

1/31/2024

2021

Reese, Cathy

From: Krane, Mark
Sent: Thursday, November 18, 2021 11:49 AM
To: george.lazo@marriott.com
Subject: FW: 40 Mountain Blvd.

From: Vincent Gerald <vgeraldi@warrennj.org>
Sent: Thursday, November 18, 2021 11:11 AM
To: David Marconi <dmarconi@silbertrealestate.com>; jamesdivizio@yahoo.com
Cc: paul@prconcrete.net
Subject: 40 Mountain Blvd.

As a follow up to our meeting yesterday , I would like to send you this email to clarify the details relating to the special inspections which are required for this building.

Several times during the review process, this office has requested details and documentation related to the required special inspections.

The structural engineer for the building provided a full page devoted to the required special inspections.

The requirements for the special inspections can be found on pg.S0.1 of the plans prepared by Mulhern and Kulp which were submitted to and reviewed by this office.

The special inspection agency provided the special inspectors names and copies of their licenses to this office.

Throughout the construction process and at the time of many inspection requests this office has needed to remind the builders to submit the required special inspection reports.

Be advised , there can be no metal decking nor slab inspections until the required special inspection reports are submitted to and reviewed by this office.

It is the responsibility of the builder to adhere to the special inspection process and to submit signed and sealed special inspection reports. These reports are to be submitted to and reviewed by this office prior to the inspection being performed by this office.

This office is and always has been willing to meet with the builder , owner, agents, architects, engineers, and the special inspection agency to discuss the process. Additional information relating to special inspections can be found in Chapter 17 of The International Building Code 2018 NJ Edition.

Please feel free to contact me .

Vince Gerald ,Assistant Building Subcode Official , Warren
908-753-8000-268

1/31/2024

Reese, Cathy

From: Jeffrey Lehrer <jlehrer@newjerseylaw.net>
Sent: Thursday, February 4, 2021 1:52 PM
To: Krane, Mark; Reese, Cathy; jtcivplan@comcast.net; Lazo, George
Subject: 40 Mountain Boulevard RDA
Attachments: RDA COVER LETTER-WOLFSON (A1300995x9D7D2).pdf

See attached cover letter. Once I have the signed agreements, I will bring them to town hall for the Mayor and Cathy to sign. Jeff

--

Jeffrey B. Lehrer, Esq.

Please be advised that most of our office is working remotely as a result of the executive order signed by the Governor. Please make every effort to send information electronically rather than via the US mail, UPS or other delivery service. We are making every effort to minimize unnecessary contacts. If you have an urgent matter please call we are all responding to phone calls as quickly as possible

HAVING CELEBRATED

OUR 100TH ANNIVERSARY IN 2017



DiFrancesco Bateman Kunzman Davis Lehrer & Flaum, PC
15 Mountain Blvd.
Warren, N.J. 07059
(Somerset County)
908-757-7800 ext. 180
fax 908-757-8039

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1/31/2024



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www.newjerseylaw.net
Jeffrey B. Lehrer
Member of the Firm
Extension 180
jlehrer@newjerseylaw.net

February 4, 2021

Via UPS Overnight
Brian Wolfson, Esq.
O'Toole Scrivo, PC
14 Village Park Road
Cedar Grove, NJ 07009

Re: 40 Mountain Blvd. LLC
Block 89, Lot 4 (the "Property")
40 Mountain Blvd., Warren, NJ 07059
Redeveloper's Agreement

Dear Brian:

As discussed, enclosed are 4 copies of the RDA between the Township of Warren and your client. Kindly arrange to have all copies signed and returned to me as soon as possible. I will then arrange to have the Mayor and Clerk sign same and return 2 fully executed copies to you.

Kind regards.

Very truly yours,

Jeffrey B. Lehrer

Cc: Mark M. Krane, Township Administrator
Cathy M. Reese, Township Clerk
George Lazo, Mayor

1/31/2024

Reese, Cathy

From: Jeffrey Lehrer <jlehrer@newjerseylaw.net>
Sent: Friday, January 22, 2021 9:09 AM
To: Brian Wolfson
Cc: Krane, Mark; Reese, Cathy; Brian Silbert
Subject: 40 Mountain Boulevard RDA
Attachments: RDA AS OF 1-22-21-REDLINED (A1294636x9D7D2).docx

Brian: good morning. At the closed session of the Township Committee meeting last night, there was consensus to move forward with the RDA Resolution provided the language in Section 3.6 (see attached) was included. The resolution was approved by unanimous vote. Kindly confirm that you and your client (copied on this email) approve of the revised language. If so, I will put the RDA in final form (with all exhibits) and bring 4 execution copies to the Clerk for signature by her and the Mayor.

Jeff

--

Jeffrey B. Lehrer, Esq.

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1/31/2024

REDEVELOPMENT AGREEMENT

BETWEEN THE

TOWNSHIP OF WARREN

AND

SILBERT REALTY & MANAGEMENT COMPANY, INC.

FOR THE

REDEVELOPMENT OF

40 MOUNTAIN BOULEVARD

WARREN, NEW JERSEY

THIS REDEVELOPMENT AGREEMENT, made this ____ day of _____ 2021, by and between the **TOWNSHIP OF WARREN** (hereinafter referred to as the “Township”) located at 46 Mountain Boulevard, Warren, New Jersey 07059 and **SILBERT REALTY & MANAGEMENT COMPANY, INC.** or an urban renewal entity formed pursuant to Section 7.1(b) (hereinafter referred to as “Redeveloper”) with offices located at 152 Liberty Corner Road, Suite 203, Warren, New Jersey 07059.

SECTION 1. RECITALS

WHEREAS, the Township is a political subdivision of the State of New Jersey, located in the County of Somerset; and

WHEREAS, the Township Committee of the Township of Warren (the “Township Committee”), by Resolution No. 2019-218 duly adopted on August 15, 2019, authorized the Planning Board to undertake a preliminary investigation to determine whether the area identified as Block 89, Lot 4 as shown on the Tax Map of the Township of Warren, Somerset County, New Jersey (the “Study Area”), should be declared “an area in need of redevelopment” according to the criteria set forth in Section 5 of the Local Redevelopment and Housing Law, N.J.S.A.40A:12A-1, *et seq.* (hereinafter “Redevelopment Law”); and

WHEREAS, John T. Chadwick, IV, P.P., Township Planner, submitted a report to the Planning Board entitled “Preliminary Investigation Report, 40 Mountain Blvd.” dated February 2020 (the “Redevelopment Area Report”), detailing the statutory criteria for determining whether the Study Area constituted an “area in need of redevelopment,” and which Redevelopment Study provided extensive information supporting a recommendation to the Planning Board that the aforesaid Study Area met the statutory criteria; and

WHEREAS, after a public hearing held on March 11, 2020 and in accordance with N.J.S.A. 40:12A-6, the Planning Board, on March 11, 2020, adopted a Resolution determining that the Study Area should be designated as an “area of redevelopment” and recommending that the Study Area be designated as a Non-Condensation “area in need of redevelopment” pursuant to the Redevelopment Law; and

WHEREAS, after a review of the Study Area and the recommendation of the Planning Board, the Township Committee adopted Resolution No. 2020-09 on April 16, 2020, designating the Study Area as a Non-Condensation “area in need of redevelopment” pursuant to the Redevelopment Law (the “Redevelopment Area”); and

WHEREAS, the Township Planner prepared and submitted a redevelopment plan entitled “40 Mountain Boulevard (Block 89, Lot 4) Redevelopment Plan” (the “Redevelopment

Plan”), outlining the planning, development and redevelopment of the Redevelopment Area in accordance with the provisions of N.J.S.A. 40A:12A-7; and

WHEREAS, on August 13, 2020 the Township Committee adopted Ordinance No. 20-20 adopting the Redevelopment Plan for the Redevelopment Area; and

WHEREAS, pursuant to the Redevelopment Plan, the Redeveloper proposes to redevelop Block 89 Lot 4 located in the Redevelopment Area (hereinafter referred to as the “Project Site”), by constructing a residential development consisting of a three-story apartment building containing 26 rental units, including six (6) affordable units (the “Affordable Units”); together with associated parking (the “Project”); and

WHEREAS, the Township Committee has determined that it is in the best interest of the Township and its residents for the Township to enter into this Redevelopment Agreement with the Redeveloper to set forth the principles of agreement between the Township and the Redeveloper for the redevelopment of the Project Site with the Project in the Redevelopment Area in accordance with the Redevelopment Plan; and

WHEREAS, the Township and the Redeveloper desire to fully and thoroughly address the issues, items and conditions precedent to the redevelopment of the Project Site by way of this Agreement; and

WHEREAS, the Township and the Redeveloper acknowledge that the mutual promises contained in this Agreement are good and valuable consideration for the binding execution of this Agreement;

NOW, THEREFORE, for good and valuable consideration, it is agreed upon, as of the date set forth above, by the Township and Redeveloper, as follows:

SECTION 2.DEFINITIONS

2.1. Governing Definitions. When used in this Agreement, the following words, phrases or terms shall have the meaning set forth in the subsections that follow:

2.1.1. **Agreement** shall mean the instant document, which is entitled "Redevelopment Agreement between the Township of Warren and Silbert Realty & Management Company, Inc. (or an urban renewal entity to be formed) for the Redevelopment of 40 Mountain Boulevard" and the documents and exhibits appended hereto and incorporated herein by reference.

- 2.1.2 **Approvals** shall mean, as to any Phase of the Project, all governmental approvals, permits, licenses, agreements and capacity reservations from any governmental authority having jurisdiction over the Redevelopment Area that are required to permit construction of the relevant Phase of the Project to commence, including, but not limited to, local and county planning approvals, construction permits, and other various state and local approvals; excluding, however, approvals, permits and the like normally obtained during the ordinary course of construction.
- 2.1.3 **Board** shall mean the Warren Township Planning Board.
- 2.1.4. **Township** shall mean the Township of Warren, acting through its Township Committee.
- 2.1.5 **Certificate of Completion** shall mean a certificate or certificates certifying that the Redeveloper has performed its duties and obligations under this Redevelopment Agreement with respect to all or a portion of the Project or certifying that the Project, or any portion thereof, has been completed; provided, however, to the extent that the Project, or any portion thereof, has been substantially completed, the Certificate to be provided shall certify that the Project, or any portion thereof, has been substantially completed. The Township Committee recognizes and consents to the fact that the Project may be developed and constructed in phases and that the Redeveloper shall be entitled to a Certificate of Completion for any phase of the Project that has been completed in accordance with the Approvals.
- 2.1.6. **Certificate of Occupancy** means a temporary or permanent Certificate of Occupancy, as such term is defined in the New Jersey Administrative Code, issued with respect to all or a portion of the Project upon completion of all or a portion of the Project.
- 2.1.7. **Commencement of Construction, Commencement Date, Commence Construction** or similar phrases shall have the meaning set forth in Section 5.3.
- 2.1.8. **Conditions Precedent** shall have the meaning set forth in Section 4.1.
- 2.1.9 **Township Committee** shall mean the governing body of the Township.
- 2.1.10 **Default** shall have the meaning defined in Sections 6.1 and 6.2.

2.1.11 **Default Notice** shall mean such notice from the Township to the Redeveloper as defined in Section 6.3.

2.1.12 **DEP** shall mean the New Jersey Department of Environmental Protection.

2.1.13 **Effective Date** shall be the date upon which this Agreement is fully executed by all parties.

2.1.14 **Environmental Laws** shall mean any federal, state or local law, ordinance, rule or regulation, including, without limitation, (a) the New Jersey Spill Compensation and Control Act, as amended, N.J.S.A. 58:10-23.11 et seq.; (b) the New Jersey Industrial Site Recovery Act, as amended, N.J.S.A. 13:1K-6 et seq.; (c) the New Jersey Leaking Underground Storage Tank Act, as amended, N.J.S.A. 58:10-21 et seq.; (d) the Comprehensive Environmental Response, Compensation & Liability Act, as amended, 42 U.S.C. Section 9601 et seq.; (e) the Resource Conservation and Recovery Act, as amended, 42 U.S.C. Section 6901 et seq.; (f) the Hazardous Material Transportation Act, as amended, 49 U.S.C. Section 180, et seq.; (g) the Occupational Safety and Health Act, as amended, 29 U.S.C. Section 651, et seq.; or (h) any and all laws, regulations, and executive orders, whether federal, state or local, pertaining to environmental matters, as the same may be amended or supplemented from time to time.

2.1.15 **Event of Default** shall have the meaning set forth in Section 6.2.

2.1.16 **Final Approval** shall mean an Approval for which the limiting period on appeal or for an appeal set forth statutorily or in the rules of court has expired without an appeal or further appeal having been taken.

2.1.17. **Financing** shall mean any construction, permanent or other financing, including institutional equity and debt financing and related party equity and debt financing, obtained by the Redeveloper in connection with the Project. It is understood and agreed that the Township shall not under any circumstances guaranty any Redeveloper Financing.

2.1.18 **Force Majeure** shall have the meaning set forth in Section 14.1.

2.1.19 **Hazardous Substances** shall mean any hazardous substances or wastes now or in the future regulated under Environmental Laws, excluding, however, customary construction, maintenance, janitorial and cleaning supplies in reasonable quantities

to be used in the ordinary course of construction and operation of the Project and which are used and disposed of in accordance with all applicable Environmental Laws.

2.1.20 **Parties** shall mean both the Township and the Redeveloper together and shall not refer to any other person or entity.

2.1.21 **Permitted Transfers** shall have the meaning set forth in Section 8.2.

2.1.22. **Project** shall be as generally described in Section 2.2.1 of this Agreement.

2.1.23 **Project Schedule** shall be as detailed in Exhibit C to this Agreement.

2.1.24. **Project Site** shall be defined as set forth in the Recitals in Section 1 of this Agreement.

2.1.25 **Redeveloper** shall mean Silbert Realty & Management Company, Inc. and its successors or assigns or an urban renewal entity to be formed in which Brian Silbert is the majority member.

2.1.26 **Redevelopment** shall mean the design and construction of the improvements on the Project Site as contemplated by this Agreement.

2.1.27. **Redevelopment Area** shall be defined as set forth in the Recitals in Section 1 of this Agreement.

2.1.28. **Redevelopment Entity** shall mean the Township Committee of the Township of Warren acting as a redevelopment entity.

2.1.29. **Redevelopment Law** shall be defined as set forth in the Recitals in Section 1 of this Agreement.

2.1.30 **Redevelopment Plan or Plan** shall mean the Township of Warren Redevelopment Plan adopted by the Township Committee pursuant to Ordinance No. 20-20 on August 13, 2020.

2.1.31 **Redevelopment Plan Ordinance** shall have the meaning set forth in the recitals to this Agreement, subject to such amendments as may hereafter be adopted.

2.1.32. **Remediation** shall mean any clean up, containment, correction or adjustment in strict accordance with Environmental Laws to any environmental contamination to any natural resource, including but not limited to air, groundwater, surface water, or soil.

2.1.33 **Site Plan** shall have the meaning set forth in Section 2.2.1.

2.1.34. **Third Party** means a person or entity other than (i) the Township; (ii) any agent, employee, agency, board, elected official or representative of the Township; (iii) the Redeveloper; (iv) any member, shareholder, partner, officer, representative, employee or agent of the Redeveloper or (v) any entity owned or controlled by, under common control with, or that owns or controls, the Redeveloper or any member, shareholder or partner of the Redeveloper.

2.1.35. **Transfer** shall have the meaning set forth in Section 8.2.

2.2 Project Definitions. When used in this Agreement, the following words, phrases or terms shall have the meanings set forth in the subsections that follow:

2.2.0. Purpose. The purpose of this Agreement is to set forth the respective rights, obligations, conditions and agreements of the Township and the Redeveloper in connection with the redevelopment of the Project by the Redeveloper. The Redeveloper has been designated by the Township Committee as the Redeveloper of the Project.

2.2.1. The Project. The Project shall generally be designed in accordance with the Site Plan (the "Site Plan") entitled "Preliminary and Final Major Site Plan, 40 Mountain Boulevard Residential Project, Block 89, Lot 4, tax Map Sheet 109, Warren Township, Somerset county, NJ" prepared by E & LP Associates, Inc. dated September 2, 2020, and on the architectural plans (the "Architectural Plans") dated September 18, 2020, revised October 14, 2020, prepared by Beer Architectural Group, LLC attached hereto as **Exhibits A and B**, respectively. Attached hereto as **Exhibit B-1** is a rendering of the proposed Project prepared by Beer Architectural Group, LLC. The Site Plan may be subject to the modifications as required by the Board in accordance with this Agreement, the Redevelopment Plan and the land development ordinances of the Township. The Township Committee agrees that the present Site Plan is consistent with the requirements of the Redevelopment Plan, including but not limited to, the number of residential units provided. Redeveloper shall construct only the residential units established and permitted in the current Redevelopment Plan.

SECTION 3 REDEVELOPER RESPONSIBILITIES.

3.1. Infrastructure Improvements; Redeveloper Responsibilities. The Redeveloper will be responsible for its undertakings described herein after the satisfaction of the Conditions Precedent (as defined in Section 4.1), and at a time designed to allow construction of the Project to commence consistent with the terms of this Agreement.

3.2. Infrastructure Improvements On Site. The Redeveloper is responsible, at its sole cost and expense, for the construction of all on-site infrastructure improvements on the Project Site which are required to accommodate full development of the Project, including but not limited to internal streets, sanitary sewers, storm sewers, and utility lines necessary for the Project, as more particularly set forth in Warren Township Planning Board Resolution 20-05 (Resolution 20-05) adopted on November 23, 2020, a copy of which is attached hereto and made a part hereof as Exhibit C

3.3. Infrastructure Improvements Off-Site and Off-Tract. The Redeveloper shall have no responsibility for the cost of any Township off-site or off-tract improvements under the terms of this Agreement other than for bringing water and sewer to the Project Site and any other improvements required by the Board as set forth in Resolution 20-05.. 3.4 Approval of Project Site Plan and Architectural Plans. The Township agrees that the Site Plan and Architectural Plans depicted on **Exhibit A and B** to this Agreement are consistent with the requirements of the Redevelopment Plan. Furthermore, the Redeveloper acknowledges that it will be required to comply with the provisions of the Redevelopment Plan and Resolution 20-05. 3.5. Project Site. The Redeveloper or entities owned and controlled by the Redeveloper is/are the owner(s) of the Project Site.

