Borough to be used for pedestrian safety upgrades; and (vi) construct all necessary on- and off-site infrastructure improvements, including streetscape improvements (items (i) through (vi), as more specifically described in Section 4.1 herein, collectively, the “**Project**” or “**Redevelopment Project**”); and

WHEREAS, in order to effectuate the Redevelopment Plan, the Project and the redevelopment of the Project Site, the Borough has determined to enter into this Agreement with the Redeveloper, which Agreement designates Redeveloper as the “redeveloper” of the Project in accordance with the Redevelopment Law and which specifies the respective rights and responsibilities of the Parties with respect to the Project,

NOW, THEREFORE, in consideration of the promises and mutual covenants herein contained, the Parties hereto do hereby covenant and agree, each with the other, as follows:

SECTION 2. DEFINITIONS

2.1 Definitions. When used in this Agreement the following words, phrases or terms shall have the following meanings:

Abandonment shall mean the act of relinquishing all right, title and interest in and to the Redevelopment Project without vesting such right, title and interest in any other person pursuant to the terms of this Agreement or a suspension of construction after obtaining a building permit or Commencement of Construction without the prior knowledge and consent of the Borough for more than one hundred eighty (180) days (unless such suspension arises out of an event of Force Majeure).

Administrative Agent shall have the meaning set forth in Section 4.9(d).

Affiliate shall mean 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 Units shall have the meaning set forth in Section 4.9.

Agreement shall have the meaning set forth in the Recitals.

Applicable Laws shall mean all federal, State and local laws, ordinances, approvals, rules, regulations and requirements applicable thereto including, but not limited to, the Redevelopment Law, the MLUL, applicable Council on Affordable Housing regulations, UHAC, relevant construction codes including construction codes governing access for people with disabilities, and such other applicable zoning, sanitary, pollution and other environmental safety ordinances, laws

and such rules and regulations promulgated thereunder, and all applicable Environmental Laws and applicable federal and state labor standards.

Approvals shall mean all final and unappealable governmental and quasi-governmental approvals, permits, licenses, agreements and capacity reservations from any and all governmental and quasi-governmental authorities having jurisdiction over the Project Site and/or the Redevelopment Project, and/or utility company serving the Project Site that are required as a condition to the Commencement of Construction of the Redevelopment Project, and as may be required to allow the Redevelopment Project to be fully constructed and made fully operational, including, but not limited to, local and county planning approvals, DEP permits and approvals, construction permits, “will-serve” letters from utility providers, and other various federal, State and local approvals; excluding, however, approvals, permits and the like (i.e. building permits and certificates of occupancy) normally obtained in the ordinary course of construction.

Bond shall have the meaning set forth in Section 4.3(c).

Borough shall have the meaning set forth in the Recitals.

Borough Council shall have the meaning set forth in the Recitals.

Borough Default shall have the meaning set forth in Section 12.2.

Borough Indemnified Parties shall mean the Borough, its Mayor, Borough Councilmembers, officers, agents, employees, contractors, boards, departments, officials and consultants.

Certificate of Completion shall have the meaning set forth in Section 4.6.

Certificate of No Default shall have the meaning set forth in Section 12.6.

COAH shall mean the Council on Affordable Housing of the State established by the Fair Housing Act, as the same may be amended from time to time.

Conditional Redeveloper’s Agreement shall have the meaning set forth in the Recitals.

Commencement of Construction shall mean the date upon which construction force and machinery are mobilized for the construction of the Project or any building within the Project in accordance with the Approvals but shall not include demolition.

Concept Plan shall mean concept plans for the Redevelopment of the Project Site, attached hereto as Exhibit A, as same may be amended from time to time.

Contamination shall mean the presence of Hazardous Substances in, on, under, over, or emanating from any property in violation of applicable Environmental Laws.

Court shall mean the Superior Court of New Jersey Law Division, Middlesex County.

Declaration shall have the meaning set forth in Section 16.12.

Deed Restriction Period shall have the meaning set forth in Section 4.9(b).

Default shall have the meaning set forth in Section 12.1.

Default Notice shall mean such notice to a defaulting party as defined in Section 12.3.

DEP shall mean the New Jersey Department of Environmental Protection.

Effective Date shall mean the date first written above.

Environmental Laws shall mean any applicable federal, state, local, municipal or other statutes, laws, ordinances, rules, regulations or other legally enforceable requirement, whether presently existing or hereinafter enacted, promulgated or otherwise created for the protection of the environment or human health from Hazardous Substances, as the same may be amended or supplemented from time to time, including, without limitation, (a) the New Jersey Spill Compensation and Control Act, as amended, N.J.S.A. 58:10-23.11 et seq.; (b) the New Jersey Industrial Site Recovery Act, as amended, N.J.S.A. 13:1K-6 et seq.; (c) the New Jersey Leaking Underground Storage Tank Act, as amended, N.J.S.A. 58:10-21 et seq.; (d) The New Jersey Site Remediation Reform Act, N.J.S.A. 58:10C-1 et seq.; (e) the Comprehensive Environmental Response, Compensation & Liability Act, as amended, 42 U.S.C. Section 9601 et seq.; (f) the

Resource Conservation and Recovery Act, as amended, 42 U.S.C. Section 6901 et seq.; (g) the Hazardous Material Transportation Act, as amended, 49 U.S.C. Section 180 et seq.; or (h) the Occupational Safety and Health Act, as amended, 29 U.S.C. Section 651 et seq.

Event of Default shall have the meaning set forth in Section 12.3.

Fair Housing Act shall mean the Fair Housing Act, N.J.S.A. 52:27D-301 et seq.

Financial Agreement shall mean an agreement to be entered into by and between the Borough and the Redeveloper, pursuant to the Long Term Tax Exemption Law, governing the exemption from taxation of all or a portion of the Redevelopment Project and the payment by Redeveloper to the Borough of payments in lieu of taxes.

Force Majeure shall have the meaning set forth in Section 16.1.

Foreclosure shall have the meaning set forth in Section 13.6.

Hazardous Substances shall mean any and all elements, compounds, substances, materials, or wastes, whether solid, liquid or gaseous, which are either defined or referred to as hazardous or toxic or as pollution or a pollutant or contaminant under Environmental Laws.

Holder shall have the meaning set forth in Section 13.1.

Immediate Family Member shall mean a spouse, child or grandchild of Redeveloper.

Infrastructure Improvements shall have the meaning set forth in Section 4.3(a).

Institutional Financing shall mean the loans from banks, insurance companies, pension funds and other institutional lenders obtained by Redeveloper to fund Redevelopment Project costs.

Long Term Tax Exemption Law shall mean the New Jersey Long Term Tax Exemption Law, codified at N.J.S.A. 40A:20-1 et seq.

MLUL shall mean the Municipal Land Use Law, codified at N.J.S.A. 40:55D-1 et seq.

Parties shall mean both the Borough and Redeveloper together and shall not refer to any other person or entity. Any one of the Parties may be referred to as a “**Party**”.

Permitted Transfers shall have the meaning set forth in Section 9.1(b).

Person shall mean an individual, corporation, limited liability company or other legal entity legally empowered to hold and convey title to real property in its own name under the laws of the State.

PILOP shall have the meaning set forth in Section 4.10.

Planning Board shall mean the Borough of Dunellen Planning Board.

Project shall have the meaning set forth in Section 4.1.

Project Documents shall have the meaning set forth in Section 12.7.

Project Improvements shall mean those buildings, Infrastructure Improvements, amenities or utilities necessitated by, associated with, desired or required by the implementation of the Redevelopment Project, which are located inside or outside of the Project Site, including but not limited to all facilities, amenities, on and off-street parking, streetscape improvements, landscaping, fencing, enhancements or improvements required to be made to roadways to permit or control the flow of traffic, electric power transmission lines, sewer transmission conduits or pipes, water lines or pipes, storm sewers, telephone transmission lines, television cable lines and other utilities.

Project Schedule shall mean Exhibit B attached hereto.

Project Site shall have the meaning set forth in the Recitals.

Redeveloper shall have the meaning set forth in the Recitals, together with any permitted successors and assigns.

Redevelopment shall mean the design and construction of the Redevelopment Project.

Redevelopment Law shall have the meaning set forth in the Recitals.

Redevelopment Plan shall have the meaning set forth in the Recitals.

Redevelopment Project shall have the meaning set forth in Section 4.1.

Remediation when used in this Agreement shall mean all necessary actions to investigate and cleanup or respond to any known, suspected, or threatened discharge, including, as necessary, the preliminary assessment, site investigation, remedial investigation and remedial action.

Settlement Agreement shall mean the agreement by and between the Borough and Fair Share Housing Center, which settled Fair Share Housing Center's intervention in litigation entitled In the Matter of the Application of the Borough of Dunellen, County of Middlesex, Docket No. MID-L-3947-15, dated May 9, 2016, attached hereto as Exhibit D.

State shall have the meaning set forth in the Recitals.

Substantial Portion shall have the meaning set forth in Section 16.7.

Third Party means a Person or entity, including but not limited to a governmental entity, other than (a) the Borough; (b) any agent, employee, agency, board, elected official or representative of the Borough; (c) Redeveloper; (d) any member, shareholder, partner, officer, representative, employee or agent of Redeveloper; or (e) any entity owned or controlled by, under common control with, or that owns or controls, Redeveloper or any member, shareholder or partner of Redeveloper.

Transfer shall have the meaning set forth in Section 9.1(b).

UHAC shall mean the Uniform Housing Affordability Controls, N.J.A.C. 5:80-26.1 et seq., as same may be amended, or any successor laws or regulations.

2.2 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, 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) all references to Recitals, Articles, or Sections shall, unless otherwise indicated, mean the Recitals, Articles or Sections hereto; (d) any headings preceding the texts of the several Articles and Sections of this Agreement, any table of contents or marginal notes appended to copies hereof, and the Recitals hereto 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; (e) unless otherwise indicated, all approvals, consents and acceptances required to be given or made by any Person hereunder shall be in writing and shall not be unreasonably withheld, conditioned, or delayed; (f) all notices to be given hereunder and responses thereto shall also be in writing and shall be given, unless a certain number of days is specified, within a reasonable time; (g) unless otherwise indicated, any “fees and expenses” shall be required to be customary and reasonable; and (h) “knowledge” shall mean actual knowledge of an officer of the applicable Party after due investigation and inquiry.

SECTION 3. OVERVIEW

3.1 Purpose and Background. The purpose of this Agreement is to set forth the respective rights, obligations, conditions and agreements of the Borough and Redeveloper in connection with the Redevelopment of the Project Site. Redeveloper shall be the “redeveloper” of the Project Site for the purpose of undertaking the Redevelopment Project.

SECTION 4. THE REDEVELOPMENT PROJECT

4.1 Redevelopment Project. The “Redevelopment Project” shall consist of: (i) acquisition of the Project Site; (ii) design, develop, finance, construct, operate, and maintain a multi-use development including one, three-story building containing 33 residential units consisting of 17 one-bedroom units, 14 two-bedroom units, and 2 three-bedroom units, and including 5 units affordable to very low-, low- and moderate- income households, along with associated amenities and site improvements; (iii) a ground floor commercial space of 2,192 square feet; (iv) 35 surface parking spaces for use by the residents and visitors to the commercial space and including eight (8) electric vehicle charging stations (43 parking spaces are required by the Redevelopment Plan, therefore the Redeveloper will provide a payment in lieu of parking in accordance with Section 4.10 herein); (v) a Fifty Thousand Dollar (\$50,000.00) contribution to the Borough to be used for pedestrian safety upgrades in accordance with Section 4.11 herein; and (vi) construct all necessary on- 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 and the Concept 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. Redeveloper further agrees to pursue color themes other than grey tones, such as reds, greens, blues, and other earth tones.

The Redeveloper agrees to undertake the Redevelopment Project. The Redeveloper further agrees that, notwithstanding the Redevelopment Law, it is its sole responsibility to undertake the appropriate measures to negotiate with, acquire, relocate or otherwise address the existence of

existing utilities, easements and parking spaces therefor, in order to complete the Redevelopment Project as provided by this Agreement. Redeveloper shall exercise reasonable efforts to ensure the effective coordination between the onsite and offsite Project Improvements and shall cooperate with the Borough to insure that the implementation of the Redevelopment Project does not interfere with the operation of the existing utilities, with an emphasis on the existing utilities, easements, surface parking areas and general business operations of the existing retail and commercial space that is currently occupied and is to remain. Redeveloper agrees to provide or cause to be provided all performance and maintenance bonds as required by Applicable Law, as further described at Section 4.3, below.

4.2 Designation of Redeveloper. Redeveloper has been designated as Redeveloper for the Redevelopment Project and Redeveloper shall have the exclusive right to redevelop and implement the Redevelopment Project on the Project Site in accordance with the terms and conditions of this Agreement.

4.3 Infrastructure Improvements. (a) Improvements Defined. Redeveloper acknowledges that certain on- and off-site infrastructure improvements (all items listed in this Section 4.3(a) collectively, the “**Infrastructure Improvements**”) may be necessary in connection with the implementation of the Project. In accordance with the Settlement Agreement and the Redevelopment Plan, Redeveloper, at Redeveloper’s sole cost and expense, shall provide all necessary engineering studies for, and construct and install all on- and off-site municipal infrastructure and capacity enhancements or upgrades required in connection with the provision of water, sanitary sewer, and stormwater sewer service to the Project, in addition to all required tie-in or connection fees. Redeveloper shall also be responsible for providing, at Redeveloper’s sole cost and expense, all landscaped open space, street lighting, walkways, trash receptacles, benches, sidewalks, curbs, streetscape improvements, street trees, sidewalks, crosswalks, and bicycle racks,

all in accordance with the Redevelopment Plan, and on- and off-site traffic controls and road improvements, for the Project or required as a result of the impacts of the Project.

