

AFFORDABLE HOUSING SETTLEMENT AGREEMENT

THIS AFFORDABLE HOUSING SETTLEMENT AGREEMENT ("Agreement") is made this ____ day of February, 2023 , by and between:

BOROUGH OF ALLENHURST, a municipal corporation of the State of New Jersey in the County of Monmouth, and the **BOARD OF COMMISSIONERS OF THE BOROUGH OF ALLENHURST**, the governing body of the Borough of Allenhurst (hereinafter together the "Borough"), and the **BOROUGH OF ALLENHURST PLANNING BOARD**, an administrative agency created by the Borough pursuant to the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq. (hereinafter the "Board") (hereinafter collectively the "Borough Defendants"), all with their principal place of business at 125 Corlies Avenue, Allenhurst, New Jersey 07711; and

POWER STATION AT ALLENHURST, LLC, a New Jersey Limited Liability Company having a principal place of business at 1000 Sanger Avenue, Oceanport, New Jersey 07757 (hereinafter "Developer").

Collectively, the Borough, the Board and Developer shall be referred to as the "Parties" and each a "Party." All references to Developer shall include its successors, affiliates and assigns.

P R E A M B L E

WHEREAS, the Developer filed a Mount Laurel exclusionary zoning suit with the Superior Court of New Jersey ("Court"), entitled Power Station at Allenhurst, LLC v. Borough of Allenhurst; Board of Commissioners of the Borough of Allenhurst; and Allenhurst Planning Board, Docket No.: MON L 2551 21, seeking to compel the Borough to provide a realistic opportunity for the construction of affordable housing for very-low, low and moderate income households and to meet the Borough's fair share of the housing region's need for such housing, in addition to related relief in accordance with the New Jersey Fair Housing Act, N.J.S.A. 52:27D-301 ("FHA") and Mount Laurel jurisprudence (hereinafter "Builder's Remedy Action"); and

WHEREAS, Developer is the owner of two parcels of property within the Borough located at Block 18, Lot 1 on the Tax Map of the Borough of Allenhurst located at 315 Hume Street ("East Side Property"), and Block 21, Lots 5 and 6 (which includes former Lot 7), located at and 500-523 Main Street ("West Side Property"), Allenhurst, New Jersey, respectively (hereinafter collectively referred to as the "Developer Properties"); and

WHEREAS, the Borough is the owner of property located at Block 31, Lot 3 on the Tax Map of the Borough of Allenhurst otherwise known as the Lake Drive property ("Lake Drive Property" together with Developer Properties, the "Development Properties"); and

WHEREAS, as a result of extensive settlement negotiations and mediation between the Parties, the Parties agreed to the Settlement Term Sheet attached as Exhibit "A" which forms the basis for this Settlement Agreement whereby Developer proposes, the Borough Defendants agree to permit, the development of the East Side Property with twenty-eight (28) market rate town homes

("East Side Development") and the West Side Property with sixty-two (62) market rate condominium units ("West Side Development") as generally shown in the concept plans attached as Exhibit "B;" and

WHEREAS, as part of addressing the Borough's affordable housing obligation, the Borough will contribute and dedicate, in fee simple interest, a described portion of its Lake Drive Property to the Developer which shall be deed restricted for the development of Affordable Housing and upon which the Developer shall construct twenty three (23) rental residential units for low and moderate income households ("Lake Drive Development" together with the East Side Development and West Side Development, the "Overall Development") as generally shown in the concept plans attached as Exhibit "B" ("Concept Plans") to satisfy the required affordable housing obligation related to both the East Side Development and the West Side Development, all of which is to be considered one inclusionary development for the purposes of satisfying the required affordable housing obligation; and

WHEREAS, in light of the above, the Parties have come to a resolution of the Builder's Remedy Action by proposing the rezoning of the Development Properties through the adoption of amended and revised Redevelopment Plan as defined in Section 4.2 of this Agreement, to permit the Overall Development as set forth in detail herein and to provide affordable housing on the Lake Drive Property and by including the Development Properties in the Borough's Housing Element and Fair Share Plan ("HEFSP"), to address a component of its Prior Round / Third Round affordable housing obligation; and

WHEREAS, this Agreement does not address and resolve the Borough's entire affordable housing obligation which shall be addressed in the HEFSP after application of a Vacant Land Adjustment, which shall be established and addressed in a separate agreement to be entered into between the Borough and Fair Share Housing Center ("FSHC");

NOW, THEREFORE, in consideration of the promises and the mutual obligations set forth in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto, each binding itself, its successors, affiliates and assigns, agree as follows:

1. INCORPORATION OF PREAMBLE

1.1 The Parties hereto agree that the statements contained in the foregoing preamble be and are hereby incorporated into this Agreement as if more fully set forth herein at length.

2. PURPOSE

2.1 The Parties acknowledge that the Borough has not met its constitutional obligation to provide for its fair share of affordable housing. The purpose of this Agreement is for the Borough Defendants to create a realistic opportunity for the construction of affordable housing by creating zoning incentives through the adoption of a Revised Redevelopment Plan for the Development

Properties sufficient to generate twenty three (23) creditable rental affordable units on the Lake Drive Property available to very-low, low and moderate income households.

2.2 The Parties agree that the Development Properties are available, approvable, developable and suitable for the proposed Overall Development as those terms are used in the New Jersey Fair Housing Act, N.J.S.A. 52:27D 301 ("FHA") and Council on Affordable Housing ("COAH") regulations, N.J.A.C. 5:93 1 et. seq. & 5:97 1 et seq. for the use permitted by this agreement. The Borough Defendants are not aware of any water or sanitary sewer capacity issues that would affect the Overall Development.

3. BASIC TERMS AND CONDITIONS

3.1 In the event of any legal challenges to the Required Approvals (as defined in Section 6.2), including a challenge by any third party, Developer and the Borough Defendants shall diligently defend any such challenge and shall cooperate with each other regarding said defense. In addition, if any such challenge results in a modification of this Agreement or of the Development, the Parties must negotiate in good faith with the intent to draft a mutually acceptable amended Agreement.

3.2 **Settlement Term Sheet.** The Parties hereto agree that the statements contained in the Settlement Term Sheet developed by and between the Parties through extensive settlement negotiations and mediation be and are incorporated herein by reference. Said Settlement Term Sheet is attached hereto as Exhibit "A." The rights of the Parties referenced in the Settlement Term Sheet are specifically made a part hereof. To the extent there is determined to be a conflict between the Settlement Term Sheet and this Agreement, this Agreement shall control.

3.3 The Parties hereto recognize that this Settlement Agreement must be approved by the Court following a fairness hearing ("Fairness Hearing") as required by *Morris Cty. Fair Hous. Council v. Boonton Twp.*, 197 N.J. Super. 359, 367 69 (Law Div. 1984), *aff'd o.b.*, 209 N.J. Super. 108 (App. Div. 1986) and *East/West Venture v. Borough of Fort Lee*, 286 N.J. Super. 311, 328 29 (App. Div. 1996). The Borough shall present its planner as a witness at said Fairness Hearing and the ultimate effective date hereof will be the date of a court order approving this Agreement.

3.4 This Agreement does not purport to resolve all of the issues associated with the Borough's affordable housing compliance.

4. RE-ZONING

4.1 The Borough Defendants shall rezone the Development Properties (in accordance with Section 4.3), and include in its HEFSP, to permit the Overall Development substantially in accordance with the Concept Plans attached as Exhibit "B." In summary, the East Side will permit up to 28 townhouses, the West Side shall permit up to 62 market-rate condominium units (for-sale or rental at Developer's discretion) and Lake Drive shall permit up to 23 family affordable units based upon a 20% set-aside for the Overall Development.