3.6 Additional Parking. Redeveloper shall provide additional parking at 53-55 Mountain Boulevard (the "Gateway East Site"), as more particularly set forth in a letter from Redeveloper's Counsel dated November 23, 2020, a copy of which is attached hereto and made a part hereof s **Exhibit D** and as detailed in the letter written by the Redeveloper's traffic consultant, Gary Dean, PE, dated December 22, 2020, a copy of which is attached hereto and made a part hereof as **Exhibit D-1**. In amplification of the foregoing, the approved site plans and Resolutions of the Gateway East Site reveals that the total parking required was 90 spaces and 85 spaces were approved and built (variance granted).

Redeveloper shall provide the Township with a copy of the fully executed license agreement(s) with the owner of the Gateway East Site prior to the issuance of any

Building Permit for the Project. ~~If a parking issue at the Project Site exists after the issuance of a Certificate of Occupancy for the Project, Redeveloper, upon written request of the Zoning Officer or the Township Engineer, shall provide an additional license agreement (within 30 days of such written request) with an adjacent property owner to the Project Site or the property identified as 37 Mountain Boulevard. At least ninety (90) days prior to the issuance of a Certificate of Occupancy for the Project, the Redeveloper shall provide one or more additional license agreements sufficient to satisfy the seventeen (17) space parking deficiency, to the reasonable satisfaction of the Township Committee.~~

SECTION 4. CONTINGENCIES

4.1 Contingencies. The respective obligations of the Parties to proceed with the Redevelopment under this Agreement are contingent upon the satisfaction or waiver, by the party whose performance is contingent upon the satisfaction of the contingency, of the contingencies set forth in Sections 4.1 and 4.2 hereof within the time periods set forth therein (the “Conditions Precedent”).

4.2 Approvals. The obligation of the Parties to proceed with the Project is contingent upon receipt of all Approvals, (including but not limited to building permits, Somerset County Planning Board approval, Somerset-Union Soils Conservation District Approval, New Jersey Department of Transportation approval, Department of Community Affairs and New Jersey Department of Environmental Protection approval) for the Project. The Township will reasonably cooperate and assist where possible, including expediting the processing of all such applications.

4.3. Project Schedule. It is acknowledged by the Parties that the construction of the Project is time sensitive and will require the coordination of a multitude of efforts by the Redeveloper, the Township and other governmental and private concerns. The Redeveloper’s schedule for commencement and completion of the various elements of the Project (subject to delays caused by Force Majeure) is set forth on **Exhibit E** to this Agreement. The Redeveloper shall use good faith efforts to complete the Project as expeditiously as possible in accordance with **Exhibit E**. Notwithstanding the foregoing, any applicable dates contained in the Project Schedule shall not be deemed time is of the essence.

4.4 Effect of Termination. If any of the Contingencies or Conditions Precedent in this section are not satisfied or waived by the appropriate Party prior to the expiration of the applicable time period therefore as set forth herein, then Redeveloper may terminate this Agreement upon written notice to the Township. If this Agreement is terminated under this Section 3, this Agreement shall automatically terminate, neither party shall have any further liability to the other, and any and all unexpended fees, escrows and payments

made by the Redeveloper pursuant to Section 11.1 and/or Section 11.2 hereof shall be refunded to the Redeveloper by the Township.

SECTION 5. IMPLEMENTATION OF THE PROJECT

5.1 Project Development. The Redeveloper, subject to the contingencies set forth in this Agreement, agrees to develop the Project Site in accordance with this Agreement.

5.2 Development Approvals. The Parties acknowledge that the Approvals must be obtained prior to the commencement of any work on the Project Site. The Redeveloper agrees to obtain all Approvals that may be necessary to commence and complete the Project. The Redeveloper agrees to proceed in a reasonable and diligent manner to obtain all Approvals that may be necessary to commence and complete the Project. The Township agrees that it will use good faith efforts, without cost or expense to the Township except for payroll and internal administrative costs, to assist or provide information in its possession to the Redeveloper when such assistance or information is needed by the Redeveloper to obtain any necessary permits or approvals, including, but not limited to, signing any and all applications for permits or other approvals necessary for the development of the Project, if necessary. To the extent permitted under applicable law, the Township agrees to support and endorse and, if possible, sign, any applications of the Redeveloper that are in accordance with this Agreement. The Township agrees to expedite the processing of applications for building permits and other municipal permits. The Township, and all officers, employees and agents of the Township shall take all reasonable steps to foster and facilitate development of the Project in accordance with this Agreement. The Township shall cooperate in all efforts of the Redeveloper to secure necessary municipal, county and state permits and approvals in an expeditious fashion.

5.3 Commencement of Project. The Redeveloper agrees that it will use good faith efforts, subject to delays caused by Force Majeure, to obtain the necessary building permits and commence construction of the Project by not later than ninety (90) days after the last to occur of the following events: (i) all Final Approvals have been obtained, (ii) the final Site Plan has been signed by the appropriate Township officials, and (iii) the satisfaction of all conditions in the Resolution granting final Site Plan approval for the Project. For purposes of this Agreement, the phrase, "Commencement Date" or "commencement of construction" or equivalent phrases, however worded, shall mean the commencement of physical construction or site preparation work at the Project Site by the Redeveloper in furtherance of the plans for the construction of the Project. After the commencement of construction for any improvement in the Project, the Redeveloper will

thereafter diligently and continuously prosecute that portion of the Project to completion, subject to delays caused by Force Majeure, in accordance with this Agreement.

5.4 Certificate of Occupancy and Certificate of Completion. Upon completion of the construction of the Project, or any part thereof, and issuance of a temporary certificate of occupancy for such part, subject only to punch list items for all or any part of the building(s) to be constructed, then, provided the Redeveloper has substantially complied with this Agreement and Resolution 20-05, the Township agrees to issue a Certificate of Completion in proper form for recording, which shall acknowledge that the Redeveloper has performed all of its duties and obligations under this Agreement with respect to the Project, or portion of the Project for which the certificate has been issued, and has completed construction in accordance with the requirements of this Agreement with respect to the part of the Project to which the Certificate relates. Such Certificate of Completion shall constitute a conclusive determination of the satisfaction and termination of the agreements and covenants in this Agreement and in the Redevelopment Plan with respect to the relevant obligations of the Redeveloper to construct the Project. The Township shall provide such Certificate of Completion within thirty (30) days after written request by the Redeveloper or, within ten (10) days of such request, provide the Redeveloper with a written statement setting forth in detail the respects in which it believes that the Redeveloper has failed to complete the Project and what reasonable measures or acts will be necessary in the opinion of the Township in order for the Redeveloper to be entitled to such Certificate of Completion. Pursuant to *N.J.S.A. 40A:12A-9(a)*, upon the issuance of a Certificate of Completion for the Project, the conditions that were determined to exist at the time that the area was determined to be in need of redevelopment shall be deemed to no longer exist, and the land and improvements thereon shall no longer be subject to eminent domain as a result of those determinations.

5.5 Cooperation and Compliance. The Parties hereto agree to cooperate with each other and to provide all necessary and reasonable documentation, certificates, and consents in order to satisfy the terms and conditions of this Agreement. The Township Committee further agrees to take such action as may be reasonably requested by any mortgagee of the Redeveloper in connection with obtaining Financing for the Project.

5.6 Fees. The Redeveloper shall be subject to application and escrow fees for Township approvals and review processes in accordance with the Township's Land use Procedures and Land Development ordinances

SECTION 6. DEFAULT PROVISIONS

6.1 Redeveloper's Default. The Township shall have the right to declare the Redeveloper in default of this Agreement ("Default") in the event that any of the events set forth below in Section 6.2 occur. For purposes of this Agreement, the term "Default" shall mean the occurrence of any of the events set forth in Section 5.2, after notice and opportunity to cure, and which may result in the Township exercising any or all of its remedies under Section 6.4 of this Agreement to terminate the Redeveloper's rights under this Agreement.

6.2 Default Events. The Township shall have the right to declare the Redeveloper in default of this Agreement in the event of the occurrence of any of the following (each, an "Event of Default"):

- The Redeveloper's failure to perform substantially, or substantial defect in performance by the Redeveloper, of any of its material obligations under this Agreement; or
- A final and un-appealable determination by a court of competent jurisdiction that the Redeveloper is insolvent; or
- The Redeveloper shall file a voluntary petition in bankruptcy; or
- The sending of a notice to the Township by the Redeveloper that it has determined not to proceed with the Project, unless the Redeveloper has the right not to proceed, under the terms of this Agreement; or
- Any judgment of bankruptcy against the Redeveloper, or any general assignment for the benefit of creditors by the Redeveloper, or any appointment of a receiver for the Redeveloper which is not stayed or dismissed within ninety (90) days of such appointment; or
- Abandonment of the Project by the Redeveloper for a period of more than ninety (90) consecutive days after commencement, without explanation, which shall mean the failure to staff adequately or diligently to prosecute the Approvals or to construct the Project to ensure the achievement of the Project Schedule.

6.3 Default Notice. Upon an occurrence of an Event of Default, the Township shall notify the Redeveloper in writing that it has declared the Redeveloper in default (hereinafter "Default Notice"). Absent such Default Notice, no declaration of Default shall be deemed binding against the Redeveloper. The Default Notice shall be given by the Township Committee within ten (10) days of action by the Township Committee or its designee determining that an Event of Default has occurred and shall state the basis for determining that an Event of Default has occurred. Upon receipt of the Default Notice, the Redeveloper shall have thirty (30) days after the Redeveloper's receipt of the Default Notice, in the case of a financial obligation, to respond to such Default Notice, or in the case of a non-financial obligation, the Redeveloper shall have forty-five (45) days after

the Redeveloper's receipt of the Default Notice, to commence to cure the Event of Default and shall be afforded additional time to cure, provided that the Redeveloper has, within the applicable time period, commenced and is diligently and continuously proceeding to correct same. In the event that the Redeveloper does not cure the Default as set forth herein, the Township shall have the right to exercise the remedies set forth below. The Parties may agree in writing, notwithstanding the provisions of this paragraph, to extend the period of time by which the Redeveloper must respond to the Default Notice or the period of time in which the Redeveloper must cure the Default.

6.4 Default Rights and Remedies of Township: Upon the occurrence of a Default which has not been cured pursuant to Section 6.3, the Township shall, to the fullest extent permitted by law, have each of the following rights and remedies: (i) Terminate this Agreement, in whole or in part, upon the expiration of the applicable cure period with respect to the Project; (ii) Withhold the issuance of any Certificate of Completion as to the Project until the Default has been corrected; and (iii) any other remedy at law or equity, including but not limited to, de-designating the Redeveloper and any statutory rights of the Township, none of which are waived by the execution of this Agreement.

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

waived in writing.

6.6 Township Default. The failure of the Township to substantially perform, or a substantial defect in performance by the Township of, any of its obligations under this Agreement (“Township Event of Default”) shall constitute a default by the Township.

6.7 Cure by Township. The Township shall have the right to cure any Township Event of Default, provided that the Township commences the cure thereof within forty-five (45) days of the date that the Redeveloper notifies the Township, in writing, that a Township Event of Default has occurred, unless a longer period is expressly required to comply with statutory limitations or requirements; provided, further, that if the Township diligently and continuously proceeds to cure the Township Event of Default, the Township shall be afforded an additional reasonable period of time to complete the cure, given the nature of the Default.

6.8 Rights and Remedies of Redeveloper. In the event that the Township does not cure the Township Event of Default as set forth herein, the Redeveloper shall be entitled to all remedies at law and equity, including the remedy of specific performance.

SECTION 7 LENDER PROTECTIVE PROVISIONS

7.1 Rights of Mortgagee. In the event of any default in connection with the terms and provisions of any lease or financial arrangement providing for a mortgage interest upon the Project or Project Site, the relevant financial institutions shall be entitled to the protection of N.J.S.A. 55:17-1 et seq. providing for notification, a reasonable opportunity (in light of the nature of the default and the available means to correct it), to cure the same, and shall be afforded additional time to diligently and continuously proceed to correct same in a reasonable period of time given the nature of the breach, provided that the financial institution or lender has, within thirty (30) days of the receipt of notice, commenced and is diligently pursuing the correction of such failure or defect. In order to provide additional and supplemental remedies to the holder of a mortgage loan on the Project or Project Site in the event of a default with the terms and provisions of its mortgage loan, which remedies are deemed necessary and appropriate to the feasibility of making private funds available to finance the Project, the holder of a loan may exercise the following rights: the right to cure, right to possession, right to assume control of mortgagor, right to enter into possession of and operate premises, right to the entry of a judgment of strict foreclosure, right to recover on the underlying loan obligation without first

proceeding with foreclosure, right to proceed to foreclosure, separately from or together with suit on the underlying obligation, and such other rights as are specifically provided in N.J.S.A. 55:17-8.

7.2 No Termination for Mortgage Default. This Agreement, being a lease or financial arrangement made by a governmental body or agency of the State of New Jersey pursuant to statutes in connection with a project for redevelopment, renewal or rehabilitation, shall continue in full force and effect beyond any default in or foreclosure of any mortgage loan made to finance the Project, as though such default or foreclosure had not occurred, subject to the provisions of N.J.S.A. 55:17-1 et seq.

7.3 Attornment. The Township agrees to execute recognition and attornment documents that may reasonably be required by any lender and that are reasonably acceptable to the Township, and further to make any technical, non-substantive modifications to this Agreement that may be reasonably required for the Financing; provided, however, that the Redeveloper shall reimburse the Township for all costs incurred in connection with the review and approval of said documents (including the preparation of any approving resolutions) by the Township Attorney.

7.4 Notice to Mortgagee. Whenever the Township shall deliver any notice or demand to the Redeveloper with respect to any Event of Default by the Redeveloper of its obligations or covenants under this Agreement, the Township shall simultaneously forward 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 the County or any other address provided to the Township by such mortgage holder. No such notice to the Redeveloper shall be effective unless a copy is also sent to the holder of such mortgage. No Default will become effective if the holder of any Financing is curing such Default.

7.5 Mortgagee's Right to Cure Default and Assume Redeveloper's Obligations. After any Event of Default, each holder of any Financing shall (insofar as the rights of the Township are concerned) have the right, at its option, to cure or remedy such Default and to add the cost thereof to its mortgage and shall have an additional thirty (30) days to do so, provided that, if the Default relates to construction of the Project, nothing contained in this Agreement shall be deemed to require the holder to obtain the Township's approval, either before or after foreclosure or any action in lieu thereof, to undertake or continue the construction or completion of the Project or any part thereof. Any such holder who shall properly complete the Project or applicable part thereof shall be entitled, upon

written request made to the Township, to receive the certificate of occupancy for the units or buildings within the Project and the Certificates of Completion as set forth in Section 4.5 hereof.

SECTION 8. NONDISCRIMINATION AND RESTRICTIONS ON TRANSFER

8.1 Nondiscrimination. The Redeveloper agrees, and all Deed(s) for any parcels in the Project Site shall contain covenants running with the land, perpetual in duration, binding on the Redeveloper, its successors and assigns, and every successor in interest to the parcels, that the owners of the properties to be redeveloped shall not discriminate upon the basis of race, color, creed, or national origin in the sale, lease, or rental or in the use or occupancy of the properties or any improvements erected or to be erected thereon, or any part thereof.

It is intended and agreed, and the Deed(s) shall so expressly provide, that the agreements and covenants provided herein above shall be covenants running with the land and that they shall, in any event, and without regard to technical classification or designation, legal or otherwise, and except only as otherwise specifically provided in this Agreement, be binding, to the fullest extent permitted by law and equity, for the benefit and in favor of, and enforceable by, the Township, its successors and assigns, any successor in interest to the parcels, or in any part thereof, and the owner of any other land (or any other interest in such land) in the Project Site which is subject to the land use requirements and restrictions of the Redevelopment Plan, against the Redeveloper, its successors and assigns, and every successor in interest to the parcels.

8.2 Restrictions on Transfer. (a) Prior to the issuance of a Certificate of Completion for the Project or any part thereof, pursuant to N.J.S.A. 40A:12A-9(a), the Redeveloper shall, except as set forth in subsection (b) below, be without power to sell, lease, assign, mortgage, or otherwise transfer or encumber (any of the foregoing, a "Transfer") this Agreement, the Project, the Project Site or any such part of or interest in the foregoing, without the written consent of the Township, which consent shall not be unreasonably withheld, conditioned or delayed, subject to compliance with subsection (c) below.

(b) Notwithstanding the foregoing, prior to the Certificate of Completion, the following transfers and encumbrances ("Permitted Transfers") shall be permitted without any consent or any further approval by the Township Committee: (i) leases or contracts of sale for individual residential units (ii) a mortgage or mortgages and other liens and encumbrances for the purposes of financing costs

associated with the acquisition, development, construction and marketing of the Project; (iii) utility, access, ingress, egress and other development easements; (iv) environmental covenants and restrictions imposed by a regulatory agency as a condition of any permit or approval; (v) a transfer of an interest in the Redeveloper or the Project Site to an entity owned or controlled by the Redeveloper (for purposes of this Agreement defined to mean at least a 51% or greater ownership interest), including transfer to an urban renewal entity if necessary in relation to any tax abatement that may be approved; (vi) a transfer of an interest in the Redeveloper limited liability company for the benefit of children, parents or heirs of a party owning an interest in the Redeveloper; and (vii) any contract or agreement with respect to any of the foregoing exceptions. The foregoing shall not apply, and therefore no approval will be required with respect to, a change of form of the Redeveloper entity, provided that there is no change in the beneficial ownership of the Redeveloper.

