

**REDEVELOPMENT AGREEMENT**

**By and Between**

**THE BOROUGH OF ALLENHURST**

**as Redevelopment Entity**

**and**

**POWER STATION AT ALLENHURST, LLC**

**as Redeveloper**

**Dated: [●], 2024**

**THIS REDEVELOPMENT AGREEMENT** (this “*Agreement*”) is made this [●] day of [●], 2024 (the “*Effective Date*”) by and between:

**THE BOROUGH OF ALLENHURST**, a body corporate and politic of the State of New Jersey (the “*Borough*”), with an address at 125 Corlies Avenue, Allenhurst, New Jersey 07711, in its capacity as a “redevelopment entity” pursuant to the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1, et seq. (the “*LRHL*”);

**AND**

**POWER STATION AT ALLENHURST, LLC**, a New Jersey limited liability company, with an address at 1000 Sanger Avenue, Oceanport, New Jersey 07757 (together with permitted successors or assigns as hereinafter provided, the “*Redeveloper*,” and together with the Borough, the “*Parties*”).

**WITNESSETH**

**WHEREAS**, on November 15, 2004, in accordance with the provisions of the LRHL, the Board of Commissioners of the Borough (the “*Commissioners*”) designated certain property fronting on Main Street or Deal Lake, consisting of Block 18, Lot 1, Block 19, Lots 1 and 2, Block 21, Lots 2, 3, 5, 6, 8, 9, 10, 11, 12 and 13, and Block 31, Lot 3 on the official tax maps of the Borough, as an area in need of redevelopment (as further described in the Redevelopment Plan defined below, the “*Redevelopment Area*”); and

**WHEREAS**, in accordance with the provisions of the LRHL, the Commissioners enacted the “Main Street Redevelopment Plan” dated October 2006 (and as amended November 2007) for the Redevelopment Area; and

**WHEREAS**, on July 22, 2021, Redeveloper, filed a Mount Laurel exclusionary zoning suit with the Superior Court of New Jersey (the “*Court*”), captioned 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 and Mount Laurel jurisprudence (the “*Builder’s Remedy Action*”); and

**WHEREAS**, the parties to the Builder’s Remedy Action entered into a Settlement Agreement dated February 23, 2023, attached hereto as Exhibit B-1 (the “*Settlement Agreement*”), pursuant to which the Parties agreed to, among other things, enter into good faith negotiations for the execution of a redevelopment agreement consistent with the hereinafter defined Redevelopment Plan; and

**WHEREAS**, after a duly noticed Fairness Hearing held on July 6, 2023 before the Honorable Linda Grasso Jones, J.S.C., the Court approved the Settlement Agreement as reflected in a Court Order dated July 31, 2023 and attached hereto as Exhibit B-2; and

**WHEREAS**, on February 13, 2024, in accordance with the provisions of the LRHL and in furtherance of the terms of the Settlement Agreement, the Commissioners adopted Ordinance #2024-05, a copy of which is attached as Exhibit A (the “*Redevelopment Plan Ordinance*”), enacting the “Main Street Redevelopment Plan 2023” (as the same may be amended and supplemented from time to time, the “*Redevelopment Plan*”), a copy of which is on file in the office of the Borough Clerk and available for public inspection; and

**WHEREAS**, Redeveloper is the fee simple record title owner of that certain real property located within the Redevelopment Area formally identified on the official tax maps of the Borough as Block 18, Lot 1 (the “*East Side*”) and Block 21, Lots 5 and 6 (which includes former Lot 7) (the “*West Side*”) and commonly known as 315 Hume Street and 500-523 Main Street, and the Borough is fee simple record title owner of that certain property located within the Redevelopment Area formally identified on the office tax maps of the Borough as Block 31, Lot 3 (the “*Lake Drive Property*”) and commonly known as Lake Drive; and

**WHEREAS**, the Borough will, at its sole cost, subdivide the Lake Drive Property into four (4) lots (the “*Lake Drive Subdivision*”), including three (3) lots that will be retained by the Borough (the “*Borough Retained Lots*”) and one (1) lot that the Borough will contribute and dedicate in fee simple interest to the Redeveloper (“*Lake Drive*” and, together with the East Side and the West Side, the “*Property*”), which Lake Drive shall be deed restricted for the development of up to 23 affordable housing units, and no less than 20 affordable housing units in accordance with the requirements of the Settlement Agreement, and upon which Redeveloper shall construct the hereinafter defined Lake Drive Project; and

**WHEREAS**, Redeveloper has an easement right to use a portion of that certain real property located within the Redevelopment Area formerly identified on the official tax maps of the Borough as Block 21, Lot 4 (now merged with Lot 3), which is currently owned by JCP&L, for parking; and

**WHEREAS**, Redeveloper proposes to (i) Remediate (as defined herein) the Property pursuant to the terms hereof, (ii) raze the structures on the West Side, and together with new construction, to implement 62 residential market-rate for sale or rental units, as more specifically described in Section 4.1(a) herein, together with structured and surface parking, ground floor retail and amenity space (the “*West Side Project*”), (iii) raze the structures on the East Side and improve the East Side with 28 market-rate for-sale townhouse units, related surface parking, and other on-site and off-site improvements, as more specifically described in Section 4.1(a) herein (the “*East Side Project*”), and (iv) raze structures on Lake Drive (excluding removal of existing cellular equipment atop the existing water tower) and improve Lake Drive with up to 23 affordable housing units, and no less than 20 affordable housing units in accordance with the requirements of the Settlement Agreement, related surface parking, and other on-site and off-site improvements, as more specifically described in Section 4.1(a) herein (the “*Lake Drive Project*” and, together with the West Side Project and East Side Project, the “*Project*”); and

**WHEREAS**, Redeveloper will design, finance, construct, and implement the Project; and

**WHEREAS**, the Redeveloper hereby represents to the Borough that Redeveloper possesses the proper qualifications and experience to implement and complete the Project in

accordance with the Redevelopment Plan, the LRHL, this Agreement and all other applicable laws, ordinances, and regulations; and

**WHEREAS**, in order to effectuate the Redevelopment Plan and the Project, and consistent with the terms of the Settlement Agreement, the Commissioners have determined to enter into this Agreement with Redeveloper, which Agreement designates Redeveloper as the “redeveloper” of the Project as that term is defined in the LRHL and which specifies the respective rights and responsibilities of the Borough and Redeveloper with respect to the Project; and

**WHEREAS**, on [March 12], 2024 the Commissioners adopted Resolution No. 2024-[●], a copy of which is attached hereto as Exhibit C, designating the Redeveloper as the “redeveloper” of the Property in accordance with the LRHL for the purpose of implementing the Project and authorizing the execution of this Agreement; and

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

## **ARTICLE 1 DEFINITIONS**

1.1 Definitions. As used in this Agreement the following terms shall have the meanings ascribed to such terms below. Terms listed below in the singular form shall include the plural and words listed in the plural shall include the singular. Whenever the context may require, any pronoun that is used in this Agreement shall include the corresponding masculine, feminine, and neuter. All references to Sections, Articles or Exhibits shall refer to Sections, Articles or Exhibits in this Agreement unless otherwise specified.

(a) The following terms shall have the meanings ascribed to them in the Preamble and Recitals to this Agreement:

**Agreement**  
**Borough**  
**Borough Retained Lots**  
**Builder’s Remedy Action**  
**Commissioners**  
**Conditional Redeveloper’s Agreement**  
**East Side**  
**East Side Project**  
**Effective Date**  
**Lake Drive**  
**Lake Drive Project**  
**Lake Drive Property**  
**Lake Drive Subdivision**  
**LRHL**  
**Parties**  
**Project**  
**Property**

**Redeveloper  
Redevelopment Area  
Redevelopment Plan  
Redevelopment Plan Ordinance  
Settlement Agreement  
West Side  
West Side Project**

(b) The following terms shall have the definitions ascribed to them herein:

**“2022 Phase I Report”** is defined in Section 4.8(b).

**“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.

**“AOCs”** is defined in Section 4.8(b).

**“Appeal Period”** means the period of time specified by statute or court rule within which an appeal may be taken by any party from the grant of any Governmental Approval.

**“Applicable Laws”** means all federal, State, and local laws, ordinances, approvals, rules, regulations, statutes, permits, resolutions, judgments, orders, decrees, directives, interpretations, standards, licenses and other similar requirements applicable to this Agreement, the Project and/or Property, including but not limited to the following: Environmental Laws (defined below); the LRHL; the Redevelopment Area Bond Financing Law, N.J.S.A. 40A:12A-64, et. seq. (the “*RAB Law*”); the Fair Housing Act, N.J.S.A. 52:27D-301 et seq.; the New Jersey Housing and Mortgage Finance Agency Law, N.J.S.A. 55:14K-1 et seq.; the MLUL; and the Municipal Code of the Borough, as each may be amended and supplemented; the zoning ordinances of the Borough, as and to the extent applicable pursuant to the terms of the Redevelopment Plan, relevant construction codes including construction codes governing access for people with disabilities; and all other applicable federal, State or local zoning, land use, environmental, health and safety laws, ordinances, rules and regulations, and applicable federal and State labor standards or regulations, if any.

**“Application”** means any application for Governmental Approval submitted by or on behalf of Redeveloper or a Permitted Transferee, including all plans, drawings, documentation and presentations necessary and appropriate for the purpose of obtaining any and all Governmental Approvals required to implement and complete the Project or any Phase.

**“ATA Lawsuit”** is defined in Section 2.4(e).

**“Building Permit”** means a building permit issued by or on behalf of the Borough for construction of the Project, excluding a demolition permit but including a footings and foundation permit.

**“Bulk Sales Act”** shall mean the New Jersey Sales and Use Tax Act, *N.J.S.A. 54:32B-1 et seq.*

**“Business Days”** means all days except Saturdays, Sundays and the days observed as public holidays by the Borough.

**“Certificate of Completion”** means written acknowledgement by the Borough in recordable form that Redeveloper has Completed Construction of the Project or a Phase of the Project in accordance with the requirement of this Agreement.

**“Certificate of Occupancy”** means a temporary or permanent certificate of occupancy as defined in the applicable ordinances of the Borough and the applicable provisions of the Uniform Construction Code.

**“Closing Date”** shall mean the date on which the Borough conveys fee title to the Redeveloper of Lake Drive.

**“Commencement,” “Commence Construction,” “Commencement of Construction,” or “Commencement Date”** means the undertaking of any actual physical construction of any portion of the Project, including site preparation, demolition, activities associated with Remediation, construction of Improvements, or construction or upgrading of infrastructure, but excluding demolition or activities associated with Remediation of the Property.

**“Completion,” “Completion of Construction,” “Complete Construction,” or “Completion Date”** means the completion of construction of the Project sufficient for issuance of a Certificate of Occupancy and satisfaction of all other obligations (including, but not limited to, any financial obligations) in accordance with the Redevelopment Plan and this Agreement.

**“Completion Notice”** means written notification to the Borough of Completion of the Project and request by Redeveloper for the issuance by the Borough of a Certificate of Completion.

**“Construction Schedule”** means the construction schedule and timeline for Completion of the Project set forth in Article 4.1.

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

**“County”** means Monmouth County, New Jersey.

**“Declaration of Covenants and Restrictions” or “Declaration of Restrictions”** means a written instrument to be executed by Redeveloper and recorded in the Monmouth County Clerk’s Office, substantially in the form annexed hereto as Exhibit D, intended to encumber the Property and to run with the land until a Certificate of Completion has been issued for the Project, except as otherwise expressly provided therein, setting forth certain statutory and contractual undertakings of and restrictions applicable to Redeveloper and its successors and assigns in connection with the ownership, redevelopment or rehabilitation of the Project, all as more particularly described in Article 3.

**“Deed”** shall mean a properly executed Bargain and Sale Deed with Covenant as to Grantor’s Acts, which typical language to this effect shall be modified to include that such covenants are only as to judgments or similar monetary liens against the Borough, and not as to any other encumbrances, restrictions, covenants, easements, and rights of any nature, as Lake Drive is being sold in an “AS IS WHERE IS WITH ALL FAULTS” condition as further detailed in Section 4.10 and Section 4.10(c)(3).

**“Development Period”** means the period commencing upon the Effective Date up to the day that the Certificate of Completion is issued.

**“Due Diligence Period”** is defined in Section 4.10(d).

**“East Side Phase”** is defined in Section 4.4(b).

**“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 environmental contamination, 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, materials or wastes, 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.; and the rules and regulations promulgated thereunder, as now in force or as may hereinafter be modified or amended.

**“Escrow Account”** is defined in Section 4.7(b)(i).

**“Escrow Deposit”** is defined in Section 4.7(b)(i).

**“Event of Default”** is defined in Section 5.1.

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

**“Existing Members”** means the Persons owning membership interests in Redeveloper as of the Effective Date, which Persons are set forth in Exhibit E annexed hereto.

**“Financial Agreement”** The Financial Agreement to be executed by and between the Borough and the Redeveloper.

**“Force Majeure Event”** means causes beyond the reasonable control and not due to the fault or negligence of the Party seeking to excuse delay or failure of performance of an obligation hereunder by reason thereof, including, but not limited to, an appeal of any Governmental Approvals by any third-party; new declarations of public emergency, public health emergency or

state of emergency; acts of nature (as to weather-related events, limited to severe and unusual events or natural occurrences such as hurricanes, tornadoes, earthquakes, and floods not reasonably foreseeable at the time the Construction Schedule is agreed to); acts of the public enemy; acts of war; fire; new epidemics or pandemics; new quarantine restrictions; blackouts; power failures or energy shortages; governmental embargoes; strikes or similar labor action by equipment or material suppliers or transporters; litigation filed by a third-party (excluding a Permitted Transferee) related to the substance of this Agreement or the Project; or unavailability of necessary building materials (provided that Redeveloper has no commercially reasonable alternatives to avoid the impact thereof on the progress of the Project). In all cases, the event must have an actual effect on the Party's ability to perform in order for it to be a "Force Majeure Event."

**"Foreclosure"** is defined in Section 6.3(b).

**"Governmental Approvals"** means all final and unappealable local, State, and federal governmental approvals necessary for implementation of the Project in accordance with the terms of this Agreement and the Redevelopment Plan and satisfaction of all conditions related thereto, including without limitation preliminary and final site plan approval; preliminary and final subdivision approval, if and as applicable; environmental permits, including but not limited to wetlands and storm water drainage permits; permits, consents, permissions or approvals relating to historic preservation matters; utilities-related permits, including permits related to water supply and sewer service; and all other necessary permits, licenses, consents, permissions or approvals from or required by governmental agencies, but not including Building Permits. Any litigation and/or appeal of Governmental Approvals shall toll the running of time periods related to Governmental Approvals herein.

**"Institution"** means any savings and loan association, savings bank, commercial bank or trust company (whether acting individually or in any fiduciary capacity), an insurance company, a real estate investment trust, an educational institution or a state, municipal or similar public employee's welfare, pension or retirement system.

**"Improvements"** means all improvements constructed as part of the Project.

**"Lake Drive Phase"** is defined in Section 4.4(b).

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

**"Moratorium Period"** is defined in Section 4.4(c).

**"Mortgage"** means any security interest, evidenced by a written instrument, encumbering the Project, the Property, or any portion thereof, or interest therein that secures the performance of obligations or the payment of debt, including, without limitation, any grant of, pledge of, or security interest in, any collateral, or any grant, directly or indirectly, of any deed of trust, mortgage or similar instrument or any other security whatsoever.