4.2 The proposed zoning for the East Side Property, West Side Property and Lake Drive Property shall be accomplished through the adoption of an Ordinance ("**Revised Redevelopment Ordinance**") approving a Revised Redevelopment Plan in conformance with the requirements of the Local Redevelopment and Housing Law, N.J.S.A 45:14A-12. The Borough professionals and the Developer professionals, and to the extent necessary with the assistance of the special master, between the date of this Agreement and the Fairness Hearing shall work together to prepare an amended and revised redevelopment plan to allow for the Overall Development based upon the Concept Plans ("**Revised Redevelopment Plan**"). The goal is for the Revised Redevelopment Plan is to ensure that the Concept Plans are fully conforming without the need for variance or design waiver relief.

4.3 **Timing of Re-zoning.** The Borough shall introduce the Revised Redevelopment Ordinance approving the Revised Redevelopment Plan for the Development Properties at the first meeting of the Borough Board of Commissioners following the Court's entry of an Order approving this Agreement after a duly noticed Fairness Hearing is held, but in no event more than 45-days after the Order. The Revised Redevelopment Ordinance will then be sent to the Planning Board for consistency review and comment at its first meeting following the introduction of the Revised Redevelopment Ordinance by the Borough Board of Commissioners, but in no event later than 30 days after the Borough Board of Commissioners refers the Revised Redevelopment Plan Ordinance to the Planning Board. The Planning Board shall not provide any comments that are outside of, different than or inconsistent with terms of this Agreement. The Borough Board of Commissioners will then adopt the Revised Redevelopment Ordinance on second reading at its first meeting following the consistency review meeting of the Board, but in no event more than 90 days after the Court's Order approving this Agreement.

5. DEVELOPER OBLIGATIONS

5.1 **ROFO.** The Developer agrees to grant the Borough a Right of First Offer ("**ROFO**") in the event Developer chooses to market the West Side Property for sale. The terms of the ROFO are as set forth below. Developer has no obligation to accept any Borough offer and after sixty (60) days or Developer's rejection of a Borough offer (which ever happens earlier), Developer can market the property to third-parties and solicit offers, subject to this ROFO. Unsolicited offers from third-parties prior to Developer marketing the Property and any sale of minority interest in the West Side Property are not subject to this provision, but any such purchaser of a minority interest shall be subject to this ROFO.

- i. Notice. Developer, prior to marketing for sale, assignment or other transfer of the West Side Property, (identified as Block 21, Lots 5 and 6 [which includes former Lot 7] located at 500 523 Main Street), shall deliver to the Borough a notice (the "**Marketing Notice**") of its intention to so market the West Side Property.
- ii. Right of First Offer. Within sixty (60) days of Developer providing the Marketing Notice, Borough may elect to make an offer in writing to Developer to purchase the West Side Property ("**Offer Notice**"), with failure to provide an Offer Notice within that time shall relieve Developer of any obligations under this ROFO.

Developer shall have sixty (60) days from receipt of the Offer Notice to accept or reject the Borough's offer. If Developer provides no response within sixty (60) days, the offer shall be deemed rejected. If Developer accepts the Borough's offer, then Developer and Borough shall proceed diligently and in good faith to negotiate a written contract of sale in accordance with the Offer Notice. However, nothing herein shall obligate Developer to enter into a written contract of sale with the Borough for the West Side Property.

5.2 Obligation To File Development Applications. The Developer will file development applications after adoption of the Revised Redevelopment Plan, which will be consistent with the Concept Plans, attached hereto as Exhibit “B.” Notwithstanding the last sentence of Section 4.2 of this Agreement, nothing herein shall preclude the Developer from seeking reasonable bulk variances, waivers or de minimis exceptions as part of the development applications, which shall reasonably be considered by the Board as provided for in N.J.A.C. 5:93.10.1(b) and N.J.A.C. 5:97 10.3(b). It is understood that Developer's site plan application is permitted to include a phasing plan, which will be permitted to be developed in development phases (Phase 1, Phase 2, and Phase 3). Notwithstanding the Development Properties being permitted to be developed in Phases, for COAH Affordable Housing phasing purposes it will be viewed as a single development.

5.3 Affordable Housing Requirements. Developer shall satisfy the affordable housing obligation required in connection with the Overall Development by constructing twenty three (23) affordable family rental units on the Lake Drive Property for very low, low and moderate income households based upon a 20% set-aside for the Overall Development, but in no event shall there be less than 20 affordable units. These affordable units shall consist of four (4) one-bedroom units, fourteen (14) two-bedroom units and five (5) three-bedroom units as further broken down by income level in the chart below. The affordable units shall fully comply with the Uniform Housing Affordability Controls (“UHAC”), N.J.A.C. 5:80-26.1 et seq., with the sole exception that very low income shall be defined as at or below thirty percent (30%) of the median income. The affordability controls shall remain in effect unless and until the municipality elects to release the unit from such controls after at least thirty (30) years from the date of initial occupancy in accordance with UHAC. The affordable units shall be constructed in accordance with the phasing schedule as outlined in Section 3(i) of the Settlement Term Sheet attached as Exhibit “A.”

Unit Distribution by Income Level-Family Affordable Rental Units				
Unit Type	Very-Low Income (30% or less RMI)	Low Income (30% to 50% RMI)	Moderate Income (50% to 80% RMI)	Total
1 bedroom	0	2	2	4
2 bedrooms	2	5	7	14
3 bedrooms	1	2	2	5
Total	3	9	11	23

i. Developer agrees, in accordance with the above chart, that 13% of the total number of affordable units shall be affordable to very low income households earning thirty percent (30%) or less of the median income. Thus, in conjunction with UHAC's low/mod split requirements (very low income units are considered low income for the low/mod split determination), at least 13% of all affordable units shall be very low income, at least 37% shall be affordable to low income households, and up to 50% may be affordable to moderate income households.

ii. The affordable units shall comply with the COAH and UHAC requirements for accessibility and adaptability.

iii. The Developer should ensure that there will not be additional fees for the use of any amenities by the tenants of the affordable units. There shall be no off street parking charges for residents of the affordable units.

iv. The Developer agrees to retain an experienced Administrative Agent to handle affirmative marketing, reviewing the deed restriction, establishing pricing, tenant income eligibility determination, and long term administration of the affordable units including monitoring per UHAC at N.J.A.C. 5:80 26.14. It is the obligation of the Developer to pay for all Administrative Agent costs including affirmative marketing efforts, etc. The selected Administrative Agent shall be identified for the affordable units no later than the compliance hearing in this matter.

v. COAH at N.J.A.C. 5:93 11 and UHAC at N.J.A.C. 5:80 26.15 requires an affirmative marketing program for the affordable family rental units by an experienced administrative agent. Also, per a future agreement between the Borough and FSHC, additional housing advocacy groups must be noticed of all available affordable housing units. Per a 2020 law, Developers must advertise all affordable units on the NJ State's Housing Resource Center ("HRC") website in accordance with P.L. 2020, c.51.

vi. As part of the affirmative marketing efforts, a regional preference for individuals or households that live or work in Region 4 (Mercer, Monmouth, Ocean counties) shall be implemented.

vii. In the event the Borough purchases the West Side Property, the affordable housing set-aside shall still be based upon the Overall Development factoring in 62 residential condominiums on the West Side Property. In the event of the West Side Property Sale to the Borough, Developer shall reserve in escrow \$4.6 million in proceeds from the sale of the West Side to the Borough, with half of the \$4.6 million being released to Developer from escrow upon completion and C of O for half of the affordable units and the balance of the \$4.6 million in escrow being released upon completion and C of O for all of the affordable units. Further, in such an event, the COAH phasing schedule shall be modified in accordance with Section 3.i(v) of the Term Sheet.

5.4 Obligation To Support Borough's Application for Approval of its HEFSP As May Be Amended. As it pertains to the Borough's application for approval of its HEFSP as may be amended and provided the Borough has complied with its obligations herein and is not in default under this Agreement, Developer shall not object to the Borough's efforts to secure approval of its HEFSP as may be amended and shall support the Borough's request for the Court to approve the same at a Compliance Hearing, unless the HEFSP deprives Developer of any rights created hereunder, or unless the Borough undertakes any action to obstruct or impede Developer from securing such approvals as it needs to complete the Overall Development.