(c) If, prior to the Certificate of Completion, there is a Transfer which is not a Permitted Transfer as set forth in subsection (b) above, such Transfer shall require the consent of the Township Committee, the Township Committee's consent shall be conditioned upon the Redeveloper satisfying the following conditions to the reasonable satisfaction of the Township Committee: (i) the Redeveloper presents evidence demonstrating the reputability of the transferee or assignee and the financial ability of the transferee or assignee to fulfill the obligations of this Agreement (or, if the Transfer is of a part of the Project Site or rights hereunder, the obligations relating to such part); and (ii) the Redeveloper presents evidence demonstrating the competence and experience of management of the proposed transferee or assignee to complete the relevant section of the Project.

(d) A determination of compliance with the criteria set forth in subsection (c) above shall be based on the following information and documentation to be submitted by the transferee or assignee: (i) financial statements indicating (1) net worth, or (2) unencumbered lines of credit; (ii) evidence of loan commitments sufficient to carry out the Project of the transferee or assignee; and (iii) a letter of recommendation from a prior project manager or owner for whom the prospective transferee or assignee has at least ten (10) years of experience in the construction of residential multi-family housing in the State of New Jersey, and (iv) has undertaken a comparable development in the State of New Jersey.

(e) A proposed transferee or assignee shall be presumed to be reputable and have the necessary financial ability if the above information demonstrates: (i) that the proposed transferee or assignee is of good character and reputability as evidenced by the letter from a prior manager or owner for whom the prospective

transferee or assignee has undertaken a comparable development in the State of New Jersey; and (ii) that the proposed transferee or assignee has sufficient net worth and credit worthiness to carry out the Project, or part thereof, or loan commitments in amounts and on terms sufficient to permit the completion of the Project, or relevant part thereof.

(f) Upon the granting of such consent, the Township shall issue a certificate to the transferee or assignee evidencing such consent and certifying that no Default by the Redeveloper or any other entity under this Agreement shall impair such transferee's or assignee's rights under this Agreement.

8.3. Subsequent Conveyance by Redeveloper. Upon the issuance of a Certificate of Completion for any portion of the Project on the Project Site, the Redeveloper shall have the right to sell, lease or otherwise transfer its interest in the real property of such portion of the Project without limitation.

SECTION 9. AFFORDABLE RENTAL HOUSING.

9.1 The Affordable Units shall be constructed, marketed, rented and maintained in strict accordance with the Fair Housing Act, N.J.S.A. 52:27D-301 et seq., Uniform Housing Affordability Controls, N.J.A.C. 5:80-26.1 et seq., Township Affordable Housing Ordinances; and rules or regulations adopted by the New Jersey Council on Affordable Housing, New Jersey Department of Community Affairs and/or New Jersey Court of competent jurisdiction, as well as any successor statutes, rules, regulations or ordinances (collectively the "Fair Housing Laws"). Consistent with the obligation to construct the Project in accordance with the Fair Housing Laws, but not intending to limit that obligation, each Affordable Unit shall be deed restricted with affordability controls as prescribed by the Fair Housing Laws. The affordability controls shall remain in place until released by the Township and for a minimum period of thirty (30) years. Redeveloper shall cooperate with the Township in providing any information that is necessary to complete the Township's annual monitoring. Prior to the issuance of any Certificates of Occupancy, Redeveloper shall provide the Township with an Affordable Housing Deed Restriction for Rental Projects in the form attached hereto and incorporated herein as **Exhibit F** covering all of the Affordable Units.

SECTION 10. REPRESENTATIONS AND WARRANTIES

10.1. The Redeveloper. The Redeveloper represents and warrants as follows:

- (a) it is a limited liability company duly created under the laws of the

State of New Jersey and is duly organized and existing in good standing;

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

(c) the execution, delivery and performance by the Redeveloper of this Agreement has been duly authorized, the person executing this Agreement on its behalf is authorized to do so, and this Agreement constitutes a valid and legally binding obligation of the Redeveloper;

(d) it is financially capable to undertake and fulfill the obligations of the Redeveloper hereunder, subject to the terms and conditions of Section 4.1. above;

(e) the Redeveloper has the necessary expertise, qualifications, staff and resources to undertake and fulfill its obligations hereunder;

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

(g) the execution, delivery, or performance of this Agreement will not constitute a violation of any of the Redeveloper's organizational documents, or of any mortgage, indenture, instrument, judgment or other agreement to which it is a party or by which it is bound.

9.1. The Township. The Township represents and warrants as follows:

(a) that the Township Committee duly adopted the Redevelopment Plan in accordance with the Redevelopment Law;

(b) that the Township Committee is duly and properly designated as the Redevelopment Entity, pursuant to the Redevelopment Law;

(c) that the Township is executing this Agreement in its capacity as the designated redevelopment agency for the Project Site and that this Agreement constitutes a valid and legally binding obligation of the Township;

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

(e) that the zoning of the Project Site, as amended pursuant to the Amended Redevelopment Plan, permits the Redevelopment of the Project Site for the Project, subject to Board and all other Approvals.

SECTION 11. FEES; INDEMNIFICATION

11.1 Escrow Fees. The Redeveloper shall have the obligation to maintain an escrow account for the purposes of paying for the Township's professional and administrative costs related to the Project in accordance with the terms of that certain Funding Agreement approved by the Township on August 15, 2019 (the "Funding Agreement"). The obligation to maintain such escrow account shall continue until such time as the final Certificate of Completion is issued by the Township for the Project, at which time the escrow account shall close and the Redeveloper shall no longer have the obligation to pay for the Township's professional and administrative costs related to the Project. Upon issuance of the final Certificate of Completion, the Township shall provide the Redeveloper with a final invoice for the Reimbursable Costs incurred by the Township. Any balance due the Redeveloper of any of the Escrow Funds, will be refunded at the end of the Interim Period, or shall be disbursed in accordance with the Redeveloper's instructions.

In accepting the above referenced escrow deposit from the Redeveloper, the Township shall comply fully with the standards set forth in N.J.S.A. 40:55D-53, et al. At any time prior to the completion of the Project, upon thirty (30) days written notice, the Township will provide Redeveloper with a full and detailed accounting of any and all costs charged to the Redeveloper pursuant to the escrow agreement between the parties.

The phrase "Reimbursable Costs" shall include, but not be limited to, all reasonable fees and costs related to the Project including those fees and costs incurred by the Township as a result of the Township's utilization of qualified professional consultants, including but not limited to planners, engineers and attorneys as designated by the Township, who shall participate in the review of

any and all other plans, renderings, or reports directly relating to the proposed Redevelopment Project and the drafting and negotiation of the Redevelopment Agreement and Financial Agreement. The Redeveloper shall not be responsible for any professional or administrative costs incurred by the Township or work performed by Township employees, consultants or professionals, which work was performed for any prior redeveloper of the Property.

11.2 Escrow Funds. In accordance with the terms of the Funding Agreement, the Redeveloper has deposited the sum of Twenty Five Thousand (\$25,000.00) Dollars in escrow with the Township pursuant to this Agreement. Said amount shall continue to be maintained by the Township in a separate escrow account and shall be drawn down upon the Township to pay the Reimbursable Costs. This Twenty Five Thousand (\$25,000.00) Dollar amount shall be referred to as the Escrow Funds. If, as a result of the Township's payment of the Reimbursable Costs, the Escrow Funds drop below Three Thousand (\$3,000.00) Dollars, the Township shall notify the Redeveloper in writing along with copies of all invoices and a ledger of disbursements made as of the date of the written notice. The Redeveloper shall replenish the Escrow Funds in accordance with the terms of the Funding Agreement. Provided that during such period the Township has expended any Reimbursable Costs, every thirty (30) days, the Township shall provide the Redeveloper with a statement of those Reimbursable Costs paid from the proceeds of the Escrow Funds. The Township shall further provide the Redeveloper with individual invoices on a regular basis when received by the Township that are identified as the Reimbursable Costs. Any failure on part of the Township to affirmatively provide the Redeveloper with either a statement(s) of the Reimbursable Costs and/or invoices describing same shall not relieve the Redeveloper of its obligation to pay to the Township the Escrow Costs as provided for herein.

11.3 Indemnification. The Redeveloper agrees to indemnify and hold harmless the Township and the Township Committee against, and the Redeveloper shall pay, any and all liability, loss, cost, damage, claims, judgments or expenses of any and all kinds or nature and however arising, imposed by law, which the Township may sustain, be subject to or be caused to incur by reason of any claim, suit or action based upon personal injury, death, or damage to property, whether real, personal or mixed, resulting from the Redeveloper's activities in constructing the Project or the Redeveloper's actual breach of any contracts entered into by the Redeveloper which relate to construction of the Project, or resulting solely from the Redeveloper's ownership of portions of the Project Site, or resulting from the acquisition, construction or installation of the Project, including but not limited to any and all claims by workmen, employees and agents of the Redeveloper and

unrelated third parties, which claims result from the construction of the Project, the maintenance and functioning of Project improvements, or any other activities of the Redeveloper within the Project Site during the construction of the Project. It is mutually agreed by the Redeveloper and the Township that neither the Township nor its elected and appointed officials, volunteers, officers, agents, servants or employees shall be liable in any event for any action performed under this Agreement and that the Redeveloper shall save the Township and its elected and appointed officials, volunteers, officers, agents and employees harmless from any claim or suit in connection with the Redeveloper's obligations under this Agreement, except for any claim or suit arising from the intentional, willful and negligent acts of the Township or its elected and appointed officials, volunteers, officers, agents, servants or employees.

The Redeveloper, at its own cost and expense, shall defend any and all such claims, suits and actions, as described in this Section, which may be brought or asserted against the Township or its elected and appointed officials, volunteers, officers, agents, servants or employees. Any reasonable attorneys' fees in situations where it is necessary under applicable law for the Township to engage its own attorneys, reasonable experts' testimony costs and all costs to defend the Township or any of its elected and appointed officials, volunteers, officers, agents, servants, or employees shall be reimbursed to it by the Redeveloper in connection with such indemnification claim.

As between the Redeveloper and the Township, the Redeveloper agrees and specifically assumes any and all responsibility for the investigation and remediation of all environmental conditions, whether known or unknown, on, under or migrating to or from the Project Site or anything affected off-site, as may be required by applicable Environmental Laws, and the Redeveloper shall bear all costs for such investigation and remediation of the Project Site. The Redeveloper shall use reasonable efforts to obtain all environmental approvals that may be required for the remediation of the Project Site. Any and all environmental costs shall be the sole responsibility of the Redeveloper.

Without limitation on any obligation to defend and indemnify pursuant to this Agreement, and without limitation to such obligation which the Redeveloper may have as a matter of law, the Redeveloper shall indemnify, defend, release and hold the Township and its officials and agents harmless against (a) all claims or alleged claims and response costs and fines and penalties against the Township and its officials and agents or the Redeveloper by any governmental authority or third party due to the presence of Hazardous Substances on or within the Project Site, or the discharge of Hazardous Substances in excess of any limitations provided by

the applicable Environmental Laws, whenever such Hazardous Substances become present on or within the Project Site, whether prior to or after the Effective Date, (b) all claims or alleged claims against the Township and its officials and agents by any governmental authority or third party for injunctive relief for the abatement of a nuisance or related to the presence of Hazardous Substances on or within the Project Site or the discharge of Hazardous Substances in excess of any limitations provided by the applicable Environmental Laws, whether prior to or after the Effective Date, and (c) all claims or alleged claims of bodily injury or property damage asserted against the Township and its officials and agents by third Parties due to the presence of Hazardous Substances which become present on or within the Project Site, or the discharge of Hazardous Substances in excess of any limitations provided by the applicable Environmental Laws, whenever such Hazardous Substances become present on or within the Project Site whether prior to or after the Effective Date. This indemnity shall survive termination of this Redevelopment Agreement.

SECTION 12. CONSTRUCTION PROVISIONS.

12.1 Illumination, Noise and Pollution. The Redeveloper shall follow all applicable construction laws, regulations, ordinances, and standards in the industry relating to illumination, noise and pollution.

12.2 Security and Safety. The Redeveloper shall be cognizant of and address all traffic safety issues by complying with all applicable traffic safety provisions both during and after construction of the Project.

12.3 Hours of Construction. Hours of construction, including, installation of any improvements, shall be 7:00 a.m. to 5:00 p.m., Monday through Friday and 8:00 a.m. to 5:00 p.m. on Saturday. There shall be no construction on Sundays and federal holidays outside or on the exterior of the building. Interior work shall be permitted on all days.

12.4 Township Observation, Access and Inspections. The Township, and its consultants, employees and agents, shall be given free access to observe construction of the Project, including, but not limited to, roadways, sanitary sewers/septics, water mains/wells, storm sewers, landscaping for buffer areas, street lighting, woodland management and appurtenances associated with the Board-approved Plans. The purpose of such observations shall be limited to providing the Township with a greater degree of confidence that such improvements will be constructed in accordance with the Redeveloper's approved submittals. The Township, or its representatives, consultants,

employees or agents, shall not supervise, direct or have control over the Redeveloper's work during such observations or as a result thereof nor shall they have authority over or responsibility for the means, methods, techniques, sequences or procedures of construction selected by the Redeveloper, for safety precautions and programs incident to the work of the Redeveloper or for any failure of the Redeveloper to comply with applicable laws, rules, regulations, ordinances, codes or orders. The Redeveloper is not an agent or employee of the Township.

In addition to all remedies at law or in equity, in the event that Redeveloper fails or refuses to comply with any oral or written representation made to any municipal official (including but not limited to the Township Engineer, Administrator, Zoning Officer or Township Committee member), the Township Engineer or Zoning Officer shall provide written notice to the Redeveloper of such failure or refusal and allow the Redeveloper to cure said failure or refusal within ten (10) days . If the failure or refusal continues unabated after the aforesaid ten (10) days, the Township Engineer or Zoning Officer shall have the right to issue a Stop Work Order on the Project until the failure or refusal is abated to the satisfaction of the Township Engineer or Zoning Officer.

12.5 Attached hereto as **Exhibit G** is the proposed Landscape Plan as required by Resolution PB 20-05 approving Redeveloper's Site Plan. The Landscape Plan may be modified and supplemented by the Township Engineer and Township Planner prior to installation of the plantings identified on the attached Landscape Plan.

SECTION 13. PERFORMANCE, MAINTENANCE AND OTHER GUARANTEES.

13.1 Guarantees Required. Redeveloper shall post performance and maintenance guarantees in accordance with the provisions of N.J.S.A. 40:55D-53 et seq. of the MLUL and all applicable laws, in the following manner:

(a) 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 at the discretion of the Redeveloper) in a form reasonably acceptable to the Township Attorney (provided that the New Jersey Department of Community Affairs's standard form shall be deemed reasonably acceptable to the Township Attorney) 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 not to exceed 120% of the cost of installation, which cost shall be determined by the Township Engineer according to the method of calculation set forth in N.J.S.A. 50:55D-53. Notwithstanding the foregoing, under no circumstances shall any form of performance guarantee be required for any

building comprising the Project.

(b) A maintenance guarantee in respect of those improvements which may 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 at the discretion of the Redeveloper) for a period not to exceed two (2) years after final acceptance of the improvements, in an amount not to exceed fifteen (15%) percent of the cost of installation of the improvements which are being released, which cost shall be determined by the Township Engineer according to the method of calculation set forth in N.J.S.A. 40:55D-53.

(c) If authorized by ordinance duly adopted by the Warren Township Committee prior to the commencement of construction, Redeveloper may be required to post a temporary certificate of occupancy bond and/or a safety and stabilization bond, as necessary, in accordance with the MLUL and the Township ordinances.

(d) If applicable, all bonds must name the Township as an obligee, and Redeveloper shall deliver a copy of the bonds to the Township prior to the commencement of construction. To the extent that a surety bond is provided, it shall be provided by a company licensed by the New Jersey Department of Banking and Insurance or otherwise authorized by the New Jersey Department of Banking and Insurance to do business in the State. In the event that any insurance company, financial institution or other entity issuing a performance guarantee hereunder shall become insolvent, or shall declare bankruptcy or otherwise be subject to reorganization, rehabilitation, or other action, whereby state or federal agencies have taken over management of the entity, Redeveloper shall replace the bond within thirty (30) days of notice from the Redeveloper.

(e) In the event that any bond should lapse, be cancelled or withdrawn, or otherwise not remain in full force and effect as the result of any act or omission by Redeveloper, then until an approved replacement of the lapsed bond has been deposited with the Township, the Township may require Redeveloper to cease and desist any and all work on the Project, unless the improvements required to be bonded have been completed and approved by the Township. In the event any bond shall lapse, be cancelled or withdrawn, or otherwise not remain in full force and effect through no act or omission of the Redeveloper, then unless the Redeveloper fails to replace the bond within ten (10) days of notice given to the Redeveloper by the Township, the Township may require Redeveloper to cease and desist work on the project unless the

improvements required to be bonded have been completed and approved by the Township.

(f) In the event that other governmental agencies or public utilities automatically will own the utilities to be installed, or the improvements are covered by a performance or maintenance guarantee to another governmental agency, no performance or maintenance guarantee, as the case may be, shall be required by the municipality for such utilities or improvements.

(g). Any extension of the time allowed for installation of the improvements for which a performance guarantee has been provided and any release or partial release of any performance guarantee provided pursuant to this Agreement shall be pursuant to the MLUL.

