

EXECUTION

REDEVELOPMENT AGREEMENT  
BY AND BETWEEN

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

and

BRUDNER REDEVELOPMENT PARTNERS URBAN RENEWAL, LLC,  
as Redeveloper

Dated as of July 13, 2017

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**THIS REDEVELOPMENT AGREEMENT** (referred to herein as the “Agreement” or “Redevelopment Agreement”), dated as of July 13, 2017, by and between the **BOROUGH OF DUNELLEN**, a municipal corporation of the State of New Jersey with offices at the 355 North Avenue, Dunellen, New Jersey 08812, acting in the capacity of a redevelopment entity 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 its respective successors and assigns (the “Borough”), and **BRUDNER REDEVELOPMENT PARTNERS URBAN RENEWAL, LLC**, a New Jersey urban renewal entity and limited liability company, and its permitted successors and assigns, with offices at c/o Davanne Realty Co., 80 Main Street, Suite 510, West Orange, New Jersey 07052 (the “Redeveloper” and, together with the Borough, the “Parties”).

**RECITALS:**

**WHEREAS**, the Borough had previously created the Borough of Dunellen Redevelopment Agency (“Agency”) pursuant to §§68-1 through 68-4 of the Borough Code and thereafter adopted Ordinance 04-12 which repealed the creation of the Agency and appointed the Council of the Borough of Dunellen (“Borough Council”) as the municipal entity responsible for implementing the redevelopment plans and carrying out the redevelopment projects pursuant to the Redevelopment Law; and

**WHEREAS**, the Borough Council on May 5, 2003, adopted a resolution designating certain properties within the Borough, including Site #3 of the Redevelopment Plan, consisting of property located at South Washington Avenue between the rail line and Columbia Street, identified as Block 85, Lots 1 and 2 in the Borough as an area in need of redevelopment in accordance with the Redevelopment Law (“Redevelopment Area”); and

**WHEREAS**, the Borough Council on August 9, 2004 adopted an ordinance approving and adopting the Dunellen Downtown Redevelopment Plan Phase I, which was thereafter amended, most recently on May 16, 2016 pursuant to Ordinance #2016-05 (as amended, the “Redevelopment Plan”) in accordance with the Redevelopment Law; and

**WHEREAS**, on August 9, 2004, by Ordinance #04-12, the Dunellen Borough Council appointed itself to be the appropriate authority, i.e., the redevelopment entity, to implement redevelopment plans pursuant to N.J.S.A. 40A:12A-8; and

**WHEREAS**, the Redevelopment Plan relates to the Redevelopment Area; and

**WHEREAS**, Redeveloper’s Affiliate, Dunellen Associates, LLP, is the fee simple owner of the Redevelopment Area (also referred to herein as the “Property”) and Redeveloper is under contract to acquire the Property; and

**WHEREAS**, on April 3, 2017, the Borough Council adopted resolutions (1) designating Redeveloper as the redeveloper for the Redevelopment Area and (2) authorizing the execution and delivery of this Redevelopment Agreement; and

**WHEREAS**, approval of a financial agreement, pursuant to the Long Term Tax Exemption Law, for the redevelopment project contemplated hereunder, and the issuance of

redevelopment area bonds for such project are, inter alia, preconditions to Redeveloper's obligation to carry out such project; and

**WHEREAS**, in order to set forth the terms and conditions under which the Parties shall carry out their respective obligations with respect to the redevelopment of the Redevelopment Area in accordance with the Redevelopment Plan, the Parties have determined to execute this Redevelopment Agreement.

**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 its successors and assigns, do mutually promise, covenant and agree as follows:

## **ARTICLE I DEFINITIONS**

**SECTION 1.01**     **Definitions.** In this Redevelopment Agreement, unless a different meaning clearly appears from the context:

“Additional Property” is defined in Section 3.01 hereof.

“Administrative Agent” is defined at N.J.A.C. 5:80-26.2.

“Affiliate” means with respect to Redeveloper, any other Person directly or indirectly controlling or controlled by, or under direct or indirect common Control with Redeveloper.

“Affordable Housing Rental Component” means that portion of the Rental Residential Component comprised of Affordable Units.

“Affordable Units” means very low income housing, low income housing and moderate income housing units as those terms are defined by N.J.S.A. 52:27D-304.

“Agreement” means this Redevelopment Agreement, as may be amended or supplemented from time to time.

“Applicable Law(s)” means any statute, law, constitution, charter, ordinance, resolution, judgment, order, decree, rule, regulation, directive, interpretation, standard or similarly binding authority which, in any case, shall be enacted, adopted, promulgated, issued or enforced by any Governmental Authority, and/or court of competent jurisdiction that relates to or affects the Parties or either of them, the Project, or any portion thereof, the performance by the Parties of their respective obligations or the exercise by the Parties of their respective rights under this Redevelopment Agreement, including without limitation, the Municipal Land Use Law and the Redevelopment Law.

“Approved Concept Plan” shall mean Redeveloper's proposed conceptual plan for redevelopment of the Property attached hereto as **Exhibit G**, as same may be amended and modified in accordance with the terms hereof during the course of seeking the Borough's

approval of the Plans and applicable Governmental Approvals and the build-out of the Sub-Phases and Phases of the Project.

“Borough” means the Borough of Dunellen, a political subdivision of the State of New Jersey, and its permitted successors and assigns.

“Borough Council” is defined in the Recitals.

“Borough Indemnified Parties” means the Borough and its officers, elected officials, agents, employees, contractors and consultants.

“Borough Reimbursed Costs” is defined in Section 4.02 hereof.

“Certificate of Completion” means a certificate or certificates certifying that Redeveloper has performed its duties and obligations under this Redevelopment Agreement with respect to the Project or any Phase or Sub-Phase thereof.

“Certificate of Occupancy” means a temporary or permanent Certificate of Occupancy, as such term is defined in the New Jersey Administrative Code, issued with respect to all or any portion, Phase or Sub-Phase of the Project Improvements.

“Commence[ment of] Construction” means for each separate Phase or Sub-Phase, as such terms are hereinafter defined, the undertaking by Redeveloper of any actual physical construction of Project Improvements within such Phase or Sub-Phase, including any applicable Remediation and excluding Demolition.

“Comple[t]e, [ed] or [ion]” means for each separate Phase or Sub-Phase, as applicable, that all work related to the Project Improvements comprising such Phase or Sub-Phase, required in order that a Certificate of Completion can be issued for the respective Phase or Sub-Phase, has been completed or, as referenced in Section 10.02 hereof, bonded for.

“Completion Dates” are those dates set forth herein for performance of obligations by Redeveloper for each separate Phase or Sub-Phase of the Project.

“Component” means each of the Rental Residential Component, the Retail/Commercial Component and the Townhouse Component.

“Control” (including the correlative meanings of the terms “controlled by” and “under common control with”), as used with respect to Redeveloper, means the possession, directly or indirectly, of the power to direct or cause the direction of the management policies of Redeveloper, whether through the ownership of voting securities or by contract or otherwise.

“Declaration” is defined in Section 9.05 hereof.

“Declaratory Action” is defined in Section 2.02 hereof.

“Demolition” means (a) the complete demolition and clearance of the existing structures on the Property and (b) the demolition and clearance of infrastructure on the Property to the extent required for the redevelopment of the Property.

“Demolition Security” is defined in Section 15.16 hereof.

“Development Fee Act” is defined in Section 4.05(b) hereof.

“Effective Date” means the date on which this Agreement is fully executed.

“Environmental Law” or “Environmental Laws” means any and all federal, State, regional, and local laws, statutes, ordinances, regulations, rules, codes, consent decrees, judicial or administrative orders or decrees, directives or judgments relating to pollution, damage to or protection of the environment, environmental conditions, or the use, handling, processing, distribution, generation, treatment, storage, disposal, manufacture or transport of Hazardous Substances, presently in effect or hereafter amended, modified, or adopted including, but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. sect. 9601-9675); the Resource Conservation and Recovery Act of 1976 (42 U.S.C. sect. 6901, et seq.), the Clean Water Act (33 U.S.C. sect. 1251, et seq.); the New Jersey Spill Compensation and Control Act (N.J.S.A. 58:10-23.11, et seq.); the Industrial Site Recovery Act, as amended (N.J.S.A. 13:1K-6, et seq.); the New Jersey Underground Storage of Hazardous Substances Act (N.J.S.A. 58:10A-21, et seq.), the New Jersey Water Pollution Control Act (N.J.S.A. 58:10A-1 et seq.); the New Jersey Environmental Rights Act (N.J.S.A. 2A:35A-1, et seq.); the New Jersey Site Remediation Reform Act (N.J.S.A. 58:10C-1, et seq.); and the rules and regulations promulgated thereunder.

“Escrow Account” means the non-interest bearing escrow account established by the Borough pursuant to the terms of the Interim Cost Agreement herein defined.

“Estoppel Certificate” is defined in Section 6.10 hereof.

“Event of Default” means the occurrence of any Redeveloper Event of Default or Borough Event of Default, as the case may be.

“Exhibit(s)” means any exhibit attached hereto which shall be deemed to be a part of this Agreement as if set forth in full in the text hereof.

“Fee Credit” is defined in Section 6.15 hereof.

“Financial Agreement” is defined in Section 4.6(a) hereof.

“Foreclosure” is defined in Section 13.03(b) hereof.

“Governmental Approvals” means all necessary reviews, consents, permits or other approvals of any kind legally required by any local, county, state or federal governmental or quasi-governmental entity, including without limitation the Borough and the Planning Board, required to be obtained in order to construct the Project Improvements, to execute the Financial Agreement and to issue the redevelopment area bonds provided for therein, the execution of the

Financial Agreement, and the issuance of all permits, approvals and allocations for sanitary sewer and potable water.

“Governmental Authority” means the federal government, the State, any state or other political subdivision thereof, and any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government and any other governmental entity with authority over the Project or the Property, including without limitation, the Borough and the Planning Board.

“Hazardous Substance” or “Hazardous Materials” means any substance, chemical or waste that is listed as hazardous or toxic under any applicable federal, state, county or local statute, rule, regulation, ordinance or order.

“Holder(s)” is defined in Section 13.01 hereof.

“Holder Failure” is defined in Section 13.04 hereof.

“Infrastructure Improvements” means any improvements outside the Property, to satisfy the requirements of any applicable Governmental Approvals or within the Property (excepting the Retail/Commercial Component, Townhouse Component, Rental Residential Component and Remediation) or as required by this Redevelopment Agreement, including, without limitation, (a) all roadways, bridges and on-site and off-site infrastructure improvements, (b) grading, site drainage, drainage outfalls, walkways, subsurface excavation and other site preparatory work for the Project, lighting within on-site and off-site parking areas, landscaping, fire hydrants and interior roadways, in each case, (c) new and/or reconstructed sewer pumping facilities and water and sewer service lines for the Property, including hook-ups and service laterals from a building to the curb for water, storm and sanitary sewers, and other utilities, including electric, gas, telephone and cable services (all of which are to be built underground), (d) improvements to be undertaken by third-party utility providers (i.e., electric, water, cable, telephone, etc.), and (e) all other improvements which are or may be required to accommodate construction, occupancy and use of the Project Improvements.

“Interim Cost Agreement” is an agreement entered into on September 13, 2013, between Borough and Redeveloper with respect to, inter alia, the Borough’s Interim Costs, as such term is defined therein.

“Market-Rate Rental Component” means the market-rate units in the Rental Residential Component.

“Municipal Land Use Law” means N.J.S.A. 40:55D-1 et seq., as amended and supplemented.

“NJDEP” means the New Jersey Department of Environmental Protection, and any successor agency to which its powers are transferred.

“Party” means each of Borough and Redeveloper.

“Per-Mile Snow Removal Cost” is defined in Section 6.09(b) hereof.

“Permitted Transfers” is defined in Section 11.04 hereof.

“Person” means any individual, sole proprietorship, corporation, partnership, joint venture, limited liability company, trust, unincorporated association, urban renewal entity, institution, or any other entity.

“Phase” means the improvements constituting a portion of the Project, as further delineated in Section 2.02 hereof, with the components of an individual Phase being described in **Exhibit A** hereto.

“Phase I Rental Residential Units” mean the improvements constituting the rental residential units in Phase I and associated amenities, as described in **Exhibit A**. and the corresponding Infrastructure Improvements and Remediation.

“Phase II Rental Residential Units” mean the improvements constituting the rental residential units in Phase II and associated amenities, as described in **Exhibit A**. and the corresponding Infrastructure Improvements and Remediation.

“Phase I Townhouse Residential Units” mean the improvements constituting the for-sale stacked market-rate townhouse units in Phase I and associated amenities, as described in **Exhibit A**. and the corresponding Infrastructure Improvements and Remediation.

“Phase II Townhouse Residential Units” mean the improvements constituting the for-sale stacked market-rate townhouse units in Phase II and associated amenities, as described in **Exhibit A**. and the corresponding Infrastructure Improvements and Remediation.

“Phase III Townhouse Residential Units” mean the improvements constituting the for-sale stacked market-rate townhouse units in Phase III and associated amenities, as described in **Exhibit A**. and the corresponding Infrastructure Improvements and Remediation.

“PILOT/RAB” is defined in Section 4.06(a).

“Plan Change” means any change in a proposed use within the Project Improvements and, with respect to the Site Plan or Plans, any change in the Site Plan or Plans that would result in any material change (a) in the placement, footprint or square footage of any building that would require an amendment to the Site Plan, (b) in the height of any building, (c) in the type of material to be used for the exterior of any building, (d) the exterior appearance of any building, except for color, (e) in the type of material, or any other change that would alter the placement or appearance of any of the roads, roadways, driveways, parking areas (including the number of parking spaces), walkways, sidewalks, or exterior lighting and fixtures that would require an amendment to the Site Plan, (f) in the placement, grade, or point of connection or hook-up, for any site drainage, drainage outfalls, detention basins, water, storm or sewer service lines that would require an amendment to the Site Plan, (g) that would cause any of the utilities to be built or constructed at ground level or grade, and (h) in the Project landscaping or amenities.

“Planning Board” means the Planning Board of the Borough.

“Plans” means those plans and specifications as defined in Section 8.02 hereof.

“Pledged Annual Service Charge” is defined in the Financial Agreement.

“Preliminary Site Plan” is defined in Section 8.02 hereof.

“Progress Meeting” is defined in Section 7.01 hereof.

“Project” means the Project Improvements.

“Project Costs” means all costs of the Project, including, without limitation, the design, permitting and construction of the Project Improvements, and the payment of the Borough Reimbursed Costs.

“Project Improvements” means, the improvements to be constructed within or in support of each Phase or Sub-Phase, as applicable, of the Project, consisting of the Retail/Commercial Component, Townhouse Component, Rental Residential Component, improvements necessary to support the preceding, the Infrastructure Improvements, and the Remediation for the respective Project Phase or Sub-Phase.

“Project Information” is defined in Section 15.13 hereof.

“Property” is defined in the Recitals.

“Redeveloper Covenants” shall have the meaning ascribed to such term in Section 9.04 hereof.

“Redeveloper Event of Default” means, with respect to Redeveloper, an Event of Default as defined in Section 15.01 hereof.

“Redevelopment Agreement” is defined in the Recitals.

“Redevelopment Area” is defined in the Recitals.

“Redevelopment Fee” is defined in Section 6.15 hereof.

“Redevelopment Law” is defined in the Recitals.

“Redevelopment Plan” is as defined in the Recitals, together with any amendments thereto.

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

“Rental Residential Component” means the Phase I Rental Residential Units and the Phase II Rental Residential Units of the Project, which product shall be comparable to other rental residential developments in the Middlesex/Somerset County marketplace for newly constructed rental residential units.

“Request for Qualifications” means the letter dated October 10, 2014 from Charles B. Liebling, the Borough’s special redevelopment counsel, to John C. Phillips, Redeveloper’s counsel, requesting qualifications and information regarding Redeveloper.

“Retail/Commercial Component” means the improvements constituting the retail and commercial component of Phase I described in **Exhibit A**, and the corresponding Infrastructure Improvements and Remediation.

“Section” means a section or subsection of this Agreement.

“Sewer Improvements” is defined in Section 6.10 hereof.

“Site Plan(s)” means the Preliminary Site Plan or Final Site Plan, as applicable, for each respective Phase or Sub-Phase, as applicable, of the Project, depicting those aspects of the Project Improvements to be constructed within such Phase or Sub-Phase, as required pursuant to the Borough’s site plan ordinance and pursuant to N.J.S.A. 40:55D-7.

“State” means the State of New Jersey.

“Sub-Phase” shall mean any independent, freestanding portion of a Phase within the Project, including each of the following which shall all be deemed a separate Sub-Phase of the Project: the Phase I Rental Residential Units, the Phase II Rental Residential Units, the Phase I Townhouse Residential Units, the Phase II Townhouse Residential Units, the Phase III Townhouse Residential Units and the Retail/Commercial Component within Phase II.

“Sub-Redeveloper” is defined in Section 11.04(g) hereof.

“TC Paved Area Length” is defined in Section 6.09(b) hereof.

“TC Paved Areas” is defined in Section 6.09(b) hereof.

“Term” means that period of time from the Effective Date of this Agreement until the Borough issues the final Certificate of Occupancy for the last of the Project Improvements to be constructed on the Property.

“Townhouse Component” means the Phase I Townhouse Residential Units, the Phase II Townhouse Residential Units, and the Phase III Townhouse Residential Units of the Project, which product shall be comparable to other for-sale townhouse developments in the Middlesex/Somerset County marketplace for newly constructed for-sale townhome units. One-half of the Townhouse Component shall be two-bedroom units and one-half shall be three-bedroom units.

“Transfer” is defined in Section 11.03 hereof.

“UHAC” is defined in Section 4.05(a) hereof.

“Uncontrollable Circumstance” means the events or conditions set forth below, or any combination thereof, for which reasonable evidence is provided, that has (have) had or may reasonably be expected to have a material adverse effect on the rights or obligations of the Parties to this Agreement, provided however, that such act, event or condition shall be beyond the reasonable control of the Party relying thereon as justification for not performing any obligation or complying with any condition required of such Party under the terms of this Agreement:

(a) An act of God, such as severe natural conditions such as landslide, lightning strike, earthquake, flood, hurricane, blizzard, tornado or other severe weather conditions, severe sea conditions affecting delivery of materials or similar cataclysmic occurrence, nuclear catastrophe, an act of a public enemy, war, blockade, insurrection, riot, general unrest or general restraint of government and people.

(b) Action or inaction by any Governmental Authority which precludes or delays the Party relying thereon from performing its obligations under this Agreement, including, without limitation any moratorium or delay in the ability to obtain the Utilities necessary to service the Project, provided however, that (i) such action or failure to act shall not be the result of the willful, intentional or grossly negligent action or inaction of the Party relying thereon and/or (ii) such action, inaction, issuance, denial or suspension shall not be the result of the illegal or unlawful actions of the Party relying thereon, shall not constitute an Uncontrollable Circumstance under this paragraph (b).

(c) The suspension, termination, interruption, denial, failure of or delay in the renewal or issuance of any Governmental Approval, including those resulting from a delay in inspections or issuance of permits or approvals; provided, however, that such suspension, termination, interruption, denial or failure of or delay in renewal or issuance shall not be the result of the willful, intentional or negligent action or inaction of the Party relying thereon and that neither the contesting of any such suspension, termination, interruption, denial or failure of renewal or issuance, in good faith, nor the reasonable failure to so contest (up to thirty (30) days following such suspension, termination, interruption or failure of renewal or issuance) shall constitute or be construed as a willful, intentional or negligent action or inaction by such Party.

(d) The damage or destruction of the Project Improvements or any portion thereof or of the Property, unless a result of the willful, intentional or grossly negligent action or inaction of Redeveloper or its contractors.

(e) Delay caused by or arising out of legal action or lawsuits filed in challenge of the issuance, grant or denial of any Governmental Approval, including, but not limited to, local Planning Board approval of Redeveloper’s Site Plans.

(f) Delay caused by or arising out of the inability of any contractor or materials supplier to make timely delivery of materials.

(g) Delay caused by or arising due to strike, labor unrest, national emergency or generally recognized materials shortage, or other delays in the industry.

(h) Significant change of market conditions which establish that the Project or any Phase thereof will not be reasonably viable from an economic standpoint, provided, however, that a claim by Redeveloper of the existence of such condition as an Uncontrollable Circumstance shall not be permitted to exceed a period of twenty-four (24) months, except in the event that the Sewer Improvements have been installed and Construction of the Project or any Phase thereof has not been Commenced, in which case the existence of such condition as an Uncontrollable Circumstance with respect to non-Commenced improvements such shall not be permitted to exceed a period of seventy-two (72) months (such seventy-two (72) month period, the "Sewer/Market Conditions Period"). For purposes of this provision, market conditions shall mean conditions of the real estate and/or financing markets as they affect the Project or any Phase thereof, as demonstrated by an independent market study reasonably acceptable to the Borough.

(i) Holdover by a tenant that is a tenant of the Property as of the Effective Date, subsequent to reasonable notice by Redeveloper or its Affiliate, as landlord.

(j) The occurrence of any new environmental contamination or defect or the discovery of any environmental contamination or defect, neither of which is identified in **Exhibit D**, requiring remediation in accordance with Applicable Law in order to develop the Project, provided such environmental defect was not caused or created by the gross negligence or willful misconduct of Redeveloper.

(k) A change in any Applicable Law, which establishes requirements affecting performance by the Party relying thereon as a justification for its failure to perform any obligation under this Redevelopment Agreement which are materially more burdensome than and adversely inconsistent with the requirements which are applicable to the performance of such obligations as of the Effective Date; provided, however, that actions or inactions of the Borough shall not constitute a change in law giving rise to a suspension of any performance or other obligation of the Borough under this Redevelopment Agreement. Nothing herein shall preclude Redeveloper from challenging any change in Applicable Law by the Borough or any action or inaction which materially, adversely affects the Project as proposed by Redeveloper.

The Parties acknowledge that the acts, events or conditions set forth in paragraphs (a) through (k) of this definition are intended to be the only acts, events or conditions which may (upon satisfaction of the criteria set forth above) constitute an Uncontrollable Circumstance. In no event shall Redeveloper, any Sub-Redeveloper or any Holder be permitted not to comply with the provisions of Section 4.05(a) hereof as a result of an Uncontrollable Circumstance or otherwise.

"Utilities" means water, sanitary sewer and storm water provisions, natural gas, electricity, and voice and data transmission facilities.

"Unpledged Annual Service Change" is defined in the Financial Agreement.

**SECTION 1.02 Interpretation and Construction.** In this Redevelopment Agreement, unless the context otherwise requires:

(a) The terms “hereby”, “hereof”, “hereto”, “herein”, “hereunder” and any similar terms, as used in this Redevelopment Agreement, refer to this Redevelopment Agreement, and the term “hereafter” means after, and the term “heretofore” means before the date of delivery of this Redevelopment Agreement.

(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) Words importing persons mean and include firms, associations, partnerships (including limited partnerships), trusts, corporations, limited liability companies and other legal entities, including public or governmental bodies, as well as natural persons.

(d) Any headings preceding the texts of the several Articles and Sections of this Redevelopment Agreement, and any table of contents or marginal notes appended to copies hereof, shall be solely for convenience of reference and shall not constitute a part of this Redevelopment 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 or Party hereunder shall not be unreasonably withheld, conditioned, or delayed.

## **ARTICLE II DESCRIPTION OF PROPERTY AND THE PROJECT IMPROVEMENTS**

### **SECTION 2.01      Intentionally Left Blank.**

### **SECTION 2.02      Proposed Development.**

(a) The Project consists of the construction of the Project Improvements in the respective Phase or Sub-Phase, as applicable, of the Project. The Project shall be constructed consistent with the Redevelopment Plan, as it may be further amended from time to time, this Agreement, the Site Plans, the Plans and all Applicable Laws.

(b) The Borough and Redeveloper hereby expressly acknowledge, represent and agree that the Project will be undertaken in three separate Phases, each as described in **Exhibit A**, with Redeveloper having the right to develop each Phase in the Sub-Phases described herein.

(c) Redeveloper shall make good faith efforts to identify tenants for the Project in order to facilitate Redeveloper’s ability to obtain financing for the Project and shall make good faith efforts to obtain such financing. Redeveloper shall keep the Borough regularly informed of its marketing efforts for tenants for Phase I, II and III.

(d) Pursuant to the Final Judgment of Compliance and Repose entered on December 16, 2016 in the Borough’s Mount Laurel declaratory judgment action, In the Matter of the Application of the Borough of Dunellen, County of Middlesex, Docket No. MID-L-3947-15 (the “Declaratory Action”), the Project is required to have a minimum of 58 Affordable Units in

the Affordable Housing Rental Component, as described in greater detail in **Exhibit A**, in order for the Borough to meet its affordable housing obligations for the Project under Applicable Law. Provided that the Project includes only 382 residential units (130 for-sale townhome units and 252 rental residential units), only 58 affordable housing units will be required for the Project.

**SECTION 2.03**      **Infrastructure Improvements; Remediation.** Redeveloper shall timely implement the Infrastructure Improvements and Remediation, if any, in order to Complete each Phase or Sub-Phase of the Project. Redeveloper shall provide all performance and maintenance bonds as required by the Governmental Approvals for the respective Phase or Sub-Phase thereof.

**SECTION 2.04**      **Redevelopment Project Schedule.**

(a) Phase I Rental Residential Units, Rental Residential Component and the Retail/Commercial Component:

(i) With respect to the Phase I Rental Residential Units, the Retail/Commercial Component and/or the Rental Residential Component (as indicated), Redeveloper shall:

A. Submit Plans for the Rental Residential Component and the Retail/Commercial Component to the Borough within three (3) months of the Effective Date.

B. Submit a complete site plan application for the Rental Residential Component and the Retail/Commercial Component to the Planning Board within four (4) months of Borough's approval of the Plans.

C. At the time of submission of site plan application for the Rental Residential Component and the Retail/Commercial Component, provide the Borough with two schedules: one for obtaining the remaining Governmental Approvals and Commencing Construction of the Phase I Rental Residential Units and the Retail/Commercial Component and one for obtaining the remaining Governmental Approvals for the balance of the Rental Residential Component.

D. Diligently pursue all Governmental Approvals required for the construction of the Phase I Rental Residential Units and the Retail/Commercial Component and all Governmental Approvals for the balance of the Rental Residential Component that can be obtained at such time.