5.5 Release. Except for claims only seeking to enforce the terms of this Agreement, Developer does hereby, release, acquit, waive and forever discharge the Borough Defendants (including its current and former elected and appointed officials, agents, representatives, employees, officers, directors, parents, subsidiaries, affiliates, attorneys and independent contractors) from any and all actions, causes of action, damages, demands, rights, claims, costs, expenses, attorneys' fees and demands whatsoever, whether at law or in equity, known or unknown, foreseen or unforeseen, which Developer had, may have had or now has, concerning the Borough's overall affordable housing obligation, up to and including the Effective Date, including all claims, demands or actions that were raised or could have been raised in the Builder's Remedy Action. In addition, provided the Borough is not in default of the terms of this Agreement, Developer, and its principals, shall not bring any future Mount Laurel exclusionary zoning or builder's remedy lawsuit in connection with the Borough's Third Round affordable housing obligation against the Borough during the Third Round affordable housing cycle.

6. OBLIGATIONS OF THE BOROUGH DEFENDANTS

6.1 Dedication of Land. As part of addressing the Borough's affordable housing obligation, the Borough will dedicate and contribute, in fee simple interest, a described portion of its Lake Drive Property to the Developer which shall be deed restricted for the development of Affordable Housing and upon which the Developer shall construct twenty three (23) rental residential units for very-low, low and moderate income households. Borough will prepare a survey and property description of the parcel to be donated to Developer and reflecting such portion of the current lot and block as will be reserved for Borough's ownership and use.

In consideration of the value of the land being dedicated and contributed, the Power Station shall be responsible for any and all costs related to the development of the land, including all costs for provision of necessary utilities for the project.

6.2 The Revised Redevelopment Ordinance. The Borough shall adopt the Revised Redevelopment Ordinance to effectuate the rezoning of the Development Properties as set forth in the Revised Redevelopment Plan in order to permit the Development consistent with the Concept Plans within the time specified in Section 4.3 above. For the avoidance of doubt, the term "Revised Redevelopment Ordinance" as defined herein and used throughout this Agreement shall encompass any such Borough ordinance(s) as are needed to adopt and effectuate the Revised Redevelopment Plan and the rezoning to permit the Development.

6.3 **Obligation To Cooperate.** The Borough acknowledges that in order for Developer to construct the Development on the Development Properties, the Developer will be required to obtain any and all approvals and permits from (1) entities, boards or agencies which have jurisdiction over the Parties to this Agreement and the Overall Development contemplated hereby, and from (2) all relevant public entities and utilities; such as, by way of example only, the Borough, the Board, the County of Monmouth, the Monmouth County Planning Board, the New Jersey Department of Environmental Protection, and the New Jersey Department of Transportation (collectively, "**Required Approvals**"). The Borough Defendants agree to cooperate with Developer in Developer's efforts to obtain the Required Approvals. Further, consistent with the FHA and COAH regulations, the Borough Defendants agree to use all reasonable efforts to assist the Developer in its undertakings to obtain the Required Approvals which includes taking all necessary and reasonable steps to support the Overall Development's efforts to obtain adequate water service from New Jersey American Water and sewer service from Township of Ocean Sewerage Authority, including expediting all municipal endorsements and approvals of the same. Nothing herein shall be deemed to require the Borough to incur any expense or cost whatsoever to build, erect, extend or otherwise develop any utility infrastructure.

6.4 **Obligation to Maintain Proposed Re-Zoning of Property.** The Borough agrees that if a decision of a court of competent jurisdiction in Monmouth County, or a determination by an administrative agency responsible for implementing the Fair Housing Act, or an action by the New Jersey Legislature, or any other act of any federal, state, county, municipal, or other governmental authority would result in a calculation of an affordable housing obligation for the Borough for the period 1987 2025 that would lower the Borough's affordable housing obligation beyond that established by COAH for the period 1987 1999 and/or the Court for the period 1999 2025, the Borough shall nonetheless implement the Revised Redevelopment Ordinance contemplated by this Agreement and take all steps necessary to support the completion of the Development contemplated by this Agreement. The Borough shall not seek to repeal, amend or change the Revised Redevelopment Plan for 10 years without Developer's written consent.

6.5 **Obligation to Refrain From Imposing Cost Generative Requirements.** The Development Properties shall be exempt from cost generative features of the Borough Code pursuant to N.J.A.C. 5:93 10.1, including, but not limited to, any tree removal ordinance or any impact fees. The Parties acknowledge that the Revised Redevelopment Ordinance has been designed to permit the Overall Development in accordance with the Concept Plans attached hereto. The Board agrees not to impose any unnecessary conditions that would be cost generative to the Overall Development and there shall be no affordable housing residential development fees charged to any part of the Development Properties as it is an inclusionary development.

6.6 **Settlement Term Sheet.** The Parties hereto agree that the statements contained in the Settlement Term Sheet developed by and between the Parties through extensive settlement negotiations and mediation be and are incorporated herein by reference. Said Settlement Term Sheet is attached hereto as Exhibit "A." The obligations of all Parties referenced in the Settlement Term Sheet are specifically made a part hereof.

6.7 **Ordinance Review.** After the Borough introduces the Revised Redevelopment Ordinance and refers the same to the Board for comment and a Master Plan consistency review, the Board shall expeditiously make such a determination consistent with the requirements of the Municipal Land Use Law and refer the Revised Redevelopment Ordinance back to the Borough for a hearing.

6.8 **Obligation to Adopt a Housing Element and Fair Share Plan.** Pursuant to the FHA and subsequent Mount Laurel I and Mount Laurel II decisions, a Housing Plan Element must be designed to address a municipality's fair share for very-low, low and moderate income housing, as determined by the Fair Share Housing Center. The Board is vested with the responsibility to prepare a HEFSP to address the Borough's affordable housing obligations and to recommend zoning and land use regulations in furtherance and implementation thereof. The Board shall prepare and adopt, as an amendment to the Borough's HEFSP, and to the extent necessary the Master Plan, such resolutions as are necessary in order to include the Development Properties within the Borough's HEFSP (and if necessary the Master Plan) to address the Borough's constitutional obligation to provide a realistic opportunity for the satisfaction of the Borough's Second Round and Third Round Fair Share Obligation.

6.9 **Obligation to Process Developer's Development Applications with Reasonable Diligence.** The Board shall expedite the review of any development and zoning applications filed by the Developer following Court approval of this Agreement (including granting reasonable checklist waivers). In the event of any appeal of the Court approval of this Agreement, the Board shall review and take action on any applications filed by Developer for the Overall Development. The Board's decisions on such applications may be conditioned upon the outcome of any pending appeal. If Developer's development application cannot be scheduled for the next regularly scheduled meeting or if regularly scheduled meetings are cancelled, upon request from the Developer, the Board shall schedule special meetings to process Developer's application(s) at no cost to Developer. Notwithstanding the last sentence of Section 4.2 of this Agreement, the Board shall reasonably consider any bulk variances, waivers or de minimis exceptions sought as part of the development applications. Nothing herein eliminates the Developer's obligations to comply with the Planning Board's filing fees and escrow fees relative to its application for review.

6.10 **Escrow.** The Borough agrees to waive any unpaid escrow balance of Developer in connection with the Developer Properties as of the date of this Agreement and the Borough shall not charge any additional escrow in connection with its obligations under this Agreement. Nothing herein eliminates the Developer's obligations to comply with the Planning Board's filing fees and escrow fees relative to its site plan application in accordance with the Borough Ordinance.

6.11. **Borough Construction Moratorium Ordinance.** The Borough Defendants agree to a modified application to the Construction Moratorium Ordinance such that Developer (and its contractors) will be permitted to perform work associated with the Project during the Moratorium Period (July 1 through Labor Day) between the hours of 8 am and 5 pm, Monday through Friday, with no work on Saturdays, Sundays and Federal Holidays. All deliveries must be scheduled during the permitted work hours.

