

JAN 23 2012



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DEVELOPER'S AGREEMENT

THIS AGREEMENT entered into this 23 day of June, 2011

BETWEEN

THE TOWNSHIP OF ABERDEEN *R+P.01*
One Aberdeen Square, Aberdeen, NJ 07747
a municipal corporation of the State of New
Jersey located in the County of Monmouth,
(hereinafter referred to as the "Township")

AND

C&M REALTY, LLC,
having an address of 73 Conover Road, Colts
Neck, NJ 07722 (hereinafter referred to as the
"Developer")

affects all or a portion of real estate known as:

Block 114, Lot 4 in the Township of Aberdeen

WHEREAS, Developer is the owner and developer of Block 114, Lots 4 ("Property"), which property was the subject of an application before the Aberdeen Township Planning Board ("Planning Board") for approval of a preliminary and final site plan with variances bearing Application No. SP-10-526; and

WHEREAS, the Planning Board granted preliminary and final site plan approval to the Developer as reflected on a preliminary and final site plan entitled "Site Plan of Block 114, Lot 4 for C&M Real Estate, LLC" prepared by WJH Engineering dated 05/03/10 and last revised 3/10/11 ("Site Plan"), for the construction of 58 townhouse structures consisting of 62 dwelling units on the Property, of which eight dwelling units will be restricted for affordable housing (the eight affordable units will be located in four townhouse structures - two affordable units per structure); and

WHEREAS, the Planning Board reviewed various maps and presentations of the Developer and granted approval subject to compliance by the Developer with certain terms and conditions set forth in resolution of the Planning Board dated November 3, 2010; and

WHEREAS, as a portion of the performance guarantee for improvements, the Owner

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FEES \$8.00
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MONMOUTH COUNTY, NJ

and Developer and the Township have agreed to enter into this agreement; and

WHEREAS, the approved site plan calls for certain improvements and the Developer has agreed to construct these improvements as shown on the preliminary and final maps and records before the Board of Adjustment, all of which are made a part of this agreement by reference hereto as though fully set forth at length.

NOW, THEREFORE, said Owner and Developer for and in consideration of the sum of One (\$1.00) Dollar to it in hand paid by the Township, receipt of which is hereby acknowledged, and for other good and valuable consideration, hereby agrees for itself, its successors and assigns, as follows:

1. Application of Agreement. The terms and conditions of this agreement shall be applicable to the following described property: Block 114, Lot 4 and all off-site improvements set forth herein, if any.

2. Developer/Owner Bound. The Developer agrees to be bound by resolutions, representations, commitments, matters of fact and matters of law which constitute the file and record of the Planning Board of the Township of Aberdeen in this matter and it will faithfully discharge all of the obligations and commitments thereof.

3. Construction Subject to Ordinance. The Developer shall construct in accordance with the specifications of the Land Use Ordinance of the Township of Aberdeen, as amended to date, in a manner satisfactory to the Township Engineer and in accordance with the improvements set forth on the map, including but not limited to the installation of those items specifically set forth on Exhibit A attached. Developer shall perform all work in full compliance and observation of all ordinances of the Township of Aberdeen. The Developer shall be responsible for securing all permits required by law and others required by the ordinances of the Township of Aberdeen and to pay the requisite fees called for under the appropriate fee schedules.

4. Performance Guarantees. Developer shall post with the Township performance guarantees in accordance with the attached estimates. Said performance guarantees may be posted by sections in accordance with approved sectional plans and estimates of the Township Engineer. The performance guarantee estimates set forth herein are effective

only if approved bonds/letters of credit are posted and cash deposits made within thirty (30) days of the date of the execution of the within agreement, whichever is later. Thereafter, the estimates are subject to revision. The cash deposit shall be released proportionately to the performance guarantee by the Township. The cash portion may be utilized by the Township upon default of the Developer to cure any default under this agreement. In addition, all taxes and assessments for the property must be paid prior to the release of performance guarantees.

