

SECOND AMENDMENT TO REDEVELOPMENT AGREEMENT

THIS SECOND AMENDMENT TO REDEVELOPMENT AGREEMENT (referred to herein as the “Second Amendment”), dated as of January 18, 2024, by and between the **BOROUGH OF DUNELLEN**, a municipal corporation of the State of New Jersey with offices at 355 North Avenue, Dunellen, New Jersey 08812, and its permitted successors and assigns (the “Borough”), acting in the capacity of a redevelopment entity pursuant to the provisions of the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 *et seq.*, as amended and supplemented (the “Redevelopment Law”), and **150 NORTH URBAN RENEWAL, LLC**, a New Jersey limited liability company, and its permitted successors and assigns, with offices at c/o Villani Builders, 376 North Avenue, Suite A, Dunellen, New Jersey 08812 (the “Redeveloper”; each a “Party” and, together with the Borough, the “Parties”).

RECITALS:

WHEREAS, the Borough and Communipaw Associates, LLC, an affiliate of the Redeveloper, entered into that certain Redevelopment Agreement dated as of June 8, 2021 (the “Original Redevelopment Agreement”), as amended by that certain First Amendment to Redevelopment Agreement dated as of March 9, 2022 by and between the Borough and the Redeveloper dated as of March 9, 2022 (the “First Amendment” together with the Original Redevelopment Agreement, the “Redevelopment Agreement”) in connection with that certain real property known and identified on the official tax maps of the Borough as Block 1, Lot 14 (the “Property”); and

WHEREAS, pursuant to the Redevelopment Agreement, Redeveloper proposed to construct a three-story, mixed-used rental project consisting of approximately 1,578 square feet of ground floor commercial space, fourteen (14) residential units (two (2) of which shall be Affordable Units) and related improvements (collectively, the “Project”) on the Property;

WHEREAS, pursuant to UHAC, the Redeveloper is obligated to construct one (1) two-bedroom Affordable Unit and one (1) three-bedroom Affordable Unit in the Project;

WHEREAS, the Redeveloper instead constructed one (1) one-bedroom Affordable Unit and one (1) two-bedroom Affordable Unit in the Project;

WHEREAS, the Project, therefore, as constructed, does not comply with the required bedroom distribution for Affordable Units as set forth in UHAC;

WHEREAS, 1879 Morris Associates, LLC (the “Affiliate Redeveloper”), affiliate of the Redeveloper, is the redeveloper pursuant to that certain Redevelopment Agreement by and between the Borough and the Affiliate Redeveloper dated as of July 13, 2023 (as amended, modified, supplemented or restated from time to time, the “Affiliate Redevelopment Agreement”) of certain real property designated on the Borough’s tax map as Block 66, Lots 17 and 17.01, more commonly known as 435 North Avenue and 441 North Avenue, respectively (the “Affiliate Property”);

WHEREAS, pursuant to the Affiliate Redevelopment Agreement, Affiliate Redeveloper proposes to construct a mixed-use building including, but not limited to, sixty-two (62) residential units, which shall include nine (9) residential Affordable Units on the Affiliate Property (the “Affiliate Project”);

WHEREAS, pursuant to UHAC, Affiliate Redeveloper is obligated to construct for the Affiliate Project at most one (1) one-bedroom/studio Affordable Unit, at least three (3) two-bedroom Affordable Units and at least two (2) three-bedroom Affordable Units with the remaining Affordable Units being three-bedroom or two-bedroom;

WHEREAS, Affiliate Redeveloper has instead agreed to construct at least three (3) three-bedroom Affordable Units in the Affiliate Project to make up for the deficiency of the three-bedroom Affordable Unit required to be constructed for the Project;

WHEREAS, the Borough and the Redeveloper agree, with the proposed three (3) three-bedroom Affordable Units to be constructed by Affiliate Redeveloper, the total number of Affordable Units constructed and to be constructed pursuant to the Redevelopment Agreement and the Affiliate Redevelopment Agreement will be compliant with the required bedroom distribution for Affordable Units in the Project and Affiliate Project as set forth in UHAC;

WHEREAS, the Borough and the Redeveloper agree that the Redevelopment Agreement should be amended for the reasons set forth above;

WHEREAS, in accordance with the Redevelopment Law, the Parties wish to amend the Redevelopment Agreement to set forth in their agreement with respect to the above.

NOW, THEREFORE, for and in consideration of the mutual promises, representations, covenants and agreements contained herein and the undertakings of each Party to the other and such other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound hereby and to bind their successors and assigns, do mutually promise, covenant and agree as follows:

1. All defined terms not defined herein shall have the meaning as set forth in the Redevelopment Agreement.

2. Notwithstanding anything to the contrary set forth in the Redevelopment Agreement, the Redeveloper shall be obligated to construct two (2) Affordable Units (which shall include one (1) one-bedroom Affordable Unit and one (1) two-bedroom Affordable Unit) on the Property.