7. MUTUAL OBLIGATIONS

7.1 **Redeveloper Agreement.** Developer and the Borough agree to enter good faith negotiations for the execution of a Redeveloper Agreement consistent with the Revised Redevelopment Plan ("**Redeveloper Agreement**"). The Redeveloper Agreement shall designate the Developer as the official Redeveloper of the Development Properties pursuant to the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq. The Parties agree to prepare a final draft of the Redeveloper Agreement prior to the Fairness Hearing. Each Party shall be responsible for its own attorney's fees in connection with the negotiation and preparation of the Redeveloper Agreement.

7.2 **PILOT.** Developer and the Borough agree to enter good faith negotiations for the execution of a payment-in-lieu-of-taxes ("**PILOT**") agreement for the Development. The Parties agree that such PILOT(s) will provide for the following: (a) payments under the PILOT for the East Side Property shall be equivalent to ninety-five percent (95%) of the conventional taxes that would otherwise be imposed on the East Side Property; (b) payments under the PILOT for the West Side Property shall be equivalent to ninety-five percent (95%) of the conventional taxes that would otherwise be imposed on the West Side Property; and (c) payments under the PILOT for the Lake Drive Property shall be equivalent to six and two hundred eighty five thousandths percent (6.285%) of gross rental income generated by the affordable housing units on the Lake Drive Property. Each Party shall be responsible for its own attorney's fees in connection with the negotiation and preparation of the PILOT(s). There shall be no administrative fee charged by the Borough in connection with the PILOT(s).

7.3 **Communications Tower.** The Borough will be reserving unto itself a portion of the lot and block referred to as the Lake Drive Property on which it will see that a communications tower will be erected ("**Communications Tower**"). The Developer and Borough shall work together, in consultation with the special master if needed, to identify an appropriate location agreeable to both the Borough and Developer so as not to interfere with the affordable housing development on the Lake Drive Property. The Developer agrees that it will not object to the construction of a monopole Communications Tower on that portion of the Lake Drive Property that shall remain owned by the Borough.

7.4 **Water Tower.** The Lake Drive Property to be contributed and dedicated, in fee simple interest, by the Borough to the Developer shall be "as is where is", inclusive of the existing Water Tower. Ownership of the long inoperative Water Tower shall transfer to the Developer with the dedication and contribution of the Lake Drive Property. It shall be Developer's obligation to remove the Water Tower at Developer's sole case and expense. The Developer recognizes that the Water Tower must be removed prior to construction of the affordable units on the Lake Drive Property, which includes, but is not limited to, any site work. In accepting the contribution and dedication of the land, Developer acknowledges that removal of the Water Tower is its responsibility and shall not seek anything from the Borough Defendants relating to the costs of removal. The Borough represents that the Water Tower is not operational and no approvals, consents or notices are required with the utility company.

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TO THE PLANNING BOARD: Borough of Allenhurst Planning Board
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In the event any of the individuals identified above has a successor, the individual identified shall name the successor and notify all of others identified of their successor.

8. MISCELLANEOUS

8.1 **Necessity of Required Approvals.** The Parties recognize that the site plans required to implement the Development, and such other actions as may be required of the Board or Borough under this Agreement, cannot be approved except in accordance with the procedures established by

law. Nothing in this Agreement is intended to constrain that judgment or to authorize any action not taken in accordance with procedures established by law, it being understood that any such action shall be in accordance with procedures established by law. For the avoidance of doubt, however, by the terms of this Agreement the Borough Defendants agree that the Development as detailed in the Concept Plan conforms to the Revised Redevelopment Plan and the Revised Redevelopment Ordinance and the new zoning to be effectuated thereby. The Parties acknowledge that the Borough and Board professionals have reviewed the Revised Redevelopment Plan and confirmed that the Concept Plan are fully conforming without the need for variance or design waiver relief. Notwithstanding the immediately preceding sentence or anything contained herein, the Developer shall have the right to seek and obtain any such variances, waivers, exceptions, or other relief as may be necessary to secure site plan approval and complete the Development. The Board specifically agrees to grant such relief from the Residential Site Improvement Standards parking requirements, N.J.A.C. 5:21-1.1 et seq., as Developer may require in order to develop twenty-three (23) affordable housing units on the Lake Drive Property.

8.2 **Default.** In the event that any of the Parties shall fail to perform any material obligation on its part to be performed pursuant to the terms and conditions of this Agreement, unless such obligation is waived in writing by all of the other Parties for whose benefit such obligation is intended, such failure to perform shall constitute a default of this Agreement. Upon the occurrence of any default, the non defaulting Party shall provide notice of the default and the defaulting Party shall have a reasonable opportunity to cure the default within forty five (45) days or such other reasonable period of time as may be appropriate if of the nature that cannot be cured within 45 days. In the event the defaulting Party fails to cure within forty five (45) days or such reasonable period of time as may be appropriate, the Party(ies) for whose benefit such obligation is intended shall be entitled to exercise any and all rights and remedies that may be available in equity or under the laws of the State of New Jersey, including the right of specific performance to the extent available. With respect to any uncured default by the Borough with respect to its obligations to adopt the Revised Redevelopment Plan, approve the PILOT and enter into the necessary agreements for the Development (e.g., PILOT, Redevelopers Agreement, etc.), Developer may immediately file a motion to the court to enforce litigant's rights, and if successful, Developer shall be entitled to reasonable attorney and professional fees. With respect to any uncured default by the Planning Board in performing its obligations, including, but not limited to granting site plan approval for the Development with any reasonable variances, if Developer may immediately file a motion to the court to enforce litigant's rights, and if successful on such a motion, Developer shall be entitled to reasonable attorneys fees and professionals fees in connection with site plan application.

8.3 **Severability.** It is intended that the material provisions of this Agreement ***are not severable***. If any material provision of this Agreement shall be fully adjudged by a court (including all appeals) to be invalid, illegal or unenforceable in any respect, the entire Agreement becomes invalid, illegal or unenforceable and the Parties shall be returned to their respective positions whereby Developer may prosecute its builder's remedy claim in this case.

8.4 **Successors Bound.** The provisions of this Agreement shall run with the land, and the obligations and benefits hereunder shall be binding upon and inure to the benefit of the Parties, their successors, affiliates and assigns, including any person, corporation, partnership or other legal entity

which at any particular time may have a fee title interest in the Development Properties which is the subject of this Agreement. This Agreement may be enforced by any of the Parties, and their successors, affiliates and assigns.

8.5 **Disclaimer of Liability.** It is understood and agreed that this is a compromise and settlement of disputed claims, and that nothing in this Agreement shall be construed as an admission of liability on the part of the Parties, or any of the Parties' current or former elected and appointed officials, agents, representatives, employees, officers, directors, parents, subsidiaries, affiliates, attorneys and independent contractors, all of whom expressly deny any such liability.

8.6 **Governing Law.** This Agreement shall be governed by and construed by the laws of the State of New Jersey.

8.7 **No Modification.** This Agreement may not be modified, amended or altered in any way except by a writing signed by each of the Parties or, in the event of a partial assignment, signed by the assignee whose rights and obligations are affected by such modification, amendment, or alteration.

8.8 **Effect of Counterparts.** This Agreement may be executed simultaneously in one (1) or more facsimile or PDF counterparts, each of which shall be deemed an original. Any facsimile or PDF counterpart forthwith shall be supplemented by the delivery of an original counterpart pursuant to the terms for notice set forth in this Agreement.

8.9 **Voluntary Agreement.** The Parties acknowledge that each has entered into this Agreement on its own volition without coercion or duress after consulting with its counsel, that each party is the proper person and possesses the authority to sign the Agreement, that this Agreement contains the entire understanding of the Parties and that there are no representations, warranties, covenants or undertakings other than those expressly set forth in this Agreement.

8.10 **Interpretation.** Each of the Parties hereto acknowledges that this Agreement was not drafted by any one of the Parties, but was drafted, negotiated and reviewed by all Parties, and, therefore, the presumption of resolving ambiguities against the drafter shall not apply. Each of the Parties expressly represents to the other Parties that: (a) it has been represented by counsel in connection with negotiating the terms of this Agreement; and (b) it has conferred due authority for execution of this Agreement upon the person(s) executing it.

