

RESOLUTION 24-11-18

AUTHORIZING THE BOROUGH OF MATAWAN TO ENTER INTO A SETTLEMENT AGREEMENT WITH 160 MAIN, LLC REGARDING THE PROPERTY LOCATED AT 160 MAIN STREET

WHEREAS, the Borough of Matawan (the "Borough"), a municipality in the State of New Jersey, seeks to resolve claims brought by 160 Main, LLC (the "Developer") concerning the property located at Block 27, Lot 2 on the Borough's official tax map, commonly known as 160 Main Street (the "Property"); and

WHEREAS, the Developer filed a Builder's Remedy Action against the Borough under Docket No. MON-L-513-22, asserting claims to develop the Property as an inclusionary development for providing affordable housing in connection with the Borough's Third Round affordable housing obligations; and

WHEREAS, the parties have negotiated a settlement agreement (the "Agreement") to resolve the Builder's Remedy Action, pursuant to which the Developer will construct a total of forty-six (46) residential units on the Property, with approximately seventeen percent (17%) of the units set aside as affordable housing, amounting to eight (8) affordable units; and

WHEREAS, the Agreement provides for the inclusion of a Retail Component on the ground floor and a total of eighty-five (85) parking spaces, with specified designations for structured and surface parking as per the Concept Plan; and

WHEREAS, the Agreement includes terms for the Developer to comply with all affordable housing regulations as stipulated by the Uniform Housing Affordability Controls (UHAC) and other applicable legal requirements, including a deed restriction on the affordable units for a period of no less than thirty (30) years; and

WHEREAS, the Borough agrees to seek Court approval for the Agreement by way of a Fairness Hearing and include the rezoning of the Property to facilitate the agreed-upon development plan.

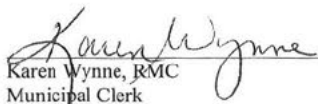
NOW, THEREFORE, BE IT RESOLVED, by the Mayor and Council of the Borough of Matawan that the Borough is hereby authorized to enter into the Settlement Agreement with 160 Main, LLC, as outlined above.

BE IT FURTHER RESOLVED, that the Mayor and Council authorize the Borough Administrator and other necessary officials to take any and all actions to execute the Agreement, including submission for Court approval and compliance with all conditions and obligations set forth therein.

CERTIFICATION OF RESOLUTION

I, Karen Wynne, Municipal Clerk of the Borough of Matawan, County of Monmouth, State of New Jersey, do hereby certify the foregoing to be a true and correct copy of a Resolution adopted by the Council of the Borough of Matawan on November 12, 2024.

IN WITNESS WHEREOF, I have hereunder set my hand and official seal of the Borough of Matawan this 12th day of November, 2024.


Karen Wynne, RMC
Municipal Clerk

SETTLEMENT AGREEMENT

This Settlement Agreement (hereinafter, the “**Agreement**”) is made by, between, and among the Borough of Matawan (hereinafter, the “**Borough**”), the Mayor and Council of the Borough of Matawan (hereinafter, the “**Mayor and Council**”) and 160 Main, LLC (hereinafter “**Developer**”), a New Jersey limited liability company, with a business address of 399 Monmouth Street, East Windsor, New Jersey 08520 (hereinafter, the Borough, Mayor and Council, and Developer shall sometimes collectively be referred to as the “**Parties**”; and hereinafter the Borough and Mayor and Council shall sometimes be collectively referred to as the “**Borough Parties**”).

RECITALS

WHEREAS, the Borough is a municipality in the State of New Jersey;

WHEREAS, Developer is the owner of property located in the Borough designated as Block 27, Lot 2 on the Borough’s official tax map, and commonly known as 160 Main Street (hereinafter, the “**Property**”);

WHEREAS, without the affordable housing obligation required by applicable law and imposed upon the Borough by the Court, the Borough would not consider the development of the Property as contemplated by this Agreement;

WHEREAS, on February 09, 2022, the Borough filed a Declaratory Judgment action seeking judicial approval that the Borough has satisfied its constitutional obligation to provide its fair share of the regional need of moderate- and low-income housing, captioned **In the Matter of the Application of the Borough of Matawan for a Declaratory Judgement**, Docket No. MON-L-410-22 (hereinafter the “**Declaratory Judgment**”);

WHEREAS, on February 18, 2022, Developer filed a builder's remedy action against the Borough regarding the Property captioned, **160 Main, LLC v. The Borough of Matawan, et al.**, Docket No. MON-L-513-22 (hereinafter, the "**Builder's Remedy Action**" and together with the Declaratory Judgment, the "**Litigation**");

WHEREAS, pursuant to applicable law the Borough intends to prepare a Housing Element and Fair Share Plan (hereinafter "**Affordable Housing Plan**"), that will be presented to the Unified Planning/Zoning Board of Adjustment (the "**Unified Planning/Zoning Board**"), endorsed by the Borough Council, and submitted to the Superior Court of New Jersey (hereinafter, the "**Court**") for review and approval;

WHEREAS, in consideration for the settlement of Developer's claims in the Builder's Remedy Action and as required by applicable affordable housing law, the Affordable Housing Plan will include the Property as an inclusionary development with a density of not more than forty-six (46) total units with approximately seventeen (17%) percent of the total units being set aside as Affordable Housing units for a total of eight (8) affordable units, of which four (4) shall be moderate-income rental units, three (3) shall be low-income rental units, and one (1) shall be a very-low income rental unit, as well as 3,040 square-feet of retail on the ground floor (the "Retail Component") and eighty-five (85) total parking spaces, of which seventy-seven (77) shall be structured parking and eight (8) shall be surface parking (the "**Inclusionary Development**");