5. Replacement Bond. In the event any insurance company, financial institution or other entity issuing a performance guarantee hereunder shall be subject to a reorganization, rehabilitation, other action whereby a state or federal agency has taken over management of the entity or if in the reasonable opinion of the Governing Body, the circumstances and condition of the entity results in the Township declaring it feels its interests are jeopardized, within 45 days of such written notification the Developer shall replace the performance guarantees. If requested by the Developer, the Township shall adopt a resolution conditionally releasing the jeopardized performance guarantees subject to the posting of satisfactory substitute guarantees.

6. Engineering Escrows and Legal Fees. The Developer shall pay an engineering inspection escrow in accordance with the attached estimates, which fee may be posted proportionately as provided by law. The Developer shall pay an attorney's bond/letter of credit review fee and Developer's Agreement preparation fee to the Township. If any bonds/letter of credit or deeds are to be reviewed, approved or released, the Developer shall pay an additional fee for review and preparation of any documents pursuant to Township ordinances and conditions of this agreement. If the escrowed funds diminish to below one thousand dollars (\$1,000), posting of additional funds as necessary to address outstanding items shall occur within fourteen (14) days of a written request made by the Township.

7. Withholding Permits/Certificates of Occupancy. Developer understands and agrees in the event it is in violation of any of the terms of this agreement, the Township may, in its discretion, withhold the issuance of any further building permits and/or certificates of occupancy until the violation has been corrected.

8. Completion of Public Improvements. The improvements contemplated in the Developer's Agreement shall be performed within a period of two (2) years from the date hereof or such additional periods of time as may be granted by the Township in accordance with N.J.S.A. 40:55D-52. In the event the aforesaid improvements are not completed within that period, the Township reserves the right to not issue any further certificates of occupancy or building permits for the subject property. In the event of an extension, the Township may annually review the amount of performance guarantees with regard to its sufficiency to insure faithful completion of remaining required improvements and if found insufficient, require the Developer to increase the amount of performance guarantees. The issuance of a certificate of occupancy by the Township within the two (2) year period shall not be deemed a waiver for defects in site work improvements ascertained during said period or subsequent thereto.

9. Release of Maps. Any payments, posting of bonds or other financial obligation required to be performed by the Developer in this agreement, unless specifically set forth otherwise, shall be done and/or performed prior to the signing of the map for release to the Developer.

10. Sale of Premises/Assignment. In the event the site plan or any part thereof is sold or otherwise conveyed by this Developer prior to the installation of all improvements, this Developer shall have the right to assign both the performance guarantee and Developer's Agreement to a subsequent qualified developer provided this developer shall remain primarily liable for the obligations created thereunder and provided further the subsequent developer assumes same in writing and in a form which is acceptable to the Township Attorney. In the event a subsequent developer tenders new guarantees to the Township, they shall be reviewed by the Township Attorney as to form and content prior to acceptance and release of this Developer's performance guarantee.

In the event any performance guarantee shall lapse, be cancelled or withdrawn or otherwise not remain in full force and effect, the Developer, until an approved replacement guarantee has been deposited with the Township, will cease and desist any and all work on the site unless required improvements under the Board of Adjustment approval and this

Developer's Agreement can be completed and approved by the Township Engineer and the Governing Body.

11. Records. The Township Engineer shall keep records of inspections and related reviews and the costs thereof and upon the Developer's written request, said records shall be made available for inspection by the Developer or its representatives not more than quarterly during the regular business hours of the Township Engineer.

12. Record Drawings. The Developer shall provide record drawings of all utilities, including water, sanitary sewer and storm drainage, as constructed by the Developer both within its development site and off-tract. Said record drawings shall be in conformance with applicable Township standards and shall be both in hard copy and on disc.