**"Mortgagee"** means the holder of any Mortgage and any Affiliate(s) of such holder, including entities affiliated with such holder that own or exercise control over real property.



**“New Permitted Title Objection(s)”** is defined in Section 4.10(c)(vii).

**“NJDEP”** means the New Jersey Department of Environmental Protection, and any successors in interest.

**“Notice”** is defined in Section 7.8.

**“Permitted Transferee”** means the person or entity that receives the title or interest as a result of a Permitted Transfer (as defined herein).

**“Permitted Transfers”** is defined in Section 3.5(c).

**“Performance Guarantee”** is defined in Section 4.7(d)(i).

**“Permitted Title Objection(s)”** is defined in Section 4.10(c)(iii).

**“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 any phase of Redeveloper’s Project, as may be defined or delineated by Redeveloper’s approved Phasing Plan.

**“Phasing Plan”** is defined in Section 4.4(b).

**“PILOT”** is defined in Section 4.9.

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

**“Purchase Price”** is defined in Section 4.10(a).

**“RECs”** is defined in Section 4.8(b).

**“Redeveloper’s Title Commitment”** is defined in Section 4.10(c)(iv).

**“Remediate”** or **“Remediation”** means the performance and completion of all investigations and cleanup, and any and all other activities necessary or required for the cleanup or containment of hazardous substances, known or unknown, on, under, or migrating to or from the Property, in accordance with Applicable Law, Environmental Laws, and Governmental Approvals.

**“RMS”** is defined in Section 4.8(b).

**“ROFO”** is defined in Section 3.5(a).

**“State”** means the State of New Jersey.

**“Supplemental Phase I”** is defined in Section 4.8(b).

“**Survey**” is defined in Section 4.10(c)(iv).

“**Title Company**” shall mean a title insurance company licensed to do business in the State of New Jersey selected by the Redeveloper.

“**Title Date**” is defined in Section 4.10(c)(iv).

“**Title Review Letter**” is defined in Section 4.10(c)(v).

“**Transfer**” means, prior to Completion of the Project, (i) a sale or conveyance of all or any portion of the Property or Project, or interest therein, by Redeveloper to any other Person; (ii) a sale, pledge, joint venture, equity investment, or any other act or transaction involving or resulting in a change in Control of Redeveloper as it exists on the date of this Agreement, or (iii) any assignment of this Agreement to any other Person.

“**West Side Phase**” is defined in Section 4.4(b).

(c) Interpretation and Construction. In this Agreement, unless the context otherwise requires:

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

(ii) 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.

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

(iv) Any headings preceding the texts of the several Articles and Sections of this Agreement, and any table of contents or marginal notes appended to copies hereof, shall be solely for convenience of reference and shall not constitute a part of this Agreement, nor shall they affect its meaning, construction or effect.

## **ARTICLE 2 REPRESENTATIONS AND WARRANTIES**

2.1 Designation as Redeveloper. The Borough hereby designates and appoints the Redeveloper as redeveloper of the Property for purposes of developing the Property with the Project. For so long as this Agreement and the designation hereunder remain in effect, Redeveloper shall have the exclusive right to redevelop the Property in accordance with the Redevelopment Plan, the Governmental Approvals, the LRHL, and all other Applicable Laws, and the terms and conditions of this Agreement.

2.2 Settlement Agreement Supersedes. This Agreement shall not supersede the Settlement Agreement and to the extent any terms of this Agreement conflicts with the Settlement Agreement, the terms of the Settlement Agreement shall control.

2.3 Term of Agreement. This Agreement shall commence on the Effective Date and shall terminate upon the issuance of the Certificate of Completion for the Project, or if the Project is undertaken in Phases, with respect to each Phase, upon the issuance of the Certificate of Completion for such Phase (unless sooner terminated in accordance with the terms hereof).

2.4 Representations and Warranties of the Borough. The Borough hereby makes the following representations and warranties:

(a) The Borough is a municipal corporation, duly organized and existing under the laws of the State, and as such, has the legal power, right and authority pursuant to the LRHL to enter into this Agreement and the instruments and documents referenced herein to which the Borough is a party, to consummate the transactions contemplated hereby, to take any steps or actions contemplated hereby, and to perform its obligations hereunder;

(b) The Borough has authorized the execution of this Agreement by resolution and has duly executed this Agreement;

(c) To the best of the Borough's knowledge, there are no writs, injunctions, orders or decrees of any court or governmental body that would be violated by the Borough entering into or performing its obligations under this Agreement;

(d) This Agreement has been duly executed by the Borough, and is valid and legally binding upon the Borough and enforceable in accordance with its terms on the basis of laws presently in effect, subject however, to the effect of, and to restrictions and limitations imposed by or resulting from, bankruptcy, insolvency, moratorium, reorganization or other similar laws affecting creditors' rights generally, and the execution and delivery thereof shall not, with due effect and the execution and delivery thereof shall not, with due notice or the passage of time, constitute a default under or violate the terms of any indenture, agreement, or other instrument to which the Borough is a party;

(e) The Borough represents that, to the best of its knowledge and belief, after diligent inquiry, and except for the matter captioned Allenhurst Taxpayers Association Inc. v. The Borough of Allenhurst; Board of Commissioners of the Borough of Allenhurst; Borough of Allenhurst Planning Board; and Power Station at Allenhurst, LLC, Docket No. MON-L-1000-23 (the "*ATA Lawsuit*"), there is no action, proceeding or investigation now pending, known or believed to exist which questions the validity of the Redevelopment Plan or this Agreement or any action or act taken or to be taken by the Borough pursuant to the Redevelopment Plan or this Agreement;

(f) The uses of the Property, as contemplated by this Agreement, are authorized by the LRHL, Applicable Laws, and the Redevelopment Plan; and

(g) The Borough shall use that portion of the Borough Retained Lots not used for the new monopole and cellular equipment for public and quasi-public uses as set forth

in the Redevelopment Plan. The Borough will not use such portion of the Borough Retained Lots in a manner or condition that presents an unreasonable risk of harm to the public safety, health, comfort and welfare of the public, including specifically the residents of Lake Drive.

2.5 Representations and Warranties of Redeveloper. Redeveloper hereby makes the following representations and warranties:

(a) Redeveloper has the legal capacity to enter into this Agreement and perform each of the undertakings set forth herein and in the Redevelopment Plan as of the date of this Agreement;

(b) Redeveloper is a duly organized and a validly existing legal entity under the laws of the State of New Jersey and all necessary consents have been duly adopted to authorize the execution and delivery of this Agreement and to authorize and direct the persons executing this Agreement to do so for and on Redeveloper's behalf.

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

(d) This Agreement has been duly executed by the Redeveloper, and is valid and legally binding upon the Redeveloper and enforceable in accordance with its terms on the basis of laws presently in effect, subject however, to the effect of, and to restrictions and limitations imposed by or resulting from, bankruptcy, insolvency, moratorium, reorganization or other similar laws affecting creditors' rights generally, and the execution and delivery thereof shall not, with due effect and the execution and delivery thereof shall not, with due notice or the passage of time, constitute a default under or violate the terms of any indenture, agreement, or other instrument to which the Redeveloper is a party

(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 Redeveloper or any officer or shareholder of Redeveloper;

(g) Redeveloper's execution and delivery of this Agreement and its performance hereunder will not constitute a violation of any operating, partnership and/or stockholder agreement of Redeveloper or of any agreement, mortgage, indenture, instrument or judgment, to which Redeveloper is a party;

(h) Subject to obtaining construction financing, Redeveloper is financially and technically capable of developing, designing, financing, constructing, operating, and maintaining the Project;

(i) To the best of Redeveloper's knowledge and belief, after diligent inquiry, and except for the ATA Lawsuit, there is no action, proceeding or investigation now pending, known or believed to exist which (i) questions the validity of this Agreement or any action or act taken or to be taken by Redeveloper pursuant to this Agreement; or (ii) is likely to result in a material adverse change in Redeveloper's property, assets, liabilities or condition which will materially and substantially impair its ability to perform pursuant to the terms of this Agreement;

(j) Redeveloper's execution and delivery of this Agreement and its performance hereunder will not constitute a violation of any agreement, mortgage, indenture, instrument or judgment, to which Redeveloper is a party;

(k) To the best of Redeveloper's knowledge and belief after diligent inquiry all information and statements included in any information submitted to the Borough and its agents, including but not limited to, Birdsall & Laughlin, LLC; Heyer & Gruel; McManimon, Scotland & Baumann, LLC; and NW Financial, LLC; are true and correct in all respects. 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 Agreement; and

(l) To the best of Redeveloper's knowledge and belief after diligent inquiry, Redeveloper is not delinquent with respect to any taxes, payments in lieu of tax, service charge, or similar obligations owed to the Borough for any property situated in the Borough.

(m) Redeveloper is a limited liability company and the disclosure of members is set forth in Exhibit E.

### **ARTICLE 3 COVENANTS AND RESTRICTIONS**

3.1 Covenants and Restrictions. The Redeveloper agrees to record the Declaration of Restrictions with the Monmouth County Clerk's Office immediately upon execution of this Agreement at the cost and expense of Redeveloper.

3.2 Description of Covenants. The following covenants and restrictions are imposed upon Redeveloper, its successors and assigns, and are intended to run with the land until a Certificate of Completion has been issued for the Project, except as otherwise provided. They shall be recorded substantially in the form of a Declaration of Covenants and Restrictions annexed hereto as Exhibit D.

(a) Redeveloper shall construct the Project on the Property in accordance with, and subject to the terms of, the Redevelopment Plan, this Agreement, the Settlement Agreement, and all Applicable Laws and Governmental Approvals;

(b) Except for Permitted Transfers which shall not require written consent of the Borough, and subject to the terms hereof, prior to the issuance of a Certificate of

Completion, Redeveloper shall not effect a Transfer without the written consent of the Borough, which shall not be unreasonably withheld, conditioned or delayed;

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

(d) Subject to and in accordance with the terms hereof, upon Completion of Construction, obtain a Certificate of Occupancy and all other Government Approvals required for the occupancy and uses of the Property; Redeveloper shall use the Property and/or Project only for the purposes contemplated by this Agreement and the Redevelopment Plan;

(e) Subject to and in accordance with the terms of this Agreement and the Settlement Agreement, Redeveloper shall cause the Project to be developed, financed, constructed, operated, and maintained at its sole cost and expense;

(f) Subject to and in accordance with the terms hereof, Redeveloper shall develop, finance, construct, operate, and maintain the Project consistent with Applicable Laws, Governmental Approvals, the Redevelopment Plan, the Settlement Agreement, and this Agreement including the obligation to use commercially reasonable efforts to meet all deadlines and timeframes set forth in this Agreement;

(g) Redeveloper will promptly pay any and all taxes, assessments, and service charges when owed with respect to the Property and any other property owned by Redeveloper situated in the Borough.

(h) Redeveloper shall expressly prohibit residential units in the West Side Project, whether such units are for-sale units or rental units, from being leased or subleased for a term less than 1 full year. If such units are for sale units, Redeveloper shall further include in the condominium association or other similar formation documents a provision expressly prohibiting unit owners from renting such units or permitting a sublease of such units for a term less than 1 full year.

3.3 Effect and Duration of Covenants. It is intended and agreed that the covenants and restrictions set forth in Section 3.2 shall be covenants running with the land. All covenants in Section 3.2, in any event, and without regard to technical classification or designation, legal or otherwise, and except only as otherwise specifically provided in this Agreement, shall be binding, to the fullest extent permitted by law and equity, for the benefit and in favor of, and enforceable by the Borough and its successors and assigns, and any successor in interest to the Property, the Project, or any part thereof, against Redeveloper, its successors and assigns and every successor in interest therein, and any party in possession or occupancy of the Property or any part thereof.

Notwithstanding the foregoing, the agreements and covenants set forth in Section 3.2 shall cease and terminate upon (1) termination of this Agreement prior to Commencement of Construction or (2) the issuance of a Certificate of Completion, provided, however, that the covenants in Section 3.2(c) shall remain in effect without limitation as to time.

3.4 Enforcement by Borough. In amplification, and not in restriction of the provisions of this Article 3, 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 Section 3.2 both for and in their own right but also for the purposes of protecting the interests of the community and other parties, public or private, in whose favor or for whose benefit such agreements and covenants shall run in favor of the Borough for the entire period during which such agreements and covenants 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 to or in favor of which such agreements and covenants relate.

3.5 Prohibition Against Transfers of Interests in Redeveloper.

(a) *General Restrictions as to Transfers; ROFO.* 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 Agreement except as expressly set forth herein. In order to assist in the effectuation of the purpose of this Article 3.5, Redeveloper agrees that during the Development Period, Redeveloper shall, at such time or times as the Borough may request, but no more than once per year and upon any change, 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, and in the event any other Parties have a beneficial interest in Redeveloper, their names and the extent of such interests. During the Development Period, consistent with N.J.S.A. 40A:12A-9, Redeveloper may not sell, lease, or otherwise convey the Property or the Project, or any part thereof, except in the case of a Permitted Transfer, without first obtaining the Borough's written consent, which consent will not be unreasonably withheld, conditioned, or delayed, provided, that, any application to the Borough for such written consent of such a transfer shall include documentation identifying the transferee's leadership team, the transferee's experience developing, constructing, owning and operating projects similar to the Project, and the transferee's financial capabilities to undertake and complete the Project, including evidence of transferee's ability to secure financing from one or more lenders in an amount sufficient to finance the Project, together with any other information reasonably requested by the Borough to reasonably demonstrate the proposed transferee's leadership, financial wherewithal, credentials, and qualifications to undertake the Project and assume the obligations imposed upon the Redeveloper in this

Agreement. Recognizing that the Borough has a Right of First Offer on the West Side Property pursuant to the terms of the Settlement Agreement (“*ROFO*”), should Redeveloper seek Borough consent to transfer any portion of the West Side Property after the Borough issues an Offer Notice pursuant to the *ROFO* or the East Side Property and Redeveloper alleges that the Borough has unreasonably withheld consent requiring Redeveloper to file in Superior Court to obtain such consent to permit the transfer, then the prevailing party shall be entitled to attorney’s fees.

(b) *Transfer in Membership Interest in Redeveloper.* Redeveloper may not sell, assign or otherwise transfer any membership interest in Redeveloper, except in the case of a Permitted Transfer, without first obtaining the Borough’s written consent, which consent will not be unreasonably withheld, conditioned, or delayed, provided, that, any application to the Borough for consent of such a transfer shall include documentation identifying the transferee’s leadership team, the transferee’s experience developing, constructing, owning and operating projects similar to the Project, and the transferee’s financial capabilities to undertake and complete the Project, including evidence of transferee’s ability to secure financing from one or more lenders in an amount sufficient to finance the Project, together with any other information reasonably requested by the Borough to reasonably demonstrate the proposed transferee’s leadership, financial wherewithal, credentials, and qualifications to undertake the Project and assume the obligations imposed upon the Redeveloper in this Agreement. Should Redeveloper seek Borough consent to transfer any interest in the Redeveloper after the Borough issues an Offer Notice pursuant to the *ROFO* and Redeveloper alleges that the Borough has unreasonably withheld consent requiring Redeveloper to file in Superior Court to obtain such consent to permit the transfer, then the prevailing party shall be entitled to attorney’s fees.