(b) Time for Completion. All Infrastructure Improvements shall be completed: (i) prior to the issuance of the first Certificate of Occupancy for the Project; or (ii) at such later time as may be approved by the Borough Engineer, in his reasonable discretion.

(c) Performance and Maintenance Bonds. Redeveloper shall post performance and maintenance guarantees and review escrows in accordance with the provisions of N.J.S.A. 40:55D-53 et seq. of the MLUL and all Applicable Laws (collectively, the “**Bond**”), in the following manner:

(i) Prior to the Commencement of Construction, a performance bond or irrevocable letter of credit (or such other form of guarantee allowed in accordance with the MLUL) for those Infrastructure Improvements for which a performance guarantee may be required pursuant to the MLUL and as may be required pursuant to the approved site plan and Planning Board resolution, in an amount to be determined by the Borough Engineer pursuant to the MLUL.

(ii) A maintenance guarantee in respect of those Infrastructure Improvements required to be bonded in accordance with the MLUL, in the form of a surety bond (or such other form of guarantee allowed in accordance with the MLUL) for a period not to exceed two (2) years after final acceptance of the Infrastructure Improvements, in an amount determined by the Borough Engineer according to the method of calculation set forth in N.J.S.A. 40:55D-53 of the MLUL.

(iii) If applicable, the Bond must name the Borough as an obligee and Redeveloper shall deliver a copy of the Bond to the Borough prior to Commencement of Construction. To the extent that a surety bond is provided, it shall be provided by a company licensed by the New Jersey Department of Banking and Insurance or otherwise authorized by the New Jersey Department of Banking and Insurance to do business in the State. In the event any

insurance company, financial institution or other entity issuing a performance guarantee herein, shall be insolvent or shall declare bankruptcy or otherwise be subject to reorganization, rehabilitation, or other action, whereby State or federal agencies have taken over the management of the entity, within thirty (30) days after notice from the Borough, Redeveloper shall replace the Bond.

(iv) In the event any Bond should lapse, be canceled or withdrawn, or otherwise not remain in full force and effect as a result of any act or omission by Redeveloper, then until an approved replacement of the lapsed Bond has been deposited with the Borough, the Borough may require Redeveloper to cease and desist any and all work on the Project, unless the Infrastructure Improvements required to be bonded have been completed and approved by the Borough. In the event any Bond should lapse, be canceled or withdrawn, or otherwise not remain in full force and effect through no act or omission of Redeveloper, then unless Redeveloper fails to replace the Bond within ten (10) business days of notice given to Redeveloper by the Borough, the Borough may require Redeveloper to cease and desist work on the Project unless the Infrastructure Improvements required to be bonded have been completed and approved by the Borough.

4.4 Project Schedule. Redeveloper will diligently implement and complete the Redevelopment Project in accordance with the Project Schedule, subject to the terms of this Agreement and subject only to relief resulting from events of Force Majeure. The Parties agree and acknowledge that adherence to the Project Schedule is of the essence in this Agreement. Notwithstanding the Project Schedule, Redeveloper may attempt to implement each task whenever possible earlier than the dates set forth for such tasks in the Project Schedule. If Redeveloper fails to meet a completion date set forth on the Project Schedule or determines that it will fail to meet a completion date, Redeveloper shall promptly provide notice to the Borough stating: (a) the reason for the failure to complete the applicable task, (b) Redeveloper's schedule for completing such

task and (c) the method or methods by which Redeveloper proposes to achieve subsequent tasks by the relevant extended completion dates.

4.5 Commencement of Redevelopment Project. Redeveloper agrees that Commencement of Construction shall occur in accordance with the Project Schedule and shall progress in accordance with the time frames set forth in the Project Schedule. After Commencement of Construction, Redeveloper will thereafter diligently and continuously prosecute construction of the Redevelopment Project to completion in accordance with the Project Schedule.

4.6 Certificate of Completion. The completion of the Project Improvements shall be evidenced by a certificate issued by the Borough (the “**Certificate of Completion**”) stating that: (a) all the Project Improvements have been completed in accordance with the approved final site plan and (b) a Certificate of Occupancy, if required, has been issued for the Project Improvements. If the Borough determines that Redeveloper is not entitled to a Certificate of Completion, the Borough shall, within ten (10) days of receipt of Redeveloper’s certification, provide Redeveloper with a written statement, specifying in reasonable detail the reasons the Borough refused or failed to furnish a Certificate of Completion, and describing the measures or acts reasonably necessary, in the opinion of the Borough, that the Redeveloper must take or perform in order to obtain such Certificate of Completion. Upon Redeveloper’s completion of the actions deemed reasonably necessary by the Borough, it shall forthwith issue the 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 and in the Redevelopment Plan with respect to Redeveloper’s obligation to construct the Project Improvements within the dates for the commencement and completion of same. Upon issuance of the Certificate of Completion, the conditions determined to exist at the time the Project Site was

determined to be an area in need of redevelopment shall be deemed to no longer exist, and the Declaration shall be released.

4.7 Certificates of Occupancy. The Borough, in accordance with its ordinances and regulations then in effect, upon application of Redeveloper, shall issue certificates of occupancy from time to time, as applicable, for individual residential units, as may be necessary to enable Redeveloper to lease same to third parties.

4.8 Approval of Project Concept; Pre-Approval of Site Plan. Subject to review and approval of site plans, the Borough approves of the Concept Plan. Any material modifications to the Concept Plan will require approval of the Borough and Redeveloper. The Parties acknowledge that the Concept Plan depicts a front yard setback of ten (10) feet, whereas the Redevelopment Plan requires a front yard setback of sixteen (16) feet. Therefore, the Borough's approval of the Concept Plan is contingent upon the Redeveloper obtaining variance approval from the Planning Board to permit a front yard setback of ten (10) feet. In the event the Redeveloper is unable to obtain variance approval from the Planning Board to permit a front yard setback of ten (10) feet, then either Party may terminate this Agreement.

Furthermore, Redeveloper acknowledges that it will be required to submit proposed site plan applications to the Borough Council (or, at the Borough's option, to a subcommittee organized by the Borough Council) prior to submission to the Planning Board. Confirmation by the Borough Council (or a subcommittee organized thereby) stating that the application is consistent with the Redevelopment Plan and this Agreement shall be a required element of any application for site plan approval, and the Planning Board shall deem any application for site plan approval lacking such confirmation to be incomplete.

4.9 Affordable Housing Obligation. Pursuant to the Settlement Agreement, the Redevelopment Project is an inclusionary development and shall include 5 rental units affordable

to very low-, low- and moderate-income households, of which a maximum of twenty percent (20%) can be one-bedroom units (1 unit), at least twenty percent (20%) must be three-bedroom units (1 unit), and the remainder can be two or three-bedroom units (3 units) (the “**Affordable Units**”), which the Borough agrees to apply towards satisfaction of the Borough’s obligations under the Fair Housing Act, applicable COAH regulations and the Settlement Agreement. As further described in the Settlement Agreement and Section 6.1.4 of the Redevelopment Plan:

(a) The Affordable Units shall comply with UHAC, applicable COAH affordable housing regulations, the Settlement Agreement, any applicable order of the Court and other Applicable Laws.

(b) The Redeveloper shall have an obligation to deed restrict the Affordable Units as very low, low or moderate income affordable units in accordance with subsections (c) and (d) hereof for a period of thirty (30) years (the “**Deed-Restriction Period**”) so that the Borough may count the Affordable Units against its obligation to provide family rental affordable housing. The deed restriction shall be provided to the Borough for its review for compliance with the terms of the Redevelopment Plan, the Settlement Agreement and this Agreement prior to recordation and filed by the Redeveloper prior to the Borough issuing the Certificate of Completion for the Project Improvements. The Parties agree that the affordability controls shall expire at the end of thirty (30) years after the date of the initial occupancy of the respective Affordable Unit. At the end of the Deed Restriction Period, the Borough shall cooperate with the Redeveloper, at no cost to the Borough, to facilitate the Redeveloper’s ability to exercise its right to have the deed restriction last for only thirty (30) years subject to the requirements of N.J.A.C. 5:80-26.1 l(b) of UHAC.

(c) Redeveloper’s obligation includes, but is not limited to, the Redeveloper’s obligation to comply with bedroom distribution requirements, income distribution requirements,

pricing requirements, integration of affordable units, affirmative marketing requirements, candidate qualification and screening requirements, and deed restriction requirements.

(d) Redeveloper shall contract with an experienced and qualified administrative agent (“**Administrative Agent**”) for the administration of the Affordable Units and 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. Redeveloper and its Administrative Agent shall work with the Borough and the Borough’s administrative agent regarding any affordable housing monitoring requirements imposed by COAH or the Court. Redeveloper shall provide, within thirty (30) days of written notice, detailed information requested by the Borough or the Borough’s administrative agent concerning Redeveloper’s compliance with UHAC and other applicable laws.

(e) The Parties agree that the Affordable Units are to be included in the Affordable Housing Plan to be approved and credited by the Court in the Compliance Action (as defined in the Settlement Agreement), and that the credits will be applied against any Round 3 obligation assigned to the Borough.

4.10 Payment in Lieu of Parking. The Redeveloper proposes to provide 35 off-street parking spaces as part of the Project. However, 43 off-street parking spaces are required pursuant to the Redevelopment Plan. In accordance with Section 8.13, paragraph 18 of the Redevelopment Plan, if a development is unable to meet the parking requirements of the Redevelopment Plan as a result of undue difficulty or hardship, the Borough may require a payment in lieu of parking to satisfy all or a portion of the parking deficit. Accordingly, the Redeveloper shall provide to the Borough a one-time payment in lieu of parking in the total amount of Eighty Thousand Dollars (\$80,000.00) (\$10,000.00 per parking space deficit) (the “**PILOP**”). Said PILOP shall be submitted by the Redeveloper to the Borough prior to application for the first construction permit

for the Project. The PILOP will be paid into the Borough's Parking Improvement Program Trust Fund. The Parties recognize that the off-street parking space requirement for the commercial use may be reduced by a maximum of 4 parking spaces in the event the Planning Board approves a shared parking arrangement. In the event the off-street parking space requirement for the commercial use is reduced, the PILOP shall also be reduced. In any event, the minimum PILOP shall be Sixty Thousand Dollars (\$60,000.00).

4.11 Community Benefit Contribution. The Redeveloper agrees to provide a one-time payment to the Borough, in the amount of Fifty Thousand Dollars (\$50,000.00) (the "**Community Benefit Contribution**"). The Community Benefit Contribution will be used to provide pedestrian safety upgrades in the Borough. Said Community Benefit Contribution shall be submitted by the Redeveloper to the Borough prior to application for the first construction permit for the Project.

**SECTION 5. EASEMENTS/NO RELIANCE
ON OTHER INVESTIGATIONS**

5.1 Existing Easements. The Project Site, as well as many of the surrounding contiguous properties, contains numerous easements, rights-of-way and developer's agreements which will play a significant and vital role in the redevelopment of the Project Site. The Redeveloper shall be responsible for compiling a comprehensive map illustrating all covenants, restrictions, easements, rights-of-ways, and agreements on the Project Site and surrounding contiguous properties which may impact the redevelopment of the Project Site. The Redeveloper shall be responsible for amending these covenants, restrictions, easements, rights-of-ways and agreements in order to comply with the requirements of this Agreement and the Redevelopment Plan.

5.2 No Reliance On Other Investigations. Redeveloper further agrees, acknowledges and represents that, subject to the terms hereof, Redeveloper is entering into this Agreement and shall perform all of its obligations hereunder and consummate the transaction contemplated by this Agreement solely in reliance on and as a result of Redeveloper's own investigations and efforts and at Redeveloper's sole risk, understanding that any such investigations, examinations and inspections may not reveal any or all adverse or existing conditions, aspects or attributes of any such property.

SECTION 6. ENVIRONMENTAL

6.1 Environmental Obligations and Indemnification. The Parties hereby expressly acknowledge that the Borough has made no representation as to the environmental condition of any part of the Project Site. The Parties further expressly acknowledge and agree that to the extent any portion of the Project Site requires Remediation, or causes any other property to require Remediation, the Borough shall have no responsibility therefor. The Parties expressly agree and acknowledge that it shall be the sole responsibility of the Redeveloper to undertake and pay the cost of any and all Remediation, compliance, environmental testing, and/or other analyses for the Project Site, and that the Borough has no obligation or liability whatsoever with respect to the environmental condition of the Project Site, or any other parcels which may claim Contamination arising from the Project Site. Redeveloper shall defend, protect, indemnify and hold harmless the Borough and its agents from any claims which may be sustained as a result of any environmental conditions on, in, under or migrating to or from the Project Site, including, without limitation, claims against the Borough and its agents by any Third Party.

SECTION 7. REDEVELOPMENT PROJECT OVERSIGHT

7.1 Progress Meetings. Redeveloper agrees to attend and participate in progress meetings every six (6) months with representatives of the Borough to report on the status of the Redevelopment Project and to review the progress under the Project Schedule. The meetings shall be held at the Borough's Municipal Building or other convenient location in the Borough. Prior to the meeting, subject to the terms of Section 7.3 below, representatives of the Borough may visit the Project Site to inspect the progress of the work on the Redevelopment Project. Redeveloper shall prepare the agenda for the progress meeting in advance of the meeting (which shall include, *inter alia*, any agenda items reasonably requested by the Borough) and shall provide information to the Borough at the meetings regarding the Redevelopment Project progress including but not limited to property acquisition, Approval submissions, financial commitments, construction of Project Improvements, compliance with the Redevelopment Plan and activities concerning marketing and leasing, if applicable. At the meeting, this information will be evaluated by the Borough to determine compliance with the terms and conditions of this Agreement and the Project Schedule.