WHEREAS, Developer shall develop the Inclusionary Development in substantial accordance with the architectural drawings dated March 2, 2023 prepared by Sonnenfeld + Trocchia Architects, P.A., which are attached as Exhibit A, and the architectural renderings and elevations dated March 15, 2023 prepared by Sonnenfeld + Trocchia Architects, P.A., which are

attached as Exhibit B (together, Exhibits A and B shall together be referred to as the “**Concept Plan**”);

WHEREAS, as directed by the Court, the settlement of Builder’s Remedy Action will be submitted to the Court Appointed Special Adjudicator and the Court for approval and, in consideration for the settlement of Builder’s Remedy Action and as required by applicable affordable housing law;

WHEREAS, to ensure that the Inclusionary Development generates affordable housing credits to be applied to the Borough’s affordable housing obligations, the affordable units within the Inclusionary Development shall be developed in accordance with the Uniform Housing Affordability Controls, N.J.A.C. 5:80-26.1 et seq. (“**UHAC**”) and shall be deed restricted for a period of not less than thirty (30) years;

WHEREAS, the Parties wish to enter into this Agreement, setting forth the terms, conditions, responsibilities and obligations of the Parties, and seek the Court’s approval of this Agreement; and

NOW, THEREFORE, in consideration of the promises, the mutual obligations contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each of the Parties, the Parties hereto, each binding itself, its successors and assigns, do hereby covenant and agree, each with the other, as follows:

I. TERMS AND CONDITIONS.

A. The purpose of this Agreement is to settle the Builder’s Remedy Action and to create a realistic opportunity for the construction of the Inclusionary Development as required by applicable law and to generate affordable housing credits for the Borough to apply to any Round

Three (3) affordable housing obligations assigned to it. The Inclusionary Development shall be substantially consistent with the Concept Plan, attached hereto as **Exhibit A** and **Exhibit B**, as well as the bulk standards set forth in **Exhibit C**, which have been reviewed and approved by the Borough Parties and their professionals.

B. The Borough will seek Court approval by way of a “Fairness Hearing” of its Third Round plans and will include in the plan a rezoning of the Property to allow for the construction of an inclusionary development of forty-six (46) total units with approximately seventeen (17%) percent of the total units being set aside as Affordable Housing units for a total of eight (8) rental affordable units, of which four (4) shall be moderate-income rental units, three (3) shall be low-income rental units, and one (1) shall be a very-low income unit, consistent with the Concept Plan.

C. In the event of any legal challenges to the Court’s approval of this Agreement, or the Rezoning Ordinance (as herein defined), the Parties must diligently defend any such challenge and shall cooperate with each other regarding said defense. In addition, if any such challenge results in a judicially imposed reduction of the number of units or invalidates the Rezoning Ordinance that is the subject of this Agreement, the Parties must negotiate in good faith to draft a mutually-acceptable amended agreement reasonably consistent with this Agreement and the Rezoning Ordinance that would pass judicial scrutiny.

II. DEVELOPER’S OBLIGATIONS. Developer shall have an obligation to deed-restrict no less than eight (8) of the residential units in the Inclusionary Development as very-low, low-, and moderate-income affordable units in accordance with the percentages required by UHAC, the applicable affordable housing regulations, any applicable order of the Court, and other applicable

laws. Four (4) rental units shall be moderate-income units, three (3) rental units shall be low-income units, and one (1) rental unit shall be a very-low-income unit.

A. In addition, the affordable rental units shall remain affordable units for a period of not less than thirty (30) years unless extended by the Borough in accordance with UHAC guidelines (“**Deed-Restriction Period**”) so that the Borough may count the units against its obligations to provide rental housing in the Third Round or future rounds. This obligation includes, but is not limited to, the obligation to comply with the bedroom distribution requirements, very low/low/moderate income split requirements, pricing requirements, affirmative marketing requirements, candidate qualification and screening requirements and deed restriction requirements.

B. The distribution of the affordable housing units shall be in compliance with COAH’s Round Two substantive regulations, N.J.A.C. 5:93 or as approved by the Special Adjudicator and the Court.

C. Developer shall have the option to self-administer the rental of the affordable units or shall contract with an experienced administrative agent (“**Administrative Agent**”) for the rental administration of the affordable units. In either case, Developer shall have the obligation to pay all costs associated with properly deed restricting the affordable units in accordance with UHAC and other applicable laws for the Deed-Restriction Period.

D. The Parties agree that the affordable units are to be included in the Affordable Housing Plan to be approved and credited by the Court and will be counted toward the Borough’s Round 2 and/or Round 3 affordable housing obligation.

E. Upon written notice, Developer shall provide detailed information requested by the Borough, or the Borough's Administrative Agent, specifically related to and concerning Developer's compliance with UHAC and other applicable laws.

F. Obligation Not To Oppose Borough's Application for Approval of its Affordable Housing Plan: As it pertains to the Property, Developer shall not directly or indirectly oppose or undertake any action to interfere with the Court's approval and/or implementation of the Affordable Housing Plan or the Borough's Settlement (the "**FSHC Settlement**") with Fair Share Housing Center ("**FSHC**"), as it may be amended in any form, unless any other interested parties undertake any action to obstruct, impede, or challenge Developer's inclusion of the rezoning of the Property or otherwise oppose, challenge, or appeal any approvals needed to develop the Inclusionary Development on the Property consistent with this Agreement, in which case Developer may intervene or participate in such action for the purpose of preserving its ability to develop the Inclusionary Development in a manner consistent with this Agreement.

G. No Obligation to Continue to Participate in the Declaratory Judgment Action: Developer shall no longer participate in the Declaratory Judgment Action but may, at its option, participate should the occurrence of the conditions specified at **Section II-F** of this Agreement be met.

