

TOWNSHIP OF CINNAMINSON

RESOLUTION 2021 – 38

**AUTHORIZING THE TOWNSHIP OF CINNAMINSON TO
ENTER INTO A MEMORANDUM OF UNDERSTANDING WITH DELCO
DEVELOPMENT, LLC (“DELCO”)**

WHEREAS, Delco has equitable interest in the commercial property, located at Block 1403, Lots 27 and 28 on the Cinnaminson Township Tax Map located on Route 130 (“Subject Property”); and

WHEREAS, Delco is interested in redeveloping the Subject Property into to a Chick-fil-A restaurant and accompanying retail use, along with associated parking and infrastructure at the Subject Property; and

WHEREAS, in order to so, it is necessary for the Township and Delco to enter into a Memorandum of Understanding (“MOU”) for this purpose; and

WHEREAS, entering into the MOU will promote the public health, safety and general welfare of the residents of Cinnaminson Township.

NOW, THEREFORE, BE IT RESOLVED by the Township Committee of the Township of Cinnaminson, County of Burlington and State of New Jersey that:

(1) The recitations of the preamble hereto are incorporated by reference as though same were set forth fully herein at length;

(2) Cinnaminson Township is hereby authorized to enter into the Memorandum of Understanding (Exhibit “A”) with Delco;

(3) The Mayor is hereby authorized and directed to execute the Memorandum of Understanding on behalf of the Township of Cinnaminson; and

CINNAMINSON TOWNSHIP COMMITTEE

Certified to be a true copy of a Resolution adopted by the Cinnaminson Township Committee on the 1st day of February, 2021.



Lisa A, Passione, Municipal Clerk

EXHIBIT “A”
MEMORANDUM OF UNDERSTANDING

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (this "MOU") dated as of Feb 1, 2021 by and between Delco Development, LLC ("Delco"), having an address of 200 Campbell Drive, Suite 200, Willingboro, New Jersey 08046 and the Township of Cinnaminson, a municipal corporation of the State of New Jersey, having offices at 1621 Riverton Road, Cinnaminson, New Jersey 08077 (the "Township"), collectively referred to as the "Parties."

RECITALS

A. Delco has equitable interest in the commercial property located at Block 1403, Lots 27 and 28 on the Cinnaminson Township Tax Map located on Route 130 ("Subject Property").

B. Delco is interested in redeveloping the Subject Property into to a Chick-fil-A restaurant and accompanying retail use (the "Project"), along with associated parking and infrastructure at the Subject Property (the "Redevelopment").

C. The Township and Delco (each, a "Party" and jointly, the "Parties") desire to jointly explore the feasibility of the Redevelopment and negotiate an agreement or agreements to provide for the redevelopment of the Project ("Redevelopment Agreement").

D. The primary purpose of this Agreement is to establish a period during which the Parties shall negotiate the items included in Section 3 below.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

Section 1. Concept Plan. Delco presented its Concept Plan for redevelopment of the Project ("Concept Plan") to the Mayor and Township Council. A copy of the Concept Plan is attached hereto as Exhibit "A". The Concept Plan proposes renovation of the Subject Property.

Section 2. Negotiating Period. The Parties agree to negotiate diligently and in good faith with one another for a period of one hundred and eighty (180) days commencing upon the Effective Date of this Agreement (as hereinafter defined in Section 16 (the “Negotiating Period”), in order to negotiate the items in Section 3 below. The Negotiating Period shall automatically extend for two (2) additional thirty (30) day periods as long as the Parties are working diligently to execute such agreement or agreements necessary provided in Section 3.

Section 3. Certain Parameters for Negotiation. The following nonexclusive list of items related to the Project shall be the subject of negotiations during the Negotiation Period:

- (a) Concept plan for the Project;
- (b) Marketing/branding plan for the Project;
- (c) Pro forma for the Project;
- (d) Financing plan for the Project;
- (e) Scope of the development for the Project;
- (f) Development schedule for the Project;
- (g) Redeveloper Agreement; and
- (h) Redevelopment Plan.

Section 4. Cooperation. The Parties agree to cooperate with each other in promptly supplying information and analyses relating to the Project.

Section 5. Effect of this Agreement; Termination.

5.1 Nature of Agreement. This Agreement is not intended to constitute a binding agreement to enter into a Redevelopment Agreement or any other contract. Except as set forth in the Redevelopment Agreement, no party shall be legally bound to consummate the construction of the Project as outlined herein unless and until a Redevelopment Agreement or

other contract has been executed and delivered by the Parties. Notwithstanding any other provision hereof, neither Delco nor the Township shall be under any obligation to approve or execute a Redevelopment Agreement during or upon conclusion of the Negotiating Period. Any Party may refuse to approve and execute any Redevelopment Agreement at its sole and absolute discretion, with or without cause. In the event that a Redevelopment Agreement is approved and executed by the Parties, this Agreement shall be superseded by such Redevelopment Agreement.