13. Maintenance of Project. During the course of construction and until the time of final acceptance, Developer shall: (1) keep the streets free of dirt, stone, mud, snow and other debris and (2) maintain and keep all storm drainage, including all roof leaders, downspouts, pipes, inlets, appurtenances and the detention basin, within the site free from accumulation of weeds, debris and leaves. "Final Acceptance" for the purpose of this provision is deemed to be the date upon which the improvements are accepted by the Township and the final maintenance guarantees for the same are posted with the Township. Said maintenance guarantees shall be posted with the Township for a period of not less than two (2) years in an amount equal to fifteen (15%) percent of the cost of said improvements.

14. Deeds and Affidavits of Title. Developer shall provide to the Township such documents, including but not limited to deeds, affidavits of title, corporate resolutions to convey as are necessary to convey valid, marketable and insurable easement(s) of fee title, as the case may be, to such dedications of property or easements as revealed on the map.

15. Township Observation, Access and Inspections. The Township, its consultants, employees and agents, shall be given free access to observe construction associated with the approved plan. 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 Developer's approved submittals. The Township, or its

representatives, consultants, employees or agents, shall not supervise, direct or have control over the Developer'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 Developer, for safety precautions and programs incident to the work of the Developer or for any failure of the Developer to comply with applicable laws, rules, regulations, ordinances, codes or orders. The Developer is not an agent or employee of the Township.

16. Compliance with Applicable Laws. The Developer shall comply with all laws and regulations of the State of New Jersey, County of Monmouth and Township of Aberdeen. In addition, Developer shall comply with all environmental laws and regulations of the federal and state governments, including but not limited to the State Flood Control Facility Act (N.J.S.A. 58:16A-1, et seq.), Flood Hazard Area Control Act (N.J.S.A. 58:16A-51, et seq.), the Spill Compensation and Control Act (N.J.S.A. 58:10-23.11, et seq.), the Industrial Site Recovery Act (N.J.S.A. 13:1K-6, et seq.), the Worker Community Right to Know Act (N.J.S.A. 35:5A-1, et seq.), the Noise Act of 1971 (N.J.S.A. 13:1G-1, et seq.), the Fresh Water Wetlands Act (N.J.S.A. 58:10A-1, et seq.), the Safe Drinking Water Act (N.J.S.A. 58:12A-1, et seq.), the Solid Waste Management Act (N.J.S.A. 13:1E-1, et seq.), the Realty Improvement and Sewerage Facilities Act (N.J.S.A. 58:11-23, et seq.) and any other environmental acts or regulations adopted by the federal, state, county or local government. Failure to comply with these laws and any violations thereof shall be deemed to be a breach of this agreement. To the extent the Township must bring an action for compliance with this agreement, defend or participate in any litigation with regard to said laws or regulations related to the Developer's development and/or actions whether purposeful or negligent, any such action shall be subject to the provisions set forth in paragraph 17 below. In addition, the Developer shall indemnify and hold the Township harmless for such violations and shall reimburse the Township for any and all fees, judgment or penalties entered against the Township as a result of the purposeful or negligent acts of the Developer.

17. Affordable Housing Obligation. Developer agrees that of the 62 dwelling units, 8 will be deed restricted for affordable housing. Four of the units will be restricted for moderate-income households and four of the units will be restricted for low-income

households. These units will comply with the NJ Council on Affordable Housing regulations (N.J.A.C. 5:97 et seq.), with the Uniform Housing Affordability Controls (N.J.A.C. 5:80-26.1 et seq.) and, as to affordability restrictions, with the NJ Housing Mortgage & Finance Agency regulations (and other such regulations governing affordable housing). Developer agrees to place the appropriate deed restriction on the affordable units to ensure compliance with the affordability restrictions. Developer further agrees to utilize the services of the Administrative Agent designated by the Township.