SECTION 14. MISCELLANEOUS

14.1 Force Majeure. The failure of either Party to perform any of the provisions of this Agreement by reason of any of the following shall not constitute a Default or breach of this Agreement: labor disputes, strikes, picket lines, unavailability of materials, freight and delivery delays, energy shortages, boycott efforts, fires, floods, freezes, epidemics, pandemics, extreme weather conditions, accidents, war (whether or not declared), riots, acts of God, acts of government (including, without limitation, any agency or department of the United States of America or the State of New Jersey, acts or omissions of Third Parties (including litigation by Third Parties), or other causes which are beyond the reasonable control of the Party asserting an excusable delay that are subsequent to the date of this Agreement ("Force Majeure") provided however (A) that the non-performing party, (i) give the other party prompt written notice describing the particulars of the claimed Force Majeure, including, but not limited to, the nature of the occurrence and its expected duration within thirty (30) days of the commencement of same, (ii) continue to furnish timely regular reports with respect thereto during the period of the Force Majeure and (iii) provide notice of the termination of the Force Majeure; (B) the suspension of performance is of no greater scope and of no longer duration than is required by the Force Majeure and the reasonable time required to secure any applicable insurance settlement; (C) the Force Majeure shall not excuse any pre-existing Event of Default hereunder; (D) the non-performing party uses commercially reasonable efforts to remedy its inability to perform and to mitigate, in an expeditious manner, any losses to the other party; (E) the Force Majeure described above is not otherwise due to the willful or negligent acts or omissions of the party relying on such Force Majeure;

and (F) Economic hardship, including changes in tax laws and/or loss of profits, shall not constitute a Force Majeure.

14.2 Tax Assessments. The parties acknowledge that, to the extent that a Financial Agreement is entered into between the Redeveloper and the Township, such Financial Agreement will control the payments in lieu of taxes applicable for the Property. Otherwise, the Redeveloper shall pay standard ad valorem taxes on the Project Site.

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

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

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

14.6 Severability. Should any provision, term, paragraph or other portion or portions of this Agreement be held by any court of competent jurisdiction to be in violation of any applicable law or against public policy or held to be null and void for any reason whatsoever, such portion shall be deemed severable, so that such determination, unless it prohibits or prevents the performance of this Agreement in substantial part, shall not affect the validity of any other provisions of this Agreement, and such other provisions shall be deemed to be in full force and

effect and binding on the Parties unless amended in accordance with Section 14.5 of this Agreement.

14.7 Incorporation of Recitals. The recitals set forth in Section 1 of this Agreement are hereby incorporated by reference and are considered part of this Agreement.

14.8 Casualty. In the event that all or any substantial portion of the Project Site is damaged or destroyed by casualty prior to completion of construction, the Redeveloper may, at its option, terminate this Agreement by written notice to the Township within thirty (30) days after the damage or casualty. For purposes of this provision "substantial portion" shall be defined as any portion which is equal to or in excess of twenty-five percent (25%) of the total acreage of the Project Site or that portion which, in the sole opinion of the Redeveloper, would prevent the successful completion of the Project as envisioned by this Agreement.

14.9 Insurance. The Redeveloper shall purchase and maintain during the construction of the improvements a Comprehensive General Liability Insurance Policy with minimum limits of One Million (\$1,000,000.00) Dollars per occurrence, and One Million (\$1,000,000.00) Dollars in the aggregate. Said insurance coverage shall be in accordance with the requirements of the Township Attorney. The policy shall indicate the Township of Warren as additional insured with respect to their interest in work performed by the above-named insured at the Project. The coverage shall include endorsements for broad form property damage; explosion, collapse and underground hazards; completed operations; and contractual liability. The contractual liability coverage shall specifically apply to the above indemnification clause. All liability coverage shall be on an occurrence basis. Certificates of Insurance evidencing the foregoing coverage shall be provided to the Township before work on the improvements begins and on an on-going basis, as the insurance is reviewed from time to time.

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

thereof, or a waiver in any respect in regard to any other rights of the Party making the waiver.

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

14.12 Recordation. A short form memorandum of this Agreement, and any modifications thereof or additions thereto, may be duly recorded by the Redeveloper in the Book of Deeds of the County of Somerset, and the cost of such recordation and the cost of any and all federal revenue stamps, which legally must be attached to such memorandum, shall be paid by the Redeveloper.

14.13 Notices. Any notice provided or required to be given under this Agreement must be in writing and shall be served (and shall be deemed to have been served) by delivering a copy thereof to the Party being served in person, by commercial courier or by email, with electronic proof of delivery, as follows:

As to the Township:

Township of Warren
46 Mountain Boulevard
Warren, NJ 07059
Attn: Township Administrator
Email:

With a copy to:
Jeffrey B. Lehrer, Esq.
DiFrancesco Bateman et als
15 Mountain Blvd.
Warren, N.J. 07059
Email: jlehrer@newjerseylaw.net

As to the Redeveloper:
Brian S. Silbert, President & CEO
Silbert Realty and Management Co., Inc.
152 Liberty Corner Road, Suite 203
Warren, New Jersey 07059

With a copy to:
Brian Wolfson, Esq.
O'Toole Scrivo
14 Village Park Road
Cedar Grove, New Jersey 07009

From time to time, either Party may designate a different person or address for all of 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.

14.14 Counting of Days. Unless otherwise specifically set forth, all references to counting of days shall be calendar days; provided, however, that consistent with R. 1:3-1, in computing a period of time of less than seven (7) days, Saturdays and Sundays and legal holidays shall be excluded.

14.15 Waiver of Jury Trial. The Township and the Redeveloper hereby waive trial by jury in any action, proceeding or counterclaim brought by or against either Party on, or in respect of, any matter whatsoever arising out of, relating to or pertaining to this Agreement, the relationship between the Township and the Redeveloper and/or any claim of injury or damage from any other relationship between the Parties hereto.

14.16 Successors Bound. This Agreement shall be binding upon the respective Parties hereto and, subject to the limitations on transfer set forth in Section 8, their successors and assigns.

SECTION 15. ESTOPPEL CERTIFICATE.

15.1 Estoppel Certificate. Within thirty (30) days following written request therefor by a party hereto, the other party shall issue a signed estoppel certificate either stating that this Agreement is in full force and effect and that there is no default or breach under this Agreement (nor any event which, with the passage of time or the giving of notice would result in a default or breach under this Agreement), or stating the nature of the default or breach or event, if any. In the event the estoppel certificate discloses such a default, breach or event, it shall also state the manner in which such default, breach and/or event may be cured.

[signature page to follow]

1/31/2024

IN WITNESS WHEREOF, the Parties have executed this Agreement effective as of the Effective Date.

TOWNSHIP OF WARREN

Attest:

Cathy Reese, Township Clerk

By: _____
George K. Lazo, Mayor

Witness:

**SILBERT REALTY & MANAGEMENT
COMPANY, INC.**

By: _____
Name:
Title:

1/31/2024

EXHIBIT A

SITE PLAN

[On file with Planning Board]

1/31/2024

EXHIBIT B

ARCHITECTURAL PLANS

[On file with Planning Board]

1/31/2024

EXHIBIT B-1
ARCHITECTURAL RENDERING OF PROJECT

1/31/2024

EXHIBIT C

PLANNING BOARD RESOLUTION PB 20-05

1/31/2024

EXHIBIT D
LETTER FROM REDEVELOPER'S COUNSEL

1/31/2024

EXHIBIT D-1

**LETTER DATED DECEMBER 22, 2020 FROM
GARY DEAN, PE, TRAFFIC CONSULTANT FOR THE REDEVELOPER**

1/31/2024

EXHIBIT E
PROJECT SCHEDULE

1/31/2024

EXHIBIT F
FORM OF AFFORDABLE HOUSING
DEED RESTRICTION

1/31/2024

EXHIBIT G
LANDSCAPE PLAN OF NORTHWESTERLY SIDE OF
DEVELOPMENT

1/31/2024

Reese, Cathy

From: Reese, Cathy
Sent: Tuesday, January 19, 2021 10:20 AM
To: Administrator; Gary DiNardo; George Lazo (george.lazo@marriott.com); Jolanta Maziarz (jmaziarz@warrennj.org); mmarion@warrennj.org; vjsordillo@warrennj.org
Cc: Jeff Lehrer (jlehrer@newjerseylaw.net)
Subject: FW: Meeting packet

Mayor,
Per your text to Mark this weekend, we are adding 40 Mountain Blvd. to the Executive Session. And we are starting at 5:30 PM for Executive, correct? Is everyone available to start that early? And would you like to move it to the courthouse for better social distancing for an hour and a half?

Cathy

From: Jeffrey Lehrer <jlehrer@newjerseylaw.net>
Sent: Tuesday, January 19, 2021 9:55 AM
To: Reese, Cathy <creese@warrennj.org>
Subject: Re: Meeting packet

The closed agenda still does not reflect the 40 Mountain Boulevard Redevelopment Agreement-Contract Negotiation.

On Tue, Jan 19, 2021 at 9:46 AM Reese, Cathy <creese@warrennj.org> wrote:

Cathy Reese

Township Clerk

Township of Warren

46 Mountain Blvd.

Warren, NJ 07059

908-753-8000 ext. 223

www.warrennj.org

--

1/31/2024

Jeffrey B. Lehrer, Esq.

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HAVING CELEBRATED

OUR 100TH ANNIVERSARY IN 2017



DiFrancesco Bateman Kunzman Davis Lehrer & Flaum, PC

15 Mountain Blvd.

Warren, N.J. 07059

(Somerset County)

908-757-7800 ext. 180

fax 908-757-8039

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1/31/2024

Reese, Cathy

From: Reese, Cathy
Sent: Tuesday, January 19, 2021 9:33 AM
To: Administrator; Gary DiNardo; George Lazo (george.lazo@marriott.com); Jolanta Maziarz (jmaziarz@warrennj.org); mmarion@warrennj.org; vjsordillo@warrennj.org
Subject: FW: Agenda

Please clue me in why we are starting at 5:30 and am I changing the executive session agenda to include 40 Mt. Blvd. or other items

Thanks

C

From: Jeffrey Lehrer <jlehrer@newjerseylaw.net>
Sent: Tuesday, January 19, 2021 9:29 AM
To: Reese, Cathy <creese@warrennj.org>
Subject: Re: Agenda

Discuss with Mayor. It was his call.

On Tue, Jan 19, 2021 at 9:28 AM Reese, Cathy <creese@warrennj.org> wrote:

Why 5:30 for executive

From: Jeffrey Lehrer <jlehrer@newjerseylaw.net>
Sent: Tuesday, January 19, 2021 9:23 AM
To: Reese, Cathy <creese@warrennj.org>
Cc: Krane, Mark <mkrane@warrennj.org>
Subject: Re: Agenda

Discuss with Mark. YOU need to notice asap for 5:30 on Thursday for closed session.

On Tue, Jan 19, 2021 at 8:39 AM Reese, Cathy <creese@warrennj.org> wrote:

Its on the open session

-----Original Message-----

From: Jeffrey Lehrer <jlehrer@newjerseylaw.net>
Sent: Friday, January 15, 2021 8:24 PM
To: Krane, Mark <mkrane@warrennj.org>; Reese, Cathy <creese@warrennj.org>
Subject: Agenda

1/31/2024

I have asked more than once. Why isn't 40 Mountain Blvd. RDA on closed session agenda?
Sent from my iPad

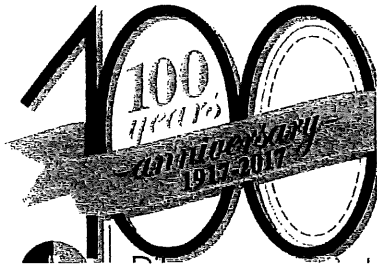
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Jeffrey B. Lehrer, Esq.

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Reese, Cathy

From: Jeffrey Lehrer <jlehrer@newjerseylaw.net>
Sent: Tuesday, January 19, 2021 6:20 PM
To: Jolanta Maziarz
Cc: Lazo, George; Krane, Mark; DiNardo, Gary; Marion, Mick; Reese, Cathy; Sordillo, Victor
J.jtcivplan@comcast.net
Subject: Re: Off Premises Parking - 40 Mountain Blvd.

Thanks for your email Jolanta. I will see you Thursday. I apologize for my terse email last week. COVID brain and isolation are not a good combination!! :)

Jeff

On Tue, Jan 19, 2021 at 6:17 PM Jolanta Maziarz <jmaziarz@warrennj.org> wrote:

Jeff,

Please extend my gratitude to Mr. Silbert for his willingness to send this letter to the adjacent property owner. I believe it goes a long way toward being a good neighbor, as people will seek the closest parking possible and will probably park there anyway, it demonstrates concern for future residents and it shows good faith toward the Township. Even if the answer is no, although I hope he is able to secure at least a few spaces, it informs the elected officials of potential future challenges and allows us to plan. This is all I was looking for really, a comprehensive investigation of what we have and what is possible.

Thank you,

Jolanta

Sent from Mail for Windows 10

From: Jeffrey Lehrer
Sent: Tuesday, January 19, 2021 2:59 PM
To: Lazo, George; Krane, Mark; DiNardo, Gary; Marion, Mick; Reese, Cathy; Jolanta Maziarz; Sordillo, Victor J.; jtcivplan@comcast.net
Subject: Fwd: Off Premises Parking - 40 Mountain Blvd.

1/31/2024

I am forwarding this to all members of the TC from counsel for the 40 Mountain Boulevard property. Mr. Silbert's letter is dated January 13, 2021 to the owner of 34 Mountain Boulevard. Jeff

----- Forwarded message -----

From: **Brian Wolfson** <BWolfson@oslaw.com>
Date: Tue, Jan 19, 2021 at 2:17 PM
Subject: Off Premises Parking - 40 Mountain Blvd.
To: Jeffrey Lehrer <jlehrer@newjerseylaw.net>

Jeff,

Please see the attached letter that Brian Silbert sent on January 13, 2021 to the neighboring property owner along with the associated rendering.

Please pass this along to any individual on the Township Committee that would like to review in advance of the upcoming meeting. Thanks.

Brian Wolfson
Of Counsel

BWolfson@oslaw.com
Phone: (973) 559-9848
Fax: (973) 239-3400

O'TOOLE SCRIVO
ATTORNEYS AT LAW

New Jersey

14 Village Park Road
Cedar Grove, NJ 07009

New York

200 Park Ave, Suite 1700
New York, NY 10166

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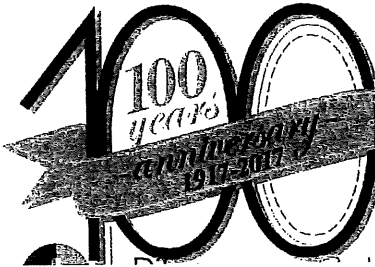
Jeffrey B. Lehrer, Esq.

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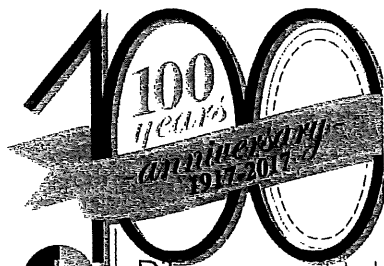
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Reese, Cathy

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To: Jeffrey Lehrer; Lazo, George; Krane, Mark; DiNardo, Gary; Marion, Mick; Reese, Cathy; Sordillo, Victor J.; jtcivplan@comcast.net
Subject: RE: Off Premises Parking - 40 Mountain Blvd.

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Subject: Fwd: Off Premises Parking - 40 Mountain Blvd.

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Date: Tue, Jan 19, 2021 at 2:17 PM
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To: Jeffrey Lehrer <jlehrer@newjerseylaw.net>

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1/31/2024

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New Jersey

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Cedar Grove, NJ 07009

New York

200 Park Ave, Suite 1700
New York, NY 10166

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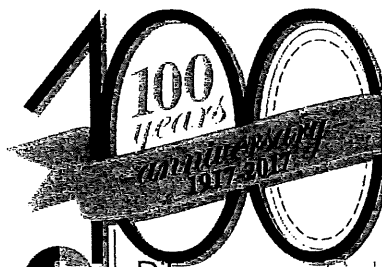
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Subject: Fwd: Off Premises Parking - 40 Mountain Blvd.
Attachments: Beer_Architectural_Group_40_Mt_Blvd_20201209 copy.pdf; 40 Mtn. Blvd. Warren Off-Site Parking - Ltr. Warrentown Associates LLC 1_13_2021.docx

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New Jersey	New York
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Cedar Grove, NJ 07009	New York, NY 10166

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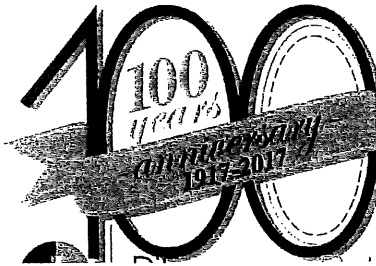
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fax 908-757-8039

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1/31/2024

40 Mountain Boulevard, LLC

152 Liberty Corner Road • Suite 203
Warren, NJ 07059
(Tel) 908-604-6900 (Fax) 908-604-2130

January 13, 2021

Warrenville Associates, LLC
396 Whitehead Avenue
South River, New Jersey 08882

RE: 34 Mountain Blvd. Township of Warren, New Jersey (Lot 5 in Block 88.08)

To Whom It May Concern:

I am the redeveloper of the contiguous property to the south (40 Mountain Blvd) which I had acquired back in April 2019 for the purpose of redevelopment of the abandoned auto repair /former gas station for a small apartment complex. The planning board granted preliminary and final site plan approval for the 26 unit new development of which 8 apartments are affordable and my intentions are to re-develop an inviting, quality community that will provide local business owners with some much needed customer activity and enable retail and service providers to remain in business within the community, which has a considerable number of vacancies and one of two major supermarkets likely closing this month. The colored rendering of the building elevation is provided for your interest. I have been active in various real estate within Warren for over 25 years and a supporter of the community on various levels.