E. As set forth in more detail in Exhibit A, diligently pursue commencement and completion of Demolition and that portion of the Remediation that is not to be completed as part of the construction of the Project Improvements, with Redeveloper having acquired title to the Property prior to the commencement thereof;

F. Commence Construction of (i) the Infrastructure Improvements required for the Phase I Rental Residential Units and the Retail/Commercial Component within three (3) months from the later of (y) and (z) below and (ii) the Phase I Rental Residential Units and the Retail/Commercial Component within six (6) months from the later of (y) the date all final, non-appealable Governmental Approvals necessary to Commence

Construction of the Phase I Rental Residential Units and the Retail/Commercial Component are obtained and (z) the date of completion of Demolition and that portion of the Remediation that is not to be completed as part of the construction of the Project Improvements.

G. Diligently prosecute to Completion all construction of the Phase I Rental Residential Units and the Retail/Commercial Component once Commenced.

H. Complete the Phase I Rental Residential Units and the Retail/Commercial Component and, in accordance with Section 10.02 hereof, apply for a Certificate of Completion for the Phase I Rental Residential Units and the Retail/Commercial Component within twenty-four (24) months from the Commencement of Construction thereof.

(ii) All of the above Completion Dates are subject to, and shall be extended by, Uncontrollable Circumstances, as limited by Section 14.01 hereof.

(iii) If Redeveloper is notified by the Borough that it has failed to meet the Completion Date for the Phase I Rental Residential Units and/or the Retail/Commercial Component, Redeveloper shall promptly provide notice to the Borough stating the reason for the failure to complete the applicable task and shall propose a new Completion Date for such Sub-Phase for the Borough's consideration. If Redeveloper provides reasonable evidence that such failure is due to an Uncontrollable Circumstance, Borough shall not deem such failure an Event of Default hereunder. If such failure is not the result of an Uncontrollable Circumstance, compliance with the first sentence of this subparagraph shall not be deemed a cure of an Event of Default by Redeveloper resulting from its failure to meet a Completion Date.

(b) Phase II Rental Residential Units:

(i) With respect to the Sub-Phase consisting of the Phase II Rental Residential Units, Redeveloper shall:

A. Submit any revisions to the Plans to the Borough within twelve (12) months of the original submission of the Plans, subject to Section 8.03(b) hereof.

B. At the time of Commencement of Construction of the Phase I Rental Residential Units, provide the Borough with a schedule for obtaining the remaining Governmental Approvals for the Phase II Rental Residential Units.

C. Diligently pursue all remaining Governmental Approvals required for the construction of the Phase II Rental Residential Units.

D. Commence Construction of the Phase II Rental Residential Units by a date no later than that on which Certificates of Occupancy for two-thirds of the Phase I Rental Residential Units have been issued.

E. Complete the Phase II Rental Residential Units and, subject to (f) below and in accordance with Section 10.02 hereof, apply for a Certificate of Completion no later than twenty-four (24) months from the date in "D" above.

(ii) All of the above Completion Dates are subject to, and shall be extended by, Uncontrollable Circumstances, as limited by Section 14.01 hereof.

(iii) If Redeveloper is notified by the Borough that it has failed to meet the Completion Date for the Phase II Rental Residential Units and/or the Retail/Commercial Component, Redeveloper shall promptly provide notice to the Borough stating the reason for the failure to complete the applicable task and shall propose a new Completion Date for such Sub-Phase for the Borough's consideration. If Redeveloper provides reasonable evidence that such failure is due to an Uncontrollable Circumstance, Borough shall not deem such failure an Event of Default hereunder. If such failure is not the result of an Uncontrollable Circumstance, compliance with the first sentence of this subparagraph shall not be deemed a cure of an Event of Default by Redeveloper resulting from its failure to meet a Completion Date.

(c) Phase I Townhouse Residential Units:

(i) With respect to the Phase I Townhouse Residential Units and/or the Townhouse Component (as indicated), Redeveloper shall:

A. Submit Plans for the Townhouse Component to the Borough within three (3) months of the Effective Date.

B. Submit a complete site plan application for the Townhouse Component to the Planning Board within four (4) months of Borough's approval of the Plans.

C. At the time of submission of site plan application for the Townhouse Component, provide the Borough with two schedules: one for obtaining the remaining Governmental Approvals for the Phase I Townhouse Residential Units and one for obtaining the remaining Governmental Approvals for the balance of the Townhouse Component.

D. Diligently pursue all Governmental Approvals required for the construction of the Phase I Townhouse Residential Units and all Governmental Approvals for the balance of the Townhouse Component that can be obtained at such time.

E. Commence Construction of (i) the Infrastructure Improvements required for the Phase I Townhouse Residential Units within three (3) months from the later of (y) and (z) below and (ii) the Phase I Townhouse Residential Units within nine (9) months from the later of (y) the date all final, non-appealable Governmental Approvals necessary to Commence Construction of the Phase I Townhouse Residential Units are obtained and (z) the date of completion of Demolition and of that portion of the Remediation that is not to be completed as part of the construction of the Project Improvements.

F. Diligently prosecute to Completion all construction of the Phase I Townhouse Residential Units once Commenced.

G. Complete the Phase I Townhouse Residential Units and, in accordance with Section 10.02 hereof, apply for a Certificate of Completion for the Phase I Townhouse Residential Units within twenty-four (24) months from the Commencement of Construction thereof.

(ii) All of the above Completion Dates are subject to, and shall be extended by, Uncontrollable Circumstances, as limited by Section 14.01 hereof.

(iii) If Redeveloper is notified by the Borough that it has failed to meet the Completion Date for the Phase I Townhouse Residential Units, Redeveloper shall promptly provide notice to the Borough stating the reason for the failure to complete the applicable task and shall propose a new Completion Date for such Sub-Phase for the Borough's consideration. If Redeveloper provides reasonable evidence that such failure is due to an Uncontrollable Circumstance, Borough shall not deem such failure an Event of Default hereunder. If such failure is not the result of an Uncontrollable Circumstance, compliance with the first sentence of this subparagraph shall not be deemed a cure of an Event of Default by Redeveloper resulting from its failure to meet a Completion Date.

(d) Phase II Townhouse Residential Units:

(i) With respect to the Sub-Phase consisting of the Phase II Townhouse Residential Units, Redeveloper shall:

A. Submit any revisions to the Plans to the Borough within twelve (12) months of the original submission of the Plans, subject to Section 8.03(b) hereof.

B. At the time of Commencement of Construction of the Phase I Townhouse Residential Units, provide the Borough with a schedule for obtaining the remaining Governmental Approvals for the Phase II Townhouse Residential Units.

C. Diligently pursue all remaining Governmental Approvals required for the construction of the Phase II Townhouse Residential Units.

D. Commence site work for the Phase II Townhouse Residential Units within thirty (30) days of the date that 75% of the Phase I Townhouse Residential Units are under contract for sale.

E. Diligently prosecute to Completion all construction of the Phase II Townhouse Residential Units once site work for same is Commenced.

F. Complete the Phase II Townhouse Residential Units and, subject to (f) below and in accordance with Section 10.02 hereof, apply for a Certificate of Completion for the Phase II Townhouse Residential Units within twenty-four (24) months from the Commencement of Construction thereof.

(ii) All of the above Completion Dates are subject to, and shall be extended by, Uncontrollable Circumstances, as limited by Section 14.01 hereof.

(iii) If Redeveloper is notified by the Borough that it has failed to meet the Completion Date for the Phase II Townhouse Residential Units, Redeveloper shall promptly provide notice to the Borough stating the reason for the failure to complete the applicable task and shall propose a new Completion Date for such Sub-Phase for the Borough's consideration. If Redeveloper provides reasonable evidence that such failure is due to an Uncontrollable

Circumstance, Borough shall not deem such failure an Event of Default hereunder. If such failure is not the result of an Uncontrollable Circumstance, compliance with the first sentence of this subparagraph shall not be deemed a cure of an Event of Default by Redeveloper resulting from its failure to meet a Completion Date.

(e) Phase III Townhouse Residential Units:

(i) With respect to the Sub-Phase consisting of the Phase III Townhouse Residential Units, Redeveloper shall:

A. Submit any revisions to the Plans to the Borough within twelve (12) months of the original submission of the Plans, subject to Section 8.03(b) hereof.

B. At the time of Commencement of Construction for the Phase II Townhouse Residential Units, provide the Borough with a schedule for obtaining the remaining Governmental Approvals for the Phase III Townhouse Residential Units.

C. Diligently pursue all remaining Governmental Approvals required for the construction of the Phase III Townhouse Residential Units.

D. Commence site work for the Phase III Townhouse Residential Units within thirty (30) days of the date that 75% of the Phase II Townhouse Residential Units are under contract for sale.

E. Diligently prosecute to Completion all construction of the Phase III Townhouse Residential Units once site work for same is Commenced.

F. Complete the Phase III Townhouse Residential Units and, subject to (f) below and in accordance with Section 10.02 hereof, apply for a Certificate of Completion for the Phase III Townhouse Residential Units within forty (40) months from the Commencement of Construction thereof.

(ii) All of the above Completion Dates are subject to, and shall be extended by, Uncontrollable Circumstances, as limited by Section 14.01 hereof.

(iii) If Redeveloper is notified by the Borough that it has failed to meet the Completion Date for the Phase II Townhouse Residential Units, Redeveloper shall promptly provide notice to the Borough stating the reason for the failure to complete the applicable task and shall propose a new Completion Date for such Sub-Phase for the Borough's consideration. If Redeveloper provides reasonable evidence that such failure is due to an Uncontrollable Circumstance, Borough shall not deem such failure an Event of Default hereunder. If such failure is not the result of an Uncontrollable Circumstance, compliance with the first sentence of this subparagraph shall not be deemed a cure of an Event of Default by Redeveloper resulting from its failure to meet a Completion Date.

(f) Notwithstanding the above timelines, the development of any Sub-Phase of the Project within Phase II and Phase III may commence concurrently with the development of any Sub-Phase within Phase I, in the sole discretion of Redeveloper, provided that the

respective Completion Dates for Phase I, Phase II, and Phase III are satisfied (subject to Uncontrollable Circumstances) and provided the UHAC and COAH phasing requirements referenced in Section 4.05(a) are complied with and, further provided, that, notwithstanding the commencement of any Sub-Phase prior to the date required by this Section, the required Completion Date for such Sub-Phase shall remain as if Commencement of Construction of such Sub-Phase had occurred on the deadline for same stated herein.

(g) Further notwithstanding the above timelines, a failure by any Sub-Redeveloper to meet a Completion Date with respect to any Sub-Phase that may be assigned to such Sub-Redeveloper pursuant to the terms of Section 11.04(g) hereof, shall not trigger a default or Event of Default on the part of Redeveloper or any other Sub-Redeveloper, and in such event, the Borough's only recourse shall be against such Sub-Redeveloper and the respective Sub-Phase of the Project assigned to and assumed by such Sub-Redeveloper pursuant to the terms of this Agreement.

(h) If, within six (6) months following the request by the Entity to issue the Bonds, as set forth in Section 4.6 of the Financial Agreement, all Governmental Approvals for the PILOT/RAB have not become final and unappealable, Redeveloper may terminate this Agreement unless an application for the issuance of the Bonds is pending before the State's Local Finance Board, in which event such termination right shall be postponed until an action by the Local Finance Board not to approve the Bonds. The occurrence or non-occurrence of any or all of the preceding shall not be an Uncontrollable Circumstance.

(i) In the event that a Sub-Redeveloper contemplated in Section 11.04 does not ultimately assume Redeveloper's rights hereunder as Sub-Redeveloper, the dates set forth in this Section 2.04 for tasks not yet completed shall be tolled for a period of six (6) months with respect to the corresponding Component.

### ARTICLE III REDEVELOPMENT AREA EXPANSION

**SECTION 3.01 Redevelopment Approvals for Additional Property.** As of the Effective Date of this Agreement, the Borough has already adopted a resolution directing the Planning Board to undertake a preliminary investigation of the property located at South Washington Avenue north of Columbia Street, which is identified as Block 83, Lot 1 in the Borough tax maps, ("Additional Property") to determine if the Additional Property meets the criteria for designation as a "non-condemnation redevelopment area" in accordance with N.J.S.A. 40A:12A-5 and -6. The Parties contemplate that the statutory process will be undertaken to designate the Additional Property as an being "in need of redevelopment" and to amend the Redevelopment Plan and the Financial Agreement to include the Additional Property; provided, however, that the Parties agree and acknowledge that the preceding does not constitute a contractual agreement by the Borough to take legislative action and that the non-occurrence of same shall not be a default hereunder nor shall it excuse the performance by Redeveloper of its obligations hereunder or under the Financial Agreement.

**ARTICLE IV**  
**FINANCIAL OBLIGATIONS**

**SECTION 4.01**      **Redeveloper's Financial Commitment.** Redeveloper warrants that it will use diligent efforts to obtain the requisite equity and debt financing in an amount necessary to implement and Complete the Project, subject to Uncontrollable Circumstances. If Redeveloper's inability to obtain financing results in a failure by Redeveloper to meet Completion Dates or in other Events of Default, Borough shall have all of its remedies as set forth herein.

**SECTION 4.02**      **Borough Reimbursed Costs.** Redeveloper agrees to provide funding to the Borough for all reasonable out-of-pocket costs incurred by the Borough in connection with the redevelopment of the Property (the "Borough Reimbursed Costs"). The Borough Reimbursed Costs shall include, but not be limited to any reasonable fees and costs of any professional consultant, contractor or vendor retained by the Borough including attorneys, engineers, technical consultants, environmental consultants, planners and financial consultants, among others, and all out-of-pocket costs and expenses of the Borough, which are incidentally and necessary for the Borough to meet its obligations as it pertains to the Project.

**SECTION 4.03**      **Payment of Borough Reimbursed Costs.**

(a) Redeveloper has established an Escrow Account (also referred to as the "Interim Fund"), pursuant to the Interim Cost Agreement, having an initial balance of Twenty Thousand Dollars (\$20,000.00). The Interim Fund defined therein shall now be referred to as the "Escrow Account." If the balance of the Escrow Account drops below Five Thousand Dollars (\$5,000.00), within ten (10) days of the Borough's request, Redeveloper will replenish the Escrow Account to Twenty Thousand and 00/100 Dollars (\$20,000.00). Simultaneously with such replenishment request, the Borough shall use good faith efforts to provide Redeveloper with a reasonable estimate of the Borough's remaining costs to be paid.

(b) Funds in the Escrow Account will be applied to the payment or reimbursement of the Borough Reimbursed Costs as provided in this Redevelopment Agreement. Prior to making any disbursement from the Escrow Account, written notice of the proposed disbursement shall be mailed to Redeveloper, setting forth: (i) the amount of the disbursement; (ii) the name of the person, company or entity designated to receive payment; and (iii) a description, in reasonable detail, of the particular cost to be paid or reimbursed in accordance with this Redevelopment Agreement. If Redeveloper does not object to such disbursement within fifteen (15) days of receipt of such notice, Redeveloper will be deemed to have approved same. Any dispute concerning payment of the Borough Reimbursed Costs shall be resolved in accordance with the procedures set forth in N.J.S.A. 40:55D-53.2a. Upon the issuance of the Certificate of Completion for Phase III of the Project, or upon termination of this Redevelopment Agreement, any money remaining in the Escrow Account shall be disbursed to Redeveloper, except that the Borough may retain an amount sufficient to cover incurred expenses.

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

**SECTION 4.04**      **Governmental Approval Fees.** Redeveloper shall pay all fees, including without limitation, any and all application and permit fees, required by the Borough (in accordance with standard fees provided in the Borough's ordinances) and any other Governmental Authority for the acquisition, development and construction of the Project. Redeveloper shall pay all other fees, including without limitation, any and all permit fees payable by the Borough or Redeveloper to all required Governmental Authorities other than the Borough, or for which the Borough is required to reimburse other Governmental Authorities or is required to pay other third party contractors retained by or on behalf of the Borough to perform services that the Borough would otherwise be required to perform itself. The Borough shall use reasonable efforts to predetermine the amounts of such costs referenced in the preceding sentence and give Redeveloper prior notice thereof.

**SECTION 4.05**      **Affordable Housing; Fees; Agent; Deed Restriction.**

(a) Redeveloper and the Project shall at all times comply with and abide by the Fair Housing Act, N.J.S.A. 52:27D-301, et seq., all COAH Rules, including but not limited to N.J.A.C. 5:93-5.6 (as partially set forth in **Exhibit I**), court orders and the Uniform Housing Affordability Control regulations ("UHAC"), N.J.A.C. 5:80-26.1, et seq. in connection with construction and marketing of the Project and in the performance of this Agreement, including but not limited to, pricing, bedroom mix, low/moderate income split, affirmative marketing, project phasing and the assignment of a COAH-qualified Administrative Agent. 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).

(b) With respect to the Retail/Commercial Component, Redeveloper shall comply with the Statewide Non-Residential Development Fee Act (the "Development Fee Act"), N.J.S.A. 40:55D-8.1 et seq., provided, however, that nothing herein is intended to waive any rights Redeveloper may have under Applicable Law with respect to such obligation.

(c) The Administrative Agent for approving the tenants for the Affordable Units in the Project shall be selected and retained by the Borough in accordance with the UHAC regulations. The Administrative Agent shall have the proper certifications and credentials as required by Applicable Law. Redeveloper and any subsequent owner of the Rental Residential Component of the Project shall be responsible for payment of the administrative fees and costs to be incurred by the Borough in connection with 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. Such payments shall be paid to the Borough's Affordable Housing Trust Fund. Redeveloper shall not lease any Affordable Unit prior to the proposed tenant therefor being income qualified by the Administrative Agent.

(d) Redeveloper shall record a deed restriction that shall maintain the affordability of the affordable housing units within the Project, in a form substantially similar to the form in Appendix E of N.J.A.C. 5:80-26.1, et seq. and that shall further address Redeveloper's payment obligation set forth in subparagraph (c) above. Redeveloper shall provide the form of deed restriction to Borough for review and approval and shall provide the Borough with proof of recordation of said deed restriction against the applicable units. Said deed restriction shall be recorded by Redeveloper prior to the issuance of the first Certificate of Occupancy for the Project.

**SECTION 4.06      Long Term Tax Exemption/Redevelopment Area Bond Financing.**

(a) It is the expectation of Redeveloper that the financial viability of the Project will require Redeveloper and Borough to enter into a financial agreement ("Financial Agreement") for the Project, with such agreement having a term of thirty (30) years and provisions for redevelopment area bond financing in a total issuance amount not to exceed Ten Million Dollars (\$10,000,000), pursuant to N.J.S.A. 40A:20-1 et seq. and N.J.S.A. 40A:12A-65 et seq., respectively, ("PILOT/RAB"). Redeveloper acknowledges that a PILOT/RAB for the Project is subject to separate approval by the Borough's governing body and the State's Local Finance Board and to Redeveloper's demonstration, to Borough's satisfaction, of the financial need for same. The Parties acknowledge that Redeveloper has provided the Borough with Project financial information necessary for Borough to evaluate such need, and the ordinance to approve the Financial Agreement and PILOT/RAB is being adopted simultaneously with the resolution approving this Agreement.

(b) The Parties agree and acknowledge that redevelopment area bonds issued under the PILOT/RAB shall provide for level debt service in an annual amount not to exceed \$710,000.00. If such bonds are not issued within one hundred twenty (120) days following the Bond Notice Date, as such term is defined in the Financial Agreement, the Redevelopment Project Schedule shall be tolled for the same number of days that the issuance of the bonds is delayed.

(c) In the event that, prior to the date that Redeveloper is required to Commence Construction of any Phase I Rental Residential Units hereunder, (i) a PILOT/RAB is not approved, with such approval being final and unappealable, on terms acceptable to Redeveloper and (ii) the bond proceeds from the PILOT/RAB are not available for the Project on terms acceptable to Redeveloper, Redeveloper may terminate this Agreement. The occurrence of (i) and/or (ii) shall not be an Uncontrollable Circumstance.

**ARTICLE V  
ENVIRONMENTAL MATTERS**

**SECTION 5.01      Environmental Compliance.** All costs for Remediation shall be the responsibility of Redeveloper, except for those to be the responsibility of a Sub-Redeveloper as part of construction of Project Improvements and for ongoing compliance with engineering and/or institutional controls. Redeveloper shall diligently prepare and submit all applications and documentation required to comply with the requirements of all Environmental Laws. Redeveloper shall also use diligent efforts to obtain all environmental approvals for the

Remediation of the Property. The status of Redeveloper's investigation and characterization of contamination on the Property and Redeveloper's plan and timeline for the Remediation thereof is set forth on **Exhibit D** hereof. Redeveloper shall, to the extent practicable, carry out concurrently the tasks in the Remediation timeline. Redeveloper agrees that a delay in obtaining or the non-availability of insurance funds shall not be a basis for delay in the implementation of the Remediation. Any insurance proceeds, grants or other funds made available to offset the cost of Remediation (other than the proceeds of the bonds issued as part of the PILOT/RAB) shall be remitted to Borough. The information set forth in **Exhibit D** shall be kept current, and, no less frequently than quarterly, Redeveloper shall provide Borough with information regarding the implementation of and revisions to the process set forth on **Exhibit D**.

## ARTICLE VI CONSTRUCTION OF PROJECT IMPROVEMENTS

**SECTION 6.01**      **Construction of Project Improvements.** Redeveloper shall construct or cause to be constructed the Project Improvements in accordance with this Agreement and all Applicable Law. Subject to the provisions of Section 2.04 hereof, it is understood and agreed that Redeveloper may construct the Project in a maximum of three separate Phases: Phase I, Phase II, and Phase III, subject to Section 4.05(a) and 10.01.

**SECTION 6.02**      **Relocation of Utilities.** Redeveloper acknowledges that utility providers may have certain rights with respect to the Property and may own certain facilities located therein. Redeveloper shall negotiate with, acquire, relocate or otherwise address the existence of these utilities and improvements and easements therefor to construct the Project Improvements. Upon Redeveloper's request, the Borough shall cooperate in facilitating the installation and/or relocation of any such affected utilities.

**SECTION 6.03**      **First Source Employment.** Redeveloper shall make good faith efforts, or cause its Construction Manager to make good faith efforts, to employ and shall attempt to provide in its contracts with its contractors and subcontractors that they must make good faith and commercially reasonable efforts to employ qualified residents of the Borough in the construction of the Project, consistent with market wages and the financial success of the Project. Notwithstanding anything herein to the contrary, Redeveloper shall not be in default of this Agreement for any claims that it or its Construction Manager or any of their contractors or subcontractors, did not employ Borough residents.

**SECTION 6.04**      **No Rent Control.** The Parties agree that the market-rate units of the Project shall not be subject to any rent control or rent stabilization requirements. This provision shall not apply in any way to the Affordable Units. In the event of any conflict or inconsistency between the terms of this Redevelopment Agreement and any Borough rent control or rent stabilization requirements, the terms of this Redevelopment Agreement shall control.

**SECTION 6.05**      **Affirmative Action.** During the construction of the Project Improvements, Redeveloper, where applicable, will at all times conform to all Applicable Laws with respect to affirmative action and equal employment opportunities requirements and, if there is any government-sponsored funding for the Project Improvements, those requirements that are

imposed as a condition to receipt of such government-sponsored funding, notwithstanding any other provision of this Redevelopment Agreement to the contrary.

**SECTION 6.06 Nondiscrimination During Construction; Equal Opportunity.**

Redeveloper for itself and its successors and assigns agrees that in the construction of the Project Improvements:

(a) Redeveloper will not discriminate against any employee or applicant for employment because of race, color, religion, creed, national origin, ancestry, physical handicap, age, marital status, affectional preference or gender. Redeveloper will ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, creed; national origin, ancestry, physical handicap, age, marital status, or gender. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. Redeveloper agrees to post in notices on the Property, available to employees and applicants for employment, setting forth the provisions of this nondiscrimination clause.

(b) Redeveloper will use good faith efforts to cause the foregoing provisions to be inserted in all contracts entered into by Redeveloper for any work covered by this Redevelopment Agreement.

**SECTION 6.07 Maintenance of Property.** Following commencement of physical construction of the Project Improvements, Redeveloper will maintain all areas of the Property in conformance with Borough Code.

**SECTION 6.08 Traffic.** The direction, flow and amount of traffic in and around the Property will be addressed during the site plan approval process and construction of the Project Improvements. Redeveloper shall satisfy all New Jersey Department of Transportation requirements regarding any traffic improvements to Route 28, and all County requirements regarding traffic improvements to South Washington Avenue, and any other requirements to obtain Governmental Approvals.

**SECTION 6.09 Project Roadways.** (a) The interior roadways of the Project are to remain private, with Redeveloper not being required to post a bond for such roadway improvements.

(b) Redeveloper shall be responsible for snow plowing costs for all paved areas within the Project, with the Borough to provide reimbursement of such costs for the Townhouse Component paved areas ("TC Paved Areas") shown in green on **Exhibit H** hereto. The TC Paved Areas shown on **Exhibit H** measure approximately 0.29 linear miles (the "TC Paved Area Length"). This reimbursement procedure shall be as follows: The Borough shall calculate its costs for the removal of snow on public streets within the Borough – which costs shall include any labor, equipment and materials utilized – for the prior year's snow season (e.g., October 1<sup>st</sup> to April 15th) and divide that cost by the number of linear miles of public streets in the Borough plowed during that prior year's snow season, resulting in a cost per linear mile ("Per-Mile Snow Removal Cost"). Each year, a new Per-Mile Snow Removal Cost shall be

calculated, based on the prior year's snow season. By June 1 of each year, the Borough shall reimburse the homeowner's association for the Townhouse Component the amount arrived at by multiplying the Per-Mile Snow Removal Cost by the TC Paved Area Length. Prior to the issuance of the first certificate of occupancy for the Project, the Borough and Redeveloper shall agree on the actual TC Paved Area Length as calculated and certified by a New Jersey licensed engineer from the final site plan for the Townhouse Component as approved by the Borough Planning Board and shall enter into a Qualified Community Services Agreement to memorialize this Section 6.09(b).

(c) No vehicular (motorized or non-motorized) or pedestrian connections to adjacent developments shall be permitted.

(d) Redeveloper shall, within applicable legal requirements, reasonably cooperate with the Borough in rendering reasonable Project ingress and egress compatible with that of adjoining properties, including but not limited to the laying out, design and construction of all roadways, streets and curb cuts on the Project Premises.