(c) *Consent to Permitted Transfers.* The Borough hereby consents, without the necessity of further approvals, to the following Transfers (each, a “*Permitted Transfer*”):

(i) a Mortgage or related security granted by Redeveloper to a Mortgagee for the purpose of obtaining the financing necessary to enable Redeveloper to perform its obligations under this Agreement, including any Mortgage or Mortgages and other liens and encumbrances granted by Redeveloper to a Mortgagee for the purpose of financing costs associated with the acquisition, development, construction, or marketing of the Project and not any transaction or project unrelated to the Project; provided, however, that Redeveloper shall give the Borough at least thirty (30) days prior written notice of such Permitted Transfer, including a description of the nature of such Transfer, and the name(s) and address(es) of the Mortgagee;

(ii) A transfer of membership or partnership interests in Redeveloper, such as for the infusion of equity capital or otherwise for, and only for, the purpose of obtaining the financing necessary to enable Redeveloper to perform its obligations under this Agreement with respect to completing the Project and any other purpose authorized by this Agreement, so long as those Members of Redeveloper set forth on Exhibit D remain in Control of Redeveloper;

(iii) transfers of easements or dedications of portions of interests in the Property as may be required for utilities for the Project or otherwise as conditions of Governmental



Approvals, including but not limited to any sanitary sewer easement required by the Planning Board Approvals;

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

(v) A lease of a building, unit, pad, parcel, section, subsection, Phase, that is part of the Property to any tenant for purposes of furthering the redevelopment contemplated by this Agreement;

(vi) Transfers to third-party tenants, such as leases, sub-leases, or ground leases;

(vii) Transfers to third-party purchasers (in the case of townhome and condominium units);

(viii) Transfers of any interests of less than 50% in the Redeveloper or transfers of any interests for estate planning purposes or pursuant to any testamentary document or laws intestate provided that members of those holding beneficial interests in the Redeveloper or members of the same family or any entity controlled by those holding beneficial interests in the Redeveloper or members of the same family, remain, directly or indirectly, the Redeveloper's managing member;

(ix) a Transfer to an Affiliate of Redeveloper, including an urban renewal entity, to one of the Existing Members, or to an entity controlled by one or more of the Existing Members, including but not limited to any lease in compliance with the terms of the Financial Agreement; and

(x) a Transfer pursuant to a Foreclosure, and any Transfer by any Mortgagee or any Mortgagee's successor and/or assigns after Foreclosure.

(d) *Notice of Permitted Transfer.* With respect to any Permitted Transfer, except for those set forth in Section 3.5(c)(vi) and ~~-(vii)~~, Redeveloper shall provide to the Borough written notice at least thirty (30) days prior to such transfer or as soon as possible in the case of a transfer on account of death, including a description of the nature of such Transfer, and the name(s) and address(es) of the transferee and any parties, individuals and/or entities comprising such transferee. Redeveloper shall exercise commercially reasonable efforts with respect to the provisions of any documentation relating to the Permitted Transfer as the Borough may request. In the case of any Permitted Transfer, the Permitted Transferee will assume only those rights of Redeveloper under this Redevelopment Agreement as reasonably necessary in order to effectuate the purposes of this Redevelopment Agreement.

(e) *Borough Review of Requests for Transfer.* Except for Permitted Transfers, with respect to any Transfer that requires the Borough's consent pursuant to the terms of this Section 3.5, the Borough shall not unreasonably withhold, condition, or delay its consent to such Transfer. The Borough shall notify Redeveloper in writing whether the

Borough consents to a Transfer within forty-five (45) days after Redeveloper's written request to the Borough for such consent.

(f) *Subsequent Conveyance.* Notwithstanding anything in this Agreement to the contrary, upon the issuance of a Certificate of Completion for the Project or a Phase of the Project, this Agreement shall terminate as to the Project or applicable Phase of the Project as set forth in Section 2.3, and the limitations or restrictions on transfers of the Project or Phase of the Project set forth in this Agreement shall no longer apply to the Project or such Phase of the Project, except for those covenants in the Declaration of Restrictions that expressly survive the issuance of the Certificate of Completion for such Phase pursuant to the terms of such Declaration of Restrictions.

## **ARTICLE 4 PROJECT DETAILS**

### **4.1 Redeveloper Obligations.**

(a) *Project.* The "East Side Project" shall consist of: (i) Remediation of the East Side, if applicable (ii) the demolition of the existing improvements; (iii) the design, development, financing, construction, operation and maintenance of a 28-unit market-rate for-sale townhouse development in accordance with the Redevelopment Plan; (iv) associated amenities and improvements for the residents, all in accordance with the Redevelopment Plan; (v) construction of all necessary on-site and off-site improvements; and (vi) construction of required parking for the East Side Project, in accordance with the Redevelopment Plan. The "West Side Project" shall consist of: (i) Remediation of the West Side; (ii) the demolition of the existing improvements; (iii) the design, development, financing, construction, operation and maintenance of a 62-unit market-rate multi-family residential for sale or rental development in accordance with the Redevelopment Plan; (iv) associated amenities and improvements for the residents, all in accordance with the Redevelopment Plan; (v) construction of required parking for the West Side Project, in accordance with the Redevelopment Plan; (vi) construction of ground floor retail, in accordance with the Redevelopment Plan; and (vii) construction of all necessary on-site and off-site improvements. The "Lake Drive Project" shall consists of: (i) Remediation of Lake Drive, if applicable, (ii) the demolition of the existing improvements; (iii) the design, development, financing, construction, operation and maintenance of a 100% affordable multi-family residential rental development consisting of up to 23 units, based upon a 20% set-aside, but not less than 20 units (all of which will be deed restricted affordable units), all in accordance with the Redevelopment Plan; (iv) associated amenities and improvements for the residents, all in accordance with the Redevelopment Plan; (v) construction of required parking for the Lake Drive Project, in accordance with the Redevelopment Plan; and (vi) construction of all necessary on-site and off-site improvements.

(b) *Governmental Approvals.* Redeveloper shall cause to be prepared and filed, at Redeveloper's sole cost and expense, all applications as may be necessary and appropriate for the purpose of obtaining all Governmental Approvals required to implement the development of the Project. The Borough shall cause to be prepared and

filed, at Borough's sole cost and expense, the Lake Drive Subdivision, and the Borough shall submit all applications necessary and appropriate for such Lake Drive Subdivision, including filing with the Monmouth County Planning Board if and to the extent required by applicable law. At the request of the Borough, Redeveloper shall provide the Borough with copies of each application for Governmental Approvals that is submitted by or on behalf of Redeveloper to the governmental agency having jurisdiction over the same and provide the Borough with copies of all correspondence to and from each governmental agency relating to such applications.

(c) *Diligent Pursuit of Governmental Approvals.* Redeveloper agrees to prosecute all Applications for Governmental Approvals submitted by Redeveloper in good faith using commercially reasonable efforts. Subject to the requirements of Applicable Laws and unless expressly provided otherwise in this Agreement, Redeveloper shall determine when and in what order to file each specific Application. If Redeveloper determines that it (or any Permitted Transferee) will be unable to obtain all Governmental Approvals on a timely basis and diligently pursued or that any Governmental Approvals will contain conditions that are not acceptable to Redeveloper in its reasonable discretion, Redeveloper may terminate this Agreement on notice to the Borough.

(d) *Commencement of Construction.* Following the receipt of all Governmental Approvals required for Redeveloper to Commence Construction of the Project, Redeveloper will be responsible for all aspects of the clearing, grading, site preparation, and construction of the Project. Redeveloper is also responsible for any required demolition of existing Improvements on the Property and any Remediation (as required). The demolition of the existing structures on the Property shall not require a Certificate of Appropriateness from the Borough Historic Preservation Committee. During construction of the Project, Redeveloper is responsible for performance of or contracting for and administration and supervision of all construction required in connection with all Phases of the Project; arrangement for interim and final inspections and any other actions required to satisfy the requirements of all Governmental Approvals necessary to develop the Project, including equity funding and construction, interim, and permanent financing, and construction of Project infrastructure and improvements.

4.2 Borough Obligation. The Borough shall sign consents or other documents required in connection with Redeveloper's (or any Permitted Transferee's) Applications for Governmental Approvals and will supply information which is in the Borough's possession respective thereto. The Borough will otherwise cooperate with and support Redeveloper (or any Permitted Transferee) in connection with the Applications for Governmental Approvals as Redeveloper (or any Permitted Transferee's) and Redeveloper's counsel may reasonably request and the Borough shall diligently defend any challenges to the Governmental Approvals (for example, if a third party files an action challenging a resolution of approval of the Borough's Planning Board), the Borough's adoption of the Redevelopment Plan, the Borough's designation of the Redevelopment Area as an "area in need of redevelopment," or the Borough's designation of Redeveloper as the "redeveloper" of the Property. The Borough further acknowledges that Redeveloper may proceed with the Project notwithstanding any pending third party challenges at Redeveloper's own risk.

#### 4.3 Timeline and Construction Schedule.

(a) *Project Timeline.* Redeveloper shall use commercially reasonable best efforts to:

(i) file an application for preliminary and final major site plan (and, if applicable, preliminary and final subdivision) approval with the Planning Board for the East Side Project, the West Side Project and Lake Drive Project no later than one hundred and fifty (150) days from the Effective Date;

(ii) apply for all Governmental Approvals required for the Commencement of Construction of the East Side Project, West Side Project and Lake Drive Project no later than ninety (90) days after receiving preliminary and final major site plan (and, if applicable, preliminary and final subdivision) approval for the East Side Project, West Side Project and Lake Drive Project, respectively, from the Planning Board;

(iii) commence construction in up to three (3) separate and distinct phases as set forth in the Settlement Agreement and in the following order: a Phase constituting the construction of the East Side Project (the "*East Side Phase*"); a Phase constituting the construction of the West Side Project (the "*West Side Phase*") and a Phase constituting the construction of the Lake Drive Project (the "*Lake Drive Phase*"). Redeveloper, in its discretion, may begin construction on any subsequent phase earlier than contemplated herein;

(iv) submit applications for Building Permits to the Borough for the East Side Phase no later than one hundred and twenty (120) days from the date that Redeveloper obtains all Governmental Approvals required for the Commencement of Construction of such East Side Phase;

(v) Commence Construction of each Phase of the Project no later than ninety (90) days from the issuance of a Building Permit for each such Phase;

(vi) Complete Construction of the East Side Project and West Side Project no later than thirty-six (36) months after the Commencement of Construction of the East Side Project and West Side Project, respectively;

(vii) Complete Construction of the Lake Drive Project no later than twenty-four (24) months after the Commencement of Construction of the Lake Drive Project.

(b) The Borough shall submit an application for the Lake Drive Subdivision within forty-five (45) days of the latter of the Effective Date or the date upon which the Parties agree on the boundaries of the Lake Drive Subdivision, including application to the Monmouth County Planning Board if and to the extent required by applicable law. If the Borough fails to submit such application within such forty-five (45) day period, the Redeveloper may submit an application for the Lake Drive Subdivision and the Borough shall reimburse Redeveloper for all reasonable expenses related thereto, including all professional, legal, application and escrow fees. The Borough shall perfect the subdivision within forty-five (45) days of approval.

(c) If, subject to the provisions of this Agreement, including relevant tolling or Force Majeure provisions, Redeveloper fails, or determines that it will fail, to meet any relevant date for the completion of a task set forth in the Project time line set forth above, for any reason, Redeveloper shall promptly provide notice to the Borough stating: (i) the reason for the failure or anticipated failure, (ii) Redeveloper's proposed method for correcting such failure, (iii) Redeveloper's proposal for revising the time line and (iv) the method or methods by which Redeveloper proposes to achieve subsequent tasks by the relevant dates set forth in the revised Project time line. Redeveloper's proposed revisions to the Construction Schedule shall be subject to the Borough's approval, which approval shall not be unreasonably withheld, conditioned, or delayed.

(d) In the event the Borough fails to take timely action in accordance with the terms of this Agreement which results in a delay to the Construction Schedule as set forth in 4.3(a), including failing to cause the removal by the owners thereof of all cellular equipment from the existing water tower located on Lake Drive prior to the Closing Date, then Redeveloper's obligations pursuant to Section 4.3(a) shall be tolled on a day for day basis. The Borough acknowledges that removal by the owners thereof of all cellular equipment from the existing water tower located on Lake Drive is a condition precedent, among others, to the commencement of construction of the Lake Drive Project, inclusive of the affordable housing units.

#### 4.4 Construction of the Project.

(a) *Diligent Pursuit.* Redeveloper shall Commence Construction of each Phase after receiving all necessary Governmental Approvals and issuance of Building Permits required for Redeveloper to Commence Construction of such Phase in accordance with Section 4.3, above. Redeveloper will endeavor to Commence Construction of each Phase within the timelines established in the Construction Schedule set forth in this Article 4. Redeveloper is responsible to make all applications for Building Permits necessary for the construction of the Project in a timely manner. The Borough shall ensure that it promptly processes, reviews, and otherwise ensures that Applications for Building Permits are promptly processed.

(b) *Phases.* As discussed in Section 4.3(a)(iii) and consistent with the Settlement Agreement, Redeveloper may construct the Project in up to three Phases, including the East Side Phase, the West Side Phase and the Lake Drive Phase. Redeveloper shall submit a phasing plan for the Borough's review (the "*Phasing Plan*"). The Phasing Plan shall be consistent with the terms of the Settlement Agreement, which states as follows:

(i) Redeveloper is permitted to build the East Side Phase, or all 28 townhouse units, and obtain Certificates of Occupancy for 22 of those townhouse units on the East Side.

(ii) The building permit and start of construction for the Lake Drive Project must start before the Certificate of Occupancy for the 23<sup>rd</sup> townhouse unit can be issued. "Start of construction" means that the footing inspection for the

foundation of the affordable units building has occurred per Uniform Construction Code and has been approved.

(iii) No Certificate of Occupancy for the West Side Project can be issued until the Certificate of Occupancy for all of the affordable units in the Lake Drive Project are issued.

(c) *Construction Hours.* Construction practices and hours shall be in accordance with Borough Ordinances, which are available at the Borough Building Department or through the Borough Clerk, except as follows in this Subsection 4.2(c). Pursuant to Section 6.11 of the Settlement Agreement, the Parties agree to a modified application of the Borough's moratorium on construction such which modified application shall permit Redeveloper to perform work associated with the Project during the Moratorium Period (July 1 through Labor Day) (the "*Moratorium Period*") 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 such permitted work hours.

(d) *Remediation and Associated Demolition.* Redeveloper may conduct any Remediation or associated demolition of the existing improvements on the Property without affecting the Construction Schedule set forth in Section 4.1. Any demolition activities will be subject to Redeveloper's application for demolition permits in accordance with Applicable Law and the Borough's issuance of demolition permits in accordance with Applicable Law. Redeveloper may apply for a demolition permit in connection with the removal of any structures on the Property for any Phase (East Side, West Side and Lake Drive) of the Project at any time after the Effective Date of this Agreement.

(e) *Maintenance.* The Property will be cleaned on a regular basis by Redeveloper; provided, however, that, subject to weather conditions and Force Majeure events, the Redeveloper agrees to clean up the Property within seventy-two (72) hours of a specific, reasonable request by the Borough that Redeveloper do so. Should Redeveloper fail to comply with this obligation, the Borough may undertake street cleaning and charge Redeveloper for the costs of same. Redeveloper shall repair, at Redeveloper's cost, any damage to the streets or sidewalks caused by Redeveloper during the construction of the Project.