8.11 **Schedules.** Any and all Exhibits and Schedules annexed to this Agreement are hereby made a part of this Agreement by this reference thereto. Any and all Exhibits and Schedules now and/or in the future are hereby made or will be made a part of this Agreement with prior written approval of all Parties.

8.12 **Entire Agreement.** This Agreement constitutes the entire agreement between the Parties hereto and supersedes all prior oral and written agreements between the Parties with respect to the subject matter hereof except as otherwise provided.

8.13 **Effective Date.** The effective date ("**Effective Date**") of this Agreement shall be the date upon which the last of the Parties to execute this Agreement has executed and delivered this Agreement, subject to the Court approving this agreement following a duly noticed Fairness Hearing.

8.14 **Waiver.** The Parties agree that this Agreement is enforceable. Each of the Parties waives all rights to challenge the validity or the ability to enforce this Agreement. Failure to enforce any of the provisions of this Agreement by any of the Parties shall not be construed as a waiver of these or other provisions.

8.15 **Captions.** The captions and titles to this Agreement and the several sections and subsections are inserted for purposes of convenience of reference only and are in no way to be construed as limiting or modifying the scope and intent of the various provisions of this Agreement.

8.16 **Construction, Resolution of Disputes.** Jurisdiction of any litigation ensuing with regard to this Agreement exclusively shall be in the Superior Court of New Jersey, with venue in Monmouth County. Service of any complaint may be affected consistent with the terms hereof for the delivery of "Notices," hereinafter defined. The Parties waive formal service of process. The Parties expressly waive trial by jury in any such litigation.

8.17 **Conflicts.** The Parties acknowledge that this Agreement cannot be affected by any contradictory amendments to the Borough's Fair Share Plan or zoning ordinances, and this Agreement shall control with respect to those matters as applied to the Development Properties.

8.18 **Transferability.** Developer shall have the right to transfer the development rights bestowed upon it in this Agreement to another developer, subject however to prior written approval by the Borough, which shall not be unreasonably withheld or delayed. Failure to provide consent upon request may be addressed via a motion to enforce litigant's rights with the prevailing party entitled to attorney's fees. The Borough shall also be liable for any damages suffered by Developer for any consent unreasonably withheld or delayed. This provision shall also be included in the Redeveloper's Agreement(s).

[Signature Page to Follow.]

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SIGNATURE PAGE

IN WITNESS WHEREOF, the Parties have caused this Agreement to be properly executed, their corporate seals affixed and attested and this Agreement to be effective as of the Effective Date.

Attest: **POWER STATION AT ALLENHURST, LLC**

By: _____
Name:

By: _____
Name:
Title: Member

Date: _____, 2023

Attest: **BOROUGH OF ALLENHURST AND BOARD OF COMMISSIONERS OF THE BOROUGH OF ALLENHURST**

By: Donna M. Campagna
Name: Donna M. Campagna, R.M.C.
Title: Municipal Clerk and Administrator

By: David J. McLaughlin
Name: David J. McLaughlin
Title: Mayor

Date: February 21, 2023, 2023

Attest: **BOROUGH OF ALLENHURST PLANNING BOARD**

By: Kelly Barrett
Name: Kelly Barrett
Title: Administrator & Secretary

By: Joseph Tomaino
Name: Joseph Tomaino
Title: Chairman

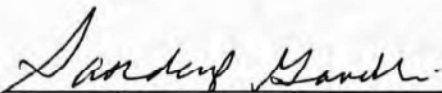
Date: February 22, 2023

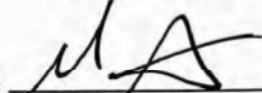
SIGNATURE PAGE

IN WITNESS WHEREOF, the Parties have caused this Agreement to be properly executed, their corporate seals affixed and attested and this Agreement to be effective as of the Effective Date.

Attest:

POWER STATION AT ALLENHURST, LLC

By: 
Name: Sandeep Gandhi

By: 
Name: Michael Abboud
Title: Member

Date: February 28, 2023

Attest:

BOROUGH OF ALLENHURST AND BOARD OF COMMISSIONERS OF THE BOROUGH OF ALLENHURST

By: _____
Name: Donna M. Campagna, R.M.C.
Title: Municipal Clerk and Administrator

By: _____
Name: David J. McLaughlin
Title: Mayor

Date: _____, 2023

Attest:

BOROUGH OF ALLENHURST PLANNING BOARD

By: _____
Name: Kelly Barrett
Title: Administrator & Secretary

By: _____
Name: Joseph Tomaino
Title: Chairman

Date: _____, 2023

AFFORDABLE HOUSING SETTLEMENT AGREEMENT

Power Station v. Borough of Allenhurst, et al.

Docket No.: MON-L-2551-21

SETTLEMENT TERM SHEET

Power Station v. Borough of Allenhurst, et al.

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1. East Side:
 - a) To be developed as 28 town homes per the plan used for the 2021 Redevelopment Plan (attached). The units will be:
 - i. Ground Floor: Garage and a full bathroom
 - ii. First Floor: Living space with full bathroom
 - iii. Second Floor: 3 bedrooms and 2 bathrooms.
 - iv. Attic: One bedroom, a full bathroom and a Den that can be converted to another bedroom.
 - v. Site layout and design to be in keeping with the concept designs previously exchanged between the parties (attached).
 - b) Parking to be RSIS compliant
 - c) To be taxed via PILOT at 95% of conventional taxes
 - d) Certificates of Occupancy (hereinafter "C of O") on units 23 to 28 to be withheld until "Footing Inspection" conducted on Lake Drive Affordable Housing project and has been approved.
 - e) Redevelopment agreement and financial agreement to be prepared.

2. West Side:
 - a) Parties agree that Borough shall have a Right of First Offer ("ROFO") in the event Power Station chooses to sell the West Side parcel. Borough will have 60 days to make an offer to Power Station. Power Station has no obligation to accept any Borough offer and after 60 days or Power Station's rejection of a Borough offer, Power Station can market the property to third parties and solicit offers.
 - b) To be developed as 62, market rate, condos (for sale or rental at Power Station's discretion) within a building substantially similar to the West Side building in the 2021 Redevelopment Plan (up to 5 stories and 65 ft.).
 - i. The total square footage for floor space will be substantially the same as the West Side building in the 2021 Redevelopment Plan
 - ii. Developer has option to include a 3,000 sq. ft. amenity space in the building.
 - iii. Units to be large with up to 4 bedrooms.
 - iv. Developer retains right to determine if Units will be rental or for sale, depending on market conditions (both parties prefer for sale).
 - v. If Developer chooses for sale condos, the condo formation documents shall indicate that they cannot be rented by the unit owners for less than an annual term. If Developer chooses rentals, rental term shall be no less than annual. In no case may any unit be sublet for less than an annual term (i.e. no "summer rentals" nor any "winter rentals").
 - c) Bulk Standards (taken from previous 108 unit 2021 Redevelopment Plan):
 - i. Maximum Residential Density is 62 Units on the West Side. Total floor area of the proposed building is approximately 190,000 sq ft.
 - ii. Maximum Height, Five (5) Stories, 65 Feet