H. FSHC's Attorney's Fees: The parties acknowledge that, as of the date of this Agreement, neither anticipates being responsible for any portion of FSHC's attorney's fees in connection with the Litigation. However, both parties recognize that should FSHC subsequently require a contribution of attorney's fees in connection with the Builder's Remedy Action, Developer agrees to pay not less than fifty percent (50%) of such required contribution. This

payment shall be due within thirty (30) days following the Court's approval of the Borough's FSHC Settlement, which must be confirmed through a duly-noticed fairness hearing.

III. THE BOROUGH'S OBLIGATIONS.

A. The Rezoning Ordinance: Following the approval of this Settlement Agreement by the Court, the Borough Council shall, in conformance with the Court's order, but no later than sixty (60) days after such approval, introduce an ordinance and refer said ordinance (hereinafter the "**Rezoning Ordinance**") to the Unified Planning/Zoning Board, that is substantially consistent with the Concept Plan that allows for the development of the Property and the construction of forty-six (46) total units with approximately seventeen percent (17%) of the total units being set aside as Affordable Housing units for a total of eight (8) affordable units, with at least thirteen percent (13%) of those Affordable units being very low-income units. The Rezoning Ordinance will indicate that the eight-unit (8-unit) set-aside will be constructed in accordance with all applicable UHAC and COAH regulations. Upon introduction of the Rezoning Ordinance, the Borough Council shall refer the Rezoning Ordinance to the Unified Planning/Zoning Board for review and recommendation as provided by the Municipal Land Use Law, N.J.S.A. 40:55D- 1, et, seq. The Unified Planning/Zoning Board shall make its recommendation no later than thirty (30) days after the Rezoning Ordinance is referred by the Borough Council. Thereafter, the Borough Council shall have thirty (30) days to conduct a second reading and formally adopt the Rezoning Ordinance. In no event shall the Borough take longer than 120 days after the Court's Approval of this agreement to formally adopt the Rezoning Ordinance. In the event that the Borough fails to adopt the Rezoning Ordinance within 120 days after the Court's approval of this Settlement

Agreement, Developer may seek the relief set forth in Section V herein or go back to the Court and resume its role as Plaintiff in the Builder's Remedy Action.

The Borough agrees that, absent written consent of Developer, the Rezoning Ordinance shall remain applicable to the Property for a period of ten (10) years from the later of (1) date the Rezoning Ordinance becomes effective and unappealable and (2) the date all appeals challenging the validity of the Rezoning Ordinance are resolved.

B. Representation regarding Sufficiency of Water and Sewer: The Borough acknowledges that, upon completion of the pump upgrades currently underway to Well #3 and Well #4 (the "**Pump Upgrades**"), sufficient water capacity will exist to reserve a portion of the Borough's water supplies for the forty-six (46) unit Inclusionary Development. To receive an allocation of water service, Developer will be responsible, without any contribution from the Borough, for on-site and its pro-rata share of all off-site construction requirements and costs associated with the thirty-eight (38) market rate units and Retail Component of the Inclusionary Development pursuant to N.J.S.A. 40:55D-42. Developer specifically acknowledges that, though the Borough's professionals have performed a review of the existing Borough water map to determine potential water system infrastructure options available to Developer for servicing the Property, the Borough shall bear no responsibility, including any costs, associated with the infrastructure demands prompted by the Inclusionary Development, except for those costs incurred in connection with the Pump Upgrades.

To receive an allocation of sewer service, Developer will be responsible, without any contribution from the Borough, for all on-site and off-site construction requirements and cost associated with the thirty-eight (38) market rate units and Retail Component of the Inclusionary Development. Upon execution of this Agreement, the Borough's professionals, which have not

yet analyzed the existing capacity of the sanitary sewer system located on Main Street from Church Street towards the Bayshore Regional Sewerage Authority (BRSA) pump station, will, in six (6) months from this Agreement's Effective Date, subject to reasonable extensions for issues beyond the Borough's control, meter and field survey the existing infrastructure to determine existing flow and any additional flow that the sewer system can accommodate. Should adequate capacity not exist to provide sewer service to the Inclusionary Development, the Borough will provide its recommendations as to the infrastructure required to service the Inclusionary Development. Developer acknowledges that the Borough shall bear no responsibility, including any costs, associated with the sewer infrastructure demands prompted by the Inclusionary Development.

Developer shall be required to enter into a Developer's Agreement with the Borough, which shall memorialize all fees and expenses required to receive water and sewer service. Developer shall be responsible only for the full amount of water and sewer connection fees for the market rate units and the Retail Component, which shall be payable prior to issuance of a Certificate of Occupancy for the Inclusionary Development. For the affordable units, Developer shall not be responsible for the water or sewer connection fees.

C. Obligation To Cooperate: The Borough acknowledges that in order for Developer to construct its Inclusionary Development, Developer will be required to obtain any and all necessary and applicable agreements, approvals, and permits from all relevant public entities and utilities; such as, by way of example only, the Borough, the Unified Planning/Zoning Board, the County of Monmouth, the Monmouth County Planning Board, the Freehold Soil Conservation District, the New Jersey Department of Environmental Protection, the New Jersey Department of Transportation, including the Borough's ordinance requirements as to site plan provided the Borough's ordinance requirements do not operate to change the requirements of this Agreement

(the “**Required Approvals**”), or impede and interfere with the applicant’s ability to develop the forty-six (46) unit inclusionary development. The Borough agrees to use reasonable efforts to expedite and assist Developer in its undertakings to obtain the Required Approvals.

In the event a third party challenges or opposes this Agreement and/or an action or approval by the Borough or any Borough entity which is compelled or contemplated by this Agreement, including, by way of example only, the adoption of the Rezoning Ordinance or the Unified Planning/Zoning Board approval of the Inclusionary Development, the Borough Parties agree to permit intervention by the Developer in such action and the Parties agree to cooperate in defense of the action or approval challenged by the third party.