7.2 Progress Reports. Commencing on the first day of the second month after the Effective Date of this Agreement, Redeveloper shall submit to the Borough a quarterly written progress report which shall include a description of activities completed, the activities to be undertaken prior to the next quarterly progress report, the status of all Approvals, 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 and an explanation of corrective action taken or proposed.

7.3 Access to Project Site. Upon reasonable advance written notice (except for Borough construction code officials, fire officials, public safety personnel and the like performing

their duties in the ordinary course, who shall not be obligated to provide advance written notice) the Borough and its authorized representatives shall have the right to enter the Project Site to inspect the site and any and all work in progress for the purpose of furthering its interest in this Agreement. Such entrance shall be for informational purposes and shall not relieve Redeveloper of its obligation to implement the Redevelopment Project in accordance with this Agreement. In no event shall the Borough's inspection of the Redevelopment Project be deemed acceptance of the work or be deemed to waive any right the Borough has under this Agreement. Any such entry shall be subject to reasonable restrictions by Redeveloper typical of an active construction site and any persons present at the Project Site shall comply with all applicable health and safety rules established by the Redeveloper or the general contractor for personnel present on the Project Site. Such measures may include a need to be accompanied by Project personnel when visiting the Project Site.

SECTION 8. REPRESENTATIONS AND WARRANTIES

8.1 The Redeveloper. Redeveloper represents and warrants as follows:

- (a) it is a limited liability company duly created under the laws of the State and is duly organized and existing in good standing;
- (b) it has full power and authority to enter into this Agreement, to consummate the transactions contemplated herein and to perform all of its obligations hereunder;
- (c) the execution, delivery and performance by Redeveloper of this Agreement has been duly authorized and the person executing this Agreement on its behalf is authorized to do so and that this Agreement constitutes a valid and legally binding obligation of Redeveloper, enforceable in accordance with its terms;
- (d) subject to obtaining Institutional Financing, it is financially capable to undertake and fulfill the obligations of Redeveloper hereunder;
- (e) Redeveloper has the necessary expertise, qualifications, staff and resources to undertake and fulfill the obligations hereunder;
- (f) there is no action, proceeding or investigation now pending or threatened, nor any basis therefore, known or believed to exist which (i) questions the validity of this Agreement or any action or act taken or to be taken by them pursuant to this Agreement; or (ii) is likely to result in a material adverse change in its property, assets, liabilities or condition or which will materially and substantially impair its ability to perform pursuant to the terms of this Agreement;
- (g) the execution, delivery, or performance of this Agreement will not constitute a violation of any of Redeveloper's organizational documents, or of any mortgage, indenture, instrument, judgment or other agreement to which it is a party or by which it is bound;
- (h) that Redeveloper is majority owned and controlled by Mayer Gross; and
- (i) that Redeveloper is the contract purchaser of the Project Site.

8.2 The Borough. The Borough represents and warrants as follows:

(a) the designation of the Project Site, the adoption of the Redevelopment Plan and the designation of Redeveloper were done (and any amendment thereto will be done) in conformance with the Redevelopment Law, the adoption of the Redevelopment Plan was duly authorized in accordance with Redevelopment Law and the Borough Council is duly and properly acting as the redevelopment entity for the Borough pursuant to the Redevelopment Law;

(b) it is executing this Agreement in its capacity as a political subdivision of the State and the County of Middlesex, as the designated redevelopment entity; the execution, delivery and performance by the Borough of this Agreement has been duly authorized and the person executing this Agreement on its behalf is authorized to do so; and this Agreement constitutes a valid and legally binding obligation of the Borough, enforceable in accordance with its terms;

(c) there is no action, proceeding or investigation now pending or threatened, nor any basis therefore, known or believed to exist, which (i) questions the validity of this Agreement or any action or act taken or to be taken by them pursuant to this Agreement; or (ii) is likely to result in a material adverse change in its agency, property, assets, liabilities or condition or which will materially and substantially impair its ability to perform pursuant to the terms of this Agreement; and

(d) it has full power and authority to enter into this Agreement, to consummate the transactions contemplated herein and to perform all of its obligations hereunder.

SECTION 9. REDEVELOPER COVENANTS

9.1 Redeveloper Covenants. Redeveloper covenants and agrees that:

(a) Redeveloper shall not use the Project Site or any part thereof in a manner that is not in all material respects consistent with the Redevelopment Plan, the Approvals and this Agreement. Redeveloper will construct only those uses established in the Redevelopment Plan or as the Redevelopment Plan may be modified, in writing, by the Borough from time to time in accordance with the Redevelopment Law.

(b) Except as permitted in Section 9.1(c) below, prior to the issuance of a Certificate of Completion for the Redevelopment Project or any part thereof, pursuant to N.J.S.A. 40A:12A-9(a), Redeveloper shall not, without the prior written consent of the Borough in its reasonable discretion: (i) effect or permit any change, directly or indirectly, in the majority ownership of more than fifty percent (50%) or control of Redeveloper (whether in one transaction or by virtue of the combined effect of more than one transaction), provided, however, that the Borough will not unreasonably withhold consent to a transfer of a majority or greater interest in Redeveloper (or in an Affiliate of Redeveloper) to a reputable financial institution for *bona fide* financing purposes, provided that the current members of Redeveloper remain in control of the entity, (ii) assign or attempt to assign this Agreement or any rights herein or in the Project Site, (iii) make any total or partial sale, lease, transfer or conveyance of the whole or any part of its interest in the Project Site or the Redevelopment Project; or (iv) pledge, or transfer all or substantially all of its assets (collectively, a “**Transfer**”). If Redeveloper proposes a Transfer, other than as set forth above, Redeveloper will promptly provide to the Borough for its consideration information concerning the proposed transferee, including, but not limited to, current audited financial statements for the proposed transferee and any other documentation reasonably requested by the Borough pertaining to the transferee’s identity, principals, qualifications, reputation, and financial condition. If a

Transfer is approved by the Borough, the transferee, by written document acceptable in form and substance to the Borough, for itself and its successors and assigns, and for the benefit of the Borough, shall expressly assume all of the obligations of Redeveloper under this Agreement applicable to the property interest conveyed with such sale, assignment or transfer and shall agree to be subject to all the conditions and restrictions to which Redeveloper is subject hereunder, including the restrictions regarding the right to subsequent transfers. All relevant instruments and other legal documents proposed to effect any such transfer shall be submitted to the Borough, and if the transferee is approved by the Borough, such approval shall be indicated to Redeveloper in writing.

(c) Redeveloper, without violating the provisions of Section 9.1(b), may, subject to the requirements of N.J.S.A. 40A:12A-9(a) effect the following Transfers, to which the Borough hereby consents upon receipt of notice thereof, without the necessity of further action by the Borough (the “**Permitted Transfers**”): (i) Transfers to an Affiliate of Redeveloper; (ii) leases to residential tenants; (iii) mortgages to secure Institutional Financing for acquisition of the Project Site and/or the construction of the Redevelopment Project; (iv) environmental covenants and restrictions imposed by DEP as a condition of any permit or Approval; (v) any direct or indirect transfer of any interest in Redeveloper to a Person not presently holding an interest in Redeveloper, provided that the transfer is for less than fifty percent (50%) of the ownership interest of Redeveloper and otherwise does not change the control of Redeveloper; (vi) granting of easements, deed restrictions and licenses required for utilities or in connection with development approvals; (vii) transfers by means of inheritance, devise, or bequest or by operation of law upon an Immediate Family Member, or a trust established for the benefit of such Immediate Family Member; and (viii) any contract or agreement which effectuates any of the foregoing exceptions. With respect to any of the Permitted Transfers listed in this Section 9.1(c), Redeveloper shall

provide to Borough written notice within thirty (30) days of such Permitted Transfer, including a description of the nature of such Permitted Transfer, and the name(s) and address(es) of the transferee parties, individuals and/or entities involved.

(d) Upon issuance of a Certificate of Completion for the Redevelopment Project, Redeveloper shall have the right to sell its interest in the real property.

(e) Redeveloper shall design, implement, complete, and operate the Redevelopment Project in compliance with this Agreement and all other Applicable Laws, ordinances, Approvals, rules, regulations, and requirements applicable thereto including, but not limited to, such zoning, sanitary, pollution, health, environmental, and safety ordinances, laws and such rules and regulations thereunder as shall be binding upon Redeveloper under Applicable Laws. Without limiting the foregoing, Redeveloper shall comply at its own expense with all stormwater regulations, including but not limited to, those pertaining to detention, recharge and water quality.

(f) Redeveloper shall not unlawfully discriminate against or segregate any person, or group of persons, on account of race, color, religion, creed, national origin, ancestry, physical handicap, age, marital status, sex, affectional, or sexual orientation in the sale, lease, sublease, rental, transfer, use, occupancy, tenure, or enjoyment of the Project Site, nor shall Redeveloper itself, or any person claiming under or through Redeveloper, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use of occupancy of tenants, lessees, subtenants, sublessees, or vendees on the Project Site.

(g) Redeveloper shall not use the Project Site, or any part thereof, as security or collateral for an unrelated transaction.

9.2 Compliance with Redevelopment Plan. Redeveloper shall take all necessary steps so that the development of the Project Site and the construction, use, operation, and

maintenance of the Redevelopment Project thereon shall be in accordance with the provisions of this Agreement and Redevelopment Plan.

9.3 Redevelopment Project Completion. Redeveloper agrees to diligently undertake and implement the Redevelopment Project throughout the term of this Agreement and shall complete the Redevelopment Project within the time frames set forth in the Project Schedule.

9.4 Execution of Documents. Redeveloper shall, in order to effectuate the purposes of this Agreement, make, execute, acknowledge and deliver any commercially reasonable contracts, orders, receipts, writings and instructions with any other persons, firms or corporations and in general do all things which may be requisite or proper for the acquisition, construction and development of the Redevelopment Project in accordance with the terms of this Agreement and all necessary Approvals.

9.5 Fees. Redeveloper shall be subject to normal and customary application fees for Borough approvals and review processes for the Approvals for the Redevelopment Project, as well as normal and customary building and construction permit fees.

9.6 Construction Assurances. Redeveloper shall, upon Commencement of Construction, proceed diligently to complete construction.

9.7 Delivery of Consultants' Reports. Redeveloper agrees to promptly deliver to the Borough one electronic copy of every survey, report, analysis, test result and other written report or document prepared for Redeveloper by any Third Party consultant with respect to any property in the Project Site, including, but not limited to, wetlands investigations, environmental assessments, soil tests, surveys, title commitments, engineering analyses, utility capacity analyses and the like, all reports and other documents to be delivered without representation or warranty.

SECTION 10. REDEVELOPER'S FINANCIAL OBLIGATIONS

10.1 Redeveloper's Equity. Redeveloper represents that it will use commercially reasonable efforts to obtain and commit the requisite equity and debt financing in order to finance the Redevelopment Project.

10.2 Payment to Borough. Redeveloper agrees that simultaneously with the execution of this Agreement it will make payment to the Borough, in the amount of Twenty-Five Thousand Dollars (\$25,000.00). The Borough shall use such funds to pay for: (a) all out of pocket costs it has incurred or will incur in connection with the Redevelopment Project, including, but not limited to, the professional, legal, technical and other consultant fees incurred in connection with the designation of the Project Site as an area in need of redevelopment, the adoption of the Redevelopment Plan, the review, preparation and negotiation of this Agreement and the Financial Agreement, and the implementation and oversight of the Redevelopment Project; and (b) any other such costs as the Borough shall determine, in its discretion, are necessary and proper. If at any time the balance of the funds deposited with the Borough falls below Seven Thousand Five Hundred Dollars (\$7,500.00) or is insufficient to fund work to be performed, the Borough shall provide the Redeveloper with a notice of the insufficient deposit balance. The Redeveloper shall replenish the account with additional funds such that the amount on deposit therein is Twenty-Five Thousand Dollars (\$25,000.00) and such deposit shall be made within five (5) business days of the Borough's notice, failing which the Borough may unilaterally cease work without liability to the Redeveloper.

The Parties have previously entered into that certain Conditional Redeveloper's Agreement whereby Redeveloper deposited certain funds with the Borough to defray certain of the Borough's expenses prior to the date of this Agreement. To the extent there is any balance in that escrow

account as of the date hereof, such balance shall be credited against the required payment set forth above.

10.3 Application for Tax Exemption. The Redeveloper expects to submit to the Borough an application for tax exemption in accordance with the Long Term Tax Exemption Law and the terms of a Financial Agreement. If approved by ordinance of the Borough, the Financial Agreement shall provide, *inter alia*, that the Redevelopment Project shall be exempt from *ad valorem* taxation and that, in lieu of taxes otherwise due thereon, the Redeveloper shall make annual payments to the Borough in an amount set forth in the Financial Agreement. It is the intention of the Parties that this Agreement be contingent upon subsequent approval by the Borough of such application, adoption by the Borough Council of an ordinance approving the terms of the Financial Agreement, and the execution of the Financial Agreement by the Redeveloper and the Borough. In the event that the Financial Agreement is not executed within 90 days of the Effective Date (unless such deadline is extended by mutual agreement of the Parties), the Redevelopment Agreement, and Redeveloper's designation as redeveloper of the Project Site, will automatically terminate without any further action by either party.