(f) *Pedestrian Access and Safety.* The Borough acknowledges that for safety reasons, the sidewalks adjacent to the Property may need to be closed from time to time during construction of the Project. Notwithstanding the foregoing, Redeveloper will provide appropriate signage and crosswalks to ensure the continued flow of pedestrian traffic. Redeveloper shall supply to the Borough Building Department plans and specifications providing for pedestrian safety at and across the Property as applicable. Redeveloper shall keep the sidewalks abutting the Property clean and free of debris, ice, and snow during the construction of the Project.

(g) *Construction Parking.* Redeveloper shall make arrangements with the Borough Construction Official and the Borough Police Department for off-street parking

for construction vehicles and construction worker's vehicles, if such vehicles cannot be parked on the Property itself.

(h) *Preconstruction Meeting.* There shall be a preconstruction meeting held at least fourteen (14) days prior to the Commencement of Construction of any Phase, which meeting shall include the Borough Administrator, the Borough Construction Official, the Borough Engineer, a representative from the Borough Police Department, a representative from the Borough Fire Department and representatives from the various utility companies. Said meeting may include the Borough Attorney.

(i) *Inspections.* Redeveloper shall be permitted to hire independent, third-party inspectors, approved by the Borough within fourteen (14) days of request by Redeveloper and which approval shall not be unreasonably withheld or delayed, to inspect the Project as necessary throughout construction at Redeveloper's sole cost and expense. If the Borough fails to respond within fourteen (14) days of Redeveloper's request, then such inaction shall be deemed as consent to the Redeveloper's use of the proposed third-party inspector.

#### 4.5 Certificates of Occupancy and Certificates of Completion.

(a) Upon Completion of Construction of any Phase (or building or unit within such Phase), Redeveloper shall apply to the appropriate Borough construction code official for a Certificate of Occupancy for that Phase (or building or unit within such Phase) as to which construction is Complete. Redeveloper shall take all actions required for issuance of a Certificate of Occupancy and the Borough shall promptly process any applications for same

(b) Certificates(s) of Occupancy for each Phase may be sought consistent with the terms of the Settlement Agreement and as set forth in Section 4.4(b).

(c) Upon Completion of the East Side Phase, including "start of construction" of the Lake Drive Phase, the Borough, in its reasonable discretion, shall promptly issue Redeveloper a Certificate of Completion for such East Side Phase. The Certificate of Completion may be substantially in the form of Exhibit F. Upon the issuance of the Certificate of Completion, the conditions determined to exist at the time the Property underlying such East Side Phase was determined to be an area in need of redevelopment shall be deemed to no longer exist. The land and improvements comprising such East Side Phase shall no longer be subject to (i) any covenant, pursuant to this Agreement, running with that portion of the land covered by the Certificate of Completion, including without limitation the Declaration of Restrictions (except for those that expressly survive pursuant to the terms of the Declaration of Restrictions), and (ii) eminent domain for purposes of redevelopment as a result of those determinations, if applicable.

(d) Upon Completion of the West Side Phase, including Completion of the Lake Drive Phase, the Borough, in its reasonable discretion, shall promptly issue Redeveloper a Certificate of Completion for the West Side Phase. The Certificate of Completion may be substantially in the form of Exhibit F. Upon the issuance of the

Certificate of Completion, the conditions determined to exist at the time the Property underlying the West Side Phase was determined to be an area in need of redevelopment shall be deemed to no longer exist. The land and improvements comprising the West Side Phase shall no longer be subject to (i) any covenant, pursuant to this Agreement, running with that portion of the land covered by the Certificate of Completion, including without limitation the Declaration of Restrictions (except for those that expressly survive pursuant to the terms of the Declaration of Restrictions), and (ii) eminent domain for purposes of redevelopment as a result of those determinations, if applicable.

(e) Upon Completion of the Lake Drive Phase, the Borough, in its reasonable discretion, shall promptly issue Redeveloper a Certificate of Completion for the Lake Drive Phase. The Certificate of Completion may be substantially in the form of Exhibit F. Upon the issuance of the Certificate of Completion, the conditions determined to exist at the time the Property underlying the Lake Drive Phase was determined to be an area in need of redevelopment shall be deemed to no longer exist. The land and improvements comprising the Lake Drive Phase shall no longer be subject to (i) any covenant, pursuant to this Agreement, running with that portion of the land covered by the Certificate of Completion, including without limitation the Declaration of Restrictions (except for those that expressly survive pursuant to the terms of the Declaration of Restrictions), and (ii) eminent domain for purposes of redevelopment as a result of those determinations, if applicable.

4.6 Estoppel Certificates (Prior to the Issuance of a Certificate of Completion). At any time and from time to time prior to the issuance of a Certificate of Completion, the Borough shall, within ) sixty (60) days of its receipt of a written request by Redeveloper, Permitted Transferee, mortgagee, lender, purchaser, or other party having an interest in the Project or any Phase thereof, execute and deliver to (a) Redeveloper, or (b) a third party (e.g., a prospective lender, purchaser, investor, Permitted Transferee, etc.) designated by Redeveloper, an instrument in which the Borough (i) certifies that this Agreement is unmodified and in full force and effect as to the Project (excepting only modifications which shall be set forth), (ii) states whether to the best knowledge of the Borough Redeveloper is in Default under this Agreement, and, if so, specifying each such Default of which the Borough shall have knowledge; and (iii) confirms such other factual matters within the Borough's knowledge or control pertinent to this Agreement, as the same relate to, or might affect, the Project or Property, as requested by Redeveloper or such third party.

#### 4.7 Project Costs and Financing.

(a) *Redeveloper to Bear Costs*. Redeveloper agrees that the costs and financing for the Project are the sole responsibility of Redeveloper, not the Borough.

(b) *Borough to Bear Costs*. Borough agrees that the costs for the Lake Drive Subdivision is the sole responsibility of the Borough. If the Borough fails to undertake the Lake Drive Subdivision in the time frame set forth in Section 4.3(b) and Redeveloper then undertakes the subdivision, the Borough shall repay the Redeveloper for all reasonable fees expended in pursuit of subdivision (application fees, escrow, professional fees, etc.). Redeveloper shall be paid within thirty (30) days of submitting its invoice for services related to the Lake Drive Subdivision. The Redeveloper shall not be responsible for any costs associated with and the removal of all cellular equipment from the existing water



tower located on Lake Drive. The Borough hereby represents that, prior to the Effective Date, the Borough commenced negotiations with the appropriate parties for the construction/installation of a new cellular tower on the Borough Retained Lots and the removal of all existing cellular equipment from the water tower. As of the Effective Date, and based on the representations of the owners thereof, the Borough anticipates that the existing cellular equipment will be removed from the water tower by spring 2025 and the Borough shall diligently proceed with any required lease amendments with the owners of such cellular equipment necessary to remove such cellular equipment from the existing water tower and to erect the monopole to relocate such cellular equipment.

(c) The Borough shall not charge any additional escrow in connection with the Project and the Borough agrees the Project 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 Borough shall be responsible for its own legal and professional fees in connection with the preparation and implementation of this Agreement. Nothing herein eliminates the Redeveloper's obligations to comply with the Planning Board's filing fees and escrow fees relative to its site plan application in accordance with applicable Borough ordinances.

(d) Redeveloper shall post performance guarantees, inspection fees, and review escrows in accordance with the provisions of the MLUL for the East Side Project, West Side Project and Lake Drive Project as follows:

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

(ii) As a condition of the Borough's release of the Performance Guarantee, Redeveloper shall post with the Borough a maintenance guarantee in respect of those Improvements required to be bonded in accordance with the MLUL, in the form of a surety bond (or such other form of guarantee allowed in accordance with the MLUL) for a period not to exceed two (2) years after final acceptance of the Improvement, in an amount determined by the Borough Engineer according to the method of calculation set forth in the MLUL.

(iii) If applicable, the Performance Guarantee must name the Borough as an obligee and Redeveloper shall deliver a copy of the Performance Guarantee(s) applicable to any Phase to the Borough prior to Commencement of Construction of that Phase. To the extent that a surety bond is provided, it shall be provided by a company licensed by the New Jersey Department of Banking and Insurance or otherwise authorized by the New Jersey Department of Banking and Insurance to do business in the State. In the event any insurance company, financial institution or other entity issuing a Performance Guarantee herein, shall be insolvent or shall declare bankruptcy or otherwise be subject to reorganization, rehabilitation, or other action, whereby state or federal agencies have taken over the management of the entity, within thirty (30)

days after notice from the Borough, Redeveloper shall replace the applicable Performance Guarantee.

(iv) In the event any Performance Guarantee should lapse, be canceled or withdrawn, or otherwise not remain in full force and effect as a result of any act or omission by Redeveloper, then until an approved replacement of the lapsed Performance Guarantee has been deposited with the Borough, the Borough may require Redeveloper to cease and desist any and all work on the Phase of the Project to which the lapsed Performance Guarantee is applicable, unless the Improvements required to be guaranteed have been completed and approved by the Borough. In the event any Performance Guarantee should lapse, be canceled or withdrawn, or otherwise not remain in full force and effect through no act or omission of Redeveloper, then unless Redeveloper fails to replace the Bond within thirty (30) days of notice given to Redeveloper by the Borough, the Borough may require Redeveloper to cease and desist work on the Phase of the Project to which the lapsed Performance Guarantee is applicable, unless the Improvements required to be guaranteed have been completed and approved by the Borough.

#### 4.8 Environmental Obligations and Indemnification.

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

(b) The Parties each acknowledge receipt of the Phase I Environmental Site Assessment and Preliminary Assessment Report dated December 22, 2022 (the “*2022 Phase I Report*”), prepared by RMS Environmental LLC (“*RMS*”), which report did not identify any Recognized Environmental Concerns (“*RECs*”) or Areas of Concern (“*AOCs*”) requiring further investigation by sampling. Further, the Borough expressly agrees and acknowledges that it is not otherwise aware of any known RECs or AOCs that would require Remediation related to the Lake Drive Property. Notwithstanding the foregoing, not more than 60 days prior to the Closing Date, Redeveloper shall have RMS conduct a supplemental combined Phase I Environmental Site Assessment and Preliminary Assessment in scope substantially similar to the scope of work performed for the Phase I Report (the “*Supplemental Phase I*”) at Redeveloper’s cost. In the event that the Supplemental Phase I reveals no new RECs or AOCs, not originally identified in the

2022 Phase I Report, that require further investigation, then it shall be the sole responsibility of Redeveloper to undertake and pay the cost of any and all Remediation, if any, of the Lake Drive Property even if discovered after the Closing Date. In the event that the Supplemental Phase I reveals one or more new RECs or AOCs, not originally identified in the 2022 Phase I Report, that require further investigation, then Redeveloper shall conduct a further investigation as recommended by RMS at Redeveloper's cost. If, upon completion of such further investigation, RMS concludes that no additional action is recommended, then it shall be the sole responsibility of Redeveloper to undertake and pay the cost of any and all Remediation, if any, of the Lake Drive Property even if discovered after the Closing Date. If, upon completion of such further investigation, the Lake Drive Property requires Remediation, then it shall be the sole responsibility of Redeveloper to undertake all required Remediation of the Lake Drive Property and the Redeveloper shall be reimbursed by the Borough for all expenses related thereto except if the Remediation is of such a nature that it renders the Lake Drive Project infeasible or not economically viable in the reasonable determination of the Parties and the court-appointed special master, at which point Redeveloper shall not be obligated to take title to the Lake Drive Property and the Parties shall work in good-faith to address that issue with the court-appointed special master. Notwithstanding anything in this Section 4.8(b) to the contrary, in the event Redeveloper discovers after the Closing Date that the Lake Drive Property requires Remediation and the Borough is found to have breached the representation set forth in the second sentence of this Section 4.8(b), then it shall be the sole responsibility of Redeveloper to undertake all required Remediation of the Lake Drive Property and the Redeveloper shall be reimbursed by the Borough for all expenses related thereto.

4.9 Payment in Lieu of Taxes. The Redeveloper and Borough acknowledge that the Project consists of an inclusionary housing development to assist the Borough in meeting its constitutional obligation to provide very-low, low and moderate income housing. The Parties agree that to ensure that such inclusionary Project is a success, and upon satisfaction of all requirements of the Long Term Tax Exemption Law, N.J.S.A. 40A:20-1 et seq., the Borough and one or more urban renewal entities, each an Affiliate of the Redeveloper, shall enter into one or more Financial Agreements providing for a payment in lieu of taxes ("*PILOT*") for the Project. The Parties agree that the PILOT for each Phase of the Project shall be computed as follows: (a) for the East Side Project, ninety-five percent (95%) of otherwise applicable taxes to be imposed on the East Side Project; (b) for the West Side Project, ninety-five percent (95%) of otherwise applicable taxes to be imposed on the West Side Project; and (c) for the Lake Drive Project, six and two hundred eighty five thousandths percent (6.285%) of annual gross revenue generated by the Lake Drive Project. In addition, the Financial Agreement(s) shall provide for an exemption of the land underlying each Phase of the Project from conventional taxation. Each Party shall be responsible for its own attorney's fees in connection with the negotiation and preparation of the Financial Agreement(s). There shall be no administrative fee charged by the Borough pursuant to the Financial Agreement(s). The urban renewal entities referenced herein shall each file an application for tax exemption pursuant to N.J.S.A. 40A:20-8 within 45 days of the Effective Date.

4.10 Agreement to Sell and Purchase Lake Drive. Subject to the terms and conditions herein, the Borough agrees to sell Lake Drive to the Redeveloper and the Redeveloper agrees to acquire Lake Drive from the Borough, in accordance with the provisions of this Agreement and

on the additional terms and condition herein, and in an “AS IS WHERE IS WITH ALL FAULTS” condition, except as represented in Section 4.8(b) herein.

(a) Purchase Price and Payment of the Purchase Price. The purchase price for the Borough Parcels shall be One Dollar and 00/100 cents (\$1.00) (the “*Purchase Price*”). On the Closing Date, the Redeveloper agrees to pay, and the Borough agrees to accept, the Purchase Price, by certified or bank check or wire transfer of immediately available federal funds to an account or accounts designated in writing by the Borough.

(b) Time and Place of Closing. The Closing Date for Lake Drive shall occur within thirty (30) calendar days after the receipt of all Governmental Approvals for the Lake Drive Project. The Closing Date may be such earlier or later date as mutually agreed to by the Parties and memorialized in writing. The Closing shall be held at the offices of Birdsall, Laughlin & Clark, LLC, 1720 State Highway 34, Wall, New Jersey 07719, or such other place as the Parties may mutually agree. For avoidance of doubt, the Closing Date will not occur until Redeveloper obtains all Governmental Approvals necessary to commence construction on the Lake Drive Project.

(c) Transfer of Ownership and Title to Lake Drive.

(i) On the Closing Date, the Borough shall give to the Redeveloper a Deed for Lake Drive, and such other documentation as may reasonably be requested by the Title Company.

(ii) The Redeveloper will pay for all recording fees incidental to conveying title to Lake Drive to the Redeveloper. In the event the “mansion tax” is due by either the Redeveloper or the Borough, the payment of such tax shall be the Redeveloper’s obligation. Notwithstanding Redeveloper’s obligation to pay any realty transfer fees, the Borough shall cooperate with Redeveloper in seeking any exemption available under Applicable Laws.