The Warren Township Committee has recommended supplemental off-site parking should the need would ever arise, perhaps during a holiday, weekend or special event. Given your office complex appears to have substantial on-site parking and more so during non-peak hours virtually un-used, I am inquiring as to your consideration of my use of four to five parking spaces if ever necessary due to an overflow condition at 40 Mountain Blvd. The most logical area is the section of your lot to the rear and adjacent the dumpster pad. I would very much appreciate a principal of your company contacting me at their earliest convenience to discuss the matter directly and I may be reached at the number above or email: bsilbert@silbertrealesate.com. I would propose a basic license agreement between us and would name your company as an additional insured with respect to any liability issues in such regard and having similar situations.

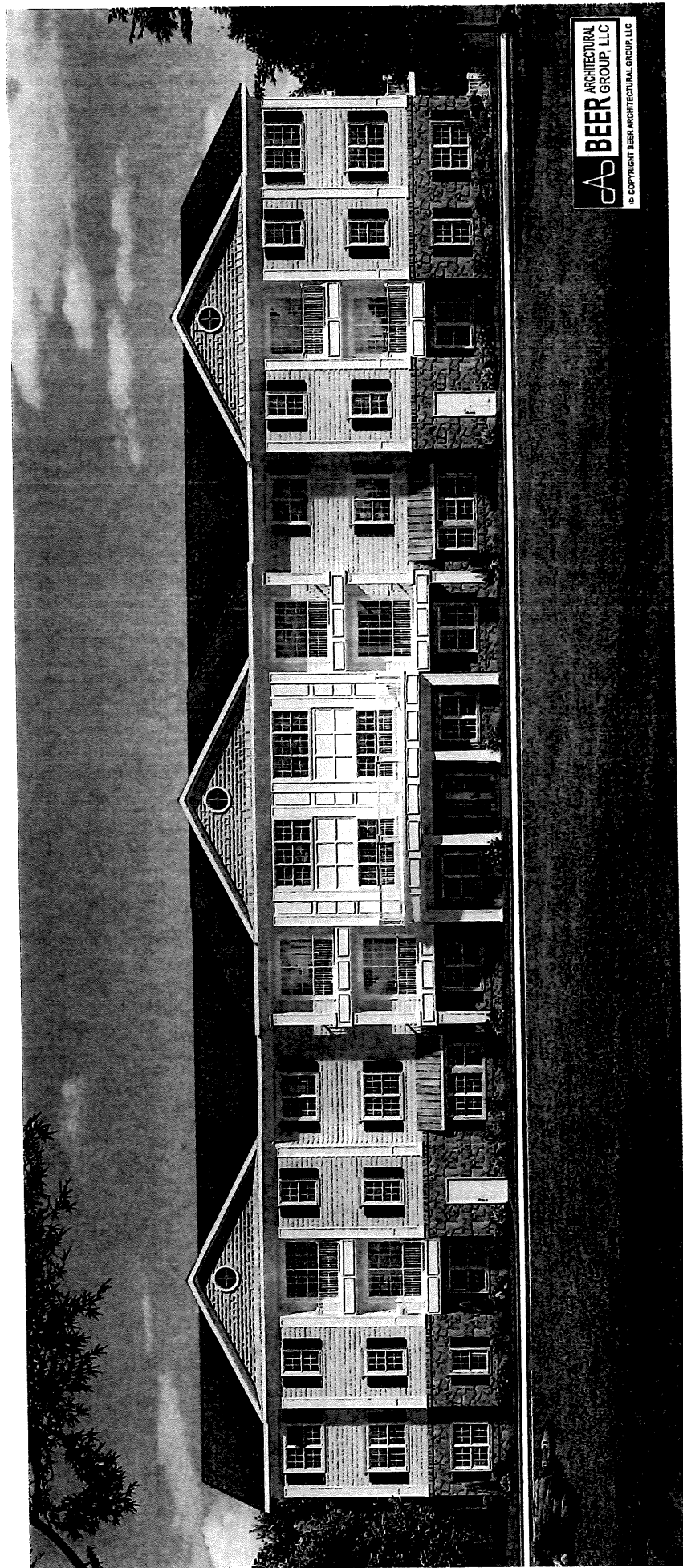
Please feel free to contact me should you have any questions or concerns. Thank you.

Sincerely yours,
40 Mountain Boulevard, LLC

Brian S. Silbert
Managing Member

Encl.

1/31/2024



AB BEER ARCHITECTURAL GROUP, LLC
© COPYRIGHT BEER ARCHITECTURAL GROUP, LLC

1/31/2024

Reese, Cathy

From: Marion, Mick
Sent: Tuesday, January 19, 2021 10:39 AM
To: george.lazo@marriott.com
Cc: Reese, Cathy; Krane, Mark; gpdviper@aol.com; Jolanta Maziarz; Sordillo, Victor J.; Jeff Lehrer (jlehrer@newjerseylaw.net)
Subject: Re: Meeting packet

Sorry folks but I'm overwhelmed at work especially given traveling with recent extended family members passing . It's not been easy lately

Kind regards, Mick

Sent from my iPhone

On Jan 19, 2021, at 10:34 AM, Lazo, George <George.Lazo@marriott.com> wrote:

Yes Cathy.

Adding 40 Mountain which is what we spoke about on Friday when we completed the video.

Courthouse side room is better.

If starting at 6p., let's all be ready to go.

Mick cannot make 5:30.

Kind regards,
George

Sent from my iPhone

On Jan 19, 2021, at 10:20 AM, Reese, Cathy <creese@warrennj.org> wrote:

Mayor,
Per your text to Mark this weekend, we are adding 40 Mountain Blvd. to the Executive Session. And we are starting at 5:30 PM for Executive, correct? Is everyone available to start that early? And would you like to move it to the courthouse for better social distancing for an hour and a half?

Cathy

From: Jeffrey Lehrer <jlehrer@newjerseylaw.net>
Sent: Tuesday, January 19, 2021 9:55 AM

1/31/2024

To: Reese, Cathy <creese@warrennj.org>

Subject: Re: Meeting packet

The closed agenda still does not reflect the 40 Mountain Boulevard
Redevelopment Agreement-Contract Negotiation.

On Tue, Jan 19, 2021 at 9:46 AM Reese, Cathy <creese@warrennj.org> wrote:

Cathy Reese

Township Clerk

Township of Warren

46 Mountain Blvd.

Warren, NJ 07059

908-753-8000 ext. 223

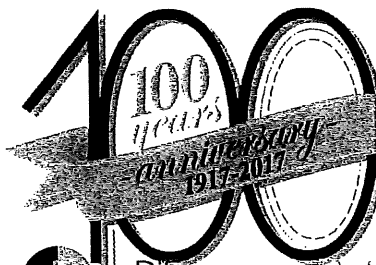
www.warrennj.org

--

Jeffrey B. Lehrer, Esq.

Please be advised that most of our office is working remotely as a result of the executive order signed by the Governor. Please make every effort to send information electronically rather than via the US mail, UPS or other delivery service. We are making every effort to minimize unnecessary contacts. If you have an urgent matter please call we are all responding to phone calls as quickly as possible

HAVING CELEBRATED OUR 100TH ANNIVERSARY IN 2017



DiFrancesco Bateman Kunzman Davis Lehrer & Flaum, PC

1/31/2024

15 Mountain Blvd.
Warren, N.J. 07059
(Somerset County)
908-757-7800 ext. 180
fax 908-757-8039

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1/31/2024

Reese, Cathy

From: Jeffrey Lehrer <jlehrer@newjerseylaw.net>
Sent: Thursday, January 14, 2021 2:26 PM
To: Reese, Cathy
Cc: Krane, Mark;jtcivplan@comcast.net;Lazo, George;Jolanta Maziarz;Marion, Mick;Sordillo, Victor J.;DiNardo, Gary
Subject: 40 Mountain Boulevard-RDA for Agenda next week
Attachments: RDA AS OF 1-14-21 (A1294395x9D7D2).docx

Cathy, Mayor and Members of the Township Committee: attached is a redline of the RDA for the 40 Mountain Boulevard site which reflects the final negotiated issues relative to parking.

I am satisfied with this version of the RDA in light of the Gary Dean letter which will accompany the "clean" Agreement as an Exhibit. I am not attaching the exhibits since I am working from home, still in quarantine. The exhibits are the same as the last version. I will have 4 copies of the final RDA with exhibits brought to the meeting for execution next week.

Thank you. Jeff

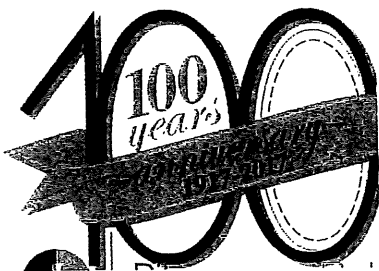
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Jeffrey B. Lehrer, Esq.

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HAVING CELEBRATED

OUR 100TH ANNIVERSARY IN 2017



DiFrancesco Bateman Kunzman Davis Lehrer & Flaum, PC
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1/31/2024

REDEVELOPMENT AGREEMENT

BETWEEN THE

TOWNSHIP OF WARREN

AND

SILBERT REALTY & MANAGEMENT COMPANY, INC.

FOR THE

REDEVELOPMENT OF

40 MOUNTAIN BOULEVARD

WARREN, NEW JERSEY

THIS REDEVELOPMENT AGREEMENT, made this ____ day of _____ 2021, by and between the **TOWNSHIP OF WARREN** (hereinafter referred to as the “Township”) located at 46 Mountain Boulevard, Warren, New Jersey 07059 and **SILBERT REALTY & MANAGEMENT COMPANY, INC.** or an urban renewal entity formed pursuant to Section 7.1(b) (hereinafter referred to as “Redeveloper”) with offices located at 152 Liberty Corner Road, Suite 203, Warren, New Jersey 07059.

SECTION 1. RECITALS

WHEREAS, the Township is a political subdivision of the State of New Jersey, located in the County of Somerset; and

WHEREAS, the Township Committee of the Township of Warren (the “Township Committee”), by Resolution No. 2019-218 duly adopted on August 15, 2019, authorized the Planning Board to undertake a preliminary investigation to determine whether the area identified as Block 89, Lot 4 as shown on the Tax Map of the Township of Warren, Somerset County, New Jersey (the “Study Area”), should be declared “an area in need of redevelopment” according to the criteria set forth in Section 5 of the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1, *et seq.* (hereinafter “Redevelopment Law”); and

WHEREAS, John T. Chadwick, IV, P.P., Township Planner, submitted a report to the Planning Board entitled “Preliminary Investigation Report, 40 Mountain Blvd.” dated February 2020 (the “Redevelopment Area Report”), detailing the statutory criteria for determining whether the Study Area constituted an “area in need of redevelopment,” and which Redevelopment Study provided extensive information supporting a recommendation to the Planning Board that the aforesaid Study Area met the statutory criteria; and

WHEREAS, after a public hearing held on March 11, 2020 and in accordance with N.J.S.A. 40:12A-6, the Planning Board, on March 11, 2020, adopted a Resolution determining that the Study Area should be designated as an “area of redevelopment” and recommending that the Study Area be designated as a Non-Condensation “area in need of redevelopment” pursuant to the Redevelopment Law; and

WHEREAS, after a review of the Study Area and the recommendation of the Planning Board, the Township Committee adopted Resolution No. 2020-09 on April 16, 2020, designating the Study Area as a Non-Condensation “area in need of redevelopment” pursuant to the Redevelopment Law (the “Redevelopment Area”); and

WHEREAS, the Township Planner prepared and submitted a redevelopment plan entitled “40 Mountain Boulevard (Block 89, Lot 4) Redevelopment Plan” (the “Redevelopment

Plan”), outlining the planning, development and redevelopment of the Redevelopment Area in accordance with the provisions of N.J.S.A. 40A:12A-7; and

WHEREAS, on August 13, 2020 the Township Committee adopted Ordinance No. 20-20 adopting the Redevelopment Plan for the Redevelopment Area; and

WHEREAS, pursuant to the Redevelopment Plan, the Redeveloper proposes to redevelop Block 89 Lot 4 located in the Redevelopment Area (hereinafter referred to as the “Project Site”), by constructing a residential development consisting of a three-story apartment building containing 26 rental units, including six (6) affordable units (the “Affordable Units”); together with associated parking (the “Project”); and

WHEREAS, the Township Committee has determined that it is in the best interest of the Township and its residents for the Township to enter into this Redevelopment Agreement with the Redeveloper to set forth the principles of agreement between the Township and the Redeveloper for the redevelopment of the Project Site with the Project in the Redevelopment Area in accordance with the Redevelopment Plan; and

WHEREAS, the Township and the Redeveloper desire to fully and thoroughly address the issues, items and conditions precedent to the redevelopment of the Project Site by way of this Agreement; and

WHEREAS, the Township and the Redeveloper acknowledge that the mutual promises contained in this Agreement are good and valuable consideration for the binding execution of this Agreement;

NOW, THEREFORE, for good and valuable consideration, it is agreed upon, as of the date set forth above, by the Township and Redeveloper, as follows:

SECTION 2.DEFINITIONS

2.1. Governing Definitions. When used in this Agreement, the following words, phrases or terms shall have the meaning set forth in the subsections that follow:

2.1.1. **Agreement** shall mean the instant document, which is entitled "Redevelopment Agreement between the Township of Warren and Silbert Realty & Management Company, Inc. (or an urban renewal entity to be formed) for the Redevelopment of 40 Mountain Boulevard" and the documents and exhibits appended hereto and incorporated herein by reference.

- 2.1.2 **Approvals** shall mean, as to any Phase of the Project, all governmental approvals, permits, licenses, agreements and capacity reservations from any governmental authority having jurisdiction over the Redevelopment Area that are required to permit construction of the relevant Phase of the Project to commence, including, but not limited to, local and county planning approvals, construction permits, and other various state and local approvals; excluding, however, approvals, permits and the like normally obtained during the ordinary course of construction.
- 2.1.3 **Board** shall mean the Warren Township Planning Board.
- 2.1.4 **Township** shall mean the Township of Warren, acting through its Township Committee.
- 2.1.5 **Certificate of Completion** shall mean a certificate or certificates certifying that the Redeveloper has performed its duties and obligations under this Redevelopment Agreement with respect to all or a portion of the Project or certifying that the Project, or any portion thereof, has been completed; provided, however, to the extent that the Project, or any portion thereof, has been substantially completed, the Certificate to be provided shall certify that the Project, or any portion thereof, has been substantially completed. The Township Committee recognizes and consents to the fact that the Project may be developed and constructed in phases and that the Redeveloper shall be entitled to a Certificate of Completion for any phase of the Project that has been completed in accordance with the Approvals.
- 2.1.6 **Certificate of Occupancy** means a temporary or permanent Certificate of Occupancy, as such term is defined in the New Jersey Administrative Code, issued with respect to all or a portion of the Project upon completion of all or a portion of the Project.
- 2.1.7 **Commencement of Construction, Commencement Date, Commence Construction** or similar phrases shall have the meaning set forth in Section 5.3.
- 2.1.8 **Conditions Precedent** shall have the meaning set forth in Section 4.1.
- 2.1.9 **Township Committee** shall mean the governing body of the Township.
- 2.1.10 **Default** shall have the meaning defined in Sections 6.1 and 6.2.

2.1.11 **Default Notice** shall mean such notice from the Township to the Redeveloper as defined in Section 6.3.

2.1.12 **DEP** shall mean the New Jersey Department of Environmental Protection.

2.1.13 **Effective Date** shall be the date upon which this Agreement is fully executed by all parties.

2.1.14 **Environmental Laws** shall mean any federal, state or local law, ordinance, rule or regulation, including, without limitation, (a) the New Jersey Spill Compensation and Control Act, as amended, N.J.S.A. 58:10-23.11 et seq.; (b) the New Jersey Industrial Site Recovery Act, as amended, N.J.S.A. 13:1K-6 et seq.; (c) the New Jersey Leaking Underground Storage Tank Act, as amended, N.J.S.A. 58:10-21 et seq.; (d) the Comprehensive Environmental Response, Compensation & Liability Act, as amended, 42 U.S.C. Section 9601 et seq.; (e) the Resource Conservation and Recovery Act, as amended, 42 U.S.C. Section 6901 et seq.; (f) the Hazardous Material Transportation Act, as amended, 49 U.S.C. Section 180, et seq.; (g) the Occupational Safety and Health Act, as amended, 29 U.S.C. Section 651, et seq.; or (h) any and all laws, regulations, and executive orders, whether federal, state or local, pertaining to environmental matters, as the same may be amended or supplemented from time to time.

2.1.15 **Event of Default** shall have the meaning set forth in Section 6.2.

2.1.16 **Final Approval** shall mean an Approval for which the limiting period on appeal or for an appeal set forth statutorily or in the rules of court has expired without an appeal or further appeal having been taken.

2.1.17. **Financing** shall mean any construction, permanent or other financing, including institutional equity and debt financing and related party equity and debt financing, obtained by the Redeveloper in connection with the Project. It is understood and agreed that the Township shall not under any circumstances guaranty any Redeveloper Financing.

2.1.18 **Force Majeure** shall have the meaning set forth in Section 14.1.

2.1.19 **Hazardous Substances** shall mean any hazardous substances or wastes now or in the future regulated under Environmental Laws, excluding, however, customary construction, maintenance, janitorial and cleaning supplies in reasonable quantities

to be used in the ordinary course of construction and operation of the Project and which are used and disposed of in accordance with all applicable Environmental Laws.

2.1.20 **Parties** shall mean both the Township and the Redeveloper together and shall not refer to any other person or entity.

2.1.21 **Permitted Transfers** shall have the meaning set forth in Section 8.2.

2.1.22. **Project** shall be as generally described in Section 2.2.1 of this Agreement.

2.1.23 **Project Schedule** shall be as detailed in Exhibit C to this Agreement.

2.1.24. **Project Site** shall be defined as set forth in the Recitals in Section 1 of this Agreement.

2.1.25 **Redeveloper** shall mean Silbert Realty & Management Company, Inc. and its successors or assigns or an urban renewal entity to be formed in which Brian Silbert is the majority member.