**SECTION 6.10 Pumping Station.** (a) Redeveloper has determined that, in order to provide adequate sewer service to the Project, the following are required as part of the Project Improvements: (i) construction of a sewer pumping station on the Property; (ii) construction of sewer lines on and off of the Property to connect the Property to the Borough's Washington Street pumping station; and (iii) repairs and upgrades to the Washington Avenue pumping station (the "Sewer Improvements"). The location of the Washington Avenue pumping station and the expected route of the sewer lines is shown on **Exhibit J**. Except to the extent needed to access the Washington Avenue pumping station across the pumping station property, the sewer lines shall not be installed on Borough property.

(b) Redeveloper shall obtain all permits, approvals and property rights necessary for the Sewer Improvements and shall be responsible for all costs and expenses associated with same. PARSA and the Borough's consulting engineers shall review and approve all aspects of planning, construction and design, and the Sewer Improvements shall be subject to Planning Board review.

(c) Borough agrees to enter into an access agreement with Redeveloper in a form mutually acceptable to the parties to permit the connection of the sewer lines to the Washington Avenue pumping station and to permit Redeveloper to carry out the needed repairs and renovations of same.

(d) Upon completion of the Sewer Improvements, Redeveloper shall offer to the Borough for dedication, at the cost of \$1, the Sewer Improvements and all permits, approvals and property rights associated with same. The Borough shall conduct those inspections associated with acceptance of a dedication and may require the posting of maintenance bonds, as well as satisfaction of Borough's other requirements associated with dedication of improvements. Redeveloper reserves the right, in lieu of dedication, to lease the Sewer Improvements to Borough at the cost of \$1/year, pursuant to a form of lease mutually acceptable to the parties, for a term to be determined by Redeveloper not to exceed thirty (30) years, with

such lease to provide for conveyance of the Sewer Improvements to the Borough for \$1 upon expiration of the lease.

(e) Following the dedication or lease of the Sewer Improvements to Borough, Redeveloper shall not be responsible for the operation, maintenance or repair of same (except as may be required in connection with maintenance bonds posted).

**SECTION 6.11** **NJTransit.** Redeveloper and Borough shall cooperate to engage NJTransit in discussions regarding the involvement of NJTransit in improvements, investments, planning, etc. associated with the development of the Project. Notwithstanding the above, however, Redeveloper shall be under no obligation to implement improvements suggested by NJTransit or by the Borough in concert with NJTransit; provided, however, that in the event that NJTransit, the Borough, or another governmental or quasi-governmental entity agrees to implement such improvements, including, but not limited to, access from the Project to the train platform of the Dunellen NJTransit station, Redeveloper shall provide for nominal consideration the necessary easements and/or licenses, provided that such easements and/or licenses do not interfere with the development of the Project or any Phase or portion thereof and provided that such easements and/or licenses affect only the northwestern portion of the Property.

**SECTION 6.12** **Estoppel Certificates.** Within fourteen (14) days following written request therefor by a Party hereto, or by any Holder, purchaser, tenant or other party having an interest in the Property, the other Party shall issue a signed certificate ("Estoppel Certificate") either stating that this Redevelopment Agreement is in full force and effect and that there is no Event of Default under this Redevelopment Agreement, or stating the nature of the Event of Default, if any. If there is such an Event of Default, the Estoppel Certificate shall also state the manner in which such Event of Default may be cured. No more than a reasonable number of Estoppel Certificates may be requested per year.

**SECTION 6.13** **Standards of Construction.** The Project Improvements shall be constructed in a good and workmanlike manner and in accordance with the Governmental Approvals.

**SECTION 6.14** **Cooperation.** The Parties shall fully cooperate with each other as necessary to effectuate the Project Improvements, including any application to the NJDOT or any other governmental or quasi-governmental agency. Such cooperation shall also include entering into additional agreements that may be required, provided however, that such actions and/or agreements shall not result in a material increase or decrease in the Borough's and Redeveloper's respective obligations hereunder.

**SECTION 6.15** **Redevelopment Fee.**

(a) In order to offset certain costs incurred and revenues forgone by Borough in connection with the redevelopment of the Property and the development of the Project, and to defray certain expenses of Borough acting as the redevelopment entity, all of which actions have benefitted and will benefit Redeveloper, Redeveloper shall pay to Borough the sum of Two Hundred Forty-Eight Thousand Four Hundred Dollars (\$248,400) annually ("Redevelopment Fee"), which obligation shall commence on the January 1 following the earlier of

Commencement of Construction of the Phase I Project Improvements or Demolition of any existing improvements on the Property and which shall be payable in quarterly installments of Sixty Two Thousand One Hundred Dollars (\$62,100) on the due date for property tax payments, with such payment obligation to end when the total of (i) the municipal portion of the Unpledged Annual Service Charge installment for the Project Improvements being paid simultaneously plus (ii) the land tax installment on the Property being paid simultaneously equals at least Sixty Two Thousand One Hundred Dollars (\$62,100). In addition, against payment of each installment of the Redevelopment Fee, Redeveloper shall receive a credit equal to the total amount of (i) the municipal portion of any Unpledged Annual Service Charge installment being paid simultaneously plus (ii) the land tax installment on the Property being paid simultaneously (“Fee Credit”). By way of non-exhaustive example, upon the payment of a quarterly Unpledged Annual Service Charge installment to the Borough for the Project Improvements of which the municipal portion (i.e., that portion to be retained by the Borough) plus the land tax installment on the Property being paid simultaneously is equal to \$30,000, the Redevelopment Fee payment due to the Borough will be reduced by that \$30,000 amount to \$32,100 (i.e., \$62,100 minus \$30,000 = \$32,100). For the purposes of clarity, if Redeveloper is paying the Minimum Annual Service Charge, the municipal portion of the Unpledged Annual Service Charge shall be comprised of the Existing Tax Amount and the Incremental Borough Costs, as such terms are defined in the Financial Agreement.

(b) Redeveloper’s obligation to pay the aforesaid amounts shall be secured pursuant to a mechanism mutually acceptable to the Parties, each in their sole discretion. If the Parties have not agreed on such mechanism and all actions necessary to implement such mechanism have not been taken within ninety (90) days from the Effective Date, either Party may terminate this Agreement.

(c) Redeveloper’s obligations under this Section 6.15 and the events giving rise thereto shall be included in the Declaration and, provided that the events giving rise thereto occur, Redeveloper’s obligations under this Section 6.15 shall survive termination of this Agreement for a period of two (2) years unless such termination is the result of an Event of Default by Borough or an Uncontrollable Circumstance. In the event that the Property, or portion thereof, is lawfully developed other than pursuant to this Agreement and such development results in the payment of property taxes or annual service charges to the Borough, the municipal portion of such payments shall be a Fee Credit.

## ARTICLE VII PROJECT OVERSIGHT

**SECTION 7.01**      Progress Meetings. The Parties shall attend quarterly progress meetings (“Progress Meetings”) to report on the status of the Governmental Approvals and the Project Improvements. Progress Meetings may be held more frequently at the request of the Borough. At the request of Borough, Redeveloper shall appear at meetings of the Borough Council to discuss the Project.

**ARTICLE VIII**  
**APPLICATIONS FOR GOVERNMENTAL APPROVALS**

**SECTION 8.01**      **Copies to Borough.** Redeveloper shall provide the Borough with a copy of each application for Governmental Approvals submitted to Governmental Authorities at the same time Redeveloper submits those applications to such Governmental Authorities, provided that the Borough shall not charge Redeveloper any review fees for such applications. Attached hereto as **Exhibit E** is a list of the Governmental Approvals that Redeveloper believes will be required for the Project.

**SECTION 8.02**      **Borough Review and Approval.**

(a) Prior to Redeveloper's submission of a preliminary site plan/subdivision application ("Preliminary Site Plan") to the Planning Board for the construction of the Project, Redeveloper (or Sub-Redeveloper, with respect to its applicable Component) shall submit to the Borough concept plans for the Project ("Plans") for its review and approval, not to be unreasonably withheld, conditioned or delayed. The Plans shall include the following information:

(i) Location of buildings, parking areas (vehicular and bicycle), driveways, site features, landscaping and amenities; of each Sub-Phase.

(ii) A plan and colorized renderings showing the elevations of the building(s), the exterior treatment of the building(s) including color, type and texture of material(s) to be used, and a sample of the actual construction materials being used on all facades within each Sub-Phase. Such plan and renderings for the retail building facing South Washington Avenue (shown on the Project layout sheet in Exhibit G) shall be consistent with the concept drawing attached hereto as Exhibit F.

(iii) Signage renderings and locational plan.

(iv) A plan estimating the timing of any soil or environmental remediation and/or engineering and institutional controls (if any, and subject to NJDEP requirements), final site preparations, foundations, construction, landscaping, installation of drives, sidewalks, and completion of construction, and any information and data necessary to enable the Borough to schedule any public improvements required for each particular Sub-Phase.

(v) A traffic impact study for the Project.

(vi) Such other plans as the Borough may from time to time reasonably require to promote the orderly construction of each Sub-Phase.

(b) The review and approval of the Plans shall be carried out by the Redevelopment Committee of the Borough Council with the advice and consent of the Borough Council. If the Borough determines that the Plans require revision, the revised Plans shall be submitted to the Borough, which shall have a period of fifteen (15) days after receipt thereof to approve the revised Plans or to furnish to Redeveloper in writing notice of any changes or of any modifications required to be made along with the reason(s) therefor. Upon reasonable request of

the Borough, Redeveloper shall consent to an additional fifteen (15) day period to review the Plans, or any revisions thereof. If changes or modifications shall be required by the Borough, Redeveloper shall incorporate such changes and modifications and furnish the revisions to the Borough for approval within forty-five (45) days after receipt of written notice thereof. Redeveloper agrees that the Preliminary Site Plan shall not be filed with the Planning Board without Borough's prior written approval of the Plans and that the Preliminary and Final Site Plan shall reflect the approved Plans. In the event that the Borough shall fail to notify Redeveloper within thirty (30) days of its receipt of the Plans, or revisions thereof, then the Borough shall be deemed to have accepted such Plans. In performing its review of the Plans, or revisions thereof, the Borough shall not unreasonably withhold its approval of same, nor shall it unreasonably withhold its consent to Redeveloper's request for additional time to submit any revisions to its Plans.

**SECTION 8.03      Change in Plans.**

(a) If at any time there shall be any material Plan Change, for any reason whatsoever, including, without limitation, any Plan Change as may be requested or desired by Redeveloper, or otherwise required by any Governmental Authority, other than the Borough (including the Planning Board or any of the Borough's agencies), or any contractor or subcontractor, Redeveloper shall promptly notify Borough of same. The Redevelopment Committee of the Borough Council, acting on behalf of the Borough, shall have the right to review such Plan Change as set forth in Section 8.02 or to waive such right. The Redevelopment Committee of the Borough Council shall have fifteen (15) days to provide written notice either (i) approving the Plan Change, which approval shall not be unreasonably withheld, conditioned or delayed, (ii) disapproving the Plan Change, which disapproval shall be accompanied with a statement detailing the reasons for such disapproval, or (iii) waiving the right to review such Plan Change. If the Borough fails to respond within such fifteen (15) day period such Plan Change shall automatically be deemed approved by the Borough. Notwithstanding the foregoing to the contrary, the Borough may not unreasonably object to any Plan Change required for the Project to comply with any law, rule, ordinance or other governmental requirement.

(b) In addition to the foregoing, and notwithstanding any provision in this Redevelopment Agreement that may be construed to the contrary, if, following construction of any Phase I Sub-Phase, Redeveloper determines, in its commercially reasonable discretion, that the remainder of the Project needs to be re-designed in order to achieve commercial viability, Redeveloper shall present evidence of same to Borough and, in connection therewith, may request a Plan Change for the re-design of the remainder of the Project. The Borough shall reasonably consider such request and, if such request is granted, all time periods set forth in this Redevelopment Agreement, including without limitation the Completion Dates for the remainder of the Project, shall be tolled for such period of time as the Parties agree to in order to effectuate a Plan Change to re-design the remainder of the Project. In no event shall any Plan Change relieve Redeveloper of its obligations with respect to the Financial Agreement, PILOT/RAB or the Redevelopment Fee and any Plan Change shall be required to maintain compliance with Section 4.05(a).

**SECTION 8.04      Effect of Review of Plans.** The review of the Plans by the Borough and the Borough Council Redevelopment Committee shall not constitute a representation, warranty

or guaranty by the Borough as to the substance or quality of the documents, work or other matter reviewed, approved or accepted. Redeveloper acknowledges that the Borough has relied on Article XIV hereof, along with its rights to review and approve the Plans, in entering into its obligations under this Redevelopment Agreement.

**SECTION 8.05**      **Cooperation.**

(a) Upon Redeveloper's request and to the extent permitted by Applicable Law (and without violating its obligations as a governmental entity or regulatory body having competent jurisdiction over the Project), the Borough shall provide support and assistance to Redeveloper in facilitating the prompt review of all plans, issuance of all permits, request for inspections and the conduct of such inspections through the appropriate Borough board, body or department, including the Planning Board, as applicable.

(b) To the extent permitted by Applicable Law, the Borough shall cooperate with and assist Redeveloper in applying for any subsidies or funding for the Project from any non-Borough Governmental Authority.

(c) Redeveloper and the Borough shall cooperate and use diligent efforts to secure, or cause to be secured, any and all Governmental Approvals which may be required to be obtained from any Governmental Authority having jurisdiction over the Project Improvements. The Borough shall fully cooperate with Redeveloper in obtaining the Governmental Approvals, at no expense to Borough, including without limitation, execution (as a co-applicant) of any application relating to such Governmental Approvals.

**SECTION 8.06**      **Notice of Commencement.** At least ten (10) days prior to the date that Redeveloper expects to commence construction of the Project Improvements for a particular Phase or Sub-Phase, Redeveloper shall notify the Borough of the estimated date that construction will commence.

**ARTICLE IX**  
**REPRESENTATIONS AND WARRANTIES; REDEVELOPER COVENANTS**

**SECTION 9.01**      **Representations and Warranties by Redeveloper.** In addition to, but not limited by, any and all other representations and warranties of Redeveloper contained in this Agreement, Redeveloper hereby represents and warrants the following to the Borough for the purpose of inducing the Borough to enter into this Redevelopment Agreement and to consummate the transactions contemplated hereby, all of which shall be true as of the date hereof and shall be deemed remade on the date of a Transfer:

(a) Redeveloper is a limited liability company organized under the laws of the State, is in good standing under the laws of the State, and has all requisite power and authority to carry on its business as now and whenever conducted, and to enter into and perform its obligations under this Redevelopment Agreement.

(b) Redeveloper has the power, right and authority to enter into this Redevelopment Agreement and the instruments and documents referenced herein to which

Redeveloper is a party, to consummate the transactions contemplated hereby, to take any steps or actions contemplated hereby, and to perform their obligations hereunder.

(c) This Redevelopment Agreement has been duly authorized, executed and delivered by Redeveloper and is valid and legally binding upon Redeveloper and enforceable in accordance with its terms. The execution and delivery hereof shall not constitute a default under or violate the terms of any indenture, agreement or other instrument to which Redeveloper is a party.

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

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

(f) No indictment has been returned against any partner, member or officer of Redeveloper with respect to any transaction contemplated by the terms of this Redevelopment Agreement.

(g) There is no pending or, to Redeveloper's actual knowledge, threatened litigation that would prevent Redeveloper from performing its duties and obligations hereunder.

(h) There are no suits, other proceedings or investigations pending or, to Redeveloper's actual knowledge, threatened against Redeveloper that would have a material adverse effect on the financial condition of Redeveloper.

(i) All materials and documentation submitted by Redeveloper and its agents to the Borough and its agents were, at the time of such submission, and as of the Effective Date, materially accurate, and Redeveloper shall continue to inform the Borough of any material and adverse changes in the documentation submitted. Redeveloper acknowledges that the facts and representations contained in the information submitted by Redeveloper are a material factor in the decision of the Borough to enter into this Redevelopment Agreement.

(j) Redeveloper is capable of developing, designing, and constructing the Project Improvements.

(k) The cost and financing of the Project is the responsibility of Redeveloper. Absent an agreement to the contrary, the Borough shall not be responsible for any cost whatsoever in respect to same.

(l) The ownership structure of Redeveloper is set forth in Exhibit B attached hereto. Redeveloper shall, at such times as the Borough may request, furnish the Borough with a complete statement subscribed and sworn to by a partner, member or officer of Redeveloper, setting forth all of the ownership interests of Redeveloper and the extent of their respective holdings.

(m) Redeveloper's responses to Sections II E., III, and IV E. of the Borough's Request for Qualifications continue to be true and correct, as said responses may be revised and updated from time to time.

(n) As of the Effective Date, eleven (11) leases/licenses are in effect with respect to the Property, all of which are month-to-month except for one lease that has a renewable six-month term. On the earliest date permitted under each such lease/license, Redeveloper or its Affiliate shall terminate such lease/license and take all actions to require the tenant/licensee thereunder to vacate its premises and terminate its rights of occupancy at the earliest permitted date. Redeveloper and its Affiliate shall not consent to any holdovers.

**SECTION 9.02 Representations and Warranties by the Borough.** In addition to, but not limited by, any and all other representations and warranties of the Borough contained in this Redevelopment Agreement, the Borough hereby represents and warrants the following to Redeveloper for the purpose of inducing Redeveloper to enter into this Redevelopment Agreement and to consummate the transactions contemplated hereby, all of which shall be true as of the date hereof:

(a) The Borough has the legal power, right and authority to enter into this Redevelopment Agreement and the instruments and documents referenced herein to which the Borough is a Party, to consummate the transactions contemplated hereby, and to perform its obligations hereunder.

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

(c) To the best of the Borough's knowledge and belief, there is no pending litigation that would in any way (i) contest or seek to invalidate Redeveloper's ability to commence performance of its obligations under the Redevelopment Agreement, or (ii) prevent the Borough from performing its duties and obligations hereunder.

(d) There are no suits, other proceedings or investigations pending against the Borough that would have a material adverse effect on the Borough's financial condition.

(e) To the best of the Borough's knowledge and belief, the Redevelopment Plan has been adopted in accordance with all Applicable Laws at the time of its adoption.

**SECTION 9.03 Delivery of Documents by Redeveloper.** Redeveloper shall deliver the following fully executed collateral documents simultaneously with the execution of this Redevelopment Agreement and the Borough hereby acknowledges the receipt of such documents:

(a) Certified copies of the certificate of formation and certificate of good standing of Redeveloper.

**SECTION 9.04 Redeveloper Covenants.** In addition to, but not limited by, any and all other covenants and agreements of Redeveloper contained in this Redevelopment Agreement, Redeveloper covenants and agrees to the following for the purpose of inducing the Borough to enter into this Redevelopment Agreement and to consummate the transactions contemplated hereby (collectively, “Redeveloper Covenants”):

(a) Commence construction of the Project Improvements within the time set forth in this Redevelopment Agreement, subject to all provisions of the Agreement.

(b) Upon completion of the development and construction of the Project Improvements in any Phase or Sub-Phase, as applicable, Redeveloper shall use diligent efforts to obtain all Governmental Approvals authorizing the occupancy and uses of the Project Improvements for the purposes contemplated hereby.

(c) Redeveloper shall not 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, affectional preference or gender in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Project Improvements, 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 of the Project Improvements.

(d) Redeveloper shall not restrict the sale, lease, sublease, rental, transfer, use, occupancy, tenure, or enjoyment of the Project Improvements on the basis of race, color, religion, creed, national origin, ancestry, physical handicap, age, marital status, affectional preference or gender of any person.

(e) Redeveloper shall promptly notify the Borough of any material adverse change in its financial condition from the information provided to the Borough by Redeveloper indicating Redeveloper’s financial capability to develop and construct the Project Improvements.

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

(g) Redeveloper shall not use the Property, Project Improvements or any part thereof for which a Certificate of Completion has not been issued, or for which a Certificate of Occupancy has not been issued with respect to a building in the Rental Residential Component and/or the Retail/Commercial Component, as collateral for an unrelated transaction.

(h) Redeveloper shall promptly pay and discharge all taxes, payments in lieu of taxes, assessments and other levies imposed upon it, the Property and/or the Project Improvements, or any other of its property located within the Borough, before the same shall become in default.

(i) Redeveloper shall ensure that satellite dishes that are part of the Project Improvements are not visible from the public road or sidewalks.

(j) Redeveloper hereby waives and relinquishes any and all statutory, contractual, common law or other claim, right or claim of right, action, or cause of action it may otherwise have, at law, in equity, or otherwise, to challenge, bring suit or any other legal action, or otherwise use as a defense, in any and all legal, administrative, judicial or other proceedings, including without limitation, any condemnation proceeding, or before any Governmental Authority, or arbitration board or panel, or otherwise, with respect to any and all of the following: (i) the determination, decision, finding, conclusion or action, official or otherwise, by the Borough that the Property is an area in need of redevelopment pursuant to, and in accordance with, the Redevelopment Law, and (ii) that the Property is properly, appropriately, and for all purposes, legally, included within the Redevelopment Area.

**SECTION 9.05**      **Recording, Project Covenants.** Upon the execution and delivery of this Redevelopment Agreement, Redeveloper shall file and record against the Property a Declaration of Covenants and Restrictions in the form attached hereto as **Exhibit C** (hereinafter referred to as the "Declaration") in the Office of the Middlesex County Clerk, at Redeveloper's expense, which Declaration shall, inter alia, disclose the existence of the above covenants and all restrictions on Transfers, their running with the Property, and other information as required by law. Any liens on the Property shall be removed or subordinated to the Declaration at the time of or prior to it being recorded, and Redeveloper shall provide satisfactory evidence to Borough of same. Redeveloper shall deliver to the Borough a copy of such filed and recorded Declaration. Upon issuance of a Certificate of Occupancy for an individual for-sale unit in the Townhouse Component, the Borough will provide satisfaction of Declaration in recordable form releasing such unit from the Declaration (excluding the provisions that survive as set forth in Exhibit C). The last for-sale unit in a Phase or Sub-Phase shall not be entitled to receive such a satisfaction; rather, the process set forth in Section 10.02 shall apply. Upon issuance of a Certificate of Occupancy for an individual building in the Rental Residential Component or the Retail/Commercial Component, the Borough will provide satisfaction of Declaration in recordable form releasing such building from the Declaration (excluding the provisions that survive as set forth in Exhibit C). The last building in a Phase or Sub-Phase shall not be entitled to receive such a satisfaction; rather, the process set forth in Section 10.02 shall apply.

**SECTION 9.06**      **Effect and Duration of the Covenants.** Except as otherwise set forth herein, the agreements and covenants in this Redevelopment Agreement shall run with the Property until a Certificate of Completion has been issued for the respective Project Improvements within an applicable Phase or Sub-Phase thereof, and until such time they shall, in any event, and without regard to technical classifications or designation, legal or otherwise, and except only as otherwise specifically provided in this Redevelopment Agreement, be binding, to the fullest extent permitted by law and equity, for the benefit and in favor of, and enforceable by, the Borough, its successors and assigns, and any successor in interest to the Property, or any part thereof, against Redeveloper, its successors and assigns and every successor in interest therein, and any party in possession or occupancy of the Property or any part thereof.

**SECTION 9.07**      **Enforcement of Covenants by the Borough.** In amplification, and not in restriction of the provisions of this Article IX, it is intended and agreed that the Borough and its successors and assigns shall be deemed beneficiaries of the agreements and covenants set forth in this Redevelopment Agreement, both for and in their own right but also for the purposes of protecting the interests of the community and other parties, public or private, in whose favor

or for whose benefit such agreements and covenants have been provided. Such agreements and covenants shall run in favor of the Borough for the entire period during which such agreements and covenants shall be in force and effect, or in favor of which such agreements and covenants relate. The Borough shall have the right, in the event of any breach of any such agreement or covenant, to exercise all the rights and remedies and to maintain any actions or suits at law or in equity or other proper proceedings to enforce the curing of such breach of agreement or covenant, to which it or any other beneficiaries of such agreement or covenant may be entitled, including, without limitation, all other rights as more specifically set forth in Article XIV and Article XV hereof. This Section is not intended to confer standing to sue on any party other than the Borough.

## ARTICLE X CERTIFICATES OF OCCUPANCY AND COMPLETION

**SECTION 10.01**     Certificate of Occupancy. Upon completion of any structure or building within a Phase or Sub-Phase eligible for issuance of a Certificate of Occupancy, Redeveloper shall apply to the appropriate governmental officer or body for a Certificate of Occupancy for such Project Improvements, or portion thereof, such as, in the case of the Townhouse Component, an individual dwelling unit. Notwithstanding the foregoing, Redeveloper shall not seek a Certificate of Occupancy for a residential unit (whether part of the Townhouse Component or the Rental Residential Component) in the Project if the issuance of such Certificate of Occupancy would result in a violation of the UHAC and COAH phasing requirements referenced in Section 4.05(a) or of applicable law.

**SECTION 10.02**     Certificate of Completion. The completion of any Phase or Sub-Phase eligible to receive a Certificate of Occupancy shall be evidenced by a certificate of the Borough in recordable form ("Certificate of Completion") accepting the terms of a certificate of Redeveloper, delivered no later than ten (10) days following the issuance of the final Certificate of Occupancy for such Phase or Sub-Phase, stating that: (a) the applicable Project Improvements have been completed (excluding any normal and customary tenant improvements) in accordance with the all Governmental Approvals and Applicable Laws and that all labor, services, materials and supplies used in connection therewith have been paid for or adequate security has been posted in connection therewith; and (b) a Certificate of Occupancy, if required, and any other permissions required, if any, of Governmental Authority for the occupancy and use of all portions of the applicable Project Improvements (excluding vacant portions of any building) for the purposes contemplated by this Redevelopment Agreement have been obtained. The Borough shall not unreasonably withhold or delay the delivery of a Certificate of Completion with respect to any Phase or Sub-Phase. If the Borough determines that Redeveloper is not entitled to a Certificate of Completion, the Borough shall, within fifteen (15) days of receipt of Redeveloper's written request for a Certificate of Completion, provide Redeveloper with a written statement of the items to be addressed or remedied to furnish a Certificate of Completion. If the reason for the non-issuance is confined to the non-completion of specific minor finish items or to Project Improvements, whether public or private, that are to be completed as part of the final Completion of the full Project, the Borough will issue its Certificate of Completion upon the posting of a bond (or other reasonably satisfactory security) by Redeveloper with the Borough in an amount representing 120% of the value of the work not yet completed unless Completion of such work is already covered by and secured by a bond or other security provided pursuant to the Municipal

Land Use Law. Upon the issuance of a Certificate of Completion in accordance with the terms hereof, the conditions that were found and determined to exist at the time the Redevelopment Area was determined to be in need of redevelopment shall be deemed to no longer exist with respect to the corresponding portion of the Property, and same shall no longer be subject to eminent domain as a result and the conditions and requirements of N.J.S.A. 40A:12A-9 shall be deemed to have been satisfied with respect to the corresponding portion of the Property.