D. No Redeveloper Designation or PILOT: Developer acknowledges that this Agreement does not contemplate, and Developer shall not be entitled to seek, the designation of the Property as an “area in need of redevelopment” or the issuance of any Payment in Lieu of Taxes (“PILOT”) in connection with the Inclusionary Development.

E. The Planning Board’s Obligation to Fast-Track Developer’s Inclusionary Development Applications. The Parties agree that, in proceedings before the Unified Planning/Zoning Board, Developer shall be entitled to have the Unified Planning/Zoning Board fast-track its Inclusionary Development Application(s) as follows: (1) Completeness review determinations shall be issued within thirty (30) days of receipt of the subject submission; (2) Developer shall deliver all required filings to the Unified Planning/Zoning Board office. Reports from the Unified Planning/Zoning Board’s professionals and commenting entities shall be delivered to Developer within forty-five (45) days of the completeness of the Inclusionary Development Application. The Unified Planning/Zoning Board’s Planner and Engineer shall respond in a reasonably diligent fashion to any subsequent submissions of Developer; (3) Within

thirty (30) days from the date upon which the Unified Planning/Zoning Board is in receipt of reports from all of its professionals and consultants, the Unified Planning/Zoning Board shall schedule a Technical Review committee meeting, if applicable, for the Developer's Inclusionary Development Application at which any technical issues can be identified and addressed; (4) The Inclusionary Development Application shall be placed on the agenda at the next public action meeting provided that all required submissions have been filed, the 45-day review period has expired, all completeness items on the Borough's checklist have been submitted or waived, and clearance from the technical review committee has been issued, if applicable. All notice requirements shall be completed by Developer in accordance with the MLUL. In the event time constraints associated with notice prevent the conducting of a hearing at the next regularly scheduled meeting, then the matter shall be considered at the next subsequent meeting; and (5) The Inclusionary Development Application shall be given, to the extent reasonably possible, no less than two (2) hours of time at each of the regular monthly public action meetings of the Unified Planning/Zoning Board it being agreed that the matter will be considered, to the extent reasonably possible, at each successive meeting until the application is concluded.

F. Obligation to Refrain From Imposing Cost-Generative Requirements. The Borough recognizes that this Agreement, and, as applicable, the Rezoning Ordinance, contemplate the development of an "inclusionary development" within the meaning of the Mount Laurel doctrine, and Developer shall be entitled to any benefits, protections, and obligations afforded to developers of inclusionary developments, and as such shall refrain from imposing unnecessary cost generative requirements. A violation of this subsection shall be subject to the provisions of Section VI-B.

Although the Unified Planning/Zoning Board, which is a distinct legal entity from the Borough Parties, shall be responsible for processing and taking action on any development application by Developer for the Property, the Borough acknowledges Developer's expectation that it not be subjected to the imposition of cost generative requirements. However, Developer, on behalf of itself and its successors and assigns, hereby unconditionally acknowledges, as contemplated at Section III-B of this Agreement, that it shall be subject to all on-site and its pro-rata share of off-site sewer and water construction requirements and costs associated with the thirty-eight (38) market rate units, consistent with N.J.S.A. 40:55D-42.

IV. DEFAULT.

A. Default with Respect to the Borough: Default with respect to the Borough Parties shall be defined as the Borough Parties' (i) failure to adopt the Rezoning Ordinance; (ii) failure to approve Developer's application for development if said application conforms to the terms of this Agreement and the Rezoning Ordinance; and/or (iii) grant an approval of the application for development with conditions that: (a) contradict the terms of this Agreement or the Rezoning Ordinance; or (b) fail to satisfy any material obligation of the Borough Parties set forth in this Agreement. The Borough shall be considered in Default of this Agreement if, subject to the terms of this Agreement, after written Notice of Default delivered to counsel for the Borough Parties, the Borough Parties have not cured any default within ten (10) business days or at the next regularly scheduled meeting of the Borough Council or the Unified Planning/Zoning Board, whichever is later. In the event the Borough Parties are in default, Developer may apply to the Superior Court of New Jersey, Monmouth Vicinage to the judge assigned to handle Mt. Laurel matters for the Monmouth Vicinage, by motion for an Order directing the Borough to immediately

take whatever action is necessary to comply with the terms of this Agreement, including but not limited to enacting the Rezoning Ordinance, or issue to Developer the governmental approvals for the Property consistent with the Rezoning Ordinance. Such motion may be assigned to a Special Adjudicator pursuant to Section VI-B.

B. Default with Respect to Developer: If Developer should default on any of the agreed upon terms and conditions of this Agreement, the Borough will have the right to apply to the Court to enforce whichever term or condition has been violated. Default shall include, but not be limited to, the submission of a plan for approval that exceeds the agreed upon unit count or reduces the number of affordable units to be provided. Developer shall be considered in Default of this Agreement if, after written Notice of Default has been delivered to counsel for Developer, and Developer has not cured any default within forty-five (45) business days. The Borough Parties may seek relief under this subsection in the same manner permitted to developer as set forth in Section IV-A above.

V. RELEASES.

A. The Borough's Release to Developer: The Borough hereby fully and forever releases and discharges Developer and its respective past, present, and future directors, officers, members, shareholders, employees, agents, partners, representatives, attorneys, parent and affiliated corporations, subsidiaries, divisions, joint venturers, predecessors, successors, beneficiaries, and assigns, from any and all claims asserted in the Litigation, including, but not limited to violations of substantive and procedural due process and civil rights violations of any nature whatsoever, whether known or unknown, suspected or unsuspected based on any legal or

equitable theory of recovery, in any way arising out of, growing out of, or resulting from the Litigation from the beginning of time until the effective date of this Agreement.