SETTLEMENT TERM SHEET

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- A. Architectural features (e.g. a cupola) and rooftop mechanical equipment including elevator towers, HVAC units, antennas and other typical installations may exceed the maximum height limit by up to 10 feet.
 - B. Rooftop amenity space associated with a permitted use on site (i.e. roof deck for residents may exceed the maximum height by up to 10 feet provided such space does not occupy more than 20% of the rooftop).
 - iii. All rooftop appurtenances (mechanical equipment, amenity spaces, solar arrays, etc.) shall be set back a minimum of 10 feet from the edge of the roof to limit visibility from below. Amenity space that is not covered by a roof may be located within the required setback area.
 - iv. The existing front yard setback shall be maintained.
 - v. There shall be no required minimum setback for the side and rear yards.
 - vi. Parking Standards, RSIS using the "Mid Rise or Garden Apartment" standard for residential uses, 2.0 spaces for each 2 Bedroom Unit, 2.1 spaces for each 3 bedroom or larger unit
 - d) To be taxed via PILOT at 95% of conventional taxes
 - e) No C of O's to issue on West Side building until all Affordable Housing units have received C of O's on Lake Drive
 - f) Redevelopment agreement and financial agreement to be prepared.
 - g) Borough and Developer to work to locate a pole on either the West Side parcel or Lake Drive parcel, before April of 2023, to act as an Osprey Nest.
3. Lake Drive:
- a) To be developed as 23 Affordable Housing rental residential units on as much of the Lake Drive property needed for the development, including parking and amenity space based upon a 20% set-aside for the West Side, East Side and Lake Drive developments combined, but in no event shall there be less than 20 affordable units on the Lake Drive property. The Borough desires to keep the tennis courts, summer storage unit storage space and cell antenna tenants (currently on the water tower), if reasonably feasible; however, ensuring a quality affordable development is the priority. The development is based upon a survey prepared by the Borough Engineer.
 - i. Mix of units to be 4 one bedroom units, 14 two bedroom units and 5 three bedroom units.
 - ii. Developer has option to construct units up to 3 stories in height if that is needed given site size.
 - iii. Power Station's engineer is preparing a concept plan to share with the Borough on a Lake Drive development, recognizing it is being prepared without a survey of the land.

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Power Station v. Borough of Allenhurst, et al.

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- A. Borough has supplied a survey, with topographical data and wetlands delineation to be prepared at Borough's expense.
- iv. Borough would like to max out the number of 1 bedroom units in the Lake Drive development permitted under UHAC and do the minimum number of 3 bedrooms, as per 3(a)(i) above.
- v. Borough to retain right to locate a cell communications monopole on the property and associated equipment space. Rent from providers will belong to Borough.
- b) The Borough will contribute and dedicate, in fee simple interest, a specifically described portion of the Lake Drive parcel to Power Station, deed restricted for affordable housing.
 - i. In consideration of the value of the land being donated, the Power Station shall be responsible for any and all costs related to the development of the land, including all costs for provision of necessary utilities for the project.
- c) Power Station will accept the contribution / dedication of the Lake Drive land in fee, inclusive of the water tower. Power Station hereby acknowledges that removal of the water tower shall be its responsibility and at Power Station's sole cost and expense. The Borough represents that the water tower is no longer in use and no approvals are required by the utility company to remove the water tower.
- d) Communications Tower. The Borough will be reserving unto itself a portion of the lot and block referred to as the Lake Drive Property on which it will see that a communications tower will be erected ("Reserved Lake Drive Property"). The Developer and Borough shall work together, in consultation with the special master if needed, to identify an appropriate location agreeable to both Parties so as to not interfere with the affordable housing development on the Lake Drive Property.
- e) Parking to be reviewed and, if RSIS relief is needed, the Borough / Planning Board agree to grant such relief in order to ensure 23 units are achieved with appropriate amenities.
- f) To be taxed via PILOT at 6.285% of gross rental income.
- g) Re-development agreement and financial agreement to be prepared.
- h) Amenities to be considered include a playground and pickle ball courts.
- i) The COAH Phasing Schedule for Market Rate Units and Affordable Units:
 - i. Given there are different unit types and properties involved, the Parties will seek a modification to COAH's Phasing Schedule (which is based upon issuance of certificates of occupancy), subject to FSHC approval.
 - ii. Power Station is permitted to build all 28 townhouses on the East parcel and obtain certificates of occupancy for 22 of those townhouse units on the East Side.
 - iii. The building permit and start of construction for the affordable units must start before the certificate of occupancy for the 23rd townhouse unit can be issued. "Start of construction" means that the footing inspection for the

SETTLEMENT TERM SHEET

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foundation of the affordable unit buildings has occurred per UCC code and has been approved.

- iv. No certificate of occupancy for the West Side building can issue until the certificate of occupancy for all of the affordable units on Lake Drive are issued.
 - v. In the event that the Borough purchases the West Side Property from the Developer, Developer shall reserve in escrow \$4.6 million in proceeds from the sale of the West Side to the Borough, with half of the \$4.6 million being released to Developer from escrow upon completion and C of O for half of the affordable units and the balance of the \$4.6 million in escrow being released upon completion and C of O for all of the affordable units. In the event the Borough purchases the West Side Property from the Developer, the COAH Phasing schedule shall also be modified as follows:
 - By the time Developer reaches C of Os for 50% of the THs on the East Property, Developer shall have C of Os for 50% of the affordable units on Lake Drive.
 - By the time Developer reaches C of Os for 90% of the THs on the East Property, Developer shall have received C of Os for 100% of the affordable units on Lake Drive.
4. Terms common to all three parcels (East, West & Lake):
- a) Each side to bear its own legal fees during negotiation of PILOTS, Redeveloper's agreement(s) and financial agreement(s).
 - i. Power Station agrees to release and surrender any and all claims for payment of any legal fees from the Borough or the Defendant Planning Board as of the date of a fully executed Settlement Agreement (which does not include any claim to enforce the terms of a fully executed Settlement Agreement).
 - ii. Special Master's fees. The Borough and Developer agree that the Special Master's fees associated with the builder's remedy and this settlement shall be split 50/50 between them in accordance with the Court's previous Order establishing the same. The Borough shall be responsible for all special master fees associated with any settlement with Fair Share Housing Center and the preparation of a Housing Element & Fair Share Plan.
 - b) Defendant Planning Board agrees to grant expedited review of the development plans, with special meetings, to facilitate development.
 - c) Borough agrees that there will be no off-site impact fees relating to any of the above.
 - d) The Borough shall amend the Redevelopment Plan to permit the developments contemplated on the East Side, West Side and Lake Drive as contemplated in this term sheet. The Borough will also enter into a redeveloper's agreements and PILOT/Financial Agreements with Power Station for East Side, West Side and Lake Drive developments as contemplated in this term sheet.

S E T T L E M E N T T E R M S H E E T

Power Station v. Borough of Allenhurst, et al.

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- e) Borough will permit modification of the Construction Moratorium to permit work during the Moratorium period (July 1 through Labor Day) between the hours of 8 am and 5 pm, Monday through Friday, with no work on Saturdays, Sundays or Holidays. All deliveries must be scheduled during the aforesaid work hours.
- f) Borough to provide an access agreement to Developer to permit Phase I environmental review of Lake Drive. Developer to obtain Phase I review at Developer's expense.
- g) The parties expect the following to occur after the Borough approves the Settlement Agreement and it is signed by both parties:
 - i. The Settlement Agreement will be presented to the Court for a Fairness Hearing. Prior to the Fairness Hearing, the parties will work to draft and finalize the Redevelopment Plan Amendment and Redevelopers Agreement.
 - ii. After the Settlement Agreement is approved by the Court, the Borough will introduce the Redevelopment Plan amendment at its next Commissioner's Meeting. It will then be referred to the Planning Board for consistency review and comment. The Planning Board shall not provide any comments that are outside of, different than or inconsistent with terms of the Settlement Agreement. The Borough will then adopt the Redevelopment Plan at a second reading.
 - iii. Following adoption of the Redevelopment Plan, the Power Station will then apply to the Planning Board for site plan approval for the East, West and Lake Drive sides, which will be permitted to be developed in development Phases (Phase 1, Phase 2 and Phase 3). Notwithstanding the East, West and Lake Drive sides being permitted to be developed in Phases, for COAH phasing purposes it will be viewed as a single development (as discussed in Section 3(i) herein).

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AFFORDABLE HOUSING SETTLEMENT AGREEMENT

Power Station v. Borough of Allenhurst, et al.