**SECTION 10.03**     **Additional Inspectors.** At Redeveloper's request, the Borough will seek to timely retain the services of qualified code and sub-code inspectors to carry out inspections of the Project Improvements during their construction. The cost of such additional inspections shall be deemed Borough Reimbursed Costs, to be paid through the Escrow Account.

## **ARTICLE XI TRANSFERS**

**SECTION 11.01**     **Prohibition Against Speculative Development.** Redeveloper covenants that its undertakings pursuant to this Redevelopment Agreement shall be for the purpose of redevelopment of the Property and not for speculation in land holding.

**SECTION 11.02**     **Prohibition Against Transfers.**

(a) Redeveloper recognizes that, in view of (i) the importance of the redevelopment to the general welfare of the community; (ii) the public assistance to be made available by law and by the Borough on the conditions stated herein, for the purpose of making such redevelopment possible; and (iii) the fact that a change in ownership or control of Redeveloper, or any other act or transaction involving or resulting in a change in ownership or control of Redeveloper to the degree thereof, is for practical purposes a transfer or disposition of the property interest then owned by Redeveloper, the qualifications and identity of Redeveloper and its principals are of particular concern to the Borough, no voluntary or involuntary successor in interest of Redeveloper shall acquire any interest in or rights or powers under this Redevelopment Agreement except as expressly set forth herein.

(b) With respect to Phases, Sub-Phases (or portions thereof) for which a Certificate of Completion has not been issued, during the period between the Effective Date and the Completion of the Project as evidenced by the issuance of Certificates of Completion for all Phases, Redeveloper shall, at such time or times as the Borough may request, furnish the Borough with a complete statement subscribed and sworn to by the managing partner, managing member or other executive officer or member of Redeveloper, setting forth all of the partners, both general and limited, managing members, shareholders, or other owners of equity interests of Redeveloper and the extent of their respective holdings.

**SECTION 11.03**     **Retention of Title to Property; Redeveloper to Maintain its Existence.** Except where expressly permitted hereunder, during the term of this Redevelopment Agreement, Redeveloper shall not, prior to the issuance of the Certificate of Completion for any Phase or Sub-Phase: (a) effect or permit any change, directly or indirectly, in the ownership or control of the applicable Property, Project Improvements, or any portion thereof, or Redeveloper (b) assign or attempt to assign this Redevelopment Agreement or any rights herein, or (c) make any total or

partial sale, transfer, or conveyance of the whole or any part of its interest in the applicable Property or Project Improvements (individually and collectively, a “Transfer”).

**SECTION 11.04 Permitted Transfers.** Redeveloper, without violating the provisions of Section 11.02 or Section 11.03 hereof, may effect the following Transfers (“Permitted Transfers”), without the necessity of further action by the Borough; provided that the requirements set forth in Section 11.05 have been satisfied:

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

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

(c) utility and other development easements;

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

(e) the Transfer, in the aggregate, of less than ten (10%) percent of the ownership interest of Redeveloper;

(f) any leasing or sale of a unit within any Phase or Sub-Phase, including, the Phase I Rental Residential Units, the Phase I Townhouse Residential Units, the Phase II Rental Residential Units, the Phase II Townhouse Residential Units, the Retail/Commercial Component, and the Phase III Townhouse Residential Units, as applicable, in the ordinary course of business, provided that the occupancy under such lease or closing on such sale occurs following the issuance of a Certificate of Occupancy as to the applicable Phase, Sub-Phase or unit, as applicable;

(g) provided that no Event of Default by Redeveloper, or Default by Entity under the Financial Agreement, has occurred and is ongoing and that no state of facts exists that, if left uncured, would give rise to an Event of Default by Redeveloper, or Default by Entity under the Financial Agreement, a Transfer to (and corresponding assumption by) a transferee (a “Sub-Redeveloper”) of the rights and obligations as Redeveloper hereunder applicable to any Component of the Project, provided that any such Transfer (and corresponding assumption) shall occur subsequent to Redeveloper (i) completing Demolition, (ii) completing that portion of the Remediation that is not to be completed as part of the construction of the Project Improvements, and (iii) obtaining Preliminary and Final Subdivision approval for the Property to permit the development of the Project as the Rental Residential Component, the Retail/Commercial Component and the Townhouse Component, provided that no default by Redeveloper has occurred and is ongoing and that the Rental Residential Component and the Retail/Commercial Component may not be the subject of separate Transfers, and further provided that any such proposed transferee:

(i) shall be a reputable homebuilder (for the Townhouse Component and/or the Rental Residential Component) and/or a reputable mixed-use/commercial developer (for the Retail/Commercial Component);

(ii) shall have the qualifications and financial responsibility, as reasonably determined by the Borough, necessary and adequate to fulfill the obligations undertaken in this Agreement by Redeveloper;

(iii) shall qualify and be formed as an urban renewal entity under the Long Term Tax Exemption Law;

(iv) by instrument in writing reasonably satisfactory to the Borough and in recordable form, shall, for itself and its successors and assigns, and expressly for the benefit of the Borough, have expressly assumed the applicable obligations of Redeveloper under this Redevelopment Agreement and agree to be subject to the applicable conditions and restrictions to which Redeveloper is subject with respect to the respective Townhouse Component, Rental Residential Component and/or Retail/Commercial Component, as applicable, and subject to the requirements of Section 11.07 of this Agreement;

(v) by instrument in writing reasonably satisfactory to the Borough and in recordable form, shall, for itself and its successors and assigns, and expressly for the benefit of the Borough, have expressly assumed the applicable obligations of Redeveloper under the Financial Agreement and agree to be subject to the applicable conditions and restrictions to which Redeveloper is subject with respect to the respective Townhouse Component and/or Rental Residential Component and Retail/Commercial Component, as applicable,

(vi) by instrument in writing reasonably satisfactory to the Borough shall, for itself and its successors and assigns, enter into an agreement with Redeveloper and any other Sub-Redeveloper, as applicable, for the shared use of Project infrastructure, including, but not limited to, stormwater/drainage, utilities, and access; and

(vii) as to the transferee of the Rental Residential Component and the Retail/Commercial Component, the named redeveloper under this Agreement shall have and retain a fifty percent (50%) minimum direct or indirect interest therein until a Certificate of Completion is issued therefor.

For purposes of Section 11.04(g), there may be up to two Sub-Redevelopers (not including Redeveloper) for the Project: one Sub-Redeveloper for the Townhouse Component and one Sub-Redeveloper for the Rental Residential Component and Retail/Commercial Component. For purposes of this Section 11.04(g)(i) and (ii), Borough agrees that K. Hovnanian Holdings NJ LLC, as the parent entity of a potential Sub-Redeveloper, satisfies same on behalf of such Sub-Redeveloper for the Townhouse Component, and that Dunellen Prism Associates Urban Renewal, LLC, a New Jersey limited liability company that consists of a joint venture between Redeveloper and Prism Dunellen LLC (a subsidiary of Prism Capital Partners, LLC), satisfies same on behalf of such Sub-Redeveloper for the Rental Residential Component and the Retail/Commercial Component.

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

**SECTION 11.05 Notice of Permitted Transfers.** Except as further set forth below, with respect to any Permitted Transfers, Redeveloper shall provide to the Borough written notice thereof no more than twenty (20) days following such Permitted Transfer, including a description of the nature of such Permitted Transfer, and the name(s) and address(es) of the transferee and any parties, individuals and/or entities comprising such transferee. In connection with a Permitted Transfer involving a ground lease, purchase option agreement, contract of sale or conveyance to an urban renewal entity, at closing thereon, Redeveloper shall cause the transferee to execute such documentation as is reasonably requested by the Borough in order to assure that the transferee has assumed all of Redeveloper's obligations under this Redevelopment Agreement as to the Property and/or Project Improvements, or any portion thereof (if Redeveloper's right, title and interest in the Property and/or Project Improvements is being transferred). Redeveloper shall exercise diligent efforts with respect to the provisions of any documentation relating to the Permitted Transfer as the Borough may reasonably request. With respect to Permitted Transfers involving a ground lease, purchase option agreement, contract of sale or conveyance to an urban renewal entity, Redeveloper shall provide to the Borough written notice thereof no less than twenty (20) days prior to such Permitted Transfer, including a description of the nature of such Permitted Transfer, and the name(s) and address(es) of the transferee and any parties, individuals and/or entities comprising such transferee. Further, with respect to those Permitted Transfers listed in Section 11.04(f), the above 20-day notice shall not be required; however, a report on status of leasing and sales shall be provided to the Borough at least every sixty (60) days until a Certificate of Completion for the entire Project has been issued. Redeveloper shall not have the right to carry out a Permitted Transfer if an Event of Default has occurred or if there is a breach by Redeveloper hereunder that, if uncured, would give rise to an Event of Default; provided, however, that in the event of a Permitted Transfer to a Sub-Redeveloper, such Event of Default or breach shall be material in nature and the affected Sub-Redeveloper(s) shall be given the period granted to Redeveloper hereunder to cure same, but in no event longer than ninety (90) days. Redeveloper may request Borough to issue an Estoppel Certificate in accordance with Section 6.12 hereof in connection with a Permitted Transfer.

**SECTION 11.06 Transfers Void.** Any transfer by Redeveloper in violation of this Redevelopment Agreement shall be a Redeveloper Event of Default and shall be null and void ab initio. Such default shall entitle the Borough to seek all remedies available under the terms hereof, including termination of this Redevelopment Agreement, and Borough may also seek equitable relief to cause the reversal of the transfer. The Declaration shall contain a restriction against Transfers as set forth in Section 11.02 and, in addition, shall provide that in the event of any attempted transfer in violation of the restriction in Section 11.02, the Borough shall be entitled to the ex parte issuance of an injunction restraining such Transfer, and the recovery of reasonable legal fees and related expenses of the Borough in connection with any such legal action. Upon the recording of the Declaration in the Office of the Middlesex County Clerk, the provision affording such injunctive relief shall have the same force and effect as a Notice of Lis Pendens.

**SECTION 11.07 Assignment/Assumption of Rights and Obligations with respect to Transfer of the Townhouse Component and/or the Rental Residential Component and the Retail/Commercial Component.** Upon the Transfer of the Townhouse Component and/or the Rental Residential Component and the Retail/Commercial Component, as applicable, in

accordance with Section 11.04(g) of this Agreement, with no further or other actions required by Redeveloper, Sub-Redeveloper(s), or Borough:

(a) Redeveloper shall as part of each such Transfer, reasonably allocate liability for payment of a portion of the Redevelopment Fee.

(b) Redeveloper shall have no rights, no obligations and no liabilities whatsoever under the Relevant Provisions (as defined below) with respect to the Townhouse Component and/or the Rental Residential Component and the Retail/Commercial Component, as applicable, provided, however, that Redeveloper shall be and remain liable (together with transferee(s) for its allocated portion of the Redevelopment Fee) under Section 6.15 and provided that a Transfer shall not relieve Redeveloper or its transferee of liability with respect to default that occurs or has occurred under the Agreement prior to the Transfer;

(c) the Borough shall have no recourse against Redeveloper with respect to the Townhouse Component and/or the Rental Residential Component and the Retail/Commercial Component, as applicable, except with respect to Section 6.15;

(d) the Sub-Redeveloper shall have all the rights, obligations and liabilities under the Relevant Provisions with respect to only the Townhouse Component and/or the Rental Residential Component and the Retail/Commercial Component, as applicable, but shall not be liable for the obligations of Redeveloper or hereunder that arose prior to the Transfer or of any other Sub-Redeveloper, except as otherwise specifically set forth herein; and

(e) the Borough shall have recourse against the Sub-Redeveloper only with respect to the Townhouse Component and/or the Rental Residential Component and the Retail/Commercial Component, as applicable to such Sub-Redeveloper, and the Relevant Provisions with respect to the Townhouse Component and/or the Rental Residential Component and the Retail/Commercial Component, as applicable to such Sub-Redeveloper. As such, a default by a Sub-Redeveloper shall not be deemed a default by Redeveloper or any other Sub-Redeveloper.

“Relevant Provisions” means the following provisions of the Agreement: Article II, Article IV, Article VI, Article VII, Article VIII, Article IX (except, with respect to the undersigned Redeveloper, Section 9.04(j)), Article X, Article XI, Article XII (except with respect to events occurring prior to the Transfer), Article XIII, Article XIV, Article XV and Article XVI. Accordingly, upon such Transfer of the Townhouse Component, the Rental Residential Component and/or the Retail/Commercial Component, as applicable, each Relevant Provision shall be (and shall deemed to be) amended to implement the provisions of this Section 11.07. By way of non-exhaustive example, upon a Transfer of the Townhouse Component, each reference in each Relevant Provision to “Redeveloper” means the Sub-Redeveloper to the extent such Relevant Provision is applicable to the Townhouse Component.

Moreover, notwithstanding the Transfer of any Townhouse Component and/or Rental Residential Component and Retail/Commercial Component to a Sub-Redeveloper (or Sub-Redevelopers), Section 2.03 (with respect to Remediation), Section 2.04(a)(i)(E), and Article V of the Agreement shall apply only to the undersigned Redeveloper except with respect to that

portion of the Remediation to be carried out by a Sub-Redeveloper(s) in the course of construction of Project Improvements and for ongoing compliance with engineering and/or institutional controls. Compliance with Article V of the Agreement may be enforced by Borough against Redeveloper or Sub-Redeveloper, as applicable, provided, however, that Redeveloper's and Sub-Redeveloper's obligations herein to construct the Project Improvements may not be enforced by seeking specific performance. Notwithstanding the occurrence of Transfers pursuant to this Agreement, Brudner Redevelopment Partners Urban Renewal, LLC shall remain in good standing and as a going concern until the issuance of a final Certificate of Completion for the Project.

## ARTICLE XII INDEMNIFICATION; INSURANCE

### SECTION 12.01 Redeveloper Indemnification.

(a) Redeveloper covenants and agrees, at its expense, to pay and to indemnify, protect, defend and hold the Borough Indemnified Parties harmless from and against all liability, losses, damages, demands, costs, claims, lawsuits, administrative proceedings, fines, penalties, and expenses (including attorneys' fees and court costs) of every kind, character and nature resulting, wholly or partially, from the condition (including the past, present or future presence of Hazardous Materials), use, possession, conduct, management, planning, design, acquisition, construction, installation, financing, leasing or sale of the Property and/or the Project Improvements, including but not limited to, (i) the death of any person or any accident, injury, loss, and damage whatsoever to any person or to the property of any person which shall occur on or adjacent to the Property and/or Project Improvements and which results, wholly or partially, from any negligence or willful misconduct of Redeveloper, its agents, servants, employees, or contractors, but excluding damage, liability, costs and expenses to the extent that same may result from willful misconduct of the Borough or any of the Borough Indemnified Parties, or (ii) any lawsuit or other proceeding commenced by any person or entity, because of action(s) or omissions taken by Redeveloper, its contractors, employees, agents, representatives and elected or appointed officials in connection with the Property and/or Project Improvements or this Redevelopment Agreement; and

(b) Redeveloper shall defend, indemnify and hold harmless the Borough Indemnified Parties from any claims, investigations, liability, loss, injury, damage, remediation costs, lawsuits, civil proceedings, fines, penalties, and expenses including reasonable attorneys fees and disbursements (but excluding damage, liability, costs and expenses to the extent that same may result from willful misconduct of the Borough or any of the Borough Indemnified Parties) which result, wholly or partially, from (i) the performance or any failure or delay of performance by Redeveloper of its obligations under the Redevelopment Agreement; (ii) any bodily injury or property damage that may occur in the Property during the term of the Redevelopment Agreement, provided however, that such indemnity shall not include the actions or inactions of third-parties over whom Redeveloper does not exercise control, as long as Redeveloper maintains and enforces commercially reasonable security measures and commercial liability insurance to protect against such actions or inactions.

(c) When a Borough Indemnified Party claims to be entitled to receive indemnification by Redeveloper, the Borough Indemnified Party 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 Party, unless such failure materially impairs Redeveloper's ability to defend such party. Upon receipt of such notice, Redeveloper shall, if applicable, resist and defend any action or proceeding on behalf of the Borough Indemnified Party, including the employment of counsel reasonably acceptable to the Borough Indemnified Party, the payment of all expenses and the right to negotiate and consent to settlement. The Borough Indemnified Parties shall have the right to employ separate counsel in any such action and to participate in the defense thereof, but the fees and expenses of such separate counsel shall be at the expense of the indemnified party unless the employment of such counsel is specifically authorized by Redeveloper, which authorization shall not be unreasonably withheld or delayed. Redeveloper shall not be liable for the 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 the Borough Indemnified Party in any such action, Redeveloper agrees to indemnify and hold harmless the Borough Indemnified Party from and against any loss or liability by reason of such settlement or judgment if the Borough Indemnified Party is entitled to indemnification hereunder. Redeveloper may settle any such action on terms it deems appropriate provided that a full release of the Borough Indemnified Party is obtained and no admission of liability by the Borough Indemnified Party is required. If the Borough refuses to provide a release of such action, and a final judgment is rendered against Redeveloper, the Borough shall be responsible for Redeveloper's counsel fees and costs incurred subsequent to the Borough's refusal to release the action and for that amount of the judgment which is in excess of the sum for which Redeveloper would have otherwise settled the action.

(d) Neither Party shall be required to defend against any legal challenge to the Redevelopment Plan, this Agreement, the Financial Agreement, the PILOT/RAB, or other Governmental Approval; provided, however, that a Party shall reasonably cooperate with another Party that does undertake such a defense.

(e) This Section 12.01 shall survive any termination of this Agreement.

**SECTION 12.02 Insurance Required.**

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

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

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

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

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

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

(g) Redeveloper's obligation to maintain insurance pursuant to, and in accordance with, this Section 12.02 shall terminate upon issuance of a Certificate of Completion with respect to the Project, or Phase thereof, as set forth in this Section 12.02.

### ARTICLE XIII

#### MORTGAGE FINANCING; NOTICE OF DEFAULT TO MORTGAGEE; RIGHT TO CURE

**SECTION 13.01** Mortgage Financing. Redeveloper, or its successor in interest, shall notify the Borough in advance of any such financing secured by a mortgage or other lien

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

**SECTION 13.02     Forbearance.** If any Holder is required to foreclose against any lien it has with respect to the Property and/or Project Improvements (as a result of a default by Redeveloper under any agreements executed by Redeveloper), the Borough agrees to forebear from the enforcement of any remedies provided under this Redevelopment Agreement that it may have against Redeveloper in order to permit such Holder to assume the obligations of Redeveloper under this Redevelopment Agreement, provided however, that the Borough shall not be obligated to forebear from the exercise of any remedies available to it against Redeveloper or the Property or Project hereunder if such forbearance will result (or may result, in the reasonable judgment of the Borough) in a waiver of the Borough’s rights under this Redevelopment Agreement or a material and adverse effect on the Borough’s rights or performance obligations hereunder or any material increase in the Borough’s financial obligations hereunder.

**SECTION 13.03     No Guarantee of Construction or Completion by Holder.**

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

(b) If a Holder forecloses its mortgage secured by the Property or Project Improvements, or takes title (in its name or the name of an Affiliate) to the Property or Project Improvements by deed-in-lieu of foreclosure or similar transaction (collectively a “Foreclosure”), the Holder or its Affiliate shall have the option to either (i) sell the Property or Project Improvements, as applicable, to a responsible Person reasonably acceptable to the Borough, which Person shall expressly assume the obligations of Redeveloper under this Redevelopment Agreement, and/or (ii) itself, or its Affiliate, expressly assume the obligations of Redeveloper under this Redevelopment Agreement. In the event of a Foreclosure and provided the Holder or the purchaser is in compliance with this Redevelopment Agreement, 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 Redevelopment Agreement available in connection with the events preceding the Foreclosure. The Holder, or the entity assuming the

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

**SECTION 13.04 Borough's Option to Pay Mortgage Debt or Purchase Land.** In any case where, subsequent to an Event of Default by Redeveloper under this Agreement and/or Foreclosure, the Holder:

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

(b) undertakes construction or completion of the Project but does not complete such work within a reasonable period, and such default shall not have been cured within sixty (90) calendar days after written demand by Borough so to do unless such work cannot be reasonably completed in such time frame but the Holder is diligently and continuously undertaking construction and completion then Borough will extend such time frames accordingly, ((a) and (b) each a "Holder Failure");

(c) then Borough, or its designee, shall have the option of paying to the Holder the amount of the mortgage debt including all accrued and unpaid interest and obtaining an assignment of the mortgage and the debt secured thereby, or, in the event ownership of the Project Improvements and Property (or part thereof) has vested in such Holder by way of foreclosure or action in lieu thereof, Borough, or its designee, shall be entitled, at its option, to a conveyance to it of the Project Improvements and Property or part thereof (as the case may be) upon payment to such Holder of an amount equal to the sum of: (a) the mortgage debt inclusive of all costs and expenses Holder was so entitled under the Mortgage documents, at the time of foreclosure or action in lieu thereof (less all appropriate credits, including those resulting from collection and application of rentals and other income received during foreclosure proceedings); (b) all expenses with respect to the foreclosure, including reasonable attorney's fees and expenses; (c) the net expense, if any (exclusive of general overhead), incurred by such Holder in and as a direct result of the subsequent management of the mortgaged property; (d) the costs incurred by such Holder in making any Project Improvements; and (e) an amount equivalent to the interest that would have accrued on the aggregate of such amounts had all such amounts become part of the mortgage debt and such debt had continued in existence. Every mortgage

instrument made prior to completion of the Project with respect to any phase of development of the Project by Redeveloper shall provide for the foregoing.

**SECTION 13.05**     Coopération with Holder. Borough shall reasonably cooperate with a Holder to modify the provisions of this Agreement if reasonably requested by Holder or a proposed Holder; provided, however, that such modifications shall not substantially reduce the rights or increase the responsibilities of Borough hereunder.

**ARTICLE XIV  
ADDITIONAL TERMINATION RIGHTS**

**SECTION 14.01**     Additional Termination Rights of Borough.

(a) Notwithstanding any other provision of this Redevelopment Agreement, including, but not limited to Section 2.04, this Redevelopment Agreement shall terminate upon notice by the Borough to Redeveloper of its decision to so terminate, whether or not an Event of Default by Redeveloper has occurred or is ongoing and/or whether or not an Uncontrollable Circumstance has occurred or is ongoing and/or whether or not Completion Dates have been extended as result of an Uncontrollable Circumstance, if, on a date twenty-four (24) months following the deadline for a required action set forth in Section 2.04 (or, with respect to those required actions tolled as a result of the Sewer/Market Conditions Period being in effect provided that the Sewer/Market Conditions Period is in effect, on the later of (i) a date twenty-four (24) months following the deadline for a required action set forth in Section 2.04 and (ii) the end of the Sewer/Market Conditions Period), Redeveloper has not carried out the required action, such termination being subject to the provisions of Section 15.14 hereof.

(b) Nothing in this Section 14.01 shall prevent the Borough from declaring, in accordance with the terms of this Redevelopment Agreement, that an Event of Default by Redeveloper hereunder has occurred nor from pursuing any of its other remedies hereunder.

**ARTICLE XV  
EVENTS OF DEFAULT AND REMEDIES**

**SECTION 15.01**     Events of Default. Any one or more of the following shall constitute an event of default ("Event of Default") hereunder (with none of the following to be construed as a limitation on any other):

(a) Failure of Redeveloper or the Borough to observe and perform any covenant, condition or agreement under this Redevelopment Agreement, and continuance of such failure for a period of forty-five (45) days, after receipt by the defaulting Party of written notice from the non-defaulting Party specifying the nature of such failure and requesting that such failure be remedied, provided however, if the failure is one which cannot be remedied within the forty-five (45) days after such written notice has been given, it shall not be an Event of Default as long as the defaulting Party is proceeding with due diligence to remedy the same as soon as practicable but in no event later than one hundred fifty (150) days after such written notice (extendable in the sole discretion of the Borough).

(b) (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 and shall not have been stayed or dismissed for ninety (90) consecutive days; (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 ninety (90) 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 ninety (90) consecutive days; or (ix) Redeveloper shall have suspended the transaction of its usual business.

(c) The filing of a complaint in Foreclosure against Redeveloper that is not stayed or dismissed for ninety (90) consecutive days or the issuance of a deed in lieu of Foreclosure for any financing in connection with the Project or Phase thereof.

(d) Redeveloper substantially abandons or suspends construction of any Project Improvements, for a period in excess of ninety (90) days not resulting from the occurrence of Uncontrollable Circumstance. On a maximum of two occasions, if, following such ninety (90) day period, Redeveloper recommences construction prior to notice of termination being given by the Borough, Borough shall not have the right to terminate in connection with such suspension of construction.

(e) There is a Transfer in violation of this Redevelopment Agreement.

(f) Redeveloper or its successor in interest fails to pay any real estate taxes, assessments, payments in lieu of taxes or Redevelopment Fee when required to do so, or shall place on the Project or the Property any encumbrance or lien unauthorized by this Agreement and such real estate taxes payments in lieu of taxes, encumbrance or lien have not been paid, removed or discharged or provision satisfactory to the City made for such payment, removal or discharge within ten (10) days (thirty (30) days for encumbrances and liens) after written demand by the Borough to do so.

(g) A material representation made in Article IX was false on the Effective Date and, following a period of thirty (30) days after receipt by the defaulting Party of written notice, the representation remains false.

**SECTION 15.02 Uncontrollable Circumstance.** Except as otherwise set forth in this Agreement, including Article XIV hereof, an Event of Default shall not be deemed to have occurred where delays or failure to perform are the result of an Uncontrollable Circumstance. Completion Dates shall be extended for the period of delay resulting from the occurrence of an

Uncontrollable Circumstance. Redeveloper shall provide Borough with prompt notice of the occurrence of an Uncontrollable Circumstance of which Redeveloper becomes aware.

**SECTION 15.03 Remedies Upon Event of Default by Redeveloper.** If an Event of Default by Redeveloper occurs then the Borough may, in its sole and absolute discretion, upon sixty (60) days' prior notice to Redeveloper and any Holder, terminate this Redevelopment Agreement unless such Holder is otherwise entitled to maintain this Agreement in effect.