(iii) Title for Lake Drive conveyed by the Borough to the Redeveloper shall be in fee simple title, and shall be conveyed free and clear of all judgments or similar monetary liens against the Borough; or, any encumbrances, restrictions, covenants, easements, and rights of any nature, that would unreasonably limit the use of Lake Drive for the Lake Drive Project, or effect fee simple title in the Borough (the “*Permitted Title Objection(s)*”) and shall be subject to all other matters of record identified in Redeveloper’s Title Commitment (as hereinafter defined) issued by Redeveloper’s Title Company (as herein defined) and not objected to in Redeveloper’s Title Review Letter (as hereinafter defined) as a Permitted Title Objection.

(iv) Redeveloper shall by the thirtieth (30th) day following the Effective Date (the “*Title Date*”) obtain from a title company of the State of New Jersey selected by Redeveloper, in Redeveloper’s discretion (the “*Title Company*”), at its sole cost and expense, a title commitment (“*Redeveloper’s Title Commitment*”), and may, at its option, obtain from a licensed land surveyor or registered civil engineer acceptable to Redeveloper a survey of Lake Drive (the “*Survey*”).

(v) On or before the date that is thirty (30) days following the Effective Date, Redeveloper shall deliver copies of Redeveloper’s Title Commitment and Survey (which

may be by E-mail only) to the Borough and give specific written notice (the “*Title Review Letter*”) to the Borough of any Permitted Title Objection(s) disclosed in the Commitment and/or the Survey which are disapproved by Redeveloper. If Redeveloper disapproves of any Permitted Title Objection(s) shown in the Commitment and/or the Survey by delivering a timely Title Review Letter to the Borough, as provided above, the Borough shall have until the Closing Date to attempt to remove, satisfy or cure the same and such cure by the Borough shall be a condition precedent to Redeveloper’s obligation to consummate the transaction hereunder. If the Borough shall be unable to eliminate a Permitted Title Objection(s), despite its commercially reasonable efforts, or if the Title Company does not agree to insure over any such matter or matters within the aforesaid time period, Redeveloper may elect, by written notice to the Borough delivered on the date that is the earlier of (i) within ten (10) business days after the expiration of such 10-day period or (ii) ten (10) business days after Redeveloper’s receipt of the Borough’s Title Response, to either: (1) provide the Borough with additional time to cure the Permitted Title Objection(s); (2) waive such disapproval and to accept title to Lake Drive subject to such Permitted Title Objection(s) which the Borough shall be unable or unwilling to correct, provided that the Borough shall pay or satisfy all Liquidated Liens at the Closing Date; or (3) terminate this Agreement. In the event of such termination, this Agreement shall be null and void and the parties shall have no further liability or obligation hereunder except as otherwise expressly provided herein, provided if such defect is a result of an uncured Borough default, Redeveloper shall be entitled to exercise its rights with regard to a Borough default under this Agreement.

(vi) All matters shown in the Commitment and/or on the Survey with respect to which Redeveloper fails to timely object to in its Title Review Letter on or before the last date for so doing, or with respect to which a timely Title Review Letter is given but the Borough is unable or unwilling to undertake an express obligation to cure as provided above and which Buyer waives, shall be deemed to be approved by Buyer as “Permitted Encumbrances”.

(vii) Any Permitted Title Objection(s) to Lake Drive first raised by the Title Company in an updated Commitment or by the surveyor in a revision to the Survey (“*New Permitted Title Objection(s)*”) shall be Permitted Encumbrances if, but only if, Redeveloper fails to object to the New Permitted Title Objection(s) by written notice given to the Borough within ten (10) business days after Redeveloper first receives the updated Commitment (and referenced exception documentation) or Survey and further provided that Redeveloper has not caused such New Permitted Title Objection(s). If Redeveloper timely objects to any New Permitted Title Objection(s), the foregoing Section 4.10(c)(v) shall apply with respect to such New Permitted Title Objection(s) as if they were raised in a timely filed Title Review Letter pursuant to Section 4.10(c)(v).

(d) Following the Effective Date of this Agreement, the Borough shall not further encumber or permit any further encumbrance to appear of record on Lake Drive. Lake Drive is being sold to the Redeveloper in “AS IS, WHERE IS, WITH ALL FAULTS” condition (except as provided for in Section 4.8(b) herein) and with all latent or patent defects, except as otherwise provided in this Agreement. At Closing, the Borough shall deliver possession of Lake Drive in the same condition as on the date of this Agreement, deterioration from ordinary and reasonable usage and exposure to the elements excepted. Following the Effective Date and for a period of 120 days, Redeveloper is permitted to enter Lake Drive in order to complete due diligence

inspections (the “*Due Diligence Period*”). If during its due diligence inspections, Redeveloper is not satisfied with the condition of Lake Drive only to the extent that such condition would unreasonably limit the use of Lake Drive for the Lake Drive Project, Redeveloper may terminate this Agreement by sending a termination notice to Borough prior to the conclusion of the Due Diligence Period, stating the unacceptable condition would unreasonably limit the use of Lake Drive for the Lake Drive Project.

(e) Building and Zoning Laws. Lake Drive is being sold subject to the Redevelopment Plan and all other Applicable Laws.

(f) Deed Restriction. The Deed shall contain a deed restriction limiting the use of Lake Drive solely to provide for very low, low and moderate income affordable housing units. The deed restriction shall be provided to the Borough for its review for compliance with the terms of the Redevelopment Plan, the Settlement Agreement and this Agreement prior to and as a condition of Closing.

(g) Risk of Loss. Except with respect to the Redeveloper’s activities and investigations, if any, the Borough is responsible for any damage or loss to Lake Drive, except for normal wear and tear, until the Closing.

(h) Brokerage Fees. The Parties represent that, concerning Lake Drive, neither Party has dealt with or transacted any business with any broker. Under no circumstances shall any brokerage fees be paid. Each party agrees to indemnify, defend, and hold the other harmless against any and all claims, damages, loss, cost or expense, including attorneys’ fees, or other liability of any nature incurred by reason of the breach by such party of any warranty or representation contained in this provision. This 4.10(h) shall survive Closing or the termination of this Agreement.

(i) Non-Foreign Affidavit. The Borough shall provide to the Redeveloper at Closing an adequate non-foreign affidavit stating the inapplicability of 26 U.S.C. § 1445 to the sale of Lake Drive.

(j) Form 1099-B Filing. In compliance with the requirements of the Internal Revenue Code, the Redeveloper's attorney is responsible for collecting certain information from the Borough necessary to complete and file Form 1099-B with the Internal Revenue Service. The Borough agrees to supply all necessary information to the Redeveloper's attorney in order to facilitate such filing.

(k) Closing Prorations. The following adjustments are to be made at the Closing as of 12:00 midnight of the day preceding the Closing Date, as may be applicable: (i) water charges; (ii) sewer rents; (iii) gas; (iv) electric; (v) fuel (at the Borough’s cost therefor); (vi) real estate taxes, if any; and (vii) any other items which shall be appropriate for adjustment under local closing standards and practices.

(l) Bulk Sales Law. The Parties hereto acknowledge that the provisions of the Bulk Sales Act may be applicable to the sale of Lake Drive by the Borough. The Redeveloper shall submit the required Notification of Sale, Transfer or Assignment in Bulk (Form C-9600) and all required attachments with the New Jersey Department of the

Treasury, Division of Taxation, Bulk Sales Section not later than fifteen (15) Business Days prior to Closing. The Borough shall cooperate with the Redeveloper in connection with such submission by supplying any information necessary for the Redeveloper to file the required notice under the Bulk Sales Act. In the event that the New Jersey Division of Taxation requires the Redeveloper to hold funds in escrow for potential tax liabilities of the Borough, the Borough authorizes the Redeveloper to comply with such requirement. Redeveloper's counsel or agent shall hold such amount, in escrow, and is authorized to disburse same upon receipt of authorizations, and in accordance with directions, from the Division of Taxation. This paragraph shall survive the closing of title to Lake Drive.

(m) Casualty and Condemnation.

(i) If, prior to Closing, Lake Drive or any part thereof suffers a casualty, the Borough shall promptly notify the Redeveloper thereof. If, in the Redeveloper's reasonable judgment, such casualty materially interferes with the Redeveloper's ability to develop the Project, the Redeveloper shall have the option either to terminate this Agreement or to consummate the transaction contemplated by this Agreement notwithstanding such casualty. If the Redeveloper elects to consummate the transaction contemplated by this Agreement, the Redeveloper shall be entitled to receive the insurance and other proceeds associated with such casualty and the Borough shall, at Closing and thereafter, execute and deliver to the Redeveloper all required assignments of proceeds and other similar items. If the Redeveloper elects to terminate this Agreement, this Agreement shall, without further action of the Parties, become null and void and neither Party shall have any rights or obligations under this Agreement except for those rights and obligations that by their terms expressly survive termination of this Agreement.

(ii) If, prior to Closing, Lake Drive or any part thereof, shall be condemned or subject to a written threat of condemnation by a governmental body with eminent domain authority that exceeds the Borough, the Borough shall promptly notify the Redeveloper thereof. If, in the Redeveloper's reasonable judgment, such condemnation materially interferes with the Redeveloper's ability to develop the Project, the Redeveloper shall have the option either to terminate this Agreement or to consummate the transaction contemplated by this Agreement notwithstanding such condemnation. If the Redeveloper elects to consummate the transaction contemplated by this Agreement, the Redeveloper shall be entitled to receive the condemnation proceeds and the Borough shall, at Closing and thereafter, execute and deliver to the Redeveloper all required assignments of proceeds and other similar items. If the Redeveloper elects to terminate this Agreement, this Agreement shall, without further action of the Parties, become null and void and neither Party shall have any rights or obligations under this Agreement except for those rights and obligations that by their terms expressly survive termination of this Agreement.

(n) Conditions Precedent to Obligation of the Redeveloper to Purchase Lake Drive. The obligation of the Redeveloper to close title hereunder shall be subject to the fulfillment on or before the Closing Date of all the following conditions, any or all of which may be waived by the Redeveloper in its sole discretion:

(i) The Borough shall have delivered to the Redeveloper all of the items required to be delivered to the Redeveloper hereunder; and

(ii) All cellular equipment has been removed from the existing water tower and reinstalled on the Borough Retained Lots; and

(iii) The Redeveloper shall have obtained all unappealable Governmental Approvals necessary to commence construction on the Lake Drive Project; and

(iv) There shall be no litigation or other appeal or challenge relating to this Agreement or the Redevelopment Plan and the time for challenging same shall have expired.

(o) The Borough hereby makes the following representations and warranties regarding Lake Drive to the best of the Borough's knowledge, information and belief:

(i) All documents and instruments to be executed and delivered by the Borough in connection with this Agreement shall be legally enforceable, valid, and binding obligations of the Borough.

(ii) The Borough has marketable title to Lake Drive, and there are no encumbrances or lien against Lake Drive other than liens or encumbrances that shall be satisfied at or prior to Closing.

(iii) No third party has any rights of possession to Lake Drive. Other than this Agreement, Lake Drive is not subject to any outstanding agreement(s) of sale or options, rights of first refusal or other rights of purchase.

(iv) The Borough has not received written notice from any governmental or quasi-governmental agency or other body of any existing violations of, or non-compliance with, any federal, state, county or municipal laws, ordinances, orders, codes, regulations or requirements (including any zoning, building, fire, housing or health code requirements) affecting Lake Drive which have not been cured, including with respect to any environmental laws, and Seller has no knowledge of any such violations or non-compliance.

These representations and warranties shall survive Closing.

At such time as the Redeveloper has closed title to Lake Drive, the Borough shall be conclusively and irrevocably presumed to have satisfied all conditions precedent to the Closing of Lake Drive and shall have no further liability or obligations as to such conditions precedent.

## **ARTICLE 5 EVENTS OF DEFAULT; TERMINATION**

5.1 Events of Default. Any one or more of the following shall constitute an "Event of Default" hereunder, subject to Force Majeure Extension and tolling as provided elsewhere in this Agreement:

(a) If at any time Redeveloper shall:



(i) generally not pay its debts as such debts become due, within the meaning of such phrase under Title 11 of the United States Code (or any successor to such statute), or admit in writing that it is unable to pay its debts as such debts become due; or

(ii) make an assignment for the benefit of creditors; or

(iii) file a voluntary petition under Title 11 of the United States Code, as the same may be amended, or any successor to such statute; or

(iv) file any petition or answer seeking, consenting to or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future federal bankruptcy code or any other present or future applicable federal or state or other statute or law; or

(v) seek or consent to or acquiesce in the appointment of any custodian, trustee, receiver, sequestrator, liquidator or other similar official of Redeveloper or of all or any substantial part of its property or of the Project or any interest of Redeveloper therein; or

(vi) take any corporate action in furtherance of any action described in this subsection or

(vii) if at any time any proceeding against Redeveloper seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future applicable federal or state or other statute or law shall not be dismissed within ninety (90) days after the commencement thereof, or if, within ninety (90) days after the appointment without the consent of Redeveloper of any custodian, trustee, receiver, sequestrator, liquidator or any other similar official of Redeveloper, or of all or any substantial part of its properties or of the Project or any interest of Redeveloper therein, such appointment shall not have been vacated or stayed on appeal or otherwise, or if any such appointment shall not have been vacated within forty-five (45) days after the expiration of any such stay.

(b) Redeveloper's failure to pay or delinquency in the payment of real property taxes, if applicable, payments in lieu of taxes, or assessments, which failure or delinquency is not cured within thirty (30) days after Notice by the Borough.

(c) Cancellation or termination by reason of any act or omission of Redeveloper of any insurance policy, Performance Guarantee, or other surety required hereunder to be provided by Redeveloper for the benefit of the Borough, which failure or delinquency is not cured within thirty (30) days after Notice by the Borough.

(d) Any Transfer (except for Permitted Transfers), without the approval of the Borough.

(e) If Redeveloper fails to Commence Construction within the time frame specified in this Agreement (as same may be modified pursuant to the terms hereof and subject to Force Majeure Events).

(f) Subject to Force Majeure Events, if Redeveloper abandons the Project or substantially suspends work on the Project after the Commencement of Construction for a period of more than one hundred twenty (120) days and fails to recommence work within sixty (60) days after receipt by Redeveloper of a Notice of such failure, abandonment, or suspension; provided, however, that if the failure, abandonment, or suspension is one that cannot be completely cured within sixty (60) days after receipt of such notice, it shall not be an Event of Default as long as Redeveloper promptly undertakes actions to correct the failure, abandonment or suspension upon its receipt of notice and is proceeding with due diligence to remedy same as soon as reasonably practicable.

(g) Any other material default or breach by Redeveloper or the Borough in the observance or performance of any material covenant, condition, representation, warranty or agreement hereunder and, except as otherwise specified below, the continuance of such default or breach for a period of thirty (30) days after Notice from the non-defaulting party specifying the nature of such default or breach and requesting that such default or breach be remedied; provided, however, with respect to any non-monetary default or breach, if the default or breach is one that cannot be completely remedied within thirty (30) days after such Notice, it shall not be an Event of Default as long as the defaulting party is proceeding in good faith and with due diligence to remedy the same as soon as practicable, but in no event later than one hundred and twenty (120) days after such Notice unless this Agreement specifically provides otherwise.