SECTION 11. INDEMNIFICATION

11.1 Indemnification. (a) Redeveloper agrees to indemnify and hold harmless and defend the Borough and hold harmless and defend the Borough Indemnified Parties, and Redeveloper shall pay any and all liability, actual loss, costs, damages, claims, judgments or expenses, of any and all kinds or nature and however arising, imposed by law, including but not limited to, claims for personal injury, death and property damage, which the Borough and/or the Borough Indemnified Parties may sustain, be subject to or be caused to incur relating to, based upon or arising from (i) Redeveloper's activities in connection with the Project, or any portion thereof, (ii) contracts entered into by the Redeveloper which relate to such activities, including but not limited to any and all claims by workmen, employees and agents of the Redeveloper, its contractor and subcontractors and unrelated third parties, (iii) the maintenance and functioning of the Project Improvements, or any other activities of Redeveloper within the Project Site, (iv) the current or former environmental condition of the Project Site and including but not limited to any third-party claim with respect to other properties alleging harm emanating from such environmental condition of the Project Site, (v) a material breach of this Agreement by Redeveloper, or (vi) any violation of applicable law by Redeveloper, unless any such loss, liability claim or suit arising from the grossly negligent or intentional wrongful acts of the Borough, its employees, agents and contractors.

(b) Redeveloper, at its own cost and expense, shall defend any and all such claims, suits and actions which may be brought or asserted against the Borough, and/or the Borough Indemnified Parties; but this provision shall not be deemed to relieve any insurance company which has issued a policy of insurance as may be provided for in this Agreement from its obligation to defend Redeveloper, the Borough and any other insured named or named as an additional insured in such policy of insurance in connection with claims, suits or actions covered by such

policy. Any cost for reasonable fees in situations where it is required that the Borough engage its own attorneys, experts' testimony costs and all actual costs to defend the Borough or any Borough Indemnified Party, agents, servants, or employees shall be reimbursed to it by Redeveloper in connection with such defense and indemnification claim.

(c) In any situation in which the Borough Indemnified Parties are entitled to receive and desire defense and/or indemnification by Redeveloper, the Borough Indemnified Parties shall give prompt notice of such situation to Redeveloper. Failure to give prompt notice to Redeveloper shall not relieve Redeveloper of any liability to indemnify the Borough Indemnified Parties. Upon receipt of such notice, Redeveloper shall resist and defend any action or proceeding on behalf of the Borough Indemnified Parties, including the employment of counsel reasonably acceptable to the Borough Indemnified Parties, the payment of all reasonable expenses and the right to negotiate and consent to settlement. The Borough shall have the right to retain counsel of its choosing, the cost of which shall be borne by Redeveloper. All of the other Borough Indemnified Parties shall have the right to employ separate counsel in any such action and to participate in the defense thereof at their own expense. 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 or the Borough Indemnified Parties in any such action, Redeveloper shall indemnify and hold harmless the Borough Indemnified Parties from and against any loss or liability by reason of such settlement or judgment. Further, Redeveloper shall have the right to settle any such action on behalf of itself and all Borough Indemnified Parties, provided that such settlement (i) is solely a monetary payment, (ii) does not involve the entry of a judgment against Borough or any Borough Indemnified Parties and (iii) does not expose the Borough Indemnified Parties to any liability, contingent or otherwise. Redeveloper shall indemnify and hold harmless the Borough Indemnified Parties from and against any loss or liability by reason of such settlement.

11.2 Survival of Indemnity. The provisions of Section 11 shall survive the termination of this Agreement.

SECTION 12. DEFAULT PROVISIONS

12.1 Redeveloper Default. Subject to the terms of this Agreement, the Borough shall have the right to declare Redeveloper in default of this Agreement in the event of the occurrence of any of the following (each, a “**Default**”):

(a) Redeveloper’s failure to substantially perform any of its obligations under the terms of this Agreement or under the Financial Agreement, including the failure to cure such default during any applicable cure periods; or

(b) A final and unappealable determination by a court of competent jurisdiction that Redeveloper is insolvent; or

(c) (i) 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 (A) has made a general assignment for the benefit of creditors, or (B) 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; or (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 for a period of sixty (60) consecutive days; (vii) an Order for Relief shall have been entered with respect to or for the benefit of Redeveloper under the 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 sixty (60) consecutive days; or (ix) Redeveloper shall have abandoned the transaction of its usual business; or

(d) A notice to the Borough by Redeveloper that it has determined not to proceed with the Redevelopment Project, unless Redeveloper has the right not to proceed, under the terms of this Agreement; or

(e) Failure by Redeveloper to make any payments owed to the Borough when due; or

(f) Abandonment of the Redevelopment Project by Redeveloper; or

(g) Failure by Redeveloper to comply with the Project Schedule, subject to delays caused by the Borough's failure to timely perform its obligations under this Agreement and further subject to any delays caused by a Third Party(s) related to the Remediation of the Project Site, including but not limited to, delays caused by other party(s) obligated pursuant to Environmental Laws for Remediation of all or a part of the Project Site; or

(h) Redeveloper or its successor in interest shall fail to pay, when due, any real estate taxes, payments in lieu of taxes or other assessments on the Project Site; or

(i) Redeveloper shall implement a Transfer in violation of this Agreement; or

(j) Failure by Redeveloper to comply with its obligations, or default by Redeveloper in any of its representations, warranties or covenants under this Agreement.

12.2 Borough Default. Redeveloper shall have the right to declare the Borough in default of this Agreement in the event of the failure by the Borough to substantially perform any covenant, condition or obligation under this Agreement when performance is due, and if no time is specified then within a reasonable time (the "**Borough Default**").

12.3 Default Notice. Upon the occurrence of a Default, the non-defaulting party shall notify the defaulting party in writing that it has declared that party in Default (the "**Default Notice**"). Absent such Default Notice, no declaration of Default shall be deemed binding against

the defaulting party. The Default Notice shall state the basis for the determination that a Default has occurred. Upon receipt of the Default Notice, the defaulting party shall have, in the case of a financial obligation, ten (10) days to cure such Default; or in the case of any failure to perform any other obligation set forth in this Agreement, forty-five (45) days to commence to cure said Default. With respect to a failure to perform any obligation other than a financial obligation, provided the defaulting party shall thereafter diligently and continuously proceed to correct same, the defaulting party shall have an additional one hundred eighty (180) days to complete the cure. In the event that the defaulting party does not cure a Default as set forth herein, the non-defaulting party shall have the right to exercise the remedies set forth below. The Parties may agree in writing, notwithstanding the provisions of this paragraph, to extend the period of time by which the defaulting party must respond to the Default Notice or the period of time in which the defaulting party must cure the Default. Any Default by either Party hereto that remains uncured following any notice and applicable cure period shall be an “**Event of Default**”.

12.4 Default Rights and Remedies. Except as may otherwise be provided in this Agreement, upon the occurrence of an Event of Default, the non-defaulting party may terminate this Agreement and/or take whatever action, at law or in equity, it may deem desirable, including the seeking of damages, or institute such proceedings as may be necessary or desirable in its opinion to cure and remedy such default or breach, including but not limited to, proceedings to compel specific performance by the party in Default or breach of its obligations. In the event that the Borough terminates this Agreement following an Event of Default by Redeveloper, Redeveloper’s designation as the redeveloper of the Project Site shall immediately terminate, together with Redeveloper’s rights as Redeveloper. In that event, any tax exemption and Financial Agreement applicable to the Redevelopment Project, or any portion thereof, as described in Section 10.3, shall also immediately terminate.

12.5 Rights and Remedies Cumulative; No Waiver by Delay. The rights and remedies of the Parties whether provided by this Agreement or by law or in equity, shall be cumulative, and except as otherwise specifically provided by this Agreement, the exercise by either Party of any one or more of such rights or remedies shall not preclude the exercise, at the same or at different times, of any other such rights or remedies for the same Default, or for the same failure in respect to any of the terms, covenants, conditions or provisions of this Agreement or any of its remedies for any other default or breach. No delay by either Party in asserting any rights or exercising any remedy shall operate as a waiver of such rights or remedy or otherwise deprive it of, or limit such rights and remedies in any way (it being the intent of this provision that such Party shall not be constrained, so as to avoid the risk of being deprived of or limited in the exercise of the remedy provided in this Section because of concepts of waiver, laches, or otherwise, to exercise such remedy at a time when it may still hope otherwise to resolve the problems created by the default involved); nor shall any waiver by either Party with respect to any specific Default be considered or treated as a waiver of the rights of either Party with respect to any other defaults except to the extent specifically waived in writing.

12.6. Certificate of No Default. Either Party hereto shall deliver to the other, upon written request, a certificate signed by a duly authorized officer to the effect that the certifying Party is not aware of any condition, event or act which constitutes a violation of this Agreement or which would constitute a Default hereunder and no condition, event or act exists which, with notice or lapse of time, or both, would constitute such a violation, or Default, or if any such condition, event or act exists, specifying the same (“**Certificate of No Default**”).

12.7 Effect of Termination of Redeveloper. Upon termination, the designation of Redeveloper as redeveloper shall automatically cease, and neither party shall have any further rights or obligations under this Agreement, except as expressly provided otherwise herein. In the

event of a termination of Redeveloper as redeveloper, Redeveloper shall promptly deliver to the Borough, and assign to the Borough all of its right, title and interest in and to any Approvals, plans, drawings, surveys, studies, tests, investigations, permits, approvals, and applications for permits, approvals or utility capacity including, but not limited to, electronic versions where applicable (the “**Project Documents**”) prepared by or for Redeveloper in connection with the Redevelopment Project and/or the Project Site, without representation or warranty. Project Documents shall not include documents that are proprietary to the Redeveloper.

12.8 Termination for Failure to Obtain Approvals. Notwithstanding anything herein to the contrary, Redeveloper shall have the right to terminate this Agreement at any time upon written notice to the Borough in the event any Approval is denied or the obtaining of any one or more Approvals appears without reasonable likelihood for success, in Redeveloper’s good faith and reasonable judgment.

SECTION 13. FINANCING PROVISIONS

13.1 Rights of Institutional Mortgagee. Except to the extent that the Project Site may be subject to a mortgage or other encumbrance or lien on the Effective Date, Redeveloper shall not engage in any financing or any other transaction creating any mortgage or other encumbrance or lien upon the Project Site, whether by express agreement or operation of law, or suffer any encumbrance or lien (other than liens for governmental impositions) to be made or attach to the Project Site, except as may be reasonably required for the construction of the Redevelopment Project or the continued operation of the Redevelopment Project or portion thereof after the completion of construction, provided, however, that upon the issuance of a Certificate of Completion, such prohibition shall no longer apply with respect to the corresponding portion of the Redevelopment Project. Redeveloper shall notify the Borough in writing no less than ten (10) days in advance of any such financing secured by a mortgage or other lien instrument which it proposes to enter into with respect to the Redevelopment Project or any part thereof (the mortgagee thereunder or its affiliate, a “**Holder**”). The provisions of this Agreement shall not be deemed to grant to the Borough the right to approve or review the terms of any such proposed financing.

13.2 No Termination for Mortgage Default. This Agreement, as an arrangement made by a governmental body or agency of the State pursuant to statutes in connection with a project for redevelopment, renewal or rehabilitation, shall continue in full force and effect beyond any default in or foreclosure of any mortgage loan made to finance the Redevelopment Project, as though such default or foreclosure had not occurred, except as specifically provided herein.

13.3 Cooperation. To the extent reasonably requested by Redeveloper or any Holder, the Borough shall execute an estoppel certificate, recognition agreement, attornment agreement and or such other agreements and/or documents (to the extent same are in form and content reasonably acceptable to the Borough) as may be requested or required by any Holder; provided,

however, that any such agreement or document shall not materially and adversely alter any of the rights or obligations of Redeveloper or the Borough under this Agreement.

13.4 Notice of Default to Holder and Right to Cure.

(a) Whenever the Borough shall deliver any notice or demand to Redeveloper with respect to any breach or default by Redeveloper under this Agreement, the Borough shall at the same time deliver to each Holder a copy of such notice or demand, provided that Redeveloper has delivered to the Borough a written notice of the name and address of such Holder. Each such Holder shall have the right at its option within ninety (90) days after the receipt of such notice, to cure or remedy, or to commence to cure or remedy, any such default which is subject to being cured and to add the cost thereof to the debt and the lien which it holds.

(b) To the extent that any Holder is required to foreclose against any lien it has with respect to the Redevelopment Project (as a result of a Redeveloper Event of Default or a default by Redeveloper under any agreements executed by Redeveloper and its project lenders), the Borough agrees to forebear from the enforcement of any remedies provided under this Agreement that it may have against Redeveloper in order to permit such Holder to foreclose and assume or cause a Third Party to assume the obligations of Redeveloper under this Agreement; provided, however, that the Borough shall not be obligated to forebear from the exercise of any remedies available to it hereunder if such forbearance will result (or may result, in the reasonable judgment of the Borough) in a waiver of the Borough's rights under this Agreement.

13.5 No Guarantee of Development, Construction or Completion of the Redevelopment Project. A Holder shall in no manner be obligated by the provisions of this Agreement to develop, construct or complete the Redevelopment Project (or portion to which its mortgage relates), or to guarantee such development, construction or completion; nor shall any covenant or any other provisions be construed to so obligate a Holder. Notwithstanding the

foregoing, nothing contained in this Agreement shall be deemed to permit or authorize such Holder to undertake or continue the development, construction or completion of the Redevelopment Project, or portion to which its mortgage relates (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 the Borough going forward from and after the date of such assumption with respect to the Redevelopment Project (or portion to which its mortgage relates) by written agreement reasonably satisfactory to the Borough and the Holder.

