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IN THE MATTER OF THE APPLICATION
OF THE BOROUGH OF FREEHOLD, a
municipal Corporation of the State of New
Jersey,

Plaintiff/Petitioner

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: MONMOUTH COUNTY
DOCKET NO. MON-L-000294-25

Civil Action
(Mount Laurel)

CERTIFICATION OF COUNSEL

I, Frances C. McManimon, Esq., hereby certify and say:

1. I am a Partner with the law firm of McManimon, Scotland & Baumann, LLC, attorneys for Plaintiff/Petitioner the Borough of Freehold in this declaratory judgement action.

2. On January 21, 2025, the Borough Council adopted Resolution 39-25, accepting the obligation set forth in the “Affordable Housing Obligations for 2025-2035 (Fourth Round) Methodology and Background” (the “**DCA Report**”) by the New Jersey Department of Community Affairs (the “**DCA**”).

3. Pursuant to the Administrative Directive #14-24, dated December 13, 2024 (the “**Directive**”), implementing the Affordable Housing Dispute Resolution Program (the “**Program**”), the Borough filed this action in the Superior Court of Monmouth County on January 23, 2025.

4. On April 24, 2025, the Honorable Linda Grasso Jones, J.S.C., the designated Mount Laurel Judge for the Monmouth Vicinage, entered an order setting the Borough’s Present

Need Obligation as 270 and the Prospective Need Obligation as 49, as set forth in the Binding Resolution No. 39-25.

5. On June 25, 2025, the Planning Board of the Borough of Freehold adopted a resolution, attached hereto as **Exhibit B**, adopting its Fourth Round Housing Element and Fair Share Plan (“**HEFSP**”), attached hereto as **Exhibit A**.

6. In accordance with the Directive, the Borough is hereby filing the HEFSP with the Program.

I hereby certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Dated: June 26, 2025

Frances C. McManimon

Frances C. McManimon, Esq.

EXHIBIT A

**Borough of Freehold
Monmouth County
Housing Element and Fair Share Plan**

**Round Three (2015-2025) and
Round Four (2025-2035)**

Prepared For:



Borough of Freehold
30 Mechanic Street
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Adoption Date: June 25, 2025

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The original of this report was signed and sealed in accordance with N.J.S.A. 45:14A-12.

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I. Introduction

This Housing Element and Fair Share Plan will exhibit the Borough of Freehold's (herein the "Borough" or "Freehold") commitment to providing affordable housing within the municipality. On March 16, 2022, the Borough filed a Mount Laurel declaratory judgment action with the Superior Court of New Jersey, entitled In the Matter of the Application of the Borough of Freehold, Docket No. MON-L-0759-22, seeking a judgment that the Borough is in compliance with its constitutional obligations through the Third Round under the New Jersey Fair Housing Act, N.J.S.A. 52:27D-301 et seq. (the "FHA") and Mount Laurel jurisprudence (the "DJ Action"). This Plan is part of the settlement and resolution of the DJ Action, and the Borough intends to consolidate this Housing Element and Fair Share Plan to serve as a joint compliance mechanism for both Round 3 and Round 4 of its affordable housing obligations.

As such, this document seeks to frame Freehold's efforts based on the current best knowledge of the affordable housing framework created by the State, applicable past rules established by the Council on Affordable Housing (COAH), and the requirements of P.L.2024, c.2¹ (the "Law" or "Amended Law") which governs municipal responsibilities concerning provisions of affordable housing in the Third and Fourth Round.

The Borough has a long history of proactively responding to new affordable housing legislation. Following adoption of the Fair Housing Act in 1985 (P.L. 1985, c. 222), the Borough adopted its 1988 Housing Plan Element to amend its prior, 1980 Plan. Based on the methodology established at the time and a Vacant Land Adjustment, the Borough addressed an adjusted Prospective Need Obligation of 92 and a Present Need Obligation of 51, the former being addressed through "Section 8" housing units. The latter, as part of a Regional Contribution Agreement with the Township of Freehold, was addressed through inspection, identification, and rehabilitation of 150 units.

To address the requirements of the latest Law, this Plan has four sections. The first section ("Introduction") includes a brief history of New Jersey Housing Policy. The second section ("Housing Element") includes a Demographic Analysis, Housing Inventory, Employment Analysis, and review of land uses and policies, as required by statute. The third section (Fair Share Plan – Round 3) summarizes the Borough's affordable housing obligations for 2015-2025 and its plan for complying with these obligations. The fourth section (Fair Share Plan– Round 4) summarizes the Borough's affordable housing obligations for 2025-2035 and its plan for complying with these obligations.

¹ <https://pub.njleg.state.nj.us/Bills/2024/PL24/2 .PDF>

A. History of New Jersey Affordable Housing Policy

1975 – 1985 | Mount Laurel Doctrine and the Fair Housing Act

In 1975 the New Jersey Supreme Court decided *Southern Burlington County NAACP v. the Township of Mount Laurel*, more commonly referred to as “Mount Laurel I,” wherein it interpreted the New Jersey Constitution to create an affirmative obligation for developing municipalities to provide a “realistic opportunity for the construction of low- and moderate-income housing in their communities.” In 1983, the New Jersey Supreme Court expanded the obligation from only developing municipalities to all municipalities in a decision commonly referred to as “Mount Laurel II”. In addition, the Supreme Court required the establishment of each municipality’s fair share obligation and required each municipality, through its zoning, to provide a realistic opportunity for the construction of that established fair share obligation. Subject to several prerequisites, conditions and requirements, Mount Laurel II also created the “builder’s remedy” as a mechanism to enforce the doctrine in instances where a developer successfully demonstrated a municipality’s zoning failed to create the requisite realistic opportunity. Under such circumstances, a plaintiff may be entitled to have its site rezoned for an inclusionary development with an affordable set aside if the site is available, developable, approvable, and suitable for the proposed project and all other requirements for a successful builder’s remedy are met and all defenses defeated.

In 1985, in response to Mount Laurel II and the flood of litigation stemming from it, the Legislature adopted the Fair Housing Act (“FHA”) to discourage litigation and incentivize voluntary compliance (see N.J.S.A. 52-27D-303). The FHA established, among other things, the Council on Affordable Housing (“COAH”) as an administrative alternative to litigation and judicial intervention. COAH was charged with establishing various housing regions in the state, estimating regional affordable housing obligations, and adopting criteria and guidelines for the municipal determination of housing need as well as guidelines for satisfying those obligations. The FHA also linked municipal planning and zoning powers to the satisfaction of affordable housing obligations. Under the FHA, a municipal zoning ordinance is presumptively invalid if a municipality fails to adopt a housing element as part of its master plan or enacts zoning regulations that are inconsistent with their housing plan.

1987 – 2004 | Establishment and Administration of First Round and Second Round COAH Rules

After the adoption of the Fair Housing Act, COAH adopted procedural and substantive rules to effectuate the FHA’s legislative intent in both the First Round (1987-1993) (N.J.A.C 5:91 and 5:92) and Second Round (1993-1999) (N.J.A.C. 5:93). The Second Round substantive regulations (Chapter 93) superseded the First Round substantive regulations (Chapter 92) and recalculated the First Round obligations. Under COAH’s regulations, low-income households were defined as those with incomes no greater than 50 percent of the area median income (AMI), adjusted for household size, and moderate-income households were those with incomes no greater than 80

percent and no less than 50 percent of the median household income. AMI limits were calculated based upon housing regions as established by COAH.

2004 – 2010 | Third Round Litigation and Revisions

In December 2004, COAH promulgated its Third Round “Growth Share” methodology, which adjusted prior round obligations and devised a new system for projecting future municipal housing obligations. Growth Share obligations were based upon municipal growth and the Third Round was defined as the period of 1999-2014. The initial Growth Share methodology required municipalities to provide one affordable housing unit for every eight market rate units and one affordable unit for every 25 jobs created. In January 2007, the Appellate Division invalidated the Growth Share Methodology and required COAH to revise its rules, which it did in May 2008 via the Third Round substantive regulations of Chapter 97.

The FHA was subsequently amended in July 2008. This round of amendments, among other things, eliminated Regional Contribution Agreements and reduced non-residential development fees. In September 2008, Executive Order #114 was which amended the COAH rules to ensure consistency with the Highlands Regional Master Plan.

2010 – 2023 | COAH’s Noncompliance and Resumption of Court Responsibility

During this period, there was inaction and increased uncertainty in the realm of affordable housing.

After taking office Governor Chris Christie signed Executive Order No. 12, establishing the Housing Opportunity Task Force and charging them with a full review of the Fair Housing Act, COAH, and COAH’s regulatory structure. Ultimately, the task force recommended a model which included adjusted definitions of present and prospective need, a benchmark of 10 percent growth predicted by the State Planning Commission to guide obligations, and transferring of procedural responsibility from COAH to the Home Mortgage Finance Agency (HMFA).

Further complicating matters, in October 2010, the Appellate Division invalidated a substantial portion of COAH’s rules. Most notably, the Court invalidated the Third Round Growth Share methodology and ordered COAH to revise its rules in accordance with the decision. In addition, the Court prohibited certification of housing plans that rely upon municipally sponsored affordable housing projects without specified funding and required COAH to create an incentive structure for inclusionary developments.

In January 2011, the legislature passed S-1 / A-3447, which was subsequently vetoed. Then, in June Governor Christie issued a reorganization plan which transferred the administration of the State’s affordable housing program from COAH to the New Jersey Department of Community Affairs. Upon challenge by the Fair Share Housing Center, the Appellate Court invalidated Governor Christie’s Reorganization Plan in March 2012. The Supreme Court upheld this decision in July 2013.

In September 2013, the Supreme Court confirmed the invalidation of the previously adopted Third Round regulations, upholding that the methodology used for projecting housing needs in these rules was unconstitutional. In that ruling, the court established a February 2014 deadline for development and adoption of new COAH rules, which was eventually extended to November 2014. Significantly, no rules were adopted.

In March 2015, in the case entitled *In re: Adoption of N.J.A.C. 5:96 & 5:97*, 221 N.J. 1 (2015), more commonly referred to as "Mount Laurel IV," the State Supreme Court determined that COAH was "moribund" and unable to carry out its duties as intended by the Fair Housing Act. The Court further held "that the courts may resume their role as the forum of first instance for evaluating municipal compliance with Mount Laurel obligations."

Thus, the Court designed a transitional process whereby municipalities could seek judicial approval of their HEFSPs. Those transitional procedures gave municipalities the choice whether to seek compliance voluntarily via a Declaratory Judgment (DJ) Action or to not file a DJ Action and risk being sued. During this period, and in the absence of COAH, many municipalities entered into court-mediated Settlement Agreements involving the Fair Share Housing Center.

2024 – Present | Adoption of P.L. 2024, c.2 and Fourth Round Methodology Changes and Department of Community Affairs

With the impending end of the Third Round in 2025, there was a push at the State level to implement new legislation that would reorganize the affordable housing process and end the transitional and court-oriented process initiated by Mount Laurel IV. The result of this effort was A-4 / S-50, which was signed into law by Governor Phil Murphy on March 20, 2024. This legislation created a framework to be used for the Fourth Round and beyond. In summary, the Law:

1. Abolishes the Council on Affordable Housing ("COAH") and transfers its duties to the DCA and the Administrative Office of the Courts ("AOC");
2. Enables the DCA to implement the judicial methodology provided by Judge Mary C. Jacobson, A.J.S.C. in her March 8, 2018 decision, *In re Application of Municipality of Princeton* (the "Princeton Case"), to calculate every municipality's affordable housing obligation for the Fourth Round;
3. Creates the Affordable Housing Dispute Resolution Program (the "Program") to oversee disputes and provide for mediation; and
4. Expands the availability of bonus credits, while eliminating the previously offered "rental bonus credit." Bonus credits are further described in this Housing Element and Fair Share Plan.
5. Modifies applicable data and calculations underlying the methodology for calculation of affordable housing obligations, eliminating the prior dependance of Courts and court-

appointed Special Adjudicators (formerly known as Special Court Masters) to deploy accepted methodologies to determine each municipality's affordable housing obligation.

6. Sets timeframes under which municipalities must act to preserve immunity from exclusionary zoning litigation.

Critically, the Amended Law requires that municipalities adopt a housing element and fair share plan no later than June 30, 2025 to maintain immunity from exclusionary zoning litigation.

B. Housing Element and Fair Share Plan Requirements

Municipal Land Use Law ("MLUL") + Fair Housing Act ("FHA")

The MLUL, through incorporation of the New Jersey FHA, requires municipalities to include a housing element in their master plans as a prerequisite to the zoning power. The principal purpose is to enumerate and provide the data, policies, and methods by which municipalities will meet housing needs, with particular attention to low- and moderate-income households.

Pursuant to Section 10 of P.L.1985, c.222 (C.52:27D-310) and as amended per P.L.2024, c.2,² as amended, the required contents of the housing element shall contain at least:

- a. *An inventory of the municipality's housing stock by age, condition, purchase or rental value, occupancy characteristics, and type, including the number of units affordable to low- and moderate-income households and substandard housing capable of being rehabilitated, and in conducting this inventory the municipality shall have access, on a confidential basis for the sole purpose of conducting the inventory, to all necessary property tax assessment records and information in the assessor's office, including but not limited to the property record cards;*
- b. *A projection of the municipality's housing stock, including the probable future construction of low- and moderate-income housing, for the next ten years, taking into account, but not necessarily limited to, construction permits issued, approvals of applications for development and probable residential development of lands;*
- c. *An analysis of the municipality's demographic characteristics, including but not necessarily limited to, household size, income level and age;*
- d. *An analysis of the existing and probable future employment characteristics of the municipality;*
- e. *A determination of the municipality's present and prospective fair share for low- and moderate-income housing and its capacity to accommodate its present and prospective housing needs, including its fair share for low- and moderate-income housing, as established pursuant to section 3 of P.L.2024, c.2 (C.52:27D-304.1);*
- f. *A consideration of the lands that are most appropriate for construction of low- and moderate-income housing and of the existing structures most appropriate for conversion to, or rehabilitation for, low-*

² <https://law.justia.com/codes/new-jersey/title-52/section-52-27d-310/> and <https://pub.njleg.state.nj.us/Bills/2024/PL24/2 .PDF>

and moderate-income housing, including a consideration of lands of developers who have expressed a commitment to provide low- and moderate-income housing; and

- g. An analysis of the extent to which municipal ordinances and other local factors advance or detract from the goal of preserving multigenerational family continuity as expressed in the recommendations of the Multigenerational Family Housing Continuity Commission, adopted pursuant to paragraph (1) of subsection f. of section 1 of P.L.2021, c.273 (C.52:27D-329.20).*
- h. For a municipality located within the jurisdiction of the Highlands Water Protection and Planning Council, established pursuant to section 4 of P.L.2004, c.120 (C.13:20-4), an analysis of compliance of the housing element with the Highlands Regional Master Plan of lands in the Highlands Preservation Area, and lands in the Highlands Planning Area for Highlands-conforming municipalities. This analysis shall include consideration of the municipality's most recent Highlands Municipal Build Out Report, consideration of opportunities for redevelopment of existing developed lands into inclusionary or 100 percent affordable housing, or both, and opportunities for 100 percent affordable housing in both the Highlands Planning Area and Highlands Preservation Area that are consistent with the Highlands regional master plan; and*
- i. An analysis of consistency with the State Development and Redevelopment Plan, including water, wastewater, stormwater, and multi-modal transportation based on guidance and technical assistance from the State Planning Commission.*

In addition to the statutory components of the Housing Element and Fair Share Plan detailed in 52:27D-310, [Administrative Directive #14-24](#),³ which promulgated the procedures and guidelines for implementing the Affordable Housing Dispute Resolution Program; contains a section entitled “Required Elements of Housing Element and Fair Share Plan.” In summary, the Directive requires four additional elements of the HEFSP to be included:

1. A site suitability analysis for any inclusionary zone and/or 100% affordable site
2. A concept plan for site development of any proposed inclusionary zone.
3. A detailed review of the credit worthiness of all existing units in the municipality.
4. All ordinances and resolutions required to implement the plan attached as an Appendix to the HEFSP.

However, it should be noted that the requirement to adopt all implementing ordinances to effectuate the HEFSP as set forth in the Fair Housing Act is March 15, 2026. Given this discrepancy of the dates, the statutory necessity of implementing ordinances to be reviewed by the Planning Board and deemed consistent with this adopted HEFSP, and the potential for challenges to the HEFSP as adopted, such ordinance amendments will be prepared following adoption of this plan element.

³ https://www.njcourts.gov/sites/default/files/administrative-directives/2024/12/dir_14_24.pdf

II. Housing Element: Municipal Summary

The Borough of Freehold is roughly 1.93 square miles in area and is located in Monmouth County. For regional and planning purposes, Freehold is located in Housing Region 4, a region that consists of Mercer, Monmouth, and Ocean counties.

In compiling the analysis for the Housing Element, this report utilizes the following data:

1. American Community Survey ("ACS"): The most up to date information is the ACS estimates, which are generated between the decennial censuses. ACS figures are based on data collected over a 5-year time period. The estimates represent the average characteristics of population and housing between 2018-2023 and DO NOT represent a single point in time. Comparisons will be made with the 2018-2023 ACS to show change over time.⁴
2. Decennial Census: Every ten years, the Census conducts detailed data collection to create an image that is as accurate as possible of the conditions throughout the country in that year. Data from the decennial census is used for comparison when equivalent ACS information is unavailable, as well as for longitudinal analysis.⁵
3. North Jersey Transportation Planning Authority ("NJTPA"): Every four years, the NJTPA updates its regional forecasts for population, households and employment as part of updating its long range transportation plan (LRTP), the region's blueprint for transportation investment.⁶
4. State or Other Agency Sources: for select data types, State sources are used instead of the Census Bureau when equivalent Census data does not exist or the State data provides a more complete picture.

A. Housing Conditions

The analysis in this section shall satisfy Part A of P.L.1985, c.222 (C.52:27D-310), which requires:

- A) *"Inventory of housing stock by age, condition, purchase or rental value, occupancy characteristics, and type, including the number of units affordable to low- and moderate-income households and substandard housing capable of being rehabilitated, and in conducting this inventory the municipality shall have access, on a confidential basis for the sole purpose of conducting the inventory, to all necessary property tax assessment records and information in the assessor's office, including but not limited to the property record cards"*

⁴ <https://data.census.gov/table>

⁵ <https://data.census.gov/table?d=DEC%20Demographic%20Profile>

⁶ <https://www.njtpa.org/NJTPA/media/Documents/Planning/Plans-Guidance/Planning%20for%202050/draft%20final/E-2050-Demographic-Forecasts.pdf>

Housing Stock by Age and Condition

According to the 2023 ACS, there are an estimated 4,437 housing units in Freehold Borough which represented no increase since 2020.

46.4% of Freehold Borough's housing stock was built prior to 1960 and 90.3% prior to 1990, indicating roughly half of its housing stock is over 65 years old and most of it over 35 years old.

Table 1: Year Structure Built

	UNITS	PERCENT
Total housing units	4,448	-
Built 2020 or later	11*	0.0
Built 2010 to 2019	134	3.0
Built 2000 to 2009	131	3.0
Built 1990 to 1999	144	3.2
Built 1980 to 1989	636	14.3
Built 1970 to 1979	795	17.9
Built 1960 to 1969	518	11.7
Built 1950 to 1959	569	12.8
Built 1940 to 1949	263	5.9
Built 1939 or earlier	1,247	28.1

Source: 5-Year American Community Survey, 2023, DP04

**This value is derived from certificates of occupancy between 2020-2023, as specified in the NJDCA Construction Reporter database, and is included in the total sum of housing units.*

The table below details the condition of housing within Freehold Borough based on heating fuel, plumbing facilities and kitchen facilities, factors that help determine inadequate housing conditions in the Borough. According to the current ACS estimate, 158 housing units in Freehold Borough lacked one of these facilities, a significant increase from the 94 units lacking such facilities in 2018. The increase is predominately among units lacking heating fuel.

Table 2: Housing Condition

	2023	PERCENT	2018	PERCENT	PERCENT CHANGE
Occupied housing units lacking certain facilities	158	3.7	94	2.2	68.1
Lacking heating fuel	68	1.6	6	0.1	1,133.3
Lacking complete plumbing facilities	17	0.4	0	0.0	N/A

Lacking complete kitchen facilities	73	1.7	88	2.1	-17.0
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Source: 5-Year American Community Survey, 2018 & 2023, DP04

Housing Values and Costs

Since 2018, median home values in the Borough have increased by \$108,100 (36.8%). This change is accompanied by an increase in homes worth more than \$300,000 and a general decrease in homes worth less than \$300,000. Given the modest inventory of new housing stock and increases in inadequate housing conditions, this may suggest inflationary pressure in the housing market is a significant contributor to this trend, in addition to home improvements.

Table 3: Value of Owner-Occupied Housing Units

	2023	PERCENT	2018	PERCENT	PERCENT CHANGE
Total Owner-occupied units	2,143	-	1,954	-	-
Less than \$50,000	52	2.4	43	2.2	20.9
\$50,000 to \$99,999	15	0.7	6	0.3	150.0
\$100,000 to \$149,999	4	0.2	48	2.5	-91.7
\$150,000 to \$199,999	45	2.1	134	6.9	-66.4
\$200,000 to \$299,999	335	15.6	803	41.1	-58.3
\$300,000 to \$499,999	1253	58.5	858	43.9	46.0
\$500,000 to \$999,999	408	19.0	62	3.2	558.1
\$1,000,000 or more	31	1.4	0	0.0	N/A
Median (dollars)	\$401,900	(X)	\$293,800	(X)	36.8

Source: 5-Year American Community Survey, 2018 & 2023, DP04

The table below shows the housing expenditures for those who own and rent in Freehold. The general affordability standard is that no more than 30% of gross income should be allocated for housing costs.

A cost burden is the ratio of housing costs to household income. For renters, housing cost is the gross rent (lease rent plus utilities). For owners, housing cost is the monthly owner costs, which may include mortgage, utilities, association fees, insurance, and real estate taxes. The data below shows more than half of renters in Freehold Borough (56.3%) are cost burdened, while homeowners face less pressure from housing costs. 36.6% of owners with a mortgage are cost burdened, while 28.6% of owners without a mortgage are cost burdened.

Table 4: Housing Cost Burden, 2023
(Monthly Costs as Percentage of Household Income)

RANGES	OWNER				RENTER	
	W/ MORTGAGE		W/O MORTGAGE		TOTAL	PERCENT
	TOTAL	PERCENT	TOTAL	PERCENT		
Less than 20%	323	25.7	573	65.6	355	17.7
20.0-24.9%	187	14.9	21	2.4	254	12.7
25.0-29.9%	287	22.8	28	3.2	266	13.3
30.0-34.9%	140	11.1	23	2.6	180	9.0
35.0% or more	321	25.5	227	26.0	947	47.3
Not Computed	0	(X)	13	(X)	125	(X)

Source: 5-Year American Community Survey, 2023, DP04

Occupancy Characteristics and Type of Housing

As of 2023, the Borough is comprised of a similar share of owner-occupied and renter-occupied households. A total of 48.3% of households are owners and 47.9% are renters, and 3.8% of the Borough's housing units are vacant. While rental unit inventory has remained relatively stable, owner-occupied units now make up a plurality of those in the Borough as over half of vacant units become occupied.

Table 5: Housing Tenure and Occupancy

	2023	PERCENT	2018	PERCENT	PERCENT CHANGE
Total	4,437	100	4,469	100	-0.7
Owner Occupied	2,143	48.3	1,954	47.6	9.7
Renter Occupied	2,127	47.9	2,154	52.4	-1.3
Vacant Units	167	3.8	361	8.1	-53.7

Source: 5-Year American Community Survey, 2018 & 2023, DP04

Housing units with more than one occupant per room are considered overcrowded. Overcrowded households in the Borough have reduced since 2018. While overcrowded conditions have declined modestly over the past five years, there has been a 68% increase in acute overcrowding above 1.5 occupants per room. This growing disparity in overcrowded conditions coincides with the hollowing out of the middle range of housing types in the Borough, as 5-19 unit buildings saw significant decreases in their share of the Borough's housing stock as significant numbers of single-family attached and 20+ multifamily units came online. Overcrowding conditions may be further exacerbated by a modest decrease in the total housing inventory in the Borough.

Table 6: Occupants Per Room + Inadequate Units in Occupied Housing Units

OCCUPANTS PER ROOM	2023	PERCENT	2018	PERCENT	PERCENT CHANGE
Total	4,270	100	4,108	100	3.9
1.00 or less	3,841	90.0	3,729	90.8	3.0
1.01 to 1.50	266	6.2	282	6.9	-5.7
1.51 or more	163	3.8	97	2.4	68.0

Source: 5-Year American Community Survey, 2018 & 2023, DP04

Table 7: Housing Type and Size

HOUSING UNITS	2023	PERCENT	2018	PERCENT	PERCENT CHANGE
Total housing units	4,437	100	4,469	100	-0.7
1-unit, detached	2,423	54.6	2,449	54.8	-1.1
1-unit, attached	365	8.2	271	6.1	34.7
2 units	334	7.5	346	7.7	-3.5
3 or 4 units	243	5.5	243	5.4	0.0
5 to 9 units	187	4.2	363	8.1	-48.5
10 to 19 units	10	0.2	120	2.7	-91.7
20 or more units	844	19.0	677	15.1	24.7
Mobile home	13	0.3	0	0.0	N/A
Boat, RV, van, etc.	18	0.4	0	0.0	N/A

Source: 5-Year American Community Survey, 2018 & 2023, DP04

Table 8: Number of Bedrooms Per Unit

ROOMS	2023 TOTAL	PERCENT	2018 TOTAL	PERCENT	PERCENT CHANGE
Total	4,437	100	4,469	100	-0.7
No Bedroom	216	4.9	245	5.5	-11.8
1 Bedroom	867	19.5	772	17.3	12.3
2 Bedrooms	939	21.2	1,217	27.2	-22.8
3 Bedrooms	1,710	38.5	1,503	33.6	13.8
4 Bedrooms	618	13.9	592	13.2	4.4
5 or more Bedrooms	87	2.0	140	3.1	-37.9

Source: 5-Year American Community Survey, 2018 & 2023, DP04

Since 2018, the bedroom typology of the Borough has increased in “family” sized (i.e. 3+ bedroom) units by 8.1%, despite a decrease in 5+ bedroom units, while smaller units decreased by 9.5%, despite growth in the share of 1-bedroom units.

Existing Low- and Moderate-Income Housing Units

Freehold Borough reviewed all property tax assessment records and information in the assessor's office, including but not limited to property record cards, to determine the number of existing low- and moderate-income housing units. Based on review of available records, there are 109 LMI units approved and/or constructed in the Borough. The Borough is following the applicable requirements regarding unit monitoring and reporting.

B. Housing Projections

The analysis in this section shall satisfy Part B of P.L.1985, c.222 (C.52:27D-310), which requires:

- B) “A projection of the municipality's housing stock, including the probable future construction of low- and moderate-income housing, for the next ten years, taking into account, but not necessarily limited to, construction permits issued, approvals of applications for development and probable residential development of lands.”

Projection of Housing Stock

Below is a general prediction by NJTPA of Freehold Borough’s household population growth to 13,075 people in 2050, an increase of 1,073. This 9.2% increase in households would require available units to accommodate and may be a predictive indicator of new projected housing stock.

Table 9: Housing Unit Projection

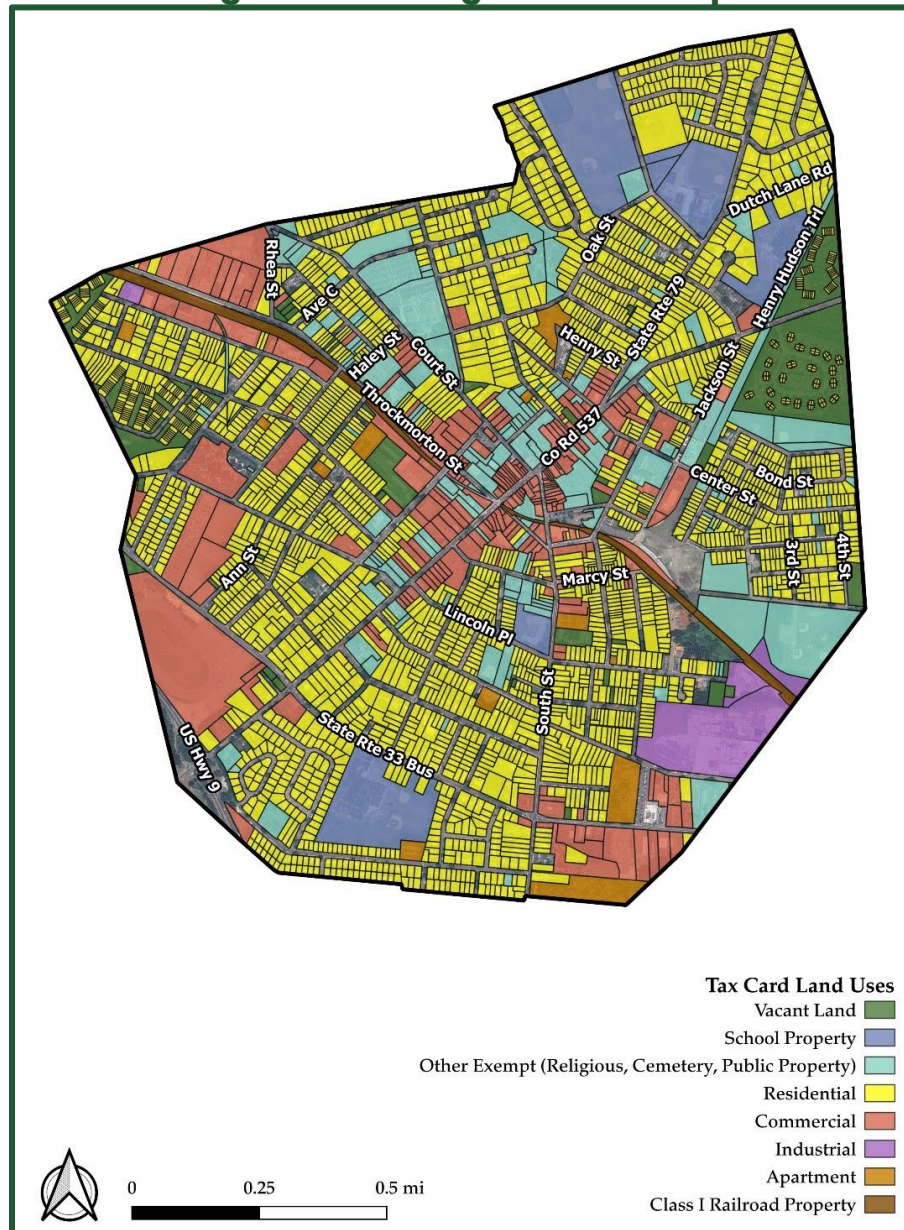
YEAR	POPULATION	ANNUALIZED % CHANGE
2015	12,002	-
2050 (Predicted)	13,075	0.2%

Source: [NJTPA, "Appendix E - 2050 Demographic Forecasts"](#)

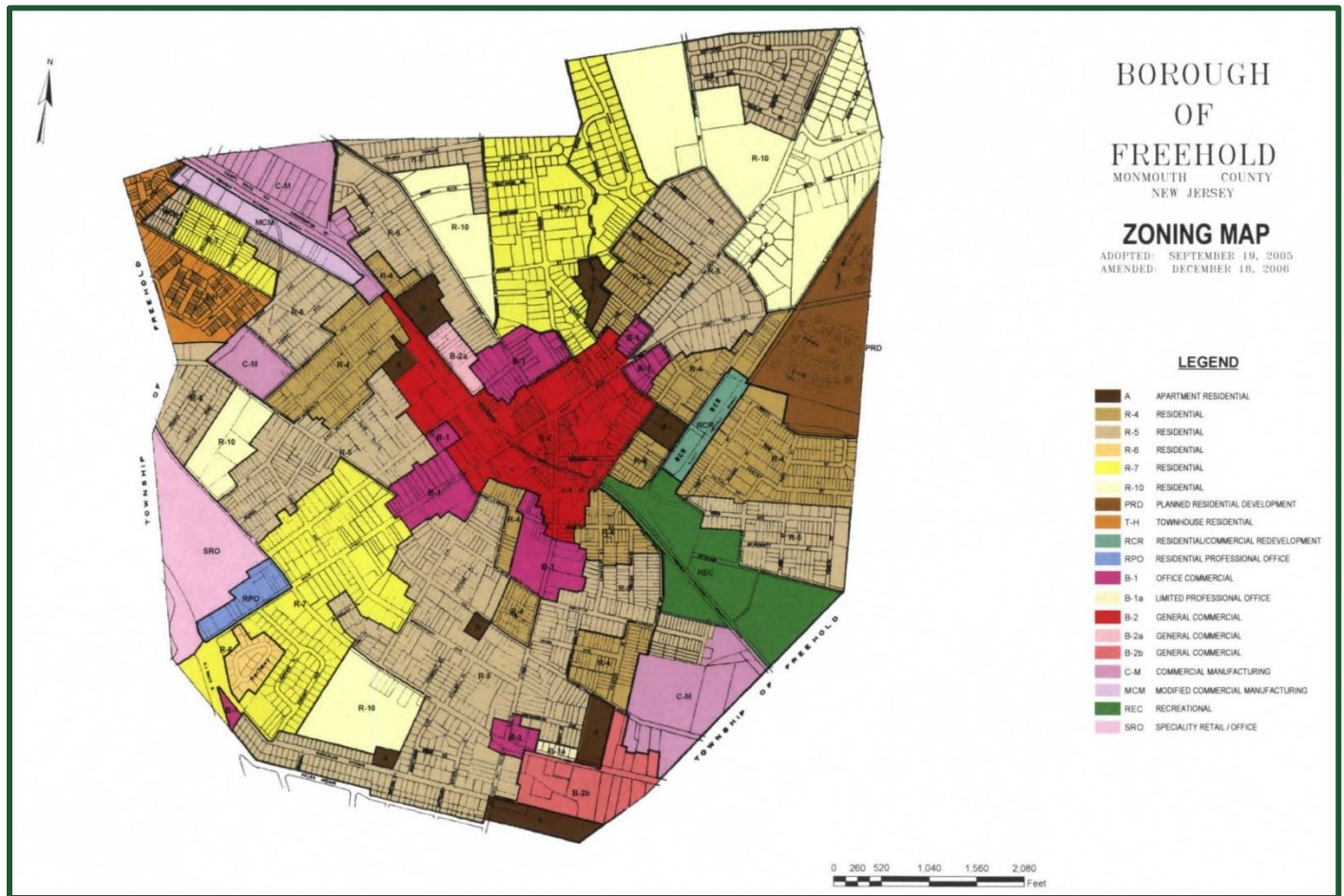
Zoning regulations and existing capital infrastructure may help determine where growth is expected and where new housing units are likely to be developed in the future.

Freehold expects new developments to bear the cost that such development puts upon the existing infrastructure, including its sewer and water systems, road infrastructure, school facilities, and emergency services. This includes the addition of capacity necessitated by the new development, as well as associated maintenance costs. New development should not be a burden on the Borough’s infrastructure.

Figure 1: Existing Land Use Map



Freehold Borough Land Use Map

Figure 2: Existing Zoning Map[Freehold Borough Zoning Map](#)

C. Demographic Characteristics

The analysis in this section shall satisfy Part C of P.L.1985, c.222 (C.52:27D-310), which requires:

- C) *“An analysis of the municipality's demographic characteristics, including but not necessarily limited to, household size, income level and age.”*

Population, General

The population estimate for Freehold Borough in 2023 was 12,430, which represents a decrease of 108 from the 2020 Census (-0.9%). Despite this trend, the NJTPA predicts Freehold’s population to grow to 13,075 people in 2050.

Table 10: Historic Population Growth

YEAR	POPULATION	CHANGE	% CHANGE
1940	6,952	N/A	0.8
1950	7,550	598	8.6
1960	9,140	1,590	21.1
1970	10,545	1,405	15.4
1980	10,020	-525	-5.0
1990	10,742	722	7.2
2000	10,976	234	2.2
2010	12,052	1,076	9.8
2020	12,538	486	4.0
2023	12,430	-108	-0.9
2050 (Predicted)	13,075	645	5.1
Source: NJ State Data Center, New Jersey Population Trends 1790 to 2000 , US Census Bureau ; NJTPA, "Appendix E - 2050 Demographic Forecasts"			

Population Composition by Age

The estimated current median age in Freehold Borough is 35.4, compared to 43.2 for Monmouth County and 40.1 for New Jersey.

Table 11: Population by Age

AGE RANGE	FREEHOLD BOROUGH	PERCENT	MONMOUTH COUNTY	PERCENT
Under 5 years	786	6.3	32,114	5.0
5 to 9 years	1,240	9.9	37,013	5.8
10 to 14 years	913	7.3	39,484	6.1
15 to 19 years	783	6.3	42,163	6.6
20 to 24 years	909	7.3	37,390	5.8
25 to 34 years	1,537	12.3	70,569	11.0
35 to 44 years	1,643	13.1	75,860	11.8
45 to 54 years	1,369	10.9	88,083	13.7
55 to 59 years	754	6.0	50,654	7.9
60 to 64 years	775	6.2	50,797	7.9
65 to 74 years	1,029	8.2	71,107	11.0
75 to 84 years	543	4.3	33,953	5.3
85 years and over	223	1.8	14,428	2.2
Median Age	35.4	(X)	43.2	(X)
Source: 5-Year American Community Survey, 2023, DP05				

Households

According to the US Census Bureau's classification system, people either live in a household, housing unit, or in "group quarters." Two types of "households" exist: family and non-family. A "household" consists of one or more persons living and eating together separately from other persons who may be in the same building. A "family" is a household with two or more related persons living together in the same housing unit. For the purposes of this analysis, household data is used.

Freehold Borough saw housing unit / household growth less than County trends, while the Borough has larger average household sizes. The number of single-member households decreased by over one-third, following County-wide trends.

Table 12: Population by Housing Type

	FREEHOLD BOROUGH			MONMOUTH COUNTY		
	2018	2023	% CHANGE	2018	2023	% CHANGE
Total Housing Units	4,469	4,437	-0.7	262,157	271,056	3.4
Total Households	4,108	4,270	3.9	236,327	252,995	7.1
Average Household Size (Owner)	2.59	2.70	4.2	2.77	2.66	-4.1
Average Household Size (Renter)	3.13	3.12	0.3	2.12	2.09	-1.4
Householders living alone	1,088	673	-38.1	61,528	38,560	-37.3
Source: 5-Year American Community Survey, 2018 & 2023, DP02, DP04						

Immigration

Foreign born residents make up 27.4% percent of Freehold Borough's population, which is higher than County (13.8%) and State (23.5%) levels. More than half of Freehold Borough's foreign-born residents are not U.S. citizens, comprising 15.1% of the overall Borough population, a larger share than that of Monmouth County (5.7%) and the State (10.2%).

Table 13: Residents Place of Birth

	FREEHOLD BOROUGH		MONMOUTH COUNTY		NEW JERSEY	
	COUNT	PERCENT	COUNT	PERCENT	COUNT	PERCENT
Total	12,504	100	642,799	100	9,267,014	100
Born in United States	8,496	67.9	545,192	84.8	6,849,548	73.9
Foreign Born	3,429	27.4	89,016	13.8	2,181,755	23.5
Foreign Born	3,429	100	89,016	100	2,181,755	100
Naturalized Citizen	1,541	44.9	52,318	58.8	1,241,100	56.9
Not a Citizen	1,888	55.1	36,698	41.2	940,655	43.1
Source: 5-Year American Community Survey, 2023, DP02						

Income and Poverty Status

The median household income for Freehold Borough grew dramatically from 2018 to 2023, growing 45.5% and far outpacing the County (18.4%) and the State (22.1%).

Table 14: Household Median Income

	2023	2018	INCREASE	% INCREASE
Freehold Borough	82,183	56,466	25,717	45.5
Monmouth County	118,008	99,642	18,366	18.4
New Jersey	99,781	81,740	18,041	22.1

Source: 5-Year American Community Survey, 2018 & 2023, S2503

In Freehold Borough, 1,727 residents (14.3%) live below the poverty line, a 9.8% decrease since 2018. In this regard, the Borough had a similar trajectory to Monmouth County, which experienced an 11.9% decrease over the same period. However, the poverty rate in the Borough remains over double that across the County.

Table 15: Poverty Status

FREEHOLD BOROUGH	2023	PERCENT	2018	PERCENT	CHANGE
Total Persons*	12,089	100	11,789	100	-
Total Below Poverty	1,727	14.3	1,897	16.1	-9.8
MONMOUTH COUNTY	2023	PERCENT	2018	PERCENT	CHANGE
Total Persons*	637,243	100	617,480	100	-
Total Below Poverty	40,984	6.4	45,873	7.4	-11.9

Source: 5-Year American Community Survey, 2018 & 2023, S1701
*For whom poverty status is determined.

D. Multigenerational Housing Continuity

The analysis in this section shall satisfy Part G of P.L.1985, c.222 (C.52:27D-310), which requires:

- G) "An analysis of the extent to which municipal ordinances and other local factors advance or detract from the goal of preserving multigenerational family continuity as expressed in the recommendations of the Multigenerational Family Housing Continuity Commission, adopted pursuant to paragraph (1) of subsection f. of section 1 of P.L.2021, c.273 (C.52:27D-329.20)."