B. Developer's Release to the Borough: Once the operative terms of this Agreement have been completed and the Borough has granted all municipal approvals, and has cooperated fully in the pursuit of any other governmental approvals requiring the Borough to be the applicant or requiring the Borough's consent as may be necessary to begin construction, and after all rights of appeals from any and all approvals has expired without an appeal having been taken, or if an appeal has been taken, any and all appeals have been resolved finally to the satisfaction of Developer, Developer hereby fully and forever releases and discharges the Borough and their respective past, present, and future council members, planning board members, and any and all other elected officials from any and all claims asserted and that could have been asserted, including, but not limited to violations of any municipal ordinances, whether known or unknown, suspected or unsuspected based on any legal or equitable theory of recovery, in any way arising out of, growing out of, or resulting from the Builder's Remedy Action and/or Declaratory Judgment from beginning of time in perpetuity. Upon ten (10) business days from the execution of this Agreement, Developer shall execute and deliver a stipulation of dismissal with prejudice of the pending Builder's Remedy Action with such stipulation of dismissal with prejudice to be held in escrow by the Borough's legal counsel and be filed upon the earlier of: (a) two (2) years from the adoption of the Rezoning Ordinance with no appeals or challenges being filed; or (b) the issuance of all applicable governmental approvals for the Inclusionary Development and the expiration of all applicable appeal periods with no appeals or challenges being filed. The aforementioned stipulation of dismissal shall be incorporated into deed restrictions or covenants that will run with the land with respect to the Property.

C. Notwithstanding the provisions of Section III-C, and as a distinct and separate matter, upon the Effective Date of this Agreement, Developer, on behalf of itself and its successors and assigns, hereby unconditionally acknowledges the validity and enforceability of all Borough ordinances and regulations that form the basis for any fees or costs charged to Developer and/or memorialized in this Agreement. Developer, on behalf of itself and its successors and assigns, hereby absolutely, unconditionally, and irrevocably releases and waives all claims, counterclaims, disputes, controversies, and causes of action, including for costs, expenses, and attorneys' fees, known or unknown, whether legal or equitable, in tort, contract, or otherwise, that in any way arise out of or relate directly or indirectly to said payment of fees or costs, except that Developer shall be permitted to assert a challenge that the aforesaid ordinances and regulations have not been properly applied and/or assert that the fees charged to Developer have not been correctly calculated in accordance with the applicable ordinances and regulations. If a court of competent jurisdiction shall later deem any of the ordinances or regulations applicable to this Section V-C to be invalid or void, the provisions of that invalidated or voided ordinance or regulation shall not be enforced or applied to Developer.

D. **Releases Do Not Extend to Obligations Under This Agreement:** The releases set forth above in **Sections V-A, V-B, and V-C** are not intended to, and shall not, extend to or otherwise release or discharge any rights, privileges, benefits, duties, or obligations of any of the Parties by reason of, or otherwise arising under this Agreement.

VI. COOPERATION AND COMPLIANCE

A. **Implementation And Enforcement Of Agreement:** The Parties agree to cooperate with each other, provide all reasonable and necessary documentation, and take all

necessary actions to satisfy the terms and conditions hereof and assure compliance with the terms of this Agreement. The Borough Parties' obligation to cooperate shall be further conditioned upon Developer paying and maintaining current real estate taxes.

B. Dispute Resolution: At the request of Developer or the Borough Parties, the Court Appointed Special Adjudicator shall decide on an expedited basis any dispute that arises as to whether any procedural or substantive requirement imposed by the Borough or the Unified Planning/Zoning Board impedes, or adds to the cost of, development of the Inclusionary Development or is necessary to protect public health or safety provided that the requirement does not arise from a limitation in the ordinance or to develop substantially consistent with the Concept Plan. Any decision by the Court Appointed Special Adjudicator may be appealed to the Honorable Kathleen A. Sheedy, J.S.C. or such other Superior Court Judge assigned by the Monmouth County Assignment Judge by any Party.

VII. NOTICES

A. Notices: Any notice or transmittal of any document required, permitted or appropriate hereunder and/or any transmittal between the Parties relating to the Property (herein "Notice[s]") shall be written and shall be served upon the respective Parties by facsimile or by certified mail, return receipt requested, or recognized overnight or personal carrier such as, for example, Federal Express, with certified proof of receipt, and, where feasible (for example, any transmittal of less than fifty (50) pages), and in addition thereto, a facsimile delivery shall be provided. All Notices shall be deemed received upon the date of delivery set forth in such certified proof, and all times for performance based upon notice shall be from the date set forth therein. Delivery shall be affected as follows, subject to change as to the person(s) to be notified and/or their respective addresses upon ten (10) days' notice as provided herein:

TO DEVELOPER:

160 Main, LLC
Attention: Carey Tajfel
399 Monmouth Street
East Windsor, New Jersey 08520
Tel: (609) 632-0006
Email: ctajfel@tfeproperties.com

WITH COPIES TO:

Wilentz, Goldman & Spitzer P.A.
Attention: Donna M. Jennings, Esq.
90 Woodbridge Center Drive, Post Office Box 10
Woodbridge, NJ 07095
Tel: (732) 855-6039
Fax: (732) 726-6560
Email: djennings@wilentz.com

TO THE BOROUGH OF MATAWAN:

Borough of Matawan
Attention: Ryan Michelson
Business Administrator
201 Broad Street
Matawan, New Jersey 07747
Tel: (732) 566-3898

Office of the Borough Clerk
201 Broad Street
Matawan, New Jersey 07747
Tel: (732) 566-3898

Pasquale Menna, Esq.
Borough Attorney
Menna Law Firm
151 Bodman Place
Suite 300
Red Bank, New Jersey 07701
Email: pmenna@mennalaw.com

Louis N. Rainone, Esq.
Affordable Housing Special Counsel
Rainone Coughlin Minchello
555 U.S. Highway One South Suite 440
Iselin, NJ 08830
Tel: 732-709-4182

In the event any of the individuals identified above has a successor, the individual identified shall name the successor and notify all others identified of their successor.