**SECTION 15.04 Disposition of Property Upon Termination of Redevelopment Agreement.** In the event that, prior to the issuance of the final Certificate of Completion for the Project Improvements, (i) an Event of Default by Redeveloper occurs and the Borough terminates this Redevelopment Agreement and/or (ii) Borough terminates this Redevelopment Agreement pursuant to Section 14.01 hereof, then, Borough shall have all rights with respect to same under the Redevelopment Law and otherwise.

**SECTION 15.05 Condemnation/Casualty.** In the event that all or any substantial portion of the Property is condemned or taken by eminent domain by any condemning authority or is damaged or destroyed by casualty prior to commencement of construction (other than casualty to any portion of the Property that will be demolished as part of the Project), Redeveloper may, at its option, terminate this Redevelopment 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 fifty (50%) percent of the total acreage of the Property or that portion which, in the reasonable business judgment of Redeveloper, would prevent the successful completion of construction or operation of the Project as envisioned by this Redevelopment Agreement. The Parties agree that Redeveloper alone shall be entitled to any condemnation awards for the Property. The Borough hereby represents and warrants to Redeveloper that the Borough presently has no intention or plans to acquire all or any portion of the Property, and, to the best of its knowledge, no other Governmental Authority has any intention or plans to acquire all or any portion of the Property, by condemnation and eminent domain.

**SECTION 15.06 Remedies Upon Events of Default by the Borough.** In the event that an Event of Default by the Borough occurs, then Redeveloper may take whatever action at law or in equity as may appear necessary or desirable to enforce the performance or observance of any rights, remedies, obligations, agreements, or covenants of the Borough, as applicable, under this Redevelopment Agreement, including the seeking of damages (including reasonable counsel fees and costs). Further, but subject to any cure provisions afforded the Borough hereunder, Redeveloper shall have the right, in its sole and absolute discretion, upon sixty (60) days' notice to the Borough, to terminate this Redevelopment Agreement.

**SECTION 15.07 Specific Performance.** Except where remedies are otherwise limited by this Agreement, if an Event of Default occurs, or a Party hereto threatens to take an action that will result in the occurrence of an Event of Default, the non-defaulting (or non-threatening) Party shall have the right and remedy, without posting bond or other security, to have the provisions of this Redevelopment Agreement specifically enforced by any court having equity jurisdiction, it being acknowledged and agreed that any such breach or threatened breach may cause irreparable

injury to the Borough or Redeveloper and that money damages may not provide an adequate remedy thereto.

**SECTION 15.08**     **Failure or Delay.** Except as otherwise expressly provided in this Redevelopment Agreement, the failure or delay by either Party in asserting any of its rights or remedies shall not operate as a waiver of any such rights or remedies, or deprive either such Party of its right to institute and maintain any actions or proceedings it may deem necessary to protect, assert or enforce any such rights or remedies.

**SECTION 15.09**     **Remedies Cumulative.** No remedy conferred by any of the provisions of this Redevelopment Agreement is intended to be exclusive of any other remedy and each and every remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. The election of one or more remedies shall not constitute a waiver of the right to pursue other available remedies. In no event, however, shall a Party be entitled to recover more than its actual damages.

**SECTION 15.10**     **Continuance of Obligations.** The occurrence of an Event of Default shall not relieve the defaulting Party of its obligations under this Redevelopment Agreement unless this Redevelopment Agreement is terminated as a result of such Event of Default, as and to the extent permitted hereunder.

**SECTION 15.11**     **Litigation Costs.** In the event that a Party to this Redevelopment Agreement successfully pursues an action to enforce any remedy provided in this Article, that Party shall be entitled to payment by the other Party of all reasonable costs and expenses incurred in connection with such action.

**SECTION 15.12**     **Mitigation.** The parties shall act reasonably to mitigate any damages that may be incurred as a result of an Event of Default hereunder.

**SECTION 15.13**     **Documents to be Delivered Upon Termination.** In the event this Redevelopment Agreement is terminated for any reason, except as a result of the default of the Borough, Redeveloper shall deliver to the Borough, within sixty (60) days after such termination, without representation or warranty, copies of all reports, studies, data, plans, surveys, title reports, subdivision maps and specifications prepared by Redeveloper and third parties with respect to the Property and the Project Improvements and all documents, reports, permits and approvals obtained by Redeveloper relating to the Property and the Project Improvements, excluding all proprietary information (all collectively called, "Project Information"). Unless expressly provided for by any third party, Borough shall not be permitted to rely on such Project Information and shall have no claim against any third party who prepared such Project Information for any inaccuracies or faults contained therein.

**SECTION 15.14**     **Agreement Not to Develop Upon Termination.** Subject to the rights of any Holders, in the event this Redevelopment Agreement is terminated with respect to any Phase or Sub-Phase, as applicable, as a result of a Redeveloper Event of Default, then, in order to give the Borough the opportunity to address any issues resulting from such termination, Redeveloper agrees that, for a period of six (6) months following such termination, in the event that Redeveloper still owns or controls the Property (or any part thereof), it shall take no further steps

to develop the Property (such prohibition not extending to Project Improvements for which Construction has been commenced), except as may be agreed to by the Borough, in its sole discretion, notwithstanding the fact that Redeveloper may be in possession of Governmental Approvals required for such development; provided, however, that if such termination is the result of the expiration of a permitted period of delay for Uncontrollable Circumstances or is pursuant to Article XIV hereof, such termination shall not prevent or delay Redeveloper from obtaining non-Borough Governmental Approvals for Project Improvements for which it is in possession of Governmental Approvals from the Borough and its instrumentalities (excluding building permits) at the time of termination and obtaining building permits therefor and constructing such Project Improvements.

**SECTION 15.15 Security for Redeveloper Obligations.** Simultaneously with and as a condition of the commencement of Demolition as required in **Exhibit A** hereof, Redeveloper shall deliver to Borough an irrevocable, stand-by letter of credit, in favor of Borough as beneficiary, in the amount of \$1,000,000, in a form reasonably acceptable to Borough, as security for (a) payment by Redeveloper of costs to complete such Demolition as required in **Exhibit A** hereof and (b) the cost to demolish an unfinished Project and to clear, restore, grade and seed the Land ("Demolition Security"), which letter of credit can be drawn on by Borough to (y) carry out the Demolition described in (a) if same is not completed within the required eight (8) month period, subject to Uncontrollable Circumstances, as applicable (but once commenced Uncontrollable Circumstances (d) and (h) shall not apply), with Redeveloper hereby granting all licenses to Borough and its contractors to carry out same and/or (z) carry out the demolition and restoration described in (b) if this Redevelopment Agreement shall be terminated as a result of an Event of Default by Redeveloper, subject to all rights of Redeveloper's senior mortgage lender. After the later of (A) Completion of Phase I of the Project and (B) expenditure of the first Five Million Dollars (\$5,000,000) of hard costs, i.e., construction costs, for the Phase II Rental Residential Units, Redeveloper shall no longer be obligated to maintain the Demolition Security, which shall be promptly returned to Redeveloper, together with Borough's executed instructions for cancellation of the letter of credit in the form required by the issuer. In lieu of a stand-by-letter of credit, at Redeveloper's option, Redeveloper will deposit in escrow with the Borough the amount of \$1,250,000, and Borough will release any remaining funds to Redeveloper on ten (10) business days' notice following notice that the later of (A) or (B) above has occurred. In lieu of a stand-by-letter of credit, at Redeveloper's option, Redeveloper will deposit in escrow with the Borough the amount of \$1,250,000, and Borough will release any remaining funds to Redeveloper on ten (10) business days' notice following notice that the first One Million Dollars (\$1,000,000) of hard costs for the Phase II Rental Residential Units have been expended.

## ARTICLE XVI MISCELLANEOUS

**SECTION 16.01 Notices.** Formal notices, demands and communications between the Borough and Redeveloper shall be deemed given if dispatched to the address set forth below by registered or certified mail, postage prepaid, return receipt requested, or by a commercial overnight delivery service with packaging tracking capability and for which proof of delivery is available. In this case such notice is deemed effective upon delivery. Such written notices, demands and communications may be sent in the same manner to such other addresses as either Party may from time to time designate by written notice.

Copies of all notices, demands and communications shall be sent as follows:

If to the Borough:

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

with copies to:

Borough Attorney  
355 North Avenue  
Dunellen, New Jersey 08812

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

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

If to Redeveloper:

Brudner Redevelopment Partners Urban Renewal, LLC  
c/o Davanne Realty Co.  
80 Main Street, Suite 510  
West Orange, New Jersey 07052  
attn: Michael J. Mandelbaum, Esq.

with copy to:

Peter M. Flannery, Esq.  
Bisgaier Hoff, LLC  
25 Chestnut Street, Suite 3  
Haddonfield, New Jersey 08033

**SECTION 16.02**     **Conflict of Interest.** No member, official or employee of the Borough shall have any direct or indirect interest in this Redevelopment Agreement, nor participate in any decision relating to this Redevelopment Agreement which is prohibited by law.

**SECTION 16.03**     **No Consideration For Redevelopment Agreement.** Redeveloper warrants it has not paid or given, and will not pay or give, any third person any money or other consideration in connection with obtaining this Redevelopment Agreement, other than normal costs of conducting business and costs of professional services such as architects, engineers, financial consultants and attorneys. Redeveloper further warrants it has not paid or incurred any

obligation to pay any officer or official of the Borough, any money or other consideration for or in connection with this Redevelopment Agreement.

**SECTION 16.04**     **Non-Liability of Officials and Employees of the Borough.** No member, official, employee agent or consultant of the Borough shall be personally liable to Redeveloper, or any successor in interest, in the event of any default or breach by the Borough, or for any amount which may become due to Redeveloper or its successor, or on any obligation under the terms of this Redevelopment Agreement.

**SECTION 16.05**     **Non-Liability of Officials and Employee of Redeveloper.** No member, officer, shareholder, director, partner or employee of Redeveloper shall be personally liable to the Borough, or any successor in interest, in the event of any default or breach by Redeveloper or for any amount which may become due to the Borough, or their successors, on any obligation under the terms of this Redevelopment Agreement.

**SECTION 16.06**     **No Brokerage Commissions.** The Borough and Redeveloper each represent one to the other that no real estate broker initiated, assisted, negotiated or consummated this Redevelopment Agreement as broker, agent, or otherwise acting on behalf of either the Borough or Redeveloper, and the Borough and Redeveloper shall indemnify each other with respect to any claims made by any person, firm or organization claiming to have been so employed by the indemnifying Party.

**SECTION 16.07**     **Provisions Not Merged With Deeds.** To the extent that the provisions of this Redevelopment Agreement are intended to bind Redeveloper's assigns and successors, its provisions shall not be merged by reason of any deeds transferring title to any portion of the Property from Redeveloper or any successor in interest, and any such deeds shall not be deemed to affect or impair the provisions and covenants of this Redevelopment Agreement.

**SECTION 16.08**     **Successors and Assigns.** This Redevelopment Agreement shall be binding upon and inure to the benefit of the permitted successors and assigns of the parties hereto, and their heirs, executors, and administrators.

**SECTION 16.09**     **Titles of Articles and Sections.** The titles of the several Articles and Sections of this Redevelopment Agreement are inserted for the convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.

**SECTION 16.10**     **Severability.** If any term or provision of this Redevelopment Agreement or the application thereof shall be held to be invalid or unenforceable, the remainder of this Redevelopment Agreement, or the application of such term or provision to circumstances other than those to which it is invalid or unenforceable, shall not be affected thereby, and each other term and provision of this Redevelopment Agreement shall be valid and shall be enforced to the extent permitted by law.

**SECTION 16.11**     **Modification.** No modification, waiver, amendment, discharge, or change of this Redevelopment Agreement, shall be valid unless the same is in writing, duly authorized, and signed by the Party against which the enforcement of such modification, waiver, amendment, discharge, or change is or may be sought.

**SECTION 16.12**     Counterparts. This Redevelopment Agreement may be executed in one or more counterparts and when each Party has executed and delivered at least one counterpart, this Redevelopment Agreement shall become binding on the parties and such counterparts shall constitute one and the same instrument.

**SECTION 16.13**     Prior Agreements Superseded. This Redevelopment Agreement integrates all of the terms and conditions mentioned herein or incidental hereto, and supersedes any prior agreement and all negotiations or previous agreements between the parties with respect to all or any part of the subject matter hereof.

**SECTION 16.14**     Drafting Ambiguities; Interpretation. In interpreting any provision of this Redevelopment Agreement, no weight shall be given to, nor shall any construction or interpretation be influenced by, the fact that counsel for one of the parties drafted this Redevelopment Agreement, each Party acknowledging that it and its counsel have had an opportunity to review this Redevelopment Agreement and have contributed to the final form of same.

**SECTION 16.15**     Governing Law. This Redevelopment Agreement shall be governed by and construed and interpreted in accordance with the laws of the State of New Jersey without regard to conflict of laws principles thereunder and no defense given or allowed by the laws of any other state shall be interposed in any action or proceeding hereon unless such defense is also given or allowed by the laws of the State of New Jersey. Any action or proceeding brought by Redeveloper arising out of this Redevelopment Agreement shall be brought solely in a court of competent jurisdiction located in the County of Middlesex, State of New Jersey, or in a United States District Court in New Jersey. Redeveloper hereby waives any right to seek removal of any action or proceeding. If the Borough commences such an action in a court located in the County of Middlesex, State of New Jersey, or any United States District Court in New Jersey, Redeveloper hereby waives any right to seek removal of any action or proceeding. Additionally, Redeveloper agrees to submit to the personal jurisdiction of such courts and will not attempt to have such action dismissed, abated or transferred on the ground of forum non conveniens. Without limiting other methods of obtaining jurisdiction, Redeveloper agrees that personal jurisdiction over it and any process or notice of motion or other application to any such court in connection with any such action or proceeding may be served upon Redeveloper by registered mail to or by personal service at the last known address of Redeveloper pursuant to the notice section set forth in this Redevelopment Agreement.

**SECTION 16.16**     No Restriction on Police Powers. Nothing in this Redevelopment Agreement shall 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 Project, the Property or Redeveloper.

**SECTION 16.17**     No Third Party Beneficiaries. This Redevelopment Agreement does not and is not intended to confer any rights or remedies upon any person other than the Parties.

[SIGNATURES APPEAR ON SUCCESSIVE PAGE]

IN WITNESS WHEREOF, the parties hereto have caused this Redevelopment Agreement to be executed, all as of the date first above written.

WITNESS:

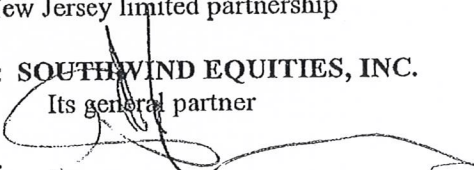


REDEVELOPER:


BRUDNER REDEVELOPMENT PARTNERS  
URBAN RENEWAL, LLC,  
a New Jersey limited liability company

By: DUNELLEN ASSOCIATES, LLP  
a New Jersey limited partnership

By: SOUTHWIND EQUITIES, INC.  
Its general partner


By:   
Richard Brudner, President

ATTEST:

  
William M. Robins, RMC,  
Borough Clerk

BOROUGH OF DUNELLEN

By:

  
Robert J. Seader, Mayor

## EXHIBIT A

### DESCRIPTION OF PHASE I OF PROJECT

Phase I shall consist of: (1) 20 for-sale stacked market-rate townhouse units (none of which shall be Affordable Units) in the corresponding area of the Property shown on the layout plan included in this exhibit (the “Phase I Townhouse Residential Units”); (2) a multi-story (up to four stories in height) residential development with 126 rental residential units in the location shown on **Exhibit G** (the “Phase I Rental Residential Units”) and (3) retail/commercial uses on in the corresponding area of the Property shown on **Exhibit G** (the “Retail/Commercial Component”). Phase I shall utilize an entry/exit at a signalized intersection on South Washington Avenue.

The Phase I Rental Residential Units shall consist of rental apartments with 29 of such apartments being Affordable Units, which Affordable Units shall be distributed throughout the rental buildings to be constructed in Phase I and the completion of which shall occur in order for the Project to maintain compliance with **Exhibit I**.

The Phase I Rental Residential Units shall also include amenities typical to the Project’s “luxury” classification, which may also serve other Phases, to be determined in detail during the Borough’s approval of the Plans.

The Retail/Commercial Component shall be in one or more buildings and shall constitute between 10,000 and 15,000 square feet. At least one of such buildings shall be a two-story (or, at Redeveloper’s option, have the appearance of a two-story building through use of dormers or the like) shall immediately front on South Washington Avenue and shall be designed to reflect design elements of the Dunellen Train Station across the street, i.e., a “railroad” style building, as depicted on Exhibit F. Any other buildings comprising a portion of the Retail/Commercial Component, which may include one or more pad sites for stand-alone commercial users, shall also reflect this design theme.

Phase I shall also include performance of the Demolition, with same to commence no later than eight (8) weeks following the vacation of the Property by all tenants/licensees pursuant to Section 9.01(n), to be diligently pursued together with the Remediation that is not to be completed as part of the Project Improvements and both completed prior to the start of construction of Phase I, with such completion timed to occur such that the Commencement of Construction of Phase I occurs within as brief a time period as is practical following completion of Demolition. Once such Demolition is commenced, Redeveloper shall be required to promptly and diligently complete both the Demolition and the Remediation that is not to be completed as part of the Project Improvements, in no event to exceed eight (8) months, subject to Uncontrollable Circumstances, as applicable (but once Demolition is commenced, Uncontrollable Circumstances (d) and (h) shall not apply).

## DESCRIPTION OF PHASE II OF PROJECT

Phase II shall consist of: (1) 20 for-sale stacked market-rate townhouse units (none of which shall be Affordable Units) in the corresponding area of the Property shown on the layout plan included in this exhibit (the “Phase II Townhouse Residential Units”); (2) a multi-story (up to four stories in height) residential development with 126 rental residential units in the location shown on **Exhibit G** (the “Phase II Rental Residential Units”); There will be a single entry/exit from Phase II at a signalized intersection on South Washington Avenue.

The Phase II Rental Residential Units shall consist of rental apartments with 29 of such apartments being Affordable Units, which Affordable Units shall be distributed throughout the rental buildings to be constructed in Phase II and the completion of which shall occur in order for the Project to maintain compliance with **Exhibit I**.

The Phase II Rental Residential Units shall also include amenities typical to the Project’s “luxury” classification, which may also serve other Phases, including a club house, pool and similar accessory uses, to be determined in detail during the Borough’s approval of the Plans.

## DESCRIPTION OF PHASE III OF PROJECT

Phase III shall consist of up to 90 for-sale stacked market-rate townhouse units (none of which shall be Affordable Units) in the location shown on **Exhibit G** (the “Phase III Townhouse Residential Units”). Phase III shall utilize an entry/exit at a signalized intersection on South Washington Avenue.

**EXHIBIT B**  
**OWNERSHIP STRUCTURE**

1. Brudner Redevelopment Partners Urban Renewal, LLC
  - a. 50% - Dunellen Associates, 22 North McCauley Road, Travels Rest, South Carolina 29060, attn: Mr. Richard Brudner
  - b. 50% - Davanne Realty Co., 80 Main Street, Suite 510, West Orange, New Jersey 07052, attn: Michael J. Mandelbaum, Esq.

EXHIBIT C

DECLARATION OF COVENANTS AND RESTRICTIONS  
FORM OF COVENANTS AND RESTRICTIONS

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

DECLARATION OF COVENANTS AND RESTRICTIONS

Block 85, Lot 1  
and as set forth on the attached Exhibit "A"  
in the  
Borough of Dunellen (the "Property")

(Record in Mortgage Book)

This Declaration of Covenants and Restrictions ("Declaration") is made this \_\_\_\_ day of \_\_\_\_\_, 2017 by and between **THE BOROUGH OF DUNELLEN** (the "**Borough**"), a municipal corporation of the State of New Jersey with offices at the 355 North Avenue, Dunellen, New Jersey 08812;

And

**BRUDNER REDEVELOPMENT PARTNERS URBAN RENEWAL, LLC**, a New Jersey urban renewal entity and limited liability company, and its permitted successors and assigns, having its offices at c/o Davanne Realty Co., 80 Main Street, Suite 510, West Orange, New Jersey 07052 (together with permitted successors or assigns as hereinafter provided, referred to as the "**Redeveloper**," and together with the Borough, the "**Parties**," with each a "**Party**");

WITNESSETH

**WHEREAS**, the *Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1, et seq.*, as amended and supplemented (the "**LRHL**"), provides a process for municipalities to participate in the redevelopment and improvement of areas in need of redevelopment; and

**WHEREAS**, the Borough previously created the Borough of Dunellen Redevelopment Agency ("**Agency**") pursuant to §§68-1 through 68-4 of the Borough Code and thereafter adopted Ordinance 04-12 which repealed the creation of the Agency and appointed the Council

of the Borough of Dunellen (“**Borough Council**”) as the municipal entity responsible for implementing the redevelopment plans and carrying out the redevelopment projects pursuant to the LRHL; and

**WHEREAS**, on May 5, 2003, the Borough Council adopted a resolution designating certain properties within the Borough, consisting of property located at South Washington Avenue between the rail line and Columbia Street, identified on the Official Tax Map of the Borough as Block 85, Lots 1 and 2 in the Borough, as an area in need of redevelopment in accordance with the LRHL (the “**Redevelopment Area**”); and

**WHEREAS**, the Borough Council on August 9, 2004 adopted an ordinance approving and adopting the Dunellen Downtown Redevelopment Plan Phase I, which was thereafter amended, most recently on May 16, 2016 pursuant to Ordinance #2016-05 (the “**Amending Ordinance**”; collectively the “**Redevelopment Plan**”) in accordance with the LRHL, which Redevelopment Plan provides for, *inter alia*, a mixed-use redevelopment project at the Property including infrastructure improvements and related remediation (collectively, the “**Project**”), which Project is consistent with the Redevelopment Plan; and

**WHEREAS**, the Redevelopment Plan governs the Redevelopment Area; and

**WHEREAS**, the Entity is the fee simple owner of the Redevelopment Area (also referred to herein as the “**Property**”), described on **Exhibit A** hereto; and

**WHEREAS**, on \_\_\_\_\_, 2017, the Borough Council adopted a resolution authorizing the execution and delivery of that certain Redevelopment Agreement (the “**Redevelopment Agreement**”) by and between the Redeveloper and the Borough, which sets forth the respective obligations for each Party with respect to the redevelopment of the Redevelopment Area in accordance with the Redevelopment Plan; and

**WHEREAS**, on \_\_\_\_\_, 2017 the Parties executed the Redevelopment Agreement; and

**WHEREAS**, *N.J.S.A. 40A:12A-9(a)* of the LRHL requires that all agreements, leases, deeds and other instruments between a municipality and a redeveloper shall contain a covenant running with the land requiring, among other things, that “. . . the owner shall construct only the uses established in the current redevelopment plan . . .”; and

**WHEREAS**, the Redevelopment Agreement contains certain covenants by the Redeveloper and its successor or assigns for as long as the Redevelopment Agreement remains in effect, unless otherwise stated, as well as perpetual covenants by the Redeveloper and its successor or assigns, as more specifically set forth herein; and

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

**NOW THEREFORE**, in consideration of the foregoing and in compliance with the requirements of the Redevelopment Agreement, the Redeveloper, in its capacity as the owner of the Property at the time of recording this Declaration, for itself, its legal and personal representatives, successors and assigns, and for the benefit of the Borough and such other persons and parties who are entitled to enjoy the benefits and protections of the covenants and restrictions hereof and to enforce the obligations of the Redeveloper hereunder and its heirs, executors, administrators, legal and personal representatives, successors and assigns, hereby agrees as follows:

Section 1. Defined terms not otherwise defined herein or in **Exhibit B** attached hereto shall have the meaning assigned to such terms in the Redevelopment Agreement.

Section 2. Redeveloper covenants and agrees that:

(A) The Redeveloper shall construct the Project on the Property in accordance with the Redevelopment Plan and the Redevelopment Agreement.

(B) The Redeveloper shall commence and complete construction of the Project Improvements within the time set forth in the Redevelopment Agreement.

(C) The Redeveloper shall not 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, affectional preference or gender in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Project Improvements, nor shall the Redeveloper itself, or any Person claiming under or through the 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 of the Project Improvements.

(D) The Redeveloper shall use diligent efforts to obtain all Governmental Approvals authorizing the occupancy and uses of the Project Improvements for the purposes contemplated hereby.

(E) The Redeveloper shall promptly notify the Borough of any material adverse change in its financial condition from the information provided to the Borough by the Redeveloper indicating the Redeveloper's financial capability to develop and construct the Project Improvements.

(F) The Redeveloper shall not use the Property or any Project Improvements in a manner that is inconsistent with the Redevelopment Plan, the Redevelopment Agreement, and the Governmental Approvals.

(G) The Redeveloper shall not use the Property, Project Improvements or any part thereof for which a Certificate of Completion has not been issued or for which a Certificate of Occupancy has not been issued with respect to a building in the Rental Residential Component and/or the Retail/Commercial Component, as collateral for an unrelated transaction.

(H) The Redeveloper shall promptly pay and discharge all taxes, payments in lieu of taxes, assessments and other levies imposed upon it, the Property and/or the Project Improvements, or any other of its property located within the Borough, before the same shall become in default.

(I) The Redeveloper recognizes that, in view of (i) the importance of the redevelopment to the general welfare of the community; (ii) the public assistance to be made available by law and by the Borough on the conditions stated in the Redevelopment Agreement, for the purpose of making such redevelopment possible; and (iii) the fact that a change in ownership or control of the Redeveloper, or any other act or transaction involving or resulting in a change in ownership or control of the Redeveloper to the degree thereof, is for practical purposes a transfer or disposition of the property interest then owned by the Redeveloper, the qualifications and identity of the Redeveloper and its principals are of particular concern to the Borough, no voluntary or involuntary successor in interest of the Redeveloper shall acquire any interest in or rights or powers under the Redevelopment Agreement except as expressly set forth therein.

(J) The Redeveloper waives and relinquishes any and all statutory, contractual, common law or other claim, right or claim of right, action, or cause of action it may otherwise have, at law, in equity, or otherwise, to challenge, bring suit or any other legal action, or otherwise use as a defense, in any and all legal, administrative, judicial or other proceedings, including without limitation, any condemnation proceeding, or before any Governmental Authority, or arbitration board or panel, or otherwise, with respect to any and all of the following: (i) the determination, decision, finding, conclusion or action, official or otherwise, by the Borough that the Property is an area in need of redevelopment pursuant to, and in accordance with, the Redevelopment Law, and (ii) that the Property is properly, appropriately, and for all purposes, legally, included within the Redevelopment Area.