18. Phasing of Development. As part of final site plan approval, the Planning Board permitted Developer to construct the development within six phases corresponding to each of the six proposed buildings as shown on the Site Plan. In Phase 1, Applicant will also undertake the site improvements and will construct four of the affordable units. The remaining four affordable units will be built in accordance with COAH's phasing schedule. The sewer connection fees will be paid based upon the following phasing schedule, and no building permit shall be issued for a particular phase without payment of the sanitary sewer connection fee having been paid in full for that phase. A separate application for sewer connection shall be used for each phasing.

Phase 1: Building A - 12 Units @ \$3,946.00/unit = \$47,352.00
Phase 2: Building B - 12 Units @ \$3,946.00/unit = \$47,352.00
Phase 3: Building C - 8 Units @ \$3,946.00/unit = \$31,568.00
Phase 4: Building D - 10 Units @ \$3,946.00/unit = \$39,460.00
Phase 5: Building E - 12 Units @ \$3,946.00/unit = \$47,352.00
Phase 6: Building F - 8 Units @ \$3,946.00/unit = \$31,568.00

19. Private Internal Roadway. Developer acknowledges that the proposed internal road right-of-way as shown on the Site Plan and identified as Road A, or such other name as later to be determined, will be a private roadway owned and maintained by the Homeowner's Association created for the development and shall not be a public road at any time. As such, all onsite street and parking area lighting and snow/ice/leaf removal shall be the responsibility of the Homeowner's Association in addition to garbage collection.

20. Subrogation and Attorney's Fees. Developer agrees to indemnify and hold the Township, its officials, officers, agents, servants, representatives and employees, harmless from and against any claim, liability, cost or expense of every kind and nature arising from the Developer's performance, or the performance of its contractors and subcontractors, of

the Developer's obligations pursuant to this agreement, the failure by Developer to perform such obligations, any action or failure to act by the Developer with respect to the project to which this agreement is applicable or in connection with any allegation of any of the foregoing. Such indemnification and/or hold harmless obligation shall extend not only to any damages but to costs and expenses of litigation, including but not limited to expenses and fees in connection with the engagement or utilization of any fact or expert witnesses as well as reasonable attorney fees. When requested by the Township the Developer agrees to aid and/or defend the Township, its officials, officers, agents, servants, representatives and employees, in the event any or all of same are named as a defendant or defendants in any action relating to the activities or obligations of the Developer arising under this agreement or in connection with the project to which this agreement applies.

21. Notice to Engineer and Preconstruction Meeting. The Developer shall provide forty-eight (48) hours notice to the Township Engineer prior to any clearing, grading, construction or tree removal at the site. The Developer shall utilize a snow fence to protect those areas which will remain undisturbed throughout the construction. In addition, there shall be a preconstruction meeting with the Township Engineer prior to the commencement of any construction effecting public improvements.

22. Reliance of Township. The Developer further acknowledges and understands all of the conditions contained in this agreement and the record of the proceedings in this matter, including any agreements made by the Developer with the Board of Adjustment and incorporated in the resolutions of approval, as well as the approved plan, are hereby deemed to be essential to the Township Committee's decision to enter into this agreement. A breach of any such condition, the failure of the Developer to adhere to the terms of any agreement incorporated within the resolution or this agreement or deviation from the approved plan shall result in a breach of this agreement and shall terminate the right of the Developer to obtain additional construction permits, certificates of occupancy or any other governmental authorizations in order to continue developing the site until such time as such breach has been remedied.

23. Condition of Approval. The Developer shall comply with the terms and conditions in connection with the final approval of the plat or map and zoning variances or

waivers granted to it by the Planning Board and as set forth in resolution of the Planning Board dated November 3, 2010 attached hereto and made a part hereof as Exhibit C:

24. Recording of this Agreement. The Township shall record the within Developer's Agreement in the Monmouth County Clerk's office and submit a fully executed recorded copy to the Developer. The Developer will reimburse the Township for any expenses for the recording of said agreement.

25. Severability. If any terms or conditions are determined invalid by a court of competent jurisdiction, the remainder shall remain in full force and effect.

26. Interpretation of Law. This agreement shall be interpreted under and governed by the laws of the State of New Jersey.