13.6 Foreclosure. If a Holder forecloses its mortgage secured by the Project Site (or portion to which its mortgage relates), or takes title to the Project Site (or portion to which its mortgage relates) by deed-in-lieu of foreclosure or similar transaction (collectively a “**Foreclosure**”), the Holder shall have the option to either (a) sell the Project Site and the Redevelopment Project to a responsible Person reasonably acceptable to the Borough, which Person shall assume the obligations of Redeveloper under this Agreement in accordance with applicable law, and/or (b) assume the obligations of Redeveloper under this Agreement in accordance with applicable law. In the event of a Foreclosure and provided the Holder or the purchaser is in compliance with this Agreement, the Borough shall not seek to enforce against the Holder or purchaser of such parcel any of the remedies available to the Borough pursuant to the terms of this Agreement available in connection with the events preceding the Foreclosure. The Holder, or the Person assuming the obligations of Redeveloper as to the parcel affected by such Foreclosure or sale, in that event must agree to complete the Redevelopment Project in the manner provided in this Agreement, but subject to reasonable extensions of the Project Schedule, and shall submit evidence reasonably satisfactory to the Borough that it has the qualifications and financial responsibility necessary to perform such obligations. Any such Holder or Person assuming such

obligations of Redeveloper, properly completing the Redevelopment Project, or any portion thereof, shall be entitled to Certificates of Completion in accordance herewith. Nothing in this Agreement shall be construed or deemed to permit or to authorize any Holder, or such other Person assuming such obligations of Redeveloper, to devote the Project Site, or any part thereof, to any uses, or to construct any improvements thereon, other than those uses or improvements consistent with the Concept Plan or other provided for or authorized by this Agreement.

13.7 Lender Changes. If Redeveloper's lender requires a change in the terms of this Agreement, the Borough shall reasonably cooperate with Redeveloper in approving and implementing such change, so long as such change does not increase the Borough's obligations or decrease the Borough's rights as set forth in the Agreement, or materially change the Concept Plan. In addition, the Borough agrees to enter into such agreement as Redeveloper's lender (or its equity participants) may reasonably require provided that such agreement shall not increase the Borough's obligations or decrease the Borough's rights in connection with this Agreement, or materially change the Concept Plan.

SECTION 14. NEIGHBORHOOD ISSUES

14.1 Neighborhood Impacts. Redeveloper acknowledges that the construction of the Project may have certain impacts on the neighborhoods in the vicinity of the Redevelopment Project. Although it is anticipated that the Redevelopment Project will provide many positive effects on the community, it is also recognized that it may result in some temporary inconveniences during the time that construction takes place and for a short time thereafter. Therefore, Redeveloper shall take reasonable steps in order to minimize any material negative effects that the construction of the Redevelopment Project may produce, with an emphasis on the existing utilities, surface parking areas and general business operations of the existing retail and commercial space that is currently occupied and is to remain. As a result, the Borough and Redeveloper agree herein to address the reasonable concerns of the surrounding neighborhoods in order to assure the citizens of the Borough that reside in those neighborhoods that the Redevelopment Project will be completed with minimum inconvenience as is practicable. Accordingly, the Parties agree to the provisions set forth below in this Section of the Agreement.

14.2 Compliance with Borough Ordinances, State Laws, Regulations and Standards. Redeveloper shall comply with all applicable Borough ordinances with regard to traffic, traffic safety, parking during construction, illumination, noise, pollution, and rodent, insect and animal control. Redeveloper commits to follow all applicable construction laws, regulations and standards in the industry to address these concerns and furthermore commits to having a program in place, prior to the Commencement of Construction, to reasonably address such concerns.

SECTION 15. ADDITIONAL PROVISIONS

15.1 Borough Cooperation. The Borough shall cooperate with and assist Redeveloper so as to enable Redeveloper to implement, develop and complete the Redevelopment Project in accordance with the Concept Plan and to otherwise perform Redeveloper's obligations and responsibilities under this Agreement. This cooperation shall include, but not be limited to, (a) causing all construction and building permits over which the Borough or any of its agencies or offices has jurisdiction to be granted to Redeveloper provided the applications for same comply with applicable law, (b) assisting Redeveloper in obtaining Approvals, in expediting required action by the Planning Board in connection with site plan and subdivision applications filed by Redeveloper in connection with this Agreement, and (c) the exercise of such other actions pursuant to Redevelopment Law as may be reasonably necessary to carry out the purpose and intent of this Agreement.

15.2 Maintenance and Landscaping. Redeveloper shall keep the Project Site free from any substantial accumulation of debris or waste materials and shall maintain in good condition any landscaping and amenities required under any applicable approved final site plan.

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

15.4 Compliance with Agreement. Redeveloper shall use reasonable efforts to ensure that all consultants, professionals, employees, agents, and contractors engaged by Redeveloper or any of Redeveloper's subcontractors shall have the skill and judgment necessary to implement the Redevelopment Project in compliance with the terms and conditions of this Agreement.

SECTION 16. MISCELLANEOUS

16.1 Force Majeure. For the purposes of any of the provisions of this Agreement, neither the Borough nor Redeveloper, as the case may be, nor any successor in interest, shall be considered in breach of, or in Default with respect to its obligations hereunder because of any delay in the performance of such obligations, including commencement or completion of construction, arising from causes beyond its reasonable control and without its fault or negligence, including, but not limited to, acts of God, acts of public enemy, acts or omissions of other parties (including litigation by Third Parties), unavailability of materials, fires, floods, epidemics, quarantine restrictions, moratoriums, strikes, freight shortages, energy shortages, embargoes, unusual or severe weather, or delays of subcontractors due to any of the forgoing such causes, actions or inactions by any federal, state, or local governmental or quasi-governmental entity, including the Borough, with respect to the Approvals or the development of the Redevelopment Project (including, without limitation, a failure of the Borough to perform in accordance with the terms of this Agreement), legal action or lawsuits filed in challenge of the issuance, grant or denial of any Approval and a change in laws, if such actions or inactions are not caused by Redeveloper (collectively “**Force Majeure**”). It is the purpose and intent of this provision that in the event of the occurrence of any such delay due to Force Majeure, the time or times for performance of the obligations of the Borough or Redeveloper shall be extended for such period(s) as may be reasonable in the circumstances but in no event less than the period of the delay.

16.2 Section Headings. The headings and numbering of paragraphs and sections of this Agreement are set forth for ease of reference only and are not to be construed or considered to impart meaning to any provision of this Agreement.

16.3 Governing Law. This Agreement shall be governed by and construed under the laws of the State and any litigation relating to this Agreement shall be brought in the Superior Court of New Jersey and venued in the County of Middlesex.

16.4 Amendments to Agreement. This Agreement represents the entire agreement by and between the Parties with respect to the development of the Project Site and the construction of the Redevelopment Project. No amendment to this Agreement shall be considered binding on either of the Parties unless such amendment is in writing and specifically recites that it is being entered into by and between the Borough and Redeveloper with the specific intention to modify the terms of this Agreement. In the event that any such amendment is agreed to by the Parties, such amendment shall not modify, change or amend any portion of this Agreement except those specific portions that are recited in the amendment as being modified by such amendment. All other portions of this Agreement not so specifically amended in writing shall remain in full force and effect.

16.5 Severability. Should any provision, term, section or other portion or portions of this Agreement be held by any court of competent jurisdiction to be in violation of any applicable law, or against public policy or held to be null and void for any reason whatsoever, such portion shall be deemed severable so that such determination, unless it prohibits or otherwise prevents the performance of this Agreement or materially alters the rights or obligations of the Parties (in such event this Agreement is to be reformed to reflect as nearly as possible the original stated terms), shall not affect the validity of any other provisions of this Agreement, and such other provisions shall be deemed to be in full force and effect and binding on the Parties unless amended in accordance with Section 16.4.

16.6 Incorporation of Recitals and Exhibits. The recitals set forth in Section 1 and the Exhibits attached hereto are hereby incorporated by reference and are considered part of this Agreement.

16.7 Condemnation/Casualty. In the event that all or any substantial portion of the Project Site is condemned or taken by eminent domain by any condemning authority or is damaged or destroyed by casualty prior to Commencement of Construction, Redeveloper may, at its option, terminate this Agreement by written notice to the Borough within thirty (30) days after Redeveloper is notified of the condemnation, taking, damage or casualty. For purposes of this provision “**Substantial Portion**” shall be defined as any portion which is equal to or in excess of ten percent (10%) of the total acreage of the Project Site or that portion which, in the reasonable opinion of Redeveloper, would prevent the successful completion of construction or operation of the Redevelopment Project as envisioned by this Agreement. The Borough acknowledges that it has no right to the proceeds resulting from a condemnation of the fee simple interest in the Project Site.

16.8 Litigation. Redeveloper shall have the right, but not the obligation, to undertake litigation in order to obtain Approvals with conditions reasonably satisfactory to Redeveloper including, without limitation, the right to litigate to the ultimate decision maker. Any litigation undertaken shall toll the relevant time periods set forth in the Project Schedule.

16.9 Waivers. Any right or remedy which any party may have under this Agreement may be waived in writing by the relevant party without the execution of a new or supplemental agreement. Except as otherwise provided in this Agreement, said right of waiver shall include the right to waive a default. No waiver made by any party with respect to the performance, or manner or time thereof, of any obligation of any other party or any condition to its own obligation under this Agreement shall be considered a waiver of any rights of the party making the waiver with

respect to the particular obligation of the other party or condition of its own obligation beyond those expressly waived and to the extent thereof, or a waiver in any respect in regard to any other rights of the party making the waiver.

16.10 Commissions. The Parties agree that no commissions to any broker, agent, or any other intermediary are due hereunder, and further agree to indemnify and save harmless the other party in the event of any claim whatsoever for any commission or other remuneration payable or alleged to be payable by any broker, agent or other intermediary by virtue of the acts or agreements of the indemnifying party.

16.11 No Significance of Party Drafting. The Parties agree that in the construction or interpretation of this Agreement no significance shall be attributed in presumption or otherwise to the identity of the party drafting the provision or provisions in question.

16.12 Recordation. In accordance with the Redevelopment Law, a short form memorandum of this Agreement, in the form attached hereto as Exhibit C (the “**Declaration**”), shall be duly recorded by Redeveloper in the land records of Middlesex County and the cost of such recordation shall be paid by Redeveloper.

16.13 Notices. Any notice provided or required to be given under this Agreement must be in writing and shall be served (and shall be deemed to have been served) (a) by hand delivering a copy thereof to the party being served in person or by commercial courier, (b) by registered or certified mail, postage prepaid, return receipt requested, or (c) by a commercial overnight delivery service with package tracking capability and for which proof of delivery is available, to the person or persons set forth below for each party to this Agreement. Minor communications between the Parties that are other than formal notices of action may be sent by regular mail, facsimile or e-mail. Notifications are deemed to be given (a) on the date of delivery if hand delivered, (b) on the third business day following their deposit in the United States Mail, postage prepaid, return receipt

requested, or (c) on the next business day following their deposit with a commercial overnight delivery service.

As to the Borough:

Borough of Dunellen
355 North Avenue
Dunellen, New Jersey 08812
Attention: Business Administrator

With copies to:

McManimon, Scotland & Baumann, LLC
75 Livingston Avenue
Roseland, New Jersey 07068
Attn: Matthew D. Jessup, Esq.

As to Redeveloper:

120 – 126 North Avenue Urban Renewal, LLC
5 Corporate Drive, Suite 100
Central Valley, New York 10917
Attn: Mayer Gross

With a copy to:

DiFrancesco, Bateman, Kunzman, Davis, Lehrer & Flaum, P.C.
15 Mountain Boulevard
Warren, New Jersey 07059
Attn: Jeff Lehrer

From time to time either party may designate a different person or address for all the purposes of this notice provision by giving the other party no less than ten (10) days' notice in advance of such change of address in accordance with the provisions hereof.

16.14 Further Assurances. Each party shall execute such further documents, papers and instruments and shall use good faith efforts to take such further actions as are contemplated by and reasonably necessary to carry out the expressed intent of this Agreement as may be reasonably requested by the other Party.

16.15 Counting of Days. Unless otherwise specifically set forth, all references to counting of days shall be calendar days.

16.16 Successors Bound. The Agreement shall be binding upon the respective Parties hereto, and, subject to the limitations on transfer set forth in Section 9.1(b), their successors and assigns.

16.17 No Obligation. The Parties agree that the submission of this Agreement (or any draft, re-draft, or other copy) by one party to another is not intended by either party to be an offer to enter into a legally binding contract. Notwithstanding any discussions, memorandum or exchange of correspondence or emails, the Parties shall be legally bound pursuant to the terms of this Agreement only if and when the Parties have been able to negotiate all of the terms and provisions of this Agreement in a manner acceptable to each of the Parties in their respective sole discretion, including, without limitation, all of the exhibits hereto, and each of the Borough and Redeveloper have fully executed and delivered to the other (or its attorney) an executed counterpart of this Agreement. Unless and until each of the Borough and Redeveloper have fully executed and delivered a counterpart of this Agreement to the other, neither shall have any obligation whatsoever to the other.

16.18 Time of the Essence. Time is of the essence with regard to all dates set forth in this Agreement.

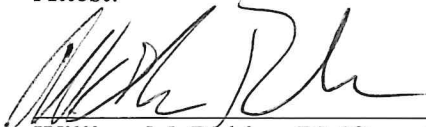
16.19 No Restriction on Police Powers. Nothing in this Agreement will in any way limit or affect the right of the Borough or any municipal board, department, agency, authority, official, or representative to enforce any generally applicable municipal ordinance, regulation, rule, procedure or other requirement, including, but not limited to, with respect to the Redevelopment Project, the Project Site or Redeveloper.