VII. MISCELLANEOUS PROVISIONS

A. Amendments: Neither this Agreement nor any term set forth herein may be changed, waived, discharged, or terminated except by a writing signed by the Parties.

B. Agreement Voluntarily Entered Into By Each of The Parties: This Agreement is executed voluntarily by each of the Parties without any duress or undue influence on the part, or on behalf, of any of them. The Parties represent and warrant to each other that they have read and fully understand each of the provisions of this Agreement and have relied on the advice and representations of competent legal counsel of their own respective choosing.

C. Interpretation: This Agreement has been reviewed by experienced and knowledgeable legal counsel for each of the Parties. Accordingly, none of the Parties shall be presumptively entitled to have any provisions of this Agreement construed against any of the other Parties in accordance with any rule of law, legal decision, or doctrine.

D. No Admission of Liability/No Precedential Value: The Parties agree that this Agreement is the result of a compromise of disputed issues, that the execution and delivery of this Agreement by any of the Parties shall not constitute or be construed as an admission of any liability, a course of performance, or wrongdoing on the part of any of them and that the settlement reflected in this Agreement shall be without precedential value. Nothing in this Agreement shall be construed nor shall the execution of the Agreement be construed to represent an admission of wrong doing or a breach of contract.

E. Attorneys' Fees, Costs, and Expenses: Each of the Parties shall bear its own costs, attorneys' fees, and expenses in connection with the negotiations for and preparation of this Agreement, the pending litigation, as well as costs involving Court approval of same.

F. Entire and Integrated Agreement: This Agreement is intended by the Parties as a final expression of their agreement and is intended to be a complete and exclusive statement of the agreement and understanding of the Parties with respect to the subject matters contained herein. This Agreement supersedes any and all prior promises, representations, warranties, agreements, understanding, and undertakings between or among the Parties with respect to such subject matters and there are no promises, representations, warranties, agreements, understanding, or undertakings with respect to such subject matters other than those set forth or referred to herein.

G. No Third Party Beneficiaries: Nothing in this Agreement is intended or shall be construed to give any person or entity, other than the Parties and their respective successors and permitted assigns, any legal or equitable right, remedy, or claim under or in respect to this Agreement or any provisions contained herein; this Agreement and any conditions and provisions hereof being and intended to be for the sole and exclusive benefit of the Parties as well as each of their respective successors and permitted assigns, and for the benefit of no other person or entity.

H. Severability: If any provision of this Agreement, or the application thereof, shall for any reason or to any extent be construed by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement, and application of such provision to other circumstances, shall remain in effect and be interpreted so as best to reasonably effect the intent of the Parties.

I. Headings: The section titles, captions, and headings contained in this Agreement are inserted as a matter of convenience and for reference, and shall in no way be construed to define, limit, or extend the scope of this Agreement or the effect of any of its provisions.

J. Recitals: The recitals set forth at the beginning of this Agreement shall not be admissible to prove the truth of the matters asserted therein in any action or proceeding involving any of the Parties (other than an action or proceeding brought to enforce the terms of this Agreement), nor do any of the Parties intend such recitals to constitute admissions of fact by any of them.

K. Additional Representations and Warranties: Each of the Parties represents and warrants that it is fully authorized to enter into this Agreement. In addition, each of the corporate Parties that is still in existence as of the Effective Date represents and warrants that (i) it is duly organized and existing in good standing under the laws of the United States, (ii) it has taken all necessary corporate and internal legal actions to duly approve the making and performance of this Agreement and that no further corporate or internal approval is necessary, and (iii) the making and performance of this Agreement will not violate any provision of law or the party's articles of incorporation, charter, or by-laws. In addition, each of the individuals signing this Agreement represents and warrants that they are authorized to enter into this Agreement on behalf of the respective parties.

L. Additional Necessary Documents: The Parties, and each of them, agree to execute such additional documents as may be reasonably required in order to carry out the purpose and intent of this Agreement, or to evidence anything contained herein.

M. Execution in Counterparts: This Agreement may be signed in multiple counterparts and the separate signature pages executed by the Parties may be combined to create

a document binding on all of the Parties and together shall constitute one and the same instrument. This Agreement may be executed in facsimile or electronic counterparts. An original signature will be provided if requested by any Party. The "Effective Date" of this Agreement shall be the date on which the last party executes this Agreement, as indicated by the date associated with that party's signature.

N. Enforceability of Agreement: The Superior Court of New Jersey, Monmouth Vicinage shall retain jurisdiction to enforce any and all terms of this Agreement.

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

P. Assignability: Developer shall have the unconditional right to assign its rights under this Agreement to any individual, entity or organization without the prior approval of the Borough Parties provided that the principals of Developer or its members, partners or shareholders have a controlling interest in said assignee.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date set forth opposite the respective signatures set forth below.