On November 8, 2021, the Senate and General Assembly of the State of New Jersey adopted C.52:27D-329.20,⁷ which establishes the "Multigenerational Family Housing Continuity

⁷ <https://pub.njleg.gov/Bills/2020/AL21/273 .HTM>

Commission” for the purpose of conducting research, obtaining public input, and adopting recommendations on how to most effectively advance the goal of enhancing multigenerational family housing continuity, which can be defined broadly as the degree to which senior citizens are able to reside at the homes of their extended families.

In short, the bill requires a municipal housing plan element to provide an analysis of the extent to which municipal ordinances and other local factors advance or detract from the goal of preserving multigenerational family continuity, as expressed in the recommendations of the commission.

The municipality is committed to promoting intergenerational harmony through the provision of diverse housing options in a manner consistent with the regulation. As demonstrated in the above demographic and housing analysis, Freehold has responded to the needs of its generally younger population, increasing the quantity of owner-occupied and family housing units. To the benefit of residents across all life stages, Freehold enjoys its position as the Monmouth County seat, enjoying proximate access to a variety of public services – as well as access to regional services and amenities from half a dozen bus routes. Strategies proposed or already implemented include the creation of family housing. The municipality, in setting forth its compliance plan, is abiding by the limitations included in the statute.

E. Employment Data

The analysis in this section shall satisfy Part D of P.L.1985, c.222 (C.52:27D-310), which requires:

- C) *“An analysis of the existing and probable future employment characteristics of the municipality.”*

Below is a general prediction by NJTPA of Freehold Borough’s employment forecast, which is expected to grow to 4,235 in 2050, an increase of 19.6%. Local housing options and regional mobility will be important to support these new jobs.

Table 16: Employment Projection

YEAR	LABOR FORCE	CHANGE	ANNUALIZED % CHANGE
2015	3,541	-	
2050 (Predicted)	4,235	694	0.5
Source: NJTPA, "Appendix E - 2050 Demographic Forecasts"			

III. Fair Share Plan: Obligations and Compliance Plan for Round 3

The foregoing analysis was prepared for submission to the Superior Court on behalf of the Borough of Freehold in connection with the DJ Action and the New Jersey Supreme Court's March 10, 2015 decision In re Adoption of N.J.A.C. 5:96 & 5:97 by N.J. Council on Affordable Housing, 221 N.J. 1 (2015) ("Mount Laurel IV").

The Court's ruling created a judicial review process through which municipalities could secure approval of their Third Round plans by trial judges. The Court appointed judges to review declaratory judgment actions filed on the part of municipalities seeking a declaration that their Fair Share Plans, as may be supplemented, satisfy their constitutional obligation to plan and provide for their fair share of the region's affordable housing units.

Fair Share Obligation

The affordable housing obligation consists of the following components: The Prior Round Obligation (1987-1999), the Prospective Need Obligation (1999-2015), the Gap Period Obligation (2015-2025), and the Indigenous Need or "Rehabilitation Obligation." Collectively, the Gap and the Prospective Need for 2015-2025 are referred to as the Round 3 obligation.

The figures that are presented in the fair share obligations below have been derived from the 2018 Jacobson methodology. As defined by both COAH and the Court, municipal housing need is divided into three components:

Prior Round Obligation: 188

Rehabilitation Obligation: 287

Gap and Prospective Need: 112

Prior Round Obligation

COAH allocated to the Borough of Freehold a Prior Round Obligation of 188 credits for the period of 1987-1999, which was first determined in 1993 as part of Round Two. This obligation is addressed in the following table. As detailed in the following sections for the Third Round Prospective Need obligation, the Borough will apply credits from Third Round projects to address a Prior Round shortfall of 41 credits.

The Prior Round crediting regime is as follows:

- Habitat for Humanity

9 housing units have been the Borough at the following addresses (Blocks & Lots). Only one of those units was restricted for 30 years, so the Borough is claiming one credit:

- 91 Parker Street (Block 93, Lot 6)
- 2-7 E Street (Block 93, Lots 61-66)
- 108 Center Street (Block 69, Lot 3)

- 124 Center Street (Block 69, Lot 11)
- Supportive Housing / Group Homes

There are 6 existing group homes that the Borough is assigning to the Prior Round obligation. These homes contain a total of 20 bedrooms occupied by persons of low or very-low income. These 20 credits are supplemented by additional 20 bonus credits due to their status as rental units, giving Freehold 40 credits in total for these homes. These projects and credits are detailed in the below table.
- Rooming / Boarding Homes & Residential Health Care Facilities

As permitted for the Third Round, boarding homes and RHCFs are a prior round crediting option, and the Borough is applying 79 credits and 27 bonus credits as identified in the below table from existing developments.

Table 17: Prior Round Obligation

PROJECT, ADDRESS (BLOCK, LOT)	UNITS / CREDITS	RENTAL BONUS CREDITS
Habitat for Humanity (Existing – See Above)	1	0
Supportive Housing / Group Homes (Existing)		
ARC of Monmouth, 93 E. Main Street (B48, L22)	6	6
Lincoln Place development, 17 Lincoln Place (B80, L11)	5	5
Monmouth Homes 2002, Inc, 6 Crestwood Drive (B3.03, L9)	3	3
Community Enterprises Corporation, 39 Broad Street, Unit 20 (B34, L30.42)	1	1
Community Enterprises Corporation, 35 Broad Street, Unit 14 (B34, L30.614)	1	1
Sherriff Ave Development Inc, 27 Sherriff Street (B41, L8.01)	4	4
Rooming / Boarding Homes & RHCFs		
33 Lockwood Realty, 31-33 Lockwood Avenue (B47, L17)	7	7
Richardson Rooming House, 30 Avenue A (B7, L2)	7	4
Tony's Lodge, 113 Throckmorton Street (B37, L36)	16	16
Freehold Manor, 51 Broad Street (B34, L29)	20	0
83 Throckmorton Street (B37, L23)	5	0
27 Avenue C (B8, L8)	5	0
Golden Age Rest Home, 21 Hudson Street (B62, L27)	19	0
Total Prior Round Credits	100	47
Units Transferred from Third Round	41	
Total Prior Round Obligation	Required	Provided
	188	188

PROJECT, ADDRESS (BLOCK, LOT)	UNITS / CREDITS	RENTAL BONUS CREDITS
Max. Senior Units (25% of Obligation)	47	0
Min. Rental Units (25% of Obligation)	47	47
Max. Bonus Credits (Not to Exceed Rental Min.)	47	47

Present Need (Rehabilitation Share)

COAH defines “indigenous need” as “deficient housing units occupied by low- and moderate-income households within a municipality and is a component of “present need” under N.J.A.C. 5:93-1.3. In the Borough of Freehold, the rehabilitation obligation through the end of Round 3 (i.e. June 30, 2025) has been determined to be 287. The Borough’s efforts to meet its Rehabilitation Share includes participation in the Monmouth County rehabilitation program and the allocation of funding for qualified rehabilitation projects in the Borough’s Spending Plan.

The Borough plans to address this obligation through the continuation of its municipal Rehabilitation Program, currently being administered by the Borough’s Administrative Agent. Attached to the Element as Appendix H is a copy of the Borough’s current Rehabilitation Program Manual, which will be updated by the Administrative Agent once new UHAC Regulations are proposed and adopted.

Additionally, the Borough participates in the Monmouth County Home repair program, which provides deferred payment loans to low- and moderate- income homeowners throughout Monmouth County – including the Borough of Freehold – under federal funding and parameters from the US Department of Housing and Urban Development. A 10-year zero interest loan in the amount of assistance required for the rehabilitation work will be made to the homeowner by the County Division of Planning’s Fair Housing Office. The Home Improvement Program will market the available funds to qualified residents and vet residents to ensure they qualify and manage the repairs. The program will primarily serve owner-occupied units and address homes with lack of heat, lack of hot water, roof leaks, dangerous electrical problems, broken pipes, problems with sanitary facilities, and other housing conditions that threaten the health, safety, or well-being of the household members per COAH rules (N.J.A.C. 5:93). All rehabilitated units shall remain affordable to low- and moderate-income households for a period of at least 10 years (the control period). For owner-occupied units, the control period is enforced with a recorded lien; and for renter-occupied units, the control period is enforced with a recorded deed restriction.

Gap and Prospective Need*Consideration of Land Most Appropriate for Affordable Housing*

As part of this Fair Share Plan, the Borough has considered land that is appropriate for the construction of low- and moderate-income housing. The Borough has employed redevelopment tools and its mandatory set-aside through land use applications to provide affordable housing opportunities. These sites will meet the Borough's Third Round Gap and Prospective Need of 112.

Aside from the projects identified in the Housing Obligation and Credits tables below, no property owner or developer has offered a site for inclusion in the Borough's Housing Element and Fair Share Plan. The Borough believes that the mechanisms proposed in this document represent the best options for affordable housing in the Borough.

Table 18: Third Round Prospective Need Obligation

PROJECT, ADDRESS (BLOCK, LOT)	UNIT TYPE	UNITS / CREDITS	RENTAL BONUS CREDITS
Hometown Redevelopment 28-32 Broad Street, 51-61 Main Street (B35, L15-19, 23, 24, 26, 26.01, 26.02, 27-32)	Family Rental	60	30
200 Park Avenue (B117, L21)	Family Rental	9	4.5
2-6 Broad Street (B36, L5-7 & 9)	Family Rental	4	2
13 Broadway (B42, L10)	Supportive Needs	10	0
42 East Main Street (B62, L14)	Family	2	0
Total Third Round Credits		85	28 (Capped)
Credits Transferred to Between Rounds		-41 to Second Round +40 from Fourth Round	
Total Prior Round Obligation		Required	Provided
		112	112
Max. Non-Family Units (25% of Obligation)		28	10
Min. Family Units (50% of Obligation)		28	106
Max. Rental Bonus Credits (25% of Obligation)		28	28

Site Description and Suitability Analysis

Municipalities shall designate sites that are available, suitable, developable and approvable, as defined in N.J.A.C. 5:93-1. As such, the criteria for crediting units must meet the following:

1. “Available site” – a site with clear title, free of encumbrances which preclude development for low- and moderate-income housing.
2. “Suitable site” – a site that is adjacent to compatible land uses, has access to appropriate streets and is consistent with the environmental policies delineated in N.J.A.C. 5:93-4.
3. “Developable site” – a site that has access to appropriate water and sewer infrastructure, and is consistent with the applicable area wide water quality management plan (including the wastewater management plan) or is included in an amendment to the area wide water quality management plan submitted to and under review by DEP.
4. “Approvable site” – a site that may be developed for low- and moderate-income housing in a manner consistent with the rules or regulations of all agencies with jurisdiction over the site. A site may be approvable although not currently zoned for low- and moderate-income housing.

Table 19: Projects Description and Suitability Analysis, Third Round

PROJECT	DESCRIPTION
Hometown Redevelopment	Total Units: 400 Units Round Three LMI Units: 60 Units
<i>Description of Availability</i>	The site was designated an area in need of redevelopment with condemnation under criteria A, B, and D. Title nor other encumbrances were identified inhibiting redevelopment.
<i>Description of Suitable</i>	The site is unconstrained, has access to multiple streets, and is in a mixed-use area in the downtown core. The area is serviced by half a dozen NJ Transit bus routes at the adjacent Freehold Center bus terminal, in addition to proximate access to County and Borough services.
<i>Description of Developable</i>	The site is already serviced by municipal sewer and water infrastructure.
<i>Description of Approvable</i>	The Borough has adopted a redevelopment plan expressly to provide for this redevelopment, which is subject of an executed Redevelopment Agreement. Associated documents are included in Appendix E.
200 Park Avenue	Total Units: 52 Units Round Three LMI Units: 9 Units
<i>Description of Availability</i>	Site is owned by Applicant and free of encumbrances that would preclude affordable unit development.
<i>Description of Suitable</i>	Site has existing street access on Park Avenue in proximity to other residential and is in addition to proximity to downtown businesses, NJ Transit bus routes, and the Park Avenue Elementary School. No environmental features preclude development.
<i>Description of Developable</i>	The site is already serviced by municipal sewer and water infrastructure.
<i>Description of Approvable</i>	Application #PB-SP-2023-006 was approved by the Joint Land Use Board on September 27, 2023 (See Appendix E).
2-6 Broad Street	Total Units: 20 Units Round Three LMI Units: 4 Units
<i>Description of Availability</i>	The site was designated a non-condemnation area in need of redevelopment under criteria A, B, D, E, and H. Any issue of title is identified under criteria E is expressly sought to be resolved through redevelopment powers.
<i>Description of Suitable</i>	The site is unconstrained and is in a mixed-use area in the downtown core. The site is serviced by half a dozen NJ Transit bus routes at the nearby Freehold Center bus terminal, in addition to proximate access to County and Borough services.
<i>Description of Developable</i>	The site is already serviced by municipal sewer and water infrastructure.

PROJECT	DESCRIPTION
<i>Description of Approvable</i>	The Borough has adopted a redevelopment plan expressly to provide for this redevelopment, which is attached in Appendix E.
13 Broadway	Total Units: 10 Bedrooms Round Three LMI Units: 10 Bedrooms
<i>Description of Availability</i>	Site is owned and operated by Applicant and free of encumbrances that would preclude affordable unit development.
<i>Description of Suitable</i>	Site has existing street access on Broadway in proximity to other residential uses, as well as to downtown businesses, NJ Transit bus routes, and the Park Avenue Elementary School. No environmental features preclude development.
<i>Description of Developable</i>	The site is already serviced by municipal sewer and water infrastructure.
<i>Description of Approvable</i>	Application #PB-UV-2025-002 was approved by the Joint Land Use Board on May 28, 2025 as Class C Boarding House, which is defined as a Supportive Needs type of affordable housing under N.J.A.C. 5:97-4.3(c)1.i (See Appendix E).
42 East Main Street	Total Units: 10 Units Round Three LMI Units: 2 Units
<i>Description of Availability</i>	Site is owned by Applicant and free of encumbrances that would preclude affordable unit development.
<i>Description of Suitable</i>	The site is unconstrained and is in a mixed-use area in the downtown core. The site is serviced by half a dozen NJ Transit bus routes at the nearby Freehold Center bus terminal, in addition to proximate access to County and Borough services.
<i>Description of Developable</i>	The site is already serviced by municipal sewer and water infrastructure.
<i>Description of Approvable</i>	Under the Center Core Rehabilitation Plan, the Applicant received approval from the Borough Council, acting as redevelopment entity, via Resolution No. 192-24 on September 3, 2024. Further land use and zoning approvals shall follow as needed.

Additional Compliance Mechanisms

- Development Fee Ordinance – Section 19.01.210 (adopted via Ordinance #2020/1 on February 3, 2020)
- Inclusionary Zoning Ordinance – Section 19.01.050.E (adopted via Ordinance #2020/1 on February 3, 2020), providing a 20% for-sale and 15% rental affordable housing set-aside requirement for any residential or mixed-use development with five or more housing units in the Borough.

IV. Fair Share Plan: Obligations and Compliance Plan for Round 4

A. Introduction and Fourth Round Changes

As stated in the History of New Jersey Affordable Housing section of this Plan, New Jersey's Fourth Round methodology of calculating and fulfilling municipal obligations is set forth in the Law under a new system. The housing need obligations discussed herein consist of the following components: Prior Round Compliance; Indigenous Need, Present Need or "Rehabilitation Obligation;" and the "Prospective Need."

The figures that are presented in the fair share obligations below have been derived from were adopted by the Borough via Resolution 39-25 on January 21, 2025 (See Appendix C). Under the Resolution, the Borough Present Need or "Rehabilitation Obligation" is 270 credits, and the "Prospective Need" is 49 credits.

The purpose of this section of the Plan is to set forth the Borough's proposed approach to satisfying its Round 4 obligation.

Importantly, the Law sets forth opportunities for bonus credits. These credits include:

- a. One (1) bonus credit for special needs or permanent supportive housing;
- b. One (1) bonus credit for 100% affordable housing projects for which the host municipality has contributed towards the cost of the project, subject to certain minimum contribution requirements;
- c. One (1) bonus credit for market rate units that are converted to affordable units;
- d. One-half (0.5) bonus credit for ownership units created in a partnership sponsorship with a non-profit housing developer;
- e. One-half (0.5) bonus credit for units located within a one-half mile radius (or a one-mile radius for projects located in a Garden State Growth Zone) of NJ Transit or Port Authority rail, bus, or ferry stations, including all light rail stations;
- f. One-half (0.5) bonus credit for age-restricted units, subject to certain caps;
- g. One-half (0.5) bonus credit for each three-bedroom unit in excess of the three-bedroom requirements set forth in the Uniform Housing Affordability Controls;
- h. One-half (0.5) bonus credit for housing units constructed on previously developed land that was utilized for retail, office, or commercial space; and
- i. One-half (0.5) bonus credit for units whose affordability controls are extended for a new term of affordability;

Municipalities will also be restricted to only claim one type of bonus credit per affordable unit. Such bonus credits may only satisfy 25% of their Fourth Round obligation.

B. Present and Prospective Need Obligation (2025-2035)

The analysis in this section shall satisfy Part E of P.L.1985, c.222 (C.52:27D-310), which requires:

- E) *“A determination of the municipality's present and prospective fair share for low- and moderate-income housing and its capacity to accommodate its present and prospective housing needs, including its fair share for low- and moderate-income housing, as established pursuant to section 3 of P.L.2024, c.2 (C.52:27D-304.1)”*

Present Need (Rehabilitation Share)

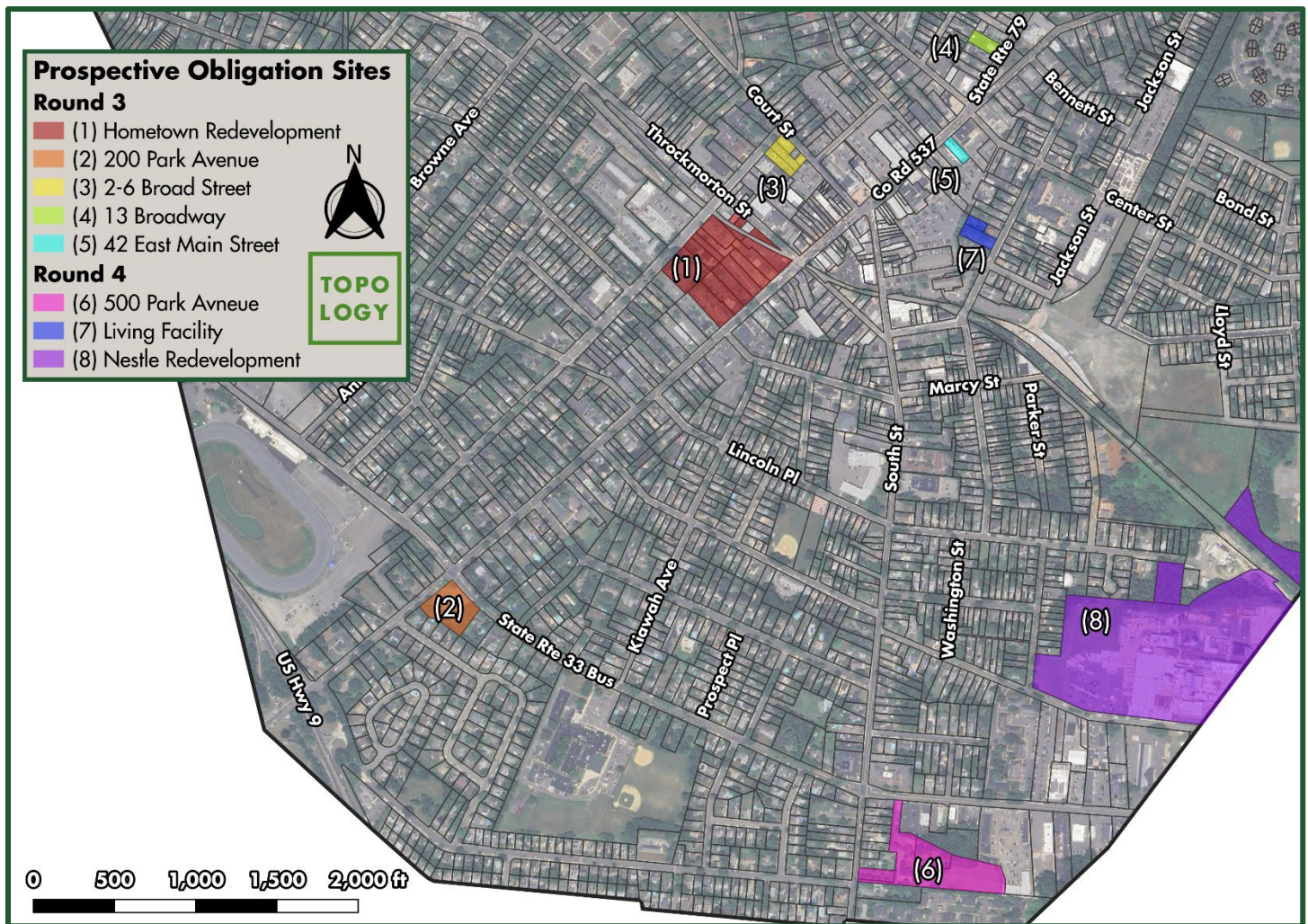
The Rehabilitation Share is described as “deficient housing units occupied by low- and moderate-income households within a municipality and is a component of “present need” under N.J.A.C. 5:93-1.3. In Freehold, the rehabilitation obligation through the end of the Fourth Round (i.e. July 2035) has been determined to be 270. The Borough plans to address this obligation through the continuation of its municipal Rehabilitation Program, currently being administered by the Borough’s Administrative Agent. Attached to the Plan as Appendix H is a copy of the Borough’s current Rehabilitation Program Manual, which will be updated by the Administrative Agent once new UHAC Regulations are proposed and adopted.

Additionally, the Borough participates in the Monmouth County Home repair program, which provides deferred payment loans to low- and moderate- income homeowners throughout Monmouth County – including the Borough of Freehold – under federal funding and parameters from the US Department of Housing and Urban Development. A 10-year zero interest loan in the amount of assistance required for the rehabilitation work will be made to the homeowner by the County Division of Planning’s Fair Housing Office. The Home Improvement Program will market the available funds to qualified residents and vet residents to ensure they qualify and manage the repairs. The program will primarily serve owner-occupied units and address homes with lack of heat, lack of hot water, roof leaks, dangerous electrical problems, broken pipes, problems with sanitary facilities, and other housing conditions that threaten the health, safety, or well-being of the household members per COAH rules (N.J.A.C. 5:93). All rehabilitated units shall remain affordable to low- and moderate-income households for a period of at least 10 years (the control period). For owner-occupied units, the control period is enforced with a recorded lien; and for renter-occupied units, the control period is enforced with a recorded deed restriction.

Prospective Need Obligation

The Borough has a Fourth Round prospective need of 49. The Borough will satisfy this obligation of 49 through the following projects:

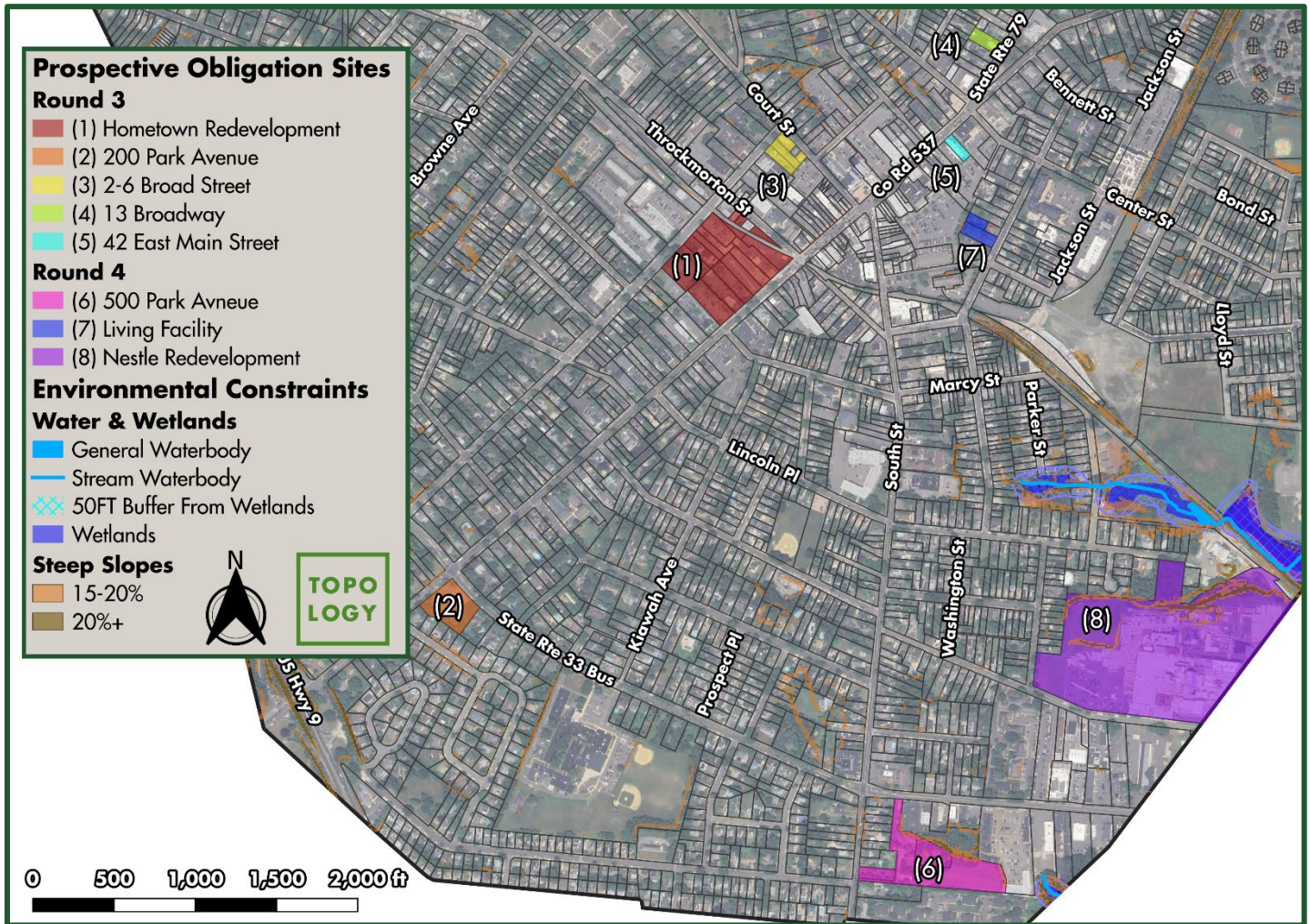
Figure 3: Prospective Need Projects Maps



Prospective Need Projects Description and Suitability Analysis

Municipalities shall designate sites that are available, suitable, developable and approvable, as defined in N.J.A.C. 5:93-1. As such, the criteria for crediting units must meet the following:

1. "Available site" – a site with clear title, free of encumbrances which preclude development for low- and moderate-income housing.
2. "Suitable site" – a site that is adjacent to compatible land uses, has access to appropriate streets and is consistent with the environmental policies delineated in N.J.A.C. 5:93-4.

Figure 4: Prospective Need Projects Map – Environmental Constraints

3. “Developable site” – a site that has access to appropriate water and sewer infrastructure, and is consistent with the applicable area wide water quality management plan (including the wastewater management plan) or is included in an amendment to the area wide water quality management plan submitted to and under review by DEP.
4. “Approvable site” – a site that may be developed for low- and moderate-income housing in a manner consistent with the rules or regulations of all agencies with jurisdiction over the site. A site may be approvable although not currently zoned for low- and moderate-income housing.

Table 20: Projects Description and Suitability Analysis, Fourth Round

PROJECT	DESCRIPTION
500 Park Avenue	Total Units: 168 Units Round Four LMI Units: 28 Units
<i>Description of Availability</i>	Site is under common ownership and free of encumbrances that would preclude affordable unit development.
<i>Description of Suitable</i>	Site has existing street access on Park Avenue and South Street in proximity to residential, multifamily, and commercial uses; NJ Transit bus stops, and the Park Avenue Elementary School. Modest steep slopes on the periphery of the site do not preclude development.
<i>Description of Developable</i>	The site is already serviced by municipal sewer and water infrastructure.
<i>Description of Approvable</i>	A redevelopment plan will be prepared for the site under the Borough-wide area in need of rehabilitation designation.
Living Facility	Total Units: 18 Bedrooms (Supportive) Round Four LMI Units: 18 Bedrooms
<i>Description of Availability</i>	Site is under common ownership and is free of encumbrances that would preclude affordable unit development.
<i>Description of Suitable</i>	The site is unconstrained and is in a residential area proximate to the downtown core. The site is serviced by half a dozen NJ Transit bus routes at the nearby Freehold Center bus terminal, in addition to proximate access to County and Borough services.
<i>Description of Developable</i>	The site is already serviced by municipal sewer and water infrastructure.
<i>Description of Approvable</i>	As a supportive needs community residence, the development is subject to treatment as a single-family use for the purposes of land use approvals pursuant to N.J.S.A. 40:55D-66.1.
Nestle Redevelopment	Total Units: 31 Units Round Four LMI Units: 31 Units
<i>Description of Availability</i>	Site is under common ownership and is free of encumbrances of title that would preclude affordable unit development.
<i>Description of Suitable</i>	Site access is provided from several municipal roads. Steep slopes are limited to the periphery of the main portion. Groundwater contamination is present, remediation of which is an ongoing obligation of Nestle. The Borough will work with Nestle and/or a prospective redeveloper to identify unencumbered areas of the site or otherwise coordinate remediation to residential standards for those areas to be used for residential development.
<i>Description of Developable</i>	The site is already serviced by municipal sewer and water infrastructure.
<i>Description of Approvable</i>	The existing redevelopment plan will be amended to provide for the required 29 affordable units on the site.

Land Most Appropriate for Affordable Housing

The analysis in this section shall satisfy Part F of P.L.1985, c.222 (C.52:27D-310), which requires:

- F) “A consideration of the lands that are most appropriate for construction of low- and moderate-income housing and of the existing structures most appropriate for conversion to, or rehabilitation for, low- and moderate-income housing, including a consideration of lands of developers who have expressed a commitment to provide low- and moderate-income housing”

As part of this Fair Share Plan, the Borough has considered land that is appropriate for the construction of low- and moderate-income housing. As noted above, the Borough can satisfy its prospective need through on-going projects, actively proceeding concept plans, and a forthcoming redevelopment plan. The Borough believes that the approach set forth in this document represents the best approach to satisfying the requirements of the Amended Law. While the Borough acknowledges that developers may express interest in proposing projects that include low- or moderate-income housing, the Borough’s position is that no additional projects are required to satisfy its prospective or present need. However, such additional projects that may come forward would provide further opportunities for affordable housing development in the Borough.

Notwithstanding this position, the sites discussed above are not the only areas in town where low- and moderate-income housing is permitted to be built. In addition the Third Round unmet need mechanism to permit downtown residential units in the B-2 Zoning District, the Borough already maintains several zoning districts throughout Freehold that permit a variety of multifamily developments. This approach, while grounded in recommendations and vision set forth by the municipality’s master plan, is also consistent with the findings set forth in the Law, namely that: “comprehensive planning in alignment with smart growth principles, and the State Development and Redevelopment Plan” is critical to meeting the housing needs of the State.

Table 21: Fourth Round Prospective Obligation Compliance Summary

PROJECT, ADDRESS (BLOCK, LOT)	OWNER-SHIP	UNITS	AH UNITS	AH TYPE	BONUS CREDITS	BONUS TYPE
500 Park Avenue (B110, L7.01, 8, & 8.01)	Rental	168	28	Family	14	TOD
Living Facility, 21 Hudson Street (B62, L26.01 & 27)	Rental	18	18	Permanent Supportive Housing	18	Permanent Supportive Housing
Nestle Redevelopment (B93, L1.02 & 50)	Rental	31	31	Family	15.5	RDV TOD
Grand Total: 89 Credits Produced – 40 Credits Transferred to 3rd Round = 49 Credits		217	77	N/A	12 (capped)	N/A
TOD = Transit-Oriented Development RDV = Nonresidential Redevelopment						

Table 22: Mandatory Obligation Subsets

Below is a table reviewing additional obligation requirement thresholds.

MANDATORY OBLIGATIONS	CITATION	# REQUIRED OF ACTUAL UNITS*	PROPOSED
Very Low-Income Units (13% Minimum) <i>Shall count towards the minimum 50 percent of the housing units required to be made available for occupancy by low-income households to address a municipality's prospective need obligation.</i>	52:27D-329.1	7	7
Family VLI Units (50% Minimum of VLI Units)	52:27D-329.1	4	4
Low-Income Units (50% Minimum) <i>Conversely, the maximum of Moderate-Income Units shall not exceed 50%.</i>	52:27D-329.1	25	25
Family Units (50% Minimum)	52:27D-311.l	25	59
Rental Units (25% Minimum)	52:27D-311.l	13	77
Family Rental Units (50% Minimum of Rental Units)	52:27D-311.k.5	7	59
Age-restricted units (30% Maximum)	52:27D-302.q	14	0
Transitional Housing (10% Maximum of Total Credits)	52:27D-311.e	4	0
Age-Restricted Housing Bonus Credit (10% Maximum of Age-Restricted Units)	52:27D-311.k.4	N/A No Age-Restricted Units	
<i>*Except where otherwise noted, actual units do not count bonus credits. In other words, to address the adjusted Prospective Need of 49 credits with bonus credits of 0.5 credits / unit, 33 units are required (33 + 0.5 * 33 = 49.5, 49.5 > 13). Note: Maximum bonus credits shall not exceed 25% of Prospective Need per NJSA 52:27D-311.k. Note: Proposed values in italics are targets based on required units and will be enforced throughout the Fourth Round as part of site plan review and approval.</i>			

V. Appendices

- A. Spending Plan
- B. Affirmative Marketing Plan
- C. Regulatory Resolutions (Adopting Obligation Number)
- D. Affordable Housing Ordinance and Development Fee Ordinance
- E. Prospective Obligation Plans & Compliance Mechanisms
- F. Resolution of intent to fund cost of municipality's municipally sponsored affordable housing development as well as its rehabilitation program
- G. Copies of resolutions appointing Administrative Agent(s) and ordinance creating the position of and appointing the Municipal Affordable Housing Liaison
- H. Borough Home Improvement Program – Policies and Procedures Manual

Appendix A – Spending Plan

NOTE: Freehold Borough will update its spending plan when the final forthcoming amendments to UHAC have been adopted.

Appendix B – Affirmative Marketing Plan

NOTE: The current Freehold Borough Affirmative Marketing Plan is inconsistent with current UHAC regulations but was approved for the Third Round. The Affirmative Marketing Plan will be updated when the final UHAC amendments have been adopted.

Appendix C – Regulatory Resolutions (Adopting Obligation Number)

OFFERED BY: REICH					SECONDED BY: FRIEDMAN				
	AYE	NAY	ABSENT	ABSTAIN		AYE	NAY	ABSENT	ABSTAIN
DI BENEDETTO	X				REICH	X			
FRIEDMAN	X				ROGERS	X			
JORDAN	X				SHUTZER	X			

I, TRACI L. DIBENEDETTO, CLERK OF THE BOROUGH OF FREEHOLD, DO HEREBY CERTIFY THE FOLLOWING RESOLUTION WAS ADOPTED BY THE MAYOR AND COUNCIL OF THE BOROUGH OF FREEHOLD AT A MEETING HELD ON JANUARY 21, 2025.


TRACI L. DI BENEDETTO, RMC
BOROUGH CLERK

Resolution No. 39-25
Agenda #2/2025

**RESOLUTION ADOPTING THE NEW JERSEY
DEPARTMENT OF COMMUNITY AFFAIRS'
CALCULATION OF THE BOROUGH OF FREEHOLD'S
FOURTH ROUND PRESENT AND PROSPECTIVE NEED
AFFORDABLE HOUSING OBLIGATIONS**

WHEREAS, the Borough of Freehold, County of Monmouth (the "Borough") is a public body corporate and politic of the State of New Jersey; and

WHEREAS, on March 20, 2024, Governor Murphy signed into law P.L. 2024, c. 2 (the "Act"), which established a new framework for determining and enforcing municipalities' affordable housing obligations under the New Jersey Supreme Court's *Mount Laurel* doctrine and the State of New Jersey's Fair Housing Act; and

WHEREAS, *N.J.S.A. 52:27D-304.1(c)* of the Act provides that prior to the beginning of each new 10-year round of affordable housing obligations beginning with the Fourth Round on July 1, 2025, the State of New Jersey's Department of Community Affairs (the "DCA") is tasked with determining municipal present and prospective need in accordance with the formulas established at *N.J.S.A. 52:27D-304.2* and *N.J.S.A. 52:27D-304.3*; and

WHEREAS, *N.J.S.A. 52:27D-304.1(d)* further provides that the DCA is required to prepare and submit a report to the Governor and Legislature on the calculations of such municipal obligations by October 20, 2024; and

WHEREAS, in accordance with the requirements of the Act, on October 18, 2024, the DCA provided a report setting forth its non-binding calculations of municipalities' present and prospective need for affordable housing for the Fourth Round using the formulas set forth at *N.J.S.A. 52:27D-304.2* and *N.J.S.A. 52:27D-304.3* (the "Report"); and

WHEREAS, the Report determined the Borough's present need obligation to be 270 units and its prospective need obligation to be 49 units; and

WHEREAS, *N.J.S.A. 52:27D-304.1(f)* provides that the Borough is required to determine its present and prospective fair share obligation for affordable housing in accordance with the formulas established at *N.J.S.A. 52:27D-304.2* and *N.J.S.A. 52:27D-304.3* and adopt a housing element and fair share plan based on this determination (as may be adjusted by the Affordable Housing Dispute Resolution Program (the "Program") in accordance with the Act); and

WHEREAS, for the Fourth Round of affordable housing obligations, this determination of present and prospective fair share obligation is required to be made by binding resolution no later than January 31, 2025; and

WHEREAS, the Borough accepts the DCA present and prospective need obligations of 270 units and 49 units, respectively, for the Borough as calculated in the Report and wishes to adopt these calculations as the determination of the Borough's Fourth Round affordable housing obligation, subject to any vacant land and/or durational adjustment it may seek as part of the Housing Element and Fair Share Plan it subsequently submits in accordance with the Act; and

WHEREAS, notwithstanding the foregoing, the Act's future is uncertain at this stage due to ongoing litigation, and accordingly, the Borough also reserves its right to review and revise its Fourth Round affordable housing obligation calculations in the event the Act should be amended or overturned; and

WHEREAS, in addition to the above, the Acting Administrative Director issued Directive #14-24, dated December 13, 2024, and made the directive available later in the week that followed; and

WHEREAS, pursuant to Directive #14-24, a municipality seeking a certification of compliance with the Act shall file an action in the form of a declaratory judgment complaint in the county in which the municipality is located within 48 hours after adoption of the municipal resolution of fair share obligations, or by February 3, 2025, whichever is sooner"; and

WHEREAS, the Borough seeks a certification of compliance with the Act and, therefore, directs its Affordable Housing Counsel to file a declaratory judgment action with the Program within 48 hours of the adoption of this Resolution in Monmouth County.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and the Council of the Borough of Freehold, County of Monmouth, State of New Jersey as follows:

1. The aforementioned recitals are incorporated herein as though fully set forth at length.
2. The Borough accepts and adopts the DCA present and prospective need obligations of 270 units and 49 units, respectively for the Borough as calculated in the Report and adopts these calculations as the determination of its Fourth Round affordable housing obligation, subject to any vacant land and/or durational adjustment it may

seek as part of the Housing Element and Fair Share Plan it subsequently submits in accordance with the Act.

3. The Borough reserves its right to review and revise its Fourth Round affordable housing obligation calculations in the event the Act should be overturned or amended.
4. The Borough's Affordable Housing Counsel shall file a declaratory judgment action with the Program no later than 48 hours following adoption of this Resolution, in accordance with the requirements of the Act. A certified copy of this Resolution shall be included with such filing.
5. A copy of this Resolution shall be posted on Borough's website.
6. This Resolution will take effect immediately.

Appendix D – Affordable Housing and Development Fee Ordinance

Freehold, New Jersey, Code of Ordinances
Title 19 AFFORDABLE HOUSING

Title 19

AFFORDABLE HOUSING

Chapters:

Chapter 19.01 GENERAL PROVISIONS

19.01.010 Definitions.

The following words and terms when used in this chapter shall have the meanings given in this section:

"Act" means the Fair Housing Act of 1985, P.L. 1985, c. 222 (N.J.S.A. 52:27D-301 et seq.)

"Adaptable" means constructed in compliance with the technical design standards of the Barrier Free Subcode, N.J.A.C. 5:23-7.

"Administrative agent" means the entity designated by the borough to administer affordable units in accordance with this chapter, N.J.A.C. 5:93, and UHAC (N.J.A.C. 5:80-26).

"Affirmative marketing" means a regional marketing strategy designed to attract buyers and/or renters of affordable units pursuant to N.J.A.C. 5:80-26.15.

"Affordability" average means the average percentage of median income at which new restricted units in an affordable housing development are affordable to low- and moderate-income households.

"Affordable" means a sales price or rent level that is within the means of a low-or moderate-income household as defined within N.J.A.C. 5:93-7.4, and, in the case of an ownership unit, that the sales price for the unit conforms to the standards set forth in N.J.A.C. 5:80-26.6, as may be amended and supplemented, and, in the case of a rental unit, that the rent for the unit conforms to the standards set forth in N.J.A.C. 5:80-26.12, as may be amended and supplemented.

"Affordable housing development" means a development included in or approved pursuant to the Housing Element and Fair Share Plan or otherwise intended to address the borough's fair share obligation, and includes, but is not limited to, an inclusionary development, a municipal construction project or a one hundred (100) percent affordable housing development.