2.1.26 **Redevelopment** shall mean the design and construction of the improvements on the Project Site as contemplated by this Agreement.

2.1.27. **Redevelopment Area** shall be defined as set forth in the Recitals in Section 1 of this Agreement.

2.1.28. **Redevelopment Entity** shall mean the Township Committee of the Township of Warren acting as a redevelopment entity.

2.1 29. **Redevelopment Law** shall be defined as set forth in the Recitals in Section 1 of this Agreement.

2.1.30 **Redevelopment Plan or Plan** shall mean the Township of Warren Redevelopment Plan adopted by the Township Committee pursuant to Ordinance No. 20-20 on August 13, 2020.

2.1.31 **Redevelopment Plan Ordinance** shall have the meaning set forth in the recitals to this Agreement, subject to such amendments as may hereafter be adopted.

2.1.32. **Remediation** shall mean any clean up, containment, correction or adjustment in strict accordance with Environmental Laws to any environmental contamination to any natural resource, including but not limited to air, groundwater, surface water, or soil.

2.1.33 **Site Plan** shall have the meaning set forth in Section 2.2.1.

2.1.34. **Third Party** means a person or entity other than (i) the Township; (ii) any agent, employee, agency, board, elected official or representative of the Township; (iii) the Redeveloper; (iv) any member, shareholder, partner, officer, representative, employee or agent of the Redeveloper or (v) any entity owned or controlled by, under common control with, or that owns or controls, the Redeveloper or any member, shareholder or partner of the Redeveloper.

2.1.35. **Transfer** shall have the meaning set forth in Section 8.2.

2.2 Project Definitions. When used in this Agreement, the following words, phrases or terms shall have the meanings set forth in the subsections that follow:

2.2.0. Purpose. The purpose of this Agreement is to set forth the respective rights, obligations, conditions and agreements of the Township and the Redeveloper in connection with the redevelopment of the Project by the Redeveloper. The Redeveloper has been designated by the Township Committee as the Redeveloper of the Project.

2.2.1. The Project. The Project shall generally be designed in accordance with the Site Plan (the "Site Plan") entitled "Preliminary and Final Major Site Plan, 40 Mountain Boulevard Residential Project, Block 89, Lot 4, tax Map Sheet 109, Warren Township, Somerset county, NJ" prepared by E & LP Associates, Inc. dated September 2, 2020, and on the architectural plans (the "Architectural Plans") dated September 18, 2020, revised October 14, 2020, prepared by Beer Architectural Group, LLC attached hereto as **Exhibits A and B**, respectively. Attached hereto as **Exhibit B-1** is a rendering of the proposed Project prepared by Beer Architectural Group, LLC. The Site Plan may be subject to the modifications as required by the Board in accordance with this Agreement, the Redevelopment Plan and the land development ordinances of the Township. The Township Committee agrees that the present Site Plan is consistent with the requirements of the Redevelopment Plan, including but not limited to, the number of residential units provided. Redeveloper shall construct only the residential units established and permitted in the current Redevelopment Plan.

SECTION 3 REDEVELOPER RESPONSIBILITIES.

3.1. Infrastructure Improvements; Redeveloper Responsibilities. The Redeveloper will be responsible for its undertakings described herein after the satisfaction of the Conditions Precedent (as defined in Section 4.1), and at a time designed to allow construction of the Project to commence consistent with the terms of this Agreement.

3.2. Infrastructure Improvements On Site. The Redeveloper is responsible, at its sole cost and expense, for the construction of all on-site infrastructure improvements on the Project Site which are required to accommodate full development of the Project, including but not limited to internal streets, sanitary sewers, storm sewers, and utility lines necessary for the Project, as more particularly set forth in Warren Township Planning Board Resolution 20-05 (Resolution 20-05) adopted on November 23, 2020, a copy of which is attached hereto and made a part hereof as Exhibit C

3.3. Infrastructure Improvements Off-Site and Off-Tract. The Redeveloper shall have no responsibility for the cost of any Township off-site or off-tract improvements under the terms of this Agreement other than for bringing water and sewer to the Project Site and any other improvements required by the Board as set forth in Resolution 20-05.. 3.4 Approval of Project Site Plan and Architectural Plans. The Township agrees that the Site Plan and Architectural Plans depicted on **Exhibit A and B** to this Agreement are consistent with the requirements of the Redevelopment Plan. Furthermore, the Redeveloper acknowledges that it will be required to comply with the provisions of the Redevelopment Plan and Resolution 20-05. 3.5. Project Site. The Redeveloper or entities owned and controlled by the Redeveloper is/are the owner(s) of the Project Site.

3.6 Additional Parking. Redeveloper shall provide additional parking at 53-55 Mountain Boulevard (the "Gateway East Site") ~~and/or 37 Mountain Boulevard (the "Shared Parking Properties")~~, as more particularly set forth in a letter from Redeveloper's Counsel dated November 23, 2020, a copy of which is attached hereto and made a part hereof as **Exhibit D** and as detailed in the letter written by the Redeveloper's traffic consultant, Gary Dean, PE, dated December 22, 2020, a copy of which is attached hereto and made a part hereof as **Exhibit D-1**. In amplification of the foregoing, the approved site plans and Resolutions of the Gateway East Site reveals that the total parking required was 90 spaces and 85 spaces were approved and built (variance granted).

Redeveloper shall provide the Township with a copy of the fully executed license agreement(s) with the owners of the Gateway East Site ~~Shared Parking Properties~~ prior to

the issuance of any Building Permit for the Project. If a parking issue at the Project Site exists after the issuance of a Certificate of Occupancy for the Project, Redeveloper, upon written request of the Zoning Officer or the Township Engineer, shall provide an additional license agreement (within 30 days of such written request) with an adjacent property owner to the Project Site or the property identified as 37 Mountain Boulevard.

SECTION 4. CONTINGENCIES

4.1 Contingencies. The respective obligations of the Parties to proceed with the Redevelopment under this Agreement are contingent upon the satisfaction or waiver, by the party whose performance is contingent upon the satisfaction of the contingency, of the contingencies set forth in Sections 4.1 and 4.2 hereof within the time periods set forth therein (the “Conditions Precedent”).

4.2 Approvals. The obligation of the Parties to proceed with the Project is contingent upon receipt of all Approvals, (including but not limited to building permits, Somerset County Planning Board approval, Somerset-Union Soils Conservation District Approval, New Jersey Department of Transportation approval, Department of Community Affairs and New Jersey Department of Environmental Protection approval) for the Project. The Township will reasonably cooperate and assist where possible, including expediting the processing of all such applications.

4.3. Project Schedule. It is acknowledged by the Parties that the construction of the Project is time sensitive and will require the coordination of a multitude of efforts by the Redeveloper, the Township and other governmental and private concerns. The Redeveloper’s schedule for commencement and completion of the various elements of the Project (subject to delays caused by Force Majeure) is set forth on **Exhibit E** to this Agreement. The Redeveloper shall use good faith efforts to complete the Project as expeditiously as possible in accordance with **Exhibit E**. Notwithstanding the foregoing, any applicable dates contained in the Project Schedule shall not be deemed time of the essence.

4.4 Effect of Termination. If any of the Contingencies or Conditions Precedent in this section are not satisfied or waived by the appropriate Party prior to the expiration of the applicable time period therefore as set forth herein, then Redeveloper may terminate this Agreement upon written notice to the Township. If this Agreement is terminated under this Section 3, this Agreement shall automatically terminate, neither party shall have any further liability to the other, and any and all unexpended fees, escrows and payments made by the Redeveloper pursuant to Section 11.1 and/or Section 11.2 hereof shall be refunded to the Redeveloper by the Township.

SECTION 5. IMPLEMENTATION OF THE PROJECT

5.1 Project Development. The Redeveloper, subject to the contingencies set forth in this Agreement, agrees to develop the Project Site in accordance with this Agreement.

5.2 Development Approvals. The Parties acknowledge that the Approvals must be obtained prior to the commencement of any work on the Project Site. The Redeveloper agrees to obtain all Approvals that may be necessary to commence and complete the Project. The Redeveloper agrees to proceed in a reasonable and diligent manner to obtain all Approvals that may be necessary to commence and complete the Project. The Township agrees that it will use good faith efforts, without cost or expense to the Township except for payroll and internal administrative costs, to assist or provide information in its possession to the Redeveloper when such assistance or information is needed by the Redeveloper to obtain any necessary permits or approvals, including, but not limited to, signing any and all applications for permits or other approvals necessary for the development of the Project, if necessary. To the extent permitted under applicable law, the Township agrees to support and endorse and, if possible, sign, any applications of the Redeveloper that are in accordance with this Agreement. The Township agrees to expedite the processing of applications for building permits and other municipal permits. The Township, and all officers, employees and agents of the Township shall take all reasonable steps to foster and facilitate development of the Project in accordance with this Agreement. The Township shall cooperate in all efforts of the Redeveloper to secure necessary municipal, county and state permits and approvals in an expeditious fashion.

5.3 Commencement of Project. The Redeveloper agrees that it will use good faith efforts, subject to delays caused by Force Majeure, to obtain the necessary building permits and commence construction of the Project by not later than ninety (90) days after the last to occur of the following events: (i) all Final Approvals have been obtained, (ii) the final Site Plan has been signed by the appropriate Township officials, and (iii) the satisfaction of all conditions in the Resolution granting final Site Plan approval for the Project. For purposes of this Agreement, the phrase, "Commencement Date" or "commencement of construction" or equivalent phrases, however worded, shall mean the commencement of physical construction or site preparation work at the Project Site by the Redeveloper in furtherance of the plans for the construction of the Project. After the commencement of construction for any improvement in the Project, the Redeveloper will thereafter diligently and continuously prosecute that portion of the Project to completion, subject to delays caused by Force Majeure, in accordance with this Agreement.

5.4 Certificate of Occupancy and Certificate of Completion. Upon completion of the construction of the Project, or any part thereof, and issuance of a temporary certificate of occupancy for such part, subject only to punch list items for all or any part of the building(s) to be constructed, then, provided the Redeveloper has substantially complied with this Agreement and Resolution 20-05, the Township agrees to issue a Certificate of Completion in proper form for recording, which shall acknowledge that the Redeveloper has performed all of its duties and obligations under this Agreement with respect to the Project, or portion of the Project for which the certificate has been issued, and has completed construction in accordance with the requirements of this Agreement with respect to the part of the Project to which the Certificate relates. Such Certificate of Completion shall constitute a conclusive determination of the satisfaction and termination of the agreements and covenants in this Agreement and in the Redevelopment Plan with respect to the relevant obligations of the Redeveloper to construct the Project. The Township shall provide such Certificate of Completion within thirty (30) days after written request by the Redeveloper or, within ten (10) days of such request, provide the Redeveloper with a written statement setting forth in detail the respects in which it believes that the Redeveloper has failed to complete the Project and what reasonable measures or acts will be necessary in the opinion of the Township in order for the Redeveloper to be entitled to such Certificate of Completion. Pursuant to *N.J.S.A. 40A:12A-9(a)*, upon the issuance of a Certificate of Completion for the Project, the conditions that were determined to exist at the time that the area was determined to be in need of redevelopment shall be deemed to no longer exist, and the land and improvements thereon shall no longer be subject to eminent domain as a result of those determinations.

5.5 Cooperation and Compliance. The Parties hereto agree to cooperate with each other and to provide all necessary and reasonable documentation, certificates, and consents in order to satisfy the terms and conditions of this Agreement. The Township Committee further agrees to take such action as may be reasonably requested by any mortgagee of the Redeveloper in connection with obtaining Financing for the Project.

5.6 Fees. The Redeveloper shall be subject to application and escrow fees for Township approvals and review processes in accordance with the Township's Land use Procedures and Land Development ordinances

SECTION 6. DEFAULT PROVISIONS

6.1 Redeveloper's Default. The Township shall have the right to declare the Redeveloper in default of this Agreement ("Default") in the event that any of the events set forth below

in Section 6.2 occur. For purposes of this Agreement, the term "Default" shall mean the occurrence of any of the events set forth in Section 5.2, after notice and opportunity to cure, and which may result in the Township exercising any or all of its remedies under Section 6.4 of this Agreement to terminate the Redeveloper's rights under this Agreement.

6.2 Default Events. The Township shall have the right to declare the Redeveloper in default of this Agreement in the event of the occurrence of any of the following (each, an "Event of Default"):

- The Redeveloper's failure to perform substantially, or substantial defect in performance by the Redeveloper, of any of its material obligations under this Agreement; or
- A final and un-appealable determination by a court of competent jurisdiction that the Redeveloper is insolvent; or
- The Redeveloper shall file a voluntary petition in bankruptcy; or
- The sending of a notice to the Township by the Redeveloper that it has determined not to proceed with the Project, unless the Redeveloper has the right not to proceed, under the terms of this Agreement; or
- Any judgment of bankruptcy against the Redeveloper, or any general assignment for the benefit of creditors by the Redeveloper, or any appointment of a receiver for the Redeveloper which is not stayed or dismissed within ninety (90) days of such appointment; or
- Abandonment of the Project by the Redeveloper for a period of more than ninety (90) consecutive days after commencement, without explanation, which shall mean the failure to staff adequately or diligently to prosecute the Approvals or to construct the Project to ensure the achievement of the Project Schedule.

6.3 Default Notice. Upon an occurrence of an Event of Default, the Township shall notify the Redeveloper in writing that it has declared the Redeveloper in default (hereinafter "Default Notice"). Absent such Default Notice, no declaration of Default shall be deemed binding against the Redeveloper. The Default Notice shall be given by the Township Committee within ten (10) days of action by the Township Committee or its designee determining that an Event of Default has occurred and shall state the basis for determining that an Event of Default has occurred. Upon receipt of the Default Notice, the Redeveloper shall have thirty (30) days after the Redeveloper's receipt of the Default Notice, in the case of a financial obligation, to respond to such Default Notice, or in the case of a non-financial obligation, the Redeveloper shall have forty-five (45) days after the Redeveloper's receipt of the Default Notice, to commence to cure the Event of Default and shall be afforded additional time to cure, provided that the

Redeveloper has, within the applicable time period, commenced and is diligently and continuously proceeding to correct same. In the event that the Redeveloper does not cure the Default as set forth herein, the Township shall have the right to exercise the remedies set forth below. The Parties may agree in writing, notwithstanding the provisions of this paragraph, to extend the period of time by which the Redeveloper must respond to the Default Notice or the period of time in which the Redeveloper must cure the Default.

6.4 Default Rights and Remedies of Township: Upon the occurrence of a Default which has not been cured pursuant to Section 6.3, the Township shall, to the fullest extent permitted by law, have each of the following rights and remedies: (i) Terminate this Agreement, in whole or in part, upon the expiration of the applicable cure period with respect to the Project; (ii) Withhold the issuance of any Certificate of Completion as to the Project until the Default has been corrected; and (iii) any other remedy at law or equity, including but not limited to, de-designating the Redeveloper and any statutory rights of the Township, none of which are waived by the execution of this Agreement.

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

6.6 Township Default. The failure of the Township to substantially perform, or a substantial defect in performance by the Township of, any of its obligations under this Agreement (“Township Event of Default”) shall constitute a default by the Township.

6.7 Cure by Township. The Township shall have the right to cure any Township Event of Default, provided that the Township commences the cure thereof within forty-five (45) days of the date that the Redeveloper notifies the Township, in writing, that a Township Event of Default has occurred, unless a longer period is expressly required to comply with statutory limitations or requirements; provided, further, that if the Township diligently and continuously proceeds to cure the Township Event of Default, the Township shall be afforded an additional reasonable period of time to complete the cure, given the nature of the Default.

6.8 Rights and Remedies of Redeveloper. In the event that the Township does not cure the Township Event of Default as set forth herein, the Redeveloper shall be entitled to all remedies at law and equity, including the remedy of specific performance.

SECTION 7 LENDER PROTECTIVE PROVISIONS

7.1 Rights of Mortgagee. In the event of any default in connection with the terms and provisions of any lease or financial arrangement providing for a mortgage interest upon the Project or Project Site, the relevant financial institutions shall be entitled to the protection of N.J.S.A. 55:17-1 et seq. providing for notification, a reasonable opportunity (in light of the nature of the default and the available means to correct it), to cure the same, and shall be afforded additional time to diligently and continuously proceed to correct same in a reasonable period of time given the nature of the breach, provided that the financial institution or lender has, within thirty (30) days of the receipt of notice, commenced and is diligently pursuing the correction of such failure or defect. In order to provide additional and supplemental remedies to the holder of a mortgage loan on the Project or Project Site in the event of a default with the terms and provisions of its mortgage loan, which remedies are deemed necessary and appropriate to the feasibility of making private funds available to finance the Project, the holder of a loan may exercise the following rights: the right to cure, right to possession, right to assume control of mortgagor, right to enter into possession of and operate premises, right to the entry of a judgment of strict foreclosure, right to recover on the underlying loan obligation without first proceeding with foreclosure, right to proceed to foreclosure, separately from or together with suit on the underlying obligation, and such other rights as are

specifically provided in N.J.S.A. 55:17-8.

7.2 No Termination for Mortgage Default. This Agreement, being a lease or financial arrangement made by a governmental body or agency of the State of New Jersey pursuant to statutes in connection with a project for redevelopment, renewal or rehabilitation, shall continue in full force and effect beyond any default in or foreclosure of any mortgage loan made to finance the Project, as though such default or foreclosure had not occurred, subject to the provisions of N.J.S.A. 55:17-1 et seq.

7.3 Attornment. The Township agrees to execute recognition and attornment documents that may reasonably be required by any lender and that are reasonably acceptable to the Township, and further to make any technical, non-substantive modifications to this Agreement that may be reasonably required for the Financing; provided, however, that the Redeveloper shall reimburse the Township for all costs incurred in connection with the review and approval of said documents (including the preparation of any approving resolutions) by the Township Attorney.