(K) The Administrative Agent for approving the tenants for the Affordable Units in the Project shall be selected and retained by the Borough in accordance with the UHAC regulations. The Administrative Agent shall have the proper certifications and credentials as required by Applicable Law. Redeveloper and any subsequent owner of the Rental Residential Component of the Project shall be responsible for payment of the administrative fees and costs to be incurred by the Borough in connection with 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. Such payments shall be paid to the Borough's Affordable Housing Trust Fund. Redeveloper shall not lease any Affordable Unit prior to the proposed tenant therefor being income qualified by the Administrative Agent.

(L) (i) In order to offset certain costs incurred and revenues forgone by Borough in connection with the redevelopment of the Property and the development of the Project, and to

defray certain expenses of Borough acting as the redevelopment entity, all of which actions have benefitted and will benefit Redeveloper, Redeveloper shall pay to Borough the sum of Two Hundred Forty-Eight Thousand Four Hundred Dollars (\$248,400) annually ("Redevelopment Fee"), which obligation shall commence on the January 1 following the earlier of Commencement of Construction of the Phase I Project Improvements or Demolition of any existing improvements on the Property and which shall be payable in quarterly installments of Sixty Two Thousand One Hundred Dollars (\$62,100) on the due date for property tax payments, with such payment obligation to end when the total of (i) the municipal portion of the Unpledged Annual Service Charge installment for the Project Improvements being paid simultaneously plus (ii) the land tax installment on the Property being paid simultaneously equals at least Sixty Two Thousand One Hundred Dollars (\$62,100). In addition, against payment of each installment of the Redevelopment Fee, Redeveloper shall receive a credit equal to the total amount of (i) the municipal portion of any Unpledged Annual Service Charge installment being paid simultaneously plus (ii) the land tax installment on the Property being paid simultaneously ("Fee Credit"). By way of non-exhaustive example, upon the payment of a quarterly Unpledged Annual Service Charge installment to the Borough for the Project Improvements of which the municipal portion (i.e., that portion to be retained by the Borough) plus the land tax installment on the Property being paid simultaneously is equal to \$30,000, the Redevelopment Fee payment due to the Borough will be reduced by that \$30,000 amount to \$32,100 (i.e., \$62,100 minus \$30,000 = \$32,100). For the purposes of clarity, if Redeveloper is paying the Minimum Annual Service Charge, the municipal portion of the Unpledged Annual Service Charge shall be comprised of the Existing Tax Amount and the Incremental Borough Costs, as such terms are defined in the Financial Agreement.

(ii) Redeveloper's obligation to pay the aforesaid amounts shall be secured pursuant to a mechanism mutually acceptable to the Parties, each in their sole discretion. If the Parties have not agreed on such mechanism and all actions necessary to implement such mechanism have not been taken within ninety (90) days from the Effective Date, either Party may terminate this Agreement.

(ili) Provided that the events giving rise thereto occur, Redeveloper's obligations under this Section 2(L) shall survive termination of the Redevelopment Agreement for a period of two (2) years unless such termination is the result of an Event of Default by Borough or an Uncontrollable Circumstance. In the event that the Property, or portion thereof, is lawfully developed other than pursuant to the Redevelopment Agreement and such development results in the payment of property taxes or annual service charges to the Borough, the municipal portion of such payments shall be a Fee Credit.

(M) The Property and the Redeveloper's undertakings pursuant to the Redevelopment Agreement will be used for, and are for, the purpose of completing the Project as provided in the Redevelopment Agreement and not for speculation in land holding.

(N) No rubbish or debris resulting from the construction of the Project shall be permitted to materially accumulate upon or adjacent to the Property, except in a commercially reasonable manner, and no noxious odors shall be permitted to arise therefrom so as to render any adjacent parcel or property, or portion thereof, substantially detrimental to any such parcel,

property, or portion thereof, or the occupants thereof.

(O) All construction performed on the Property in connection with the Project shall be conducted in a manner which will limit to the maximum extent reasonably practicable (i) any damage to the structures on any adjacent parcel or property, (ii) material interference with ingress to and/or egress from any adjacent parcel or property, (iii) material interference with the business operations being conducted in any adjacent parcel or property, and (iv) interference with or interruption of any drainage system, utilities or other similar facilities servicing any adjacent parcel or property. Any work which is being performed with respect to any utility lines or other similar facilities which serve any adjacent parcel or property shall be performed as expeditiously as possible and interference with any such utility lines or other facilities shall be limited to the maximum extent.

(P) Redeveloper shall ensure that satellite dishes that are part of the Project Improvements are not visible from the public road or sidewalks, to the extent not contrary to Applicable Law.

(Q) (a) Redeveloper has determined that, in order to provide adequate sewer service to the Project, the following are required as part of the Project Improvements: (i) construction of a sewer pumping station on the Property; (ii) construction of sewer lines on and off of the Property to connect the Property to the Borough's Washington Street pumping station; and (iii) repairs and upgrades to the Washington Street pumping station (the "Sewer Improvements"). The location of the Washington Street pumping station and the expected route of the sewer lines is shown on Exhibit C. Except to the extent needed to access the Washington Street pumping station, the sewer lines shall not be installed on Borough property.

(b) Redeveloper shall obtain all permits, approvals and property rights necessary for the Sewer Improvements and shall be responsible for all costs and expenses associated with same. PARSA and the Borough's consulting engineers shall review and approve all aspects of planning, construction and design, and the Sewer Improvements shall be subject to Planning Board review.

(c) Borough agrees to enter into an access agreement with Redeveloper in a form mutually acceptable to the parties to permit the connection of the sewer lines to the Washington Street pumping station and to permit Redeveloper to carry out the needed repairs and renovations of same.

(d) Upon completion of the Sewer Improvements, Redeveloper shall offer to the Borough for dedication, at the cost of \$1, the Sewer Improvements and all permits, approvals and property rights associated with same. The Borough shall conduct those inspections associated with acceptance of a dedication and may require the posting of maintenance bonds, as well as satisfaction of Borough's other requirements associated with dedication of improvements. Redeveloper reserves the right, in lieu of dedication, to lease the Sewer Improvements to Borough at the cost of \$1/year, pursuant to a form of lease mutually acceptable to the parties, for a term to be determined by Redeveloper not to exceed thirty (30) years, with such lease to provide for conveyance of the Sewer Improvements to the Borough for \$1 upon expiration of the lease.

(e) Following the dedication or lease of the Sewer Improvements to Borough, Redeveloper shall not be responsible for the operation, maintenance or repair of same (except as may be required in connection with maintenance bonds posted).

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

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

Section 5. Upon the issuance of a Certificate of Occupancy or a Certificate of Completion, as applicable, for a unit, building, Sub-Phase or Phase of the Project, in accordance with Sections 9.05 and 10.02 of the Redevelopment Agreement, the covenants and restrictions contained herein shall terminate with respect to such unit, building, Sub-Phase or Phase of the Project, and this Declaration will be discharged of record in relation to such unit, building, Sub-Phase or Phase of the Project, provided however, that the covenants in Section 2(C) and (P) shall remain in effect without limitation as to time.

Section 6. As set forth in greater detail in Sections 11.04(g) and 11.07 of the Redevelopment Agreement, the Redeveloper is permitted to transfer the Townhouse Component to one transferee ("Townhouse Sub-Redeveloper") and the Redeveloper is permitted to transfer the Retail/Commercial Component and the Rental Residential Component to another transferee ("Rental Sub-Redeveloper"). Upon the transfer of the Townhouse Component to the Townhouse Sub-Redeveloper, the covenants and restrictions herein with respect to the Townhouse Component shall be enforced only against the Townhouse Sub-Redeveloper, and not against the Redeveloper or the Rental Sub-Redeveloper. Upon the transfer of the Retail/Commercial

Component and the Rental Residential Component to the Rental Sub-Redeveloper, the covenants and restrictions herein with respect to the Retail/Commercial Component and the Rental Residential Component shall be enforced only against the Rental Sub-Redeveloper, and not against the Redeveloper or the Townhouse Redeveloper. However, notwithstanding the transfer of the Townhouse Component, the Retail/Commercial Component and the Rental Residential Component, the covenant set forth in Section 2.(L) of this Declaration shall continue to be enforceable against the Redeveloper as well as against the Sub-Redevelopers in the respective proportions established pursuant to Section 11.07(a) of the Redevelopment Agreement.

Section 7. Any inconsistency between the terms of this Declaration and the covenants and restrictions imposed upon the Property in the Redevelopment Agreement shall be resolved in favor of the Redevelopment Agreement.

*[signatures on following page]*

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:

**BOROUGH OF DUNELLEN**

\_\_\_\_\_  
Borough Clerk

By: \_\_\_\_\_  
Robert J. Seader, Mayor

WITNESS:

**BRUDNER REDEVELOPMENT PARTNERS URBAN  
RENEWAL, LLC, the Redeveloper**

By: DUNELLEN ASSOCIATES, LLP  
a New Jersey limited partnership

By: SOUTHWIND EQUITIES, INC.  
Its general partner

By: \_\_\_\_\_  
Richard Brudner, President

IN ACKNOWLEDGMENT HEREOF AND AGREEMENT HERETO:

WITNESS:

**DUNELLEN PRISM ASSOCIATES  
URBAN RENEWAL, LLC**

By: \_\_\_\_\_

WITNESS:

**[KHOV SUB-REDEVELOPER]**

By: \_\_\_\_\_

**EXHIBIT A of Declaration  
Legal Description**

## EXHIBIT B of Declaration

### Definitions

“Affordable Units” means very low income housing, low income housing and moderate income housing units as those terms are defined by N.J.S.A. 52:27D-304.

“Agency” is defined in the Recitals.

“Applicable Law(s)” means any statute, law, constitution, charter, ordinance, resolution, judgment, order, decree, rule, regulation, directive, interpretation, standard or similarly binding authority which, in any case, shall be enacted, adopted, promulgated, issued or enforced by any Governmental Authority, and/or court of competent jurisdiction that relates to or affects the Parties or either of them, the Project, or any portion thereof, the performance by the Parties of their respective obligations or the exercise by the Parties of their respective rights under the Redevelopment Agreement, including without limitation, the Municipal Land Use Law and the Redevelopment Law.

“Borough” is defined in the Recitals.

“Borough Council” is defined in the Recitals.

“Commence[ment of] Construction” means for each separate Phase or Sub-Phase, as such terms are hereinafter defined, the undertaking by Redeveloper of any actual physical construction of Project Improvements within such Phase or Sub-Phase, including any applicable Remediation and excluding Demolition.

“Declaratory Action”) means the Borough’s ongoing Mount Laurel declaratory judgment action, In the Matter of the Application of the Borough of Dunellen, County of Middlesex, Docket No. MID-L-3947-15.

“Demolition” means (a) the complete demolition and clearance of the existing structures on the Property and (b) the demolition and clearance of infrastructure on the Property to the extent required for the redevelopment of the Property.

“Environmental Law” or “Environmental Laws” means any and all federal, State, regional, and local laws, statutes, ordinances, regulations, rules, codes, consent decrees, judicial or administrative orders or decrees, directives or judgments relating to pollution, damage to or protection of the environment, environmental conditions, or the use, handling, processing, distribution, generation, treatment, storage, disposal, manufacture or transport of Hazardous Substances, presently in effect or hereafter amended, modified, or adopted including, but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. sect. 9601-9675); the Resource Conservation and Recovery Act of 1976 (42 U.S.C. sect. 6901, et seq.), the Clean Water Act (33 U.S.C. sect. 1251, et seq.); the New Jersey Spill Compensation and Control Act (N.J.S.A. 58:10-23.11, et seq.); the Industrial Site Recovery Act, as amended (N.J.S.A. 13:1K-6, et seq.); the New Jersey Underground Storage of Hazardous Substances Act (N.J.S.A. 58:10A-21, et seq.), the New Jersey Water Pollution Control Act (N.J.S.A. 58:10A-1 et seq.); the New Jersey Environmental Rights Act (N.J.S.A. 2A:35A-1, et

seq.); the New Jersey Site Remediation Reform Act (N.J.S.A. 58:10C-1, et seq.); and the rules and regulations promulgated thereunder.

“Fee Credit” is defined in Section 2(L)(i).

“Financial Agreement” shall have that meaning as defined in the Long Term Tax Exemption Law, addressing tax exemption of all or a portion of the Project and the issuance of Bonds as defined in the Redevelopment Area Bond Financing Act, in a form acceptable to both Parties.

“Governmental Approvals” means all necessary reviews, consents, permits or other approvals of any kind legally required by any local, county, state or federal governmental or quasi-governmental entity, including without limitation the Borough and the Planning Board, required to be obtained in order to construct the Project Improvements, to execute the Financial Agreement and to issue the redevelopment area bonds provided for therein, the execution of the Financial Agreement, and the issuance of all permits, approvals and allocations for sanitary sewer and potable water.

“Governmental Authority” means the federal government, the State, any state or other political subdivision thereof, and any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government and any other governmental entity with authority over the Project or the Property, including without limitation, the Borough and the Planning Board.

“Hazardous Substance” or “Hazardous Materials” means any substance, chemical or waste that is listed as hazardous or toxic under any applicable federal, state, county or local statute, rule, regulation, ordinance or order.

“Infrastructure Improvements” means any improvements outside the Property, to satisfy the requirements of any applicable Governmental Approvals or within the Property (excepting the Retail/Commercial Component, Townhouse Component, Rental Residential Component and Remediation) or as required by the Redevelopment Agreement, including, without limitation, (a) all roadways, bridges and on-site and off-site infrastructure improvements, (b) grading, site drainage, drainage outfalls, walkways, subsurface excavation and other site preparatory work for the Project, lighting within on-site and off-site parking areas, landscaping, fire hydrants and interior roadways, in each case, (c) water and sewer service lines for the Property, including hook-ups and service laterals from a building to the curb for water, storm and sanitary sewers, and other utilities, including electric, gas, telephone and cable services (all of which are to be built underground), (d) improvements to be undertaken by third-party utility providers (i.e., electric, water, cable, telephone, etc.), and (e) all other improvements which are or may be required to accommodate construction, occupancy and use of the Project Improvements.

“LRHL” is defined in the Recitals.

“Party” or “Parties” is defined in the Recitals.

“Phase” means the improvements constituting a portion of the Project, as further delineated in the Redevelopment Agreement with the components of an individual Phase being

described in Exhibit A of the Redevelopment Agreement.

“Planning Board” means the Planning Board of the Borough.

“Project” means the Project Improvements.

“Project Improvements” means, the improvements to be constructed within each Phase or Sub-Phase, as applicable, of the Project, consisting of the Retail/Commercial Component, Townhouse Component, Rental Residential Component, the Infrastructure Improvements, and the Remediation for the respective Project Phase or Sub-Phase.

“Property” is defined in the Recitals.

“Phase I Rental Residential Units” mean the improvements constituting the rental residential units in Phase I and associated amenities, as described in Exhibit A of the Redevelopment Agreement, and the corresponding Infrastructure Improvements and Remediation.

“Phase II Rental Residential Units” mean the improvements constituting the rental residential units in Phase II and associated amenities, as described in Exhibit A of the Redevelopment Agreement, and the corresponding Infrastructure Improvements and Remediation.

“Redevelopment Agreement” is defined in the Recitals.

“Redevelopment Area” is defined in the Recitals.

“Redevelopment Fee” is defined in Section 2(L)(i).

“Redevelopment Plan” is defined in the Recitals.

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

“Rental Residential Component” means the Phase I Rental Residential Units and the Phase II Rental Residential Units of the Project, which product shall be comparable to other rental residential developments in the Middlesex/Somerset County marketplace for newly constructed rental residential units.

“Retail/Commercial Component” means the improvements constituting the retail and commercial component of Phase I described in Exhibit A of the Redevelopment Agreement, and the corresponding Infrastructure Improvements and Remediation.

“Townhouse Component” means the Phase I Townhouse Residential Units, the Phase II

Townhouse Residential Units, and the Phase III Townhouse Residential Units of the Project, which product shall be comparable to other for-sale townhouse developments in the Middlesex/Somerset County marketplace for newly constructed for-sale townhome units.

“UHAC” means the Uniform Housing Affordability Control.

**Exhibit C of Declaration**

**Route of Sewer Improvements**

**EXHIBIT D**

**ENVIRONMENTAL STATUS/REMEDIATION PLAN**



June 13, 2016

Mr. Peter M. Flannery, Esq.  
Bisgaier Hoff, LLC  
25 Chestnut Street, Suite 3  
Haddonfield, New Jersey 08033

**Re: Summary of Site Investigation Activities  
Dunellen Associates, Inc.  
100 South Washington Avenue  
Borough of Dunellen, Middlesex County, New Jersey  
NJDEP Case No. 14-08-27-1004-48  
NJDEP Program Interest #004609**

Dear Mr. Flannery:

Since 2014, Envirotactics has conducted ten site investigation activities at the commercial property located at 100 South Washington Avenue in Dunellen, New Jersey. Envirotactics provided oversight to the installation of soil borings in areas of environmental concern (AEC) previously identified on the subject property during a Preliminary Assessment (PA). Soil borings were completed using a Geoprobe direct push drill unit to depths of approximately 12 to 15 feet below grade to investigate each AEC for the presence of soil and/or groundwater contamination. A stainless steel hand auger was also utilized to install shallow soil borings at several AECs. Each soil boring was field screened for organic vapors with a photo-ionization detector (PID) to field document any evidence of a discharge, such as elevated PID readings, soil staining, fuel odors, etc. The soil borings were also field screened for evidence of historic fill material. Select soil samples were collected biased towards the highest suspected contamination or at the 0-6 inch interval immediately above observed groundwater. Envirotactics also collected groundwater samples at the site through the installation of temporary well points.

The site investigation was completed to satisfy the New Jersey Department of Environmental Protection's (NJDEP) *Technical Requirements for Site Remediation* (TRSR), N.J.A.C. 7:26E 3.3. The following AECs were addressed over the course of the site investigation.

- Former underground storage tanks (USTs);
- Drywells, Sumps or Pits (Concrete Pit);
- Compressor vent discharge;
- Electrical transformers;
- Discharge area as defined by N.J.A.C 7:1E at the Digiview Loading Dock;
- Historic fill areas;
- Discolored or spill areas;
- Railroad spurs;

Envirotactics, inc.  
1330 Laurel Ave.  
Building 3  
Sea Girt, NJ 08750

Phone 732.449.0077  
Fax 732.449.5810  
www.envirotactics.com

- Loading and unloading areas;
- Soil piles;
- Piping;
- Southeast Corner of Subject Property

A brief summary of the findings of the site investigation activities including sample locations, analytical results, and any limitations are discussed in further detail below.

**Former USTs – Area C**

Envirotactics completed a subsurface investigation in the areas of the former USTs to confirm the absence or presence of any contamination. Three separate UST areas were identified as UST-1 (located west of the building, former gasoline UST and pump island), UST-2 (located on the northeastern side of the building, former oil tank) and UST-3 (located on the northeastern portion of the property, storage structure). Two additional USTs were located during a Geophysical Survey of the property in June 2014. The USTs were located adjacent to each other in the parking lot area along Washington Street and are designated as UST-4.

UST-1 – Suspected Gasoline UST

In July 2014, five soil borings were installed in this location to 15 feet below grade (bg). No evidence of contamination was observed in the soil borings conducted. Five soil samples (ET-2 through ET-6) were collected from the borings and submitted to a New Jersey Certified Laboratory for volatile organics with a forward library search (VO+15) including 1,2-dibromoethane and 1,2-dichloroethane, lead and extractable petroleum hydrocarbons (EPH). EPH results are provided in the table below.

EPH Results – UST 1 100 South Washington Ave Dunellen, NJ	
Sample ID	EPH Results (in parts per million)
ET-2	28.6
ET-3	51.9
ET-4	47
ET-5	Non Detect (ND)
ET-6	348

Results of the VO+15, lead and EPH analyses indicate that all constituents are below applicable NJDEP *Impact to Groundwater Soil Screening Levels (IGWSSL), Residential Direct Contact Soil Remediation Standards (RDCSRS) and Non-residential Direct Contact Soil Remediation Standards (NRDCSRS)*.

One soil boring, ET-3, was converted to a temporary well point to facilitate the collection of a groundwater sample in the area of UST-1. The well point was installed to a depth of 15 feet bg and a groundwater sample (ETW-1) was collected and submitted to a NJ Certified Laboratory for VO+15 including 1,2-dibromoethane and 1,2-dichloroethane and base neutral compounds with a forward library search Select Ion Method (BN+15 SIM).

Results of the VO+15 and BN+15 SIMs analyses indicate all compounds are below the NJ Class IIA Groundwater Quality Standards (GWQS).

UST-2 – Former Oil Tank

In July 2014, four soil borings were installed in this location to 15 feet bg. No evidence of contamination was observed in the soil borings conducted. Four soil samples (ET-17 through ET-20) were collected from the borings and submitted to a New Jersey Certified Laboratory for EPH. EPH results are provided in the table below.

EPH Results – UST 2 100 South Washington Ave Dunellen, NJ	
Sample ID	EPH Results (in parts per million)
ET-17	ND
ET-18	ND
ET-19	ND
ET-20	ND

The results of analysis did not detect any contaminant levels. One soil boring, ET-18, was converted to a temporary well point to facilitate the collection of a groundwater sample in the area of UST-2. The well point was installed to a depth of 15 feet bg and a groundwater sample (ETW-4) was collected and submitted to a NJ Certified Laboratory for VO+15 and BN+15 SIMs.

Results of the VO+15 and BN+15 SIMs analyses indicate all compounds are below the NJ GWQS.

UST-3

This area was the location of a historic concrete pad. In July 2014, due to limitations in this area (i.e. trailers), four soil borings were installed in this location to 15 feet bg. No field observation evidence of contamination was observed in the soil borings conducted. Four soil samples (ET-30 through ET-33) were collected from the borings and submitted to a New Jersey Certified Laboratory for EPH. EPH results are provided in the table below.

EPH Results – UST 3 100 South Washington Ave Dunellen, NJ	
Sample ID	EPH Results (in parts per million)
ET-30	294
ET-31	368
ET-32	ND
ET-33	ND

Because of the unknown use of this storage area and elevated EPH results, soil sample ET-31 was also analyzed for VO+15, BN+15, polychlorinated biphenyls (PCBs), and Target Analyte List (TAL) Metals.

Results of the VO+15, BN+15, PCB and TAL Metals analyses indicate that manganese is above the IGWSSL, indeno(1,2,3-cd)pyrene is above the RDCSRS and benzo(a)anthracene, benzo(a)pyrene, benzo(a)fluoranthene and dibenzo(a,h)anthracene are above the NRDCSRS. All remaining compounds are below applicable cleanup standards.

One soil boring, ET-30, was converted to a temporary well point to facilitate the collection of a groundwater sample in the area of UST-3. The well point was installed to a depth of 15 feet bg and a groundwater sample (ETW-5) was collected and submitted to a NJ Certified Laboratory for VO+15 and BN+15 SIMs.

Results of the VO+15 and BN+15 SIMs analyses indicate that benzo(a)anthracene and benzo(a)pyrene are above the NJ GWQS. All remaining compounds are below applicable cleanup standards.

On April 18, 2016, Envirotactics installed one permanent monitoring well (MW-1) in the location of AOC C – UST-3. The monitoring well was installed by a New Jersey licensed well driller in accordance with the specifications outlined in NJDEP's Field Sampling Procedures Manual (August 2005). The well was installed to 15 feet bg with 10 feet of screen.

On May 12, 2016, monitoring well MW-1 was sampled. A sample was collected from the monitoring well and analyzed for target compound list/target analyte list with a forward library search (TCL/TAL+30). Laboratory analytical results indicates that the groundwater in the area of MW-1 is above the NJDEP GWQS for bis(2-ethylhexyl)phthalate and sodium.

The contaminants in the soil and groundwater at this area are suspected to be due to historic fill present in the area.

UST-4

In June 2014, during a Geophysical Survey of the property, two previously unidentified USTs were discovered. The USTs were measured and appeared to be 550-gallons in capacity and formerly utilized for heating oil.

On March 25, 2015, Envirotactics completed a subsurface investigation in the area of the former USTs to confirm the absence or presence of any contamination. Five soil borings were installed in this location to 12 feet bg. No evidence of contamination was observed in the soil borings conducted. Groundwater was observed at approximately 7.5 feet bg. Due to a lack of field indicators, four soil samples (UST-1 through UST-4) were collected from the 0 – 6 inch interval immediately above observed groundwater in the borings and submitted to a New Jersey Certified Laboratory for EPH Category 1 (EPH Cat 1). EPH results are provided on the table below.

EPH Results – UST 4 100 South Washington Ave Dunellen, NJ	
Sample ID	EPH Results (in parts per million)
UST-1	63.8
UST-2	32.7
UST-3	Non-Detect (ND)
UST-4	ND

Results of the EPH analyses indicate that all analytical results are below applicable NJDEP *EPH Soil Remediation Criterion*.

One soil boring, UST-4, was converted to a temporary well point to facilitate the collection of a groundwater sample in the area of suspected USTs. The well point was installed to a depth of 15 feet bg and a groundwater sample (ETW-8) was collected and submitted to a NJ certified laboratory for VO+15 and BN+15 SIMs. Analytical results indicate all compounds are below the NJ Class IIA GWQS.

On September 1, 2015, Envirotactics removed the USTs from the property. Prior to removal, overlying soils were excavated to the top of the USTs and were stockpiled for later reuse due to no evidence of field observations, including stained soils, petroleum odors or elevated PID readings. Upon exposing the fill ports

located on the top of the USTs, each UST was gauged and it was determined that each of the USTs were completely empty.

The soils within the excavation were field-screened with a PID for the presence of elevated volatile organic vapors, assessed for soil staining and/or petroleum odors. None of these conditions were observed in relation to either 550-gallon UST excavation area. Approximate size of each completed excavation measured 7' x 8' x 6'. No groundwater was observed in the excavations.

A summary of the sample depths and EPH Cat 1 results are presented in the table below.

9/1/15 Post Excavation Soil Samples – EPH Cat 1 Results				
UST Location	Sample I.D.	Depth (ft.)	Sample Location	EPH Result
	<b>IGWSSL</b>	--	--	5,100
UST 1	CP-1	6.0 – 6.5	Centerline Base North	ND
UST 1	CP-2	6.0 – 6.5	Centerline Base South	ND
UST 2	CP-3	6.0 – 6.5	Centerline Base North	ND
UST 2	CP-4	6.0 – 6.5	Centerline Base South	ND
Results are in parts per million (ppm); ND – Not Detected; IGWSSL – NJDEP’s Impact to Groundwater Soil Screening Levels; Results in <b>BOLD</b> exceed the most stringent NJDEP standard				

As outlined in the table above, all post excavation soil samples displayed results less than the NJDEP’s cleanup standard of 5,100 ppm and less than the action limit or contingency analysis of EPH Cat 1 of 1,000 ppm.