5.2 Exclusive Nature of Negotiations. The Parties intend that the negotiations conducted pursuant to this Agreement be negotiated in good faith exclusively between the Parties. Accordingly, during the Negotiating Period, the Township shall negotiate exclusively with Delco with respect to the Redevelopment of the Subject Property.

5.3. Mutual Confidentiality. To the extent permitted by applicable law, the Parties shall maintain all information concerning this Agreement and any pending or subsequent negotiations between the Parties as confidential, disclosing information only to those individuals and representatives as designated by the other Party, provided that such individuals acknowledge and agree to maintain the confidentiality of such information.

Section 6. Preliminary Costs and Escrow.

(a) Delco shall reimburse the Township for the Preliminary Costs (as defined below) incurred by the Township with respect to this Agreement, the negotiation of the Redevelopment Agreement and any other agreement for the Project, from the Effective Date until the earlier to occur of (i) the date the Township and Delco enter into the Redevelopment Agreement and (ii) the expiration or termination of this Agreement. Delco shall pay all the Preliminary Costs set as forth in this Agreement even if the Redevelopment Agreement is not executed.

(b) Upon the Effective Date of this Agreement, Delco agrees to make a payment of Ten Thousand (\$10,000.00) Dollars to the Township ("Preliminary Cost Escrow") to be drawn down by the Township to pay the Preliminary Costs, which payment shall be made in order to render this Agreement, and the Township's review of the Concept Plan and redevelopment proposal, effective. If the event that the Preliminary Cost Escrow balance shall fall below \$5,000, with fifteen (15) days written notice from the Township, Delco shall post an additional \$5,000 into the Preliminary Cost Escrow Account.

(c) Deposits received from Delco pursuant to this Agreement shall be deposited in a Banking Institution or Savings & Loan Association in this State insured by an agency of the Federal Government, or in any other fund or depository approved for such deposits by the State, in an account bearing interest at the minimum rate currently paid by the institution or depository on time or savings deposits. The Township shall be responsible to have the Escrow Accounts maintained in accordance with N.J.S.A. 40:55D-53.1 and N.J.S.A. 40:55D-53.2.

(d) The Township shall notify Delco in writing when said deposit into the Escrow Account appears to be insufficient for continued review of the Project. Within twenty-one (21) days of such written notice from Township, Delco shall deposit additional funds into the Escrow Account based on an estimation submitted by the Township to Delco of the amount of money needed to complete the Project. If the balance of the Escrow Account exceeds the actual cost as approved for payment by the Township, Delco shall be entitled to return of such deposits, together with such interest as allowed by N.J.S.A. 40:55D-53.1. If the charges submitted and approved by the Township exceed the amount of the deposit, Delco shall be liable for payment of such deficiency.

(e) No Professional submitting charges to the Township for any services rendered in accordance with this Agreement shall charge for any of the services contemplated at a higher rate or in any different manner than would normally be charged to the Township for similar work as ascertained by the Professional's Contract with the Township. Payment of any bill rendered by a Professional to the Township with respect to any services or which the Township is entitled to reimbursement under this Agreement shall in no way be contingent upon receipt of reimbursement by Delco, nor shall any payment to a Professional be delayed pending reimbursement from Delco.

(f) The Township shall provide Delco with monthly invoices setting forth the costs incurred by the Township which the Township determines are to be paid from the Escrow Account. The Township shall provide a final invoice within thirty (30) days of the date a Redevelopment Agreement is executed, or the expiration or termination of this Agreement. Delco may dispute the propriety or reasonableness of the costs paid by the Township out of the Escrow Account by written notice to the Township within fifteen (15) days from receipt of the invoice. Disputes shall be handled in accordance with N.J.S.A. 40:55D-53.2a. During the pendency of a dispute about any charge, the Township may continue to pay undisputed charges out of the escrow.