7.4 Notice to Mortgagee. Whenever the Township shall deliver any notice or demand to the Redeveloper with respect to any Event of Default by the Redeveloper of its obligations or covenants under this Agreement, the Township shall simultaneously forward 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 the County or any other address provided to the Township by such mortgage holder. No such notice to the Redeveloper shall be effective unless a copy is also sent to the holder of such mortgage. No Default will become effective if the holder of any Financing is curing such Default.

7.5 Mortgagee's Right to Cure Default and Assume Redeveloper's Obligations. After any Event of Default, each holder of any Financing shall (insofar as the rights of the Township are concerned) have the right, at its option, to cure or remedy such Default and to add the cost thereof to its mortgage and shall have an additional thirty (30) days to do so, provided that, if the Default relates to construction of the Project, nothing contained in this Agreement shall be deemed to require the holder to obtain the Township's approval, either before or after foreclosure or any action in lieu thereof, to undertake or continue the construction or completion of the Project or any part thereof. Any such holder who shall properly complete the Project or applicable part thereof shall be entitled, upon written request made to the Township, to receive the certificate of occupancy for the units or buildings within the Project and the Certificates of Completion as set

forth in Section 4.5 hereof.

SECTION 8. NONDISCRIMINATION AND RESTRICTIONS ON TRANSFER

8.1 Nondiscrimination. The Redeveloper agrees, and all Deed(s) for any parcels in the Project Site shall contain covenants running with the land, perpetual in duration, binding on the Redeveloper, its successors and assigns, and every successor in interest to the parcels, that the owners of the properties to be redeveloped shall not discriminate upon the basis of race, color, creed, or national origin in the sale, lease, or rental or in the use or occupancy of the properties or any improvements erected or to be erected thereon, or any part thereof.

It is intended and agreed, and the Deed(s) shall so expressly provide, that the agreements and covenants provided herein above shall be covenants running with the land and that they shall, in any event, and without regard to technical classification or designation, legal or otherwise, and except only as otherwise specifically provided in this Agreement, be binding, to the fullest extent permitted by law and equity, for the benefit and in favor of, and enforceable by, the Township, its successors and assigns, any successor in interest to the parcels, or in any part thereof, and the owner of any other land (or any other interest in such land) in the Project Site which is subject to the land use requirements and restrictions of the Redevelopment Plan, against the Redeveloper, its successors and assigns, and every successor in interest to the parcels.

8.2 Restrictions on Transfer. (a) Prior to the issuance of a Certificate of Completion for the Project or any part thereof, pursuant to N.J.S.A. 40A:12A-9(a), the Redeveloper shall, except as set forth in subsection (b) below, be without power to sell, lease, assign, mortgage, or otherwise transfer or encumber (any of the foregoing, a "Transfer") this Agreement, the Project, the Project Site or any such part of or interest in the foregoing, without the written consent of the Township, which consent shall not be unreasonably withheld, conditioned or delayed, subject to compliance with subsection (c) below.

(b) Notwithstanding the foregoing, prior to the Certificate of Completion, the following transfers and encumbrances ("Permitted Transfers") shall be permitted without any consent or any further approval by the Township Committee: (i) leases or contracts of sale for individual residential units (ii) a mortgage or mortgages and other liens and encumbrances for the purposes of financing costs associated with the acquisition, development, construction and marketing of the Project; (iii) utility, access, ingress, egress and other development easements; (iv)

environmental covenants and restrictions imposed by a regulatory agency as a condition of any permit or approval; (v) a transfer of an interest in the Redeveloper or the Project Site to an entity owned or controlled by the Redeveloper (for purposes of this Agreement defined to mean at least a 51% or greater ownership interest), including transfer to an urban renewal entity if necessary in relation to any tax abatement that may be approved; (vi) a transfer of an interest in the Redeveloper limited liability company for the benefit of children, parents or heirs of a party owning an interest in the Redeveloper; and (vii) any contract or agreement with respect to any of the foregoing exceptions. The foregoing shall not apply, and therefore no approval will be required with respect to, a change of form of the Redeveloper entity, provided that there is no change in the beneficial ownership of the Redeveloper.

(c) If, prior to the Certificate of Completion, there is a Transfer which is not a Permitted Transfer as set forth in subsection (b) above, such Transfer shall require the consent of the Township Committee, the Township Committee's consent shall be conditioned upon the Redeveloper satisfying the following conditions to the reasonable satisfaction of the Township Committee: (i) the Redeveloper presents evidence demonstrating the reputability of the transferee or assignee and the financial ability of the transferee or assignee to fulfill the obligations of this Agreement (or, if the Transfer is of a part of the Project Site or rights hereunder, the obligations relating to such part); and (ii) the Redeveloper presents evidence demonstrating the competence and experience of management of the proposed transferee or assignee to complete the relevant section of the Project.

(d) A determination of compliance with the criteria set forth in subsection (c) above shall be based on the following information and documentation to be submitted by the transferee or assignee: (i) financial statements indicating (1) net worth, or (2) unencumbered lines of credit; (ii) evidence of loan commitments sufficient to carry out the Project of the transferee or assignee; and (iii) a letter of recommendation from a prior project manager or owner for whom the prospective transferee or assignee has at least ten (10) years of experience in the construction of residential multi-family housing in the State of New Jersey, and (iv) has undertaken a comparable development in the State of New Jersey.

(e) A proposed transferee or assignee shall be presumed to be reputable and have the necessary financial ability if the above information demonstrates: (i) that the proposed transferee or assignee is of good character and reputability as evidenced by the letter from a prior manager or owner for whom the prospective transferee or assignee has undertaken a comparable development in the State of New Jersey; and (ii) that the proposed transferee or assignee has sufficient net

worth and credit worthiness to carry out the Project, or part thereof, or loan commitments in amounts and on terms sufficient to permit the completion of the Project, or relevant part thereof.

(f) Upon the granting of such consent, the Township shall issue a certificate to the transferee or assignee evidencing such consent and certifying that no Default by the Redeveloper or any other entity under this Agreement shall impair such transferee's or assignee's rights under this Agreement.

8.3. Subsequent Conveyance by Redeveloper. Upon the issuance of a Certificate of Completion for any portion of the Project on the Project Site, the Redeveloper shall have the right to sell, lease or otherwise transfer its interest in the real property of such portion of the Project without limitation.

SECTION 9. AFFORDABLE RENTAL HOUSING.

9.1 The Affordable Units shall be constructed, marketed, rented and maintained in strict accordance with the Fair Housing Act, N.J.S.A. 52:27D-301 et seq., Uniform Housing Affordability Controls, N.J.A.C. 5:80-26.1 et seq., Township Affordable Housing Ordinances; and rules or regulations adopted by the New Jersey Council on Affordable Housing, New Jersey Department of Community Affairs and/or New Jersey Court of competent jurisdiction, as well as any successor statutes, rules, regulations or ordinances (collectively the "Fair Housing Laws"). Consistent with the obligation to construct the Project in accordance with the Fair Housing Laws, but not intending to limit that obligation, each Affordable Unit shall be deed restricted with affordability controls as prescribed by the Fair Housing Laws. The affordability controls shall remain in place until released by the Township and for a minimum period of thirty (30) years. Redeveloper shall cooperate with the Township in providing any information that is necessary to complete the Township's annual monitoring. Prior to the issuance of any Certificates of Occupancy, Redeveloper shall provide the Township with an Affordable Housing Deed Restriction for Rental Projects in the form attached hereto and incorporated herein as **Exhibit F** covering all of the Affordable Units.

SECTION 10. REPRESENTATIONS AND WARRANTIES

10.1. The Redeveloper. The Redeveloper represents and warrants as follows:

(a) it is a limited liability company duly created under the laws of the State of New Jersey and is duly organized and existing in good standing;

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

(c) the execution, delivery and performance by the Redeveloper of this Agreement has been duly authorized, the person executing this Agreement on its behalf is authorized to do so, and this Agreement constitutes a valid and legally binding obligation of the Redeveloper;

(d) it is financially capable to undertake and fulfill the obligations of the Redeveloper hereunder, subject to the terms and conditions of Section 4.1. above;

(e) the Redeveloper has the necessary expertise, qualifications, staff and resources to undertake and fulfill its obligations hereunder;

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

(g) the execution, delivery, or performance of this Agreement will not constitute a violation of any of the Redeveloper's organizational documents, or of any mortgage, indenture, instrument, judgment or other agreement to which it is a party or by which it is bound.

9.1. The Township. The Township represents and warrants as follows:

(a) that the Township Committee duly adopted the Redevelopment Plan in accordance with the Redevelopment Law;

(b) that the Township Committee is duly and properly designated as the Redevelopment Entity, pursuant to the Redevelopment Law;

(c) that the Township is executing this Agreement in its capacity as the designated redevelopment agency for the Project Site and that this Agreement constitutes a valid and legally binding obligation of the Township;

(d) that there is no action, proceeding or investigation now pending or threatened, nor any basis therefore, known or believed to exist which (i) questions

the validity of this Agreement or any action or act taken or to be taken by the Township pursuant to this Agreement; or (ii) is likely to result in a material adverse change in its agency, property, assets, liabilities or condition or which will materially and substantially impair its ability to perform pursuant to the terms of this Agreement; and

(e) that the zoning of the Project Site, as amended pursuant to the Amended Redevelopment Plan, permits the Redevelopment of the Project Site for the Project, subject to Board and all other Approvals.

SECTION 11. FEES; INDEMNIFICATION

11.1 Escrow Fees. The Redeveloper shall have the obligation to maintain an escrow account for the purposes of paying for the Township's professional and administrative costs related to the Project in accordance with the terms of that certain Funding Agreement approved by the Township on August 15, 2019 (the "Funding Agreement"). The obligation to maintain such escrow account shall continue until such time as the final Certificate of Completion is issued by the Township for the Project, at which time the escrow account shall close and the Redeveloper shall no longer have the obligation to pay for the Township's professional and administrative costs related to the Project. Upon issuance of the final Certificate of Completion, the Township shall provide the Redeveloper with a final invoice for the Reimbursable Costs incurred by the Township. Any balance due the Redeveloper of any of the Escrow Funds, will be refunded at the end of the Interim Period, or shall be disbursed in accordance with the Redeveloper's instructions.

In accepting the above referenced escrow deposit from the Redeveloper, the Township shall comply fully with the standards set forth in N.J.S.A. 40:55D-53, et al. At any time prior to the completion of the Project, upon thirty (30) days written notice, the Township will provide Redeveloper with a full and detailed accounting of any and all costs charged to the Redeveloper pursuant to the escrow agreement between the parties.

The phrase "Reimbursable Costs" shall include, but not be limited to, all reasonable fees and costs related to the Project including those fees and costs incurred by the Township as a result of the Township's utilization of qualified professional consultants, including but not limited to planners, engineers and attorneys as designated by the Township, who shall participate in the review of any and all other plans, renderings, or reports directly relating to the proposed Redevelopment Project and the drafting and negotiation of the Redevelopment

Agreement and Financial Agreement. The Redeveloper shall not be responsible for any professional or administrative costs incurred by the Township or work performed by Township employees, consultants or professionals, which work was performed for any prior redeveloper of the Property.

11.2 Escrow Funds. In accordance with the terms of the Funding Agreement, the Redeveloper has deposited the sum of Twenty Five Thousand (\$25,000.00) Dollars in escrow with the Township pursuant to this Agreement. Said amount shall continue to be maintained by the Township in a separate escrow account and shall be drawn down upon the Township to pay the Reimbursable Costs. This Twenty Five Thousand (\$25,000.00) Dollar amount shall be referred to as the Escrow Funds. If, as a result of the Township's payment of the Reimbursable Costs, the Escrow Funds drop below Three Thousand (\$3,000.00) Dollars, the Township shall notify the Redeveloper in writing along with copies of all invoices and a ledger of disbursements made as of the date of the written notice. The Redeveloper shall replenish the Escrow Funds in accordance with the terms of the Funding Agreement. Provided that during such period the Township has expended any Reimbursable Costs, every thirty (30) days, the Township shall provide the Redeveloper with a statement of those Reimbursable Costs paid from the proceeds of the Escrow Funds. The Township shall further provide the Redeveloper with individual invoices on a regular basis when received by the Township that are identified as the Reimbursable Costs. Any failure on part of the Township to affirmatively provide the Redeveloper with either a statement(s) of the Reimbursable Costs and/or invoices describing same shall not relieve the Redeveloper of its obligation to pay to the Township the Escrow Costs as provided for herein.

11.3 Indemnification. The Redeveloper agrees to indemnify and hold harmless the Township and the Township Committee against, and the Redeveloper shall pay, any and all liability, loss, cost, damage, claims, judgments or expenses of any and all kinds or nature and however arising, imposed by law, which the Township may sustain, be subject to or be caused to incur by reason of any claim, suit or action based upon personal injury, death, or damage to property, whether real, personal or mixed, resulting from the Redeveloper's activities in constructing the Project or the Redeveloper's actual breach of any contracts entered into by the Redeveloper which relate to construction of the Project, or resulting solely from the Redeveloper's ownership of portions of the Project Site, or resulting from the acquisition, construction or installation of the Project, including but not limited to any and all claims by workmen, employees and agents of the Redeveloper and unrelated third parties, which claims result from the construction of the Project, the maintenance and functioning of Project improvements, or any other activities

of the Redeveloper within the Project Site during the construction of the Project. It is mutually agreed by the Redeveloper and the Township that neither the Township nor its elected and appointed officials, volunteers, officers, agents, servants or employees shall be liable in any event for any action performed under this Agreement and that the Redeveloper shall save the Township and its elected and appointed officials, volunteers, officers, agents and employees harmless from any claim or suit in connection with the Redeveloper's obligations under this Agreement, except for any claim or suit arising from the intentional, willful and negligent acts of the Township or its elected and appointed officials, volunteers, officers, agents, servants or employees.

The Redeveloper, at its own cost and expense, shall defend any and all such claims, suits and actions, as described in this Section, which may be brought or asserted against the Township or its elected and appointed officials, volunteers, officers, agents, servants or employees. Any reasonable attorneys' fees in situations where it is necessary under applicable law for the Township to engage its own attorneys, reasonable experts' testimony costs and all costs to defend the Township or any of its elected and appointed officials, volunteers, officers, agents, servants, or employees shall be reimbursed to it by the Redeveloper in connection with such indemnification claim.

As between the Redeveloper and the Township, the Redeveloper agrees and specifically assumes any and all responsibility for the investigation and remediation of all environmental conditions, whether known or unknown, on, under or migrating to or from the Project Site or anything affected off-site, as may be required by applicable Environmental Laws, and the Redeveloper shall bear all costs for such investigation and remediation of the Project Site. The Redeveloper shall use reasonable efforts to obtain all environmental approvals that may be required for the remediation of the Project Site. Any and all environmental costs shall be the sole responsibility of the Redeveloper.

Without limitation on any obligation to defend and indemnify pursuant to this Agreement, and without limitation to such obligation which the Redeveloper may have as a matter of law, the Redeveloper shall indemnify, defend, release and hold the Township and its officials and agents harmless against (a) all claims or alleged claims and response costs and fines and penalties against the Township and its officials and agents or the Redeveloper by any governmental authority or third party due to the presence of Hazardous Substances on or within the Project Site, or the discharge of Hazardous Substances in excess of any limitations provided by the applicable Environmental Laws, whenever such Hazardous Substances become present on or within the Project Site, whether prior to or after the

Effective Date, (b) all claims or alleged claims against the Township and its officials and agents by any governmental authority or third party for injunctive relief for the abatement of a nuisance or related to the presence of Hazardous Substances on or within the Project Site or the discharge of Hazardous Substances in excess of any limitations provided by the applicable Environmental Laws, whether prior to or after the Effective Date, and (c) all claims or alleged claims of bodily injury or property damage asserted against the Township and its officials and agents by third Parties due to the presence of Hazardous Substances which become present on or within the Project Site, or the discharge of Hazardous Substances in excess of any limitations provided by the applicable Environmental Laws, whenever such Hazardous Substances become present on or within the Project Site whether prior to or after the Effective Date. This indemnity shall survive termination of this Redevelopment Agreement.

SECTION 12. CONSTRUCTION PROVISIONS.

12.1 Illumination, Noise and Pollution. The Redeveloper shall follow all applicable construction laws, regulations, ordinances, and standards in the industry relating to illumination, noise and pollution.

12.2 Security and Safety. The Redeveloper shall be cognizant of and address all traffic safety issues by complying with all applicable traffic safety provisions both during and after construction of the Project.

12.3 Hours of Construction. Hours of construction, including, installation of any improvements, shall be 7:00 a.m. to 5:00 p.m., Monday through Friday and 8:00 a.m. to 5:00 p.m. on Saturday. There shall be no construction on Sundays and federal holidays outside or on the exterior of the building. Interior work shall be permitted on all days.

12.4 Township Observation, Access and Inspections. The Township, and its consultants, employees and agents, shall be given free access to observe construction of the Project, including, but not limited to, roadways, sanitary sewers/septics, water mains/wells, storm sewers, landscaping for buffer areas, street lighting, woodland management and appurtenances associated with the Board-approved Plans. The purpose of such observations shall be limited to providing the Township with a greater degree of confidence that such improvements will be constructed in accordance with the Redeveloper's approved submittals. The Township, or its representatives, consultants, employees or agents, shall not supervise, direct or have control over the Redeveloper's work during such observations or as a result thereof nor shall they have authority over or

responsibility for the means, methods, techniques, sequences or procedures of construction selected by the Redeveloper, for safety precautions and programs incident to the work of the Redeveloper or for any failure of the Redeveloper to comply with applicable laws, rules, regulations, ordinances, codes or orders. The Redeveloper is not an agent or employee of the Township.