Following the collection of post-excavation soil samples as described above, overburden soils and certified clean fill were used to bring the UST excavation to grade.

**Drywells, Sumps or Pits (Concrete Pit) – Area E**

In June 2014, Envirotactics completed a subsurface investigation in the area of a concrete pit located adjacent to the northern side of the building. Due to the unknown use of this concrete pit, a soil boring was installed in this location to 8 feet bg to confirm the absence of any contamination. No evidence of contamination was observed in the soil boring conducted. Groundwater in this area was observed at approximately 5 feet bg. Due to a lack of field indicators, one soil sample (Pit-1) was collected from the 0 – 6 inch interval immediately above observed groundwater in the borings and submitted to a New Jersey Certified Laboratory for extractable EPH Category 2 (EPH Cat 2) and TCL/TAL+30. EPH results are provided on the table below.

EPH Results – Concrete Pit 100 South Washington Ave Dunellen, NJ	
Sample ID	EPH Results (in parts per million)
Pit-1	ND

Results of the EPH analyses indicate that the analytical results are below applicable NJDEP *EPH Soil Remediation Criterion*.

Laboratory results of the TCL/TAL+30 analyses indicate that soil sample Pit-1 detected aluminum above the IGWSSL. The IGWSSL does not apply to aluminum since the GWQS for aluminum is not based on health considerations and is considered secondary.

**Compressor Vent Discharge – Area F**

A compressor blow down area was observed along the exterior of the north wall of the building adjacent to the railroad spur. The compressor suspected to be associated with this discharge did not appear to be active. Based on the visual observations, Envirotactics completed four soil borings at this location. Obvious soil staining was present on the soil surface, therefore soil samples were collected at depth to attempt to provide vertical delineation. Seven soil samples (ET-41/41A, ET-42/42A, ET-43, and ET-44/44A) were collected from the borings and submitted to a New Jersey Certified Laboratory for EPH and VO+15 compounds. EPH results are provided in the table below.

<b>EPH Results – Vent Discharge</b> 100 South Washington Ave Dunellen, NJ	
Sample ID	EPH Results (in parts per million)
ET-41	16,200
ET-41A	5,010
ET-42	3,080
ET-42A	142
ET-43	1,010
ET-44	300
ET-44A	97.7

Due to the elevated EPH results in ET-41A and ET-42, these soil samples were also analyzed for BN+15, PCBs and TAL metals. Analytical results indicate that aluminum is above the IGWSSL. All remaining compounds are below applicable cleanup standards.

Results of the VO+15 analysis indicate that soil samples ET-43 and ET-44 were above the IGWSSL for trichloroethene (TCE). All remaining samples and compounds are below applicable cleanup standards.

One soil boring, ET-41, was converted to a temporary well point to facilitate the collection of a groundwater sample in the area of the vent discharge. The well point was installed to a depth of 15 feet and a groundwater sample (ETW-6) was collected and submitted to a NJ Certified Laboratory for VO+15 and BN+15 SIM.

Results of the VO+15 and BN+15 SIMs analyses indicate that TCE is above the NJ GWQS. All remaining compounds are below applicable cleanup standards.

**Electrical Transformers – Area G**

Four pad-mounted transformers were observed and subsequently sampled on the exterior of the property. No labels were noted on these transformers, which were situated on concrete pads surrounded by stone. No obvious staining was noted in the areas of the electrical transformers. Sampling was conducted at three of the transformers. The fourth transformer was located in a fenced off area outside the Stor-All Solutions leasehold located along the southwestern portion of the site. Upon contacting PSE&G, Envirotactics was informed that the entire "grid" that the transformer was on would need to be de-energized in order to collect soil samples, for this reason, samples were not collected around this transformer. All transformer samples were submitted to a NJ Certified Laboratory for EPH and/or PCB analysis.

Transformer 1

Two pad mounted transformers are located to the east and west of the Avenel Pallet Co. tenant space. The first transformer investigated is located to the west of the Avenel Pallet Co. Four soil borings were installed around the transformer, one per side, to a total depth of 2 feet bg. Four soil samples (ET-47 through ET-50) were collected and submitted. No PCBs were detected above the most stringent soil remediation standard. EPH results are provided in the table below.

<b>EPH Results – Transformer 1</b> 100 South Washington Ave Dunellen, NJ	
Sample ID	EPH Results (in parts per million)
ET-47	332
ET-48	210
ET-49	907
ET-50	285

Although the analytical results for EPH are below applicable cleanup standards, due to the elevated concentrations of EPH in ET-49, this sample was also analyzed for polynuclear aromatic hydrocarbons (PAHs). Analytical results of the PAHs indicate that benzo(a)anthracene, benzo(b)fluoranthene and indeno(1,2,3-cd)pyrene are above the RDCSRS. Also, analytical results indicate that benzo(a)pyrene is above the NRDCSRS.

Transformer 2

The second transformer is located to the east of the Avenel Pallet Co. Four soil borings were installed around the transformer, one per side, to a total depth of 2 feet bg. Four soil samples (ET-51 through ET-54) were collected and submitted. No PCBs were detected above the most stringent soil remediation standard. EPH results are provided in the table below.

<b>EPH Results – Transformer 2</b> 100 South Washington Ave Dunellen, NJ	
Sample ID	EPH Results (in parts per million)
ET-51	964
ET-52	1,600
ET-53	280
ET-54	1,240

Although the analytical results for EPH are below applicable cleanup standards, due to the elevated concentrations of EPH in ET-52, this sample was also analyzed for PAHs. Analytical results indicate that indeno(1,2,3-cd)pyrene is above the RDCSRS and benzo(a)anthracene, benzo(b)fluoranthene, benzo(a)pyrene and dibenzo(a,h)anthracene are above the NRDCSRS.

Transformer 3

A third transformer was located on the southwestern portion of the property, outside the Double-O tenant space. Three soil borings were advanced in this location, a fourth was attempted but refusal was encountered within the first half foot. Three soil samples (ET-55 through ET-57) were collected and submitted. Analytical results indicate that ET-57 is above the IGWSSL and RDCSRS for total PCBs. EPH results are provided in the table below.

<b>EPH Results – Transformer 3</b> 100 South Washington Ave Dunellen, NJ	
Sample ID	EPH Results (in parts per million)
ET-55	787
ET-56	39
ET-57	754

Although the analytical results for EPH are below applicable cleanup standards, due to the elevated concentrations of EPH in ET-55, this sample was also analyzed for PAHs. Analytical results indicate that benzo(a)anthracene, benzo(b)fluoranthene, benzo(a)pyrene, indeno(1,2,3-cd)pyrene and dibenzo(a,h)anthracene are above the NRDCSRS.

On October 7, 2015, Envirotactics installed four soil borings to depths ranging from 0.5' below grade (bg) to 4.0' bg. Four soil samples (CP-5, CP-6, CP-7 and CP-8) were collected from the borings and submitted to a NJ Certified Laboratory for PCBs. Total PCB results are provided on the table below:

<b>PCB Results – Transformer 4</b> 100 South Washington Ave Dunellen, NJ		
Sample ID	Depth (ft)	PCB Results (total) (in parts per million)
<b>IGWSSL</b>		<b>0.2</b>
<b>RDCSRS</b>		<b>0.2</b>
<b>NRDCSRS</b>		<b>1.0</b>
CP-5	0.5-1.0	<b>0.559</b>
CP-6	0.5-1.0	ND
CP-7	0.5-1.0	<b>1.15</b>
CP-8	2.5-3.0	<b>0.238</b>
<b>IGWSSL</b> – Impact to Groundwater Soil Screening Levels		
<b>RDCSRS</b> – Residential Direct Contact Soil Remediation Standards		
<b>NRDCSRS</b> – Nonresidential Direct Contact Soil Remediation Standards		
<b>NSE</b> – No Standard Established		

Analytical results from the table indicate that soil samples CP-5 and CP-7 are above the IGWSSL and the RDCSRS for total PCBs. Soil sample CP-7 was above the IGWSSL, RDCSRS and NRDCSRS for total PCBs.

On April 18, 2016, Envirotactics installed five soil borings to depths ranging from 0.5' bg to 7.0' bg. Nine soil samples (SB-418-1, SB-418-2/2A, SB-418-3/3A, SB-418-4/4A and SB-418-5/5A) were collected from the borings and submitted to a NJ Certified Laboratory for PCBs. Total PCB results are provided on the table below:

PCB Results – Transformer 4 100 South Washington Ave Dunellen, NJ		
Sample ID	Depth (ft)	PCB Results (total) (in parts per million)
<b>IGWSSL</b>		<b>0.2</b>
<b>RDCSRS</b>		<b>0.2</b>
<b>NRDCSRS</b>		<b>1.0</b>
SB-418-1	6.5-7.0	ND
SB-418-2	0.5-1.0	ND
SB-418-2A	2.5-3.0	ND
SB-418-3	0.5-1.0	0.0181
SB-418-3A	2.5-3.0	ND
SB-418-4	0.5-1.0	ND
SB-418-4A	2.5-3.0	ND
SB-418-5	0.5-1.0	ND
SB-418-5A	2.5-3.0	ND
<b>IGWSSL</b> – Impact to Groundwater Soil Screening Levels		
<b>RDCSRS</b> – Residential Direct Contact Soil Remediation Standards		
<b>NRDCSRS</b> – Nonresidential Direct Contact Soil Remediation Standards		
<b>ND</b> – Non Detect		

Analytical results from the table above indicate that total PCBs are below the IGWSSL. Therefore, soil exceedances detected in earlier soil investigations are now horizontally and vertically delineated in AOC G.

**Discharge Area – Digiview Loading Dock – Area H**

Four soil borings were installed in this location to 15 feet bg. Eight soil samples (ET-9/9A, ET-10/10A, ET-11/11A, and ET-12/12A) were collected from the borings and submitted to a NJ Certified Laboratory for EPH. Evidence of contaminants was observed in two of the borings. EPH results are provided in the table below.

EPH Results – Discharge Area 100 South Washington Ave Dunellen, NJ	
Sample ID	EPH Results (in parts per million)
ET-9	ND
ET-9A	ND
ET-10	710
ET-10A	2,180
ET-11	1,380
ET-11A	8,020
ET-12	ND
ET-12A	403

Soil sample ET-11A, exceeds the NJDEP's established cleanup standards of 5,100 ppm for EPH. Due to the elevated EPH results in ET-10A and ET-11, these soil samples were also analyzed for VO+15, BN+15, PCBs and TAL metals.

Analytical results of the VO+15, BN+15, PCB and TAL Metals analyses indicate that 2-methylnaphthalene, manganese and methylene chloride were detected above the NJDEP IGWSSL in soil sample ET-10A. However, since the sample was collected below the water table, the RDCSRS applies and therefore, are considered below applicable cleanup standards. Soil sample ET-11 was above the IGWSSL for manganese and methylene chloride, but because the sample was collected below the water table, the RDCSRS applies and therefore, are considered below applicable cleanup standards. All remaining compounds are below applicable cleanup standards.

One soil boring was converted to a temporary well point to facilitate the collection of a groundwater sample in the area of Digiview Loading Dock. The well point was installed to a depth of 15 feet bg and a groundwater sample (ETW-2) was collected and submitted to a NJ Certified Laboratory for VO+15 and BN+15 SIM. Results of the VO+15 and BN+15 SIMs analyses indicate all compounds are below the NJ GWQS.

**Historic Fill Material – Area I and Area Q**

Historic fill material is present at the site. One area of historic fill is located in the northeastern corner of the property, a second area is located in the southeastern corner of the property in the pallet storage area and a third area is located in the southwestern corner of the property in the parking area.

Northeastern Corner

The northeastern corner of the property was investigated to confirm the absence/presence of any historic fill material via soil borings to a total depth of 15 feet bg. Four soil borings were installed, from which two soil samples (ET-28 and ET-29) were collected and submitted for laboratory analysis of EPH and TCL/TAL+30. Fill material was observed in each of the soil borings to approximately 1 foot bg, with the highest content observed in ET-28 and ET-29. EPH results are provided in the table below.

<b>EPH Results – NE Corner Historic Fill</b> 100 South Washington Ave Dunellen, NJ	
Sample ID	EPH Results (in parts per million)
ET-28	230
ET-29	34.2

Analytical results indicate that soil sample ET-28 was above the IGWSSL for dieldrin, aluminum and manganese. Soil sample ET-28 was above the RDCSRS for benzo(a)anthracene and benzo(a)fluoranthene. ET-28 was above the NRDCSRS for benzo(a)pyrene.

Analytical results indicate that soil sample ET-29 was above the IGWSSL for manganese and above the NRDCSRS for benzo(a)pyrene.

Southeastern Corner

In June 2014, the southeastern corner of the property was investigated to confirm the absence/presence of any historic fill material via soil borings to a total depth of 15 feet bg. Nine soil borings were installed, from which two soil samples (ET-14 and ET-15) were collected and submitted for laboratory analysis of EPH and TCL/TAL+30. Fill material was observed in each of the soil borings to approximately 1 foot bg, with the highest content observed in ET-14 and ET-15. EPH results are provided in the table below.

<b>EPH Results – SE Corner Historic Fill</b> 100 South Washington Ave Dunellen, NJ	
Sample ID	EPH Results (in parts per million)
ET-14	631
ET-15	203

Analytical results indicate that soil sample ET-14 was above the IGWSSL for dieldrin, chlordane, heptachlor epoxide, aluminum, mercury and manganese. Soil sample ET-14 was above the RDCSRS for benzo(b)fluoranthene and indeno(1,2,3-cd)pyrene. ET-14 was above the NRDCSRS for benzo(a)anthracene and benzo(a)pyrene.

Analytical results indicate that soil sample ET-15 was above the IGWSSL for manganese and above the NRDCSRS for benzo(a)pyrene.

One soil boring was converted to a temporary well point to facilitate the collection of a groundwater sample in the area of historic fill. The well point was installed to a depth of 15 feet bg and a groundwater sample (ETW-3) was collected and submitted to a NJ Certified Laboratory for VO+15 and BN+15 SIM.

Results of the VO+15 and BN+15 SIMs analyses indicate all compounds are below the NJ GWQS.

On May 1, 2015, Envirotactics provided oversight of the installation of test pits in the pallet storage area biased to the anomalies detected during a Geophysical Scan. Eight of the eleven anomalies were investigated; three were not accessible during Envirotactics investigation. The test pits were installed to depths ranging between 6 – 8 feet below grade. Groundwater was observed at approximately 8 feet bg. Four soil samples were collected biased towards the highest suspected contamination and/or historic fill material and analyzed for EPH Cat 2 and TCL/TAL+30.

EPH results are provided on the table below.

<b>EPH Results – Test Pits</b> 100 South Washington Ave Dunellen, NJ	
Sample ID	EPH Results (in parts per million)
TP-1	121
TP-2	393
TP-3	181
TP-4	591

Laboratory results of the TCL/TAL+30 analyses indicate that soil sample TP-1 detected PCBs, benzo(a)anthracene, benzo(a)pyrene, lead, manganese, mercury and silver above the NJDEP IGWSSL. TP-1 also detected benzo(b)fluoranthene, dibenzo(a,h)anthracene and indeno(1,2,3-cd)pyrene above the NJDEP RDCSRS.

Laboratory results of the TCL/TAL+30 analyses indicate that soil sample TP-2 detected benzo(a)pyrene, benzo(b)fluoranthene, dibenzo(a,h)anthracene, and manganese above the IGWSSL. TP-2 also detected benzo(a)anthracene and indeno(1,2,3-cd)pyrene above the RDCSRS.

Laboratory results of the TCL/TAL+30 analyses indicate that soil sample TP-3 is above the IGWSSL for, benzo(a)pyrene, benzo(b)fluoranthene, manganese and aluminum. TP-3 is also above the RDCSRS for benzo(a)anthracene and indeno(1,2,3-cd)pyrene. TP-3 is also above the NRDCSRS for dibenzo(a,h)anthracene.

Laboratory results of the TCL/TAL+30 analyses indicate that soil sample TP-4 detected cis-Chlordane, trans-Chlordane, PCBs, benzo(a)pyrene, benzo(b)fluoranthene, dibenzo(a,h)anthracene, antimony, manganese and mercury above the IGWSSL. TP-4 detected chlordane and lead above the RDCSRS. TP-4 also detected benzo(a)anthracene and indeno(1,2,3-cd)pyrene above the NJDEP NRDCSRS.

On October 8, 2015, Envirotactics installed five soil borings to depths ranging from 0.5' - 10.0' bg to delineate PCBs observed in TP-4. Six samples (CP-13, CP-14, CP-15, CP-16, CP-17, CP-17A) were collected from the borings and submitted to a NJ Certified Laboratory for PCBs. Total PCB results are provided on the table below:

PCB Results – Test Pit TP-4 100 South Washington Ave Dunellen, NJ		
Sample ID	Depth (ft)	PCB Results (total) (in parts per million)
<b>IGWSSL</b>		<b>0.2</b>
<b>RDCSRS</b>		<b>0.2</b>
<b>NRDCSRS</b>		<b>1.0</b>
CP-13	2.5-3.0	0.156
CP-14	2.5-3.0	ND
CP-15	2.5-3.0	0.0118
CP-16	2.5-3.0	0.0249
CP-17	0.5-1.0	<b>10.5</b>
CP-17A	5.5-6.0	ND
<b>IGWSSL</b> – Impact to Groundwater Soil Screening Levels		
<b>RDCSRS</b> – Residential Direct Contact Soil Remediation Standards		
<b>NRDCSRS</b> – Nonresidential Direct Contact Soil Remediation Standards		
<b>NSE</b> – No Standard Established		

Analytical results from the table indicate that soil sample CP-17 is above the IGWSSL, RDCSRS and NRDCSRS for total PCBs.

Delineation soil sampling related to test pit TP-4 is complete. Four soil borings were installed to horizontally delineate the original sample, approximately 13 feet apart from the original sample, TP-4. One soil boring was installed to vertically delineate the original sample, a sample was collected at the 0.5 – 1.0 foot interval bg and the 5.5 – 6.0 foot interval bg. Analytical results for the associated horizontal and vertical soil samples were observed below NJDEP standards indicating delineation is complete.

On October 8, 2015, Envirotactics installed five soil borings to depths ranging from 0.5' - 15.0' bg to delineate PCBs observed in TP-1. Six samples (CP-18, CP-19, CP-20, CP-21, CP-22, CP-22A) were collected from the borings and submitted to a NJ Certified Laboratory for PCBs. Total PCB results are provided on the table below:

PCB Results – Test Pit TP-1 100 South Washington Ave Dunellen, NJ		
Sample ID	Depth (ft)	PCB Results (in parts per million)
<b>IGWSSL</b>		<b>0.2</b>
<b>RDCSRS</b>		<b>0.2</b>
<b>NRDCSRS</b>		<b>1.0</b>
CP-18	2.5-3.0	ND
CP-19	2.5-3.0	ND
CP-20	2.5-3.0	ND
CP-21	2.5-3.0	ND
CP-22	0.5-1.0	<b>2.23</b>
CP-22A	5.5-6.0	ND
<b>IGWSSL</b> – Impact to Groundwater Soil Screening Levels		
<b>RDCSRS</b> – Residential Direct Contact Soil Remediation Standards		
<b>NRDCSRS</b> – Nonresidential Direct Contact Soil Remediation Standards		
<b>NSE</b> – No Standard Established		

Analytical results from the table indicate that soil samples CP-22 was above the IGWSSL, RDCSRS and NRDCSRS for total PCBs

Delineation soil sampling related to test pit TP-1 is complete. Four soil borings were installed to horizontally delineate the original sample, ranging from approximately 18 - 25 feet apart from the original sample, TP-1. One soil boring was installed to vertically delineate the original sample, a sample was collected at the 0.5 - 1.0 foot interval bg and the 8.0 - 8.5 foot interval bg. Analytical results for the associated horizontal and vertical soil samples were observed below NJDEP standards indicating delineation is complete.

Southwestern Corner

The southwestern corner of the property was investigated to confirm the absence/presence of any historic fill material via soil borings to a total depth of 15 feet bg. Five soil borings were installed, no fill material was observed and no soil samples were submitted for analysis.

**Discolored or Spill Areas – Area J**

Suspected petroleum staining from vehicular/equipment storage was also observed at various locations on the unpaved areas outside the Avenel Pallet leasehold. Envirotactics installed five soil borings where petroleum staining was observed associated with the truck parking. Five soil samples (ET-23 through ET-27) were collected and submitted to a NJ Certified Laboratory for EPH analysis. EPH results are provided in the table below.

EPH Results – Spill Areas 100 South Washington Ave Dunellen, NJ	
Sample ID	EPH Results (in parts per million)
ET-23	ND
ET-24	ND
ET-25	ND
ET-26	ND
ET-27	ND

**Railroad Spurs – Area K**

Evidence of wooden railroad sidings was observed along the entire northern portion of the building. Based on a review of historic maps, railroad spurs historically occupied the northern, eastern and northeastern portions of the property. A number of limiting factors were present that prohibited Envirotactics from completing the investigation along the northeastern portion of the property, including trailers and vagrant people occupying this area. In total, five soil borings were installed along historic railroad spurs to 5 feet bg on the northern and eastern portions of the property.

Eastern Spur

In June 2014, two soil samples (ET-21 through ET-22) were collected from borings installed along the railroad spurs in the eastern portion of the property and submitted to a NJ Certified Laboratory for EPH, PAH, PCBs and TAL metals analyses.

Analytical results indicate that soil sample ET-21 is above the IGWSSL for manganese, above the RDCSRS for benzo(b)fluoranthene and above the NRDCSRS for benzo(a)pyrene.

Analytical results indicate that soil sample ET-22 is above the IGWSSL for manganese, aluminum and benzo(a)anthracene; above the RDCSRS for benzo(b)fluoranthene and above the NRDCSRS for benzo(a)pyrene. EPH results are provided in the table below.

EPH Results – Eastern RR Spur 100 South Washington Ave Dunellen, NJ	
Sample ID	EPH Results (in parts per million)
ET-21	1,420
ET-22	903

Due to the elevated concentrations observed, soil sample ET-21 was also analyzed for VO+15 and BN+15. Analytical results indicate that all VO+15 and BN+15 compounds are below applicable cleanup standards.

Northern Spur

In June 2014, three soil samples (ET-34, ET-37 and ET-38) were collected from borings installed along the railroad spurs in the northern portion of the property and submitted to a NJ Certified Laboratory for EPH, PAH, PCBs and TAL metals analyses.

Analytical results indicate that soil sample ET-34 is above the IGWSSL for benzo(a)pyrene, benzo(b)fluoranthene, dibenzo(a,h)anthracene, manganese, aluminum and mercury; above the RDCSRS for indeno(1,2,3-cd)pyrene and above the NRDCSRS for benzo(a)anthracene.

Analytical results indicate that soil sample ET-37 is above the IGWSSL for manganese.

Analytical results indicate that soil sample ET-38 is above the IGWSSL for antimony, manganese, aluminum and mercury; above the RDCSRS for benzo(b)fluoranthene and lead. EPH results are provided in the table below.

<b>EPH Results – Northern RR Spur</b> 100 South Washington Ave Dunellen, NJ	
Sample ID	EPH Results (in parts per million)
ET-34	776
ET-37	ND
ET-38	840

On March 26, 2015, Envirotactics continued the subsurface investigation in the area of the railroad spurs located adjacent to the northern side of the building. Three soil borings (SB-2, SB-3 and SB-6) were installed along the historical railroad spurs to 5 feet bg. Low level PID readings were detected from one soil boring (SB-2) and discolored soils were detected in all three soil borings. A soil sample was collected from each boring (SB-2, SB-3 and SB-6) from the intervals displaying the highest PID readings and/or discolored soil and submitted to a New Jersey Certified Laboratory for EPH Cat 2, PAHs, PCBs, and TAL Metals. The EPH results are provided on the table below.

<b>EPH Results – Railroad Spurs</b> 100 South Washington Ave Dunellen, NJ	
Sample ID	EPH Results (in parts per million)
SB-2	144
SB-3	ND
SB-6	168

Laboratory results for the PAH, PCB and TAL Metal analyses indicate that soil sample SB-2 detected aluminum and manganese above the IGWSSL. The IGWSSL does not apply to aluminum and manganese since the GWQS for aluminum and manganese are not based on health considerations and are considered secondary.

SB-2 also detected benzo(a)anthracene, benzo(a)pyrene, benzo(b)fluoranthene, dibenzo(a,h)anthracene and indeno(1,2,3-cd)pyrene above the NJDEP NRDCSRS.

Laboratory results for the PAH, PCB and TAL Metal analyses indicate that soil sample SB-3 detected aluminum above the IGWSSL. The IGWSSL does not apply to aluminum since the GWQS for aluminum is not based on health considerations and is considered secondary.

Analytical results for the PAH, PCB and TAL Metal analyses indicate that soil sample SB-6 detected benzo(a)pyrene, aluminum, manganese and mercury above the IGWSSL. The IGWSSL does not apply to aluminum and manganese since the GWQS for aluminum and manganese are not based on health considerations and are considered secondary.

**Loading and Unloading Areas – Area L**

Loading docks associated with railroad spurs as well as loading docks for use with trucks are present throughout the site. Loading and unloading areas were observed along the northern, northeastern, eastern, southeastern, and western portions of the building. All lifts associated with the loading docks are reportedly mechanical and not hydraulic in nature. Some of the loading docks have soil or gravel surfaces and some have impervious surfaces with drains present. Envirotactics was able to investigate five of the eight loading docks associated with the property, three were not accessible. One soil boring was installed at each loading dock to a depth of 5 feet bg and a soil sample was collected from the intervals displaying highest field indicators.

Western Side of Building

Three soil samples (ET-1, ET-7, and ET-8) were collected from loading docks located on the western side of the building and submitted for laboratory analyses of VO+15, EPH, BN+20 and PCBs. Analytical results indicate that manganese is present at each soil sampling location above the IGWSSL. EPH results are provided in the table below

<b>EPH Results – Western Side of Building</b> 100 South Washington Ave Dunellen, NJ	
Sample ID	EPH Results (in parts per million)
ET-1	46.2
ET-7	ND
ET-8	ND

No additional contaminants were detected above the most stringent soil remediation standard.