27. Ownership/Individuals. The Developer and Owner have attached hereto as Exhibit B a list setting forth the name and address of the individuals and/or entities each having an interest of ten (10%) percent or more in this development and hereby certifies the correctness of that list. The Developer and Owner further agree they will provide the Township will any changes in this list in writing within thirty (30) days of the date of such occurrence.

28. Notices. All notices required or permitted under this agreement shall be in writing by certified mail, return receipt requested, to the addresses set forth herein or as otherwise designated by the parties in writing. In the case of the Township a notice shall be provided to the Township at 1 Aberdeen Square, Aberdeen, NJ 07747 attn: Township Manager and shall be provided to Rogut McCarthy LLC, Daniel J. McCarthy, 37 Alden Street, Cranford NJ 07016.

29. Successors. This agreement shall inure to the benefit of and be binding upon the parties, their heirs, successors and/or assigns.

30. Insurance Coverage. Insurance coverage shall be in accordance with the requirements of the Township Attorney. The policy shall indicate Aberdeen Township and CME Associates/Engineers, 3141 Bordentown Avenue, Parlin, New Jersey 08859 as

additional insureds with respect to their interest in work performed by the above named insured at the above named project. Prior to the commencement of the construction the Developer shall submit to the Township written proof of all applicable insurance. It shall

Associates and its employees.

31. Events of Default. Prior to completion of each phase of the overall Project, each of the following shall constitute an event of default (hereinafter referred to as an "Event of Default") with respect to the relevant phase of the overall Project:

Applicable Law, federal or state, now or hereafter in effect, shall be filed in and approved by a court of competent jurisdiction and the order approving the same shall not be vacated or set aside or stayed within Ninety (90) Days from the date of entry thereunder, or if the Developer shall consent to the filing of such Petition or Answer.

32. Initial Remedy Upon Default. Upon the advent of any Event of Default of any of the terms or conditions contained in this Agreement by any party hereto or any party's Transferee, the aggrieved party shall notify the defaulting party in writing that it has declared such party in default (hereinafter "Default Notice"). The Default Notice shall be given by the aggrieved party within Ten (10) days of determination that an Event of Default has occurred. The defaulting party (Transferee, successor or assignee) shall, within Ninety (90) Days of receiving the Default Notice proceed to commence to cure or remedy Event of Default. In case such action is not taken or not diligently pursued, or the Event of Default shall not be cured or remedied within the time periods for cure set forth in this Agreement, or if there is no designated time for cure, within a reasonable time, the aggrieved party may, in addition to such other rights as specified in this Agreement, institute such proceedings as may be necessary or desirable in its opinion to cure and remedy such Event of Default.

Upon occurrence of a default which has not been cured, the Township shall to the fullest extent permitted by law have each of the following rights and remedies:

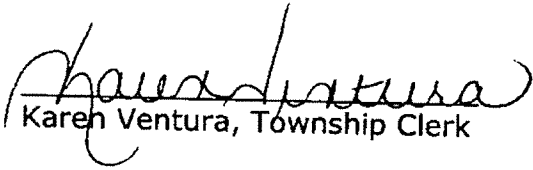
- A. Termination of this Agreement, in whole or in part, upon expiration of the applicable cure period with respect to the relevant phase of the overall Project or to otherwise de-designate the Redeveloper;
- B. To declare and direct the enforcement by the appropriate Township official to enforce the forfeiture of the performance guarantees if such Event of Default is with respect to an obligation for which such performance guarantee was furnished;
- C. To require the Developer to prepare a revised plan for implementation, to provide detailed financial reports or other special condition or restriction as required by the Township; or
- D. All other remedies stated elsewhere in this Agreement and at law or in equity.