Witness:

Green Wayne
Municipal Clerk

Dated: 11-12, 2024

Witness:

[Redacted]

Dated: 10/28, 2024

The Board of Municipalities

By:

Name

Joseph Altomonte

Title:

Mayor

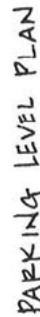
160 Main, LLC

By:

Title:

Carrey Tajtel
Manager

EXHIBIT A
CONCEPT PLAN – PART 1
(Architectural Drawings)



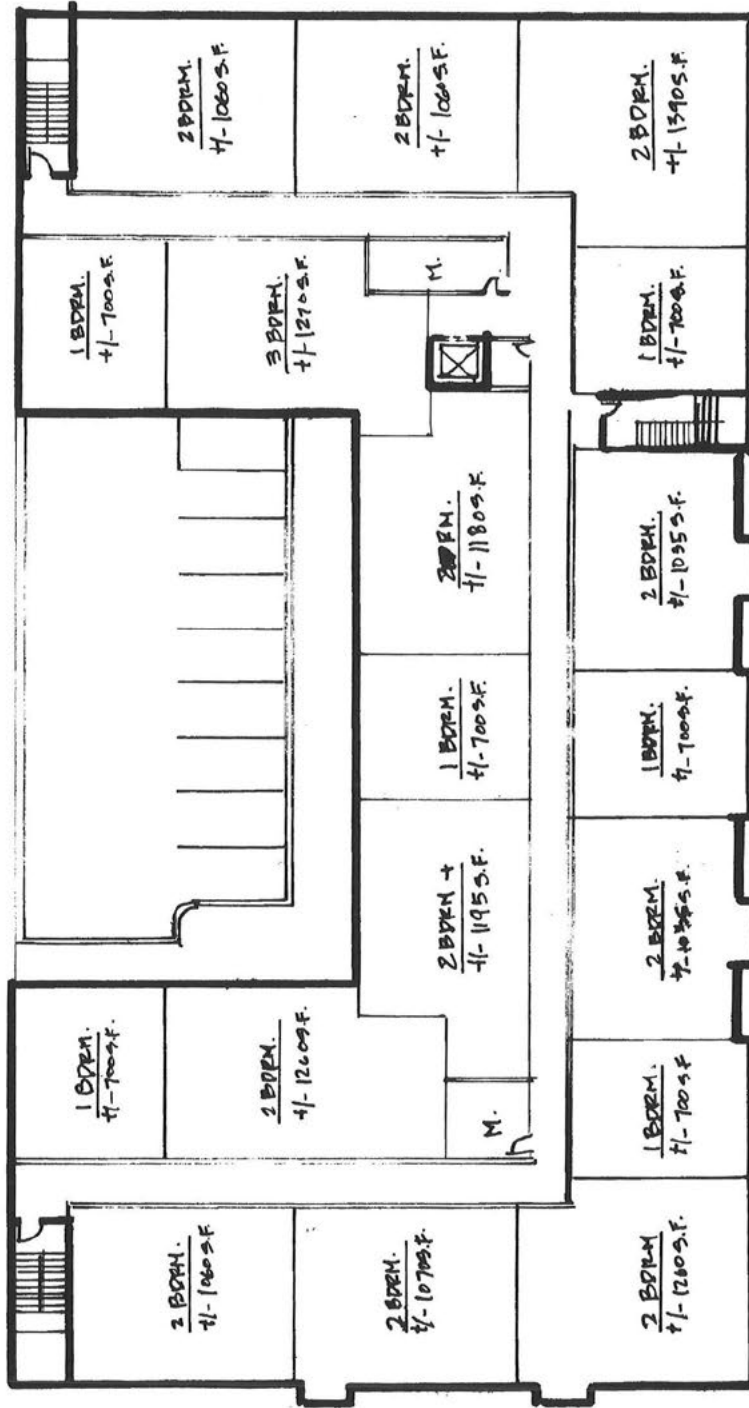
SCALE: 1" = 20'-0"

ΣΗΜΕ 6

160 MAIN, L.L.C.
MATAWAN, N.J.
STARCHITECTS
3/2/2023

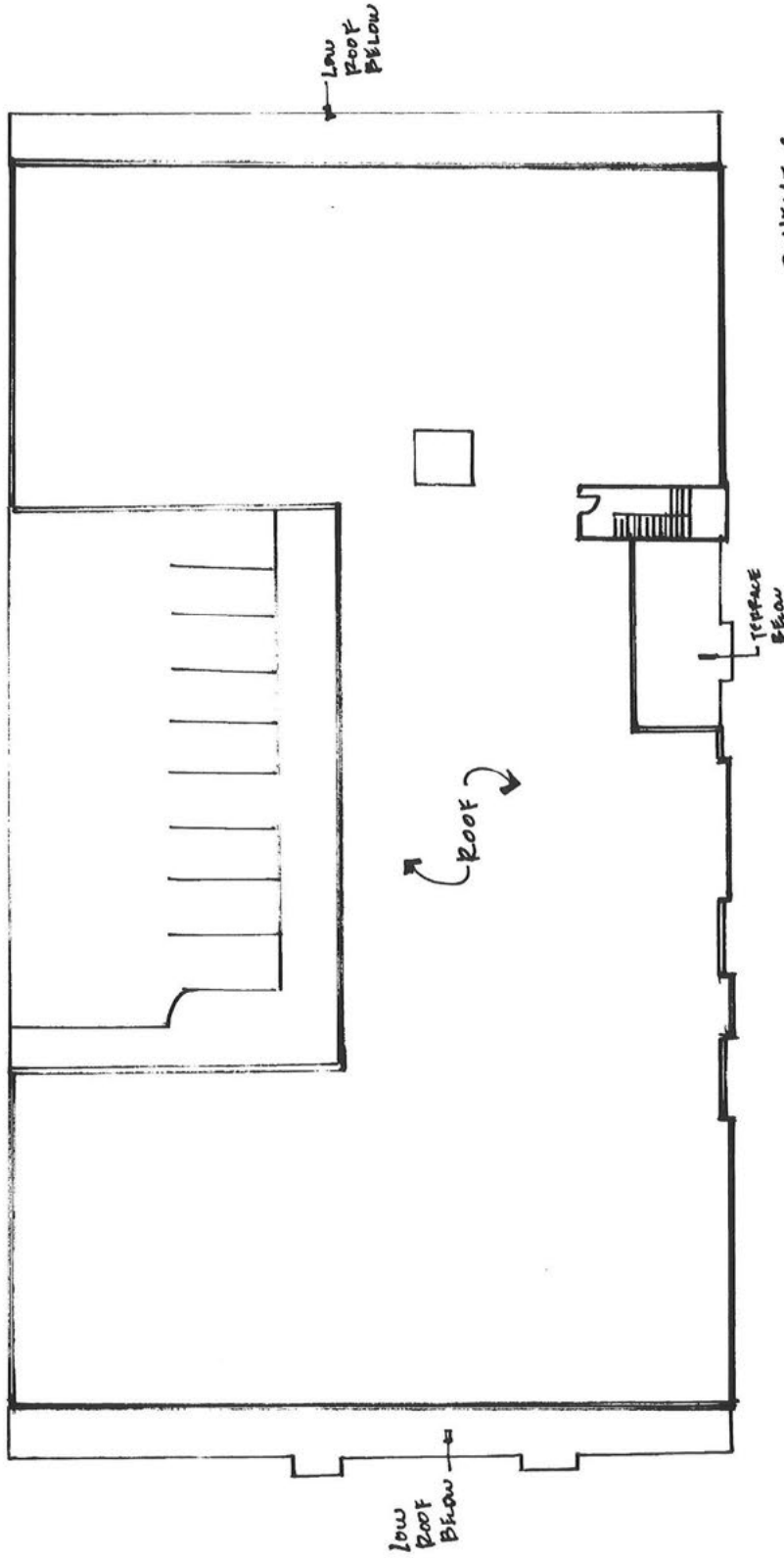
4 units.	
18 (1) BDRM.	
26 (2) BDRM.	
2 (3) BDRM.	
46 TOTAL	