Eastern Side of Building

Two soil samples (ET-13 and ET-16) were collected from loading docks located on the eastern side of the building and submitted for laboratory analyses of VO+15, EPH, BN+15 and PCBs. Analytical results indicate that soil sample ET-13 is above the IGWSSL for aluminum and soil sample ET-16 is above the IGWSSL for manganese. EPH results are provided in the table below.

<b>EPH Results – Eastern Side of Building</b> 100 South Washington Ave Dunellen, NJ	
Sample ID	EPH Results (in parts per million)
ET-13	ND
ET-16	ND

No additional contaminants were detected above the most stringent soil remediation standard.

**Soil/Debris Piles – Area N**

Several piles consisting of asphalt, rocks and soils were observed along the southern of portion of the property. Envirotactics installed two soil borings within the soil piles located in this portion of the property, from which, two soil samples (ET-45 and ET-46) were collected and submitted to a NJ Certified Laboratory for EPH and TCL/TAL+30 analysis.

Analytical results indicate that soil sample ET-45 is above the IGWSSL for cis-chlordane, trans-chlordane, benzo(k)fluoranthene, dibenzo(a,h)anthracene, indeno(1,2,3-cd)pyrene, aluminum, lead, manganese, mercury and silver. Soil sample ET-45 was above the RDCSRS for chlordane and chrysene. Soil sample ET-45 was above the NRDCSRS for benzo(a)anthracene, benzo(a)pyrene and benzo(b)fluoranthene.

Analytical results indicate that soil sample ET-46 is above the IGWSSL for chlordane, benzo(a)anthracene, benzo(a)pyrene, aluminum and manganese. Soil sample ET-46 is above the RDCSRS for benzo(b)fluoranthene and indeno(1,2,3-cd)pyrene; and above the NRDCSRS for dieldrin. EPH results are provided in the table below.

<b>EPH Results – Soil Piles</b> 100 South Washington Ave Dunellen, NJ	
Sample ID	EPH Results (in parts per million)
ET-45	5,610
ET-46	778

**Piping – Area O**

In June 2014, numerous drainpipes were observed along the northern exterior side of the building. Envirotactics installed four soil borings to a depth of 5 feet bg, at accessible drainpipes at their respective discharge points. Four soil samples (ET-35, ET-36, ET-39 and ET-40) were collected and submitted to a NJ Certified Laboratory for EPH and TCL/TAL+30.

Analytical results indicate that soil sample ET-35 is above the IGWSSL for manganese and mercury.

Analytical results indicate that soil sample ET-36 is above the IGWSSL for cis-chlordane, trans-chlordane, benzo(a)anthracene, benzo(a)pyrene, benzo(b)fluoranthene, dibenzo(a,h)anthracene, lead, manganese and mercury. Soil sample ET-36 was above the RDCSRS for indeno(1,2,3-cd)pyrene and chlordane.

Analytical results indicate that soil sample ET-39 is above the IGWSSL for manganese and mercury.

Analytical results indicate that soil sample ET-40 is above the IGWSSL for benzo (a) pyrene, lead, manganese, antimony, arsenic and benzene. Soil sample ET-40 was above the RDCSRS for benzo(b)fluoranthene. EPH results are provided in the table below.

<b>EPH Results - Piping</b> 100 South Washington Ave Dunellen, NJ	
Sample ID	EPH Results (in parts per million)
ET-35	506
ET-36	1,580
ET-39	40.1
ET-40	336

On March 26, 2015, Envirotactics continued the subsurface investigation along the northern side of the building in areas where additional drainpipes were observed. A soil boring (SB-4, SB-5 and SB-7) was installed at each drainpipe to 5 feet bg. No evidence of contamination was observed in the soil borings conducted. A soil sample was collected from each boring (SB-4, SB-5 and SB-7) and submitted to a New Jersey Certified Laboratory for EPH Cat 2 and TCL/TAL+30 compounds. EPH results are provided on the table below.

EPH Results – Piping 100 South Washington Ave Dunellen, NJ	
Sample ID	EPH Results (in parts per million)
SB-4	ND
SB-5	ND
SB-7	ND

Laboratory results of the EPH analysis indicate that all analytical results are below applicable NJDEP *EPH Soil Remediation Criterion*.

Laboratory results for the TCL/TAL+30 analyses indicate that soil sample SB-4 and SB-5 detected aluminum above the IGWSSL. The IGWSSL does not apply to aluminum since the GWQS for aluminum is not based on health considerations and is considered secondary.

On October 7, 2015, Envirotactics installed four soil borings to delineate the area of former sample ET-40 to depths ranging from 3.5' bg to 6.0' bg from which four soil samples were collected. Analytical results of VO+15, TAL Metals and PAH analyses indicate that soil sample CP-9 is above the IGWSSL for tetrachloroethene, benzene, antimony, lead, manganese and mercury. Soil sample CP-9 is above the RDCSRS for benzo(a)anthracene and benzo(b)fluoranthene and above the NRDCSRS for benzo(a)pyrene. Soil sample CP-10 is above the IGWSSL for benzene, manganese and mercury. Soil sample CP-10 is above the RDCSRS for benzo(b)fluoranthene, antimony and lead and above the NDRCSRS for benzo(a)pyrene and arsenic. Soil sample CP-11 is above the IGWSSL for lead and mercury. Soil sample CP-12 was above the IGWSSL for aluminum and mercury.

On April 18, 2016, Envirotactics returned to the site to install additional soil borings to delineate the aforementioned samples. Six soil borings were installed to depths ranging from 3.5' bg to 7.0' bg. Six samples (SB-418-6, SB-418-7, SB-418-8, SB-418-9, SB-418-10 and SB-418-11) were collected from the borings and submitted to a NJ Certified Laboratory for VO+15, BN+15 and TAL metals.

Analytical results of the VO+15, BN+20 and TAL analysis indicate that soil sample SB-418-6 is above the IGWSSL for benzene and aluminum.

Soil sample SB-418-10 is above the IGWSSL for benzo(a)anthracene, benzo(a)pyrene, antimony, lead, manganese and mercury. SB-418-10 is also above the RDCSRS for benzo(b)fluoranthene.

Soil sample SB-418-11 is above the IGWSSL for benzene, benzo(a)pyrene, antimony, manganese and mercury. SB-418-11 is also above the RDCSRS for trichloroethene, benzo(b)fluoranthene and lead.

One soil boring, SB-418-1, was converted to a temporary well point to facilitate the collection of a groundwater sample in AOC-O. The well point was installed to 15' bg and a groundwater sample (TW-418-1) was collected and submitted to a NJ Certified Laboratory for VO+15 and BN+15 SIMs.

Results of the VO+15 and BN+15 SIMs analyses indicate that all compounds are below the NJ Class IIA GWQS.

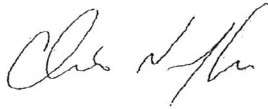
**Conclusions**

Based on the results of the site investigation, residual contamination remains on-site, in both soil and groundwater. In general the soil contamination consists of historic fill material with several hotspot areas. The presence of contaminants above NJDEP remediation standards was reported and NJDEP Case #14-08-27-1004-48 was assigned along with NJDEP Program Interest #004609. Additional investigation and remediation of the soil and groundwater at the site will be required to be performed under the oversight of a Licensed Site Remediation Professional (LSRP). Christopher Neuffer of Envirotactics was retained as the LSRP for this site.

Additional investigation and remediation will be conducted once the Owner's insurance company has made a determination of coverage.

If you have any questions or concerns please contact Envirotactics.

Sincerely,  
**For Envirotactics, Inc.**



Christopher Neuffer  
President

June 14, 2016

Mr. Peter M. Flannery, Esq.  
Bisgaier Hoff, LLC  
25 Chestnut Street, Suite 3  
Haddonfield, New Jersey 08033

**Re: Timeline for Site Investigation Activities  
Dunellen Associates, Inc.  
100 South Washington Avenue  
Borough of Dunellen, Middlesex County, New Jersey  
NJDEP Case No. 14-08-27-1004-48  
NJDEP Program Interest #004609**

Dear Mr. Flannery:

Since 2014, Envirotactics has conducted ten site investigation activities at the commercial property located at 100 South Washington Avenue in Dunellen, New Jersey. Envirotactics provided oversight to the installation of soil borings in areas of environmental concern (AEC) previously identified on the subject property during a Preliminary Assessment (PA).

The site investigation was completed to satisfy the New Jersey Department of Environmental Protection's (NJDEP) *Technical Requirements for Site Remediation* (TRSR), N.J.A.C. 7:26E 3.3. The following AECs were addressed over the course of the site investigation.

- Former underground storage tanks (USTs);
- Drywells, Sumps or Pits (Concrete Pit);
- Compressor vent discharge;
- Electrical transformers;
- Discharge area as defined by N.J.A.C 7:1E at the Digiview Loading Dock;
- Historic fill areas;
- Discolored or spill areas;
- Railroad spurs;
- Loading and unloading areas;
- Soil piles;
- Piping;
- Southeast Corner of Subject Property

Based on the results of the site investigation, residual contamination remains on-site, in both soil and groundwater. In general the soil contamination consists of historic fill material with several hotspot areas. The presence of contaminants above NJDEP remediation standards was reported and NJDEP Case #14-08-27-1004-48 was assigned along with NJDEP Program Interest #004609. Additional investigation and remediation of the soil and groundwater at the site will be required to be performed under the oversight of a Licensed Site Remediation Professional (LSRP). Christopher Neuffer of Envirotactics was retained as the LSRP for this site.

**Scope of Work**

The remaining scope of work to complete the investigation and remediation of the property consists of the following.

Limited testing has been conducted in the building interior but a complete investigation has not been conducted. The interior soil investigation along with minor additional exterior soil delineation will be conducted. Upon demolition of the building, hot-spot remediation of several areas of concern will be conducted.

The final remediation of the property will be capping of the site and establishing of a Deed Notice due to the presence of historic fill material. The capping of the site will allow for development of the property for residential purposes. It is anticipated that the cap will consist of the proposed residential structures, driveway and parking areas, sidewalks, and clean soil for landscape areas. It should be noted that in order to allow for unrestricted residential development that the cap will need to follow the New Jersey Department of Environmental Protection (NJDEP) Presumptive Remedy Guidelines.

Once the cap is complete a Deed Notice will be established for the site soils. A Soils Remedial Action Permit will then be obtained from the NJDEP. Once the Remedial Action Permit is obtained an Response Action Outcome (RAO) letter for soils at the site can be provided by the Licensed Site Remediation Profession (LSRP). Depending on the findings of the groundwater investigation, additional monitoring of groundwater may be required and potentially a groundwater Classification Exception Area (CEA) established for the site. In the event a groundwater CEA is established a Groundwater Remedial Action Permit will be required.

An RAO cannot be provided until the cap is completed which is proposed to consist of the site redevelopment.

**Timeline**

The projected timeframe to complete the above scope of work is outlined below.

<b>Task</b>	<b>Timeframe</b>
Conduct interior and exterior soils investigation	2 – 4 months
Hot Spot Soil Excavation and Disposal	1 – 2 months*
Groundwater Investigation	2 – 3 months*
Capping of the Site	Completed During Development
Establishment of Deed Notice and NJDEP Permitting	1 – 2 months**
Prepare RAO	2 – 3 months**

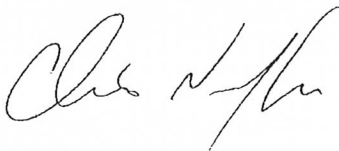
\* Following demolition of the building.

\*\* Following development of property.

If you have any questions or concerns please contact Envirotactics.

Sincerely,

**For Envirotactics, Inc.**



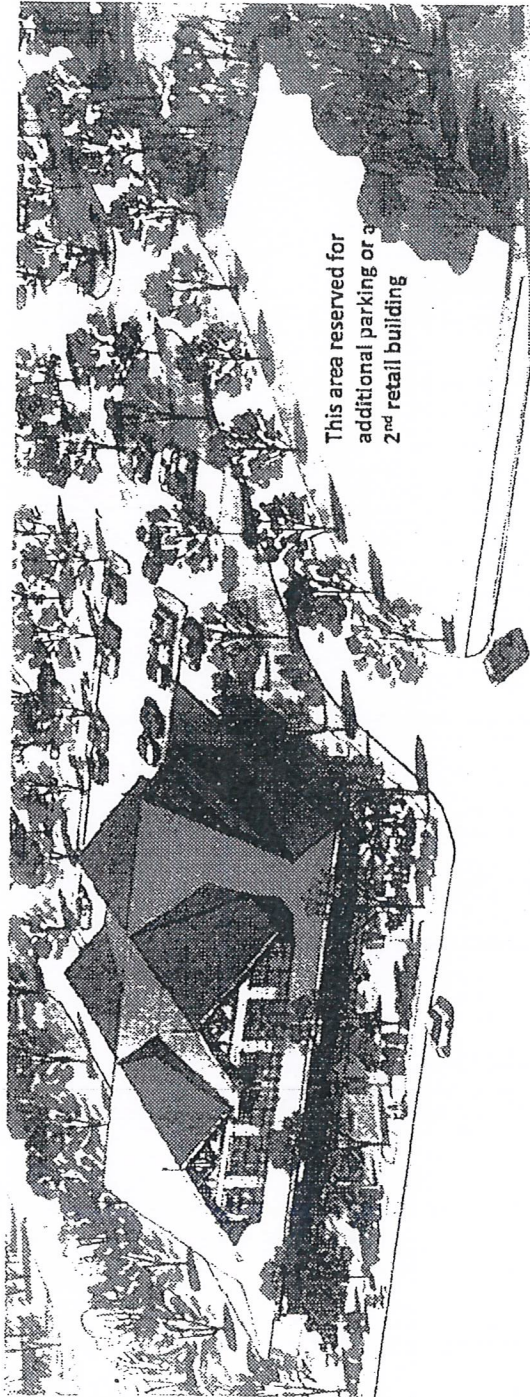
Christopher Neuffer, LSRP, CHMM  
President

## EXHIBIT E

### LIST OF GOVERNMENTAL APPROVALS

- **Borough of Dunellen Planning Board Approval**
- **Middlesex County Planning Board Approval**
- **Freehold Soil Conservation District Approval**
- **New Jersey Department of Transportation Access Permit**
- **New Jersey Department of Environmental Protection (“NJDEP”) Treatment Works Approval**
- **Middlesex County Utilities Authority Approval (TWA)**
- **Plainfield Area Regional Sewage Authority (TWA)**
- **NJDEP Water Connection Permit**
- **NJDEP Environmental Approvals, as applicable.**

**EXHIBIT F**  
**CONCEPT PLAN FOR RETAIL BUILDING**



This area reserved for  
 additional parking or a  
 2<sup>nd</sup> retail building

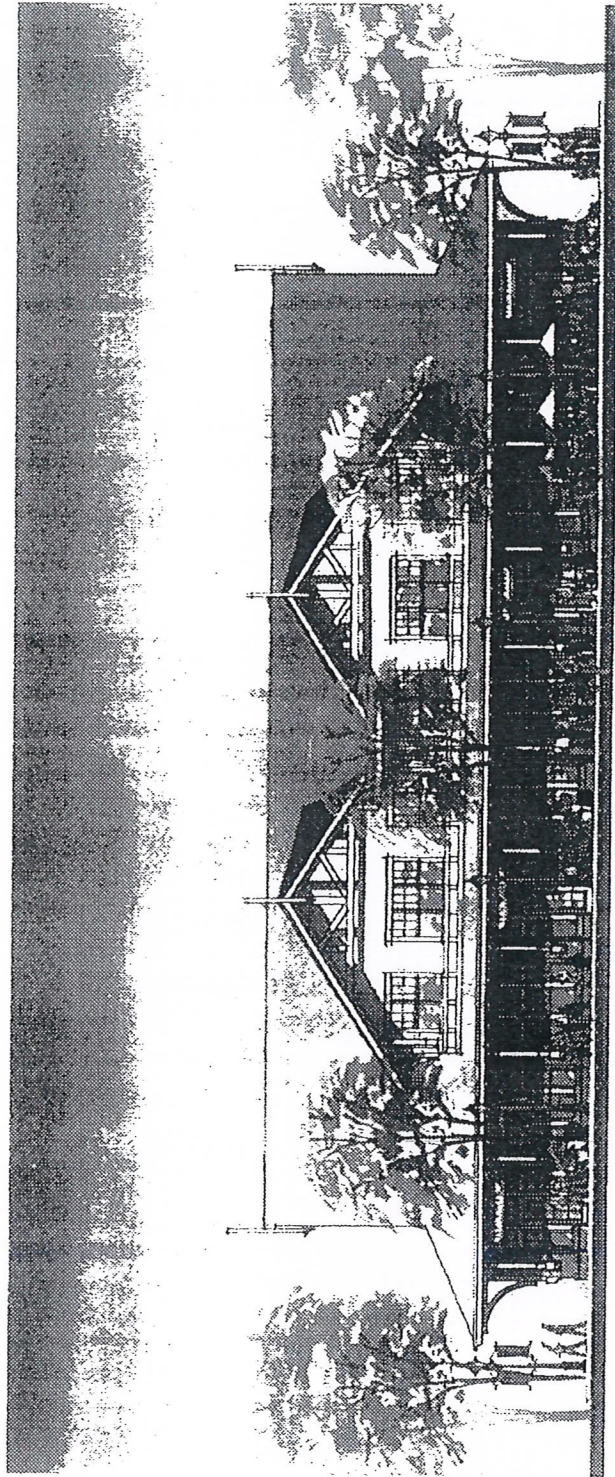
**RETAIL SHOPS**

**AERIAL PERSPECTIVE**

**MINNO WASKO**  
ARCHITECTS

**DUNELLEN**

BOROUGH OF DUNELLEN, WISCONSIN COUNTY, NEW JERSEY



FRONT ELEVATION  
SCALE 3/16"=1'-0"

RETAIL BUILDING  
DATE: 02/17/2014

MANDELBAUM

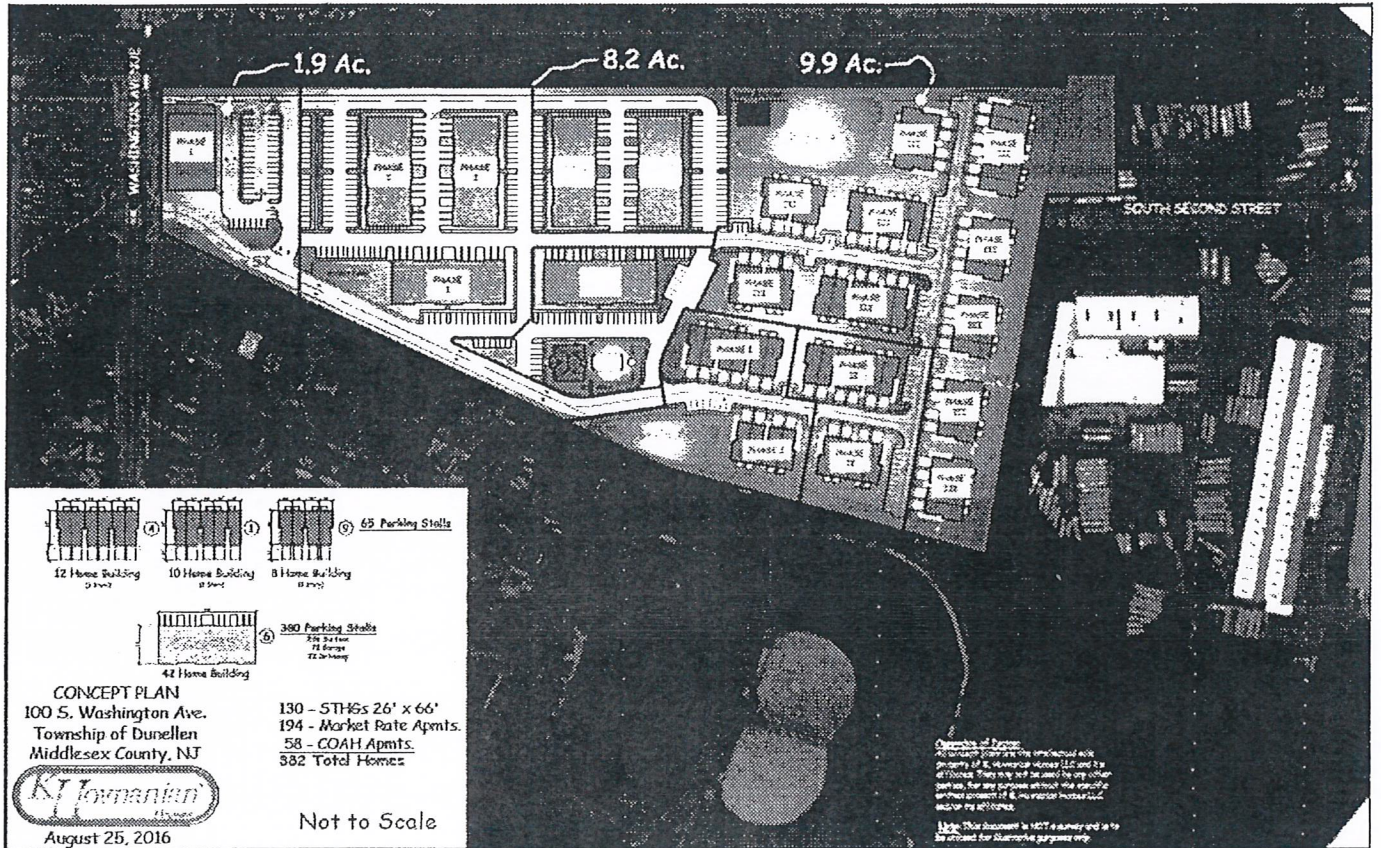
**DUNELLEN**

BOROUGH OF DUNELLEN, MIDDLESEX COUNTY, NEW JERSEY  
DRAWN BY: J. MANDELBAUM  
CHECKED BY: J. MANDELBAUM

**MINNO WASKO**  
ARCHITECTS AND PLANNERS  
40 HANBERT LANE, SUITE 102, LANERTVILLE, NEW JERSEY 08846  
WWW.MWASO.COM

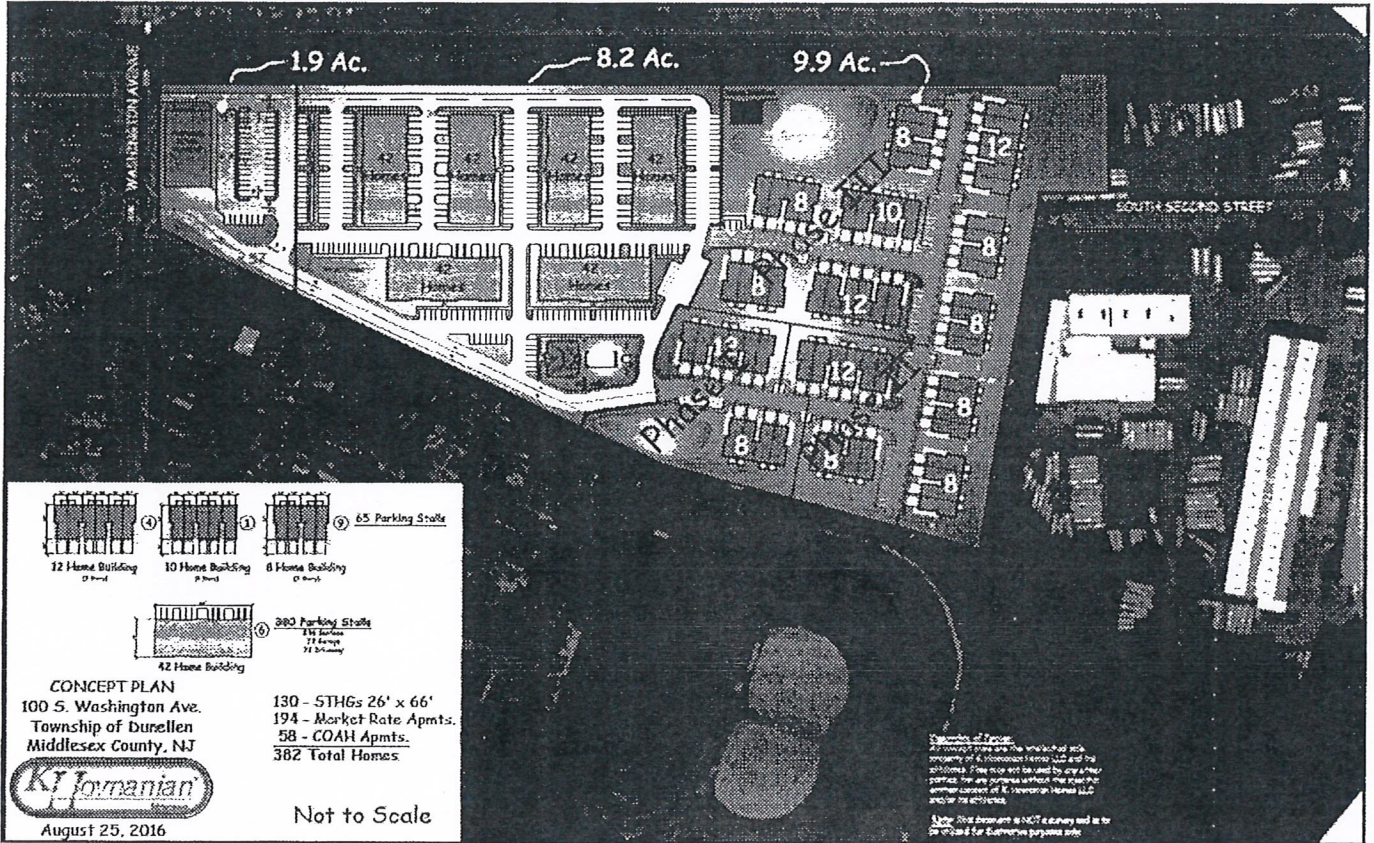
# EXHIBIT G

## APPROVED CONCEPT PLAN



# EXHIBIT H

## ROADWAY AREAS FOR SNOW REMOVAL REIMBURSEMENT



**EXHIBIT I**

**PHASING OF AFFORDABLE UNITS**

Art Color Project Minimum Phasing for Affordable Units (per N.J.A.C. 5:93-5.6)

<b>Minimum Percentage of Low and Moderate Income Units That Must Be Completed</b>	<b>Percentage of Market Housing Units Completed</b>
0%	25%
10%	25% + 1 Unit
50%	50%
75%	75%
100%	90%

EXHIBIT J  
SEWER IMPROVEMENTS