"Affordable housing program(s)" means any mechanism in a municipal fair share plan prepared or implemented to address a municipality's fair share obligation.

"Affordable unit" means a housing unit proposed or created pursuant to the Act and approved for crediting by the court and/or funded through an affordable housing trust fund.

"Age-restricted unit" means a housing unit designed to meet the needs of, and exclusively for, the residents of an age-restricted segment of the population such that: 1) all the residents of the development wherein the unit is situated are sixty-two (62) years of age or older; or 2) at least eighty (80) percent of the units are occupied by one person who is fifty-five (55) years of age or older; or 3) the development has been designated by the Secretary of the U.S. Department of Housing and Urban Development as "housing for older persons" as defined in Section 807(b)(2) of the Fair Housing Act, 42 U.S.C. § 3607.

"Agency" means the New Jersey Housing and Mortgage Finance Agency established by P.L. 1983, c. 530 (N.J.S.A. 55:14K-1, et seq.).

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"Alternative living arrangement" means a structure in which households live in distinct bedrooms, yet share kitchen and plumbing facilities, central heat and common areas. Alternative living arrangements include, but are not limited to: transitional facilities for the homeless; Class A, B, C, D and E boarding homes as regulated by the State of New Jersey Department of Community Affairs; residential health care facilities as regulated by the New Jersey Department of Health; group homes for the developmentally disabled and mentally ill as licensed and/or regulated by the New Jersey Department of Human Services; and congregate living arrangements.

"Assisted living residence" means a facility that is licensed by the New Jersey Department of Health and Senior Services to provide apartment-style housing and congregate dining and to assure that assisted living services are available when needed for four or more adult persons unrelated to the proprietor and that offers units containing, at a minimum, one unfurnished room, a private bathroom, a kitchenette and a lockable door on the unit entrance.

"Certified household" means a household that has been certified by an administrative agent as a low-income household or moderate-income household.

"COAH" means the Council on Affordable Housing, as established by the New Jersey Fair Housing Act (N.J.S.A. 52:27D-301, et seq.).

"DCA" means the State of New Jersey Department of Community Affairs.

"Deficient housing unit" means a housing unit with health and safety code violations that requires the repair or replacement of a major system. A major system includes weatherization, roofing, plumbing (including wells), heating, electricity, sanitary plumbing (including septic systems), lead paint abatement and/or load bearing structural systems.

"Developer" means any person, partnership, association, company or corporation that is the legal or beneficial owner or owners of a lot or any land included in a proposed development including the holder of an option to contract to purchase, or other person having an enforceable proprietary interest in such land.

"Development" means the division of a parcel of land into two or more parcels, the construction, reconstruction, conversion, structural alteration, relocation, or enlargement of any use or change in the use of any building or other structure, or of any mining, excavation or landfill, and any use or change in the use of any building or other structure, or land or extension of use of land, for which permission may be required pursuant to N.J.S.A. 40:55D-1, et seq.

"Inclusionary development" means a development containing both affordable units and market rate units. This term includes, but is not limited to: new construction, the conversion of a non-residential structure to residential use and the creation of new affordable units through the gut rehabilitation or reconstruction of a vacant residential structure.

"Low-income household" means a household with a total gross annual household income equal to fifty (50) percent or less of the median household income.

"Low-income unit" means a restricted unit that is affordable to a low-income household.

"Major system" means the primary structural, mechanical, plumbing, electrical, fire protection, or occupant service components of a building which include but are not limited to, weatherization, roofing, plumbing (including wells), heating, electricity, sanitary plumbing (including septic systems), lead paint abatement and load bearing structural systems.

"Market-rate units" means housing not restricted to low- and moderate-income households that may sell or rent at any price.

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"Median income" means the median income by household size for the applicable housing region, as adopted annually by COAH, the court, or a successor entity approved by the court.

"Moderate-income household" means a household with a total gross annual household income in excess of fifty (50) percent but less than eighty (80) percent of the median household income.

"Moderate-income unit" means a restricted unit that is affordable to a moderate-income household.

"Multifamily unit" means a structure containing five or more dwelling units.

"Municipal housing liaison" shall mean the employee charged by the governing body with the responsibility for oversight and administration of the affordable housing program for the Borough of Freehold.

"Non-exempt sale" means any sale or transfer of ownership other than the transfer of ownership between husband and wife; the transfer of ownership between former spouses ordered as a result of a judicial decree of divorce or judicial separation, but not including sales to third parties; the transfer of ownership between family members as a result of inheritance; the transfer of ownership through an executor's deed to a class A beneficiary and the transfer of ownership by court order.

"Random selection process" means a process by which currently income-eligible households are selected for placement in affordable housing units such that no preference is given to one applicant over another except for purposes of matching household income and size with an appropriately priced and sized affordable unit (e.g., by lottery).

"Regional asset limit" means the maximum housing value in each housing region affordable to a four-person household with an income at eighty (80) percent of the regional median as defined by duly adopted regional income limits published annually by COAH, the court, or a successor entity.

"Rehabilitation" means the repair, renovation, alteration or reconstruction of any building or structure, pursuant to the Rehabilitation Subcode, N.J.A.C. 5:23-6.

"Rent" means the gross monthly cost of a rental unit to the tenant, including the rent paid to the landlord, as well as an allowance for tenant-paid utilities computed in accordance with allowances published by DCA for its Section 8 program. In assisted living residences, rent does not include charges for food and services.

"Restricted unit" means a dwelling unit, whether a rental unit or an ownership unit, that is subject to the affordability controls of N.J.A.C. 5:80-26.1, as amended and supplemented, but does not include a market-rate unit financed under the Urban Home Ownership Recovery Program (UHORP) or Market Oriented Neighborhood Investment Program (MONI).

"UHAC" means the Uniform Housing Affordability Controls set forth in N.J.A.C. 5:80-26, et seq.

"Very low-income household" means a household with a total gross annual household income equal to thirty (30) percent or less of the median household income for the applicable housing region.

"Very low-income unit" means a restricted unit that is affordable to a very low-income household.

"Weatherization" means building insulation (for attic, exterior walls and crawl space), siding to improve energy efficiency, replacement storm windows, replacement storm doors, replacement windows and replacement doors, and is considered a major system for purposes of a rehabilitation program.

(Ord. No. 2020/1, § I, 2-3-20)

Freehold, New Jersey, Code of Ordinances
Title 19 AFFORDABLE HOUSING

19.01.020 Applicability.

- A. The provisions of this chapter shall apply to all affordable housing developments and affordable housing units that currently exist and that are proposed to be created within the Borough of Freehold pursuant to the borough's most recently adopted housing element and fair share plan.
- B. In addition, any property in the Borough of Freehold that is currently zoned for non-residential uses and that is subsequently rezoned for residential purposes or receives a zoning change or a use variance to permit residential development, or receives a zoning change or a density variance to permit higher density residential development, and provided such residential development provides a sufficient compensatory benefit in terms of the density of development permitted, shall provide an affordable housing set-aside as set forth in section 19.01.040.E. The determination of a "sufficient compensatory benefit" shall be made by the reviewing authority based upon prevailing legislation and/or case law.
- C. The following sections shall apply to all developments that contain very-low, low-and moderate-income housing units, including any currently unanticipated future developments that will provide very-low, low-and moderate-income housing units.

(Ord. No. 2020/1, § I, 2-3-20)

19.01.030 Alternative living arrangements.

- A. The administration of an alternative living arrangement shall be in compliance with N.J.A.C. 5:93-5.8 and UHAC, with the following exceptions:
 - 1. Affirmative marketing (N.J.A.C. 5:80-26.15), provided, however, that the units or bedrooms may be affirmatively marketed by the provider in accordance with an alternative plan approved by COAH or the court;
 - 2. Affordability average and bedroom distribution (N.J.A.C. 5:80-26.3).
- B. With the exception of units established with capital funding through a twenty (20) year operating contract with the department of human services, division of developmental disabilities, alternative living arrangements shall have at least thirty (30) year controls on affordability in accordance with UHAC, unless an alternative commitment is approved by COAH or the court.
- C. The service provider for the alternative living arrangement shall act as the administrative agent for the purposes of administering the affirmative marketing and affordability requirements for the alternative living arrangement.

(Ord. No. 2020/1, § I, 2-3-20)

19.01.040 Phasing schedule for inclusionary zoning.

In inclusionary developments the following schedule shall be followed:

Maximum Percentage of Market-Rate Units Completed	Minimum Percentage of Low- and Moderate-Income Units Completed
25	0
25+1	10
50	50
75	75
90	100

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Title 19 AFFORDABLE HOUSING

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(Ord. No. 2020/1, § I, 2-3-20)

19.01.050 New construction.

A. Low/Moderate Split and Bedroom Distribution of Affordable Housing Units.

1. The fair share obligation shall be divided equally between low- and moderate-income units, except that where there is an odd number of affordable housing units, the extra unit shall be a low-income unit. At least thirteen (13) percent of all restricted rental units shall be very low-income units (affordable to a household earning thirty (30) percent or less of median income). The very low-income units shall be counted as part of the required number of low income units within the development. At least twenty-five (25) percent of the obligation shall be met through rental units, including at least half in rental units available to families. A maximum of twenty-five (25) percent may be age restricted. At least half of the units in total shall be available to families.
2. In each affordable development, at least fifty (50) percent of the restricted units within each bedroom distribution shall be low-income units.
3. Affordable developments that are not age-restricted shall be structured in conjunction with realistic market demands such that:
 - a. The combined number of efficiency and one-bedroom units shall be no greater than twenty (20) percent of the total low- and moderate-income units;
 - b. At least thirty (30) percent of all low- and moderate-income units shall be two-bedroom units;
 - c. At least twenty (20) percent of all low- and moderate-income units shall be three-bedroom units; and
 - d. The remaining units may be allocated among two- and three-bedroom units at the discretion of the developer.
4. Affordable developments that are age-restricted shall be structured such that the number of bedrooms shall equal the number of age-restricted low- and moderate-income units within the inclusionary development. This standard may be met by having all one-bedroom units or by having a two-bedroom unit for each efficiency unit.

B. Accessibility Requirements.

1. The first floor of all restricted townhouse dwelling units and all restricted units in all other multistory buildings shall be subject to the technical design standards of the Barrier Free SubCode, N.J.A.C. 5:23-7 and the following:
2. All restricted townhouse dwelling units and all restricted units in other multistory buildings in which a restricted dwelling unit is attached to at least one other dwelling unit shall have the following features:
 - a. An adaptable toilet and bathing facility on the first floor; and
 - b. An adaptable kitchen on the first floor; and
 - c. An interior accessible route of travel on the first floor; and
 - d. An adaptable room that can be used as a bedroom, with a door or the casing for the installation of a door, on the first floor; and

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- e. If not all of the foregoing requirements in B.1. through B.4. can be satisfied, then an interior accessible route of travel must be provided between stories within an individual unit, but if all of the terms of paragraphs B.1. through B.4. above have been satisfied, then an interior accessible route of travel shall not be required between stories within an individual unit; and
 - f. An accessible entranceway as set forth at P.L. 2005, c. 350 (N.J.S.A. 52:27D-311a, et seq.) and the Barrier Free SubCode, N.J.A.C. 5:23-7, or evidence that Freehold has collected funds from the developer sufficient to make ten (10) percent of the adaptable entrances in the development accessible:
 - i. Where a unit has been constructed with an adaptable entrance, upon the request of a person with disabilities who is purchasing or will reside in the dwelling unit, an accessible entrance shall be installed.
 - ii. To this end, the builder of restricted units shall deposit funds within the Borough of Freehold's Affordable Housing Trust Fund sufficient to install accessible entrances in ten (10) percent of the affordable units that have been constructed with adaptable entrances.
 - iii. The funds deposited under paragraph 2.f. above shall be used by the Borough of Freehold for the sole purpose of making the adaptable entrance of an affordable unit accessible when requested to do so by a person with a disability who occupies or intends to occupy the unit and requires an accessible entrance.
 - iv. The developer of the restricted units shall submit a design plan and cost estimate to the construction official of the Borough of Freehold for the conversion of adaptable to accessible entrances.
 - v. Once the construction official has determined that the design plan to convert the unit entrances from adaptable to accessible meet the requirements of the Barrier Free SubCode, N.J.A.C. 5:23-7, and that the cost estimate of such conversion is reasonable, payment shall be made to the borough's affordable housing trust fund in care of the borough chief financial officer who shall ensure that the funds are deposited into the affordable housing trust fund and appropriately earmarked.
 - g. Full compliance with the foregoing provisions shall not be required where an entity can demonstrate that it is "site impracticable" to meet the requirements. Determinations of site impracticability shall be in compliance with the Barrier Free SubCode, N.J.A.C. 5:23-7.
- C. Design.
- 1. In inclusionary developments, to the extent possible, very-low, low- and moderate-income units shall be integrated with the market units.
 - 2. In inclusionary developments, very-low, low- and moderate-income units shall have access to all of the same common elements and facilities as the market units.
- D. Maximum Rents and Sales Prices.
- 1. In establishing rents and sales prices of affordable housing units, the administrative agent shall follow the procedures set forth in UHAC, utilizing the regional income limits approved by COAH, the court, or a successor entity.
 - 2. The maximum rent for restricted rental units within each affordable development shall be affordable to households earning no more than sixty (60) percent of median income, and the average rent for

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- restricted rental units shall be affordable to households earning no more than fifty-two (52) percent of median income.
3. The developers and/or municipal sponsors of restricted rental units shall establish at least one rent for each bedroom type for both low-income and moderate-income units, provided that at least thirteen (13) percent of all low- and moderate-income rental units shall be affordable to very low-income households, earning thirty (30) percent or less of the regional median household income.
 4. The maximum sales price of restricted ownership units within each affordable development shall be affordable to households earning no more than seventy (70) percent of median income, and each affordable development must achieve an affordability average of fifty-five (55) percent for restricted ownership units; in achieving this affordability average, moderate-income ownership units must be available for at least three different sales prices for each bedroom type, and low-income ownership units must be available for at least two different sales prices for each bedroom type.
 5. In determining the initial sales prices and rent levels for compliance with the affordability average requirements for restricted units other than assisted living facilities and age-restricted developments, the following standards shall be used:
 - a. A studio shall be affordable to a one-person household;
 - b. A one-bedroom unit shall be affordable to a one and one-half person household;
 - c. A two-bedroom unit shall be affordable to a three-person household;
 - d. A three-bedroom unit shall be affordable to a four and one-half person household; and
 - e. A four-bedroom unit shall be affordable to a six-person household.
 6. In determining the initial sales prices and rents for compliance with the affordability average requirements for restricted units in assisted living facilities and age-restricted developments, the following standards shall be used:
 - a. A studio shall be affordable to a one-person household;
 - b. A one-bedroom unit shall be affordable to a one and one-half person household; and
 - c. A two-bedroom unit shall be affordable to a two-person household or to two one-person households.
 7. The initial purchase price for all restricted ownership units shall be calculated so that the monthly carrying cost of the unit, including principal and interest (based on a mortgage loan equal to ninety-five (95) percent of the purchase price and the Federal Reserve H.15 rate of interest), taxes, homeowner and private mortgage insurance and condominium or homeowner association fees do not exceed twenty-eight (28) percent of the eligible monthly income of the appropriate size household as determined under N.J.A.C. 5:80-26.4, as may be amended and supplemented; provided, however, that the price shall be subject to the affordability average requirement of N.J.A.C. 5:80-26.3, as may be amended and supplemented.
 8. The initial rent for a restricted rental unit shall be calculated so as not to exceed thirty (30) percent of the eligible monthly income of the appropriate size household, including an allowance for tenant paid utilities, as determined under N.J.A.C. 5:80-26.4, as may be amended and supplemented; provided, however, that the rent shall be subject to the affordability average requirement of N.J.A.C. 5:80-26.3, as may be amended and supplemented.

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9. The price of owner-occupied low- and moderate-income units may increase annually based on the percentage increase in the regional median income limit for the housing region. In no event shall the maximum resale price established by the administrative agent be lower than the last recorded purchase price.
 10. The rent of very-low, low- and moderate-income units may be increased annually based on the permitted percentage increase in the Housing Consumer Price Index for New Jersey. This increase shall not exceed nine percent in any one year. Rents for units constructed pursuant to low-income housing tax credit regulations shall be indexed pursuant to the regulations governing low-income housing tax credits.
 11. All deed restricted affordable rental units will be subject to an annual rental recertification process to ensure that income eligible households continue to reside in the borough's portfolio of rental units.
- E. Affordable Housing Set-Asides. Any residential or mixed-use development, within the public sewer service area of the municipality, that produces five (5) or more housing units, shall be required to provide for affordable housing set-asides of at least twenty (20) percent of the total housing units in "for-sale" developments and fifteen (15) percent of the total housing units in "rental" development. When the application of the set-aside requirement results in a set-aside requirement that is not a whole number, the set-aside requirement shall be rounded up to the next whole number.

(Ord. No. 2020/1, § I, 2-3-20)

19.01.060 Utilities.

- A. Affordable units shall utilize the same type of heating source as market units within an inclusionary development.
- B. Tenant-paid utilities included in the utility allowance shall be set forth in the lease and shall be consistent with the utility allowance approved by DCA for its Section 8 program.

(Ord. No. 2020/1, § I, 2-3-20)

19.01.070 Occupancy standards.

In referring certified households to specific restricted units, the administrative agent shall, to the extent feasible and without causing an undue delay in the occupancy of a unit, strive to:

- A. Provide an occupant for each bedroom;
- B. Provide children of different sexes with separate bedrooms;
- C. Provide separate bedrooms for parents and children; and
- D. Prevent more than two persons from occupying a single bedroom.

(Ord. No. 2020/1, § I, 2-3-20)

19.01.080 Control periods for restricted ownership units and enforcement mechanisms.

- A. Control periods for restricted ownership units shall be in accordance with N.J.A.C. 5:80-26.5, as may be amended and supplemented, and each restricted ownership unit shall remain subject to the requirements of this chapter for a period of at least thirty (30) years, until Freehold takes action to release the unit from such requirements; prior to such action, a restricted ownership unit must remain subject to the requirements of N.J.A.C. 5:80-26.1, as may be amended and supplemented.

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- B. The affordability control period for a restricted ownership unit shall commence on the date the initial certified household takes title to the unit.
- C. Prior to the issuance of the initial certificate of occupancy for a restricted ownership unit and upon each successive sale during the period of restricted ownership, the administrative agent shall determine the restricted price for the unit and shall also determine the non-restricted, fair market value of the unit based on either an appraisal or the unit's equalized assessed value without the restrictions in place.
- D. At the time of the initial sale of the unit, the initial purchaser shall execute and deliver to the administrative agent a recapture note obligating the purchaser (as well as the purchaser's heirs, successors and assigns) to repay the borough, upon the first non-exempt sale after the unit's release from the restrictions set forth in this chapter, an amount equal to the difference between the unit's non-restricted fair market value and its restricted price, and the recapture note shall be secured by a recapture lien evidenced by a duly recorded mortgage on the unit.
- E. The affordability controls set forth in this chapter shall remain in effect despite the entry and enforcement of any judgment of foreclosure with respect to restricted ownership units.
- F. A restricted ownership unit shall be required to obtain a continuing certificate of occupancy or a certified statement from the construction official stating that the unit meets all code standards upon the first transfer of title following the removal of the restrictions provided under N.J.A.C. 5:80-26.5(a), as may be amended and supplemented.

(Ord. No. 2020/1, § I, 2-3-20)

19.01.090 Price restrictions for restricted ownership units, homeowner association fees and resale prices.

Price restrictions for restricted ownership units shall be in accordance with N.J.A.C. 5:80-26.1, as may be amended and supplemented, including:

- A. The initial purchase price for a restricted ownership unit shall be approved by the administrative agent.
- B. The administrative agent shall approve all resale prices, in writing and in advance of the resale, to assure compliance with the foregoing standards.
- C. The master deeds of inclusionary developments shall provide no distinction between the condominium or homeowner association fees and special assessments paid by low- and moderate-income purchasers and those paid by market purchasers.
- D. The owners of restricted ownership units may apply to the administrative agent to increase the maximum sales price for the unit on the basis of anticipated capital improvements. Eligible capital improvements shall be those that render the unit suitable for a larger household or the addition of a bathroom. See Section 19.

(Ord. No. 2020/1, § I, 2-3-20)

19.01.100 Buyer income eligibility.

- A. Buyer income eligibility for restricted ownership units shall be in accordance with N.J.A.C. 5:80-26.1, as may be amended and supplemented, such that low-income ownership units shall be reserved for households with a gross household income less than or equal to fifty (50) percent of median income and moderate-income ownership units shall be reserved for households with a gross household income less than eighty (80) percent of median income.

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- B. Notwithstanding the foregoing, however, the administrative agent may, upon approval by the borough council, and subject to the court's approval, permit moderate-income purchasers to buy low-income units in housing markets if the administrative agent determines that there is an insufficient number of eligible low-income purchasers to permit prompt occupancy of the units. All such low-income units to be sold to moderate-income households shall retain the required pricing and pricing restrictions for low-income units.
- C. A certified household that purchases a restricted ownership unit must occupy it as the certified household's principal residence and shall not lease the unit; provided, however, that the administrative agent may permit the owner of a restricted ownership unit, upon application and a showing of hardship, to lease the restricted unit to another certified household for a period not to exceed one year.
- D. The administrative agent shall certify a household as eligible for a restricted ownership unit when the household is a low-income household or a moderate-income household, as applicable to the unit, and the estimated monthly housing cost for the particular unit (including principal, interest, taxes, homeowner and private mortgage insurance and condominium or homeowner association fees, as applicable) does not exceed thirty-three (33) percent of the household's eligible monthly income.

(Ord. No. 2020/1, § I, 2-3-20)

19.01.110 Limitations on indebtedness secured by ownership unit; subordination.

- A. Prior to incurring any indebtedness to be secured by a restricted ownership unit, the owner shall apply to the administrative agent for a determination in writing that the proposed indebtedness complies with the provisions of this section, and the administrative agent shall issue such determination prior to the owner incurring such indebtedness.
- B. With the exception of first purchase money mortgages, neither an owner nor a lender shall at any time cause or permit the total indebtedness secured by a restricted ownership unit to exceed ninety-five (95) percent of the maximum allowable resale price of the unit, as such price is determined by the administrative agent in accordance with N.J.A.C. 5:80-26.6(b).

(Ord. No. 2020/1, § I, 2-3-20)

19.01.120 Capital improvements to ownership units.

- A. The owners of restricted ownership units may apply to the administrative agent to increase the maximum sales price for the unit on the basis of capital improvements made since the purchase of the unit. Eligible capital improvements shall be those that render the unit suitable for a larger household or that add an additional bathroom. In no event shall the maximum sales price of an improved housing unit exceed the limits of affordability for the larger household.
- B. Upon the resale of a restricted ownership unit, all items of property that are permanently affixed to the unit or were included when the unit was initially restricted (for example, refrigerator, range, washer, dryer, dishwasher, wall-to-wall carpeting) shall be included in the maximum allowable resale price. Other items may be sold to the purchaser at a reasonable price that has been approved by the administrative agent at the time of the signing of the agreement to purchase. The purchase of central air conditioning installed subsequent to the initial sale of the unit and not included in the base price may be made a condition of the unit resale provided the price, which shall be subject to ten (10) year, straight-line depreciation, has been approved by the administrative agent. Unless otherwise approved by the administrative agent, the purchase of any property other than central air conditioning shall not be made a condition of the unit resale. The owner and the purchaser must personally certify at the time of closing that no unapproved transfer of funds for the purpose of selling and receiving property has taken place at the time of or as a condition of resale.

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(Ord. No. 2020/1, § I, 2-3-20)

19.01.130 Control period for restricted rental units.

- A. Control periods for restricted rental units shall be in accordance with N.J.A.C. 5:80-26.11, as may be amended and supplemented, and each restricted rental unit shall remain subject to the requirements of this chapter for a period of at least thirty (30) years, until Freehold takes action to release the unit from such requirements. Prior to such action, a restricted rental unit must remain subject to the requirements of N.J.A.C. 5:80-26.1, as may be amended and supplemented. For new projects receiving nine percent low income housing tax credits, a control period of not less than a thirty (30) year compliance period plus a fifteen (15) year extended use period shall be required.
- B. Deeds of all real property that include restricted rental units shall contain deed restriction language. The deed restriction shall have priority over all mortgages on the property, and the deed restriction shall be filed by the developer or seller with the records office of the County of Monmouth. The deed shall also identify each affordable unit by apartment number and/or address and whether that unit is designated as a very low, low or moderate income unit. Neither the unit nor its affordability designation shall change throughout the term of the deed restriction. A copy of the filed document shall be provided to the administrative agent within thirty (30) days of the receipt of a certificate of occupancy.
- C. A restricted rental unit shall remain subject to the affordability controls of this chapter despite the occurrence of any of the following events:
 - 1. Sublease or assignment of the lease of the unit;
 - 2. Sale or other voluntary transfer of the ownership of the unit; or
 - 3. The entry and enforcement of any judgment of foreclosure on the property containing the unit.

(Ord. No. 2020/1, § I, 2-3-20)

19.01.140 Rent restrictions for rental units; leases.

- A. A written lease shall be required for all restricted rental units and tenants shall be responsible for security deposits and the full amount of the rent as stated on the lease. A copy of the current lease for each restricted rental unit shall be provided to the administrative agent.
- B. No additional fees or charges shall be added to the approved rent (except, in the case of units in an assisted living residence, to cover the customary charges for food and services) without the express written approval of the administrative agent.
- C. Application fees (including the charge for any credit check) shall not exceed five percent of the monthly rent of the applicable restricted unit and shall be payable to the administrative agent to be applied to the costs of administering the controls applicable to the unit as set forth in this chapter.
- D. No rent control ordinance or other pricing restriction shall be applicable to either the market units or the affordable units in any development in which at least fifteen (15) percent of the total number of dwelling units are restricted rental units in compliance with this chapter.

(Ord. No. 2020/1, § I, 2-3-20)

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19.01.150 Tenant income eligibility.

- A. Tenant income eligibility shall be in accordance with N.J.A.C. 5:80-26.19, as may be amended and supplemented, and shall be determined as follows:
1. Very low-income rental units shall be reserved for households with a gross household income less than or equal to thirty (30) percent of median income.
 2. Low-income rental units shall be reserved for households with a gross household income less than or equal to fifty (50) percent of median income.
 3. Moderate-income rental units shall be reserved for households with a gross household income less than eighty (80) percent of median income.
- B. The administrative agent shall certify a household as eligible for a restricted rental unit when the household is a very low-income household, low-income household or a moderate-income household, as applicable to the unit, and the rent proposed for the unit does not exceed thirty-five (35) percent (forty (40) percent for age-restricted units) of the household's eligible monthly income as determined pursuant to N.J.A.C. 5:80-26.16, as may be amended and supplemented; provided, however, that this limit may be exceeded if one or more of the following circumstances exists:
1. The household currently pays more than thirty-five (35) percent (forty (40) percent for households eligible for age-restricted units) of its gross household income for rent, and the proposed rent will reduce its housing costs;
 2. The household has consistently paid more than thirty-five (35) percent (forty (40) percent for households eligible for age-restricted units) of eligible monthly income for rent in the past and has proven its ability to pay;
 3. The household is currently in substandard or overcrowded living conditions;
 4. The household documents the existence of assets with which the household proposes to supplement the rent payments; or
 5. The household documents reliable anticipated third-party assistance from an outside source such as a family member in a form acceptable to the administrative agent and the owner of the unit.
- C. The applicant shall file documentation sufficient to establish the existence of the circumstances in A.1. through B.5. above with the administrative agent, who shall counsel the household on budgeting.

(Ord. No. 2020/1, § I, 2-3-20)

19.01.160 Municipal housing liaison.

- A. There is hereby created the position of municipal housing liaison responsible for administering the affordable housing program, including affordability controls, the an, monitoring and reporting, and, where applicable, supervising any contracted administrative agent.
- B. The Borough of Freehold shall, by resolution, appoint a specific municipal employee to serve as a municipal housing liaison responsible for administering the affordable housing program, including affordability controls, the affirmative marketing plan, monitoring and reporting, and, where applicable, supervising any contracted administrative agent. The municipal housing liaison shall be appointed by the governing body and may be a full or part time municipal employee. The municipal housing liaison shall be approved by the court and shall be duly qualified through a training program sponsored by Affordable Housing Professionals of New Jersey before assuming the duties of municipal housing liaison.

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- C. The municipal housing liaison shall be responsible for oversight and administration of the affordable housing program for Freehold, including the following responsibilities which may not be contracted out to the administrative agent:
1. Serving as Freehold's primary point of contact for all inquiries from the state, affordable housing providers, administrative agents and interested households;
 2. Monitoring the status of all restricted units in Freehold's Fair Share Plan;
 3. Compiling, verifying and submitting annual monitoring reports as may be required by the court;
 4. Coordinating meetings with affordable housing providers and administrative agents, as needed; and
 5. Attending continuing education opportunities on affordability controls, compliance monitoring and affirmative marketing at least annually and more often as needed.
- D. Subject to the approval of the court, the Borough of Freehold shall designate one or more administrative agent(s) to administer newly constructed affordable units in accordance with UHAC. An operating manual for each affordable housing program shall be provided by the administrative agent(s) to be adopted by resolution of the governing body and subject to approval of the court. The operating manual(s) shall be available for public inspection in the office of the borough clerk, in the office of the municipal housing liaison, and in the office(s) of the administrative agent(s). The municipal housing liaison shall supervise the contracting administrative agent(s).

(Ord. No. 2020/1, § I, 2-3-20)

19.01.170 Administrative agent.

The administrative agent shall be an independent entity serving under contract to and reporting to the municipality. For new sale and rental developments, all of the fees of the administrative agent shall be paid by the owners of the affordable units for which the services of the administrative agent are required. For resales, single family homeowners and condominium homeowners shall be required to pay three percent of the sales price for services provided by the administrative agent related to the resale of their homes. That fee shall be collected at closing and paid directly to the administrative agent. The administrative agent shall perform the duties and responsibilities of an administrative agent as set forth in UHAC, including those set forth in Sections 5:80-26.14, 16 and 18 thereof, which include:

- A. Affirmative Marketing.
 1. Conducting an outreach process to affirmatively market affordable housing units in accordance with the affirmative marketing plan of the Borough of Freehold and the provisions of N.J.A.C. 5:80-26.15; and
 2. Providing counseling or contracting to provide counseling services to low- and moderate-income applicants on subjects such as budgeting, credit issues, mortgage qualification, rental lease requirements, and landlord/tenant law.
- B. Household Certification.
 1. Soliciting, scheduling, conducting and following up on interviews with interested households;
 2. Conducting interviews and obtaining sufficient documentation of gross income and assets upon which to base a determination of income eligibility for a low- or moderate-income unit;
 3. Providing written notification to each applicant as to the determination of eligibility or non-eligibility;

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4. Requiring that all certified applicants for restricted units execute a certificate substantially in the form, as applicable, of either the ownership or rental certificates set forth in Appendices J and K of N.J.A.C. 5:80-26.1 et seq.;
 5. Creating and maintaining a referral list of eligible applicant households living in the housing region and eligible applicant households with members working in the housing region where the units are located; and
 6. Employing a random selection process as provided in the Affirmative Marketing Plan of the Borough of Freehold when referring households for certification to affordable units.
- C. Affordability Controls.
1. Furnishing to attorneys or closing agents forms of deed restrictions and mortgages for recording at the time of conveyance of title of each restricted unit;
 2. Creating and maintaining a file on each restricted unit for its control period, including the recorded deed with restrictions, recorded mortgage and note, as appropriate;
 3. Ensuring that the removal of the deed restrictions and cancellation of the mortgage note are effectuated and properly filed with the Monmouth County Register of Deeds or County Clerk's office after the termination of the affordability controls for each restricted unit;
 4. Communicating with lenders regarding foreclosures; and
 5. Ensuring the issuance of continuing certificates of occupancy or certifications pursuant to N.J.A.C. 5:80-26.10.
- D. Resales and Rerentals.
1. Instituting and maintaining an effective means of communicating information between owners and the administrative agent regarding the availability of restricted units for resale or rental; and
 2. Instituting and maintaining an effective means of communicating information to low- and moderate-income households regarding the availability of restricted units for resale or re-rental.
- E. Processing Requests from Unit Owners.
1. Reviewing and approving requests for determination from owners of restricted units who wish to take out home equity loans or refinance during the term of their ownership that the amount of indebtedness to be incurred will not violate the terms of this chapter;
 2. Reviewing and approving requests to increase sales prices from owners of restricted units who wish to make capital improvements to the units that would affect the selling price, such authorizations to be limited to those improvements resulting in additional bedrooms or bathrooms and the depreciated cost of central air conditioning systems;
 3. Notifying the municipality of an owner's intent to sell a restricted unit; and
 4. Making determinations on requests by owners of restricted units for hardship waivers.
- F. Enforcement.
1. Securing annually from the municipality a list of all affordable housing units for which tax bills are mailed to absentee owners, and notifying all such owners that they must either move back to their unit or sell it;

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2. Securing from all developers and sponsors of restricted units, at the earliest point of contact in the processing of the project or development, written acknowledgement of the requirement that no restricted unit can be offered, or in any other way committed, to any person, other than a household duly certified to the unit by the administrative agent;
 3. The posting annually in all rental properties, including two-family homes, of a notice as to the maximum permitted rent together with the telephone number of the administrative agent where complaints of excess rent or other charges can be made;
 4. Sending annual mailings to all owners of affordable dwelling units, reminding them of the notices and requirements outlined in N.J.A.C. 5:80-26.18(d)4;
 5. Establishing a program for diverting unlawful rent payments to the municipality's Affordable Housing Trust Fund; and
 6. Creating and publishing a written operating manual for each affordable housing program administered by the administrative agent, to be approved by the borough council and the court, setting forth procedures for administering the affordability controls.
- G. Additional Responsibilities.
1. The administrative agent shall have the authority to take all actions necessary and appropriate to carry out its responsibilities hereunder.
 2. The administrative agent shall prepare monitoring reports for submission to the municipal housing liaison in time to meet any monitoring requirements and deadlines imposed by the court.
 3. The administrative agent shall attend continuing education sessions on affordability controls, compliance monitoring, and affirmative marketing at least annually and more often as needed.

(Ord. No. 2020/1, § I, 2-3-20)

19.01.180 Affirmative marketing requirements.

- A. The Borough of Freehold shall adopt by resolution an affirmative marketing plan, subject to approval of the court, that is compliant with N.J.A.C. 5:80-26.15, as may be amended and supplemented.
- B. The affirmative marketing plan is a regional marketing strategy designed to attract buyers and/or renters of all majority and minority groups, regardless of race, creed, color, national origin, ancestry, marital or familial status, gender, affectional or sexual orientation, disability, age or number of children to housing units which are being marketed by a developer, sponsor or owner of affordable housing. The affirmative marketing plan is intended to target those potentially eligible persons who are least likely to apply for affordable units in that region. It is a continuing program that directs marketing activities toward Housing Region 4 and is required to be followed throughout the period of restriction.
- C. The affirmative marketing plan shall provide a regional preference for all households that live and/or work in Housing Region 4, comprised of Monmouth, Mercer and Ocean Counties.
- D. The Borough of Freehold may enter into an agreement with a developer or residential development owner to provide a preference for affordable housing to low to moderate income veterans who served in time of war or other emergency, as defined in section 1 of P.L. 1963, c.171 (C.54:4-8.10), of up to fifty (50) percent of the affordable units in that particular project. This preference shall be established in the applicant selection process for available affordable units so that applicants who are veterans who served in times of war or

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other emergency, and who apply within ninety (90) days of the initial marketing period shall receive preference for the rental of the agreed-upon percentage of affordable units.

- E. The municipality has the ultimate responsibility for adopting the affirmative marketing plan and for the proper administration of the affirmative marketing program, including initial sales and rentals and resales and rerentals. The administrative agent designated by the borough of freehold shall implement the affirmative marketing plan to assure the affirmative marketing of all affordable units.
- F. In implementing the affirmative marketing plan, the administrative agent shall provide a list of counseling services to very-low, low- and moderate-income applicants on subjects such as budgeting, credit issues, mortgage qualification, rental lease requirements, and landlord/tenant law.
- G. The affirmative marketing plan shall describe the media to be used in advertising and publicizing the availability of housing. In implementing the affirmative marketing plan, the administrative agent shall consider the use of language translations where appropriate.
- H. The affirmative marketing process for available affordable units shall begin at least four months (one hundred twenty (120) days) prior to the expected date of occupancy.
- I. Applications for affordable housing shall be available in several locations, including, at a minimum, the county administration building and/or the county library for each county within the housing region; the municipal administration building and the municipal library in the municipality in which the units are located; and the developer's rental office. Pre-applications shall be emailed or mailed to prospective applicants upon request.
- J. The costs of advertising and affirmative marketing of the affordable units shall be the responsibility of the developer, sponsor or owner.

(Ord. No. 2020/1, § I, 2-3-20)

19.01.190 Enforcement of affordable housing regulations.

- A. Upon the occurrence of a breach of any of the regulations governing the affordable unit by an owner, developer or tenant, the municipality shall have all remedies provided at law or equity, including but not limited to foreclosure, tenant eviction, a requirement for household recertification, acceleration of all sums due under a mortgage, recuperation of any funds from a sale in violation of the regulations, injunctive relief to prevent further violation of the regulations, entry on the premises, and specific performance.
- B. After providing written notice of a violation to an owner, developer or tenant of a very-low, low- or moderate-income unit and advising the owner, developer or tenant of the penalties for such violations, the municipality may take the following action(s) against the owner, developer or tenant for any violation that remains uncured for a period of sixty (60) days after service of the written notice:
 - 1. The municipality may file a court action pursuant to N.J.S.A. 2A:58-11 alleging a violation or violations of the regulations governing the affordable housing unit. If the owner, developer or tenant is adjudged by the court to have violated any provision of the regulations governing affordable housing units the owner, developer or tenant shall be subject to one or more of the following penalties, at the discretion of the court:
 - a. A fine of not more than five hundred dollars (\$500.00) per day or imprisonment for a period not to exceed ninety (90) days, or both, provided that each and every day that the violation continues or exists shall be considered a separate and specific violation of these provisions and not a continuation of the initial offense;

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- b. In the case of an owner who has rented a very-low, low- or moderate-income unit in violation of the regulations governing affordable housing units, payment into the Borough of Freehold Affordable Housing Trust Fund of the gross amount of rent illegally collected;
 - c. In the case of an owner who has rented a very-low, low- or moderate-income unit in violation of the regulations governing affordable housing units, payment of an innocent tenant's reasonable relocation costs, as determined by the court.
 - 2. The municipality may file a court action in the superior court seeking a judgment that would result in the termination of the owner's equity or other interest in the unit, in the nature of a mortgage foreclosure. Any such judgment shall be enforceable as if the same were a judgment of default of the first purchase money mortgage and shall constitute a lien against the low- or moderate-income unit.
 - a. The judgment shall be enforceable, at the option of the municipality, by means of an execution sale by the sheriff, at which time the low- and moderate-income unit of the violating owner shall be sold at a sale price which is not less than the amount necessary to fully satisfy and pay off any first purchase money mortgage and prior liens and the costs of the enforcement proceedings incurred by the municipality, including attorney's fees. The violating owner shall have his right to possession terminated as well as his title conveyed pursuant to the sheriff's sale.
 - b. The proceeds of the sheriff's sale shall first be applied to satisfy the First Purchase Money Mortgage lien and any prior liens upon the low- and moderate-income unit. The excess, if any, shall be applied to reimburse the municipality for any and all costs and expenses incurred in connection with either the court action resulting in the judgment of violation or the sheriff's sale. In the event that the proceeds from the sheriff's sale are insufficient to reimburse the municipality in full as aforesaid, the violating owner shall be personally responsible for the full extent of such deficiency, in addition to any and all costs incurred by the municipality in connection with collecting such deficiency. In the event that a surplus remains after satisfying all of the above, such surplus, if any, shall be placed in escrow by the municipality for the owner and shall be held in such escrow for a maximum period of two years or until such earlier time as the owner shall make a claim with the municipality for such. Failure of the owner to claim such balance within the two-year period shall automatically result in a forfeiture of such balance to the municipality. Any interest accrued or earned on such balance while being held in escrow shall belong to and shall be paid to the municipality, whether such balance shall be paid to the owner or forfeited to the municipality.
 - c. Foreclosure by the municipality due to violation of the regulations governing affordable housing units shall not extinguish the restrictions of the regulations governing affordable housing units as the same apply to the low- and moderate-income unit. Title shall be conveyed to the purchaser at the sheriff's sale, subject to the restrictions and provisions of the regulations governing the affordable housing unit. The owner determined to be in violation of the provisions of this plan and from whom title and possession were taken by means of the sheriff's sale shall not be entitled to any right of redemption.
 - d. If there are no bidders at the sheriff's sale, or if insufficient amounts are bid to satisfy the First Purchase Money Mortgage and any prior liens, the municipality may acquire title to the low- and moderate-income unit by satisfying the First Purchase Money Mortgage and any prior liens and crediting the violating owner with an amount equal to the difference between the First Purchase Money Mortgage and any prior liens and costs of the enforcement proceedings, including legal fees and the maximum resale price for which the low- and moderate-income unit could have been sold under the terms of the regulations governing affordable housing units. This excess shall

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be treated in the same manner as the excess which would have been realized from an actual sale as previously described.