3. The first paragraph of Section 8.8. of the Original Redevelopment Agreement is hereby amended and restated to indicate the following:

“Pursuant to the Borough’s affordable housing ordinance Section 89-13B(1)(d) and Section 6.1.4 of the Redevelopment Plan, the Project is required to include a fifteen (15%) affordable housing set-aside for rental units, which equates to 2.1 Affordable Units, such obligations to be satisfied by (a) the inclusion in the Project of two (2) Affordable Units (which shall include one (1) one-

bedroom Affordable Unit and one (1) two-bedroom Affordable Unit) and (ii) the Redeveloper making a payment-in-lieu of constructing the one-tenth (0.1) portion of an Affordable Unit pursuant to Borough's ordinance governing the making of a payment in lieu of constructing fractional Affordable Units, or otherwise addressed pursuant to said ordinance. All Affordable Units created in this Project shall comply with UHAC, applicable COAH affordable housing regulations, FSHC Settlement Agreement, any applicable order of the Court, and other Applicable Laws. Notwithstanding this Section 8.8, the Redeveloper's noncompliance with the bedroom distribution requirement for Affordable Units pursuant to UHAC shall be remedied as set forth in Section 8.8(i). Notwithstanding the provisions of N.J.A.C. 5:80-26.3(d), thirteen percent (13%) of all low and moderate income housing units shall be affordable to households earning no more than thirty percent (30%) of median income (i.e., very low income housing), and such units may be counted as part of the fifty percent (50%) low income housing requirement imposed by N.J.A.C. 5:80-26.3(a). With respect to bedroom distribution, the very low-income housing units shall also comply with the requirements of N.J.A.C. 5:80-26.3(b) except that half of such very low-income housing units shall be made available to families in accordance with the requirements of N.J.A.C. 5:80-26.4(c)."

4. Section 8.8 of the Original Redevelopment Agreement is hereby amended to include the following:

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

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

(i) The two (2) rental Affordable Units created for this Project shall be comprised of one (1) one-bedroom Affordable Unit and one (1) two-bedroom Affordable Unit. The Borough and the Redeveloper agree that the aforementioned bedroom distribution is not compliant with UHAC. In order to remedy this noncompliance, the Borough and the Redeveloper agree that the total number of Affordable Units for purposes of satisfying the bedroom distribution requirement set forth in UHAC shall be determined by the taking into account all eleven (11) of the Affordable Units constructed for both the Project and the redevelopment project that is the subject of the Redevelopment Agreement by and between the Borough and 1879 Morris Associates, LLC, an affiliate of Redeveloper, dated as of July 13, 2023 (as amended, modified, supplemented or restated from time to time, the "Affiliate Redevelopment Agreement"). For the avoidance of doubt, the eleven (11) Affordable Units to be constructed between this Project and the redevelopment project that is the subject of the Affiliate Redevelopment Agreement shall include at most two (2) one-bedroom/studio Affordable Units, at least four (4) two-bedroom Affordable Units and at least three (3) three-bedroom Affordable Units with the remaining Affordable Units being three-bedroom or two-bedroom."

5. Pursuant to the Affiliate Redevelopment Agreement, Affiliate Redeveloper shall be obligated to construct at least nine (9) Affordable Units (which shall include at most one (1) one-bedroom/studio Affordable Unit, at least three (3) two-bedroom Affordable Units and at least three (3) three-bedroom Affordable Units with the remaining Affordable Units being three-bedroom or two-bedroom). The Parties acknowledge and agree that Affiliate Redeveloper's failure to do so shall constitute an Event of Default under Section 12.1 of the Original Redevelopment Agreement and the Borough shall have rights to any remedies, including, but not limited to, remedies set forth in Section 12.2 of same. This Section 5 shall survive the termination of this Redevelopment Agreement and the issuance of the Certificate of Completion with the Borough's rights with respect to this Section 5 to be set forth in the Certificate of Completion.

6. Nothing contained in this Second Amendment or in previous or subsequent discussions or communications between the Borough, the Redeveloper, the Affiliate Redeveloper and their respective representatives or counsel shall constitute a waiver, limitation or postponement of any rights and/or remedies of the Borough in the event of an Event of Default to obligate Redeveloper to reconfigure the Project to include one (1) two-bedroom Affordable

Unit and one (1) three-bedroom Affordable Unit, all of which rights and remedies are expressly reserved hereby.

7. The Parties acknowledge and agree that the Redevelopment Agreement is in full force and effect and enforceable in accordance with its terms and that there are no uncured defaults, breaches, or events of default by the Redeveloper in the Redevelopment Agreement in the observance or performance of any of its obligations, and no facts or circumstances known to the Parties which would, with the passage of time or the delivery of notice, or both, constitute a default, breach, or event of default thereunder.

8. This Second Amendment may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Parties have caused this Second Amendment to be executed, all as of the date first above written.

ATTEST:

BOROUGH OF DUNELLEN

By: Lauren Staats

Lauren Staats, Borough Clerk

By: Jason F. Cilento

Jason F. Cilento, Mayor

REDEVELOPER:

150 NORTH URBAN RENEWAL LLC
a New Jersey limited liability company

WITNESS:

By: _____

Name:

Title:

IN WITNESS WHEREOF, the Parties have caused this Second Amendment to be executed, all as of the date first above written.

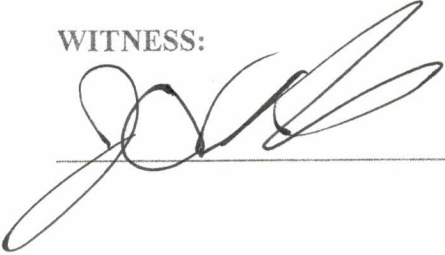
ATTEST:

BOROUGH OF DUNELLEN

By: _____
Lauren Staats, Borough Clerk

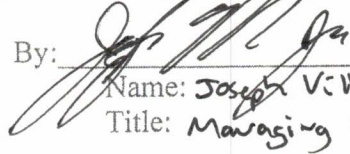
By: _____
Jason F. Cilento, Mayor

WITNESS:



REDEVELOPER:

150 NORTH URBAN RENEWAL LLC
a New Jersey limited liability company

By: 
Name: Joseph Villari Jr
Title: Managing Member