(g) **Preliminary Costs** means all activities related to the Project from the Effective Date of this Agreement, including but not limited to the following:

- a. Preparation for and attendance at meetings.
- b. Review documentation and issuance of any reports relating thereto in connection with the Redevelopment and Project.
- c. Charges for any telephone conferences or meetings by any Professional.

d. Issuance of reports by Professionals to the reviewing municipal agency(ies) setting forth recommendations resulting from review of any documents.

e. Preparation of all Resolutions and Ordinances regarding the Project.

f. Any and all other expenses of Professionals incurred and paid by the Township for the Project.

g. All advertising and noticing expenses, including certified mailing as is required or deemed necessary with regard to the Project pursuant to the LRHL and the Municipal Land Use Law.

h. If, upon the termination of this Agreement or the Township's or Delco withdrawal from this Agreement, any unaccounted for and unexpended balance remains in the Preliminary Cost Escrow Fund, the Township agrees to return such funds to Delco within thirty (30) days of such termination or withdrawal.

i. None of the fees and costs anticipated to be charged to the Preliminary Cost Escrow shall include any charges for and clerical, administrative functions, overhead expenses and/or meeting room charges.

Section 7. Notices. Any notices, requests or approvals given under this Agreement from one Party to another may be personally delivered, transmitted by e-mail (during business hours) and deposit with the United States Postal Service for mailing, postage prepaid, to the address of the other Party as stated in this paragraph, and shall be deemed to have been given at the time of personal delivery or e-mail or, if mailed, on the third day following the date of deposit in the course of transmission with the United States Postal Service. Any notice given by e-mail shall be followed up with a confirming copy by overnight mail. Notices shall be sent as follows:

If to the Township Township of Cinnaminson
1621 Riverton Road
Cinnaminson, New Jersey 08077
Attn: Eric Schubiger, Township Administrator
E-Mail: eschubiger@cinnaminsonnj.org

With copy to: Platt & Riso, P.C.
40 Berlin Avenue
Stratford, New Jersey 08084
Attn: Stuart A. Platt, Esquire
Email: platt@prlawoffice.com

If to Delco: Delco Development, LLC
200 Campbell Drive, Suite 200
Willingboro, New Jersey 08046
Attn: Thomas Juliano
Email: tjuliano@delcodevelopment.com

With copy to: Bisgaier Hoff
25 Chestnut Street, Suite 3
Haddonfield, New Jersey 08033
Attn: Richard J. Hoff, Jr., Esquire
Email: rhoff@bisgaierhoff.com

Section 8. Governing Law. This Agreement shall be governed by the laws of the State of New Jersey.

Section 9. Interpretation. This Agreement shall be interpreted as a whole and in accordance with its fair meaning and as if each Party participated equally in its drafting. Captions are for reference only and are not to be used in construing meaning. The recitals are deemed incorporated into this Agreement.

Section 10. Real Estate Commissions. Each Party represents and warrants to the other Party that no real estate commission, broker's fee or finder's fee which may accrue by means of the acquisition of an interest in the Subject Property due to any person, firm or entity except as set forth above; each Party agrees to indemnify and hold the other Party harmless with respect to

any judgment, damages, legal fees, court costs, and any and all liabilities of any nature whatsoever arising from a breach of such representation.

Section 11. Assignment of Agreement. Upon notice to the Township, Delco shall have the right to assign this Agreement to a single purpose entity in which the principals of Delco have either a majority interest or control with the consent by the Township, which shall not be unreasonably withheld.

Section 12. Amendment of Agreement. No modification, rescission, waiver, release or amendment of any provision of this Agreement shall be made except by a written agreement executed by each of the Parties.

Section 13. Entire Agreement. This Agreement constitutes the entire understanding and agreement of the Parties concerning this subject. This Agreement integrates all of the terms and conditions mentioned herein or incidental thereto, and supersedes all prior negotiations, discussions and previous agreements between the Parties concerning all or any part of the subject matter of this Agreement.

Section 14. Effective Date of this Agreement. This Agreement shall take effect immediately upon the execution of this Agreement by the Township (the "Effective Date").

Section 15. Police Powers. The Township does not waive or release any police powers hereunder.

Section 16. Joint Construction. This Agreement is the joint product of the Parties and each provision of this MOU has been subject to the mutual consultation, negotiation, and agreement of the Parties, and shall not be construed for or against either of the Parties.

Section 17. Counterparts. This Agreement may be signed in counterparts, each of which, when so executed and delivered, shall be deemed an original, but such counterparts shall together constitute but one and the same instrument.

IN WITNESS WHEREOF, THE PARTIES HAVE EXECUTED THIS AGREEMENT AS OF THE RESPECTIVE DATES SET FORTH BELOW.