16.20 Prior Agreements Superseded. This Agreement integrates all of the terms and conditions mentioned herein or incidental hereto, and supersedes all negotiations or previous agreements between the Parties with respect to all or any part of the subject matter hereof, except for the terms and conditions of the Settlement Agreement, which continue to be in full force and effect.

Signatures on next page

IN WITNESS WHEREOF, the Parties have executed this Agreement effective as of the date first written above.

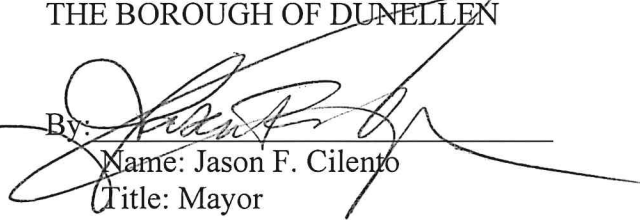
Attest:



William M. Robins, RMC
Borough Clerk

THE BOROUGH OF DUNELLEN

By:



Name: Jason F. Cilento
Title: Mayor

Attest:

NORTH AVENUE PORTFOLIOS LLC

By:

Name: Mayer Gross
Title: [Managing Member]

IN WITNESS WHEREOF, the Parties have executed this Agreement effective as of the date first written above.

Attest:

THE BOROUGH OF DUNELLEN

William M. Robins, RMC
Borough Clerk

By: _____
Name: Jason F. Cilento
Title: Mayor

Attest:

NORTH AVENUE PORTFOLIOS LLC

By: 
Name: Mayer Gross
Title: [Managing Member]

EXHIBIT A
CONCEPT PLAN

Zoning Analysis

Block/Lot: Block 1 / Lot 19; Lot 20; & Lot 21

Site Area: 22,455 sq. ft.

Zoning: Redevelopment Area Remainder as per "Dunellen Zoning Map May 2009"

Permitted Uses: Commercial/Residential - Commercial uses on ground floor and office, commercial and residential uses on upper floors.

Building Height: Permitted - 3 stories.
Proposed - 3 stories.

Density: No Residential Density Requirement
Proposed - 33 units

Setbacks: Required - 16'-0" front setback from curb, no side or rear setback requirements.
Provided - 10'-0" setback from curb,
No front, side or rear setback requirement per Dunellen Downtown Redevelopment Plan dated 5/16/2016.

Parking:

Commercial:
1 space per 200 sf of gross first floor area plus 1 additional space for each 300 sf of additional gross floor area.

Commercial - Required = 8 spaces

Residential:
1 bdrm = 1 per unit = 17 X 1.0 = 17.0
2 bdrm = 1.5 per unit = 14 X 1.5 = 21.0
3 bdrm = 1.75 per unit = 2 X 1.75 = 3.5
Residential - Required = 42.0 spaces

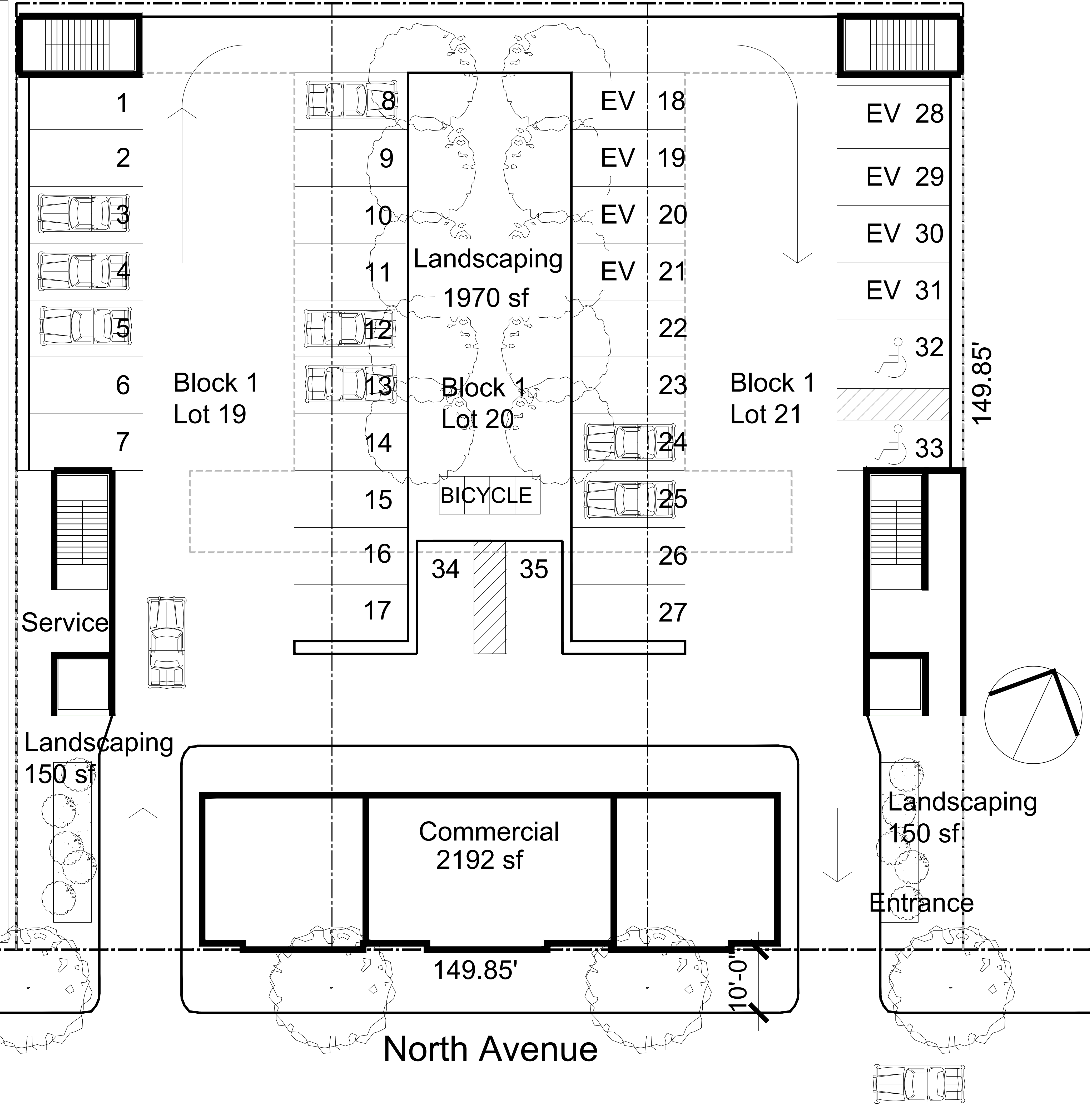
Total required = 50.0 spaces

Includes:

ADA - Required = 2.0 spaces
Bicycle Credit = - 1.0 spaces
EV Charge station (15%) = 8.0 spaces
Reduction of 10% req. spaces EVCS adjustment = - 5.0 spaces
TOTAL Required w/ 10% EVCS adjustment + bicycle credit = 44.0 spaces

Total Proposed = 35.0 spaces

Landscaping: 10% of lot area
Required = 2,245 sq. ft.
Provided = 2,270 sq. ft.



37 East Washington Avenue
Atlantic Highlands, NJ 07716
732.741.4900

Kevin M Settembrino, AIA, LEED AP
License No. AI 15163

OWNER

LGP Capital
51 Forest Road
Monroe, NY 10950
888-371-0382

No.	Description	Date
	REV - PLANNER COMMENTS	05.31.22
	REV - ATTY COMMENTS	08.23.22
	REV - 2 3BDRM INCLUSION	01.19.22
	REV - 3 PER PLANNER MTG	03.21.22
	REV - BICYCLE SPACES/CREDIT	03.31.22
	REV - BICYCLE SPACES/CREDIT	04.11.22

JOB NO. 20.114
DRAWN BY: CHECKED BY:
DATE:
CAD FILE:

PROPOSED:
MIXED USE
DEVELOPMENT -
DUNELLEN
BLOCK: 1, LOTS: 19, 20, 21

120-126 NORTH AVENUE
DUNELLEN, NJ 08812

FIRST FLOOR PLAN



SETTEMBRINO
ARCHITECTS

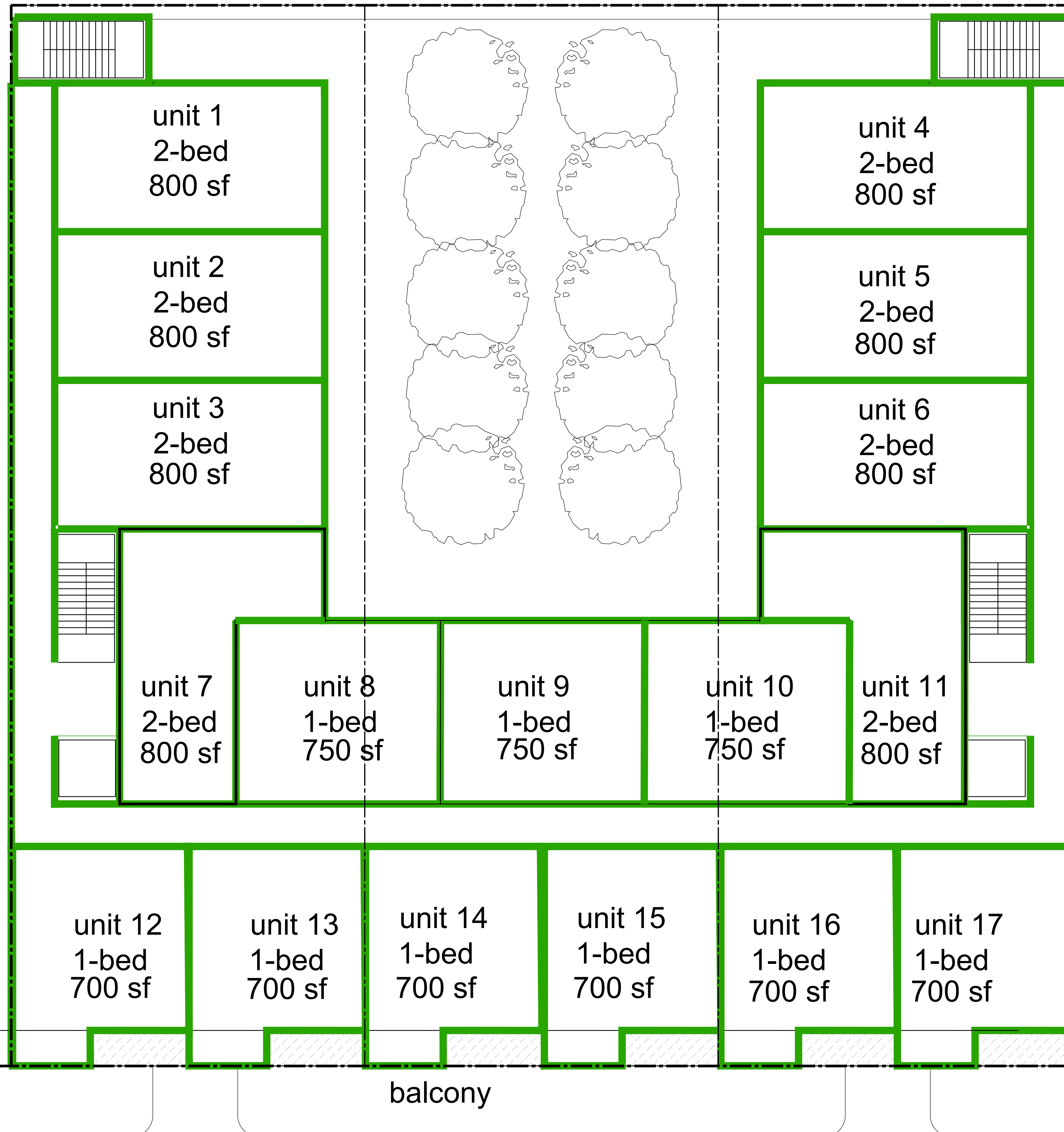
37 East Washington Avenue
Atlantic Highlands, NJ 07716
732.741.4900

Kevin M Settembrino, AIA, LEED AP
License No. AI 15163

OWNER

LGP Capital
51 Forest Road
Monroe, NY 10950
888-371-0382

SECOND FLOOR	
1 BDRM UNITS	= 9
2 BDRM UNITS	= 8
3 BDRM UNITS	= 0
TOTAL UNITS	= 17



No.	Description	Date
REV -	PLANNER COMMENTS	05.31.22
REV -	ATTY COMMENTS	08.23.22
REV -	2 3BDRM INCLUSION	01.19.22
REV -	3 PER PLANNER MTG	03.21.22
REV -	BICYCLE SPACES/CREDIT	03.31.22
REV -	BICYCLE SPACES/CREDIT	04.11.22