5.2 Remedies Upon Event of Default by Redeveloper. Whenever any Event of Default by Redeveloper occurs and continues beyond any applicable cure or grace period, the Borough may, on written notice to Redeveloper (after applicable Notice and cure periods shall have expired), terminate this Agreement and Redeveloper's designation as redeveloper hereunder upon which, except as expressly provided herein, this Agreement shall be void and of no further force and effect and neither Party shall have any further rights, liability and/or obligations hereunder.

5.3 Remedies Upon Event of Default by the Borough. Whenever any Event of Default by the Borough occurs and continues beyond any applicable cure or grace period, then Redeveloper may take whatever action at law or in equity as Redeveloper may deem necessary or desirable to enforce the performance or observance of any rights or remedies of Redeveloper, or any obligations, agreements, or covenants of the Borough under this Agreement, including an action for specific performance and/or actual, compensatory damages (but specifically excluding delay, reliance, consequential or punitive damages). Further, but subject to any cure provisions afforded the Borough hereunder, Redeveloper shall have the right, in its sole and absolute discretion, on written notice to the Borough (after applicable Notice and cure period shall have expired), to terminate this Agreement upon which, except as expressly provided for herein, this Agreement shall be void and of no further force and effect and neither Party shall have any farther rights, liabilities and/or obligations hereunder.

5.4 Force Majeure Extension. For the purposes of this Agreement, neither the Borough nor Redeveloper shall be considered in breach or in default with respect to its obligations hereunder because of a delay in performance arising from a Force Majeure Event. It is the purpose and intent of this provision that in the event of the occurrence of any such delay, the time or times for performance of the obligations of the Borough or Redeveloper shall be extended for the period of

the delay; provided, however, that such delay is actually caused by or results from the Force Majeure Event. The time for completion of any specified obligation hereunder shall be tolled for a period of time up to but not exceeding the period of delay resulting from the occurrence of a Force Majeure Event. During any Force Majeure Event that affects only a portion of a Project, Redeveloper shall to the maximum extent feasible continue to perform its obligations for the balance of the Project unaffected by the Force Majeure Event. The existence of an event or occurrence of Force Majeure Event shall not prevent the Borough or Redeveloper from declaring a default or the occurrence of an Event of Default by the other party if the event that is the basis of the Event of Default is not a result of the Force Majeure Event.

5.5 No Waiver. Except as otherwise expressly provided in this Agreement, any failure or delay by either Party hereunder in asserting any of its rights or remedies as to any default by the other Party, shall not operate as a waiver of such default, or of any such rights or remedies, or to deprive the Borough or Redeveloper, as the case may be, of its right to institute and maintain any actions or proceedings in accordance with this Agreement, which it may deem necessary to protect, assert or enforce any such rights or remedies.

5.6 Remedies Cumulative. No remedy conferred by any of the provisions of this 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.

5.7 Termination Rights Related to Litigation. If third-party litigation is commenced challenging the validity of (i) the designation of the Redevelopment Area, (ii) the Redevelopment Plan, or (iii) execution of this Agreement by the Borough, the Borough shall diligently defend such litigation. The commencement of such litigation shall be a Force Majeure Event effective as of the date of the filing of the summons and complaint if Redeveloper invokes the Force Majeure provisions this Agreement; provided, however, that (a) Redeveloper may terminate this Agreement pursuant to Section 4.1 (c) hereof, and (b) if such litigation is finally determined in favor of the plaintiff with no further opportunity for appeal, then either Party may terminate this Agreement by written notice to the other. Upon such termination, this Agreement shall be void and of no further force and effect and neither Party hereto shall have any rights, liabilities and/or obligations hereunder.

## **ARTICLE 6 FINANCING**

### 6.1 Mortgage Financing.

(a) During the term of this Agreement, Redeveloper shall not engage in any financing or any other transaction creating any Mortgage on the Project other than with respect to the cost of acquiring the Property and developing the Project (including designing, permitting, and constructing the Project). Redeveloper shall have the option to obtain separate financing for any Phase of the Project.

(b) In the event that Redeveloper is unable to obtain financing for the Project, inclusive of all three Phases of such Project, on terms and conditions acceptable to Redeveloper in its sole discretion, or if Redeveloper determines that financing for the

Project cannot be obtained on terms and conditions acceptable to Redeveloper in its sole discretion, and provided Redeveloper has not Commenced any Phase of the Project, Redeveloper shall have the right to terminate this Agreement upon written notice to the Borough.

(c) If this Agreement is terminated pursuant to the terms of this Section 6.1, then, except as expressly set forth herein to the contrary, this Agreement (including, without limitation, all the covenants contained herein) shall be of no further force and effect and the Parties hereto shall have no further rights, liabilities and/or obligations hereunder.

(d) If the Mortgagee reasonably requires any change(s) or modification(s) to the terms of this Agreement, the Borough shall reasonably cooperate with the Mortgagee and Redeveloper in reviewing such proposed change(s) or modification(s) and shall consider them in good faith; provided, however, that any such proposed change or modification shall not materially and adversely alter or modify the rights and obligations of Redeveloper or the Borough, as provided in this Agreement.

(e) To the extent reasonably requested by Redeveloper, the Borough shall execute such other agreements and/or documents (to the extent same are in form and content reasonably acceptable to the Borough) as may be requested or required by any Mortgagee (or any equity participant of Redeveloper); provided, however, that any such agreement or document shall not materially and adversely alter any of the rights, liabilities or obligations of Redeveloper or the Borough under this Agreement.

6.2 Notice of Default to the Mortgagee and Right to Cure. Whenever the Borough shall deliver any notice or demand to Redeveloper with respect to any breach or default by Redeveloper under this Agreement, the Borough shall at the same time deliver to each Mortgagee a copy of such notice or demand; provided that Redeveloper has delivered to the Borough a written notice of the name and address of such Mortgagee. Each such Mortgagee (insofar as the rights of the Borough are concerned) has the right at its option within sixty (60) days after the receipt of such notice to cure or remedy, or to commence to cure or remedy, any such default which is subject to being cured and to add the cost thereof to the debt and the lien which it holds. The Borough shall not seek to enforce any of its remedies under this Agreement during the period in which any such Mortgagee is proceeding diligently and in good faith to cure a Redeveloper Event of Default. If the Mortgagee elects to cure the Event of Default within such 60-day period but has not completed such cure, then, not later than every sixty (60) days thereafter until such Event of Default is cured, Redeveloper shall inform the Borough that the Mortgagee is proceeding diligently to cure the Redevelopment Event of Default, and shall briefly describe the course of action being pursued to effectuate such cure. Notwithstanding the foregoing, the Borough may seek to enforce any of its remedies under this Agreement with respect to a monetary Event of Default if such monetary Event of Default is not cured within such sixty (60) day period after notice thereof. If possession of the Project is necessary to cure any default or breach, any Mortgagee will be allowed to complete any proceedings required to obtain possession of the Project. Notwithstanding anything contained herein to the contrary, the Borough shall retain at all times all statutory rights to enforce the payment of payments in lieu of taxes, sewer charges, property taxes, if applicable, and other municipal charges, including but not limited to those rights granted by the Tax Lien Law and/or the In Rem Foreclosure Act.

6.3 No Guarantee of Construction or Completion by Mortgagee.

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

(b) If a Mortgagee forecloses its Mortgage secured by the Project, or takes title (in its name or the name of an Affiliate) to the Project by deed-in-lieu of foreclosure or similar transaction (collectively, a "*Foreclosure*"), the Mortgagee or its Affiliate shall have the option to either (i) sell the Project to any Person, provided Mortgagee gives the Borough notice of such sale at least thirty (30) days prior to closing and provided such Person assumes the obligations of Redeveloper under this Agreement in accordance with Applicable Law, and/or (ii) assume the obligations of Redeveloper under this Agreement in accordance with Applicable Law. The Mortgagee, or the entity assuming the obligations of Redeveloper, in that event must agree to complete the Project in accordance with the terms of this Agreement, but subject to reasonable extensions of any deadlines hereunder. Any such Mortgagee or other entity assuming such obligations of Redeveloper, upon completing the Project shall be entitled, upon written request made to the Borough, to a Certificate of Occupancy in accordance with the terms of this Agreement and under Applicable Laws. Nothing in this Agreement shall be construed or deemed to permit or to authorize any Mortgagee, 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 Agreement and the Redevelopment Plan. The Mortgagee or such other entity that assumes the obligations of Redeveloper shall be entitled to develop the Property or Project in accordance herewith.

6.4 Additional Lender Protective Provisions. Notwithstanding anything in this Agreement to the contrary:

(a) *Rights of Mortgagee.* Relevant financial institutions shall be entitled to the protection of N.J.S.A. 55:17-1, et. seq. providing for notification, right to cure, right to possession, right to assume control of mortgagor, right to enter into possession of and operate Redeveloper's Property (or the portion thereof in question), right to the entry of a judgment of strict foreclosure, right to recover on the underlying loan obligations without first proceeding with foreclosure, right to proceed to foreclosure, separately from or together with suit on the underlying obligations, and such other rights all as specifically provided in N.J.S.A. 55:17-8.

(b) *No Termination of Mortgage Default.* This Agreement shall continue in full force and effect beyond any default in or foreclosure of any mortgage loan made to finance

the acquisition of the Property and/or the construction of the Project, as though such default or foreclosure had not occurred, subject to the provisions of N.J.S.A. 55:17-1, et. seq.

(c) *Attornment.* The Borough agrees to execute recognition and attornment documents that may reasonably be required by any lender and are reasonably acceptable to the Borough, and further to make any technical, non-substantive modifications to this Agreement that may be reasonably required for any financing. In the event the Borough shall fail to respond to Redeveloper's request within thirty (30) days of the date of said request, then such request shall be deemed as granted.

(d) *Notice to Mortgagee.* Whenever the Borough shall deliver any notice or demand to Redeveloper with respect to any Default or Event of Default by Redeveloper of its obligations or covenants under this Agreement, the Borough shall at the same time deliver a copy of such notice or demand to each holder of any mortgage at the last known address of such holder shown in the land records of Monmouth County or any other address provided to the Borough by such mortgage holder or Redeveloper. No such notice to Redeveloper shall be effective unless a copy is also sent to the holder the mortgage. No Default will become an Event of Default if the holder of any such mortgage shall undertake to cure such Default.

## **ARTICLE 7 MISCELLANEOUS**

7.1 No Consideration for Agreement. Redeveloper warrants it has not paid or given, and will not pay or give, any third person any money or other consideration for obtaining this Agreement, other than normal costs of conducting business and costs of professional services such as architects, engineers, financial consultants and attorneys. Redeveloper 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 Agreement.

7.2 Redeveloper's Rights. The Borough agrees it will not introduce any subsequent ordinances that impair the rights of the Redeveloper under this Agreement.

7.3 Non-Liability of Officials and Employees.

(a) No member, official or employee 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 Agreement.

(b) 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 Agreement.

7.4 Non-Liability of Officials and Employees of Redeveloper. Unless otherwise obligated hereunder as a guarantor, no member, officer, shareholder, director, partner or employee of Redeveloper or any Permitted Transferee, and no member, officer, shareholder, director,

partner, or employee of the members or partners of Redeveloper or any Permitted Transferee shall be personally liable to the Borough, or any successor in interest, in the event of any Default or breach by Redeveloper or any Permitted Transferee, or for any amount which may become due to the Borough, or their successors, on any obligation under the terms of this Agreement.

7.5 Modification of Agreement. This Agreement represents the entire agreement by and between the Parties with respect to the redevelopment of Redeveloper's Property. No amendment to this Agreement shall be considered binding on either of the Parties unless such amendment is in writing and specifically recites that it is being entered into by and between the Parties with the specific intention to modify the terms of this Agreement. In the event that any such amendment is agreed to by the Parties, such amendment shall not modify, change, or amend any portion of this Agreement except those specific portions that are recited in such amendment as being modified by such amendment. All other portions of this Agreement not so specifically amended in writing shall remain in full force and effect. No waiver by the Borough or Redeveloper of any covenant, agreement, term, provision or condition of this Agreement shall be deemed to have been made unless expressed in writing and signed by an appropriate official on behalf of both the Borough and Redeveloper. Notwithstanding the foregoing, any amendment to this Agreement must be approved by the Borough Council and attested to and acknowledged by the Borough Clerk.

7.6 Recitals and Exhibits. The Recitals and all Exhibits annexed to this Agreement are hereby made a part of this Agreement by this reference thereto.

7.7 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.

7.8 Severability. The validity of any Article and Section, clause or provision of this Agreement shall not affect the validity of the remaining Articles and Sections, clauses or provisions hereof.

7.9 Indemnification. Redeveloper, for itself and its successors and assigns, covenants and agrees, at its sole cost and expense, to indemnify, defend and hold harmless the Borough, its governing body, their respective officers, employees, agents, attorneys and consultants, representatives and employees, agents, attorneys and consultants, representatives and employees and respective successors and assigns from any third-party claims, liabilities, losses, costs, damages, penalties and expenses (including reasonable attorneys' fees) resulting from or in connection with the acts or omissions of Redeveloper or of Redeveloper's agents, employees, or consultants in connection with the development, financing, design, construction, operation, or maintenance of the Project, excluding any claims challenging the Borough's due and proper (i) designation of the Redevelopment Area, (ii) adoption of the Redevelopment Plan, (iii) authorization and execution of the Redevelopment Agreement and (iv) authorization and execution of the Financial Agreements and/or (v) grant of any land use approvals for the Project. No indemnification shall be required pursuant to this Section 7.7 in the event that the indemnification otherwise due pursuant to this Section 7.7 is attributable to the gross negligence or willful misconduct of the Borough, its governing body, or any agency of the Borough or any of their respective officers, employees, agents, attorneys, consultants, representatives and employees. This Section 7.9 shall survive termination of this Agreement.

7.10 Notices. A notice, demand or other communication required to be given under this Agreement by any Party to the other (a “*Notice*”) shall be in writing and shall be sufficiently given or delivered if dispatched by United States Registered or Certified Mail, postage prepaid and return receipt requested, or delivered by overnight courier or delivered personally (with receipt acknowledged), or by facsimile transmission (with a hard copy and a transmission confirmation sent by a recognized overnight national carrier service for next business day delivery), with a copy by electronic mail transmission, to the parties at their respective addresses set forth herein, or at such other address or addresses with respect to the parties or their counsel as any party may, from time to time, designate in writing and forward to the others as provided in this Section.

As to the Borough:

Borough of Allenhurst  
125 Corlies Avenue  
Allenhurst, New Jersey 07711  
ATTN: Donna Campagna, Borough Administrator  
Email: [dcampagna@allenhurstnj.org](mailto:dcampagna@allenhurstnj.org)

With a copy to:

David A. Laughlin, Esq.  
Birdsall & Laughlin, LLC  
P.O. Box 1380  
Wall, New Jersey 07719  
Email: [dlaughlin@birdsallandlaughlin.com](mailto:dlaughlin@birdsallandlaughlin.com)

And to:

Matthew D. Jessup, Esq.  
McManimon, Scotland & Baumann, LLC  
75 Livingston Avenue, 2nd Floor  
Roseland, New Jersey 07068  
Email: [mjessup@msbnj.com](mailto:mjessup@msbnj.com)

As to Redeveloper:

Power Station at Allenhurst, LLCc/o Michael Abboud  
1000 Sanger Avenue, 3<sup>rd</sup> Floor  
Oceanport, New Jersey 07757  
Email: [michael@tetherview.com](mailto:michael@tetherview.com)

With a copy to:

Craig M. Gianetti, Esq.  
Day Pitney LLP  
One Jefferson Road  
Parsippany, New Jersey 07054  
Email: [cgianetti@daypitney.com](mailto:cgianetti@daypitney.com)

From time to time either Party may designate a different person or address for all the purposes of this Notice provision by giving the other party no less than ten (10) days’ Notice in



advance of such change of address in accordance with the provisions hereof. Notices shall be effective upon the earlier of receipt or rejection of delivery by the addressee, provided, that any notice delivered by telecopy shall be deemed to have been received by such Party at the time of transmission, provided that a hard copy and transmission confirmation is simultaneously sent by a recognized overnight national carrier service for next business day delivery. Any notice given by an attorney for a Party shall be effective for all purposes.