Docket No.: MON-L-2551-21



ALLENHURST REDEVELOPMENT
EAST SIDE TOWNHOMES
ALLENHURST, NEW JERSEY

ARTISTIC CONCEPTUAL RENDERING ACTUAL
COLORS AND CONDITIONS MAY VARY





ARTISTIC CONCEPTUAL RENDERING ACTUAL
COLORS AND CONDITIONS MAY VARY

ALLENHURST REDEVELOPMENT WEST SIDE APARTMENT BUILDING ALLENHURST, NEW JERSEY



ARTISTIC CONCEPTUAL RENDERING ACTUAL
COLORS AND CONDITIONS MAY VARY

ALLENHURST REDEVELOPMENT

STREETSCAPE RENDERING

ALLENHURST, NEW JERSEY



CERTIFICATE OF AUTHORIZATION 304802006

MORGAN
 engineering & surveying
 P.O. BOX 15132
 TOWNSHIP OF B.L. 08704
 TEL: 732 278 8400
 FAX: 732 278 8044
 www.morganengineering.com

**LAKE DRIVE TOWNHOME
 CONCEPT 3**

BOROUGH OF ALLENHURST
 COUNTY OF MONMOUTH NEW JERSEY

DATE	SCALE	DATE	DATE	DATE	DATE
04/04/22	1/4"=10'	04/04/22	04/04/22	04/04/22	04/04/22

1/2024, 4/2024, 8/2024, 12/2024, 2/2025, 4/2025, 6/2025, 8/2025, 10/2025, 12/2025, 2/2026, 4/2026, 6/2026, 8/2026, 10/2026, 12/2026, 2/2027, 4/2027, 6/2027, 8/2027, 10/2027, 12/2027, 2/2028, 4/2028, 6/2028, 8/2028, 10/2028, 12/2028, 2/2029, 4/2029, 6/2029, 8/2029, 10/2029, 12/2029, 2/2030, 4/2030, 6/2030, 8/2030, 10/2030, 12/2030, 2/2031, 4/2031, 6/2031, 8/2031, 10/2031, 12/2031, 2/2032, 4/2032, 6/2032, 8/2032, 10/2032, 12/2032, 2/2033, 4/2033, 6/2033, 8/2033, 10/2033, 12/2033, 2/2034, 4/2034, 6/2034, 8/2034, 10/2034, 12/2034, 2/2035, 4/2035, 6/2035, 8/2035, 10/2035, 12/2035, 2/2036, 4/2036, 6/2036, 8/2036, 10/2036, 12/2036, 2/2037, 4/2037, 6/2037, 8/2037, 10/2037, 12/2037, 2/2038, 4/2038, 6/2038, 8/2038, 10/2038, 12/2038, 2/2039, 4/2039, 6/2039, 8/2039, 10/2039, 12/2039, 2/2040, 4/2040, 6/2040, 8/2040, 10/2040, 12/2040, 2/2041, 4/2041, 6/2041, 8/2041, 10/2041, 12/2041, 2/2042, 4/2042, 6/2042, 8/2042, 10/2042, 12/2042, 2/2043, 4/2043, 6/2043, 8/2043, 10/2043, 12/2043, 2/2044, 4/2044, 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POWER STATION AT ALLENHURST, LLC

Plaintiffs,

v.

BOROUGH OF ALLENHURST, BOARD OF
COMMISSIONERS OF BOROUGH OF
ALLENHURST; AND ALLENHURST
PLANNING BOARD

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
MONMOUTH COUNTY

DOCKET NO. MON-L-2551-21

Civil Action
(Mount Laurel)

**ORDER OF FAIRNESS AND
PRELIMINARY COMPLIANCE**

This matter having been opened to the court through the filing a *Mt. Laurel* exclusionary zoning suit on behalf of Power Station at Allenhurst, LLC (the "Developer") seeking a builder's remedy in regard to properties owned by the Developer identified as Block 18, Lot 1 on the tax map of the Borough of Allenhurst located at 315 Hume Street, (the "East Side Property"), and Block 21, Lots 5 and 6 (which includes former Lot 7), located at and 500-523 Main Street ("West Side Property"),

Allenhurst, New Jersey, respectively (collectively referred to as the “Developer Properties”) represented by Day Pitney LLP (Craig M. Gianetti, Esq. appearing) against the Borough of Allenhurst, Board of Commissioners of the Borough Allenhurst represented by Birdsall and Laughlin, LLC (David A. Laughlin, Esq. appearing) and Pashman Stein Walder Hayden, PC (Andrew Bayer, Esq. appearing), and the Borough of Allenhurst Planning Board represented by Reardon Anderson, LLC (Erik Anderson, Esq. appearing) (the Borough of Allenhurst, the Board of Commissioners of the Borough of Allenhurst and the Allenhurst Planning Board shall be collectively referred to as “Allenhurst” or the “Borough”); and Fair Share Housing Center having intervened in the matter by Court Order dated November 5, 2021 (Rachel Lokken, Esq. appearing); and where on December 8, 2021 this Court entered an Order determining that the Borough had failed to meet its constitutional affordable housing obligation; and the Court having appointed Mary Beth Lonergan, P.P. A.I.C.P, as the Special Court Master; and the Borough and Developer having entered into an Affordable Housing Settlement Agreement dated February 23, 2023 (“Affordable Housing Settlement Agreement”) resolving the Mt. Laurel exclusionary lawsuit with the Developer which allows for the development of the East Side Property with twenty-eight (28) market rate townhomes, the West Side Property with sixty-two (62) market rate condominium units as depicted on the concept plans attached as Exhibit B to the Power Station Settlement Agreement with the Borough dedicating a described portion of its Lake Drive Property (portion of Block 31, Lot 3) to the Developer which shall be developed with deed restricted affordable housing upon which the Developer is obligated to construct twenty three (23) rental residential units for low and moderate income household (the proposed development on the East Side Property, West Side Property and affordable family rental housing units to be constructed and located on the Lake Drive property shall be collectively referred to as the “Power Station Inclusionary Development”); and the Borough and Fair Share Housing Center having entered into a Settlement Agreement dated

May 10, 2023 resolving the Borough's cumulative constitutional obligation to provide for its fair share of affordable housing including its Present Need, Prior Round obligation and Third Round gap and prospective need obligation (the "Fair Share Settlement Agreement"); and the Court having scheduled a Fairness and Preliminary Compliance Hearing (the "Fairness Hearing") on July 6, 2023 to consider approval of both the Power Station Settlement Agreement and the Fair Share Settlement Agreement (collectively referred to as the "Settlement Agreements") to determine whether the Settlement Agreements are fair, reasonable and adequately protect the interest of very low, low and moderate income households in accordance with East/West Venture v. Boro. of Fort Lee, 286 N.J. Super. 311 (App. Div. 1996); and the Borough having provided proper public and actual notice of the Fairness Hearing; and no objections to the Settlement Agreements having been filed with the Court; and the Court Special Master, Mary Beth Lonergan, P.P., AICP having issued a report to the Court dated June 29, 2023 ("Court Master Report") recommending Court approval of the Settlement Agreements subject to certain terms and conditions; and the Court having conducted a Fairness Hearing on July 6, 2023 and having considered the testimony of Jennifer Beahm, P.P., AICP on behalf of the Borough; and Special Master Mary Beth Lonergan, P.P. AICP on behalf of the Court; and the Court having admitted into evidence the (1) Settlement Agreement between the Borough and Fair Share Housing Center dated May 10, 2023 as D-1; (2) Affordable Housing Settlement Agreement by and between Allenhurst and the Developer dated February 23, 2023 as D-2; (3) Vacant Land Mapping aerial prepared by Leon S. Avakian, Inc. as D-3; (4) Power Station Properties aerial prepared by Leon S. Avakian, Inc. as D-4; (5) Main Steet Commercial District Overlay Inclusionary Zoning aerial prepared by Leon S. Avian, Inc. as D-5; (6) Main Street Commercial District Overlay Inclusionary Zoning aerial with Borough's Professional Planner's markings as D-5A; (7) Certification of Publication of Service prepared by David A. Laughlin, Esq. dated May 19, 2023 as D-6; (8)

Certification of Service prepared by David A. Laughlin, Esq. dated July 5, 2023 as D-7; and (9) Special Master's Report prepared by Mary Beth Lonergan, PP AICP dated June 29, 2023 as C-1; and the Court having considered the testimony and the evidence submitted, the arguments of counsel; and for the reasons set forth on the record and for good cause having been shown;