WITNESS:

TOWNSHIP OF CINNAMINSON

Lisa A. Passiore, RMC
Lisa A. Passiore
Municipal Clerk

By:

Albert D. Segrest
ALBERT D. SEGREST, MAYOR

WITNESS:

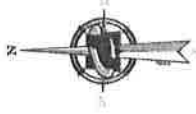
DELCO DEVELOPMENT, LLC

Michelle Banje

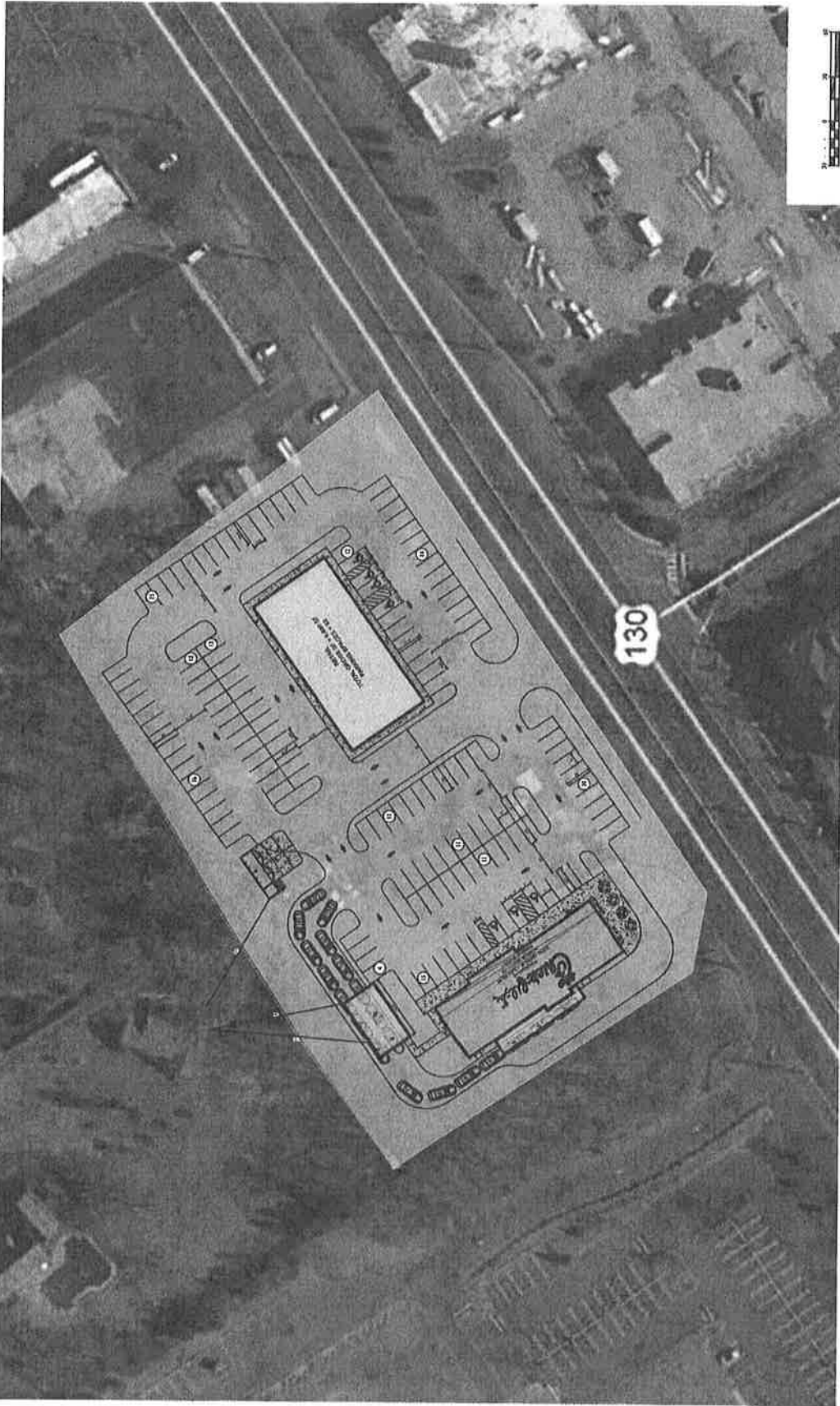
By:

Robert J. ...

**EXHIBIT A
CONCEPT PLAN**



P13-LS-LARGE-NJ
SQUARE FEET= 5,431 SQ. FT.
TOTAL SEATS = 102
PARKING SPACES = 62



	FIRM CINNAMISON TOWNSHIP COUNTY NEW JERSEY	CONCEPT PLAN	DMS EDITION 02-1	10 Preliminary 100% Submittal 100% Construction	File No. : NA State : NA Date : 10/20 Drawn By : TL Checked By: RTT	CPF
Seal						