JOB NO. 20.114
 DRAWN BY: _____ CHECKED BY: _____
 DATE: _____
 CAD FILE: _____

PROPOSED:
 MIXED USE
 DEVELOPMENT -
 DUNELLEN
 BLOCK: 1, LOTS: 19, 20, 21

120-126 NORTH AVENUE
 DUNELLEN, NJ 08812

SECOND FLOOR PLAN

North Avenue



SETTEMBRINO
ARCHITECTS

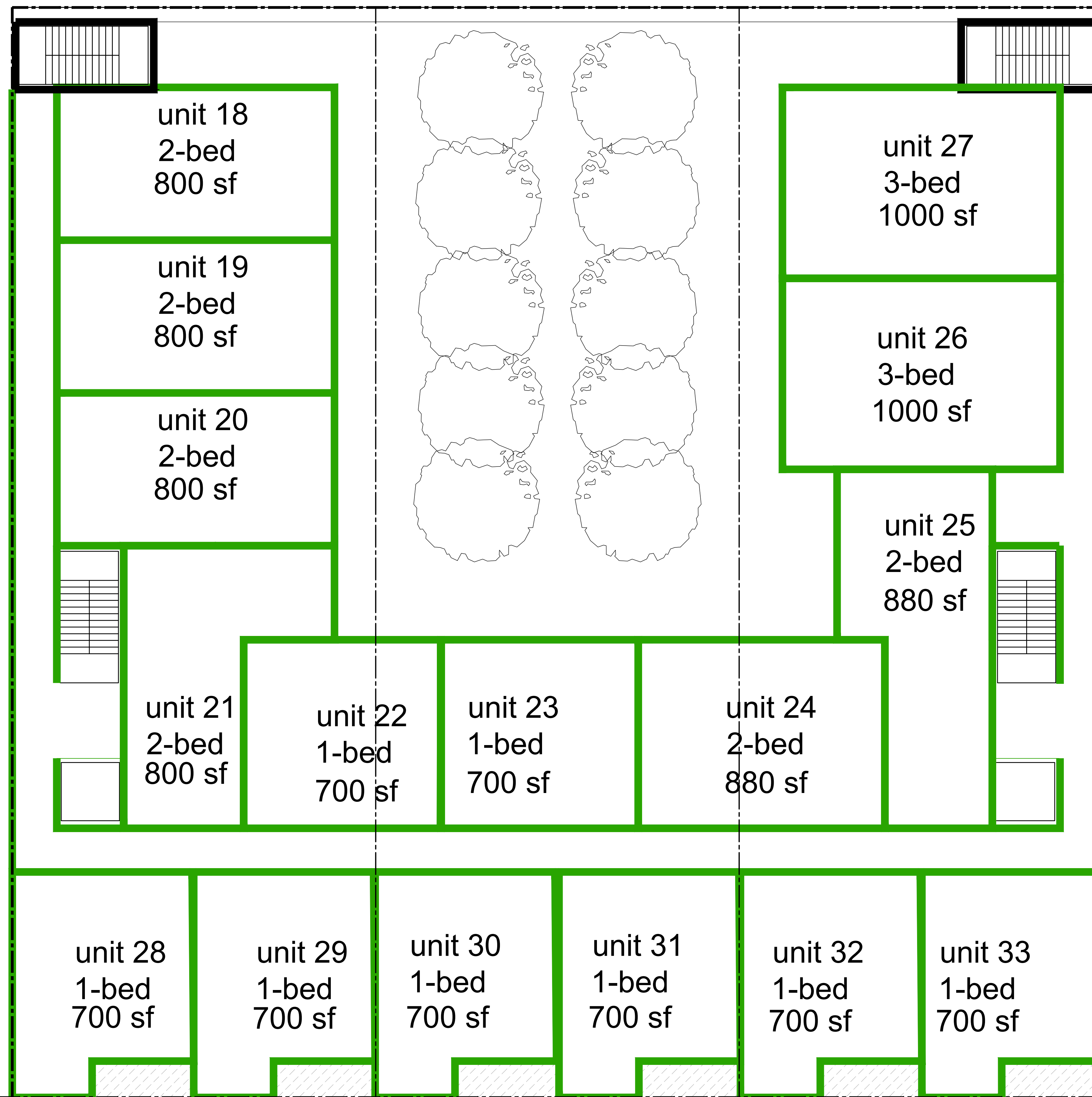
37 East Washington Avenue
Atlantic Highlands, NJ 07716
732.741.4900

Kevin M Settembrino, AIA, LEED AP
License No. AI 15163

OWNER

LGP Capital
51 Forest Road
Monroe, NY 10950
888-371-0382

THIRD FLOOR	
1 BDRM UNITS	= 8
2 BDRM UNITS	= 6
3 BDRM UNITS	= 2
TOTAL UNITS	= 16



No.	Description	Date
REV - PLANNER COMMENTS		05.31.22
REV - ATTY COMMENTS		08.23.22
REV - 2 3BDRM INCLUSION		01.19.22
REV - 3 PER PLANNER MTG		03.21.22
REV - BICYCLE SPACES/CREDIT		03.31.22
REV - BICYCLE SPACES/CREDIT		04.11.22

JOB NO. 20.114
 DRAWN BY: CHECKED BY:
 DATE:
 CAD FILE:

PROPOSED:
 MIXED USE
 DEVELOPMENT -
 DUNELLEN
 BLOCK: 1, LOTS: 19, 20, 21

120-126 NORTH AVENUE
 DUNELLEN, NJ 08812

THIRD FLOOR PLAN

North Avenue



EXHIBIT B
PROJECT SCHEDULE

126 North Avenue • Dunellen, NJ
3/17/22

PROJECT *schedule*

Planning Board Approval:	June 2022
Design Development:	August 2022
Construction Documents:	October 2022
Owner Review:	November 2022
Local Plan & Permit Submission:	December 2022
Quote / Award:	January 2023
Construction Start:	February 2023
Construction Complete:	April 2024



EXHIBIT C
DECLARATION

Record and Return to:
Jessica CM Almeida, Esq.
McManimon, Scotland & Baumann
75 Livingston Avenue
Roseland, NJ 07068

Prepared by:

Jessica CM Almeida, Esq.

DECLARATION OF COVENANTS AND RESTRICTIONS

With respect to the Property identified as Block 1, Lots 19, 20, and 21 on the Tax Maps of the Borough of Dunellen, New Jersey and as more specifically delineated in the metes and bounds description attached hereto as **Exhibit A** (the “**Property**”)

This Declaration of Restrictions is made this ____ day of August, 2022 by and between the **BOROUGH OF DUNELLEN** (the “**Township**”), a municipal corporation of the State of New Jersey, County of Hunterdon, having its offices at 355 North Avenue, Dunellen, New Jersey 08812, in its capacity as redevelopment entity pursuant to N.J.S.A. 40A:12A-4(c);

and

120-126 NORTH AVENUE URBAN RENEWAL LLC, a limited liability company of the State of New Jersey, having its offices at 5 Corporate Drive, Suite 100, Central Valley, New York 10917 (together with permitted successors or assigns hereinafter provided, referred to as the “**Redeveloper**”).

WITNESSETH

WHEREAS, on May 5, 2003, the Borough Council of the Borough (the “**Borough Council**”) designated, along with other properties, Block 1, Lots 19, 20, and 21 as a non-condemnation area in need of redevelopment (the “**Project Site**”) in accordance with the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq. (the “**Redevelopment Law**”); and

WHEREAS, the Borough Council duly adopted a redevelopment plan for the Project Site, along with other properties, entitled, “Dunellen Downtown Redevelopment Plan Phase 1”, dated May 16, 2016 and most recently amended June 7, 2021 and entitled “Amended and Restated Dunellen Downtown Redevelopment Plan Phase 1”, (as the same may be amended and supplemented from time to time, the “**Redevelopment Plan**”); and

WHEREAS, Redeveloper is formed as a limited liability company and as an urban renewal entity under the laws of the State, and is the owner of a portion of certain property within the Redevelopment Area identified as Block 1, Lots 19, 20, and 21, on the official Tax Maps of the Borough (the “**Project Site**”); and

WHEREAS, the Redeveloper entered an agreement in order to develop, construct and implement that certain Redevelopment Project defined in the redevelopment agreement executed by and between the Township and the Redeveloper dated August _____, 2022 (the “**Redevelopment Agreement**”) in accordance with N.J.S.A. 40A:12A-8(f) of the Redevelopment Law; and

WHEREAS, N.J.S.A. 40A:12A-9(a) of 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 requires that such covenants be memorialized in a Declaration of Restrictions and said declaration be recorded in the office of the Middlesex County Clerk,

NOW THEREFORE, IT IS AGREED AS FOLLOWS:

Section 1. Defined terms not otherwise defined herein shall have the meaning assigned to such terms in the Redevelopment Agreement.

Section 2. Redeveloper covenants and agrees that, subject to the terms of the Redevelopment Agreement:

(a) Redeveloper shall construct the Redevelopment Project on the Project Site in accordance with, and subject to the terms of, the Redevelopment Plan, the Redevelopment Agreement and all Applicable Laws.

(b) Redeveloper shall not use the Project Site or any part thereof in a manner that is not in all material respects consistent with the Redevelopment Plan, the Approvals and the Redevelopment Agreement. Redeveloper will construct only those uses established in the Redevelopment Plan or as the Redevelopment Plan may be modified, in writing, by the Township from time to time in accordance with the Redevelopment Law.

(c) Except as permitted in paragraph (d) below, prior to the issuance of a Certificate of Completion for the Redevelopment Project or any part thereof, pursuant to N.J.S.A. 40A:12A-9(a), Redeveloper shall not, without the prior written consent of the Township, which the Township shall not unreasonably withhold, condition or delay: (i) effect or permit any change, directly or indirectly, in the majority ownership of more than fifty percent (50%) or control of Redeveloper (whether in one transaction or by virtue of the combined effect of more than one transaction), provided, however, that the Township will not unreasonably withhold consent to a transfer of a majority or greater interest in Redeveloper (or in an Affiliate of Redeveloper) to a reputable financial institution for *bona fide* financing purposes, provided that the current members of Redeveloper remain in control of the entity, (ii) assign or attempt to assign the Redevelopment Agreement or any rights therein or in the Project Site, (iii) make any total or partial sale, lease, transfer or conveyance of the whole or any part of its interest in the Project Site or the Redevelopment Project; or (iv) pledge, or transfer all or substantially all of its assets (collectively,

a “**Transfer**”). If Redeveloper proposes a Transfer, other than as set forth above, Redeveloper will promptly provide to the Township for its consideration any information or documentation reasonably requested by the Township pertaining to the transferee’s identity, principals, qualifications, reputation and financial condition. If a Transfer is approved by the Township, the transferee, by written document acceptable in form and substance to the Township, for itself and its successors and assigns, and for the benefit of the Township, shall expressly assume all of the obligations of Redeveloper under the Redevelopment Agreement applicable to the property interest conveyed with such sale, assignment or transfer and shall agree to be subject to all the conditions and restrictions to which Redeveloper is subject hereunder, including the restrictions regarding the right to subsequent transfers. All relevant instruments and other legal documents proposed to effect any such transfer shall be submitted to the Township. The Township shall notify the Redeveloper in writing whether the Township consents to a requested Transfer within forty-five (45) days after Redeveloper’s written request to the Township for such consent. If the Township does not deliver a written response to the Redeveloper’s request within said forty-five (45) day period, then the Redeveloper may deliver a second written request to the Township for consent to the Transfer and the Township shall be deemed to have consented to such requested Transfer if the Township does not deliver a written response to the Redeveloper within forty-five (45) days after Redeveloper’s second request to the Township for such consent.

(d) Redeveloper, without violating the provisions of paragraph (c), may, subject to the requirements of N.J.S.A. 40A:12A-9(a) effect the following Transfers, to which the Township hereby consents upon receipt of notice thereof, without the necessity of further action by the Township (the “**Permitted Transfers**”): (i) Transfers to an Affiliate of Redeveloper; (ii) leases to residential and commercial tenants; (iii) mortgages or related security to secure Institutional Financing for acquisition of the Project Site and/or the construction of the Redevelopment Project (including conditional assignments to mortgagees or Holders required as a condition to the closing of the financing so secured) granted by Redeveloper to Holder; (iv) mortgages, leases, and other liens and encumbrances for the purpose of financing the costs associated with, or incurred in connection with the acquisition, development and construction of the Redevelopment Project; (v) environmental covenants and restrictions imposed by DEP, or other Governmental Agency, as a condition of any permit or Approval; (vi) any direct or indirect transfer of any interest in Redeveloper to a Person not presently holding an interest in Redeveloper, provided that the transfer is for less than fifty percent (50%) of the ownership interest of Redeveloper and otherwise does not change the control of Redeveloper; (vii) granting of easements, deed restrictions and licenses required for utilities or in connection with any Approvals; (viii) transfer to a single purpose entity formed for the purpose of implementing the Redevelopment Project and in which either Redeveloper, or Redeveloper’s member or members, maintains a minimum fifty percent (50%) ownership or controlling interest, including a “urban renewal entity” formed pursuant to the provisions of the Long Term Tax Exemption Law; (ix) transfers by means of inheritance, devise or bequest or by operation of law upon an Immediate Family Member, or a trust established for the benefit of such Immediate Family Member; (x) any direct or indirect transfer to a Person of an interest in excess of fifty percent (50%) of the ownership interest of Redeveloper, provided the transferee has the financial capacity and development experience equal to or greater than that of the majority member of Redeveloper as set forth in Section 8.1(h) of the Redevelopment Agreement; and (xi) any contract or agreement which effectuates any of the foregoing exceptions. For avoidance of doubt, the Township consents to the transfer to a Holder upon a foreclosure or

deed in lieu. With respect to any of the Permitted Transfers listed in this Section, to the extent reasonably practical, Redeveloper shall provide to Township written notice within thirty (30) days of such Permitted Transfer, including a description of the nature of such Permitted Transfer, and the name(s) and address(es) of the transferee parties, individuals and/or entities involved.

(e) Upon issuance of a Certificate of Completion for the Redevelopment Project, Redeveloper shall have the right to sell its interest in the real property.