IT IS on this 31st day of July, 2023, ~~2023~~

ORDERED:

1. The Affordable Housing Settlement Agreement by and between Power Station at Allenhurst, LLC and the Borough of Allenhurst, Board of Commissioners of the Borough of Allenhurst and the Borough of Allenhurst Planning Board dated February 23, 2023 is fair, reasonable, and adequately protects the interests of very low, low, and moderate-income households, and the Court hereby approves the Affordable Housing Settlement Agreement.
2. The Settlement Agreement between Fair Share Housing Center and the Borough of Allenhurst and Board of Commissioners of the Borough of Allenhurst dated May 10, 2023 is fair, reasonable, and adequately protects the interests of very low, low, and moderate-income households, and the Court hereby approves the Fair Share Settlement Agreement.
3. The Court finds that the inclusionary project of 28 townhomes on the East Side Property, sixty-two (62) market rate condominium units on the West Side Property and twenty three (23) rental residential units dedicated for low and moderate income households on the Lake Drive Property as set forth in the Affordable Housing Settlement Agreement between the Borough and the Developer is facially constitutional compliant and provides a fair and reasonable opportunity for the Borough

to partially meet its obligation under Mt. Laurel IV subject to the Borough's compliance with the conditions set forth herein and the Settlement Agreements.

4. The Court preliminarily finds that the Borough's proposed affordable housing strategy as set forth in the Fair Share Settlement Agreement is facially constitutional compliant and provides a fair and reasonable opportunity for the Borough to meet its cumulative affordable housing obligation under Mt. Laurel IV subject to the Borough's compliance with the conditions set forth herein and in the Court Master Report.
5. In conformance with the Fair Share Settlement Agreement, the Borough's Rehabilitation Obligation is 4 units; the Borough Prior Round (1987-1999) Obligation is 50 units; and the Borough's Third Round (1999-2025) Gap and Prospective Need obligation is 44 units. The Court hereby preliminarily approves the Borough's Vacant Land Inventory as established in the Settlement Agreement with Fair Share Housing Center and finds that the Borough's Realistic Development Potential for the Prior Round and Third Round is twenty-seven (27) units with a remaining unmet need of 67 units. The Borough will address its 27-unit RDP with thirty (30) total credits and rental bonuses generated by the Power Station Inclusionary Development including 23 credits for 23 family affordable rental units and the maximum of seven (7) rental bonuses provided by the firm commitment for family affordable rentals per the Affordable Housing Settlement Agreement between the Borough and Developer. The Borough may apply three (3) surplus credits from the thirty (30) total credits and rental bonuses generated by the Power Station Inclusionary Development towards its unmet need obligation.
6. The Borough shall address its Rehabilitation Obligation of 4 units through participating in the Monmouth County Housing Improvement Program administered by the

Monmouth County Development Block Grant program.

7. The Borough shall address its combined Prior Round/Third Round RDP of 27 units through the adoption of an Amended Redevelopment Plan in accordance with the Affordable Housing Settlement Agreement between Allenhurst and Developer. The Borough shall rezone Block 18, Lot 1 located at 315 Hume Street (“East Side Property”), Block 21, Lots 5 and 6 located at 500-523 Main Street (“West Side Property”) owned by Developer, and a portion of the municipally-owned Block 31, Lot 3, otherwise known as the Lake Drive Property to create a realistic opportunity for the construction of twenty-three (23) family affordable rental units on the Lake Drive Property based upon a twenty percent (20%) set-aside of the required affordable housing obligation associated with the 113-unit Power Station Inclusionary Development.
8. The Borough shall address its remaining combined Prior Round and Third Round Gap and Prospective Need unmet need balance of 64 units (67 unmet need – 3 RDP surplus credits) as follows:
 - a. Main Street Commercial District Overlay Inclusionary Zoning: Allenhurst shall adopt overlay inclusionary zoning over the Southern Gateway District, known as Block 21, Lots 8, 9, 10, 11, 12, 13, Block 19, Lots 1 and 2, and also along the Main Street commercial corridor including all remaining parcels in the C-1 Commercial zone, C-2 Main Street Redevelopment Area (with the exception of the Power Station Inclusionary Development parcels including the East Side Property at Block 18, Lot 1 and the West Side Property at Block 21, Lots 5 and 6 which includes former Lot 7) and all parcels in the C-3 Commercial zone, the B-1 Business Office zone, and the B-2 Business Office zone to create a realistic opportunity for the development of affordable housing in accordance with Exhibit P-5A. This order modifies the reference in the Fair Share Settlement Agreement of the inclusion of Block 21, Lot 19 (does not exist) in the Southern Gateway District to instead correctly read Block 21, Lot 10 as listed above. The overlay inclusionary zone along Main Street shall permit multifamily housing up to two stories over ground floor commercial, as well as three-story multifamily apartments in certain locations not fronting Main Street, such as at Block 19, Lot 2, all with a mandatory twenty percent (20%) set-aside for

affordable housing. The bulk standards in this overlay shall permit shared parking ratios and otherwise accommodate a maximum density of fifteen (15) units per acre.

- b. Mandatory Borough-Wide Affordable Housing Set-aside Ordinance: Allenhurst shall adopt an ordinance requiring a mandatory affordable housing set aside for all new multifamily residential development of five (5) units or more at a density of six (6) or more units per acre, created through: a municipal rezoning permitting multifamily residential housing; use variance; a density variance increasing the permissible density at the site; or a redevelopment plan or a rehabilitation plan. The set aside for affordable housing shall be twenty percent (20%).
- c. Affordable Housing Development Fee Ordinance: Allenhurst shall implement an approved Development Fee Ordinance for all new non-residential development and new non-inclusionary residential development. The Ordinance shall provide for the Borough's collection of residential fees for all residential expansions that increase said residential square footage by the creation of a new bedroom.

9. The Borough shall take all necessary action to prepare, adopt and endorse a Housing Element and Fair Share Plan within one hundred twenty days (120) days of the date of this Order. The Borough shall take all necessary action to rezone the East Side Property, West Side Property and Lake Drive property via a redevelopment plan under the auspices of the Local Redevelopment and Housing Law within 90 days of entry of this Order pursuant to the Affordable Housing Settlement Agreement. The Borough shall also adopt the Main Street Commercial District Overlay Inclusionary Zoning, Mandatory Borough-Wide Affordable Housing Set-aside Ordinance, Development Fee Ordinance, Spending Plan, Affirmative Marketing Plan and will also satisfy the other conditions listed in the Court Master Report within one hundred twenty days (120) days of the date of this Order. The Borough shall submit the adopted and endorsed Housing Element and Fair Share Plan along with all other documentation set forth in both Settlement Agreements and the Court Master Report to the Court Master and interested parties

for final review and recommendation by the Court Master, and for consideration and approval by the Court.

10. The parties shall abide by all terms and conditions in the Settlement Agreements if those terms are referenced as if fully set forth at length herein.
11. The Court will conduct a Final Compliance Hearing for the Court to consider approval of the Borough's Housing Element and Fair Share Plan and its compliance with the terms and conditions of the Settlement Agreements and the Special Master's Report for the purposes of issuing a Judgment of Compliance and Repose on January 12, 2024 at 9:00 a.m. which will last through July 8, 2025. After such Final Compliance Hearing, a Final Judgment of Compliance and Repose may be issued without further hearing should the Court Master file a compliance report that all conditions of the Settlement Agreements and the Special Master's Fairness and subsequent Compliance Report have been met.
12. The Court hereby approves the AHPNJ Regional Income Limits and the process for calculating increases as set forth in paragraph 14 of the Fair Share Settlement Agreement.
13. The Borough's temporary immunity from Mt. Laurel lawsuits shall continue until one month after the date the final Compliance Hearing is held.
14. Counsel for the Borough shall provide copies of this Order to all counsel of record, the Court Master, and the Service List within seven (7) days of the date hereof.

1st Linda Grasso Jones, J.S.C.
Hon. Linda Grasso Jones, J.S.C.