7.11 Governing Law, Forum Selection, and Waiver of Jury Trial. The Parties agree that this Agreement shall be governed by and interpreted according to the laws of the State of New Jersey, without reference to the choice of law principles thereof. Each of the Parties hereto irrevocably submits to the jurisdiction of the Superior Court of New Jersey, Monmouth County, for the purpose of any suit, action, proceeding or judgment relating to or arising out of this Agreement and the transactions contemplated thereby. Each of the Parties hereto irrevocably consents to the jurisdiction of the Superior Court of New Jersey, Monmouth County, in any such suit, action or proceeding and to the laying of venue in such Court. Each Party hereto irrevocably waives any objection to the laying of venue of any such action or proceeding brought in said Court and irrevocably waives any claim that any such suit, action or proceeding brought in said Court has been brought in any inconvenient forum. The Parties further agree that any claims relating to or arising out of this Agreement and the transactions contemplated thereby shall be tried before a Judge and without a trial by jury.

7.12 Counterparts. This Agreement may be executed in one or more counterparts (which may be copies delivered electronically or by facsimile), each of which shall be deemed to be an original, but all of which taken together shall constitute one and the same agreement.

7.13 Compliance with N.J.S.A. 40A:12A-9. Notwithstanding anything in this Agreement to the contrary: it shall be a covenant running with the Property for so long as this Agreement is in effect that (a) the only uses to be constructed thereon are the uses established in the Redevelopment Plan; (b) Redeveloper will use commercially reasonable efforts to begin the building of the improvements that are the subject of this Agreement within the time periods specified by this Agreement which the Borough deems to be reasonable; (c) except as provided elsewhere in this Agreement with respect to Permitted Transfers, Redeveloper is without power to sell, lease, or otherwise transfer Redeveloper's Project, or any of Redeveloper's Property, without the written consent of the Borough; (d) upon issuance of the Certificate of Completion for each Phase, the conditions determined to exist at the time the area comprising the portion of the Property applicable to such Phase was determined to be an "area in need of redevelopment" shall no longer exist.

7.14 Cooperation. The Parties hereto agree to cooperate with each other and to provide all necessary and reasonable documentation, certificates, consents in order to satisfy the terms and conditions hereof and the terms and conditions of this Agreement. The Borough further agrees to cooperate as may be reasonably requested by any mortgagee, lender, or state agency in connection with Redeveloper (or any Permitted Transferee) obtaining financing for the Project; provided, however, that all costs and expenses of such cooperation by the Borough shall be borne by Redeveloper (or a Permitted Transferee as the case may be). The Borough further agrees to take all actions reasonably requested by Redeveloper to expedite the Project, including without limitation designating Borough staff liaisons to assist Redeveloper in interacting with Borough

departments, commissions, boards, authorities and the like and granting of special meetings and other expedited processing of Applications, submissions and the like to the extent authorized under Applicable Law.

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

***THE BALANCE OF THIS PAGE IS INTENTIONALLY BLANK:  
SIGNATURE PAGE FOLLOWS:***

**IN WITNESS WHEREOF**, the parties have executed this Agreement effective as of the latest date of the signatures affixed hereto.

**BOROUGH OF ALLENHURST**

By: \_\_\_\_\_  
Donna M. Campagna, DMC,  
Borough Clerk

By: \_\_\_\_\_  
Mayor, David J. McLaughlin

SEAL

Dated: \_\_\_\_\_

Witness:

**POWER STATION AT ALLENHURST, LLC**

By: Allen Development, LLC,  
Member

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

By: \_\_\_\_\_  
Name: Michael Abboud  
Title: Managing Manager

Exhibit A

Redevelopment Plan Ordinance

**ORDINANCE #2024-05**

**AN ORDINANCE OF THE BOROUGH OF ALLENHURST TO ADOPT THE AMENDED MAIN STREET REDEVELOPMENT PLAN AS REQUIRED BY THE SETTLEMENT WITH POWER STATION AT ALLENHURST, LLC**

Offered By: Deputy Mayor McLoughlin

Seconded By: Comm. Cumiskey

**WHEREAS**, on November 15, 2004, in accordance with the provisions of the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq. (the "Redevelopment Law"), the Borough designated certain properties fronting on Main Street and Deal Lake as an area in need of redevelopment (as further described in the Redevelopment Plan defined below, the "Redevelopment Area"); and

**WHEREAS**, in accordance with the provisions of the Redevelopment Law, the Borough enacted the "Main Street Redevelopment Plan" in October 2006, as amended November 2007 (the "Prior Redevelopment Plan") for the Redevelopment Area; and

**WHEREAS**, an action entitled *Power Station at Allenhurst, LLC v. Borough of Allenhurst, Board of Commissioners of the Borough of Allenhurst and Allenhurst Planning Board*, Superior Court of New Jersey, Law Division, Docket No.: MON-L-2551-21 was brought by Power Station at Allenhurst, LLC (hereinafter "Developer") alleging that the Borough had failed to provide a realistic opportunity for the construction of affordable housing and to meet the Borough's fair share of the 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 and Mount Laurel jurisprudence (hereinafter "Builder's Remedy Action"); and

**WHEREAS**, as a result of extensive settlement negotiations and in excess of a year of mediation between the Parties, the Parties arrived at agreements to resolve their differences and at a Fairness Hearing on July 6, 2023 before the Superior Court of New Jersey, the Hon. Linda Grasso Jones, J.S.C. determined the Affordable Housing Settlement Agreement to be fair, reasonable, and adequately protects the interests of very low, low, and moderate-income households, and the Court hereby approves"; and

**WHEREAS**, in order to comply with the Affordable Housing Settlement Agreement and the Order of Fairness and Preliminary Compliance entered by the Superior Court on July 31, 2023, the Board of Commissioners of the Borough of Allenhurst is obligated to adopt an amended and restated redevelopment plan for the Redevelopment Area; and

**WHEREAS**, an amended and restated Main Street Redevelopment Plan was prepared by the Borough's Planner, Jennifer C. Beahm, PP, AICP, in keeping with the terms and conditions of the settlement agreements between the parties and the Order of the Court, which Amended Redevelopment Plan is on file in the Office of the Borough Clerk and available for public inspection; and

**WHEREAS**, the Borough now desires to adopt the Amended Main Street Redevelopment Plan.

**NOW THEREFORE, BE IT ORDAINED** by the Governing Body of the Borough of Allenhurst that the Borough Code of the Borough of Allenhurst, be and is hereby amended, revised and supplemented to adopt the amended Main Street Redevelopment Plan as follows:

**SECTION I. ADOPTING THE AMENDED MAIN STREET REDEVELOPMENT PLAN PURSUANT TO THE LOCAL REDEVELOPMENT AND HOUSING LAW**

**A.:** The recitals set forth above be and are hereby incorporated in this Ordinance as if more fully set forth herein at length.

**B.:** In further compliance with the Settlement Agreements and as directed by the Court in the July 31, 2023 Order of Fairness and Preliminary Compliance, the Amended Main Street Redevelopment Plan be and is hereby approved and adopted pursuant to N.J.S.A. 40A:12A-7 and shall supersede any previous Redevelopment Plan in its entirety. As such, the Prior Redevelopment Plan is no longer of any effect.

**C.:** The Board of Commissioners does hereby refer the Amended Main Street Redevelopment Plan to the Planning Board for their determination that the same is in accordance with the master plan and the Planning Board's obligations as a party to the Settlement Agreements and the Order of Fairness and Preliminary Compliance set forth above.

**D.:** All of the provisions of the Amended Main Street Redevelopment Plan shall supersede the applicable development regulations of the Borough's municipal code in accordance with the terms of the Amended Main Street Redevelopment Plan, and the sections of the zoning map of the Borough that relate to the Redevelopment Area are hereby amended to incorporate the provisions of the Amended Main Street Redevelopment Plan.

**E.:** If any article, section, subsection, sentence, clause or phrase of this Ordinance is, for any reason, held to be unconstitutional or invalid, such decision shall not affect the remaining portions of this Ordinance and they shall remain in full force and effect.

**F.:** In the event of any inconsistencies between the provisions of this Ordinance and any prior ordinance of the Borough of Allenhurst, the provisions hereof shall be determined to govern. All other parts, portions and provisions of the Revised General Ordinances of the Borough of Allenhurst are hereby ratified and confirmed, except where inconsistent with the terms hereof.

**SECTION II.:** REPEALER. The remainder of all other sections and subsections of the aforementioned ordinances not specifically amended by this Ordinance shall remain in full force and effect.

**SECTION III.:** INCONSISTENT ORDINANCES. All other Ordinances or parts thereof inconsistent with the provisions of this Ordinance are hereby repealed as to such inconsistency.

**SECTION IV.:** SEVERABILITY. If any section, paragraph, subdivision, clause, or provision of this Ordinance shall be adjudged invalid, such adjudication shall apply only to the section,

paragraph, subdivision, clause, or provision so adjudged and the remainder of this Ordinance

shall be deemed valid and effective.

VOTE: Comm. McLoughlin-AYE; Mayor McLaughlin-AYE

**APPROVED:** January 9, 2024

**ADOPTED:** February 13, 2024

**CERTIFICATION**

I, Donna M. Campagna, Borough Clerk/Administrator, do hereby certify this to be a true and exact copy of an Ordinance adopted by the Board of Commissioners of the Borough of Allenhurst, County of Monmouth, State of New Jersey, at a meeting held on February 13, 2024.

A handwritten signature in black ink that reads "Donna M. Campagna". The signature is written in a cursive style with a large initial "D" and "C".

Donna M. Campagna, RMC  
Borough Clerk/Administrator

Exhibit B-1  
Settlement Agreement



## AFFORDABLE HOUSING SETTLEMENT AGREEMENT

THIS **AFFORDABLE HOUSING SETTLEMENT AGREEMENT** ("Agreement") is made this 23 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.



TO THE BOROUGH: Borough of Allenhurst  
Donna M. Campagna, R.M.C.  
125 Corlies Avenue  
Allenhurst, New Jersey 07711  
Fax: (732) 531-8694  
Email: dcampagna@allenhurstnj.org

With a copies to: David A. Laughlin, Esq.  
Birdsall & Laughlin, LLC  
1720 Highway 34 North  
P.O. Box 1380  
Wall, New Jersey 07719  
Fax: (732) 749-3901  
Email: dlaughlin@birdsallandlaughlin.com

and Andrew Bayer, Esq.  
Pashman Stein Walder Hayden, PC  
Bell Works  
101 Crawfords Corner Road, Suite 4202  
Holmdel, New Jersey 07733  
Phone: (732) 852 2482  
E mail: abayer@pashmanstein.com

TO THE PLANNING BOARD: Borough of Allenhurst Planning Board  
Kelly Barrett, Secretary  
125 Corlies Avenue  
Allenhurst, New Jersey 07711  
Fax: (732) 531-8694  
Email: planningboard@allenhurstnj.org

With a copies to: Erik Anderson, Esq.  
Reardon Anderson, LLC  
55 Gilbert Street North, Suite 2204  
Tinton Falls, New Jersey 07701  
Fax: (732) 758-8071  
Email: eanderson@reardonanderson.com

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 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.]

*BALANCE OF PAGE INTENTIONALLY LEFT BLANK*

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: *Sandeep Gandhi*  
Name: **Sandeep Gandhi**

By: *MA*  
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

**Exhibit "A"**

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**AFFORDABLE HOUSING SETTLEMENT AGREEMENT**

Power Station v. Borough of Allenhurst, et al.

Docket No.: MON-L-2551-21

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**Exhibit "A"**

## 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.

Docket No.: MON-L-2551-21

Page 1 of 5

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

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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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- 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 &amp; 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.

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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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**Exhibit "B"**

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**AFFORDABLE HOUSING SETTLEMENT AGREEMENT**

Power Station v. Borough of Allenhurst, et al.

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**Exhibit "B"**





ARTISTIC CONCEPTUAL RENDERING. ACTUAL  
COLORS AND CONDITIONS MAY VARY

# ALLENHURST REDEVELOPMENT

EAST SIDE TOWNHOMES  
ALLENHURST, NEW JERSEY



07.22.20



ARTISTIC CONCEPTUAL RENDERING. ACTUAL  
COLORS AND CONDITIONS MAY VARY.

# ALLENHURST REDEVELOPMENT

## WEST SIDE APARTMENT BUILDING

### ALLENHURST, NEW JERSEY

07.22.20



ARTISTIC CONCEPTUAL RENDERING, ACTUAL  
COLORS AND CONDITIONS MAY VARY

# ALLENHURST REDEVELOPMENT

STREETSCAPE RENDERING  
ALLENHURST, NEW JERSEY



**MORGAN**  
engineering & surveying  
CONTRACTOR OF PROFESSIONAL SERVICE  
AS ORDERED  
BY THE BOARD OF  
SUPERVISORS  
FOR THE TOWNSHIP

**LAKE DRIVE TOWNHOME  
CONCEPT 3**

BOROUGH OF ALLENHURST  
COUNTY OF MONMOUTH  
NEW JERSEY  
DATE: 03/03/2023  
PROJECT: LAKE DRIVE TOWNHOME  
SHEET: 28 OF 28



Exhibit B-2

Court Order dated July 31, 2023

**BIRDSALL & LAUGHLIN, LLC**

1720 Highway 34  
P.O. Box 1380  
Wall, NJ 07719  
Telephone: (732) 749-3900  
[dlaughlin@birdsallandlaughlin.com](mailto:dlaughlin@birdsallandlaughlin.com)  
David A. Laughlin, Esq. (No. 016421986)  
Attorneys for Borough of Allenhurst and Board of Commissioners  
of the Borough of Allenhurst

**PASHMAN STEIN WALDER HAYDEN, PC**

A Professional Corporation  
Bell Works  
101 Crawfords Corner Rd., Suite 4202  
Holmdel, New Jersey 07733  
Telephone: (732) 852-2481  
Andrew Bayer, Esq. (No. 033871988)  
Co-Counsel for Borough of Allenhurst and the Board of Commissioners  
of the Borough of Allenhurst

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.

*/s/ Linda Grasso Jones, J.S.C.*  
Hon. Linda Grasso Jones, J.S.C.

Exhibit C

Redeveloper Designation and Authorizing Resolution

Exhibit D

Form of Declaration of Covenants and Restrictions

**DECLARATION OF COVENANTS AND RESTRICTIONS**

Record and Return to:

Matthew D. Jessup, Esq.  
McManimon, Scotland & Baumann, LLC  
75 Livingston Avenue, Suite 201  
Roseland, New Jersey 07068

This Declaration of Covenants and Restrictions (the “*Declaration*”) is made this \_\_\_\_ day of \_\_\_\_\_ 2024 by POWER STATION AT ALLENHURST, LLC, a New Jersey limited liability company, having its principal office at 1000 Sanger Avenue, Oceanport, New Jersey 07757 (together with permitted successors or assigns as provided by the hereinafter defined Redevelopment Agreement, the “*Redeveloper*”).