- e. Failure of the low- and moderate-income unit to be either sold at the sheriff's sale or acquired by the municipality shall obligate the owner to accept an offer to purchase from any qualified purchaser which may be referred to the owner by the municipality, with such offer to purchase being equal to the maximum resale price of the low- and moderate-income unit as permitted by the regulations governing affordable housing units.
- f. The owner shall remain fully obligated, responsible and liable for complying with the terms and restrictions of governing affordable housing units until such time as title is conveyed from the owner.

(Ord. No. 2020/1, § I, 2-3-20)

19.01.200 Appeals.

Appeals from all decisions of an administrative agent appointed pursuant to this chapter shall be filed in writing with the court.

(Ord. No. 2020/1, § I, 2-3-20)

19.01.210 Development fees.

A. Purpose.

- 1. In *Holmdel Builder's Association v. Holmdel Borough*, 121 N.J. 550 (1990), the New Jersey Supreme Court determined that mandatory development fees are authorized by the Fair Housing Act of 1985 (the Act), N.J.S.A. 52:27d-301 et seq., and the State Constitution, subject to the Council on Affordable Housing's (COAH's) adoption of rules.
- 2. Pursuant to P.L.2008, c.46 section 8 (C. 52:27D-329.2) and the Statewide Non-Residential Development Fee Act (C. 40:55D-8.1 through 8.7), COAH is authorized to adopt and promulgate regulations necessary for the establishment, implementation, review, monitoring and enforcement of municipal affordable housing trust funds and corresponding spending plans. Municipalities that are under the jurisdiction of the council or court of competent jurisdiction and have a COAH-approved spending plan may retain fees collected from non-residential development.
- 3. This section establishes standards for the collection, maintenance, and expenditure of development fees pursuant to COAH's regulations and in accordance PL.2008, c. 46, Sections 8 and 32-38. Fees collected pursuant to this ordinance shall be used for the sole purpose of providing very low, low- and moderate-income housing. This section shall be interpreted within the framework of COAH's rules on development fees, codified at N.J.A.C. 5:97-8. (Ord. No. 2008-1503 § 1)

B. Basic Requirements.

- 1. This section shall not be effective until approved by the court, COAH or a successor agency.
- 2. Freehold Borough shall not spend development fees until the court, COAH or a successor agency has approved a plan for spending such fees (spending plan).

C. Definitions.

- 1. The following terms, as used in this section shall have the following meanings:

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"Affordable housing development" shall mean a development included in the housing element and fair share plan, and includes, but is not limited to, an inclusionary development, a municipal construction project or a one hundred (100) percent affordable development.

"COAH or the council" shall mean the New Jersey Council on Affordable Housing established under the Fair Housing Act.

"Developer" means the legal or beneficial owner or owners of a lot or of any land proposed to be included in a proposed development, including the holder of an option or contract to purchase, or other person having an enforceable proprietary interest in such land.

"Development fee" shall mean money paid by a developer for the improvement of property as permitted by applicable COAH regulations.

"Equalized assessed value" shall mean the assessed value of a property divided by the current average ratio of assessed to true value for the municipality in which the property is situated, as determined in accordance with sections 1, 5, and 6 of P.L.1973, c.123 (C.54:1-35a through C.54:1-35c).

"Green building strategies" shall mean those strategies that minimize the impact of development on the environment, and enhance the health, safety and well-being of residents by producing durable, low-maintenance, resource-efficient housing while making optimum use of existing infrastructure and community services.

D. Residential Development Fees.

1. Imposed Fees.

- a. Within the Borough of Freehold, all residential developers, except for developers of the types of development specifically exempted below, shall pay a fee of one and one-half percent of the equalized assessed value for residential development provided no increased density is permitted. Development fees shall also be imposed and collected when an additional dwelling unit is added to an existing residential structure; in such cases, the fee shall be calculated based on the increase in the equalized assessed value of the property due to the additional dwelling unit.
- b. When an increase in residential density pursuant to a "d" variance is granted under N.J.S.A. 40:55D-70d(5) (known as a "d" variance), developers shall be required to pay a "bonus" development fee of six percent of the equalized assessed value for each additional unit that may be realized, except that this provision shall not be applicable to a development that will include affordable housing. If the zoning on a site has changed during the two-year period preceding the filing of such a variance application, the base density for the purposes of calculating the bonus development fee shall be the highest density permitted by right during the two-year period preceding filing of the "d" variance application. Example: If an approval allows four units to be constructed on a site that was zoned for two units, the development fees will equal one and one-half percent of the equalized assessed value on the first two units; and six percent of the equalized assessed value for the two non-age-restricted additional units, provided zoning on the site has not changed during the two-year period preceding the filing of such a variance application.

2. Eligible Exactions, Ineligible Exactions and Exemptions for Residential Development.

- a. Affordable housing developments and developments where the developer is providing for the construction of affordable units elsewhere in the municipality, and/or developments where the developer has made a payment in lieu of on-site construction of affordable units, if permitted by

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ordinance or by agreement with the Borough of Freehold, shall be exempt from development fees.

- b. Developments that have received preliminary or final site plan approval prior to the adoption of Freehold's first adopted development fee ordinance shall be exempt from the payment of development fees, unless the developer seeks a substantial change in the original approval. Where a site plan approval is not applicable, the issuance of a zoning and/or building permit shall be synonymous with preliminary or final site plan approval for the purpose of determining the right to exemption. In all cases, the applicable fee percentage shall be determined based upon on the development fee ordinance in effect on the date that the building permit is issued.
- c. In addition to the construction of new principal and/or accessory buildings, development fees shall be imposed and collected when an existing structure is demolished and replaced, if the expansion is not otherwise exempt from the development fee requirement. The development fee shall be calculated on the increase in the equalized assessed value of the new structure. Furthermore:
 - i. No development fee shall be collected for a demolition and replacement of a residential building resulting from a natural disaster.
 - ii. No development fee shall be collected for the construction of an "accessory structure" which is not a "building" as these terms are defined in the Freehold Borough Administrative Code.
- d. Nonprofit organizations which have received tax-exempt status pursuant to Section 501(c)(3) of the Internal Revenue Code, providing current evidence of that status is submitted to the municipal clerk, together with a certification that services of the organization are provided at reduced rates to those who establish an inability to pay existing charges, shall be exempted from paying a development fee.
- e. Federal, state, county, and local governments shall be exempted from paying a development fee.

E. Non-residential Development Fees.

1. Imposition of Fees.

- a. Within all zoning districts, non-residential developers, except for developers of the types of development specifically exempted below, shall pay a fee equal to two and one-half percent of the increase in equalized assessed value of the land and improvements, for all new non-residential construction on an unimproved lot or lots.
- b. Within all zoning districts, non-residential developers, except for developers of the types of development specifically exempted, shall also pay a fee equal to two and one-half percent of the increase in equalized assessed value resulting from any additions to existing structures to be used for non-residential purposes.
- c. Development fees shall be imposed and collected when an existing structure is demolished and replaced. The development fee of two and one-half percent shall be calculated on the difference between the equalized assessed value of the pre-existing land and improvements and the equalized assessed value of the newly improved structure, i.e. land and improvements, and such calculation shall be made at the time a final certificate of occupancy is issued. If the calculation required under this section results in a negative number, the non-residential development fee shall be zero.

2. Eligible Exactions, Ineligible Exactions and Exemptions for Non-residential Development.

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- a. The non-residential portion of a mixed-use inclusionary or market rate development shall be subject to the two and one-half percent development fee, unless otherwise exempted below.
- b. The two and one-half percent fee shall not apply to an increase in equalized assessed value resulting from alterations, change in use within existing footprint, reconstruction, renovations and repairs.
- c. Non-residential projects that have received a certificate of occupancy or general development plan approval or have entered into a developer's agreement or a redevelopment agreement, all prior to July 17, 2008 (the effective date of P.L. 2008, c.46), shall be exempt from the payment of non-residential development fees, provided that an affordable housing fee of at least one percent of the equalized assessed value of the improvements is included in the development plan, developer's agreement or redevelopment agreement.
- d. Non-residential developments shall be exempt from the payment of non-residential development fees in accordance with the exemptions required as specified in the Form N-RDF "State of New Jersey Non-Residential Development Certification/Exemption". Any exemption claimed by a developer shall be substantiated by that developer.
- e. A developer of a non-residential development exempted from the non-residential development fee shall be subject to the fee at such time the basis for the exemption no longer applies and shall make the payment of the non-residential development fee, in that event, within three years after that event or after the issuance of the final certificate of occupancy for the non-residential development, whichever is later.
- f. If a property which was exempted from the collection of a non-residential development fee thereafter ceases to be exempt from property taxation, the owner of the property shall remit the fees required pursuant to this section within forty-five (45) days of the termination of the property tax exemption. Unpaid non-residential development fees under these circumstances may be enforceable by Freehold Borough as a lien against the real property of the owner.

F. Collection Procedures.

1. Upon the granting of a preliminary, final or other applicable approval, for a development, the applicable approving authority shall direct its staff to notify the borough construction official responsible for the issuance of a building permit.
2. For non-residential developments only, the developer shall also be provided with a copy of Form N-RDF "State of New Jersey Non-Residential Development Certification/Exemption" to be completed as per the instructions provided. The developer of a non-residential development shall complete Form N-RDF as per the instructions provided. The construction official shall verify the information submitted by the non-residential developer as per the instructions provided in the Form N-RDF. The tax assessor shall verify exemptions and prepare estimated and final assessments as per the instructions provided in Form N-RDF.
3. The construction official responsible for the issuance of a building permit shall notify the local tax assessor of the issuance of the first building permit for a development which is subject to a development fee.
4. Within ninety (90) days of receipt of such notification, the borough tax assessor, based on the plans filed, shall provide an estimate of the equalized assessed value of the development.

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5. The construction official responsible for the issuance of a final certificate of occupancy shall notify the borough tax assessor of any and all requests for the scheduling of a final inspection on a property which is subject to a development fee.
 6. Within ten (10) business days of a request for the scheduling of a final inspection, the borough assessor shall confirm or modify the previously estimated equalized assessed value of the improvements of the development; calculate the development fee; and thereafter notify the developer of the amount of the fee.
 7. Should Freehold Borough fail to determine or notify the developer of the amount of the development fee within ten (10) business days of the request for final inspection, the developer may estimate the amount due and pay that estimated amount consistent with the dispute process set forth in subsection b. of section 37 of P.L.2008, c.46 (C.40:55D-8.6).
 8. Fifty (50) percent of the initially calculated development fee shall be collected at the time of issuance of the building permit. The remaining portion shall be collected at the issuance of the certificate of occupancy. The developer shall be responsible for paying the difference between the fee calculated at building permit and that determined at issuance of certificate of occupancy.
 9. Appeal of Development Fees.
 - a. A developer may challenge residential development fees imposed by filing a challenge with the county board of taxation. Such a challenge must be made with forty-five (45) days from the issuance of the certificate of occupancy. Pending a review and determination by the board, collected fees shall be placed in an interest bearing escrow account by Freehold Borough. Appeals from a determination of the board may be made to the tax court in accordance with the provisions of the State Tax Uniform Procedure Law, R.S.54:48-1 et seq., within ninety (90) days after the date of such determination. Interest earned on amounts escrowed shall be credited to the prevailing party.
 - b. A developer may challenge non-residential development fees imposed by filing a challenge with the director of the division of taxation. Pending a review and determination by the director, which shall be made within forty-five (45) days of receipt of the challenge, collected fees shall be placed in an interest-bearing escrow account by Freehold Borough. Appeals from a determination of the director may be made to the tax court in accordance with the provisions of the State Tax Uniform Procedure Law, R.S.54:48-1 et seq., within ninety (90) days after the date of such determination. Interest earned on amounts escrowed shall be credited to the prevailing party.
- G. Affordable Housing Trust Fund.
1. There is hereby created a separate, interest-bearing affordable housing trust fund to be maintained by the chief financial officer of the Borough of Freehold for the purpose of depositing development fees collected from residential and non-residential developers and proceeds from the sale of units with extinguished controls.
 2. The following additional funds shall be deposited in the affordable housing trust fund and shall at all times be identifiable by source and amount:
 - a. Payments in lieu of on-site construction of affordable units or of a fraction of an affordable unit, where permitted by ordinance or by agreement with the Borough of Freehold;
 - b. Funds contributed by developers to make ten (10) percent of the adaptable entrances in a townhouse or other multistory attached development accessible;

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- c. Rental income from municipally operated units;
 - d. Repayments from affordable housing program loans;
 - e. Recapture funds;
 - f. Proceeds from the sale of affordable units; and
 - g. Any other funds collected in connection with the Freehold Borough's affordable housing program.
3. Interest accrued in the affordable housing trust fund shall only be used to fund eligible affordable housing activities approved by the court.
- H. Use of Funds.
- 1. The expenditure of all funds shall conform to a spending plan approved by the court, or COAH or its successor agency. Funds deposited in the affordable housing trust fund may be used for any activity approved by the court to address the Freehold Borough's fair share obligation and may be set up as a grant or revolving loan program. Such activities include, but are not limited to: preservation or purchase of housing for the purpose of maintaining or implementing affordability controls, housing rehabilitation, new construction of affordable housing units and related costs, accessory apartments, a market to affordable program, regional housing partnership programs, conversion of existing non-residential buildings to create new affordable units, green building strategies designed to be cost saving and in accordance with accepted national or state standards, purchase of land for affordable housing, improvement of land to be used for affordable housing, extensions or improvements of roads and infrastructure to affordable housing sites, financial assistance designed to increase affordability, administration necessary for implementation of the housing element and fair share plan, or any other activity as permitted by the court and specified in the approved spending plan.
 - 2. Funds shall not be expended to reimburse Freehold Borough for past housing activities.
 - 3. At least thirty (30) percent of all development fees collected and interest earned on such fees shall be used to provide affordability assistance to very-low, low- and moderate-income households in affordable units included in the municipal fair share plan. One-third of the affordability assistance portion of development fees collected shall be used to provide affordability assistance to those households earning thirty (30) percent or less of median income for Housing Region 4, in which Freehold is located.
 - a. Affordability assistance programs may include down payment assistance, security deposit assistance, low interest loans, rental assistance, assistance with homeowners association or condominium fees and special assessments, and assistance with emergency repairs. The specific programs to be used for affordability assistance shall be identified and described within the spending plan.
 - b. Affordability assistance to households earning thirty (30) percent or less of median income may include buying down the cost of low- or moderate-income units in the municipal fair share plan to make them affordable to households earning thirty (30) percent or less of median income. The specific programs to be used for very low income affordability assistance shall be identified and described within the spending plan.
 - c. Payments in lieu of constructing affordable housing units on site, if permitted by ordinance or by agreement with the Borough of Freehold, and funds from the sale of units with extinguished controls shall be exempt from the affordability assistance requirement.

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1. Freehold Borough may contract with a private or public entity to administer any part of its housing element and fair share plan, including its programs for affordability assistance.
2. No more than twenty (20) percent of all revenues collected from development fees may be expended on administration, including, but not limited to, salaries and benefits for municipal employees or consultants' fees necessary to develop or implement a new construction program, prepare a housing element and fair share plan, and/or an affirmative marketing program or rehabilitation program.
 - d. In the case of a rehabilitation program, the administrative costs of the rehabilitation program shall be included as part of the twenty (20) percent of collected development fees that may be expended on administration.
 - e. Administrative funds may be used for income qualification of households, monitoring the turnover of sale and rental units, and compliance with COAH's/court monitoring requirements. All other housing rehabilitation costs are considered programmatic and not administrative. Legal or other fees related to litigation opposing affordable housing sites or related to securing or appealing a judgment from the court are not eligible uses of the affordable housing trust fund.
- I. Monitoring. Freehold Borough shall provide annual reporting of Affordable Housing Trust Fund activity to the State of New Jersey, Department of Community Affairs, Council on Affordable Housing or Local Government Services, or other entity designated by the State of New Jersey, with a copy provided to Fair Share Housing Center and posted on the municipal website, using forms developed for this purpose by the New Jersey Department of Community Affairs, Council on Affordable Housing or Local Government Services. The reporting shall include an accounting of all Affordable Housing Trust Fund activity, including the sources and amounts of funds collected and the amounts and purposes for which any funds have been expended. Such reporting shall include an accounting of development fees collected from residential and non-residential developers, payments in lieu of constructing affordable units on site (if permitted by ordinance or by agreement with the borough), funds from the sale of units with extinguished controls, barrier free escrow funds, rental income from borough owned affordable housing units, repayments from affordable housing program loans, and any other funds collected in connection with Freehold's affordable housing programs, as well as an accounting of the expenditures of revenues and implementation of the spending plan approved by the court.
- J. Ongoing Collection of Fees.
 1. The ability for Freehold Borough to impose, collect and expend development fees shall expire with its substantive certification or judgment of compliance unless Freehold Borough has filed an adopted housing element and fair share plan with COAH or the court, or a successor agency, has petitioned for substantive certification, and has received COAH's, or the court, or a successor agency's approval of its development fee ordinance.
 2. If Freehold Borough fails to renew its ability to impose and collect development fees prior to the expiration of substantive certification/judgment of compliance, it may be subject to forfeiture of any or all funds remaining within its municipal trust fund. Any funds so forfeited shall be deposited into the "New Jersey Affordable Housing Trust Fund" established pursuant to section 20 of P.L.1985, c.222 (C.52:27D-320).
 3. Freehold Borough shall not impose a residential development fee on a development that receives preliminary or final site plan approval after the expiration of its substantive certification or judgment of compliance, nor shall Freehold Borough retroactively impose a development fee on such a development. Freehold Borough shall not expend development fees after the expiration of its substantive certification or judgment of compliance.

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(Ord. No. 2020/1, § I, 2-3-20)

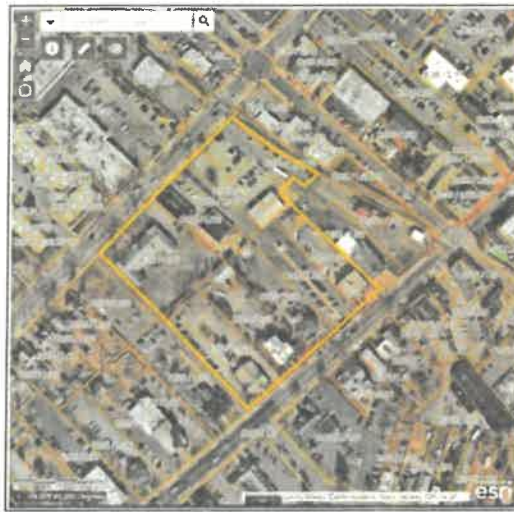
Appendix E – Prospective Obligation Plans & Compliance Mechanisms



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**DOWNTOWN FREEHOLD:
HOMETOWN REDEVELOPMENT PHASE 1
BLOCK 35 REDEVELOPMENT PLAN
FREEHOLD BOROUGH, NEW JERSEY**


Beacon File: A22087
January 2023



The original copy of this report was signed and sealed in accordance with N.J.S.A. 45: 14A-12.



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FIGURES

Figure 1: Location Map

Figure 2: Block 35 Redevelopment Area Map

Figure 3: Existing Zoning

Figure 4: Proposed Zoning

Figure 5: Tax Map

APPENDIX	TITLE
1	Borough of Freehold Resolution No. 31-22, adopted 02/07/2022
2	Borough of Freehold Resolution No. R 42-22, adopted 02/07/2022

1.0 INTRODUCTION

1.1 Background

The Block 35 Redevelopment Area (as defined herein) subject to this Freehold Downtown: Block 35 Redevelopment Plan (this "Redevelopment Plan" or this "Plan") is located in the center portion of the Borough with frontages along Broad Street to the northwest and W. Main Street to the southeast, and is a portion of a larger area referred to as "Borough Hall and Surrounding Commercial Area" determined to be an "area in need of redevelopment" with condemnation by the Borough Council via Resolution 31-22 adopted February 07, 2022, pursuant to the requirements of New Jersey's Local Redevelopment and Housing Law (LRHL). Resolution 42-22 adopted February 07, 2022 authorized the preparation of redevelopment plan(s) for the designated properties, including Block 35, Lots 15, 16, 17, 18, 19, 26.02, 28, 29, 30, 31, and 32.

The resulting plan, which is this document, identifies the land uses that are suitable for the property designated as Block 35, Lots 15, 16, 17, 18, 19, 26.02, 28, 29, 30, 31, and 32 on the official tax map of the Borough of Freehold (the "Block 35 Redevelopment Area"). It also sets forth area and bulk requirements to guide the redevelopment of these properties in a manner which promotes the health, safety, and welfare of the Freehold community. The Redevelopment Plan will encourage the redevelopment of this property located within this portion of the community. The Plan establishes a comprehensive, integrated approach to development that will result in an attractive and complementary use of the property within the Block 35 Redevelopment Area. The Plan is designed to complement and implement the specific goals, objectives and policy statements set forth in the Borough Master Plan.

1.2 Statutory Basis for the Redevelopment Plan

The Local Redevelopment and Housing Law (LRHL) sets forth the following criteria that must be addressed in a redevelopment plan:

- A. No redevelopment project shall be undertaken or carried out except in accordance with a redevelopment plan adopted by ordinance of the municipal governing body, upon its finding that the specifically delineated project area is located in an area in need of redevelopment or in an area in need of rehabilitation, or in both, according to criteria set forth in section 5 or section 14 of P.L.1992, c.79 (C.40A:12A-5 or 40A:12A-14), as appropriate.

The redevelopment plan shall include an outline for the planning, development, redevelopment, or rehabilitation of the project area sufficient to indicate:

1. Its relationship to definite local objectives as to appropriate land uses, density of population, and improved traffic and public transportation, public utilities, recreational and community facilities and other public improvements.
2. Proposed land uses and building requirements in the project area.
3. Adequate provision for the temporary and permanent relocation, as necessary, of residents in the project area, including an estimate of the extent to which decent, safe and sanitary dwelling units affordable to displaced residents will be available to them in the existing local housing market.
4. An identification of any property within the redevelopment area which is proposed to be acquired in accordance with the redevelopment plan.
5. Any significant relationship of the redevelopment plan to (a) the master plans of contiguous municipalities, (b) the master plan of the county in which the municipality is located, and (c) the State Development and Redevelopment Plan adopted pursuant to the "State Planning Act," P.L.1985, c.398 (C.52:18A-196 et al.).
6. As of the date of the adoption of the resolution finding the area to be in need of redevelopment, an inventory of all housing units affordable to low and moderate income households, as defined pursuant to section 4 of P.L.1985, c.222 (C.52:27D-304), that are to be removed as a result of implementation of the redevelopment plan, whether as a result of subsidies or market conditions, listed by affordability level, number of bedrooms, and tenure.
7. A plan for the provision, through new construction or substantial rehabilitation of one comparable, affordable replacement housing unit for each affordable housing unit that has been occupied at any time within the last 18 months, that is subject to affordability controls and that is identified as to be removed as a result of implementation of the redevelopment plan. Displaced residents of housing units provided under any State or federal housing subsidy program, or pursuant to the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.), provided they are deemed to be eligible, shall have first priority for those replacement units provided under the plan; provided that any such

replacement unit shall not be credited against a prospective municipal obligation under the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.), if the housing unit which is removed had previously been credited toward satisfying the municipal fair share obligation. To the extent reasonably feasible, replacement housing shall be provided within or in close proximity to the redevelopment area. A municipality shall report annually to the Department of Community Affairs on its progress in implementing the plan for provision of comparable, affordable replacement housing required pursuant to this section.

8. Proposed locations for public electric vehicle charging infrastructure within the project area in a manner that appropriately connects with an essential public charging network.
- B. A redevelopment plan may include the provision of affordable housing in accordance with the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.) and the housing element of the municipal master plan.
 - C. The redevelopment plan shall describe its relationship to pertinent municipal development regulations as defined in the "Municipal Land Use Law," P.L.1975, c.291 (C.40:55D-1 et seq.). The redevelopment plan shall supersede applicable provisions of the development regulations of the municipality or constitute an overlay zoning district within the redevelopment area. When the redevelopment plan supersedes any provision of the development regulations, the ordinance adopting the redevelopment plan shall contain an explicit amendment to the zoning district map included in the zoning ordinance. The zoning district map as amended shall indicate the redevelopment area to which the redevelopment plan applies. Notwithstanding the provisions of the "Municipal Land Use Law," P.L.1975, c.291 (C.40:55D-1 et seq.) or of other law, no notice beyond that required for adoption of ordinances by the municipality shall be required for the hearing on or adoption of the redevelopment plan or subsequent amendments thereof.
 - D. All provisions of the redevelopment plan shall be either substantially consistent with the municipal master plan or designed to effectuate the master plan; but the municipal governing body may adopt a redevelopment plan which is inconsistent with or not designed to effectuate the master plan by

affirmative vote of a majority of its full authorized membership with the reasons for so acting set forth in the redevelopment plan.

- E. Prior to the adoption of a redevelopment plan, or revision or amendment thereto, the planning board shall transmit to the governing body, within 45 days after referral, a report containing its recommendation concerning the redevelopment plan. This report shall include an identification of any provisions in the proposed redevelopment plan which are inconsistent with the master plan and recommendations concerning these inconsistencies and any other matters as the board deems appropriate. The governing body, when considering the adoption of a redevelopment plan or revision or amendment thereof, shall review the report of the planning board and may approve or disapprove or change any recommendation by a vote of a majority of its full authorized membership and shall record in its minutes the reasons for not following the recommendations. Failure of the planning board to transmit its report within the required 45 days shall relieve the governing body from the requirements of this subsection with regard to the pertinent proposed redevelopment plan or revision or amendment thereof. Nothing in this subsection shall diminish the applicability of the provisions of subsection d. of this section with respect to any redevelopment plan or revision or amendment thereof.
- F. The governing body of a municipality may direct the planning board to prepare a redevelopment plan or an amendment or revision to a redevelopment plan for a designated redevelopment area. After completing the redevelopment plan, the planning board shall transmit the proposed plan to the governing body for its adoption. The governing body, when considering the proposed plan, may amend or revise any portion of the proposed redevelopment plan by an affirmative vote of the majority of its full authorized membership and shall record in its minutes the reasons for each amendment or revision. When a redevelopment plan or amendment to a redevelopment plan is referred to the governing body by the planning board under this subsection, the governing body shall be relieved of the referral requirements of subsection e. of this section.

1.3 Area Description

The Freehold Downtown: Block 35 District (the "District") is located within the central portion of the borough and part of an area designated as an "area in need of redevelopment" with condemnation. Figures located in the back of this Plan depict the geometry of the parcel. Figure 1 shows the location of the District within the Borough with the subject parcels outlined while Figure 2

outlines the Block 35 Redevelopment Area addressed by this Redevelopment Plan which is located within the District. As described above, the Block 35 Redevelopment Area subject to this Redevelopment Plan consists of a property identified by the Borough Tax Assessor as Block 35, Lots 15, 16, 17, 18, 19, 26.02, 28, 29, 30, 31, and 32, which is located between and maintain frontages along Broad Street and West Main Street.

Downtown Freehold: Block 35						
Block	Lot	~Area (Sq.Ft.)	~Acreage *	Zone	Ownership	Property Address
35	15	43,164	0.9909	B-1	15 Hardy Street Corp.	32 Broad St.
35	16	17,402	0.3995	B-2	Hamilton Kuser Associates, LLC	30 Broad St.
35	17	9,479	0.2176	B-2	Bank of America Corp. Real Estate AS	28 Broad St.
35	18	10,846	0.249	B-2	Boro of Freehold	Broad St.
35	19	22,246	0.5107	B-2	Boro of Freehold	Broad St.
35	26.02	9,400	0.2158	A	Boro of Freehold	Broad St.
35	28	21,301	0.489	B-2	Boro of Freehold	51 W. Main St.
35	29	22,499	0.5165	B-2	Bank of America Corp. Real Estate AS	53 W. Main St.
35	30	22,499	0.5165	B-2	American Realty Enterprises, LLC	55 W. Main St.
35	31	24,002	0.551	B-2	Mainstream 57, LLC	57 W. Main St.
35	32	35,702	0.8196	B-2	Blitz 61 West Main Street, LLC	61 W. Main St.
Total:		238,539	5.48			
*Approximate acreage obtained from Freehold Borough tax records and tax maps. Lots have not been surveyed and lot areas are subject to change as additional information is obtained.						

The District is comprised of ~5.26 acres or ~229,139 sq.ft. The underlying B-1 district permits professional offices, as well as banks, funeral homes, photography studios, music/dance/art studios and public institutions of higher education while the B-2 underlying zone permits retail sales and service establishments, automobile parking areas, shopping centers, hotels, and public institutions of higher learning. The District is made of an intermingling of uses, including a one-story office building, an auto repair facility, the former Borough Hall, a Bank of America drive through, professional offices, and a mixed-use building. However, the predominate feature of the area are the large areas of surface parking that break up the continuity of this portion of the downtown.

The Block 35 Redevelopment Area is located proximate and is a part of the Borough's downtown neighborhood. To the northwest of the property is a shopping center and residential apartments and to the northwest is a rail right-of-way followed by restaurants and a car detailing center. To the southeast and southwest are professional offices within former residential homes, as well as a mixed-use building and houses of worship.

As a result of a number of factors, including the existing condition and configuration of improvements as well as the large areas of surface parking, a stagnant and declining condition has emerged in this area of the Borough. The Borough is pursuing a revitalization of this area, which is underutilized commercial in character including additional blocks and lots within the

downtown area. The redevelopment of the Block 35 Redevelopment Area is one of the first efforts within this area to address cited conditions.

1.4 Utility and Infrastructure

Municipal water, sanitary sewer, storm water provisions, natural gas, electricity, and voice and data transmission facilities either serve or are available to serve the parcels within the District.

- **Water:** Freehold Borough provides water services to the subject property.
- **Sanitary Sewerage:** Freehold Borough provides sanitary sewer services to the subject property.
- **Electricity:** Electrical power is provided to the District by Jersey Central Power & Light (JCPL).
- **Natural Gas.** Gas lines that service the District are provided by New Jersey Natural Gas.
- **Voice and Data Transmission:** Telecommunication services are reportedly available to the District.

1.5 Environmental Conditions

Any and all redevelopment/rehabilitation efforts must consider the status of environmentally sensitive areas within the District. Potential environmental liabilities present within the District must be identified and all planning and redevelopment/rehabilitation pursued pursuant to all applicable laws, statutes, and pertinent rules.

1.6 Urban Enterprise Zone Status

The Block 35 Redevelopment Area is not located within an Urban Enterprise Zone (UEZ).

2.0 DESCRIPTION OF SITE AND FINDING OF NEED FOR REDEVELOPMENT

The findings of the Planning Board's preliminary investigation are summarized in a report entitled "Borough Hall and Surrounding Commercial Area In Need of Redevelopment Study, Borough of Freehold," dated October 7, 2021 and prepared by Peter Van Den Kooy, PP, AICP (CME Associates). The properties within the Block 35 Redevelopment Area qualified under Criteria A, B, and D, as well as per stipulations within the state statutes permitting the inclusion of lands which are necessary to effectuate a redevelopment area. The following statutory criteria were cited together with a description of the condition evident as justification for inclusion of the subject property or properties for redevelopment:

- Criterion A:** The generality of buildings are substandard, unsafe, unsanitary, dilapidated, or obsolescent, or possess any of such characteristics, or are so lacking in light, air, or space, as to be conducive to unwholesome living or working conditions.
- Criterion B:** The discontinuance of the use of a building or buildings previously used for commercial, retail, shopping malls or plazas, office parks, manufacturing, or industrial purposes; the abandonment of such building or buildings; significant vacancies of such building or buildings for at least two consecutive years; or the same being allowed to fall into so great a state of disrepair as to be untenable.
- Criterion D:** Areas with buildings or improvements which, by reason of dilapidation, obsolescence, overcrowding, faulty arrangement or design, lack of ventilation, light and sanitary facilities, excessive land coverage, deleterious land use or obsolete layout, or any combination of these or other factors, are detrimental to the safety, health, morals, or welfare of the community.

The preliminary investigation and subsequent Planning Board recommendation represented the first step of an extensive planning process. In turn, the governing body elected to proceed with the recommendation of the Planning Board, pursuant to Borough Resolution No. 31-22 adopted February 7, 2022 wherein the properties were designated an area in need of redevelopment with condemnation. The Council directed the preparation of redevelopment plan(s) via Resolution No. 42-22 adopted February 7, 2022. The statute governing this process allows a redevelopment plan to encompass the redevelopment and/or rehabilitation of some or all of the properties within the designated area. The CME Assessment and subsequent designation highlighted the fact that the properties within the study area are not utilized in a manner that allows the achievement of their full development potential, and thus does not enable them to contribute to the public health, safety, and general welfare of the community.

3.0 BLOCK 35 REDEVELOPMENT AREA REGULATIONS

3.1 Approach

The planning approach outlined in this Redevelopment Plan is to create an enhanced opportunity for reutilization of existing improvements as well as the development of new improvements to promote the vitality of the Borough's downtown area by broadening both the type of retail/service establishments permitted as well as the variety of housing within the Borough, and to provide an opportunity for affordable housing in a manner that advances the Master Plan's goals and objectives.

Of note, the redevelopment district is situated adjacent to the proposed My Hometown: The Bruce Springsteen Story center. The proposal consists of a multimedia center with rotating exhibits about the life and times of Bruce Springsteen and his early days in Freehold Borough, and how his story relates to the American Story.

3.2 Plan Interpretation

A replacement zoning district to accommodate the intended permitted land uses will be established and be known as the "Freehold Downtown: Block 35 District." Since this is a replacement zone, the Freehold Downtown: Block 35 District may be used in accordance with the current, underlying zoning designation for the Block 35 Redevelopment Area (see Figure 3) until such time as it is to be redeveloped. Final adoption of this Redevelopment Plan by the Borough Council shall be considered an amendment to the Borough of Freehold Zoning Code and Zoning Map. Unless otherwise defined herein, terms used in this plan shall have the same meaning ascribed to them in the Borough's Zoning Code.

The continued use of the Downtown Freehold: Block 35 District is permitted until the lots are to be developed, redeveloped, or substantially rehabilitated, at which time the provisions of this Redevelopment Plan shall be applied. In the case where a particular land use or site standard is not specifically addressed in this Redevelopment Plan, compliance with the Borough of Freehold's Zoning Code and/or other applicable Borough codes or ordinances shall be required.

The flexibility of land uses within the Block 35 Redevelopment Area is essential to allow for the best design possible in order to:

- 1) Broaden opportunities to reutilize existing, historic improvements;
- 2) Provide for a variety of residential housing within the community;
- 3) Create an opportunity to address the Borough's affordable housing obligation;

- 4) Expand commercial/retail opportunities in a way that complements the existing downtown;
- 5) Create market-driven opportunities to ensure the success of the efforts.

The local land development regulatory process will be administered by the Freehold Borough Planning Board in order to ensure that the goals and objectives of the Redevelopment Plan are met.

3.3 Purpose and Intent

It is the intent of this Redevelopment Plan to achieve the following goals and objectives for the Borough of Freehold as noted within the July 2018 Downtown Freehold Vision Plan:

- A. The downtown will have high-quality modern urban housing that provides immediate access to the area amenities and the bus station;
- B. The downtown will have at least one major high-quality public space that serves the everyday need of users while being able to accommodate larger special events;
- C. Downtown will be an age-, income-, and culturally-inclusive environment that provides affordable business and living opportunities for the borough's large and growing Hispanic population as well as its aging residents. Residents and stakeholders will actively engage in the exchange of ideas and cultures that invite and encourage participation in community processes;
- D. Development project will meet the economic, environmental and social needs of current residents without compromising the ability of future generations to meet their own needs.

The Freehold Vision Plan also notes the importance of new residents/workers as customers for downtown retailers, which will 'inject vitality' into the area.

3.4 Permitted Uses

The Redevelopment Plan seeks to create a mixed-use development that will accommodate a variety of commercial uses that complement the existing downtown area while also providing for a density of housing that both supports local businesses as well as promotes use of the available public transportation. Additionally, the development shall provide affordable housing within the Borough.

Table 1 below lists the permitted uses for this area. Any use not specifically permitted shall be prohibited.

Table 1
Permitted Principal Uses

-
1. The sale of retail goods such as but not necessarily limited to the following types: meat and poultry stores, drug stores, variety stores, drygood stores, baked good stores, packaged liquor stores and taverns, flower stores, confectionery stores, household supply stores, stationery supplies stores, haberdashery, and apparel stores;
 2. The provision of service establishments such as but not limited to the following types: barber or beauty shops, clothes cleaning and laundry pick-up establishments, shoe repair shops, the office of a member of a recognized profession such as physicians, attorneys, dentists, ministers, chiropractors, architects, engineers, accountants, insurance agents, real estate brokers, stock brokers and other generally recognized professional service personnel and organizations, banks, photography studios, music, dance and art studios;
 3. Restaurants, luncheonettes, and eateries, including fast casual dine-in facilities, but prohibiting drive-thru and take-out only establishments. Walk-up windows shall only be permitted in restaurants situated along a public courtyard and must face the public courtyard. Seasonal outdoor dining shall be permitted in the courtyard.
 4. Grocery stores, not to exceed 10,000 sq.ft.;
 5. Multifamily dwellings;
 6. Mixed-use structures consisting of permitted uses
-

A. Required accessory uses. Required accessory uses include public open space, configured as either a public central courtyard located at the ground level in the core of the structure along Main Street or along Main Street between the new structure and the existing fire house. The public courtyard shall be attractively designed and landscaped, should include architectural components of the new structure and consider surrounding structures, and shall contain a minimum area of 7,500 feet.

- a. Center Courtyard Public Open Space
- b. Main Street Public Courtyard

Below please find photos of exemplary courtyards:



- B. Permitted accessory uses. Permitted accessory uses may include fences and walls, signage, dog washing stations, fitness centers, virtual fitness centers, gazebos, sports courts, a swimming pool, and uses that are commonly ancillary to principal permitted uses. Sheds and similar accessory structures are not permitted.

The following accessory uses shall be permitted within a multi-family dwelling structure for the use of its residents: package storage including refrigerated

foot storage for tenant delivers, mail room, computer rooms, music rooms, libraries, golf simulators, bowling lanes, game rooms, community rooms, theaters, hobby rooms, recreation rooms, personal storage lockers, and other similar accessory uses which are for the common benefit of all residents of the multi-family dwelling; and a leasing office, building manager or superintendent's office, including space for the storage of maintenance equipment may be provided within a principal multi-family building for the purpose of serving such building; one apartment may be designated for a resident superintendent.

1. Specific Use Standards

- a. A 15% set aside for affordable housing shall be provided and unit mix be as set forth in the Redevelopment Agreement (defined below).
- b. A secure package receiving and storage system shall be provided for the residential units.
- c. Bicycle storage shall be provided. The number of bicycle storage spaces shall be set forth in the Redevelopment Agreement. Storage shall be provided within a secure room with racking conducive to securing bicycles with owner provided locks. The bicycle storage room shall also provide a work bench for bicycle repairs. The bicycle storage space shall anticipate the storage of e-mobility vehicles and potential risks associated with same, such as batteries overheating and causing fires/damages when re-charging. In order to prevent this risk from occurring within residential units, the bicycle storage area shall provide UL tested and approved charging stations and the area itself shall be constructed so as to minimize the potential impacts affecting the remainder of the structure, i.e. the space shall be sprinklered, of fire-resistant construction and shall include smoke detectors. Lease documentation and/or condominium documentation shall explicitly prohibit charging batteries anywhere in the structure other than locations specifically designed for this purpose.
- d. Trash and recycling shall be collected and stored within a designated area of the building.
- e. Each apartment shall provide laundry facilities for the resident within the apartment. There shall be no common laundry facility.
- f. Controlled and secure access for the residential use shall be provided.
- g. Dwelling units shall contain a complete kitchen, toilet, and bathing facilities. Market rate units shall contain no more than two bedrooms.

Market rate units are only permitted in one- and two- bedroom configurations.

- h. The fifth and sixth floors of the building, if proposed, must setback a minimum of 20 ft. from the perimeter of the fourth floor.
- i. Retail uses shall be oriented toward Main Street and Main Street oriented courtyards.
- j. Off-street parking for multifamily dwelling units shall be provided in accordance with the New Jersey Residential Site Improvement Standards (N.J.A.C. 5:21, as amended). Off-street parking for the commercial uses shall be provided in accordance with §18.73.010 of the Borough's Zoning Ordinance. In the case of a development proposal in which there are efficiencies derived by shared parking for uses which have complementary peak demands, the applicant shall submit parking generation data, based upon standard methodology (such as that published by the Urban Land Institute) sufficient for the redevelopment entity to determine the appropriate reduction. The final parking configuration shall be set forth in the Redevelopment Agreement.
- k. Off-street parking facilities, to the greatest extent possible, shall be designed so as to provide parking sufficient for use by both residents and the general public visiting the area.
- l. A designated area for pick-up and drop-off by such ride share services as Uber or Lyft, shall be provided in an enclosed waiting area along Broad Street. The parking/drop-off point must be clearly visible from the enclosed waiting area. This area must be provided along Broad Street and may consist of curb-site parking stalls. Parking shall not be permitted in this area.
- m. The building shall include on each floor, all separate from individual dwelling units and access hallways and as specifically reviewed and approved by the Planning Board, one or more trash chutes in enclosed areas and/or one or more other enclosed areas for temporary storage of waste and recyclable materials prior to being conveyed to the outside garbage and recycling storage and pick-up structure(s) by property janitorial and/or maintenance workers. Minimum unit sizes for all units shall be set forth in the Redevelopment Agreement.
- n. Public Open Space along Main Street. Retail spaces along Main Street may vary in setback by up to 10 feet from the property line in order to create interest and outdoor space complimenting the commercial uses.