In the event the Township fails to cure an Event of Default on the part of the Township, the Developer shall be entitled to terminate this Agreement or any portion thereof and pursue all remedies available to it in law or in equity . Other than with regard to any applicable laws regarding the statute of limitations, any delay by the aggrieved party in instituting or prosecuting any actions or proceedings or otherwise asserting its rights under this Agreement shall not operate as a waiver of such rights or shall not deprive such party of or limit its rights in any way. The rights and remedies of the parties to this Agreement, whether provided by law or by this Agreement, shall be cumulative and the exercise by either party of any one or more of such remedies shall not preclude the exercise by it, at the same or different times, of any other such remedies for the same default or breach or of any of its remedies for any other default or breach by the other party. No waiver made by either such party with respect to the performance, or manner or time thereof, or any obligation of the other party or any condition to its own obligation under the 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 to its own obligation beyond those expressly waived in writing and to the extent thereof, or a waiver in any respect in regard to any other rights of the party making the waiver or any other obligations of the other party.

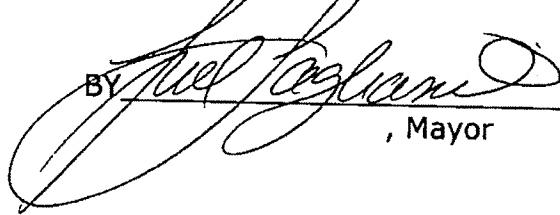
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IN WITNESS WHEREOF, the Owner and Developer has hereunto caused these presents to be signed by its proper authorized parties and has caused its proper seals, if any, to be affixed hereto. The Township of Aberdeen has caused this instrument to be signed by its Mayor and attested by its Clerk and does cause its proper corporate seal to be affixed as of the date and year first above written.

Attest:

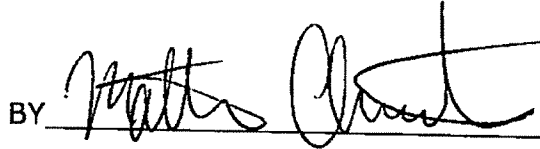

Karen Ventura, Township Clerk

TOWNSHIP OF ABERDEEN

BY 
_____, Mayor

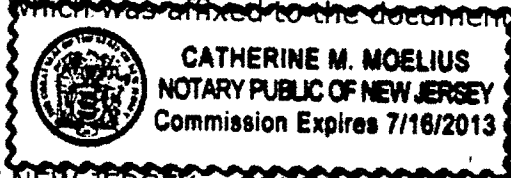
C&M REAL ESTATE, LLC

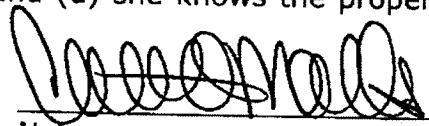
Witness:

BY 

STATE OF NEW JERSEY COUNTY OF MONMOUTH : ss:

I certify that on 6/23, 2011 Karen Ventura personally came before me and she acknowledged under oath to my satisfaction that (a) she is the municipal clerk of the Township of Aberdeen, the municipal corporation named in this document; (b) she is the attesting witness to the signing of this document by the proper municipal officer who is _____, mayor of the Township of Aberdeen, the municipal corporation; (c) this document is signed and delivered by the Township as its voluntary act duly authorized by a proper resolution of the Council and (d) she knows the proper seal of the Township which was affixed to the document.

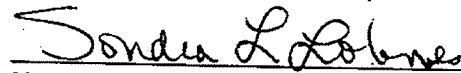




Notary

STATE OF NEW JERSEY COUNTY OF Monmouth : ss:

I certify that on June 14, 2011, Matthew Clemente personally came before me and acknowledged under oath to my satisfaction that (a) he is a managing member of C&M Real Estate, LLC, the company named in this document; and (b) this document is signed and delivered by the company as its voluntary act duly authorized by the company.



Notary

::ODMA\PCDOCS\GHCDPCS\759753\5

SONDRA L. LOHNES
NOTARY PUBLIC OF NEW JERSEY
MY COMMISSION EXPIRES JUNE 20, 2013