**W I T N E S S E T H**

**WHEREAS**, on November 15, 2004, in accordance with the provisions of the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq. (the “*LRHL*”), the Board of Commissioners of the Borough (the “*Commissioners*”) designated certain property fronting on Main Street or Deal Lake, consisting of Block 18, Lot 1, Block 19, Lots 1 and 2, Block 21, Lots 2, 3, 5, 6, 8, 9, 10, 11, 12 and 13, and Block 31, Lot 3 on the official tax maps of the Borough, as an area in need of redevelopment (as further described in the Redevelopment Plan defined below, the “*Redevelopment Area*”); and

**WHEREAS**, in accordance with the provisions of the LRHL, the Commissioners enacted the “Main Street Redevelopment Plan” dated October 2006 (and as amended November 2007) for the Redevelopment Area; and

**WHEREAS**, on July 22, 2021, Redeveloper filed a Mount Laurel exclusionary zoning suit with the Superior Court of New Jersey (the “*Court*”), captioned 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 and Mount Laurel jurisprudence (the “*Builder’s Remedy Action*”); and

**WHEREAS**, the parties to the Builder’s Remedy Action entered into a Settlement Agreement dated February 23, 2023, attached to the Redevelopment Agreement as Exhibit B-1 (the “*Settlement Agreement*”), pursuant to which the Parties agreed to, among other things, enter into good faith negotiations for the execution of a redevelopment agreement consistent with the hereinafter defined Redevelopment Plan; and

**WHEREAS**, after a duly noticed Fairness Hearing held on July 6, 2023 before the Honorable Linda Grasso Jones, J.S.C., the Court approved the Settlement Agreement as reflected in a Court Order dated July 31, 2023 and attached to the Redevelopment Agreement as Exhibit B-2; and

**WHEREAS**, on February 13, 2024, in accordance with the provisions of the LRHL and in furtherance of the terms of the Settlement Agreement, the Commissioners adopted Ordinance #2024-05, a copy of which is attached to the Redevelopment Agreement as Exhibit A (the “*Redevelopment Plan Ordinance*”), enacting the “Main Street Redevelopment Plan 2023” (as the same may be amended and supplemented from time to time, the “*Redevelopment Plan*”), a copy of which is appended to the Redevelopment Plan Ordinance as Exhibit A; and

**WHEREAS**, Redeveloper is the fee simple record title owner of that certain real property located within the Redevelopment Area formally identified on the official tax maps of the Borough as Block 18, Lot 1 (the “*East Side*”) and Block 21, Lots 5 and 6 (which includes former Lot 7) (the “*West Side*”) and commonly known as 315 Hume Street and 500-523 Main Street, and the Borough is fee simple record title owner of that certain property located within the Redevelopment Area formally identified on the office tax maps of the Borough as Block 31, Lot 3 (the “*Lake Drive Property*”) and commonly known as Lake Drive; and

**WHEREAS**, the Borough will, at its sole cost, subdivide the Lake Drive Property into four (4) lots, including three (3) lots that will be retained by the Borough (the “*Borough Retained Lots*”) and one (1) lot that the Borough will contribute and dedicate in fee simple interest to the Redeveloper (“*Lake Drive*” and, together with the East Side and the West Side, the “*Property*”), which Lake Drive shall be deed restricted for the development of up to 23 affordable housing units, and no less than 20 affordable housing units in accordance with the requirements of the Settlement Agreement, and upon which Redeveloper shall construct the hereinafter defined Lake Drive Project; and

**WHEREAS**, Redeveloper has an easement right to use a portion of that certain real property located within the Redevelopment Area formerly identified on the official tax maps of the Borough as Block 21, Lot 4 (now merged with Lot 3), which is currently owned by JCP&L, for parking; and

**WHEREAS**, Redeveloper proposes to (i) Remediate (as defined in the Redevelopment Agreement) the Property pursuant to the terms of the Redevelopment Agreement, (ii) raze the structures on the West Side, and together with new construction, to implement 62 residential market-rate for sale or rental units, as more specifically described in Section 4.1(a) of the Redevelopment Agreement, together with structured and surface parking, ground floor retail and amenity space (the “*West Side Project*”), (iii) raze the structures on the East Side and improve the East Side with 28 market-rate for-sale townhouse units, related surface parking, and other on-site and off-site improvements, as more specifically described in Section 4.1(a) of the Redevelopment Agreement (the “*East Side Project*”), and (iv) raze structures on Lake Drive (excluding removal of existing cellular equipment atop the existing water tower) and improve Lake Drive with up to 23 affordable housing units, and no less than 20 affordable housing units in accordance with the requirements of the Settlement Agreement, related surface parking, and other on-site and off-site improvements, as more specifically described in Section 4.1(a) of the Redevelopment Agreement



(the “*Lake Drive Project*” and, together with the West Side Project and East Side Project, the “*Project*”); and

**WHEREAS**, Redeveloper will design, finance, construct, and implement the Project; and

**WHEREAS**, the Redeveloper has represented to the Borough that Redeveloper possesses the proper qualifications and experience to implement and complete the Project in accordance with the Redevelopment Plan, the LRHL, the Redevelopment Agreement and all other applicable laws, ordinances, and regulations; and

**WHEREAS**, in order to effectuate the Redevelopment Plan and the Project, and consistent with the terms of the Settlement Agreement, on [March 12], 2024, the Commissioners adopted Resolution No. 2024-[●], designated the Redeveloper as the “redeveloper” of the Property in accordance with the LRHL for the purpose of implementing the Project and authorized the execution of a Redevelopment Agreement between the Parties dated [●], 2024 (the “*Redevelopment Agreement*”); and

**WHEREAS**, the Parties desire that this Declaration be recorded in the land records of the County of Monmouth, State of New Jersey, in furtherance of the Redevelopment Plan and the Redevelopment Agreement and in accordance with the LRHL;

**NOW THEREFORE**, in consideration of the foregoing and in compliance with the requirements of the Redevelopment Agreement, Redeveloper, as the owner of the Property, hereby declares as follows:

**Section 1.** Capitalized terms not otherwise defined herein shall have the meaning assigned to them in the Redevelopment Agreement.

**Section 2.** Redeveloper covenants and agrees that:

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

(b) Except for Permitted Transfers which shall not require written consent of the Borough, and subject to the terms of the Redevelopment Agreement, prior to the issuance of a Certificate of Completion, Redeveloper shall not effect a Transfer without the written consent of the Borough, which shall not be unreasonably withheld, conditioned or delayed.

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

(d) Subject to and in accordance with the terms of the Redevelopment Agreement, upon Completion of Construction, Redeveloper shall obtain a Certificate of Occupancy and all other Government Approvals required for the occupancy and uses of the Property and Redeveloper shall use the Property and/or Project only for the purposes contemplated by the Redevelopment Agreement and the Redevelopment Plan.

(e) Subject to and in accordance with the terms of the Redevelopment Agreement and the Settlement Agreement, Redeveloper shall cause the Project to be developed, financed, constructed, operated, and maintained at its sole cost and expense.

(f) Subject to and in accordance with the terms of the Redevelopment Agreement, Redeveloper shall develop, finance, construct, operate, and maintain the Project consistent with Applicable Laws, Governmental Approvals, the Redevelopment Plan, the Settlement Agreement, and the Redevelopment Agreement including the obligation to use commercially reasonable efforts to meet all deadlines and timeframes set forth in the Redevelopment Agreement.

(g) Redeveloper will promptly pay any and all taxes, assessments, and service charges when owed with respect to the Property and any other property owned by Redeveloper situated in the Borough.

(h) Redeveloper shall expressly prohibit residential units in the West Side Project, whether such units are for-sale units or rental units, from being leased or subleased for a term less than 1 full year. If such units are for sale units, Redeveloper shall further include in the condominium association or other similar formation documents a provision expressly prohibiting unit owners from renting such units or permitting a sublease of such units for a term less than 1 full year.

**Section 3.** The covenants and restrictions set forth in Section 2 above shall be covenants running with the land. All covenants in Section 2, in any event, and without regard to technical classification or designation, legal or otherwise, and except only as otherwise specifically provided in the Redevelopment Agreement, shall be binding, to the fullest extent permitted by law and equity, for the benefit and in favor of, and enforceable by the Borough and its successors and assigns, and any successor in interest to the Property, or any part thereof, against Redeveloper, its successors and assigns and every successor in interest therein, and any party in possession or occupancy of the Property to any part thereof. Said covenants shall cease and terminate upon either the lawful termination of the agreement which will render all covenants and restrictions null and void or the issuance of a Certificate of Completion; provided, however, that the covenants in Section 2(c) and Section 2(h) shall remain in effect without limitation as to time.

**Section 4.** In amplification, and not in restriction of the provisions of Section 2, it is intended and agreed that the Borough and its successors and assigns shall be deemed beneficiaries of the restrictions and covenants set forth in Section 2 both for and in their own right but also for the purposes of protecting the interests of the community and other parties, public or private, in whose favor or for whose benefit such agreements and covenants shall run in favor of the Borough for the entire period during which such agreements and covenants 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 to or in favor of which such agreements and covenants relate.

*[Signature Page Follows]*

IN WITNESS WHEREOF, the Redeveloper has executed this Declaration effective as of the date first above written.

WITNESS: POWER STATION AT ALLENHURST, LLC

By: \_\_\_\_\_ By: \_\_\_\_\_  
Name: Name: Michael Abboud  
Title: Title: Managing Member

ACKNOWLEDGMENT

STATE OF NEW JERSEY )  
) SS.  
COUNTY OF \_\_\_\_\_ )

I CERTIFY that, on \_\_\_\_\_, 2024, Michael Abboud personally came before me, the undersigned, a Notary Public or Attorney at Law of the State of New Jersey, and this person acknowledged under oath, to my satisfaction that: (a) This person is the managing member of the Redeveloper, the limited liability company named in the within document; (b) this document was signed and delivered by the Redeveloper as its voluntary act duly authorized by a proper resolution of its members; and (c) being informed of the contents thereof, this person acknowledged execution of the foregoing instrument on behalf of said company.

Sworn to and subscribed before me  
This \_\_\_\_\_ day of \_\_\_\_\_, 2024  
\_\_\_\_\_

Notary Public  
State of New Jersey

Exhibit E

Existing Members

Power Station at Allenhurst, LLC is owned by:

33.33% - Allen Development, LLC, which is 100% owned by Michael Abboud

33.33% - Asbury Music Center North, LLC, which is 100% owned by Jon Leidersdorff

33.33% - Mach VI Properties, LLC, which is 75% owned by Nabil Elmachtoub and 25% owned by Joseph Castelluci

Exhibit F

Form of Certificate of Completion

Record and Return to:  
Craig M. Gianetti, Esq.  
Day Pitney LLP  
One Jefferson Road  
Parsippany, NJ 07054

CERTIFICATE OF COMPLETION

Date:

Project: \_\_\_\_\_ Urban Renewal Redevelopment Project [(East Side Project)] [(West Side Project)] [(Lake Drive Project)]

Location: [Block 18, Lot 1] [Block 21, Lots 5 and 6 (which includes former Lot 7)] [Block 31, Lot 3]<sup>1</sup> on the Official Tax Maps of the Borough of Allenhurst, County of Monmouth, New Jersey (the “Property”)

Pursuant to Section 4.5 of the Redevelopment Agreement by and between the Borough of Allenhurst (the “*Borough*”) and Power Station at Allenhurst, LLC (the “*Redeveloper*”) dated as of [●], 2024 (the “*Redevelopment Agreement*”), the undersigned, an authorized representative of the Borough, certifies as of the date hereof that the [East Side] [West Side] [Lake Drive] Project, consisting of the redevelopment of the Property to include [28 market-rate for-sale townhouse units, related surface parking, and other on-site and off-site improvements] [62 residential market-rate for sale or rental units, together with structured and surface parking, ground floor retail and amenity space] [up to 23 affordable housing units, and no less than 20 affordable housing units in accordance with the requirements of the Settlement Agreement, related surface parking, and other on-site and off-site improvements], in accordance with Section (the “*Project*”) of the Redevelopment Agreement, has been completed in its entirety as of [●], 20[●] in accordance with the Redevelopment Agreement, the Redevelopment Plan, the Settlement Agreement and other Applicable Laws so that the referenced Project may, in all material respects, be used and operated under the applicable provisions of the Redevelopment Agreement; all permits, licenses and Governmental Approvals that are required in order for Redeveloper to Complete the Project or such other work or action to which such term is applied are, to the extent so required, in full force and effect; this Project is being operated in accordance with the terms and provisions of the Redevelopment Agreement, the Redevelopment Plan, the Settlement Agreement and Applicable Laws; and a copy of the Certificates of Occupancy issued with respect to this Project are attached hereto as Schedule 1.

This Certificate of Completion for the Project constitutes the Borough’s conclusive determination that the Redeveloper has fully satisfied the agreements and covenants in the Redevelopment Agreement, which agreements and covenants are hereby terminated, and that the conditions determined to exist at the time Property was determined to be an area in need of

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<sup>1</sup> To reflect lot number once subdivided.

redevelopment are deemed to no longer exist with respect to subject Property. The land and improvements constituting the Property are no longer subject to (i) any covenant running with the land for the benefit of the Borough, except with respect to the covenants contained in Section 2(c) of the Declaration of Covenants and Restrictions, dated [●], 2024 (the “Declaration”), and (ii) eminent domain for purposes of redevelopment as a result of those determinations, if applicable.

The Declaration recorded in the office of the Monmouth County Clerk on [●], 2024, in Deed Book [●], Page [●] *et seq.* is hereby discharged of record and is void and of no further force and effect, **except** with respect to the covenants contained in Section 2(c) which shall continue to be in full force and effect.

Except as set forth in the Redevelopment Agreement, this Certificate of Completion is given without prejudice to any rights of the Borough or the Redeveloper against third parties which exist on the date hereof or which may subsequently come into being.

Capitalized terms used in this Certificate of Completion that are not otherwise defined herein shall have the same meaning ascribed to them in the Redevelopment Agreement.

*[Signature Page Follows]*

IN WITNESS WHEREOF, the Borough has executed this Certificate effective as of the date first above written.

ATTEST:

BOROUGH OF ALLENHURST

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

Name:

Name:

Title:

Title: Mayor

ACKNOWLEDGMENT

STATE OF NEW JERSEY )

) SS.

COUNTY OF \_\_\_\_\_ )

I CERTIFY that, on \_\_\_\_\_ 20\_\_\_\_, \_\_\_\_\_ personally came before me, the undersigned, a Notary Public or Attorney at Law of the State of New Jersey, and this person acknowledged under oath, to my satisfaction that: (a) this person is the Mayor of the Borough of Allenhurst, the municipal corporation named in the within document; (b) this document was signed and delivered by the Borough as its voluntary act duly authorized by a proper resolution of its members; and (c) being informed of the contents thereof, this person acknowledged execution of the foregoing instrument on behalf of said Borough.

Sworn to and subscribed before me

This \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

\_\_\_\_\_  
Notary Public  
State of New Jersey