- o. Historic Center. A successful developer shall be cognizant of the historic character of the community and key historic elements within the designated redevelopment area. The designated developer shall respect the historical character of our streetscape, and integrate any new structures into that streetscape and shall consider:
 - a. Wrap-around construction;
 - b. Integration and adaptive reuse;
 - c. Relocation of existing historic structures on site
 - d. Relocation of existing historic structures to another site
 - e. Italianate architectural elements.
- p. Developer will consult with the Freehold Historic Preservation Advisory Commission on such subjects as:
 - a. Preservation of structures considered to be historic in nature;
 - b. Building facades, architectural styles, materials and finishes;
 - c. Integration with the historic character of the surrounding community.
- q. To the greatest extent possible, building facades shall be designed to appear as separate structures. Façade treatments shall be designed with a variety of district characteristics incorporating the stylistic theme.

2. Exemplary Photos of Styles and Themes

a. Façade Treatments

- i. Individual exterior stairs provide the illusion of brownstone development.



- ii. Step backs at upper floors reduce visual impacts of the building's height.





- iii. Façade treatments break up the continuity of the structure and create the illusion of multiple buildings.



iv. Decorative rooflines add character to structures.





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b. Stylistic Examples

i. Samples of Italianate





ii. Samples of Romantic Architectural Styles







c. Examples of Tenant Courtyard Treatments

- i. Note walkways and landscaping utilized to soften the appearance of the structure.



ii. Seating areas provided to encourage outdoor meetups.





3. Bulk Standards

Table 2
Downtown Freehold: Block 35 Bulk Regulations

Zoning Standard	Redevelopment District Requirement
Minimum Lot Area (Acres.)	5
Minimum Front Yard Setback to Building (Feet)	
Main Street	10
Broad Street	10
Minimum Side Yard Setback to Building (Feet)	5
Minimum Combined Side Yard Setback to Building (Feet)	10
Minimum Rear Yard Setback to Building (Feet)*	N/A
Minimum Side Yard Setback to Driveways and Circulation Aisles (Feet)	20
Maximum Impervious Coverage (%)	90
Maximum Building Height (Stories)(Feet)**	6-Stories/ 70' to top of parapet or midpoint of sloped roof
Minimum Width of Two-Way Circulation Aisles (Feet)	24

*The Block 35 Redevelopment Area represents a through lot; therefore, for purposes of this plan, it will be defined as having two frontages (Main Street and Broad Street) and two side yards.

**Refer to §18.04.040 of the Lane Use Ordinance of the Borough for 'Building, Height of'.

3.5 Supplemental Regulations

A. General Regulations

1. In the event of any conflicts between the regulations set forth herein and any other Borough of Freehold development ordinances, the District regulations shall apply.

B. Distribution of Uses

1. Delineation on plan required. The applicant shall identify the square footage devoted to principal and accessory uses within the District. The amount of open space and landscaped open space shall be calculated.
2. In all instances, adequate screening and buffering shall be provided between conflicting land uses.

C. Landscaped Open Space Requirements

1. A minimum of twenty percent of a site's land area shall be devoted to landscaped/naturally vegetative open space. Up to 50% of this obligation may be met with 'green' treatments on elevated courtyards.
2. Open space shall be suitably landscaped and planted so as to provide an attractive year-round visual amenity.
3. The site shall be suitably landscaped. Plans and specifications for planting, top soiling, lawn making and other landscape work shall be prepared by a competent landscape architect and be a part of the plans submitted for approval. All planting shall be in place and in a satisfactory condition at the time of issuance of a certificate of occupancy or an adequate bond shall be posted therefor.
4. Street trees shall be planted at intervals depending on the type: large trees, 50-70 feet; medium trees, 40-50 feet; small and ornamental trees, 30-40 feet.

D. Signs

All signs shall be architecturally compatible with the styles, materials, colors and details of the building and other signs used on the subject property. Signs shall be consistent with the provisions of Chapter 15.16 Signs, specifically general regulations and regulations associated with the B-2 District.

One building mounted community identification sign shall be permitted. The sign shall be architecturally compatible with the style of the structure, shall not exceed 100 square feet in area and 5 feet in height. The sign shall not be internally illuminated, and the message shall be limited to the name of the community.

Additional signage for wayfinding and identification of loading areas shall also be permitted pursuant to Planning Board approval and not to exceed 6 sq.ft. each.

Signage shall be provided in accordance with the aforementioned Borough Code sections except for façade identification sign, which shall be governed by section 3.5D of this plan.

E. Stormwater Management

Stormwater management facilities located in and serving development pursuant to the District shall satisfy all applicable requirements established by local and regional jurisdictions and the New Jersey Department of Environmental Protection.

F. Street, Curbs and Sidewalks

Proposed right-of-way improvements shall meet the requirements set forth in the Borough's Land Code at Title 10 (Vehicles and Traffic) and Title 12 (Streets, sidewalks and Public Places); and Title 15 (buildings and Construction) and shall be consistent with the streetscape design and standards being implemented elsewhere in the Borough.

G. Deviation Requests

The Planning Board may grant deviations from the bulk standards provided in this redevelopment plan where, by reason of exceptional narrowness, shallowness or shape of a specific piece of property, or by reason of exceptional topographic conditions, preexisting structures or physical conditions uniquely affecting a specific piece of property, the strict application of any area, yard, bulk or design standard or regulation adopted pursuant to the redevelopment plan, would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardship upon, the development of such property. The Planning Board may also grant such relief in an application relating to a specific piece of property where the purposes of this redevelopment plan would be advanced by a deviation from the strict application of the bulk standards of this Plan, and the benefits of the deviation would substantially outweigh any detriments. No relief may be granted under the terms of this section unless such deviation or relief can be granted without substantial detriment to the public good and will not substantially impair the intent and purpose of this Plan. No deviations may be granted that would result in permitting a use that is not permitted in the District. An application requesting a deviation from the requirements of this redevelopment plan shall provide notice of such application in accordance with the requirements of N.J.S.A. 40:55D-12a, b.

Deviations from the uses permitted in the District shall be permitted only by means of an amendment to this redevelopment plan by the Borough Council.

3.6 Design Standards

Fundamental to the redevelopment of the District is the creation of a mixed-use district that is cognizant of and responds to the needs of the local community and aids in addressing the Borough's affordable housing needs. Visual and functional transition elements are essential. Off-street parking, clearly defined access from Broad Street and/or Main Street, an architectural style that is compatible with neighboring structures, quality building materials, and an enticing streetscape are all key requirements of the Redevelopment Plan.

To the extent practical, these standards should be considered for any building that will be rehabilitated; however, architectural design standards shall not be mandatory for any building seeking rehabilitation.

Purpose

- To set forth guidelines and standards that promote the creation of functional and attractive development that shall promote and give due consideration to the health, safety, general welfare, morals, order, efficiency, economy, maintenance of property values and character of the Borough of Freehold.
- To ensure that any development shall comply with the stated goals and objectives of this redevelopment plan.
- To provide guidelines and standards that shall be used by an applicant in preparing a redevelopment proposal, and the designated redevelopment entity in reviewing same.
- To minimize adverse impacts of flooding, drainage, erosion, vehicular traffic, pedestrian movement, parking, vibration, lighting and glare, noise, odor, solid waste disposal, litter, ventilation, vibration, crime and vandalism, and inappropriate design and development.
- To ensure that any new development gives due consideration to the physical, visual and spatial characteristics of the existing and proposed streetscape, neighborhood and district in which it is located and the Borough generally, while providing sufficient opportunity for creativity in design.

Site Standards

- *Vehicular access.* It is the intent of this Plan to provide sufficient driveways and curb cuts onto the existing public rights-of-way to provide adequate

circulation while limiting potential impacts to neighboring uses. Vehicle access from Main Street shall not be permitted. A maximum of 2 curb cuts along Broad Street may be permitted. Parking within the District shall be provided completely on site. Off-street parking shall be prohibited within 10 feet of any public right-of-way or street. Emergency circulation shall be provided to the satisfaction of the Fire Official. Loading areas shall be located to the side and rear of buildings when possible. If the configuration of the property prohibits the placement of loading areas to the rear or side, proper screening shall be provided in order to minimize the impact on the traveling public.

- *Educational and residential activity.* Land uses permitted by this redevelopment plan may draw both pedestrian and motor vehicle activity, and this redevelopment plan is dependent on both to varying degrees according to the type of proposed uses. Sufficient parking for the District is important to the long-term success of the Plan. Emphasis should also be placed on providing parking in sufficient quantity and in reasonable proximity to building access points.
- *Building location.* Buildings shall be located to front towards and relate to public streets, both functionally and visually. All buildings shall be located to allow for adequate fire and emergency access. Refuse collection facilities located outside of the structure are prohibited.
- *Pedestrian Circulation.* Barrier-free, uninterrupted walkway systems shall be provided in each District in order to allow pedestrian access to the buildings from the onsite parking facilities and site amenities to the building's main entrances. Walkways shall be separated from motor vehicle circulation to the greatest extent possible.
- *Site Lighting.* The style, size, color and type of light source of lampposts shall be in accordance with generally accepted Borough standards or its functional and aesthetic equivalent. Lighting levels from such fixtures shall be in accordance with Borough standards.
- *Sidewalk type and streetscape details.* Sidewalks and all other streetscape improvements along adjacent public streets, if deemed necessary, shall be completed in accordance with the Borough's design standards.

Architectural Design Standards

- *Massing.* Building wall features, including architectural features, color and texture changes, projections and recesses, shall be provided along any building wall measuring greater than 75 feet in length in order to provide architectural interest and variety to the massing of a building and relieve the negative visual effect of a single, long wall. More detailed architectural and

landscaping requirements shall be incorporated within the Redevelopment Agreement of the Block 35 Redevelopment Area's surroundings.

- *Continuity of treatment.* All sides of a building shall be architecturally designed so as to be compatible with regard to style, materials, colors and details.
- *Roof.* The type, shape, pitch, texture and color of a roof shall be considered as an integral part of the design of a building and shall be architecturally compatible with the style, materials, colors and details of such building.
- *Windows.* Fenestration shall be architecturally compatible with the style, materials, colors and details of a building.
- *Entrances.* All entrances to a building shall be defined and articulated by utilizing such elements as lintels, pediments, pilasters, columns, canopies, porticoes, porches, overhangs, railings, balustrades and other such elements, where appropriate. Any such element utilized shall be architecturally compatible with the style, materials, colors and details of such building.
- *Physical plant.* All air-conditioning units, HVAC systems, exhaust pipes or stacks, and elevator housing shall be shielded from view for a minimum distance of 500 feet from the site. Such shielding shall be accomplished by utilizing the walls or roof of the building or a penthouse-type screening device that shall be designed to be architecturally compatible with the style, materials, colors and details of such building. Any HVAC or device penetrations (such as PTAC sleeves and grills) or vents located along any street-oriented façade shall be shielded from view with decorative metal grills. The design of the grills shall be presented to the Planning Board for approval at the time the redevelopment application is presented for review.
- *Materials, colors, and details.* All materials, colors and details used on the exterior of a building shall be architecturally compatible with the style of such building. A building designed of an architectural style that normally includes certain integral materials, colors and/or details shall have such incorporated into the design of such building.

Materials and systems should be selected with best efforts towards energy efficiency and the promotion of sustainability. Roof materials that reduce 'heat island' effects should be considered. The utilization of high SEER and energy efficient heating components should be incorporated. Insulated glass should be utilized and formaldehyde free insulation should be considered. Where practical, materials derived from recycled raw goods are encouraged. Low energy LED lighting and the utilization of sensors to control lighting are desirable. Utilization of low VOC paints is encouraged.

Where practical, the introduction of renewable energy components, i.e. solar or wind, should be incorporated.

- *Lighting.* Light fixtures attached to the exterior of a building shall be designed to be architecturally compatible with the style, materials, colors and details of such building and other lighting fixtures used within the Districts. Consideration shall also be given to the type of light source utilized and the light quality such sources produce. The type of light source used on buildings, signs, parking areas, pedestrian walkways and other areas of a site shall be the same or compatible. The use of low-pressure sodium or mercury vapor lighting either attached to buildings or to light the exterior of buildings is prohibited. Energy efficient LED lighting shall be used to the greatest extent possible.
- *Awnings and canopies.* The ground level of a building in the Redevelopment District may have awnings or canopies at entry doors (other than overhead doors intended to accommodate tailgate loading, where appropriate) to complement the architectural style of a building. The design of awnings shall be architecturally compatible with the style, materials, colors and details of such a building.
- *Materials.* Exterior building materials shall consist of the following:
 - Walls shall consist of textured masonry, pre-cast concrete, brick, insulated metal panels, finished cementitious materials, or glass.
 - The Redeveloper shall present samples and all proposed materials and finishes (inclusive of colors) to the Planning Board at the time of initial application.
- *Prohibited materials.* The use of bare aluminum or other bare metal materials or panels, brick face, thin-brick, EIFS or exposed non-decorative concrete block as exterior building materials is prohibited. The use of unusual shapes, colors, and other characteristics that create a jarring disharmony shall be avoided.

Landscaping Design Guidelines

- *Landscaping.* The entire development shall be landscaped in accordance with a landscape plan conceived as a complete pattern and style throughout the total site.
 - Preservation and enhancement, to the greatest extent possible, of existing natural features on the site, including vegetation and land forms;

- Assistance in adapting a site to its proposed development;
 - Mitigation and control of environmental and community impacts from a development;
 - Creation of an attractive appearance for the development, as viewed from both within the District itself and the surrounding area;
 - Definition of yard areas and other open space;
 - Energy conservation and micro-climatic control.
- *Other site design elements.* The site plan shall incorporate landscaping with other functional and ornamental site design elements, where appropriate, such as the following:
 - Ground paving materials;
 - Paths and walkways;
 - Fences, walls and other screens;
 - Street and site furniture.
 - *General standards.* The following general standards shall be used to prepare and review landscaping for any development plan.
 - All deciduous trees planted shall have a caliper of not less than 2.5 inches measured at a height of 4.5 feet above ground level. All evergreen trees planted shall have a height of 6.0 to 8.0 feet.
 - Any tree or other planting installed in accordance with the plans which dies shall be replaced, within the current or next planting season, in kind and at the same size as it had reached at the time of death; except that if it died more than three years after planting its replacement need not be larger than the size it had reached three years after planting. The same replacement requirements shall apply to any tree or other planting installed in accordance with the plans if subsequently removed because of damage or disease.
 - During site preparation or construction, no fuel storage, and no refueling, maintenance, repair or washdown of construction vehicles or equipment, shall occur within 50 feet of any tree to be preserved.

- No mulch shall be placed, or allowed to accumulate, within six inches of the trunk of any tree or shrub planted within the Districts in compliance with this resolution. Mulch shall not be applied, or allowed to accumulate, elsewhere within the drip line of the tree or shrub to a depth in excess of four inches.
- *Specific standards.* The following standards shall be used to prepare and review landscaping within the District:
 - The interior area of all parcels shall be landscaped to enhance the site's aesthetic appearance, provide visual relief from the monotonous appearance of extensive building and parking areas, and to provide shading. In parking lots, such landscaped areas shall be provided in protected planting islands or peninsulas located within the perimeter of the parking lot and shall be placed so as not to obstruct the vision of motorists.
 - The redeveloper shall provide to the redevelopment entity an acceptable landscaping plan in accordance with this Redevelopment Plan.
 - Benches, trash receptacles, kiosks, and other street or site furniture shall be located on-tract, and shall be positioned and sized in accordance with the functional need of such. Selection of such furniture shall take into consideration issues of durability, maintenance and vandalism. Benches shall be configured with seat dividers or in a non-linear configuration in order to dissuade an individual from lying across the bench. All such furniture shall be architecturally compatible with the style, materials, colors and details of buildings on the site.

Exceptions

The design standards contained herein shall be used as the Borough's presumptive minimum requirements for development in the District. However, these guidelines and standards are not intended to restrict creativity, and a potential redeveloper may request that the guidelines and standards be modified or waived. The Planning Board may grant a redeveloper reasonable waivers or modifications from these design guidelines provided the redeveloper demonstrates the following:

- The proposed design waiver or modification will not substantially impair the intent of this redevelopment plan;
- The proposed design waiver or modification is consistent with the Borough's normally acceptable engineering, planning and/or architectural practices;

- The proposed design waiver or modification will not have an adverse impact on the physical, visual or spatial characteristics of the overall development plan for the parcel or tract to be developed;
- The proposed design waiver or modification generally enhances the overall development plan for the tract;
- The proposed design waiver or modification will not have an adverse impact on the physical, visual or spatial characteristics of the existing streetscape and neighborhood in the District;
- The proposed design waiver or modification generally enhances the streetscape of the District and the surrounding neighborhood;
- The proposed design waiver or modification will not reduce the useful life or increase the cost of maintenance of the improvement to be modified or otherwise have an adverse impact on the long-term function of the development;
- The proposed design waiver or modification will not materially detract from the real property value of the development or adjacent or nearby properties; and
- The proposed design waiver or modification will not present a substantial detriment to the health, safety and welfare of the neighborhood, community or citizens of the Borough of Freehold.

Deviations from the uses permitted in the District shall be permitted only by means of an amendment to this redevelopment plan by the Borough Council.

4.0 ACQUISITION AND RELOCATION

4.1 Properties to be Acquired

Properties may need to be acquired in order to implement the purposes of this redevelopment plan. Some, but not all, properties within the Downtown Freehold: Block 35 Redevelopment District that are not owned by the Borough of Freehold may be acquired to enable this redevelopment plan. Properties may be acquired for the following purposes:

- Redevelopment or rehabilitation of existing lots;
- Assembly of development parcels; and
- Alteration of lot lines.

This Redevelopment Plan authorizes the Borough to exercise its power of eminent domain within the Downtown Freehold: Block 35 Redevelopment District to acquire any and all property within the Block 35 Redevelopment Area or to eliminate any restrictive covenants, easements or similar property interests that may obstruct or undermine the implementation of the Plan.

Only the properties identified in Table 2 below may be acquired to enable this redevelopment plan:

Table 3

Downtown Freehold: Block 35			
Block	Lot	Ownership	Property Address
35	15	15 Hardy Street Corp.	32 Broad St.
35	16	Hamilton Kuser Associates, LLC	30 Broad St.
35	17	Bank of America Corp. Real Estate AS	28 Broad St.
35	29	Bank of America Corp. Real Estate AS	53 W. Main St.
35	30	American Realty Enterprises, LLC	55 W. Main St.
35	31	Mainstream 57, LLC	57 W. Main St.
35	32	Blitz 61 West Main Street, LLC	61 W. Main St.

4.2 Relocation

Relocation, temporary or permanent, of businesses/residents displaced as a result of the implementation of this Redevelopment Plan shall be carried out by the Borough, or such entity designated by the Borough (Relocation Entity) in accordance with the provisions of the State of New Jersey Relocation Assistance Law of 1967 (N.J.S.A. 52:31B-1 et seq.) and the Relocation Assistance Act of 1971 (N.J.S.A. 20:4-1 et seq.), the rules promulgated there under, and a State-approved Workable Relocation Assistance Plan (WRAP) for

the Block 35 Redevelopment Area. Said WRAP shall be available for public inspection at the offices of the Relocation Entity.

A WRAP, as defined by the NJ Department of Community Affairs (DCA), demonstrates that the municipality knows the number of people, businesses, or farm operations impacted by the relocation plan and that there is are enough comparable replacement housing units or business sites in the area for the people to find new homes, apartments, or business locations. NJ Department of Community Affairs approval of the WRAP is required before relocation activities may commence.

It is estimated that adequate opportunities for the relocation of businesses and public facilities currently located within the Downtown Freehold: Block 35 District are available in the immediate region during the relocation period. Implementation of the Redevelopment Plan will not result in the relocation of any residences within the Block 35 Redevelopment Area. The Relocation Entity will seek to identify potential new locations for businesses that may be displaced as a result on the implementation of this Redevelopment Plan.

5.0 RELATIONSHIP TO OTHER PLANS

The LRHL requires a Redevelopment Plan to include a statement regarding any significant relationship that the redevelopment plan may have to contiguous municipalities, the County Master Plan, and the State Development and Redevelopment Plan. A review of the documents reveals that the proposed redevelopment plan is generally consistent with these various documents. The District is located within the center of the Borough and, therefore, not located adjacent to any adjoining municipality, but the overall goals and objectives are generally consistent with the land use planning philosophies espoused in the master plans of contiguous communities.

5.1 Freehold Master Plan

It is the intent of this Redevelopment Plan to achieve the following goals and objectives for the Borough of Freehold as noted within the July 2018 Downtown Freehold Vision Plan:

- E. The downtown will have high-quality modern urban housing that provides immediate access to the area amenities and the bus station;
- F. The downtown will have at least one major high-quality public space that serves the everyday need of users while being able to accommodate larger special events;
- G. Downtown will be an age-, income-, and culturally-inclusive environment that provides affordable business and living opportunities for the borough's large and growing Hispanic population as well as its aging residents. Residents and stakeholders will actively engage in the exchange of ideas and cultures that invite and encourage participation in community processes;
- H. Development project will meet the economic, environmental and social needs of current residents without compromising the ability of future generations to meet their own needs.

The Vision Plan also notes the importance of new residents/workers as customers for downtown retailers, which will 'inject vitality' into the area.

Redevelopment of the study area advances the goals and objectives of both the Borough Master Plan and the State Development and Redevelopment Plan.

5.2 Sewer and Water Service

The District is located within public water and sewer service areas.

5.3 Transportation and Public Transportation

The District is served by a NJ Transit bus hub. Access to the regional highway network is readily available as Routes 9 and 33 provides access to the larger roadways/highways, such as the Garden State parkway and Interstate 195.

5.4 Relation to Master Plans of Adjacent Municipalities

The Borough of Freehold is encircled by the Township of Freehold on all sides. The Redevelopment District is located toward the center of the Borough and will, therefore, not impact Freehold Township.

5.5 Relation to Monmouth County Plan

The Monmouth County 2016 Master Plan Reexamination. Goal #3 of the plan states: "Promote beneficial development and redevelopment that continues to support Monmouth County as a highly desirable place to live, work, play and stay." Objectives provided in support of the goal include: Encourage a range of housing options including types, sizes, styles and accommodations to meet the needs associated with various lifestyles, life-stages, abilities, and occupations of residents while supporting economic sustainability with the region; and Promote vibrancy, attractiveness, and a diverse array of uses, occupations, services, and amenities for downtowns and business districts. The Downtown Freehold: Block 35 Redevelopment District furthers the goals and objectives of the Monmouth County Plan by providing an expanded range of housing and commercial opportunities available to the community.

5.6 Relation to State Development and Redevelopment Plan

This Redevelopment Plan is designed to affirm the overall redevelopment concepts set forth in the State Development and Redevelopment Plan. Specifically, the State Development and Redevelopment Plan encourages development in older cities and in suburbs that have the necessary infrastructure to accommodate it, as well as in locations along existing transportation corridors. The Downtown Freehold: Block 35 District is located in a "Metropolitan Planning Area." That classification has the following characteristics: predominantly developed with little vacant land; aging infrastructure; recognize that redevelopment will be the predominant form of growth; and understands that certain municipal services and systems need to be regionalized. This Redevelopment Plan affirmatively addresses the State Plan's goal of promoting public and private investment/reinvestment in the Metropolitan Planning Areas.

6.0 AFFORDABLE HOUSING

6.1 Inventory and Replacement of Affordable Housing

Multi-family developments proposed within the District must provide a 15% set aside for affordable housing. The redeveloper is responsible for complying with the Borough's Affordable Housing regulations and applicable provisions of the Borough's Fair Share Housing Agreement.

7.0 ELECTRIC VEHICLE RECHARGE STATIONS

Each District within the proposed redevelopment shall provide electric vehicle recharge stations as mandated by State regulations.

8.0 IMPLEMENTATION OF THE REDEVELOPMENT PLAN

This section summarizes the implementation process for a successful redevelopment plan.

8.1 Redevelopment Entity

The Borough Council shall serve as the Redevelopment Entity hereunder.

8.2 Phasing

The District shall be developed in a single phase.

8.3 Appointment of a Redeveloper

The designation of a Redeveloper by the Redevelopment Entity shall be subject to the execution of an appropriate redevelopment agreement ("Redevelopment Agreement") and financial agreement, if applicable. By designating the Block 35 Redevelopment Area as an area in need of redevelopment, a redevelopment project within the Block 35 Redevelopment Area may be eligible for a tax exemption pursuant to the Long Term Tax Exemption Law, N.J.S.A. 40A:20-1 et seq., subject to approval by Borough Council and execution of a financial agreement between the redeveloper and the Borough. Estimates of total development cost and time schedule for project start and completion shall be finalized by the designated redeveloper(s) at the time of execution of such Redevelopment Agreement. Development plans shall also be submitted for approval to the Borough Planning Board, as required by the Borough's Land Development Ordinance. If a different redeveloper is designated for each District within the Block 35 Redevelopment Area, then the term "Redeveloper" as used herein shall apply to the Redeveloper designated to its respective District, and the requirements herein imposed on such Redeveloper shall relate to the respective District for which the Redeveloper was so designated.

8.4 Development Review

No application for development or redevelopment of a District may be approved by the Planning Board until such time as the applicant has applied for and received a designation as redeveloper from the Redevelopment Entity and has executed a Redevelopment Agreement with the Redevelopment Entity providing for the proposed application. Preliminary and Final Site Plans, with details sufficient to comply with the Municipal Land Use Law and the Borough's Land Use Ordinance, will be submitted for Planning Board review and approval for each development parcel, pursuant to N.J.S.A 40:55D-1 et seq.

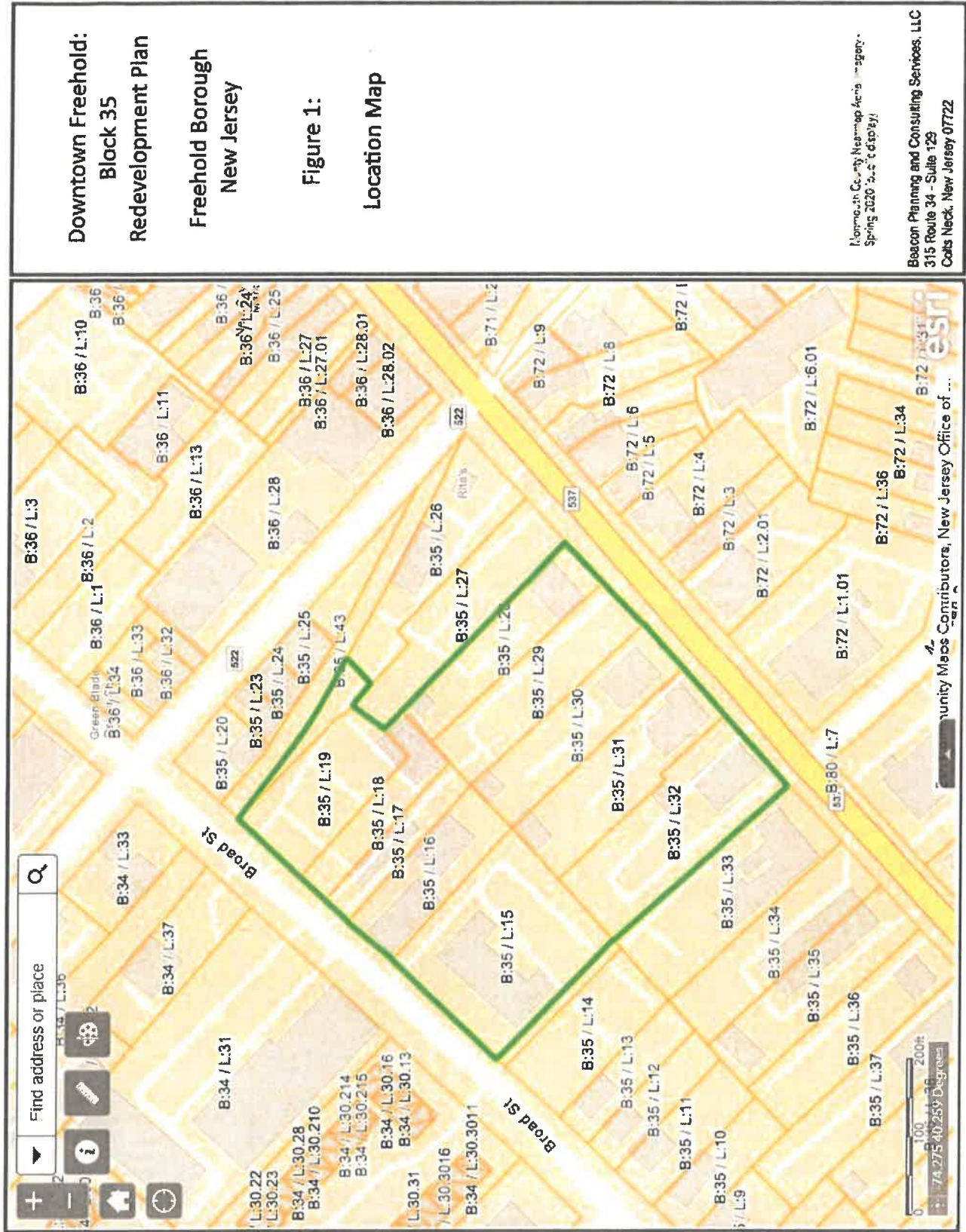
The Planning Board may require the redeveloper to provide a bond or bonds of sufficient size and duration to guarantee the completion of the various project phases in each District in compliance with the requirements of the Municipal Land Use Law and planning approvals.

The objectives, standards and requirements contained in this Redevelopment Plan, shall regulate development within the Redevelopment District and take precedent over the Land Development Ordinance of the Borough of Freehold. For standards not specifically addressed within this Redevelopment Plan, the Land Development Ordinance shall apply. The regulations for the zone or zones permitting the most similar types of use or uses shall be applied. These requirements may be varied by the Planning Board pursuant to N.J.S.A. 40:55D-1 et seq.

8.5 Amending the Redevelopment Plan

This Redevelopment Plan may be amended from time to time in compliance with the requirements of law.

FIGURES 1 - 5



**Downtown Freehold:
Block 35
Redevelopment Plan**

**Freehold Borough
New Jersey**

**Figure 2:
Redevelopment
Area Map**

Monmouth County, New Jersey
Spring 2020, as displayed

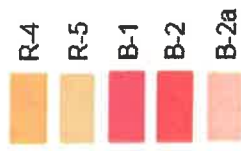
Beacon Planning and Consulting Services, LLC
315 Route 34 - Suite 129
Colts Neck, New Jersey 07722



Downtown Freehold:
Block 35
Redevelopment Plan

Freehold Borough
New Jersey

Figure 3:
Borough Zoning Map



Obtained from
Freehold Borough
Zoning Map
Adopted 09/19/2005
Amended 12/18/2006

Beacon Planning and Consulting Services, LLC
315 Route 34 - Suite 129
Colts Neck, New Jersey 07722

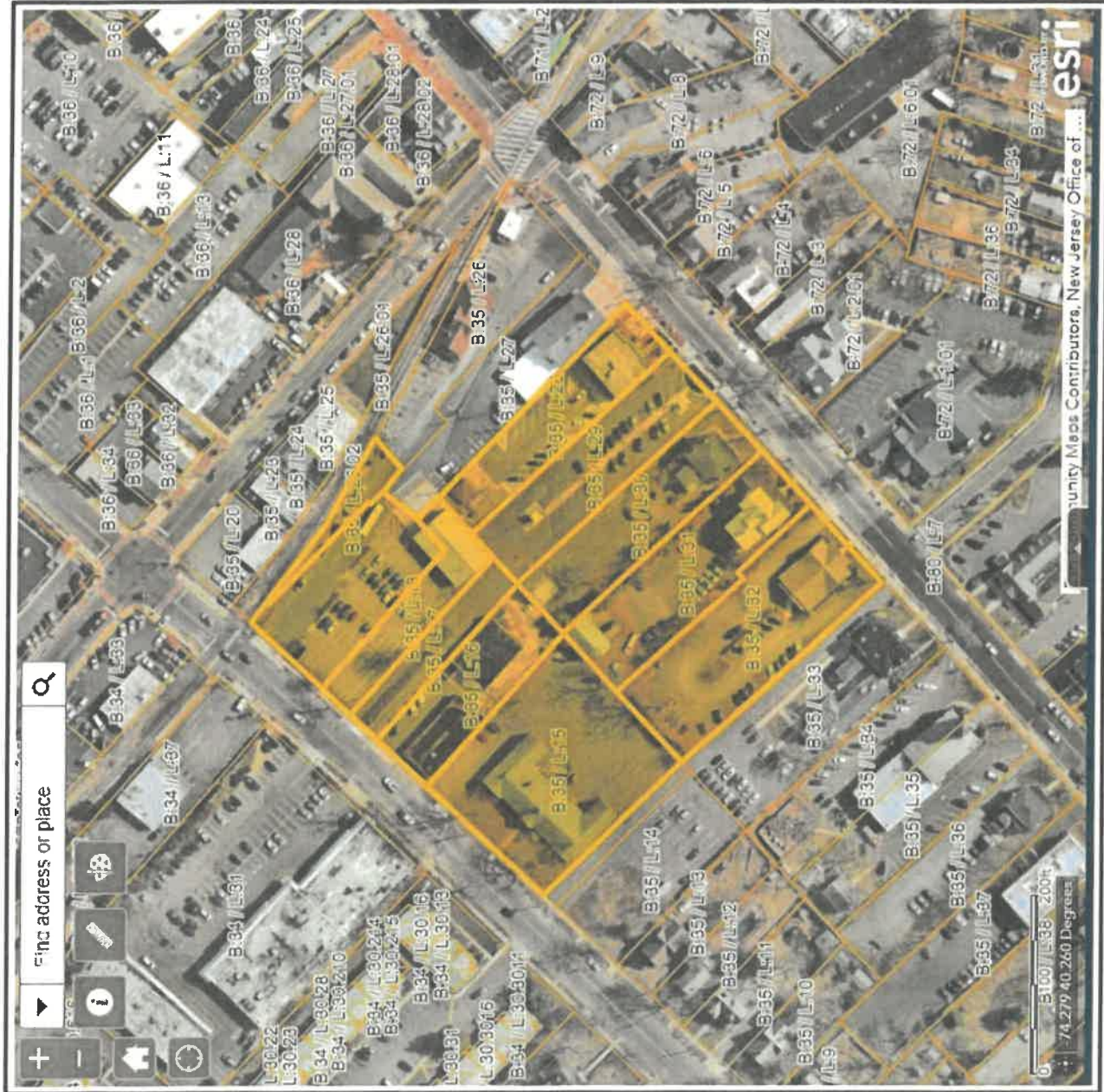


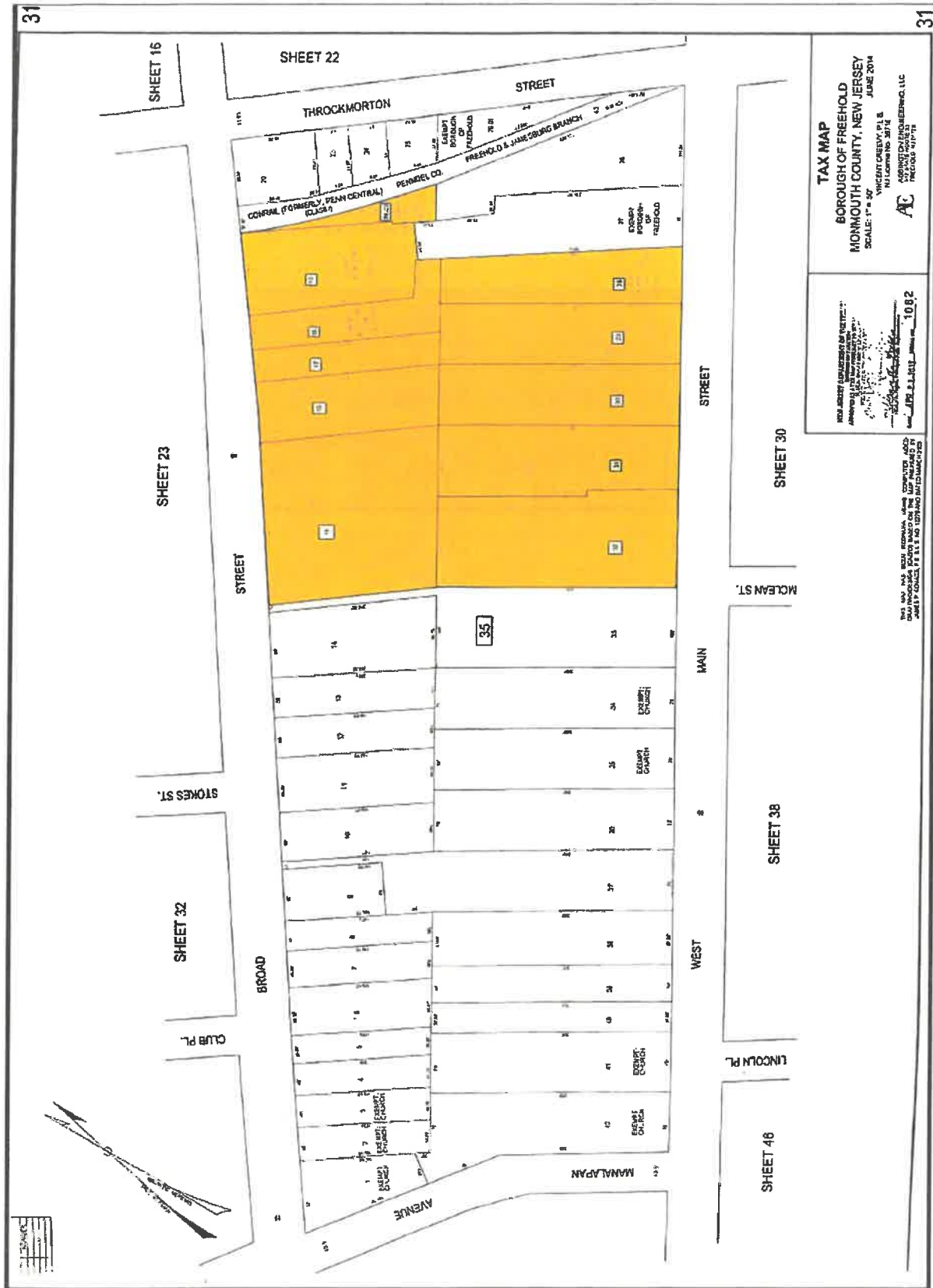
**Downtown Freehold:
Block 35
Redevelopment Plan
Freehold Borough
New Jersey**

**Figure 4:
Proposed Zoning**

Monmouth County Map-Aerial Imagery
Spring 2020 (as displayed)

Beacon Planning and Consulting Services, LLC
315 Route 34 - Suite 129
Cott's Neck, New Jersey 07722





APPENDIX 1

Borough of Freehold Resolution No. 31-22, adopted 02/07/2022

OFFERED BY:	Reich	SECONDED BY	Jordan
	AYE NAY ABSENT ABSTAIN		AYE NAY ABSENT ABSTAIN
DI BENEDETTO	X	ROGERS	X
JORDAN	X	SCHNURR	X
REICH	X	SHUTZER	X

I, TRACI L. DI BENEDETTO, CLERK OF THE BOROUGH OF FREEHOLD, DO HEREBY CERTIFY THE FOLLOWING RESOLUTION WAS ADOPTED BY THE MAYOR AND COUNCIL OF THE BOROUGH OF FREEHOLD AT A MEETING HELD ON: FEBRUARY 7, 2022.


TRACI L. DI BENEDETTO, RMC, BOROUGH CLERK

Resolution No. 31-22
Agenda No: 3/2022

RESOLUTION OF THE COUNCIL OF THE BOROUGH OF FREEHOLD DESIGNATING THE PROPERTIES KNOWN AS BLOCK 34, LOTS 31 and 37, BLOCK 35, LOTS 15, 16, 17, 18, 19, 23, 24, 26, 26.01, 26.02, 27, 28, 29, 30, 31, and 32 ON THE TAX MAP OF THE BOROUGH OF FREEHOLD, STATE OF NEW JERSEY, AS AN AREA IN NEED OF REDEVELOPMENT WITH THE POWER OF CONDEMNATION, PURSUANT TO THE LOCAL REDEVELOPMENT AND HOUSING LAW, N.J.S.A. 40A:12A-1, *et seq.*

WHEREAS, the Borough of Freehold, a public body corporate and politic of the State of New Jersey (the "Borough"), is authorized pursuant to the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1, *et seq.* (the "Redevelopment Law") to determine whether certain parcels of land within the Borough constitute an area in need of redevelopment, as further described therein; and

WHEREAS, by Resolutions No. 136-21 and No. 162-21, adopted on July 19, 2021 and September 7, 2021, the Municipal Council (the "Council") of the Borough authorized and directed the Planning Board of the Borough of Freehold (the "Planning Board") to investigate certain properties within the Borough and to recommend to the Council whether all or a portion of such properties should be designated as an area in need of redevelopment with the power of eminent domain ("Condemnation Redevelopment Area") in accordance with the Redevelopment Law, N.J.S.A. 40A:12A-6; and

WHEREAS, in areas designated as Condemnation Redevelopment Areas, the Borough may use all of those powers provided under the Redevelopment Law for use in a redevelopment area, including the power of eminent domain; and

WHEREAS, in accordance with the Redevelopment Law, the Planning Board caused CME Associates (the "Planner") to conduct a preliminary investigation of the following properties (hereinafter referred to collectively as the "Study Area"):

BLOCK	LOT	ADDRESS
34	31	25-31 Broad St.
34	33	62 Throckmorton St.
34	34	80 Throckmorton St.
34	35	78 Throckmorton St.
34	37	21 Broad St.
35	14	46 Broad St.
35	15	32 Broad St.
35	16	30 Broad St.
35	17	28 Broad St.
35	18	Broad St.
35	19	Broad St.
35	20	60 Throckmorton St.
35	23	58 Throckmorton St.
35	24	52 Throckmorton St.
35	25	46-50 Throckmorton St.
35	26	47 West Main St.
35	26.01	Throckmorton St.
35	26.02	Throckmorton St.
35	27	49 West Main St.
35	28	51 West Main St.
35	29	53 West Main St.
35	30	55 West Main St.
35	31	57 West Main St.
35	32	61 West Main St.
36	32	57 Throckmorton St.
36	33	59 Throckmorton St.
36	34	61 Throckmorton St.
37	19	17 Broad St.