PARKING
77 STRUCTURED
PARKING SPACES
8 SURFACE
PARKING SPACES
85 TOTAL



SCHEME G
 160 MAIN, L.L.C.
 MATAWAN, N.J.
 SHI ARCHITECTS.
 3/2/2023

SECOND FLOOR PLAN.
 SCALE: 1"=20'-0"



SCHEME 6
160 YAM, L.L.C.
MATAWAN, N.J.
STT ARCHITECTS.
3/2/2023

ROOF PLAN
SCALE: 1"=20'-0"

EXHIBIT B

CONCEPT PLAN – PART 2

(Architectural Renderings and Elevations)



SPRING ST. ELEVATION
SCALE: 1/8" = 1'-0"



SONNENFELD + TROCCHIA

ARCHITECTS, P.A.

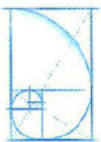
53 Main Street, Holmdel, NJ | 732.946.7777 | www.st-architects.com

160 MAIN, LLC. | MATAWAN, NJ

15 MARCH, 2023



MAIN ST. ELEVATION
SCALE: 1/8" = 1'-0"



SONNENFELD + TROCCHIA

ARCHITECTS, P.A.

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160 MAIN, LLC. | MATAWAN, NJ

15 MARCH, 2023

EXHIBIT C
BULK STANDARDS

160 Main Street Conforming Bulk Standards		
Requirement	Proposed	Conforming Requirement
Min. Lot Area	0.64 Ac (27,926 SF)	0.5 Ac (21,780 SF)
Min. Lot Width	122.1'	100.0'
Min. Front Yard Setback (Main St)	0.8'	0.0'
Min. Rear Yard Setback (Jackson St)	0.8'	0.0'
Min. Side Yard Setback (Spring St, Interior Line)	1.0'	0.0'
Max. Lot Coverage	97.0% (27,100 SF)	100.0% (27,926 SF)
Max. Building Height	4 Stories / 49.5'	4 Stories / 55.0'
Min. GFA	1 BR - 700 SF 2 BR - 1,025 SF 3 BR - 1,270 SF	1 BR - 700 SF 2 BR - 900 SF 3 BR - 1,200 SF

160 Main Street Conforming Design Standards		
Requirement	Proposed	Conforming Requirement
Parking Requirement	85 Spaces	1.5 Spaces per Residential Unit, 1 Space per 200 SF GFA of Retail
Loading Requirement	1 Space	1 Space if total Retail GFA is over 3,000 SF and less than 20,000 SF
Minimum Drive Aisle Width	23.0' Minimum	23.0' with 90 Degree Parking
Minimum Parking Space Dimensions	9.0' x 18.0'	9.0' x 18.0'
Minimum Façade Break	Minimum 1.0' Deep, for a Minimum of 12% of the overall square footage of each street facing façade.	Minimum 1.0' Deep, for a Minimum of 12% of the overall square footage of each street facing façade.

160 Main Street Signage Table

Requirement	Proposed	Conforming Requirement
# Of Signs	Retail - Four (4) building mounted signs, one (1) for each retail Tenant facing Main St and 1 for retail Tenant facing Spring Street. Residential - Three (3) building mounted signs, One(1) sign per façade facing Main Street, Spring Street, and Jackson Street. Three (3) Building address signs, one (1) per street facing facade.	Retail - One (1) building mounted sign per Tenant. Where Tenant space includes two façade walls, Tenant may have a second sign on the second façade wall. Residential - One (1) building mounted sign per street facing façade. One (1) Building address/identification sign permitted per facade.
Sign Area	Retail - Maximum 10% of Façade area designated to each Retail Tenant, with a maximum of 100 SF per sign Residential - 100 SF per street facing façade	Retail - Maximum 10% of Façade area designated to each Retail Tenant, with a maximum of 100 SF per sign Residential - 100 SF per street facing façade
Sign Height	Signage at 1st floor - 20" Signage on upper floor - 9'	Signage at 1st floor - Maximum height of 30" Signage on upper floors - Maximum height of 9'