In addition to all remedies at law or in equity, in the event that Redeveloper fails or refuses to comply with any oral or written representation made to any municipal official (including but not limited to the Township Engineer, Administrator, Zoning Officer or Township Committee member), the Township Engineer or Zoning Officer shall provide written notice to the Redeveloper of such failure or refusal and allow the Redeveloper to cure said failure or refusal within ten (10) days . If the failure or refusal continues unabated after the aforesaid ten (10) days, the Township Engineer or Zoning Officer shall have the right to issue a Stop Work Order on the Project until the failure or refusal is abated to the satisfaction of the Township Engineer or Zoning Officer.

12.5 Attached hereto as **Exhibit G** is the proposed Landscape Plan as required by Resolution PB 20-05 approving Redeveloper's Site Plan. The Landscape Plan may be modified and supplemented by the Township Engineer and Township Planner prior to installation of the plantings identified on the attached Landscape Plan.

SECTION 13. PERFORMANCE, MAINTENANCE AND OTHER GUARANTEES.

13.1 Guarantees Required. Redeveloper shall post performance and maintenance guarantees in accordance with the provisions of N.J.S.A. 40:55D-53 et seq. of the MLUL and all applicable laws, in the following manner:

(a) 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 at the discretion of the Redeveloper) in a form reasonably acceptable to the Township Attorney (provided that the New Jersey Department of Community Affairs's standard form shall be deemed reasonably acceptable to the Township Attorney) 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 not to exceed 120% of the cost of installation, which cost shall be determined by the Township Engineer according to the method of calculation set forth in N.J.S.A. 50:55D-53. Notwithstanding the foregoing, under no circumstances shall any form of performance guarantee be required for any building comprising the Project.

(b) A maintenance guarantee in respect of those improvements which may 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 at the discretion of the Redeveloper) for a period not to exceed two (2) years after final acceptance of the improvements, in an amount not to exceed fifteen (15%) percent of the cost of installation of the improvements which are being released, which cost shall be determined by the Township Engineer according to the method of calculation set forth in N.J.S.A. 40:55D-53.

(c) If authorized by ordinance duly adopted by the Warren Township Committee prior to the commencement of construction, Redeveloper may be required to post a temporary certificate of occupancy bond and/or a safety and stabilization bond, as necessary, in accordance with the MLUL and the Township ordinances.

(d) If applicable, all bonds must name the Township as an obligee, and Redeveloper shall deliver a copy of the bonds to the Township prior to the commencement of construction. To the extent that a surety bond is provided, it shall be provided by a company licensed by the New Jersey Department of Banking and Insurance or otherwise authorized by the New Jersey Department of Banking and Insurance to do business in the State. In the event that any insurance company, financial institution or other entity issuing a performance guarantee hereunder shall become insolvent, or shall declare bankruptcy or otherwise be subject to reorganization, rehabilitation, or other action, whereby state or federal agencies have taken over management of the entity, Redeveloper shall replace the bond within thirty (30) days of notice from the Redeveloper.

(e) In the event that any bond should lapse, be cancelled or withdrawn, or otherwise not remain in full force and effect as the result of any act or omission by Redeveloper, then until an approved replacement of the lapsed bond has been deposited with the Township, the Township may require Redeveloper to cease and desist any and all work on the Project, unless the improvements required to be bonded have been completed and approved by the Township. In the event any bond shall lapse, be cancelled or withdrawn, or otherwise not remain in full force and effect through no act or omission of the Redeveloper, then unless the Redeveloper fails to replace the bond within ten (10) days of notice given to the Redeveloper by the Township, the Township may require Redeveloper to cease and desist work on the project unless the improvements required to be bonded have been completed and approved by the Township.

(f) In the event that other governmental agencies or public utilities automatically will own the utilities to be installed, or the improvements are covered by a performance or maintenance guarantee to another governmental agency, no performance or maintenance guarantee, as the case may be, shall be required by the municipality for such utilities or improvements.

(g). Any extension of the time allowed for installation of the improvements for which a performance guarantee has been provided and any release or partial release of any performance guarantee provided pursuant to this Agreement shall be pursuant to the MLUL.

SECTION 14. MISCELLANEOUS

14.1 Force Majeure. The failure of either Party to perform any of the provisions of this Agreement by reason of any of the following shall not constitute a Default or breach of this Agreement: labor disputes, strikes, picket lines, unavailability of materials, freight and delivery delays, energy shortages, boycott efforts, fires, floods, freezes, epidemics, pandemics, extreme weather conditions, accidents, war (whether or not declared), riots, acts of God, acts of government (including, without limitation, any agency or department of the United States of America or the State of New Jersey, acts or omissions of Third Parties (including litigation by Third Parties), or other causes which are beyond the reasonable control of the Party asserting an excusable delay that are subsequent to the date of this Agreement ("Force Majeure") provided however (A) that the non-performing party, (i) give the other party prompt written notice describing the particulars of the claimed Force Majeure, including, but not limited to, the nature of the occurrence and its expected duration within thirty (30) days of the commencement of same, (ii) continue to furnish timely regular reports with respect thereto during the period of the Force Majeure and (iii) provide notice of the termination of the Force Majeure; (B) the suspension of performance is of no greater scope and of no longer duration than is required by the Force Majeure and the reasonable time required to secure any applicable insurance settlement; (C) the Force Majeure shall not excuse any pre-existing Event of Default hereunder; (D) the non-performing party uses commercially reasonable efforts to remedy its inability to perform and to mitigate, in an expeditious manner, any losses to the other party; (E) the Force Majeure described above is not otherwise due to the willful or negligent acts or omissions of the party relying on such Force Majeure; and (F) Economic hardship, including changes in tax laws and/or loss of profits, shall not constitute a Force Majeure.

14.2 Tax Assessments. The parties acknowledge that, to the extent that a Financial Agreement is entered into between the Redeveloper and the Township, such Financial Agreement will control the payments in lieu of taxes applicable for the Property. Otherwise, the Redeveloper shall pay standard ad valorem taxes on the Project Site.

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

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

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

14.6 Severability. Should any provision, term, paragraph or other portion or portions of this Agreement be held by any court of competent jurisdiction to be in violation of any applicable law or against public policy or held to be null and void for any reason whatsoever, such portion shall be deemed severable, so that such determination, unless it prohibits or prevents the performance of this Agreement in substantial part, shall not affect the validity of any other provisions of this Agreement, and such other provisions shall be deemed to be in full force and effect and binding on the Parties unless amended in accordance with Section 14.5 of this Agreement.

14.7 Incorporation of Recitals. The recitals set forth in Section 1 of this Agreement are hereby incorporated by reference and are considered part of this Agreement.

14.8 Casualty. In the event that all or any substantial portion of the Project Site is damaged or destroyed by casualty prior to completion of construction, the Redeveloper may, at its option, terminate this Agreement by written notice to the Township within thirty (30) days after the damage or casualty. For purposes of this provision "substantial portion" shall be defined as any portion which is equal to or in excess of twenty-five percent (25%) of the total acreage of the Project Site or that portion which, in the sole opinion of the Redeveloper, would prevent the successful completion of the Project as envisioned by this Agreement.

14.9 Insurance. The Redeveloper shall purchase and maintain during the construction of the improvements a Comprehensive General Liability Insurance Policy with minimum limits of One Million (\$1,000,000.00) Dollars per occurrence, and One Million (\$1,000,000.00) Dollars in the aggregate. Said insurance coverage shall be in accordance with the requirements of the Township Attorney. The policy shall indicate the Township of Warren as additional insured with respect to their interest in work performed by the above-named insured at the Project. The coverage shall include endorsements for broad form property damage; explosion, collapse and underground hazards; completed operations; and contractual liability. The contractual liability coverage shall specifically apply to the above indemnification clause. All liability coverage shall be on an occurrence basis. Certificates of Insurance evidencing the foregoing coverage shall be provided to the Township before work on the improvements begins and on an on-going basis, as the insurance is reviewed from time to time.

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

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

14.12 Recordation. A short form memorandum of this Agreement, and any modifications thereof or additions thereto, may be duly recorded by the Redeveloper in the Book of Deeds of the County of Somerset, and the cost of such recordation and the cost of any and all federal revenue stamps, which legally must be attached to such memorandum, shall be paid by the Redeveloper.

14.13 Notices. Any notice provided or required to be given under this Agreement must be in writing and shall be served (and shall be deemed to have been served) by delivering a copy thereof to the Party being served in person, by commercial courier or by email, with electronic proof of delivery, as follows:

As to the Township:

Township of Warren
46 Mountain Boulevard
Warren, NJ 07059
Attn: Township Administrator
Email:

With a copy to:

Jeffrey B. Lehrer, Esq.
DiFrancesco Bateman et als
15 Mountain Blvd.
Warren, N.J. 07059
Email: jlehrer@newjerseylaw.net

As to the Redeveloper:

Brian S. Silbert, President & CEO
Silbert Realty and Management Co., Inc.
152 Liberty Corner Road, Suite 203
Warren, New Jersey 07059

With a copy to:
Brian Wolfson, Esq.
O'Toole Scrivo
14 Village Park Road
Cedar Grove, New Jersey 07009

From time to time, either Party may designate a different person or address for all of 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.

14.14 Counting of Days. Unless otherwise specifically set forth, all references to counting of days shall be calendar days; provided, however, that consistent with R. 1:3-1, in computing a period of time of less than seven (7) days, Saturdays and Sundays and legal holidays shall be excluded.

14.15 Waiver of Jury Trial. The Township and the Redeveloper hereby waive trial by jury in any action, proceeding or counterclaim brought by or against either Party on, or in respect of, any matter whatsoever arising out of, relating to or pertaining to this Agreement, the relationship between the Township and the Redeveloper and/or any claim of injury or damage from any other relationship between the Parties hereto.

14.16 Successors Bound. This Agreement shall be binding upon the respective Parties hereto and, subject to the limitations on transfer set forth in Section 8, their successors and assigns.

SECTION 15. ESTOPPEL CERTIFICATE.

15.1 Estoppel Certificate. Within thirty (30) days following written request therefor by a party hereto, the other party shall issue a signed estoppel certificate either stating that this Agreement is in full force and effect and that there is no default or breach under this Agreement (nor any event which, with the passage of time or the giving of notice would result in a default or breach under this Agreement), or stating the nature of the default or breach or event, if any. In the event the estoppel certificate discloses such a default, breach or event, it shall also state the manner in which such default, breach and/or event may be cured.

[signature page to follow]

1/31/2024

IN WITNESS WHEREOF, the Parties have executed this Agreement effective as of the Effective Date.

TOWNSHIP OF WARREN

Attest:

Cathy Reese, Township Clerk

By: _____

Michael Marion, Mayor

Witness:

**SILBERT REALTY & MANAGEMENT
COMPANY, INC.**

By: _____

Name:

Title:

1/31/2024

EXHIBIT A

SITE PLAN

[On file with Planning Board]

1/31/2024

EXHIBIT B

ARCHITECTURAL PLANS

[On file with Planning Board]

1/31/2024

EXHIBIT B-1
ARCHITECTURAL RENDERING OF PROJECT

1/31/2024

EXHIBIT C
PLANNING BOARD RESOLUTION PB 20-05

1/31/2024

EXHIBIT D
LETTER FROM REDEVELOPER'S COUNSEL

1/31/2024

EXHIBIT D-1

**LETTER DATED DECEMBER 22, 2020 FROM
GARY DEAN, PE, TRAFFIC CONSULTANT FOR THE REDEVELOPER**

1/31/2024

EXHIBIT E
PROJECT SCHEDULE

1/31/2024

EXHIBIT F
FORM OF AFFORDABLE HOUSING
DEED RESTRICTION

1/31/2024

EXHIBIT G
LANDSCAPE PLAN OF NORTHWESTERLY SIDE OF
DEVELOPMENT

1/31/2024

Reese, Cathy

From: Vautin, Maryellen
Sent: Sunday, January 10, 2021 4:00 PM
To: bargiro@optonline.net; ckastrud@kastrudengineering.com; dan@gallic.com; david@deltafinancialgroup.com; gpdviper@aol.com; george.lazo@marriott.com; jctoth38@hotmail.com; jtcivplan@comcast.net; jlindner@unionstone.net; mjscuderi1@yahoo.com; saldi@optonline.net; esplou@ideal-supply.com; Marion, Mick; oceanvill125@optimum.net; vslaw@optimum.net
Cc: Lisa Sammartino
Subject: RE: Jan 11, 2021 Planning board meeting
Attachments: Nov 23 PB meeting minutes.doc

Hello Here are the Nov 23 minutes. I assume most of you will be there tomorrow at 7:30 in the court room. Thank you Maryellen

Sent from Mail for Windows 10

From: Vautin, Maryellen
Sent: Tuesday, January 5, 2021 4:13 PM
To: bargiro@optonline.net; ckastrud@kastrudengineering.com; dan@gallic.com; david@deltafinancialgroup.com; gpdviper@aol.com; george.lazo@marriott.com; jctoth38@hotmail.com; jtcivplan@comcast.net; jlindner@unionstone.net; mjscuderi1@yahoo.com; saldi@optonline.net; esplou@ideal-supply.com; Marion, Mick; oceanvill125@optimum.net; vslaw@optimum.net
Cc: [Lisa Sammartino](#)
Subject: RE: Jan 11, 2021 Planning board meeting

Hello The planning board reorganization meeting will be January 11, 2021 at 7:30. I will have a board of adjustment meeting via zoom at 7:00 p.m. so I will either be in the side room for that and leave the door open for you or be in the muni building to do that meeting and leave the door open for you. I can make copies of the documents and have for you at the meeting. I attach here all but the November 23 minutes which I hope to have done soon as they should be quick. I won't be in the office until Monday Jan 11

There may be a few minor changes with Mayor and appointee for board.

Happy New Year

Please let me know if you are unable to attend. thank you

Maryellen Vautin

Township of Warren

Land Use Coordinator

908-753-8000 x 243

1/31/2024

**WARREN TOWNSHIP PLANNING BOARD
MEETING MINUTES**

**7:30 p.m. – Susie B. Boyce Meeting Room – 44 Mountain Boulevard
November 23, 2020**

CALL TO ORDER

FLAG SALUTE AND MOMENT OF SILENCE FOR OUR TROOPS

ROLL CALL

Mayor Marion (excused)
Committeeman Lazo
Mr. Toth
Mr. Lindner
Mr. DiBianca
Mr. Argiro

Mr. Scuderi
Mr. Esposito (excused)
Mr. Pasi
Mr. Villani (excused)
Mr. Gallic

***Statement by Presiding Officer:** Adequate notice of this meeting was posted on January 21, 2020 on the Township bulletin board and sent to the Township Clerk, and The Star Ledger per the Open Public Meetings Act. All Board members are duly appointed volunteers working for the good and welfare of Warren Township. We plan to adjourn no later than 10:00 p.m.*

■ **APPROVAL OF MINUTES:**

October 26, 2020

Motion was made by Mr. Lindner, seconded by Committeeman Lazo to approve the minutes. All were in favor.

November 9, 2020

Motion was made by Mr. DiBianca, seconded by Committeeman Lazo to approve the minutes. All were in favor.

ROLL CALL

Reports:

Alan Siegel, Esq.

John T. Chadwick, IV, P.P., Professional Planner

Christian Kastrud, P.E., Professional Engineer

Maryellen Vautin, Clerk

■ **CORRESPONDENCE**

None.

**WARREN TOWNSHIP
PLANNING BOARD MEETING MINUTES
November 23, 2020
PAGE 2**

■ **CITIZENS HEARING non-agenda items**

No one came forward and this portion of the meeting was closed.

■ **RESOLUTIONS**

PB20-06 Warren Construction Co., Inc.

Block 88, lots 7.01 and 28

Minor Subdivision/Lot line change

Approved October 26, 2020

Motion was made by Mr. Lindner, seconded by Mr. Toth to adopt the resolution

For: Committeeman Lazo, Mr. Lindner, Mr. Argiro, Mr. Toth, Mr. DiBianc, M. Pasi,
Mr. Scuderi, and Mr. Gallic

Against: None.

PB 20-04 Wychwood Way LLC

Block 55 Lot 2.02 Preliminary and Final Major Subdivision

Approved November 9, 2020

Motion was made by Mr. Argiro, seconded by Mr. DiBianca to adopt the resolution

For: Committeeman Lazo, Mr. Argiro, Mr. Toth, Mr. DiBianc, Mr. Scuderi, and Mr.
Gallic.

Against: None.

PB 20-05 40 Mountain Blvd, LLC

Block 89 Lot 4 Preliminary and Final Site Plan

Approved November 9, 2020

Motion was made by Mr. Toth, seconded by Mr. Scuderi to adopt the resolution.

For: Committeeman Lazo, Mr. Argiro, Mr. Toth, Mr. DiBianca, Mr. Scuderi, and
Mr. Gallic

Against: None.

**PB20-07A Award of Contract for Professional Services-Klein Traffic Consultants,
LLC**

Motion was made by Mr. Lindner, seconded by Mr. Mr. DiBianca to adopt the
resolution.

For: Committeeman Lazo, Mr. Lindner, Mr. Argiro, Mr. Toth, Mr. DiBianca, Mr.
Pasi, Mr. Scuderi, and Mr. Gallic

Against: None.

**WARREN TOWNSHIP
PLANNING BOARD MEETING MINUTES
November 23, 2020
PAGE 3**

PB10-07A Award of Contract for Professional Services-Beer Architectural Group, LLC

Motion was made by Mr. Pasi, seconded by Mr. Argiro,
For: Committee Lazo, Mr. Lindner, Mr. Argiro, Mr. Toth, Mr. DiBianca, Mr. Pasi, Mr. Scuderi, and Mr. Gallic
Against: None.

■ **SCHEDULE OF NEXT MEETING:**

December 14, 2020 (was cancelled). The next meeting will be January 11, 2021 Reorganization Meeting at 7:30 in Susie Boyce Court Room, 44 Mountain Blvd.

■ **ADJOURNMENT**