WHEREAS, the Planner prepared a map of the Study Area and an investigation report entitled “Preliminary Investigation to determine if the following lots can be designated as a Condemnation Area in Need of Redevelopment.” dated October 8, 2021 (the “Study”); and

WHEREAS, the Study concluded that the entire Study Area qualifies as a Condemnation Redevelopment Area pursuant to the Redevelopment Law, for the reasons set forth in the Study; and

WHEREAS, the Redevelopment Law requires that the Planning Board conduct a public hearing prior to making its recommendation as to whether the Study Area should be designated as a Condemnation Redevelopment Area, at which hearing the Planning Board shall hear all persons who are interested in, or would be affected by, a determination that the Study Area is a Condemnation Redevelopment Area; and

WHEREAS, on October 27, 2021, November 10, 2021 and December 8, 2021, pursuant to the Redevelopment Law, the Planning Board held duly noticed public hearings concerning the Study (the "Public Hearings"), at which the Planner testified to the Planning Board that to prepare the Study, he performed an analysis of the Study Area's existing land uses, site layout, and physical characteristics, which are included in the Study. In doing so, the Planning Consultant testified that he reviewed the Borough's tax records, aerial photographs, Master Plan and other planning documents, existing zoning ordinance and maps, zoning, police activity logs, and conducted physical inspections of each property within the Study Area to assess the status of the existing properties, improvements, surrounding context, configuration, physical conditions and evidence of occupancy or lack thereof; and

WHEREAS, at the Public Hearings, members of the general public were given an opportunity to present their own evidence, cross-examine the Planner, and address questions to the Planning Board and its representatives concerning the potential designation of the Study Area as a Condemnation Redevelopment Area, as fully set forth on the record; and

WHEREAS, at the Public Hearings, the Planning Board considered the Study, heard the comments of the Planner, took the public comments into account, and deliberated on the matter using the criteria set forth in the Redevelopment Law; and

WHEREAS, on January 12, 2022, the Planning Board approved a resolution (the "Planning Board Resolution"), in the form introduced to it at the Public Hearings, accepting and adopting the recommendations contained in the Study, with the exception of the following properties: Block 34, Lots 33, 34 and 35; Block 35, Lots 14, 20, 25 and 32; Block 36, Lots 32, 33, and 34; and Block 37, Lot 19 (the "Revised Study Area") and recommending that the Revised Study Area be declared a Condemnation Redevelopment Area for the reasons set forth therein; and

WHEREAS, on January 12, 2022, the Planning Board memorialized the Planning Board Resolution, accepting and adopting the recommendations contained in the Study as it related to the Revised Study Area, and recommending that the Revised Study Area be declared a Condemnation Redevelopment Area for the reasons set forth therein; and

WHEREAS, after careful consideration of the Study, the Planning Board Resolution, and all of the relevant facts and circumstances concerning this matter,

NOW, THEREFORE, BE IT RESOLVED BY THE BOROUGH COUNCIL OF THE BOROUGH OF FREEHOLD, as follows:

Section 1. The aforementioned recitals are incorporated herein as though fully set forth at length.

Section 2. Based on substantial evidence and the recommendation of the Planning Board, the Council hereby designates the Revised Study Area as a Condemnation Redevelopment Area to be known as the "Throckmorton Street Redevelopment Area".

Section 3. Notwithstanding the recommendation of the Planning Board, the Council finds that Block 35, Lot 32 also qualifies as a Condemnation Redevelopment Area pursuant to the Redevelopment Law, for the reasons set forth in the Study and specifically that the lot satisfies criterion "d" pursuant to Section 5 of the Redevelopment Law for various reasons specific to the lot, including, but not limited to, that because of dilapidation, obsolescence, overcrowding, faulty arrangement or design, lack of ventilation, light and sanitary facilities, excessive land coverage, deleterious land use or obsolete layout, or any combination of these or other factors, the buildings or improvements are detrimental to the safety, health, morals, or welfare of the community. This includes that the existing asphalt drive/parking lot is deteriorated, the amount of paved area and impervious coverage is excessive, dumpsters are overflowing with garbage, concrete curbs and wheel stops are deteriorating, and the front entrance concrete patio is weather-beaten. The Council further finds that inclusion of Block 35, Lot 32 is necessary, regardless of whether its condition is detrimental to the public health, safety or welfare, for the effective redevelopment of the area in which it is a part, as set forth in N.J.S.A. 40A:12A-3, for various reasons, including, but not limited to, that such lot abuts other lots that satisfy criteria pursuant to Section 5 of the Redevelopment Law and that it would be an impediment to the redevelopment of the abutting lots and the commercial corridor as a whole if same were not included in the Condemnation Redevelopment Area. Accordingly, the Council hereby designates Block 35, lot 32 as part of the Throckmorton Street Redevelopment Area along with the Revised Study Area.

Section 4. The City Council hereby directs the Borough Clerk to transmit a certified copy of this Resolution forthwith to the Commissioner of the Department of Community Affairs for review pursuant to Section 6(b)(5) of the Redevelopment Law.

Section 5. The Council hereby directs the Borough Clerk to serve, within ten (10) days hereof, a copy of this Resolution upon (i) all record owners of property located within the Study Area, as reflected on the tax assessor's records, and (ii) each person who filed a written objection prior to the Public Hearing, service to be in the manner provided by Section 6 of the Redevelopment Law.

Section 6. This Resolution shall take effect immediately.

APPENDIX 2

Borough of Freehold Resolution No. R 42-22, adopted 02/07/2022

OFFERED BY: <u>Rogers</u>	SECONDED BY: <u>Shutzer</u>
AYE NAY ABSENT ABSTAIN	AYE NAY ABSENT ABSTAIN
DI BENEDETTO <u>X</u>	ROGERS <u>X</u>
JORDAN <u>X</u>	SCHNURR <u>X</u>
REICH <u>X</u>	SHUTZER <u>X</u>

I, TRACI L. DI BENEDETTO, CLERK OF THE BOROUGH OF FREEHOLD, DO HEREBY CERTIFY THE FOLLOWING RESOLUTION WAS ADOPTED BY THE MAYOR AND COUNCIL OF THE BOROUGH OF FREEHOLD AT A MEETING HELD ON: FEBRUARY 7, 2022.


TRACI L. DI BENEDETTO, BMC, BOROUGH CLERK

Resolution No. 42-22

Agenda No: 3/2022

**RESOLUTION OF THE COUNCIL OF THE BOROUGH OF FREEHOLD
AUTHORIZING THE PREPARATION OF REDEVELOPMENT PLAN(S)
FOR PROPERTIES IDENTIFIED AS BLOCK 34, LOTS 31 and 37, BLOCK
35, LOTS 15, 16, 17, 18, 19, 23, 24, 26, 26.01, 26.02, 27, 28, 29, 30, 31, and 32
ON THE TAX MAP OF THE BOROUGH OF FREEHOLD, STATE OF
NEW JERSEY**

WHEREAS, the Local Redevelopment and Housing Law, *N.J.S.A. 40A:12A-1 et seq.* (the "Redevelopment Law"), authorizes municipalities to determine whether certain parcels of land in the Borough of Freehold (the "Borough") constitute areas in need of redevelopment; and

WHEREAS, pursuant to the Redevelopment Law, by Resolutions No. 136-21 and No. 162-21, adopted on July 19, 2021 and September 7, 2021, the Municipal Council of the Borough of Freehold (the "Council") authorized and directed the Planning Board of the Borough of Freehold (the "Planning Board") to conduct an investigation of the following properties within the Borough (collectively, the "Study Area"), and to determine whether all or a portion of such area meets the criteria set forth in the Redevelopment Law, *N.J.S.A. 40A:12A-5*, to be designated as an area in need of redevelopment with the power of eminent domain ("Condemnation Redevelopment Area") in accordance with the Redevelopment Law, *N.J.S.A. 40A:12A-6*:

BLOCK	LOT	ADDRESS
34	31	25-31 Broad St.
34	33	62 Throckmorton St.
34	34	80 Throckmorton St.
34	35	78 Throckmorton St.
34	37	21 Broad St.
35	14	46 Broad St.
35	15	32 Broad St.
35	16	30 Broad St.
35	17	28 Broad St.
35	18	Broad St.

35	19	Broad St.
35	20	60 Throckmorton St.
35	23	58 Throckmorton St.
35	24	52 Throckmorton St.
35	25	46-50 Throckmorton St.
35	26	47 West Main St.
35	26.01	Throckmorton St.
35	26.02	Throckmorton St.
35	27	49 West Main St.
35	28	51 West Main St.
35	29	53 West Main St.
35	30	55 West Main St.
35	31	57 West Main St.
35	32	61 West Main St.
36	32	57 Throckmorton St.
36	33	59 Throckmorton St.
36	34	61 Throckmorton St.
37	19	17 Broad St.

WHEREAS, pursuant to the Redevelopment Law, on October 27, 2021, November 10, 2021, and December 8, 2021, the Planning Board conducted public hearings and, after conclusion of the public hearings, voted to accept the recommendations contained in the report prepared by CME Associates, entitled, “Preliminary Investigation to determine if the following lots can be designated as a Condemnation Area in Need of Redevelopment”, dated October 8, 2021, with the exception of the following properties: Block 34, Lots 33, 34 and 35; Block 35, Lots 14, 20, 25 and 32; Block 36, Lots 32, 33, and 34; and Block 37, Lot 19 (the “Revised Study Area”), and recommended that the Revised Study Area be declared a Condemnation Redevelopment Area, in accordance with the Redevelopment Law; and

WHEREAS, the Council agreed with the recommendation of the Planning Board in part and, pursuant to the Redevelopment Law, on February 7, 2022 by Resolution the Council designated the Revised Study Area as a Condemnation Redevelopment Area; and

WHEREAS, notwithstanding the recommendation of the Planning Board, the Council found that Block 35, Lot 32 also qualifies as a Condemnation Redevelopment Area pursuant to the Redevelopment Law, for the reasons set forth in the Study and specifically that the lot satisfies criterion “d” pursuant to Section 5 of the Redevelopment Law for various reasons specific to the lot, including, but not limited to, that because of dilapidation, obsolescence, overcrowding, faulty arrangement or design, lack of ventilation, light and sanitary facilities, excessive land coverage, deleterious land use or obsolete layout, or any combination of these or other factors, the buildings

or improvements are detrimental to the safety, health, morals, or welfare of the community. This includes that the existing asphalt drive/parking lot is deteriorated, the amount of paved area and impervious coverage is excessive, dumpsters are overflowing with garbage, concrete curbs and wheel stops are deteriorating, and the front entrance concrete patio is weather-beaten. The Council further found that inclusion of Block 35, Lot 32 is necessary, regardless of whether its condition is detrimental to the public health, safety or welfare, for the effective redevelopment of the area in which it is a part, as set forth in N.J.S.A. 40A:12A-3, for various reasons, including, but not limited to, that such lot abuts other lots that satisfy criteria pursuant to Section 5 of the Redevelopment Law and that it would be an impediment to the redevelopment of the abutting lots and the commercial corridor as a whole if same were not included in the Condemnation Redevelopment Area. The Council therefore designated Block 35, lot 32 as part of the Condemnation Redevelopment Area along with the Revised Study Area and identified the area as the "Throckmorton Street Redevelopment Area"; and

WHEREAS, to carry out its powers under the Redevelopment Law, the Borough has a need for professional planning consultant services in connection with the redevelopment of the Throckmorton Street Redevelopment Area; and

WHEREAS, Beacon Planning and Consulting Service, LLC (the "Planner") possesses the experience and qualifications to perform professional planning consultant services; and

WHEREAS, by Resolution adopted February 7, 2022, pursuant to a request for proposals for professional planning consultant services issued in accordance with the Local Public Contracts Law, *N.J.S.A. 40A:11-1 et seq.*, the Borough awarded a professional services contract to the Planner to provide professional planning consultant services to the Borough for the year 2022; and

WHEREAS, the Borough desires to authorize the Planner to prepare one (1) or more redevelopment plans for the Study Area; and

WHEREAS, funds shall be available for this purpose pursuant to funding agreement(s) with the Borough applicable to the Throckmorton Street Redevelopment Area and/or pursuant to the existing contract for professional services by and between the Planner and the Borough,

NOW, THEREFORE, BE IT RESOLVED BY THE MUNICIPAL COUNCIL OF THE BOROUGH OF FREEHOLD, NEW JERSEY AS FOLLOWS:

Section 1. The foregoing recitals are incorporated herein as if set forth in full.

Section 2. The Council hereby authorizes the Planner to prepare one (1) or more redevelopment plans for the Throckmorton Street Redevelopment Area. The Planner shall prepare the redevelopment plan(s) when and as directed by the Borough.

Section 3. A copy of this resolution, the Planner's contract, and applicable funding agreement(s) shall be available for public inspection at the offices of the Borough.

Section 4. This Resolution shall take effect immediately.

REDEVELOPMENT AGREEMENT

By and Between

BOROUGH OF FREEHOLD
a municipal corporation of the State of New Jersey

As Redevelopment Entity

and

CAPODAGLI PROPERTY COMPANY, LLC
a limited liability company of the State of New Jersey

As Redeveloper

Dated: January 20, 2025

REDEVELOPMENT AGREEMENT

THIS REDEVELOPMENT AGREEMENT (this “**Agreement**”) is entered into as of the 20th day of January, 2025 (the “**Effective Date**”) by and between the **BOROUGH OF FREEHOLD**, a municipal corporation of the State of New Jersey, having its offices at 30 Mechanic Street, Freehold, New Jersey 07728 (which, together with any successor public body or officer hereinafter designated by or pursuant to law, is hereinafter referred to as the “**Borough**”), and **CAPODAGLI PROPERTY COMPANY, LLC**, a limited liability company of the State of New Jersey, having its offices at 201 South Wood Avenue, Linden, New Jersey 07036 and/or an affiliate to be formed as an Urban Renewal Entity (hereinafter referred to as the “**Redeveloper**”, together with the Borough, the “**Parties**” and each individually a “**Party**”).

W I T N E S S E T H :

WHEREAS, the Local Redevelopment and Housing Law, *N.J.S.A. 40A:12A-1 et seq.*, as amended and supplemented (the “**Redevelopment Law**”), provides a process for municipalities to participate in the redevelopment and improvement of areas designated by the municipality as in need of redevelopment; and

WHEREAS, by Resolutions No. 136-21 and No. 162-21 adopted on July 19, 2021 and September 7, 2021, the Mayor and Council of the Borough (the “**Council**”) authorized and directed the Planning Board of the Borough (the “**Planning Board**”) to investigate certain properties within the Borough and to recommend to the Council whether all or a portion of such properties should be designated as an area in need of redevelopment with the power of eminent domain, in accordance with the Redevelopment Law, specifically N.J.S.A. 40A:12A-6; and

WHEREAS, by Resolution No. 31-22 adopted on February 7, 2022, the Council designated Block 34, Lots 31 and 37, and Block 35, Lots 15, 16, 17, 18, 19, 23, 24, 26, 26.01, 26.02, 27, 28, 29, 30, 31, and 32 on the official tax map of the Borough as a condemnation area in need of redevelopment (the “**Redevelopment Area**”); and

WHEREAS, by Resolution No. 42-22 adopted on February 7, 2022, the Council caused to be prepared a redevelopment plan for the following properties within the Redevelopment Area: Block 35, Lots 15, 16, 17, 18, 19, 26.02, 28, 29, 30, 31, and 32 (the “**Property**”, as further described in Exhibit A) entitled the “Downtown Freehold: Hometown Redevelopment Phase 1 Block 35 Redevelopment Plan” (the “**Redevelopment Plan**”); and

WHEREAS, by Ordinance #2023/11 adopted February 27, 2023, the Council formally adopted the Redevelopment Plan; and

WHEREAS, the Borough issued a Request for Proposals for the Acquisition and Redevelopment of Block 35, Lots 15, 16, 17, 18, 19, 26.02, 28, 29, 30, 31, and 32 within the Block 35 Redevelopment Area (the “**RFP**”) on March 17, 2023, seeking submissions from prospective purchasers/redevelopers for the proposal of a redevelopment project on the Property; and

WHEREAS, the Borough received nine proposals in response to the RFP from a variety of developers, including the Redeveloper, and thoroughly reviewed and vetted the nine proposals

and prospective purchasers/redevelopers over the course of several months to determine its selection of a developer; and

WHEREAS, the Borough ultimately determined that the Redeveloper would be best suited at redeveloping the Property in line with their proposal and supplemented materials supplied to the Borough; and

WHEREAS, by Resolution 244-23 adopted on December 18, 2023, the Borough designated the Redeveloper as “conditional redeveloper” of the Property for the purpose of creating a framework for the negotiation and execution of this Agreement, and authorized the execution of a conditional redeveloper’s agreement; and

WHEREAS, the Borough and the Redeveloper entered into that conditional redeveloper’s agreement on December 18, 2023 (the “**Conditional Redeveloper’s Agreement**”); and

WHEREAS, the Borough is the owner of certain lots within the Property identified as Block 35, Lots 18, 19, 26.02, and 28 (the “**Borough-Owned Property**”); and

WHEREAS, the Redeveloper shall acquire from the Borough the Borough-Owned Property as further described herein for THREE MILLION THREE HUNDRED THOUSAND AND 00/100 DOLLARS (\$3,300,000.00) subject to the terms, obligations and conditions as set forth in this Agreement and the Purchase and Sale Agreement (as defined herein); and

WHEREAS, Block 35, Lots 15, 16, 17, 29, 30, 31, and 32 are privately owned parcels within the Borough (the “**Privately-Owned Property**”); and

WHEREAS, the Redeveloper shall acquire the Privately-Owned Property; and

WHEREAS, the Redeveloper proposes to redevelop the Property by developing, financing, and constructing thereon a six (6) story mixed-use project consisting of four hundred (400) residential units, of which sixty (60) shall be designated as Affordable Housing Units (defined herein), including a minimum of twelve (12) one bedroom Affordable Housing Units, thirty-six (36) two-bedroom Affordable Housing Units, and twelve (12) three-bedroom Affordable Housing Units, and three hundred forty (340) shall be market rate units, including a maximum of forty-six (46) studio units, two hundred eighty (280) one-bedroom units and twelve (12) two-bedroom units; six hundred sixty (660) parking spaces, of which five hundred sixty (560) parking spaces shall be reserved for, and identified as, resident parking and one hundred (100) spaces reserved for, and identified as retail/public/resident parking; open public spaces totaling approximately 15,400 square feet, including a water fountain, outdoor dining, and a community room; approximately twelve thousand two hundred twenty seven (12,227) square feet of retail space; an indoor food court; an amphitheater with a stage; a dog park; appropriate amenities; on-site and off-site infrastructure; and related improvements, all in accordance with the provisions of the Redevelopment Law, the Redevelopment Plan, and the Design Standards (defined herein) (collectively, the “**Project**”); and

WHEREAS, in order to set forth the terms and conditions under which the Parties shall

carry out their respective obligations with respect to the construction of the Project, and to ensure that the redevelopment occurs in a timely manner and in a manner that corrects the conditions of the Property that led to the determination by the Borough that the Redevelopment Area met the criteria for designation as an area in need of redevelopment, the Parties have determined to execute this Agreement pursuant to the provisions of the Redevelopment Plan and Redevelopment Law authorizing and directing the execution of this Agreement; and

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

ARTICLE I

DEFINITIONS AND INTERPRETATIONS

SECTION 1.01. Definitions. As used in this Agreement, works that are capitalized, and which are not the first word of a sentence, are defined terms. Terms listed below in the singular form shall include the plural and words listed in the plural shall include the singular. Whenever the context may require, any pronoun that is used in this Agreement shall include the corresponding masculine, feminine and neuter. All references to Sections, Articles or Exhibits shall refer to Sections, Articles or Exhibits in this Agreement unless otherwise specified. Unless specifically provided otherwise or the context otherwise requires, the following terms shall have the meanings ascribed to such terms below.

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

Agreement	Privately-Owned Property
Borough	Project
Borough-Owned Property	Property
Conditional Redeveloper's Agreement	Redeveloper
Council	Redevelopment Area
Effective Date	Redevelopment Plan
Party/Parties	Redevelopment Law
Planning Board	RFP

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

“Acquisition Notice” is defined in **Section 17.02(a)**.

“Affiliate” means with respect to any Person, any other Person directly or indirectly controlling or controlled by, or under direct or indirect common control with, such Person. For purposes of this definition, the term “control,” including the correlative meanings of the terms “controlled by” and “under common control with,” as used with respect to any Person, shall mean the possession, directly or indirectly, of the power to direct or cause the management policies of such Person.

“Affordable Housing Deed Restriction” is defined in Section 3.03.

“Affordable Housing Unit(s)” is defined in Section 3.02.

“Applicable Law(s)” shall mean any and all federal, State, and local laws, rules, regulations, statutes and ordinances applicable to the Project.

“Borough Costs” means all reasonable out-of-pocket costs and/or expenses incurred by the Borough in connection with the Project, which shall include, but not be limited to, staff time, and fees and costs of any professional, consultant, contractor or vendor engaged by the Borough, including attorneys, environmental consultants, engineers, technical consultants, architects, planners, and financial consultants, among others.

“Borough Indemnified Parties” means the Borough and its officers, elected officials, Affiliates, agents, employees, contractors, boards, departments, officials and consultants and their respective successors and assigns.

“Business Day” means any day of the week except Saturdays, Sundays and federal holidays.

“CEA” is defined in Section 5.05.

“Certificate of Completion” means a certificate, in the form attached as **Exhibit B**, issued by the Borough at such time or times, in its reasonable determination, that the Redeveloper has Completed construction of the Project in accordance with the requirements of this Agreement.

“Certificate of Occupancy” means the certificate provided for at N.J.S.A. 52:27D-133, whether temporary or permanent, indicating that the construction has been completed in accordance with the applicable construction permit, the applicable Ordinances of the Borough, the State of New Jersey Uniform Construction Code, and any other ordinance or regulation implementing the State of New Jersey Uniform Construction Code. In addition to same, the Borough’s obligation to issue a Certificate of Occupancy is contingent upon the Redeveloper’s compliance with additional conditions set forth in this Agreement.

“Claims” is defined in Section 13.01.

“Commence[ment of] Construction” means the undertaking of any actual physical construction of any portion of the Project, including but not limited to site preparation, Redeveloper’s Remediation, construction of new structures or construction or upgrading of infrastructure.

“Comple[t]e, [ed] or [ion]” means with respect to the Project, or any portion thereof, that (a) all work related to the Project, or a portion thereof, has been completed, acquired and/or installed in accordance with this Agreement, the Redevelopment Plan and any amendments thereto, and in compliance with Applicable Laws so that the Project, or any portion thereof that has been completed, may be used and operated under the applicable provisions of this Agreement (b) all Governmental Approvals required for the Property are in full force and effect, and (c) such “Completion” has been evidenced by a written notice provided by the Redeveloper (with respect to the Project, or any portion thereof) in the form of **Exhibit 1** to the form of Certificate of Completion.

“Completion Date” means the date that the Certificate of Completion is issued.

“Concept Plan” means the concept plan, architectural design requirements and Design Standards for the development of the Project, attached hereto as **Exhibit C**, as may be revised with the Borough’s consent.

“Condemnation Costs” means the costs and expenses incurred by the Borough in connection with (a) the acquisition, ownership, and possession of any Designated Acquisition Parcel (as defined herein), or any interest therein, whether by negotiated purchase and sale or by the exercise of the Borough’s power of eminent domain; or (b) the elimination of any rights or interests in any Designated Acquisition Parcel to the extent that such interests are inconsistent with the Project. Condemnation Costs shall include, without limitation: (i) all costs arising out of or in connection with the actual or threatened exercise of the power of eminent domain by the Borough, whether or not an action is commenced, a declaration of taking is recorded, or title is actually acquired by the Borough; (ii) all costs and expenses of the Borough (including but not limited to reasonable attorneys’ fees) arising out of or in connection with site inspection, good faith negotiations, title investigation, survey, environmental investigation and remediation (not attributable to any aspect of environmental remediation or other work undertaken by, or negotiations with PSE&G), appraisal or litigation, which costs and expenses have not otherwise been included in the Borough Costs paid or payable by Redeveloper; (iii) without limiting the generality of the foregoing, the price paid or to be paid to Designated Acquisition Parcel owners, which shall be the just compensation value determined by the condemnation process either in bona fide negotiations with the Designated Acquisition Parcel owner or as a result of the proceedings before the condemnation commissioners or the court; (iv) the amount paid to compromise or settle any claim for just compensation (as to which the Borough agrees that the Borough will not settle or compromise any claim without the Redeveloper’s consent); (v) all relocation costs, including the costs of obtaining any required approval of or amendment to the WRAP; and (vi) all reasonable out-of-pocket costs and professional fees not otherwise set forth above incurred in complying with *N.J.S.A. 40A:12A-8(c)* and *N.J.S.A. 20:3-18*, including, but not limited to, professional services, attorneys’ fees, expert fees, inspections, appraisals, environmental investigations, court deposits (required by *N.J.S.A. 20:3-18*) and court costs and fees associated with bona-fide negotiations, commissioner’s hearings, court proceedings and challenges to the condemnation, to the extent not otherwise included in the Borough Costs paid or payable by Redeveloper.

“Condemnation Costs Account” means a dedicated, interest-bearing escrow account established and maintained by the Borough in which Redeveloper shall from time to time deposit funds to cover Condemnation Costs.

“Condemnation Counsel” is defined in **Section 17.05**.

“Condemnation Deposit” means the Initial Condemnation Deposit (as defined herein) and the Subsequent Condemnation Deposit.

“Conditions Precedent” is defined in **Section 10.01**.

“Controls” is defined in **Section 5.05**.

“Declaration” is defined in **Section 9.02** hereof and the form of which is attached hereto as **Exhibit D**.

“Declaration of Reverter” is defined in **Section 15.02(2)(f)**.

“Deed” is defined in **Section 15.02(2)(f)**.

“Deed-Restriction Period” is defined in **Section 3.03**.

“Design Standards” means the construction standards for the Project set forth in **Exhibit E**.

Designated Acquisition Parcel” is defined in **Section 17.02(a)**.

“Eminent Domain Act” means the utilization of condemnation by the Borough pursuant to the procedures set forth in the Eminent Domain Act, *N.J.S.A. 20:3-1 et seq.*, and the rules and regulations promulgated thereunder.

“Environmental Laws” means any present or future applicable common law, federal, state or local law, statute, rule, regulation, order, ordinance, code, consent decree, judicial or administrative order or decree, directive, judgment or other such legal requirement, related to the use, handling, processing, generation, treatment, storage, disposal, transportation, or release of Hazardous Substances to the environment and the related protection of human health and the environment, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §9601, et seq. (**“CERCLA”**); Resource Conservation and Recovery Act, 42 U.S.C. §6901, et seq. (**“RCRA”**); Site Remediation Reform Act, N.J.S.A. 58:10C-1, et seq.; Brownfield and Contaminated Sites Remediation Act, N.J.S.A. 58:10B-1, et seq.; Industrial Site Recovery Act, N.J.S.A. 13:1K-6, et seq. (**“ISRA”**); New Jersey Spill Compensation and Control Act, N.J.S.A. 58:10-23.11, et seq. (the **“Spill Act”**); Underground Storage of Hazardous Substances Act, N.J.S.A. 58:10A-21, et seq.; Water Pollution Control Act, N.J.S.A. 38:10A-1, et seq.; Solid Waste Management Act, N.J.S.A. 13:1E-1, et seq. (**“SWMA”**); Administrative Requirements for the Remediation of Contaminated Sites (**“ARRCS”**), N.J.A.C. 7:26C; Remediation Standards Rules, N.J.A.C. 7:26D; and the Technical Requirements for Site Remediation, N.J.A.C. 7:26E, and any other such laws, ordinances, rules, regulations, court orders, judgments, guidance documents or policies which have been published by the NJDEP or USEPA, and common law which govern (a) the existence, cleanup and/or remedy of any Hazardous Substances on the subject properties; (b) the protection of the environment from spilled, deposited or otherwise discharged Hazardous Substances; or (c) the control, use, generation, transport, treatment, removal, storage, discharge or recovery of Hazardous Substances.

“Environmental Reporting” is defined in **Section 5.03**.

“Estoppel Certificate” is defined in **Section 4.19**.

“Event of Default” is defined in **Section 15.01**.

“Excepted Claims” is defined in **Section 13.02**.

“Final Site Plan” is defined in **Section 7.01**.

“Final Site Plan Approval” is defined in **Section 7.01**.

“Force Majeure Event” means causes that are beyond the reasonable control and not substantially due to the fault or negligence of the Party seeking to excuse delay or failure of performance of an obligation hereunder by reason thereof, including, but not limited to, third-party litigation that enjoins implementation of the Project; declarations of public emergency; acts of nature (as to weather-related events, limited to severe and unusual events or natural occurrences such as hurricanes, tornadoes, earthquakes, and floods); acts of the public enemy; acts of terrorism; acts of war (whether or not declared); fire; epidemics; quarantine restrictions; blackouts, power failures, or energy shortages; and governmental embargoes; strikes or similar labor action by equipment or material suppliers or transporters, or unavailability of necessary building materials (*provided* that Redeveloper has no commercially reasonable alternatives to avoid the impact thereof on the progress of the Project).

“Governmental Approval(s)” means all necessary reviews, consents, opinions, permits or other approvals of any kind legally required by any federal, state, county or local Governmental Body or quasi-governmental entity having jurisdiction over any aspect of the implementation or construction of the Project in accordance with the Redevelopment Plan and this Agreement, required to Commence Construction.

“Governmental Body” means the federal government, the State, any state or other political subdivision thereof, and any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government and any other governmental entity with authority or jurisdiction over any part of the permitting, Redeveloper’s Remediation, construction or operation of the Project or the Property, or pursuant to Environmental Laws including without limitation, the Planning Board and the NJDEP.

“Hazardous Substance” shall mean any substance which is or contains (i) any “hazardous substance” as now or hereafter defined in § 101(14) of CERCLA, or any regulations promulgated under CERCLA; (ii) any “hazardous waste” as now or hereafter defined in RCRA, or regulations promulgated under RCRA; (iii) any substance, waste or material regulated by ISRA, the Spill Act, the SWMA, or any regulations promulgated thereunder; (iv) any substance regulated by the Toxic Substances Control Act, 15 U.S.C. § 2601 *et seq.*; (v) gasoline, diesel fuel, or other petroleum hydrocarbons; (vi) asbestos and asbestos containing materials, in any form, whether friable or non-friable; (vii) polychlorinated biphenyls; (viii) radon gas; and (ix) any additional substances or materials which are now or hereafter determined, classified or considered to be hazardous, toxic or subject to regulation and that may need to be specially treated, handled, and/or removed from the Property pursuant to Environmental Laws (Defined terms used in this definition are defined in the definition of Environmental Laws).

“Holder(s)” means the holder of any Mortgage excluding entities affiliated with the Redeveloper or members thereof.

“Holder’s Option” is defined in **Section 16.05(1)**.

“Indoor Amenities” is defined in **Section 2.08(a)**.

“Infrastructure Improvements” shall mean the preparation and installation on, in, under and to the Property of any on-site or off-site infrastructure required by the Planning Board as a condition of land use approvals.

“Initial Condemnation Deposit” means a deposit of funds into the Condemnation Costs Account by the Redeveloper at the time Redeveloper delivers the Acquisition Notice, in an amount equal to the Borough’s reasonably estimated costs, expenses and professional fees to be incurred in connection with the site investigation and valuation of a Designated Acquisition Parcel, except that no such deposit shall include Borough Costs otherwise paid or payable by Redeveloper pursuant to this Agreement. “Initial Condemnation Deposit” shall also be deemed to include all subsequent postings or deposits by Redeveloper of additional funds as may be required hereunder prior to the Subsequent Condemnation Deposit.

“LSRP” shall mean the Licensed Site Remediation Professional.

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

“Municipal Land Use Law” means *N.J.S.A. 40:55D-1 et seq.*, as amended and supplemented.

“NJDEP” means the New Jersey Department of Environmental Protection.

“Offer” is defined in **Section 17.03(a)**.

“Outdoor Amenities” is defined in **Section 2.08(b)**.

“Permitted Transfers” is defined in **Section 12.02**.

“Person” means any individual, sole proprietorship, corporation, partnership, joint venture, limited liability company or partnership, trust, unincorporated association, urban renewal entity, institution, public or governmental body, or any other entity.

“Progress Meetings” is defined in **Section 6.01**.

“Progress Report” means a written report in the form attached hereto as **Exhibit F** which sets forth a description of activities completed, the activities anticipated to be undertaken prior to the next monthly Progress Report, the status of all Governmental Approvals, an explanation of each activity, if any, which is showing delay, a description of current and anticipated delaying factors and their estimated impact on performance of other activities and Completion Dates in the Project Schedule and an explanation of corrective action taken or proposed.

“Prohibited Transfers” is defined in **Section 12.01**.

“Project Funds” is defined in **Section 16.08**.

“Project Schedule” means the schedule for the design, permitting, financing, construction and completion of the Project by the Redeveloper, as set forth in **Exhibit G** hereto.

“Project Team” is defined in **Section 9.04(b)**.

“Purchase and Sale Agreement” means an agreement, substantially in the form attached hereto as **Exhibit H**.

“RAO” shall mean a “Response Action Outcome” or “RAO” as those terms are defined in the Brownfield and Contaminated Site Remediation Act, **N.J.S.A. 58:10B-1** *et seq.*, and the regulations promulgated thereunder.

“RAP” is defined in **Section 5.05**.

“Redeveloper Covenants” is defined in **Section 9.01**.

“Redeveloper Event of Default” means, with respect to the Redeveloper, an Event of Default as defined in Section 11.01.

“Redeveloper’s Remediation” shall have the meaning set forth in **Section 5.02**.

“Remedial Action” shall have the meaning given to such term under Environmental Laws and shall consist of those actions undertaken in connection with the Project necessary to obtain one or more RAOs, conducted in accordance with applicable Environmental Laws.

“Remedial Action Workplan” shall have the meaning given to such term under Environmental Laws, including a written plan describing the intended process for conducting any Remedial Action to be undertaken in connection with the Project, which will be prepared and approved by the LSRP, in accordance and compliance with applicable Environmental Laws.

“Remedial Investigation” shall have the meaning given to such term under Environmental Laws, and may include data collection, site characterization, sampling, monitoring, and the gathering of any other sufficient and relevant information necessary to determine the necessity of Remedial Action, conducted in accordance with applicable Environmental Laws.

“Subsequent Condemnation Deposit” means a deposit of funds into the Condemnation Costs Account by Redeveloper, or with the Borough’s prior consent, which shall not be unreasonably withheld or conditioned, the posting of an irrevocable letter of credit in form and substance and issued by an underwriter acceptable to the Borough in its sole discretion, in either case, in an amount equal to one hundred percent (100%) of the appraised value of a Designated Acquisition Parcel as evidenced by the appraisal approved by Redeveloper as hereafter set forth. “Subsequent Condemnation Deposit” shall also be deemed to include all subsequent postings or deposits by Redeveloper of additional funds as may be required hereunder in connection with the acquisition of a Designated Acquisition Parcel.

“Subsequent Redeveloper” shall mean a responsible Person to whom the Redeveloper has transferred all or a portion of its rights to the Project pursuant to **Article XII** of this Agreement.

“Subsequent Redevelopment Agreement” shall have the meaning set forth in **Section 16.05(1)(a)**.

“Third Party” means a Person or entity, including but not limited to a governmental entity, other than (a) the Borough; (b) any agent, employee, agency, board, elected official or representative of the Borough; (c) Redeveloper; (d) any member, shareholder, partner, officer, representative, employee or agent of Redeveloper; or (e) any entity owned or Controlled by, under common Control with, or that owns or Controls, Redeveloper or any member, shareholder or partner of Redeveloper.

“Title Insurance Commitments” is defined in **Section 17.08**.

“Title Objections” is defined in **Section 17.08**.

“Transfer” means any transaction by which a Transferee, as that term is defined herein, obtains an interest in the Property, the Project, the Redeveloper or this Agreement or any portion thereof, by means or methods including, but not limited to, conveyance, transfer, lease, encumbrance, acquisition or assignment through sale, merger, consolidation, reorganization, assignment, foreclosure or otherwise, including the appointment of a trustee in bankruptcy or assignee for the benefit of creditors.

“Transferee” means any party to whom an interest in the Property, the Project, the Redeveloper or this Agreement, or any portion thereof, is conveyed, transferred, leased, encumbered, acquired or assigned, by sale, merger, consolidation, reorganization, assignment, foreclosure or otherwise, including a trustee in bankruptcy or assignee for the benefit of creditors.

“Transition Period” is defined in **Section 16.05(1)**.

“UHAC” means the Uniform Housing Affordability Controls, *N.J.A.C. 5:80-26.1*, et seq., as may be amended, or any successor laws or regulations.

“USEPA” shall mean the United States Department of Environmental Protection.

“Utilities” means municipal water, sanitary sewer and storm water facilities and natural gas, electricity, and voice and data transmission facilities.

“WRAP” means the “Workable Relocation Assistance Program”, as defined in *N.J.S.A. 52:31B-5 et seq.*, and as applicable pursuant to the Relocation Assistance Act, *N.J.S.A. 20:4-1*.

SECTION 1.02. Interpretation and Construction. In this Agreement, unless the context otherwise requires:

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

(b) Words importing a particular gender mean and include correlative words of every other gender and words importing the singular number mean and include the plural number and vice versa.

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

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

(e) Unless otherwise indicated, all approvals, consents and acceptances required to be given or made by any Person or Party hereunder shall not be unreasonably withheld, conditioned, or delayed.

(f) Each right of the Borough to review or approve any actions, plans, specifications, or other obligations of the Redeveloper hereunder shall be made by the Borough official(s) with legal authority to conduct such review or grant such approvals. Any review contemplated by this Agreement shall be made in a timely manner. Upon request of the Redeveloper, the Borough shall inform the Redeveloper of all officials with the required authority.

ARTICLE II

IMPLEMENTATION OF PROJECT

SECTION 2.01. Purpose. The purpose of this Agreement is to set forth the respective rights, obligations, conditions and agreements of the Borough and Redeveloper in connection with the development of the Property by the Redeveloper.

SECTION 2.02. Designation of Redeveloper. The Redeveloper is hereby designated as the exclusive redeveloper of parcels referred to herein as the Property. The Redeveloper shall have the exclusive right to redevelop and implement the Project on the Property in accordance with the terms and conditions of this Agreement, the Redevelopment Plan, all Governmental Approvals, all Applicable Laws, and all Environmental Laws. The Parties acknowledge and agree that the designation of Redeveloper and the rights and obligations under this Agreement shall be subject to Redeveloper's acquisition of the Borough-Owned Property pursuant to the Purchase and Sale Agreement, as well as Redeveloper's acquisition of the Privately-Owned Property.

SECTION 2.03. The Project. The Project shall be designed and constructed in accordance and conformance with the Concept Plans, the Redevelopment Plan, this Agreement, all Governmental Approvals, all Applicable Law, and all Environmental Laws.

SECTION 2.04. Property Acquisition by the Redeveloper. Simultaneous with the execution hereof, the Parties shall execute a Purchase and Sale Agreement, for the Borough-Owned Property. Upon the occurrence of an event of default under the Purchase and Sale Agreement or this Agreement resulting in the termination of the Purchase and Sale Agreement and this Agreement, title to the Borough-Owned Property, to the extent transferred to Redeveloper, shall revert back to the Borough without any further act on the Borough's part but with payments or reimbursements to Redeveloper, in accordance with the terms of the Purchase and Sale Agreement. Upon such termination and reverter, the Redeveloper shall restore the Borough-Owned Property to the condition it was prior to acquisition by the Redeveloper subject to approval by the Borough. The fee interest in the Borough-Owned Property granted under the Purchase and Sale Agreement and corresponding deed shall, in addition to the conditions provided for in this Agreement and the Purchase and Sale Agreement (as applicable), be subject to those encumbrances that exist on title. The Redeveloper shall also acquire the Privately-Owned Property within twelve (12) months after Redeveloper has received all Governmental Approvals.

SECTION 2.05. Infrastructure Improvements.