(f) Redeveloper shall design, implement, complete and operate the Redevelopment Project in compliance with the Redevelopment Agreement and all other Applicable Laws, ordinances, Approvals, rules, regulations and requirements applicable thereto including, but not limited to, such zoning, sanitary, pollution, health, environmental and safety ordinances, laws and such rules and regulations thereunder as shall be binding upon Redeveloper under Applicable Laws. Without limiting the foregoing, Redeveloper shall comply at its own expense with all stormwater regulations, including but not limited to, those pertaining to detention, recharge and water quality.

(g) Redeveloper shall not unlawfully discriminate against or segregate any person, or group of persons, on account of race, color, religion, creed, national origin, ancestry, physical handicap, age, marital status, sex, affectional or sexual orientation in the sale, lease, sublease, rental, transfer, use, occupancy, tenure or enjoyment of the Project Site, nor shall Redeveloper itself, or any person claiming under or through Redeveloper, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees on the Project Site.

(h) Redeveloper shall not use the Project Site, or any part thereof, as security or collateral for an unrelated transaction.

(i) Redeveloper shall include as part of the Redevelopment Project, affordable housing rental units, which shall be deed restricted in accordance with the terms and conditions of the Redevelopment Agreement.

Section 3. It is intended and agreed that the covenants and restrictions set forth in Section 2 shall be covenants running with the land. All covenants in Section 2, 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, shall be binding, to the fullest extent permitted by law and equity, for the benefit and in favor of, and enforceable by the Township 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 for in Section 2 shall cease and terminate upon the issuance of a Certificate of Completion for such Improvements, provided however, that the covenants in 2(g) shall remain in effect without limitation as to time.

Section 4. It is intended and agreed that the Township and its successors and assigns shall be deemed beneficiaries of the agreements and covenants set forth in Section 2 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 shall run in favor of the Township for the entire period during which such agreements and covenants shall be in force and effect, without regard to whether the Township has at any time been, remains, or is an owner of any land or interest therein to or in favor of which such agreements and covenants relate.

IN WITNESS WHEREOF, the parties hereto have caused this Declaration of Covenants and Restrictions to be executed in their names by their duly authorized officials or managers, as the case may be, and their corporate seals to be hereunto affixed attested to by their duly authorized officers all as of the date first written above.

Attest:

THE BOROUGH OF DUNELLEN

William M. Robins, RMC
Borough Clerk

By: _____
Name: Jason F. Cilento
Title: Mayor

Attest:

NORTH AVENUE PORTFOLIOS LLC

By: _____
Name: Mayer Gross
Title: Managing Member

STATE OF NEW JERSEY:

: ss.:

COUNTY OF MIDDLESEX :

BE IT REMEMBERED, that on this _____ day of _____, 2022 before me, the subscriber, a Notary Public of New Jersey, personally appeared Jason Cilento, who, being by me duly sworn on his oath, deposes and makes proof to my satisfaction that he is the Mayor of the **BOROUGH OF DUNELLEN, NEW JERSEY**, the entity named in the within Instrument; that the execution, as well as the making of this Instrument, have been duly authorized by the Borough of Dunellen and said Instrument was signed and delivered by said Mayor as and for the voluntary act and deed of said entity.

Notary or Attorney at Law
The State of New Jersey

EXHIBIT D
SETTLEMENT AGREEMENT



Peter J. O'Connor, Esq.
Kevin D. Walsh, Esq.
Adam M. Gordon, Esq.
Laura Smith-Denker, Esq.

March 18, 2016

John E. Bruder, Esq.
Two West Union Avenue
P.O. Box 750
Bound Brook, New Jersey 08805

Re: In the Matter of the Application of the Borough of Dunellen, County of Middlesex, Docket No. MID-L-3947-15

Dear Mr. Bruder:

This letter memorializes the terms of an agreement reached between the Borough of Dunellen (the Borough), the declaratory judgment plaintiff, and Fair Share Housing Center (FSHC), a Supreme Court-designated interested party in this matter, in accordance with In re N.J.A.C. 5:96 and 5:97, 221 N.J. 1, 30 (2015).

Background

Dunellen filed the above-captioned matter on July 7, 2015 seeking a declaration of its compliance with the Mount Laurel doctrine and Fair Housing Act of 1985, N.J.S.A. 53:27D-301 et seq. in accordance with In re N.J.A.C. 5:96 and 5:97, supra. The matter was case managed by the Honorable Douglas Wolfson, J.S.C. with the assistance of Special Master Elizabeth McKenzie, PP, AICP. During conferences with Judge Wolfson and Ms. McKenzie, which included FSHC in view of its status as an interested party, Dunellen and FSHC reached an agreement regarding the terms of Dunellen's compliance with its Mount Laurel obligation. An initial hearing to review the fairness of the settlement reached in this matter occurred March 16, 2016 before Judge Wolfson after appropriate public notice, and the court made a preliminary determination that the settlement was fair, with a final determination pending the final execution of this agreement by the parties among other conditions.

Settlement terms

The Borough and FSHC hereby agree to the following terms:

1. FSHC agrees that the municipality, through the adoption of the attached fair share plan, and the implementation of that plan and this agreement, satisfies its obligations under the Mount Laurel doctrine and Fair Housing Act of 1985, N.J.S.A. 53:27D-301 et seq.
2. Dunellen's affordable housing obligations are as follows:

Rehabilitation Share (per Kinsey Report ¹)	12
Prior Round Obligation (pursuant to N.J.A.C. 5:93)	0
Third Round Prospective Need (per Kinsey Report)	118

¹ David N. Kinsey, PhD, PP, FAICP, NEW JERSEY LOW AND MODERATE INCOME HOUSING OBLIGATIONS FOR 1999-2025 CALCULATED USING THE NJ COAH PRIOR ROUND (1987-1999) METHODOLOGY, April 16, 2015, revised July 2015

3. The Borough has participated in Middlesex County's program for the rehabilitation of low- and moderate-income housing. Participation in this program is sufficient to satisfy the Borough's rehabilitation obligation of twelve units.
4. The Borough has a Realistic Development Potential (RDP) of 22 units. Therefore, the Borough's 118-unit Third Round Obligation less the 22-unit RDP yields an unmet need of 96 units.
5. As noted above, the Borough has a prior round construction obligation of 0 units.
6. The Borough has a cumulative Third Round obligation of 118 units.
7. The Borough claims to have a Realistic Development Potential of 22 units. Therefore, the Borough has an unmet need of 96 units.
8. The Borough will implement the following mechanisms to address its Realistic Development Potential and unmet need:

	Credits	Bonuses
Inclusionary Development, 364-368 North Avenue	2	
Inclusionary Development, Block 85, Lot 1	58	5
	60	5
Total:	65	
Total Third Round obligation:	118	
Remaining unmet need:	118-65 = 53 units	

- a. The Borough agrees to meet its unmet need by retaining the set-aside requirements and permitted residential uses included in the following components of the Dunellen Downtown Redevelopment Plan, which was adopted in February 2003 and revised on July 12, 2004 with further Amendments in 2011, 2013, and 2014 and the most recent amendments as specified in the attached February 1, 2016 fair share plan: Section 6.1.3, Site #3, South Washington Avenue between rail line and Columbia Street (Block 85/Lot 1)
 - b. "Remainder Parcels (as described in Section 4.1 of the Redevelopment Plan)
9. The Borough agrees that if the following components of the Dunellen Downtown Redevelopment Plan develop with residential uses, those uses will be subject to the mandatory set-aside requirements as specified in the attached February 1, 2016 fair share plan. However, as applied to these parcels only, the Borough reserves the right to change the zoning and/or Redevelopment Plan and at its sole discretion, without further need for court approval or approval for FSHC, may remove any or all residential uses:
 - a. Site #1, Train Station North (Block 69/All Lots)
 - b. Site #2, Train Station South (Block 70/Lot 13 and 13.01)
 10. The Borough agrees to require 13% of all units referenced in this plan, with the exception of units that have been constructed as of the date of this agreement, to be very low income units, with half of the very low income units being available to families.
 11. Bonuses will be applied in accordance with N.J.A.C. 5:93 (i.e. one bonus credit per family rental unit up to the 25 percent maximum).
 12. At least 50 percent of the units in each of the Third Round Prospective Need sites shall be affordable to very-low-income and low-income households with the remainder affordable to moderate-income households.

13. The Borough shall add to the list of community and regional organizations in its affirmative marketing plan pursuant to N.J.A.C. 5:80-26.15(f)(5) Fair Share Housing Center, the New Brunswick, Plainfield Area, Perth Amboy, and Metuchen/Edison branches of the NAACP, and the Latino Action Network, and shall as part of its regional affirmative marketing strategies during the period of its judgment of repose provide notice to those organizations of all available affordable housing units.
14. The Borough further agrees to comply with the requirements of N.J.A.C. 5:80, including but not limited to, the marketing, bedroom distribution and affordability standards for the affordable housing units referenced herein.
15. The parties agree that if a court of competent jurisdiction in Middlesex County or an administrative agency responsible for implementing the Fair Housing Act makes a decision which, if applied to the Borough, would reduce its obligation by more than twenty (20%) percent of the total prospective need number agreed to by this settlement, the Borough may seek to amend the judgment in this matter. FSHC reserves its right to take any position it wishes on such a motion. Notwithstanding any such reduction, the Borough shall be obligated to complete and leave in place any site specific zone changes made or continued in connection with the plan approved pursuant to this settlement agreement. If the Borough prevails in reducing its fair share obligations for the Third Round, the Borough may carryover any resulting extra credits to future rounds.
16. A condition of this agreement is that FSHC shall be granted as part of any final judgment party status in this matter and shall be deemed to have intervened for purpose of negotiating this agreement.
17. FSHC agrees to not challenge the attached fair share plan in court during any fairness hearing in which it is reviewed and agrees to support the municipality's immunity from builder's remedy litigation for a period of 10 years from the entry of the judgment in this matter.
18. If any party concludes that another party has breached this agreement, it shall provide written notice to all parties of its claim and shall specify the nature and basis of its claim that there has been a breach. Upon receipt of such notice, the allegedly breaching Party shall within thirty (30) days thereof or within such other time as may be determined by the Court to be reasonable, either provide a written explanation as to why it disputes the claim of a breach or cure the breach. If the breach has not been conceded or cured, the parties shall thereafter engage in good faith negotiations with the Master in an effort to amicably resolve the dispute. Only if these mediation efforts do not result in an amicable accord shall the party claiming the breach have the right to bring a motion before the Court to enforce the terms and conditions of this Agreement.
19. Unless otherwise specified, it is intended that the provisions of this Agreement are to be severable. The validity of any article, section, clause or provision of this Agreement shall not affect the validity of the remaining articles, sections, clauses or provisions hereof. If any section of this Agreement shall be adjudged by a court to be invalid, illegal, or unenforceable in any respect, such determination shall not affect the remaining sections.
20. This Agreement shall be governed by and construed by the laws of the State of New Jersey.
21. This Agreement may not be modified, amended or altered in any way except by a writing signed by each of the Parties.
22. This Agreement may be executed in any number of counterparts, each of which shall be an original and all of which together shall constitute but one and the same Agreement.
23. The Parties acknowledge that each has entered into this Agreement on its own volition without coercion or duress after consulting with its counsel, that each party is the proper person and possess the authority to sign the Agreement, that this Agreement contains

- the entire understanding of the Parties and that there are no representations, warranties, covenants or undertakings other than those expressly set forth herein.
24. Each of the Parties hereto acknowledges that this Agreement was not drafted by any one of the Parties, but was drafted, negotiated and reviewed by all Parties and, therefore, the presumption of resolving ambiguities against the drafter shall not apply. Each of the Parties expressly represents to the other Parties that: (i) it has been represented by counsel in connection with negotiating the terms of this Agreement; and (ii) it has conferred due authority for execution of this Agreement upon the persons executing it.
 25. Any and all Exhibits and Schedules annexed to this Agreement are hereby made a part of this Agreement by this reference thereto. Any and all Exhibits and Schedules now and/or in the future are hereby made or will be made a part of this Agreement with prior written approval of both Parties.
 26. 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 except as otherwise provided herein.
 27. No member, official or employee of the Borough shall have any direct or indirect interest in this Agreement, nor participate in any decision relating to the Agreement which is prohibited by law, absent the need to invoke the rule of necessity.
 28. Anything herein contained to the contrary notwithstanding, the effective date of this Agreement shall be the date upon which all of the Parties hereto have executed and delivered this Agreement.
 29. All notices required under this Agreement ("Notice[s]") shall be written and shall be served upon the respective Parties by certified mail, return receipt requested, or by a recognized overnight or by a personal carrier. In addition, where feasible (for example, transmittals of less than fifty pages) shall be served by facsimile or e-mail. All Notices shall be deemed received upon the date of delivery. Delivery shall be affected as follows, subject to change as to the person(s) to be notified and/or their respective addresses upon ten (10) days notice as provided herein:

TO FSHC:

Kevin D. Walsh, Esq.
Fair Share Housing Center
510 Park Boulevard
Cherry Hill, NJ 08002
Phone: (856) 665-5444
Telecopier: (856) 663-8182
E-mail: kevinwalsh@fairsharehousing.org

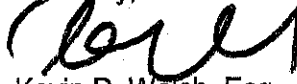
TO THE BOROUGH:

John E. Bruder, Esq.
Two West Union Avenue
P.O. Box 750
Bound Brook, New Jersey 08805
Telecopier: 732.356.0765
Email: Johnbruder@optonline.com

With a copy to the Borough Clerk


Please sign below if these terms are acceptable.

Sincerely,



Kevin D. Walsh, Esq.
Counsel for Intervenor/Interested Party
Fair Share Housing Center

On behalf of Dunellen, with the authorization
of the governing body:



John E. Bruder, Esq.
Dated: 5/16/16