(a) Redeveloper acknowledges that Infrastructure Improvements will be required in connection with the Project and agrees that it is the Redeveloper's sole responsibility to undertake the construction thereof, subject to the terms hereof. Redeveloper will design and construct the Infrastructure Improvements in a good and workmanlike manner and materially in accordance with all Applicable Laws. Redeveloper acknowledges the presence of certain existing utility structures, including but not limited to, electric power transmission lines, sewer transmission conduits or pipes, water lines or pipes, storm sewers, telephone transmission lines, television cable lines and other utilities, and agrees to undertake the appropriate measures to negotiate with, acquire, relocate or otherwise address the existence of these utilities and easements therefor, in order to complete the Project as provided by this Agreement. Redeveloper shall also be responsible for providing, at Redeveloper's sole cost and expense, all sidewalks, curbs, streetscape improvements, ornamental street lights, street trees, brick paver sidewalks, brick paver crosswalks, bicycle racks/storage, trash receptacles and benches, street lighting, and on- and off-site traffic controls and road improvements, for the Project or required as a result of the impacts of the Project, all to the extent required pursuant to the Final Site Plan Approval. Final Site Plan Approval may be conditioned upon other on-site and off-site improvements specific to the Project, consistent with the authority of the Planning Board and consistent with the Municipal Land Use Law. Redeveloper agrees to provide performance and maintenance bonds as required by the Planning Board, consistent with the authority of the Planning Board under the Municipal Land Use Law. The Borough makes no representation that the necessary infrastructure to support the Project exists at the Property; any infrastructure needed for the Project is to be constructed at Redeveloper's sole cost and expense.

(b) All Infrastructure Improvements shall be completed: (i) prior to the issuance of the first Certificate of Occupancy for the Project; or (ii) at such later time as may be approved by the Borough Engineer, in his reasonable discretion.

SECTION 2.06. Energy Efficient Components. The Redeveloper shall use commercially reasonable efforts to incorporate energy efficient design components and building materials throughout the Project in accordance with the U.S. Green Building Council guidelines.

SECTION 2.07. Charging Stations. There shall be a minimum of two (2) electric car charging stations on the Property.

SECTION 2.08. Amenities. The Project shall include the following indoor and outdoor amenities:

(a) **Indoor Amenities.** The Project shall include, at minimum, a golf simulator, an indoor fitness center, game room, business center, yoga studio, community room/lounge, mailroom, bicycle storage for approximately 40 bicycles, a mailroom, business center, golf simulator, fitness center, yoga/pilates studio, spin class room, child activity room and covered parking for the approximately six hundred and sixty (660) parking spaces (collectively, the “**Indoor Amenities**”) all in accordance with the Concept Plans and Design Standards.

(b) **Outdoor Amenities.** The Project shall include, at minimum, an outdoor fitness center, an in-ground pool and seating area property sized to accommodate the occupancy of the Project, a courtyard with barbecue grilling equipment, yard and table games, and outdoor dining capabilities (collectively, the “**Outdoor Amenities**”) all in accordance with the Concept Plans and Design Standards.

(c) **Public Plaza.** The Project shall include a public plaza as described in the Concept Plan which plaza shall be the subject of an easement providing for access to the public in perpetuity and addressing any other matters deemed important by the Parties.

SECTION 2.09. Local Contractors and Laborers.

(a) **Bidding.** The Borough recognizes the many benefits of employing a well-trained and well-compensated workforce and expresses its preference that the Redeveloper employ recognized union labor wherever possible. The Redeveloper agrees that once they receive bids from the various building trade sub-contractors, they will give labor a “last look” at the proposals they have received to determine if any union shop sub-contractor wishes to provide a competitive quote. If the union shop sub-contractor pricing is less than that provided by a non-union shop, the job shall be awarded to the union shop.

(b) **Minority Owned Business Enterprise and Woman Owned Business Enterprise Participation.** The Redeveloper agrees that it shall use good faith efforts to award twenty-five per centum (25%) of the value of all subcontracts to Minority Owned Business Enterprises and/or Woman Owned Business Enterprises, as such terms are defined by the New Jersey Department of Labor.

(c) **Local Employment.** Redeveloper shall use good faith efforts to exceed the goal that 51% or more of the employees involved in the construction of the project will be residents of the Borough of Freehold. To satisfy this good faith requirement, Redeveloper shall: 1) comply with the other requirements set forth in this Article; 2) participate in at least two job fairs; and 3) perform outreach and coordinate with relevant Borough and County of Monmouth employment related offices when employment opportunities become available.

(d) **Pre-Apprenticeship.** Redeveloper shall use good faith efforts to coordinate with the relevant Borough and County of Monmouth employment related offices to develop a pipeline of workers that will ultimately be able to apply for union apprenticeship.

ARTICLE III **AFFORDABLE HOUSING**

SECTION 3.01. Affordable Housing Obligation. Redeveloper understands that construction of the Project will result in an affordable housing obligation under UHAC and all other Applicable Laws.

SECTION 3.02. Affordable Housing Units.

(a) Fifteen percent (15%) of the total residential units (a total of sixty (60)) constructed shall be Affordable Housing Units as further described herein in this Article III (the “**Affordable Housing Units**”), in conformity with the UHAC, the Redevelopment Plan, the Borough’s Fair Share Housing Agreement, this Agreement, and all Applicable Law(s).

(b) The breakdown of the Affordable Housing Units shall be in accordance with the Affordable Housing Table below, which units shall be dispersed throughout the Project so as to be indistinguishable from the market rate units. The location of the Affordable Housing Units shall be set forth in the Planning Board Application.

Affordable Housing Table

	Income level			
Bedroom Type	Very Low	Low	Moderate	<i>Total</i>
STUDIO or 1 BR	6	0	6	<i>12</i>
2 BR	2	16	18	<i>36</i>
3 BR	0	6	6	<i>12</i>
<i>Total</i>	8	22	30	<i>60</i>
%	13.3%	36.7%	50%	100%

SECTION 3.03. Requirement to Construct. The requirement to construct the Affordable Housing Units and the construction thereof will be tracked on an ongoing basis as Governmental Approvals are obtained and construction of the Project is implemented. The Redeveloper shall have an obligation to deed restrict the Affordable Housing Units as very low, low or moderate-income Affordable Housing Units for a period of forty (40) years commencing upon the date on which the first eligible household certified by the Administrative Agent (as defined herein) occupies the respective Affordable Housing Unit (the “**Deed-Restriction Period**”). The deed restriction shall be substantially in the form of **Exhibit I** (the “**Affordable Housing Deed Restriction**”) and the final form of the Affordable Housing Deed Restriction shall be provided to the Borough and the Borough’s Administrative Agency for its review for compliance with the UHAC and all other Applicable Laws prior to recordation. The Redeveloper shall record the Affordable Housing Deed Restriction prior to the issuance of any Certificate of Occupancy for the

Project. The cost of such recordation shall be borne by the Redeveloper. At the conclusion of the minimum forty (40) year period, the affordable housing restrictions and requirements set forth herein may only be terminated upon the consent of the Borough Council, by resolution.

SECTION 3.04. Redeveloper's Obligation. Redeveloper's obligation includes, but is not limited to, the Redeveloper's obligation to comply with phasing requirements, bedroom distribution requirements, very low/low/moderate income split requirements, pricing requirements, affirmative marketing requirements, candidate qualification and screening requirements, and deed restriction requirements, all as set forth in the UHAC and as further described herein.

SECTION 3.05. Administrative Agent. Redeveloper shall contract with the Borough's Administrative Agent ("**Administrative Agent**") who shall have the responsibility for the administration of the Affordable Housing Units and Redeveloper shall have the obligation to pay all costs associated with properly deed restricting the Affordable Housing Units in accordance with UHAC and other Applicable Laws for the Deed-Restriction Period. Redeveloper shall work with the Administrative Agent to comply with any affordable housing monitoring requirements imposed by the UHAC, all other Applicable Laws, and/or court. Redeveloper shall provide, within thirty (30) days of written notice, detailed information requested by the Borough or the Administrative Agent concerning Redeveloper's compliance with UHAC, the Redevelopment Plan, and other Applicable Laws.

SECTION 3.06. Bedroom Mix. The bedroom distribution for the Affordable Housing Units shall be in conformity with the UHAC and all other Applicable Laws.

SECTION 3.07. Income Mix. The income mix for the Affordable Housing Units shall be in conformity with the UHAC and all other Applicable Laws.

SECTION 3.08. Unit Distribution. The Affordable Housing Units with rents set for low, very low and moderate-income households shall be distributed among each bedroom size on a prorated basis.

SECTION 3.09. Quality. The quality of construction and materials, as well as fixtures and appliances, in the Affordable Housing Units shall be of the same as the market rate units in the Project.

SECTION 3.10. Priority. Redeveloper's obligations with regard to the Affordable Housing Units shall be implemented in accordance and compliance with Applicable Law(s) and the terms of this Agreement.

ARTICLE IV CONSTRUCTION OF PROJECT

SECTION 4.01. The Project. The Project shall be constructed by the Redeveloper in accordance with this Agreement, the Final Site Plan, Redevelopment Plan, all Governmental Approvals and Applicable Laws unless otherwise agreed to in writing by the Borough in its sole

and absolute discretion. Construction practices and hours shall be in accordance with Borough Ordinances, which are available at the Borough Building Department or through the Borough Clerk.

SECTION 4.02. Scope of Undertaking. Except as expressly provided herein, the services and responsibilities undertaken by the Redeveloper hereunder include all aspects of the design, development, and construction of the Project, including without limitation, all design, engineering, permitting and administrative aspects, the performance of or contracting for and administration and supervision of all physical work required in connection with the Project, arrangement for interim and final inspections and any other actions required to satisfy the requirements of any applicable Governmental Approvals, the administration, operation and management, or contracting for the administration, operation and management of the Project and all aspects of funding the Project, including equity funding and construction, interim and permanent financing, all at the sole cost and liability of the Redeveloper.

SECTION 4.03. The Project Schedule. Redeveloper will diligently implement and Complete the Project in accordance with the Project Schedule, subject to the terms of this Agreement and subject only to relief resulting from events of Force Majeure. The Parties agree and acknowledge that adherence to the Project Schedule is of the essence in this Agreement. Notwithstanding the Project Schedule, Redeveloper may attempt to implement each task whenever possible earlier than the dates set forth for such tasks in the Project Schedule.

SECTION 4.04. Commencement of Redevelopment Project. Redeveloper agrees that Commencement of Construction shall occur in accordance with the Project Schedule and shall progress in accordance with the time frames set forth in the Project Schedule. After Commencement of Construction, Redeveloper will thereafter diligently and continuously prosecute construction of the Project to completion in accordance with the Project Schedule.

SECTION 4.05. Modification of Project Schedule. In the event that the Redeveloper is unable, for reasonable cause, to comply with any time frame set forth on the Project Schedule, the Redeveloper shall provide written notice to the Borough at least thirty (30) days prior to such date (or such lesser period of time as the circumstances may require), setting forth in reasonable detail (a) the reason for the failure to satisfy the required tasks necessary to comply with the Project Schedule, (b) the Redeveloper's proposed actions to remedy any delay, and (c) the Redeveloper's proposal for revising the Project Schedule. In such event the Project Schedule shall be modified accordingly, subject to the Borough's consent, which shall not be unreasonably withheld, conditioned or delayed. The Borough's approval of any such extension shall not limit in any manner the rights of the Borough or diminish the obligations of the Redeveloper with respect to the Project under this Agreement.

SECTION 4.06. Suspension of Construction. Redeveloper shall not suspend or discontinue the performance of its obligations under this Agreement (other than in the manner provided for herein) for any reason, including, without limitation, any acts or circumstances that may constitute failure of consideration, commercial frustration of purpose, or any damage to or destruction of the Project, except for the occurrence of an event of Force Majeure, as set forth in Section 15.04. If Redeveloper shall abandon or substantially suspend construction activities on the Project for a period in excess of thirty (30) consecutive days for reasons other than an event of

Force Majeure, and the suspension or abandonment is not cured, remedied or explained to the satisfaction of the Borough, in its sole discretion, in writing within sixty (60) calendar days after written demand by the Borough to do so, provided, however, that if such failure cannot be reasonably remedied within the sixty (60) days it shall not be deemed to be an Event of Default for a period not to exceed one hundred twenty (120) days so long as the Redeveloper is proceeding with due diligence to remedy same as soon as practicable, then such shall constitute an Event of Default by Redeveloper under this Agreement and the Borough shall have the right to seek any remedies pursuant of this Agreement.

SECTION 4.07. Certificates of Occupancy and Certificate of Completion.

(a) Certificate of Occupancy. Upon Completion of the construction of the Project, or any Phase thereof, in accordance with the Governmental Approvals and ordinances and regulations of the Borough, the Redeveloper may apply to the Borough for a Certificate of Occupancy for the Project. The date when Redeveloper has achieved the Completion of such Phase or the Project (a “**Completion Date**”) shall be the date Redeveloper has obtained a Certificate of Occupancy for all of the Project Improvements related to the applicable Phase of the Project or the entire Project.

(b) Certificate of Completion. Upon completion of the Project, and subject to the terms herein with regard to the Redeveloper’s Remediation, as may be applicable, Redeveloper shall request, in writing, the issuance of a Certificate of Completion. Redeveloper hereby expressly acknowledges and agrees that a Certificate of Completion for the Project shall not be issued unless and until each aspect of the Project is fully completed, including issuance of an RAO for Redeveloper’s Remediation. The Certificate of Completion will be issued when the Project is complete. If the Borough, in its reasonable discretion, determines that the Redeveloper is not entitled to a Certificate of Completion, then within forty-five (45) days of Redeveloper’s request for a Certificate of Completion the Borough shall provide the Redeveloper with a written statement of the reasons why the Borough did not issue a Certificate of Completion for the. If the reason for the refusal to issue the Certificate of Completion is confined to (i) the immediate availability of specific, minor finish or punch-list items not interfering with the use of the Project or (ii) completion of certain limited elements, such as landscaping or paving, that cannot be completed at such time due to seasonal considerations, the Borough shall issue its Certificate of Completion upon the posting of a bond to the extent not covered by existing bonds (or other reasonably satisfactory security) by the Redeveloper with the Borough in an amount representing the fair value of the items not yet completed, as same is determined by the Borough Engineer, in order to secure Redeveloper’s obligation to complete such items after issuance of the Certificate of Completion. The Certificate of Completion, when issued, shall constitute a recordable conclusive determination of the satisfaction and termination of the restrictions, obligations and covenants contained in this Agreement and in the Redevelopment Plan with respect to Redeveloper’s construction of the Project. Upon receipt of the Certificate of Completion, Redeveloper may record it in the Monmouth County Clerk’s office.

SECTION 4.08. Nondiscrimination During Construction; Equal Opportunity. The Redeveloper for itself and its successors and assigns agrees that in the construction of the Project:

(a) The Redeveloper will not discriminate against any employee or applicant for employment because of race, color, creed, religious principles, ancestry, national origin, sex,

affectional or sexual orientation, marital status, actual or perceived physical or mental disability, familial status, gender identity or expression, or source of lawful income or source of lawful rent payment. The Redeveloper will ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, religious principles, ancestry, national origin, sex, affectional or sexual orientation, marital status, actual or perceived physical or mental disability, familial status, gender identity or expression, or source of lawful income or source of lawful rent payment. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The Redeveloper agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

(b) The Redeveloper will, in all solicitations or advertisements for employees placed by or on behalf of the Redeveloper state that all qualified applicants will receive consideration for employment without regard to race, color, creed, religious principles, ancestry, national origin, sex, affectional or sexual orientation, marital status, actual or perceived physical or mental disability, familial status, gender identity or expression, or source of lawful income or source of lawful rent payment.

(c) The Redeveloper will cause the foregoing provisions to be inserted in all contracts for any work covered by this Agreement so that such provisions will be binding upon each contractor and subcontractor.

SECTION 4.09. First Source Employment. Redeveloper shall make good faith efforts and shall provide in its contracts with its contractors and subcontractors that they must make good faith efforts, to employ Borough residents and patronize Borough businesses if possible in the implementation and construction of the Project, on economically competitive terms and consistent with the Project budget. Redeveloper shall notify local residents of the pendency of the Project by way of advertisements or articles in local publications, which shall contain contact information in the event any local residents or businesses wish to apply or bid for work connected to the Project.

SECTION 4.10. Preconstruction Meeting. There shall be a preconstruction meeting held at least seven (7) days prior to the Commencement of Construction, which meeting shall include the Borough Construction Official, the Borough Engineer, a representative from the Borough Police Department, a representative from the Borough Fire Department and representatives from the various utility companies.

SECTION 4.11. The Property. The Borough acknowledges that for safety reasons, sidewalks adjacent to the Property may need to be closed from time to time during construction of the Project. Notwithstanding the foregoing, Redeveloper will provide appropriate signage and crosswalks to ensure the continued flow of pedestrian traffic. Redeveloper shall supply to the Borough Building Department plans and specifications providing for pedestrian safety at and across the Property as applicable. The Redeveloper shall keep the sidewalks abutting the Property clean and free of debris, ice and snow during the construction of the Project.

SECTION 4.12. Property Parking. The Redeveloper shall make arrangements with the Borough Construction Official and the Borough Police Department for off-street parking for

construction vehicles and construction worker's vehicles, if such vehicles cannot be parked on the Property itself. The Borough agrees to place from time to time temporary "emergency, no parking" signs on the adjacent street as reasonably requested by Redeveloper to accommodate Redeveloper's construction activities.

SECTION 4.13. Maintenance of Property. Following Commencement of Construction of the Project, the Redeveloper will maintain all areas of the Property including the buildings, parking areas, landscaping, streetscaping, sidewalks, trash collection and receptacles. The Property will be cleaned on a regular basis by Redeveloper; provided, however, that Redeveloper agrees to clean up the Property within twenty-four (24) hours or by the close of the following Business Day for a specific, reasonable request by the Borough. Ordinary construction equipment, materials and debris are allowed on the Property during construction. Should Redeveloper fail to comply with this obligation, the Borough will undertake street cleaning and charge Redeveloper for the costs of same. The Redeveloper shall repair, at Redeveloper's cost, any damage to the streets or sidewalks caused by Redeveloper during the construction of the Project.

SECTION 4.14. Relocation of Utilities. The Redeveloper acknowledges that providers of Utilities may have certain rights with respect to the Property and may own certain facilities located therein. The Redeveloper agrees that it is its sole responsibility to undertake the appropriate measures to negotiate with, acquire, relocate or otherwise address the existence of these Utilities and improvements and easements therefore, in order to complete construction of the Project as provided by this Agreement. To the extent reasonably requested by the Redeveloper, the Borough shall cooperate in facilitating the installation and/or relocation of any such affected Utilities.

SECTION 4.15. Standards of Construction. Without limitation, all work on the Project shall be performed in a good and workmanlike manner, with the materials called for under the Governmental Approvals being of such quality as is required by such approvals.

SECTION 4.16. Compliance With Applicable Law. The Project and all materials, fixtures and equipment used or installed in connection therewith shall be in full compliance with all Applicable Laws, subject to any waivers, variances, deviations, exceptions or similar approval granted in accordance with Applicable Law.

SECTION 4.17. Delivery of Consultants' Reports. Redeveloper agrees to promptly deliver to the Borough one electronic copy of every survey, report, analysis, test result and other written report or document prepared for Redeveloper by any Third Party consultant with respect to the Property, including, but not limited to, wetlands investigations, environmental assessments, soil tests, surveys, title commitments, engineering analyses, utility capacity analyses and the like, all reports and other documents to be delivered without representation or warranty.

SECTION 4.18. Cooperation. The Parties shall fully cooperate with each other as necessary to effectuate the Project, including entering into additional agreements that may be required; provided however, that such actions and/or agreements shall not result in a material increase or decrease in the Borough's and the Redeveloper's respective rights, obligations and liabilities hereunder.

SECTION 4.19. Estoppel Certificates. Within sixty (60) days following written request therefore by a Party hereto, or of any Holder, purchaser, tenant or other party having an interest in

the Property, the other Party shall issue a signed certificate (“**Estoppel Certificate**”) stating that (i) this Agreement is in full force and effect, (ii) there is no default or breach under this Agreement (nor any event which, with the passage of time and 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, and (iii) any other matter reasonably requested. 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.

ARTICLE V ENVIRONMENTAL

SECTION 5.01. Environmental Consultant or Redeveloper’s LSRP. Redeveloper agrees to retain an environmental consultant, or Redeveloper’s LSRP, for the completion of Remedial Investigation and Remedial Action of the Property, as determined by Redeveloper’s LSRP and as required by and in full compliance with all Environmental Laws. The Borough reserves the right to hire a consultant to review all Environmental Reporting if necessary, in its sole discretion, as provided in this **Article V**.

SECTION 5.02. Redeveloper’s Remediation. The Redeveloper, at no cost and expense to the Borough, shall conduct all necessary Remedial Investigation and Remedial Action of the Property in accordance and full compliance with all applicable Environmental Laws (“**Redeveloper’s Remediation**”), including the management, segregation, storage, permitted re-use, and/or off-site disposal of any Hazardous Substances. Redeveloper shall submit to NJDEP, with a simultaneous copy to the Borough, a final Remedial Action Report and any associated application(s) for any Remedial Action Permit(s) (defined herein) related to its Remedial Action before the Borough shall issue the Certificate of Occupancy. In all submissions made to the NJDEP and/or USEPA with respect to the Redeveloper’s Remediation, Redeveloper shall be designated as the Person Responsible for Conducting the Remediation (as defined by N.J.A.C. 7:26C) or equivalent under federal law. The Borough’s review shall be conducted promptly, and shall be for the sole purpose of confirming Redeveloper’s compliance with Environmental Laws, and, upon such confirmation, the Borough shall issue a Certificate of Occupancy. Any refusal to issue a Certificate of Occupancy on the basis of this review shall be made in writing to Redeveloper, not later than fourteen (14) days after Redeveloper’s submission to the Borough of a RAP application, accompanied with a specific indication of any non-compliance with Environmental Laws prepared by a qualified, independent New Jersey Licensed Site Remediation Professional identifying with specificity Redeveloper’s non-compliance. Notwithstanding any other provision of this Section, the Parties agree and acknowledge that the Redeveloper’s Remediation shall be conducted in accordance with all Environmental Laws and the requirements of this Agreement.

SECTION 5.03. Environmental Reporting to the Borough. In conducting the Redeveloper’s Remediation, the Redeveloper agrees to provide the Borough copies of any environmental reporting or submissions to the NJDEP or any other Governmental Body with jurisdiction over the Redeveloper’s Remediation, including, but not limited to, Preliminary Assessment Reports(s), Phase I Reports, Site Investigation Report(s), Phase II Reports, Remedial Investigation Report(s), Remedial Action Workplan(s), Remedial Action Reports, RAO, and all associated data (collectively, “**Environmental Reporting**”) within ten (10) days of the submission of same to the Governmental Body, which information shall be maintained as confidential by the

Borough (unless such disclosure is required by Applicable Law) and may be reviewed by the Borough for the sole purpose of assessing Redeveloper's compliance with the terms of this Agreement. Upon request by the Borough, Redeveloper shall arrange for status teleconferences related to the Remedial Investigation or Remedial Action between the Redeveloper, Redeveloper's LSRP, and a representative(s) designated by the Borough at reasonable intervals.

SECTION 5.04. Release of Hazardous Substances. In the event that the Redeveloper or any agent, employee or contractor of the Redeveloper shall cause any release or discharge of any Hazardous Substance(s) in connection with the Project (i) at, on, under or upon the Property or (ii) elsewhere within the Borough, Redeveloper shall promptly report such release or discharge to the NJDEP, notify the Borough in writing, and perform all Remedial Investigation and Remedial Action of same in accordance with applicable Environmental Laws.

SECTION 5.05. Implementation of Institutional and/or Engineering Controls. To the extent permitted by applicable Environmental Laws, Redeveloper may implement institutional and/or engineering control(s) in connection with the Redeveloper's Remediation including, but not limited to, capping, establishment of Classification Exception Area ("CEA") for groundwater, recording of Deed Notice(s), and/or the operation and maintenance of any vapor mitigation system or measure (collectively, "**Controls**"), as same are approved by the LSRP, the NJDEP or any other Governmental Body with jurisdiction over the Redeveloper's Remediation. Redeveloper, at its sole cost and expense, shall be responsible for obtaining and complying with the conditions of any Remedial Action Permit ("**RAP**") that is issued for any Control to be implemented upon the Property. Redeveloper shall be solely responsible, at its own cost and expense, for complying with the requirements of any such RAP.

SECTION 5.06. Environmental Remediation and Construction. Except for the use of Controls as provided in **Section 5.05**, under no circumstances shall Redeveloper commence construction upon a portion of the Property unless and until the remediation activities required by Environmental Laws and Redeveloper's LSRP have been completed for the portion of the Property for such construction. For the purpose of clarity, to the extent that a component of Redeveloper's Remediation is to be implemented through construction of the Project, such as with regard to the implementation of a Control, the restriction in the preceding sentence shall not apply. The Borough and Redeveloper acknowledge that any environmental remediation required by the Environmental Laws for the Project may commence prior to Commencement of Construction of the Project and may continue after Commencement and/or Completion of Construction of the Project.

SECTION 5.07. Survival. The provisions of this **Article V** shall survive the issuance of a Certificate of Completion and/or termination of this Agreement.

ARTICLE VI

PROJECT OVERSIGHT

SECTION 6.01. Progress Meetings. The Parties agree to attend and participate in monthly progress meetings ("**Progress Meetings**") to report on the status of the Project and to review the progress under the Project Schedule. Progress Meetings may be held more frequently at the reasonable request of the Borough. The Borough shall give the Redeveloper seven (7) days advance written notice of any additional meetings. The Progress Meetings shall be held in the

Borough Hall. Prior to the meeting, representatives of the Borough may visit the Property to inspect the progress of the work on the Project, in accordance with Section 6.03. Redeveloper shall prepare the agenda for the Progress Meeting in advance (which shall include, *inter alia*, any agenda items reasonably requested by the Borough) and shall provide information to the Borough at the Progress Meeting regarding the Project's progress, including but not limited to, Governmental Approval submissions, financial commitments, construction of the Project, compliance with the Redevelopment Plan, and activities concerning marketing and leasing, if applicable. At the Progress Meetings, this information will be evaluated by the Borough to determine compliance with the terms and conditions of this Agreement and the Project Schedule. The Borough shall have the right at all reasonable times to inspect the construction contracts, financing commitments and agreements, books and records pertinent to the construction contracts, insurance policies, and such other agreements of the Redeveloper which are pertinent to the purposes of this Agreement and to the Progress Meetings in order to ensure Completion of the Project in accordance with the Project Schedule, provided, however, Redeveloper shall have the right to withhold from the Borough's review any materials that Redeveloper reasonably deems to be confidential and proprietary in nature.

SECTION 6.02. Progress Reports. Commencing on the first day of the second month after the Effective Date, Redeveloper shall submit to the Borough a monthly written Progress Report.

SECTION 6.03. Access to Property. Upon reasonable advance written notice (except for Borough construction code officials, fire officials, public safety personnel and the like performing their duties in the ordinary course, who shall not be obligated to provide advance written notice) the Borough and its authorized representatives shall have the right to enter the Property to inspect the site and any and all work in progress for the purpose of furthering its interests under this Agreement. Such entrance(s) shall be for informational purposes and shall not relieve Redeveloper of its obligation to implement the Project in accordance with this Agreement. In no event shall the Borough's inspection of the Project be deemed acceptance of the work or be deemed to waive any right the Borough has under this Agreement. Any such entry shall be subject to reasonable restrictions by Redeveloper typical of an active construction site and any persons present at the Property shall comply with all applicable health and safety rules established by the Redeveloper or the general contractor for personnel present on the Property. Such measures may include a need to be accompanied by Project personnel when visiting the Property. The Borough acknowledges that the Property will be an active construction site and that the Redeveloper shall not be liable or responsible to the Borough or its employees or agents for injury to person or property sustained in connection with any such inspection, except to the extent that the Redeveloper violates the standard of due care owed to invitees.

ARTICLE VII

APPLICATIONS FOR GOVERNMENTAL APPROVALS

SECTION 7.01. Applications for Governmental Approvals.

(a) The Redeveloper (at its sole cost and expense) shall use diligent efforts to secure, or cause to be secured, any and all Governmental Approvals necessary to construct and use the Project including but not limited to all applications and supporting documents (each a "**Final Site Plan**")

as shall be required to obtain approval of the Final Site Plan for the Project, or applicable Phase, (each a “**Final Site Plan Approval**”) by the Planning Board in accordance with ordinances of the Borough and the Municipal Land Use Law.

(b) The Redeveloper shall provide the Borough with a copy of each application for Governmental Approvals at such time as such applications are submitted.

(c) The Redeveloper shall provide the Borough with a copy of each Governmental Approval received by the Redeveloper with respect to the Project.

(d) No Governmental Approval shall be deemed “final” until (i) the time for all appeals has run without the filing of an appeal or (ii) in the event an appeal is filed, all such appeal(s) have been resolved fully in favor of the Project and/or Redeveloper and the time for filing any further appeal has expired without the filing of any such appeals.

SECTION 7.02. Borough Cooperation. To the extent reasonably requested by the Redeveloper, and to the extent permitted by Applicable Law (and without violating its obligations as a governmental entity or regulatory body having competent jurisdiction over the Project), the Borough shall provide its support and assistance to the Redeveloper in facilitating the review of all plans, issuance of all permits, request for inspections and the conduct of such inspections through the appropriate Borough board, body or department, as applicable.

SECTION 7.03. Notice of Lender(s). Redeveloper shall notify the Borough if its lender(s) upon receipt of all Governmental Approvals.

ARTICLE VIII

GENERAL REPRESENTATIONS AND WARRANTIES

SECTION 8.01. Representations and Warranties by Redeveloper. The Redeveloper hereby represents and warrants the following the Borough, for the purpose of inducing the Borough to enter into this Agreement and to consummate the transactions contemplated hereby, all of which shall be true as of the Effective Date of this Agreement:

(a) The Redeveloper is a limited liability company of the State of New Jersey, authorized and qualified to do business in the State of New Jersey and is in good standing under the laws of the State of New Jersey, and has all requisite power and authority to carry on its business as now and whenever conducted, and to enter into and perform its obligations under this Agreement.

(b) The Redeveloper is the contract purchaser of the Borough-Owned Property.

(c) The Redeveloper is, or will be, the contract purchaser of the Privately-Owned Property.

(d) The Redeveloper has the legal power, right and authority to enter into this Agreement and the instruments and documents referenced herein to which Redeveloper is a party, to consummate the transactions contemplated hereby, to take any steps or actions contemplated hereby, and to perform its obligations hereunder.

(e) This Agreement is duly executed by the Redeveloper and is valid and legally binding upon the Redeveloper and enforceable in accordance with its terms. The execution and delivery hereof shall not constitute a default under or violate the terms of any indenture, agreement or other instrument to which the Redeveloper is a party.

(f) To the best of the Redeveloper's knowledge, there is no pending or threatened litigation, suit, proceeding, or investigation that would prevent the Redeveloper from performing its duties and obligations hereunder or have a material adverse effect on the financial condition of the Redeveloper or its members and the Redeveloper has provided a certification to the Borough evidencing this. During the term of this Agreement, the Redeveloper shall promptly notify the Borough in writing of any and all litigation that could potentially prevent the Redeveloper from performing its duties and obligations hereunder.

(g) No indictment has been returned against any member of the Redeveloper with respect to any transaction related to the transactions contemplated by the terms of this Agreement or otherwise.

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

(i) No adjudication of bankruptcy of the Redeveloper or a filing for voluntary bankruptcy by the Redeveloper under the provisions of the United States Bankruptcy Code or any other similar statute that is applicable to the Redeveloper has been filed as of the Effective Date.

(j) All materials and documentation submitted by the Redeveloper and its agents to the Borough and its agents were, at the time of such submission, and, unless modified, replaced or superseded by documents or written communications subsequently submitted by Redeveloper and its agents to the Borough, as of the Effective Date of this Agreement, continue to be accurate, and the Redeveloper shall continue to inform the Borough of any material changes in the documentation submitted, including any updated or new Environmental Reporting.

(k) The Redeveloper shall, at such times as the Borough may request, furnish the Borough with a complete statement sworn and subscribed to by the Redeveloper identifying all Persons holding ownership interests, equitable interests or beneficial interests in the Redeveloper to the extent that such interest exceeds ten (10%) percent and the extent of their respective holdings.

(l) Subject to obtaining construction financing, the Redeveloper is financially and technically capable of undertaking and fulfilling its obligations under this Agreement.

(m) Redeveloper has the necessary expertise, qualifications, staff and resources to undertake and fulfill the obligations hereunder.

(n) The cost and financing of the Project is the responsibility of the Redeveloper, pursuant to the Redevelopment Plan and this Agreement. The Borough shall not be responsible for any cost whatsoever in respect to same.

(o) The ownership structure of the Redeveloper is set forth in **Exhibit J**. The Redeveloper shall, at such times as the Borough may reasonably request, furnish the Borough with a complete statement subscribed and sworn to by the managing member of the Redeveloper, setting forth all ownership interests in the Redeveloper greater than ten percent (10%), or other owners of equity interests of the Redeveloper greater than ten percent (10%) and the extent of their respective holdings, and in the event any other parties have a beneficial interest in the Redeveloper greater than ten percent (10%), their names and the extent of such interest.

(p) Redeveloper is not delinquent with respect to any taxes, payments in lieu of tax, service charge, or similar obligations owed to the Borough.

If reasonably requested by the Borough, the Redeveloper shall reaffirm the representations and warranties set forth in this **Section 8.01**.

SECTION 8.02. Representations and Warranties by the Borough. The Borough hereby represents and warrants the following to the Redeveloper to consummate the transactions contemplated hereby, all of which shall be true as of the Effective Date of this Agreement:

(a) The Borough has the legal power, right and authority to enter into this Agreement and the instruments and documents referenced herein to which the Borough is a party, to consummate the transactions contemplated hereby, and to perform its obligations hereunder.

(b) The Borough is a municipal corporation, duly organized and existing under the laws of the State and has the legal power, right and authority to enter into this Agreement and the instruments and documents referenced herein to which the Borough is a party, to consummate the transactions contemplated hereby, and to perform its obligations hereunder.

(c) The designation of the Property as an area in need of redevelopment and the adoption of the Redevelopment Plan were done in conformance with the Redevelopment Law.

(d) This Agreement has been duly authorized, executed and delivered by the Borough and is valid and legally binding upon the Borough and enforceable in accordance with its terms on the basis of laws presently in effect and the execution and delivery thereof shall not, with due notice or the passage of time, constitute a default under or violate the terms of any indenture, agreement or other instrument to which the Borough is a party.

(e) To the best of the Borough's knowledge, there is no action, proceeding or investigation now pending, nor any basis therefore, known or believed to exist which questions the validity of the Redevelopment Plan or this Agreement or any action or act taken or to be taken by the Borough pursuant to the Redevelopment Plan or this Agreement.

(f) No other redevelopment agreements are in effect with respect to the Property.

ARTICLE IX

REDEVELOPER COVENANTS; DECLARATION OF COVENANTS AND RESTRICTIONS

SECTION 9.01. Redeveloper Covenants. In addition to any other covenants made by Redeveloper herein, Redeveloper also covenants and agrees as follows (collectively, the “**Redeveloper Covenants**”):

1. Covenants That Shall Terminate Upon Certificate of Completion. The following covenants shall automatically terminate upon the Borough’s issuance of a Certificate of Completion, as further set forth herein:

(a) The Redeveloper shall use commercially reasonable efforts to complete the Project in accordance with the provisions of this Agreement and all Applicable Law(s). Such obligation shall include, but not be limited to, the Redeveloper ensuring that: all consultants, professionals, employees, agents, and contractors engaged by the Redeveloper or any subcontractor of any of the Redeveloper’s contractors possess the skill and judgment necessary to construct and implement the Project in accordance and in compliance with the terms and conditions of this Agreement and the Redevelopment Plan, and there are no encumbrances or restrictions upon the Property which would prohibit the Project from being completed in accordance and in compliance with the terms and conditions of this Agreement and the Redevelopment Plan. All activities performed under this Agreement shall be performed in accordance with the high level of skill and care necessary so that the Project, upon completion, satisfies the design, materials and quality requirements of this Agreement and all applicable Governmental Approvals and Applicable Law(s).

(b) The Redeveloper shall undertake the following tasks for the commencement, completion, and implementation of the Project with due diligence: (a) financing of the Project; (b) design of the Project in accordance with the Design Standards; and (c) commencement of the construction and completion of the Project on or prior to the dates or timeframes set forth in the Project Schedule, which the Borough has fixed as reasonable, except as otherwise provided in this Agreement.

(c) In the event the Redeveloper wishes to materially modify the Project, the Redeveloper shall obtain the Borough’s approval prior to implementing such modification and this Agreement shall be amended accordingly by formal Resolution or legislation, as may be applicable, of the Borough Council.

(d) In accordance with the provisions of Article XII, prior to issuance of a Certificate of Completion by the Borough, the Redeveloper shall not utilize the Property or any portion thereof as collateral for any activity unrelated to this Project; provided that nothing herein shall be deemed to prevent Redeveloper from closing on its acquisition, construction and permanent Mortgage financing.

(e) The Redeveloper shall not utilize any portion of the Property in a manner that is inconsistent with the Redevelopment Plan and this Agreement.

(f) The Redeveloper covenants and acknowledges that its undertakings pursuant to this Agreement shall be for the purpose of the redevelopment of the Property and not for speculation in land holding.

(g) In addition to any other provisions herein requiring the Redeveloper to obtain prior written approval of the Borough, the Redeveloper shall not, without the prior written approval of

the Borough, which approval shall not be unreasonably withheld, conditioned or delayed: (a) effect or permit any change, directly or indirectly, in the majority ownership or control of the Redeveloper; or (b) assign or attempt to assign this Agreement or any rights herein or in the Project or any portion of the Property. Notwithstanding the foregoing, nothing herein shall be deemed to prohibit, and the Borough's prior approval shall not be required for, Permitted Transfers, as that term is defined herein.

(h) The Redeveloper further represents and agrees for itself and its successors and assigns that the Redeveloper has not made or created, and that it will not make or create, prior to the issuance of the Certificate of Completion referenced herein, or suffer to be made or created, any sale, conveyance or transfer of the Property or any portion thereof, or this Agreement, without the prior written approval of the Borough, excluding Permitted Transfers, as that term is defined herein.

(i) The Redeveloper shall act in good faith in carrying out all of its obligations set forth in this Agreement.

2. Covenants That Shall Expressly Survive Certificate of Completion. The following covenants shall expressly survive the Borough's issuance of a Certificate of Completion and shall run with the land that will comprise the Property in perpetuity, as further set forth herein and in the Redeveloper's Declaration:

(a) The Redeveloper shall not discriminate against any person or group of persons, on account of race, color, religious principles, creed, nationality, ancestry, familial status, disability, marital status, sex, affectional or sexual orientation or gender identity or expression in the sale, lease, sublease, rental, transfer, use, occupancy, tenure or enjoyment of the Project or any portion thereof, nor shall the Redeveloper itself, or any person claiming under or through the Redeveloper, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use of occupancy of owners, tenants, lessees, subtenants, sublessees, or vendees, as applicable.

(b) Redeveloper shall be responsible for all garbage, recycling and bulk pick up from the Property which shall be in accordance with all Borough ordinances. Redeveloper waives any reimbursement by the Borough for all garbage, recycling and bulk pick up due under Applicable Law(s).

SECTION 9.02 Declaration of Covenants and Restrictions. Redeveloper shall execute and record one or more Declaration imposing upon the Property the covenants and restrictions contained herein, including those relating to Permitted Transfers, and as set forth in Article V and Article IX, granted hereunder and other such provisions which shall run with the land as may be required by Applicable Law(s).

SECTION 9.03 Effect and Duration of the Redeveloper Covenants. It is intended and agreed, that the Redeveloper Covenants shall comprise 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 Borough, its successors and assigns, against the Redeveloper, and every successor in interest therein, and any party in possession or occupancy of the Property. It is further intended and agreed that the Redeveloper Covenants shall remain in effect until the issuance of a Certificate of Completion by the Borough for at which time such Redeveloper Covenants shall automatically and without further action cease and terminate, except as otherwise expressly set forth: (i) in this Agreement and/or (ii) in N.J.S.A. 40A:12A-9 of the Redevelopment Law, as may be amended; and the conditions determined to exist at the time the Property was determined to be in need of redevelopment or rehabilitation, as the case may be, shall be deemed to no longer exist and the lands and improvements thereon shall no longer be subject to eminent domain as a result of those determinations, as may be applicable, and further provided that if requested by either Party after the issuance of the Certificate of Completion, the Parties shall cooperate to discharge those portions of the Redeveloper's Declaration of record that are intended to terminate upon the issuance of a Certificate of Completion.

SECTION 9.04 Delivery of Documents by the Redeveloper. The Redeveloper agrees to deliver the following fully executed collateral documents simultaneously with the execution of this Agreement and the Borough hereby acknowledges the receipt of such documents:

(a) Certified copies of the certificate of formation and certificate of good standing of the Redeveloper.

(b) A comprehensive list of the names, addresses, email addresses and telephone numbers of all individuals who will comprise the Redeveloper's "**Project Team**" including, but not limited to, those individuals who will be directly responsible for managing the Project's design, approvals and construction. The Redeveloper shall provide notice to the Township of any changes in the representatives on the Project Team.

ARTICLE X

CONDITIONS PRECEDENT

SECTION 10.01. Conditions Precedent. The Borough and Redeveloper shall proceed diligently and in good faith to satisfy the following conditions precedent (collectively the "**Conditions Precedent**"), as applicable, and each shall cooperate with the other in connection therewith, and while the Parties are seeking to satisfy the Conditions Precedent, the Parties shall continue to perform their obligations under this Agreement. In the event of a failure to satisfy a Condition Precedent, either Party may terminate this Agreement on not less than sixty (60) days written notice to the other Party. In the event the Condition Precedent is satisfied within that sixty (60) day period, the termination shall not take effect. The Parties may agree to modify this Agreement by further negotiation with regard to the Condition(s) Precedent.

1. **Conditions Precedent to the Borough's Execution of the Agreement:** The Borough and Redeveloper hereby acknowledge and agree that the Borough's execution of this Agreement is contingent upon the satisfaction of the following Conditions Precedent:

a) **All Interim Costs Paid Pursuant to Conditional Redeveloper's Agreement:** Any and all outstanding monies that are due and owing to the Borough pursuant to the escrow account established by Section 2.01 of the Conditional Redeveloper's Agreement and any

Amendments thereto have been paid in full in accordance with the Conditional Redeveloper's Agreement as of the Effective Date.

b) The Declaration: Execution by Redeveloper of the Declaration, to be duly recorded as set forth in this Agreement.

2. Conditions Precedent to Redeveloper's Commencement of Construction. Unless otherwise set forth herein, and unless waived in writing by the Borough which shall be by formal Resolution of the Borough Council, the Borough and Redeveloper hereby acknowledge and agree that the following conditions shall be satisfied prior to the Redeveloper's Commencement of Construction:

a) Governmental Approvals. The Redeveloper obtaining all final and non-appealable Governmental Approvals necessary, to Commence Construction as herein defined or otherwise desired by Redeveloper for the Project in accordance with the timeframes in the Project Schedule, as may be amended in accordance with the terms of this Agreement.

b) Payment of All Fees Due and Owing to the Borough. The Redeveloper shall pay all fees due and owing to the Borough, including such fees due and owing pursuant to this Agreement.

c) Financing Plan. Provision to the Borough by the Redeveloper of an anticipated financing plan for the Project, including any term sheet or loan commitment, for informational purposes only, and same remains subject to confidentiality as required by Applicable Law(s). This must be submitted to the Borough no later than sixty (60) days prior to the Commencement of Construction.

3. Condition Precedent to Borough's Issuance of Final Certificate of Occupancy: The Borough and Redeveloper hereby acknowledge and agree that the Borough's obligation to issue a Final Certificate of Occupancy is contingent upon Redeveloper's completion of the Project, including the Indoor Amenities and the Outdoor Amenities, pursuant to the terms of this Agreement; compliance with Article V of this Agreement; and recordation of the Affordable Housing Deed Restriction.

4. Conditions Precedent to the Borough's Issuance of a Certificate of Completion: The Borough and Redeveloper hereby acknowledge and agree that the Borough's obligation to issue any Certificate of Completion for the Project is contingent upon Redeveloper's complete construction and implementation of the Project, in accordance with the terms of this Agreement, including Article V of this Agreement.

ARTICLE XI

TAXATION AND FEES

SECTION 11.01. Tax Assessments. Subject to the provisions herein, the Redeveloper agrees that each parcel of property contained within the Property must be assessed as of October

1 of the pre-tax year pursuant to N.J.S.A. 54:4-23. Any partial construction on any portion of the Property shall be assessed in a manner consistent with Applicable Law(s) for partial assessments.

SECTION 11.02 Fees. The Redeveloper agrees that there shall be no reductions in sewer, water, or construction fees for the Project and that the Redeveloper's financial commitment to the Project is not conditioned in any way upon receipt of same.

ARTICLE XII

PROHIBITED AND PERMITTED TRANSFERS

SECTION 12.01 Prohibited Transfers. The Redeveloper covenants that unless it has first received the prior written approval of the Borough, as evidenced by a Borough Council resolution, or unless a particular transfer is a Permitted Transfer as provided in **Section 12.02**, it shall not: effect or permit any change, directly or indirectly, in the majority ownership or control of the Redeveloper; assign or attempt to assign this Agreement; or make any total or partial sale, lease, transfer or conveyance of the whole or any part of its interest in the Property or this Agreement (collectively, "**Prohibited Transfers**").

SECTION 12.02 Permitted Transfers. Transfers are permitted in accordance with the following terms and conditions (the "**Permitted Transfers**"):

1. The following Transfers are permitted without the prior approval of the Borough:
 - a) Transfers by way of security for, and only for the purpose of obtaining financing necessary to enable the Redeveloper or any successor in interest to the Property, or any part thereof, to perform its obligations with respect to undertaking the Project under this Agreement.
 - b) Subject to prior notice to the Borough, a transfer of ownership interest in the Property and an assignment of this Agreement to a successor entity owned or controlled by Redeveloper or Redeveloper's Affiliates, including an equity investor, provided that Redeveloper or Redeveloper's Affiliates shall be responsible for the control of operations for the Project.
 - c) Transfers to the ultimate tenants of the residential or commercial units within the Project; or
 - d) Transfers of any individual parts or parcels of the Property on which the Project to be constructed thereon has been completed, and which, by the terms of this Agreement, the Redeveloper is authorized to convey or lease; or
 - e) Transfers by the Redeveloper of the Project or any Component and its rights under this Agreement, but only upon the following conditions: (i) such Transfer must be to (A) an Affiliate of the Redeveloper, including but not limited to an entity formed by the Redeveloper in connection with an application for tax exemption, (B) third-parties to which easements would conventionally be granted in connection with services (i.e. utility companies) or (C) a family trust formed by or on behalf of any of the members of the Redeveloper; or (D) existing members, partners or shareholders of Redeveloper or its or their existing members, partners or shareholders; (ii) in the event of an assignment to an Affiliate, (X) the successor and assignee of the Redeveloper

shall assume all of the obligations of the Redeveloper hereunder, but the Redeveloper shall remain primarily liable for the performance of the Redeveloper's obligations; (Y) a copy of the written instrument of assignment and assumption of this Agreement shall be delivered to the Borough for review and approval prior to execution, and once approved and executed, fully executed copies shall be provided to the Borough promptly; and (Z) such assignment must not violate any of the Government Approvals.

SECTION 12.03. Permitted Transfer Documentation. Upon written request by the Borough, the Redeveloper shall submit to the Borough, for review only, all instruments and other legal documents involved in effecting a Permitted Transfer described in **Section 12.02**.

SECTION 12.04. Borough Approval of Prohibited Transfers. The Borough may approve a Transfer that does not meet the requirements of **Section 12.02** provided such Transfer is requested in writing by the Redeveloper and approved in writing by the Borough and further provided that:

a) Any proposed Transferee shall have the qualifications and financial responsibility, as determined by the Borough, necessary and adequate to fulfill the obligations undertaken in this Agreement by the Redeveloper (or, in the event the Transfer is of or relates to part of the Property, such obligations to the extent that they relate to such part).

b) Any proposed Transferee, by instrument in writing reasonably satisfactory to the Borough and in form recordable among the land records, shall, for itself and its successors and assigns, and expressly for the benefit of the Borough, have expressly assumed all of the obligations of the Redeveloper under this Agreement and agreed to be subject to all the conditions and restrictions to which the Redeveloper is subject (or, in the event the Transfer is of or relates to part of the Property, such obligations, conditions, and restrictions to the extent that they relate to such part); provided that, the fact that any Transferee of, or any other successor in interest whatsoever to, the Property or any part thereof, shall, whatever the reason, not have assumed such obligations or so agreed, shall not (unless and only to the extent otherwise specifically provided in this Agreement or agreed in writing by the Borough) relieve or except such Transferee or successor of or from such obligations, conditions, or restrictions, or deprive or limit the Borough of or with respect to any rights or remedies or controls with respect to the Property or the construction of the Improvements; it being the intent of this, together with other provisions of this Agreement, that (to the fullest extent permitted by law and equity and excepting only in the manner and to the extent permitted by law and equity and excepting only in the manner and to the extent specifically provided otherwise in this Agreement) no Transfer of, or change with respect to, ownership in the Property or any part thereof, or any interest therein, however consummated or occurring, and whether voluntary or involuntary, shall operate, legally or practically, to deprive or limit the Borough of or with respect to any rights or remedies or controls provided in or resulting from this Agreement with respect to the Property and the construction of the Improvements that the Borough would have had, had there been no such Transfer or change.

c) The Redeveloper and its Transferee shall comply with such other conditions as the Borough reasonably finds necessary to achieve and safeguard the purpose of the Redevelopment Law and the Redevelopment Plan; provided that in the absence of specific written agreement by the Borough to the contrary, no such Transfer or approval by the Borough thereof shall be deemed to relieve the Redeveloper, or any other Person bound in any way by this Agreement or otherwise

with respect to the construction of the Improvements, from any of its obligations with respect thereto.

SECTION 12.05 Notice of Permitted Transfers. With respect to any Permitted Transfer (other than leases to end users of the Project), the Redeveloper shall provide to the Borough written notice within five (5) days of such Permitted Transfer, including a description of the nature of such Permitted Transfer, and the name(s) and address(es) of the Transferee parties, individuals and/or entities involved.

ARTICLE XIII INDEMNIFICATION

SECTION 13.01 Indemnification. The Redeveloper agrees to indemnify and hold harmless and defend the Borough Indemnified Parties, and the Redeveloper shall pay any and all liability, loss, cost, damage, penalty, claim, judgment or expense arising out of claims against the Borough for bodily injury, including death, or property damage, alleged to arise out of or in connection with the Project arising after the date hereof and before the issuance of the Certificate of Completion, including, but not limited to: (1) the presence of any Hazardous Substances on, beneath or migrating from the Property; (2) Redeveloper's Remediation with respect to any Hazardous Substances on, beneath or migrating from the Property; (3) any third-party claims with respect to any Hazardous Substances on, beneath or migrating from the Property, including, but not limited to, claims for natural resource damages; and/or (4) Redeveloper's acts or omissions in connection with the Project or any portion thereof, including those arising out of or related to any contract or sub-contract related to the Project (collectively, "**Claims**"); provided that nothing herein shall require the Redeveloper to indemnify against Excepted Claims as defined in **Section 13.02** herein.

SECTION 13.02 Hold Harmless. It is mutually agreed by the Redeveloper and the Borough that neither the Borough, nor the Borough Indemnified Parties shall be liable in any event for any Claims and that the Redeveloper shall save the Borough and the Borough Indemnified Parties harmless from any Claim as set forth above, except to the extent any Claim is caused solely by the negligence or willful misconduct of the Borough and/or the Borough Indemnified Parties (collectively, the "**Excepted Claims**").

SECTION 13.03 Defense of Borough and Borough Indemnified Parties. In any situation where the Borough Indemnified Parties desire to be defended and/or indemnified by the Redeveloper, the Borough Indemnified Parties shall provide prompt notice of same to the Redeveloper. Failure to provide prompt notice to the Redeveloper, however, shall not relieve the Redeveloper of any responsibility to defend and indemnify the Borough Indemnified Parties, unless such failure to provide prompt notice materially impairs the Redeveloper's ability to defend the Claim. Upon receipt of such notice, the Redeveloper shall defend any such Claim on behalf of the Borough Indemnified Parties and shall be responsible for the payment of all fees, costs and expenses associated with the Claim, including, but not limited to, reasonable fees for counsel. All of the Borough Indemnified Parties shall have the right to employ separate counsel in any such action and to participate in the defense thereof, at the cost of such Borough Indemnified Parties.

SECTION 13.04 Settlement or Judgment. The Redeveloper shall have the right to

negotiate and approve any settlement of a Claim with respect to a Claim for which Redeveloper is indemnifying the Borough; subject to approval of any named Borough Indemnified Party, which shall not be unreasonably withheld, conditioned or delayed, provided that if such settlement relates solely to the payment of monetary damages, such approval shall not be required if Redeveloper undertakes to pay the full amount of such settlement. The Redeveloper shall not be liable for any settlement of any such action effectuated without its approval, but if settled with the approval of the Redeveloper or if there is a final judgment against the Redeveloper or the Borough Indemnified Parties in any such action, the Redeveloper shall indemnify and hold harmless the Borough Indemnified Parties from and against any costs, loss or liability arising out of such settlement or judgment to the extent pertaining to a Claim (other than an Excepted Claim).

SECTION 13.05 Survival of Indemnity. The provisions of this **Article XIII** shall survive the expiration or termination of this Agreement and shall run with the land provided that the elements of such provisions shall continue thereafter with respect to Claims the elements of which are alleged to have arisen prior to the earlier of (i) issuance of a Certificate of Completion for the Project or the (ii) the termination of this Agreement.

ARTICLE XIV **INSURANCE**

SECTION 14.01 Insurance Required. Prior to any work being undertaken upon any of the Property or any portion thereof by or on behalf of the Redeveloper, and until issuance of a Certificate of Completion for the Project, the Redeveloper shall furnish or shall cause to be furnished to the Borough, duplicate originals or other reasonable evidence of the following insurance coverage:

- (a) Commercial General Liability Insurance: including blanket contractual liability coverage, insuring the Redeveloper against losses, costs, liabilities, claims, or causes of action arising out of property damage or bodily injury, including death, sustained upon the Property; and
- (b) Builder's Risk Insurance: for the benefit of the Redeveloper, subject to the interests of any Holder, during the term of construction, sufficient to protect against loss or damage resulting from all standard perils, including fire and/or lightning, vandalism, and malicious mischief; and
- (c) Workers' Compensation Insurance: as required by Applicable Law(s), with an employer's liability insurance endorsement with customary limits and a waiver of subrogation clause for the Borough, to be carried by each of Redeveloper's contractors and subcontractors; and
- (d) Comprehensive Automobile Liability Insurance, Excess Liability Coverage, Environmental Coverage and Environmental Insurance Coverage, and Pollution Coverage: as applicable.

SECTION 14.02 Insurance Requirements. All insurance policies required by **Section 14.01** shall: (i) contain commercially reasonable policy limits; (ii) be obtained from reputable insurance carriers licensed to do business in the State of New Jersey and rated at least A- in Best's Insurance Guide or at a similar level in such other industry-accepted review system; (iii) be maintained for each structure developed and constructed upon the Property, until a Certificate of Completion is issued for the Property; (iv) apply to all bodily injury, including death, property

damage, and other customarily covered losses, as applicable, occurring during the policy term; (v) add Borough Indemnified Parties as additional insureds; (vi) provide that such coverage shall be primary and non-contributing and that any insurance maintained by the Borough shall be excess insurance only; (vii) be endorsed with a waiver of subrogation clause for the Borough; (viii) provide that the policies cannot be canceled or materially changed except after thirty (30) days written notice by the insurer to the Borough; (ix) provide that the Borough shall not be liable for any premiums or assessments; and (x) carry commercially reasonable deductibles.

SECTION 14.03 Insurance Carrier Defense. This **Article XIV** shall not be deemed to relieve any insurance carrier which has issued a policy of insurance as may be required by this Agreement from any obligation to defend the Redeveloper, the Borough and any other insured named or named as an additional insured on such policy of insurance in connection with claims, suits or actions covered by such policy.

ARTICLE XV

EVENTS OF DEFAULT AND REMEDIES

SECTION 15.01 Events of Default. Prior to completion of the Project as evidenced by the issuance of Certificates of Completion, as applicable, each of the following shall constitute an “**Event of Default**”, unless stated otherwise herein:

1. **Redeveloper’s Events of Default.**

(a) **Failure to Pay Borough Costs.** If the Redeveloper fails to pay any portion of the Borough Costs pursuant to the terms of this Agreement, and such failure shall have continued for a period of fifteen (15) consecutive days after issuance of a written notice specifying such failure and demanding that same be remedied; or

(b) **Failure to Comply with Project Schedule.** If the Redeveloper fails to proceed with the development and construction of the Project in accordance with the dates contained in the Project Schedule, or if the Redeveloper abandons or suspends construction activities associated with the Project for a period of thirty (30) consecutive days, unless such suspension arises out of an event of Force Majeure or sanctioned delay set forth in this Agreement, and any such abandonment or suspension shall not be cured, ended, or remedied within sixty (60) days after issuance of a written notice of default by the Borough provided, however, that if such failure cannot be reasonably remedied within the sixty (60) days it shall not be deemed to be an Event of Default for a period not to exceed one hundred twenty (120) days so long as the Redeveloper is proceeding with due diligence to remedy same as soon as practicable; or

(c) **Failure to Pay Taxes; Creation of Liens and Encumbrances.** Subject to the provisions herein, if the Redeveloper fails to pay the Borough for any real property taxes, special assessments, utility fees, and/or payments in lieu of taxes, within thirty (30) days of when such payment is due, or shall place upon the Property any encumbrance or lien unauthorized by this Agreement, or shall suffer any levy or attachment to be made, or any materialmen’s or mechanics’ lien, or any other unauthorized encumbrance or lien to attach, and such real property taxes, special assessments, utility fees, and/or payments in lieu of taxes, encumbrance or lien shall not have been paid, or the encumbrance or lien removed or discharged; or

(d) Unauthorized Transfers. If the Redeveloper shall effectuate any Transfer not authorized by **Section 12.02** of this Agreement and such violation shall not be cured within thirty (30) days after written demand by the Borough. Any such Prohibited Transfer shall be void *ab initio*; or

(e) Liquidation. If the Redeveloper: 1) files a voluntary petition in bankruptcy; 2) makes an assignment for the benefit of creditors; 3) admits in writing its inability to pay its debts as they become due; 4) suspends payment of its obligations; 5) takes any action in furtherance of the foregoing; or 6) fails to oppose the filing of an involuntary petition in bankruptcy; or

(f) Foreclosure. If the Redeveloper permits an entry of a judgment in foreclosure or the issuance of a Deed in Lieu of Foreclosure relating to any financing in connection with the Project; or

(g) Failure to Perform Covenant or Obligation. If the Redeveloper fails to perform any covenant or obligation contained in this Agreement, and where such failure persists for a period of thirty (30) days following issuance of a written notice by the Borough specifying the alleged failure and requesting that such failure be remedied, provided, however, that if such failure cannot be reasonably remedied within the thirty (30) days it shall not be deemed to be an Event of Default for a period not to exceed one hundred and eighty (180) days so long as the Redeveloper is proceeding with due diligence to remedy same as soon as practicable.

2. Borough's Events of Default.

(a) Amendment to Redevelopment Plan Rendering Project a Prohibited Use. If the Borough Council adopts any amendment(s) to the Redevelopment Plan that would render the Redeveloper's proposed Project a prohibited use or where such amendment(s) to the Redevelopment Plan would materially affect the marketability or feasibility of the Project.

(b) Notwithstanding any provision to the contrary, it shall not be an Event of Default by either of the Parties if a court of competent jurisdiction issues a ruling, not sought by either Party hereto, the effect of which is to render invalid the implementation of this Agreement.

SECTION 15.02 Remedies Upon Event of Default.

1. Redeveloper Remedies. In an Event of Default by the Borough, the Redeveloper's recourse shall be limited to compelling specific performance by the Borough, or in the event specific performance cannot cure such default, termination of this Agreement.

2. Borough Remedies. In an Event of Default by the Redeveloper, the Borough may take whatever action, at law or in equity, it may deem desirable, including the pursuit of damages, except any consequential damages, or the Borough may institute such proceedings as may be necessary or desirable in its discretion to cure and remedy such Event of Default, including, but not limited to, proceedings to compel specific performance by the Redeveloper. Additionally, during the continuance of an Event of Default by the Redeveloper, the Borough shall have right to take one or more the following actions:

- (a) Cease, halt or withhold review of applications for any and all Governmental Approvals sought by the Redeveloper;
- (b) Cease, halt or withhold the approval process of any and all Governmental Approvals sought by the Redeveloper from the Borough;
- (c) Cease, halt or withhold the issuance of any permit or approval, including, but not limited to, building permits, temporary Certificates of Occupancy, and Certificates of Completion, sought by the Redeveloper;
- (d) Cease, halt, or withhold cooperation with the Redeveloper;
- (e) Terminate this Agreement, in which case, the Redeveloper's designation as the exclusive Redeveloper of the Property shall automatically terminate and become null and void; or
- (f) If, prior to the issuance of the Certificate of Occupancy for the Project, any Event of Default caused solely by the actions or conduct of the Redeveloper occurs and continues beyond any applicable cure or grace period, the Borough shall have the right, at its sole and absolute option, to exercise its right of reversion on the Borough-Owned Property. Upon sixty (60) Days prior written Notice by the Borough (the "**Declaration of Reverter**") to the Redeveloper (and where applicable, to a mortgagee), ownership of the Property shall revert to the Borough pursuant to a reverter clause, which shall be included in the Bargain and Sale Deed with Covenant as to Grantor's Acts (the "**Deed**"). However, any reversion of title as a result of the aforementioned termination due to an Event of Default shall always be subject to and limited by, and shall not defeat, render invalid or limit in any way (A) the lien of any mortgage authorized by this Agreement; and (B) any rights or interest provided in this Agreement for the protection of any mortgagees or other lienholders. The right of the Borough to declare such a reversion of title is not intended as a waiver by the Redeveloper of its right to challenge the validity of such reversion or otherwise contest the same in any manner if the Redeveloper believes such right has been improperly exercised and/or is otherwise defective, improper or disputable for any reason. Upon the issuance of a Certificate of Occupancy for the Project, the Property shall no longer be subject to the provisions of this sub-section.

Redeveloper acknowledges and agrees that the selection of one or more of the Borough's remedies set forth above shall not impact or impair the Borough's right and ability to select and implement any other remedies set forth above, elsewhere in this Agreement, or available in law or equity.

SECTION 15.03 Relief of Obligations. Upon an Event of Default by Redeveloper which is not cured during the applicable cure period and which results in the Borough's termination of this Agreement, the Borough shall be relieved of each and every obligation under this Agreement until such default has been cured or remedied by the Redeveloper in accordance with the terms of this Agreement.

SECTION 15.04 Force Majeure. The Parties acknowledge and agree that the performance or non-performance by both or either of the Parties of any obligation, requirement, commitment or responsibility set forth in this Agreement shall not be deemed to be an Event of Default where such performance, failure of performance or delay in performance is the result of

Force Majeure, provided, however, that the Force Majeure was not the result of or did not arise out of any action or non-action of the party relying on such Force Majeure. In the event of Force Majeure, either Party hereto may obtain an extension of any affected date in the Project Schedule by notifying the other Party of the Force Majeure, but only for so long as the Force Majeure reasonably requires.

SECTION 15.05 No Waiver of Rights and Remedies by Delay. Any delay by an 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, shall not deprive the aggrieved Party of or limit the aggrieved Party's rights in any way, nor shall any waiver in fact made by the aggrieved Party with respect to any specific default by the defaulting Party under this Agreement be considered or treated as a waiver of the rights of the aggrieved Party with respect to any other default(s) by the defaulting Party under this Agreement or with respect to the particular default, except to the extent specifically waived in writing.

ARTICLE XVI

REDEVELOPER'S FINANCIAL COMMITMENTS TO THE PROJECT

SECTION 16.01 Redeveloper's Financial Commitment. The Redeveloper agrees to proceed diligently to obtain and commit the requisite equity and construction loan and/or permanent financing in an amount necessary to complete the Project.

SECTION 16.02 Financing Information. Any term sheet or loan commitment from any lender for the Project that Redeveloper has accepted shall be submitted to the Borough for its information. The Borough acknowledges that the Redeveloper has represented that such financing requirements are proprietary and confidential. The Borough agrees to maintain the confidentiality of such financing information to the extent permitted by law.

SECTION 16.03 Notice of Default to Holder and Right to Cure. Whenever the Borough shall deliver any notice or demand to Redeveloper with respect to any breach or default by Redeveloper under this Agreement, the Borough shall at the same time deliver to each Holder a copy of such notice or demand, *provided* that Redeveloper has delivered to the Borough a written notice of the name and address of such Holder. Each such Holder shall have the right at its option within ninety (90) days after the receipt of such notice, to cure or remedy, or to commence to cure or remedy, any such default which is subject to being so cured. If such default can only be remedied or cured by such Holder upon obtaining possession, such Holder shall seek to obtain possession of the Property with diligence and continuity through a receiver or otherwise, and shall remedy or cure such default within ninety (90) calendar days after obtaining possession. If the default cannot with diligence be remedied or cured, or the remedy or cure of which cannot be commenced, within such ninety (90) days period, such Holder shall have such additional time, not exceeding one hundred eighty (180) days, as reasonably necessary to remedy or cure such default with diligence and continuity.

SECTION 16.04 No Guarantee of Development, Construction or Completion of the Project. A Holder shall in no manner be obligated by the provisions of this Agreement to develop, construct or complete the Project or to guarantee such development, construction or completion; nor shall any covenant or any other provisions be construed to so obligate a Holder.

Notwithstanding the foregoing, nothing contained in this Agreement shall be deemed to permit or authorize such Holder to undertake or continue the development, construction or completion of the Project (beyond the extent necessary to conserve or protect the Holder's security, including the improvements or construction already made), without the Holder first having been designated as a Subsequent Redeveloper.

SECTION 16.05 Foreclosure.

1. Holder's Options: If a Holder forecloses its Mortgage secured by Property, or takes title to the Property by deed-in-lieu of foreclosure or similar transaction, the Holder shall have the right, but not the obligation, at its option to (a) sell the Property to a Subsequent Redeveloper to undertake or continue the development, construction or completion of the Project as set forth herein; or (b) expressly assume the obligations of Redeveloper under this Agreement (collectively, "**Holder's Options**"); provided that one of the Holder's Options is exercised within six (6) months of the transfer of title resulting from the Foreclosure (the "**Transition Period**"), the failure of which may result in the Borough's termination of this Agreement, as further set forth herein.

a) Extension(s) of Project Schedule: In furtherance of the foregoing, the Holder, or a Subsequent Redeveloper, as the case may be, assuming the obligations of Redeveloper hereunder, shall enter into a written agreement with the Borough to complete the Project in the manner provided in this Agreement, subject to reasonable extensions of the Project Schedule (the "**Subsequent Redevelopment Agreement**"). Any Subsequent Redevelopment Agreement shall address the cure of any Event of Default by Redeveloper which occurred prior to the Foreclosure, the failure of which may result in the Borough's termination of this Agreement, as further set forth herein.

b) Completion of Project: Any such Holder or Subsequent Redeveloper, as the case may be, assuming the obligations of Redeveloper hereunder, completing the Project or any portion thereof in the manner provided in this Agreement and/or otherwise pursuant to the Subsequent Agreement, shall be entitled to Certificates of Occupancy and Certificates of Completion in accordance herewith.

2. Expiration of Transition Period: In the event that Holder declines to exercise one of the Holder's Options as set forth above, then the Borough shall have the option to terminate this Agreement pursuant to the provisions herein.

3. No Deviation from Project Description by Holder or Subsequent Redeveloper: Subject to the provisions herein, nothing in this Agreement shall be construed or deemed to permit or to authorize any Holder, or any Subsequent Redeveloper, as the case may be, to devote the Property, or any portion thereof, to any uses, or to construct any improvements thereon, other than those uses and improvements, respectively, provided for hereunder.

SECTION 16.06 Governmental Approval Fees. To the extent required by Applicable Law(s), and in accordance with the provisions of **Section 11.02**, the Redeveloper shall be responsible for the payment of any Governmental Application fees that ordinarily accompany the submission of the relevant Governmental Application materials relating to the Project. In addition,

thereto, the Redeveloper shall be responsible for establishing an escrow for the costs associated with any professional review services performed by a designated professional on behalf of any Borough body to which the Redeveloper's Governmental Application(s) are submitted.

SECTION 16.07 Project Costs. All costs associated with completing and implementing the Project, including payment of the Borough Costs, and any other costs directly incurred by or chargeable to the Redeveloper, shall be solely the responsibility of the Redeveloper.

SECTION 16.08 Payment of Borough Costs. The Redeveloper shall be responsible for the payment of all Borough Costs as follows: Within ten (10) days from the Effective Date, the Redeveloper shall pay One Hundred Thousand Dollars (\$100,000.00) to reimburse the Borough for costs incurred prior to the execution of the Conditional Redeveloper's Agreement. Additionally within ten (10) days from the Effective Date, Redeveloper shall pay Fifty Thousand Dollars (\$50,000.00) (the "**Project Funds**") to the Borough to be maintained in the existing account by the Borough and to be drawn down upon by the Borough to cover Borough Costs. Any funds paid by the Redeveloper in accordance with the Conditional Redeveloper's Agreement that have not been used as of the date of this Agreement will be transferred and credited to the Redeveloper's obligation to pay Project Funds. Upon request, the Borough shall provide Redeveloper with invoice(s) setting forth the Borough Costs which have been drawn down from the Project Funds. Within fifteen (15) days of the receipt by Redeveloper of written notice from the Borough that the amount of Project Funds has decreased to Ten Thousand Dollars (\$10,000.00), Redeveloper shall replenish the Project Funds to the amount of Twenty-Five Thousand Dollars (\$25,000.00). If the Borough's Costs exceed the amount of the Project Funds at any given time, Redeveloper agrees to pay such Borough Costs upon fifteen (15) days' written notice from the Borough stating that such Borough Costs are due. Upon the Effective Date of this Agreement, the Conditional Redeveloper's Agreement shall be terminated, funds held by the Borough shall become Project Funds and the terms and obligations contained therein shall be replaced by the terms and obligations contained in this Agreement. Redeveloper is required to post any escrow required by the Planning Board separate and in addition to these Borough Costs.

SECTION 16.09 Governmental Permit Fees. In accordance with the provisions of **Section 11.02**, the Redeveloper shall pay all fees for any permits required by the Borough, in accordance with standard fees provided in the Borough's ordinances, and any other Governmental Body for the development and construction of the Project. The Redeveloper shall pay all other permit fees, which include any permit fees payable by the Borough to any Governmental Bodies other than the Borough, or for which the Borough is required to reimburse any other Governmental Bodies or is required to pay other third party contractors retained by or on behalf of the Borough.

ARTICLE XVII **CONDEMNATION**

17.01 **Acquisition by Redeveloper.** Redeveloper agrees to use commercially reasonable efforts to acquire title to the Privately-Owned Property in an arm's length transaction between Redeveloper and the owners of such Privately-Owned Property. To the extent that Redeveloper is unable to acquire title to the Privately-Owned Property through negotiation in accordance with this Agreement, then Redeveloper may notify the Borough in writing, no later than one hundred eighty (180) days after the execution of this Agreement that Redeveloper wishes the Borough to pursue

acquisition of the relevant parcels within the Privately-Owned Property. Nothing herein shall obligate Redeveloper to request the Borough to utilize its powers of eminent domain as described herein. The Privately-Owned Property shall be acquired by the Borough pursuant to and in accordance with the Redevelopment Law, either through a negotiated purchase and sale or through exercise by the Borough of its powers of eminent domain in accordance with the applicable provisions of the Eminent Domain Act.

17.02 Acquisition by the Borough.

(a) Within fifteen (15) days after the Borough's receipt of written notice from Redeveloper identifying the parcel(s) and the interest(s) therein to be acquired by the Borough (an "**Acquisition Notice**"), and at the sole cost and expense of Redeveloper, the Borough agrees to diligently pursue acquisition of the designated parcels or the designated interest therein (the "**Designated Acquisition Parcel**"); in particular, the Borough shall (a) undertake the necessary legal due diligence required to determine if such properties may be taken by condemnation and advise Redeveloper of such conclusion; and (b) advise Redeveloper of the anticipated amount of the Initial Condemnation Deposit. Within fifteen (15) days after Redeveloper's deposit into the Condemnation Costs Account of the Initial Condemnation Deposit, the Borough in accordance with the applicable provisions of and procedures under the Eminent Domain Act will order appraisals and physical inspections to ascertain the appraised value and physical conditions of each Designated Acquisition Parcel. The Borough will engage professionals reasonably acceptable to the Redeveloper to carry out the work described in this Section.

(b) Upon completion of the appraisal, the Borough shall submit to Redeveloper a copy of the appraisal, after which the Redeveloper may, at its option, elect not to acquire the Designated Acquisition Parcel and in such case shall notify the Borough in accordance with Section 18.01 herein and then neither Party shall have any further obligations with respect to the Designated Acquisition Parcel. As a condition precedent to the Borough commencing acquisition activities, Redeveloper shall make the Subsequent Condemnation Deposit into the Condemnation Costs Account. If Redeveloper does not elect to acquire the Designated Acquisition Parcel, then the balance of the Initial Condemnation Deposit shall be returned to Redeveloper. If the appraisal is approved by Redeveloper, the Borough agrees to diligently pursue acquisition of the Designated Acquisition Parcels as hereafter set forth.

(c) The Redeveloper shall be responsible for payment of all Condemnation Costs.

17.03 Offer and Negotiations. (a) Within thirty (30) days after receipt of the Subsequent Condemnation Deposit, the Borough shall enter into bona fide negotiations with the owner of the Designated Acquisition Parcel. Such negotiations shall include an offer in writing to the owner of the Designated Acquisition Parcel, as previously approved by Redeveloper as provided herein, identifying the property and the interest therein to be acquired, the compensation offered to be paid, and a reasonable disclosure of the manner in which the amount of such offered compensation has been calculated (the "**Offer**").

(b) In no event shall the Offer be less than the appraised value. Redeveloper recognizes and acknowledges that the Borough is obligated under the provisions of the Eminent Domain Act to negotiate in good faith to purchase a Designated Acquisition Parcel once an Offer has been

made. The Borough, in consideration of the Condemnation Deposit, agrees to keep Redeveloper fully apprised of the progress of such negotiations. Furthermore:

(1) The Borough shall (i) consult with the Redeveloper concerning the acquisition; (ii) review with the Redeveloper the proposed Offer; and (iii) if the Redeveloper does not agree with the Offer proposed by the Borough, the Redeveloper may (A) terminate negotiations to purchase the Designated Acquisition Parcel; or (B) suggest in writing an alternative Offer, which the Borough shall take into consideration and utilize if and to the extent consistent with the Borough's obligation to negotiate in good faith, provided that Borough shall not submit any Offer to the owner of the Designated Acquisition Parcel unless such Offer is approved by Redeveloper. The Borough shall promptly advise the Redeveloper as to whether the proposed Offer was accepted by the owner of the Designated Acquisition Parcel. If the Borough's Offer is accepted by such owner, the Borough will enter into a purchase and sale agreement for the purchase of the Designated Acquisition Parcel at the agreed upon price and on the agreed upon terms and conditions of the Offer.

(2) The Borough shall provide a copy of each such purchase and sale agreement to the Redeveloper for its review and comment prior to execution thereof. The Redeveloper shall provide comments, if any, to the Borough and shall deposit any additional Subsequent Condemnation Deposit as may be reasonably requested by the Borough into the Condemnation Costs Account (provided that the total Condemnation Deposit shall not exceed the amount of the accepted Offer plus estimated transaction costs) if in the reasonable estimation of the Borough such additional funds are necessary to complete closing of title on the Designated Acquisition Parcel, within fifteen (15) business days of Redeveloper's receipt of the executed purchase and sale agreement. The Borough shall provide a copy of the final purchase and sale agreement to the Redeveloper within three (3) days after its execution by both the Borough and the seller. In consideration of the Condemnation Deposit and in recognition of Redeveloper's obligation to pay all Condemnation Costs, the Borough will not terminate or agree to modify any such fully executed purchase and sale agreement without Redeveloper's prior knowledge and consent, which consent may be withheld in Redeveloper's sole discretion.

(c) WRAP. Within thirty (30) days after receipt of the Subsequent Condemnation Deposit, the Borough shall commence and pursue the process for obtaining approval of the WRAP, if necessary.

17.04 Condemnation Action.

(a) If the owner of the Designated Acquisition Parcel rejects the Offer or fails to accept the Offer in writing within fourteen (14) days after the mailing of the Offer, the Borough shall provide written notice to Redeveloper that possession of the Designated Acquisition Parcel cannot be acquired through negotiations.

(b) Within fifteen (15) days after receipt of the notice from the Borough, Redeveloper must either (i) notify the Borough in writing that Redeveloper elects not to acquire the Designated Acquisition Parcel; or (ii) notify the Borough in writing of Redeveloper's consent to proceed with a condemnation action, in which case Redeveloper shall within fifteen (15) days of the Borough's

demand, deposit into the Condemnation Costs Account any additional Subsequent Condemnation Deposit reasonably requested by the Borough to cover additional anticipated Condemnation Costs. Within fifteen (15) days of the Borough's receipt of Redeveloper's notice to proceed, and if required, the deposit by Redeveloper of any additional Subsequent Condemnation Deposit, the Borough will institute the condemnation action by the filing of a verified complaint.

(c) After the service of process in conjunction with the filing of the complaint, and with prior notice to and in consultation with the Redeveloper, the Borough will file in the recording office a declaration of taking and simultaneously deposit with the Clerk of the Court the amount of the estimated compensation that must be paid for the Designated Acquisition Parcel. The Borough, in consideration of the Condemnation Deposit, agrees to keep Redeveloper fully apprised of the progress of the condemnation litigation, and to the extent feasible and consistent with the requirements of the Eminent Domain Act will endeavor to coordinate the filing of the declaration of taking and the timing thereof with Redeveloper. The Borough shall provide Redeveloper with the opportunity to review all documents related to the condemnation proceedings before submission or filing. Any settlement in the condemnation action shall be subject to Redeveloper's approval. The Redeveloper may elect to request abandonment of the condemnation proceedings at any time prior to the date on which a declaration of taking is filed in the condemnation action;

(d) A copy of the declaration of taking and notice of the filing thereof and of the making of the aforesaid deposit, shall be promptly served upon the owner of the Designated Acquisition Parcel and any other parties required to be served under the Eminent Domain Act and all other Applicable Laws, and proof of such service promptly filed in the action; and

(e) any required relocation of owners, tenants or occupants will be undertaken in accordance with the WRAP.

17.05 Condemnation Counsel. With respect to any condemnation proceedings instituted by the Borough and with respect to any other legal work required by the Borough relating to the Project, the Redeveloper agrees that the Borough shall be entitled to appoint and retain an attorney or attorneys to act as special counsel to conduct said condemnation proceedings and related work for the Borough (the "**Condemnation Counsel**"), whose reasonable fees shall be considered Condemnation Costs, but shall not be included as Borough Costs otherwise paid or payable by Redeveloper hereunder. In addition, the Borough shall have the right to hire appraisers, surveyors, and such other professionals as may reasonably be required in connection with such condemnation proceedings, the reasonable costs of which will be considered Condemnation Costs and shall not be included as Borough Costs. The selection of Condemnation Counsel, appraisers, surveyors and such other professionals shall be at the Borough's reasonable discretion, with the consent of the Redeveloper which consent may not be unreasonably withheld, conditioned or delayed. The Borough agrees that it will cause the Condemnation Counsel to inform the Redeveloper and its professionals periodically concerning the status of all negotiations and any condemnation proceedings and the strategies such counsel proposes, including settlement limits.

17.06 Remediation Cost Recovery. The Designated Acquisition Parcels may be environmentally contaminated, in which case the owner or other parties may be responsible for remediation thereof. In such event the Borough shall preserve the right of either the Borough or

Redeveloper to seek cost recovery from the prior owner and other responsible parties, or to establish an environmental escrow account from some or all of the purchase price of a Designated Acquisition Parcel in order to fund the estimated cost of remediation required at that parcel. Such reservation of rights to establish an environmental escrow account for remediation or for cost recovery shall be included in the Offer and negotiated purchase and sale agreement, or the condemnation complaint and the declaration of taking if a Designated Acquisition Parcel cannot be acquired through negotiations. Following the recording of the declaration of taking (or execution of a final judgment by the court determining that the Borough properly exercised its power of eminent domain, in the case of a challenge to that authority), the Borough and the Redeveloper shall mutually determine whether seeking an order compelling such parties to remediate the Designated Acquisition Parcel shall be brought and prosecuted by the Borough, or by Redeveloper following conveyance of the Designated Acquisition Parcel to the Redeveloper. Any such action, regardless of when commenced, shall be at the Redeveloper's sole cost and expense, and such costs and expenses shall be Condemnation Costs for the purposes of this Agreement. Provided that Redeveloper has paid all Condemnation Costs and an Event of Default is not continuing, all sums recovered under such an action, or savings achieved thereby, shall be the property of the Redeveloper. The Borough and the Redeveloper agree to cooperate as necessary to assist in the prosecution of such action. The Borough, as the condemning authority, shall object to any application to withdraw funds on deposit by the Designated Acquisition Parcel owner or anyone else having an interest in the Designated Acquisition Parcel until the costs of remediation are known and an environmental escrow fund is established, and then only if there are funds in excess of the costs of remediation.

17.07 Conveyance by the Borough to Redeveloper. Simultaneously with the acquisition by the Borough of title to a Designated Acquisition Parcel, and provided that there is no outstanding Event of Default, the Borough shall convey fee simple ownership of the Designated Acquisition Parcel to the Redeveloper, for the sum of ONE and 00/100 DOLLAR (\$1.00) and otherwise on the terms and conditions in this Agreement. All conveyances will be by bargain and sale deed.

17.08 Title. Redeveloper shall cause title to each Designated Acquisition Parcel to be examined and commitments for title insurance at regular rates (collectively, the "**Title Insurance Commitment**") in favor of Redeveloper to be issued. Such Title Insurance Commitments shall be written by such agency and/or national title insurance company selected by Redeveloper and licensed to do business in the State of New Jersey and such Title Insurance Commitments shall be delivered to Redeveloper, with copies also provided to the Borough. Notwithstanding the fact that the filing of the declaration of taking will clear title to a property, Redeveloper shall inform the Borough in writing of any objections to title ("**Title Objections**") as to any Designated Acquisition Parcel within thirty (30) days of receipt of a Title Insurance Commitment. The Borough and Redeveloper will work in a cooperative manner to resolve any Title Objections to the satisfaction of Redeveloper and its title insurer such that the title insurer agrees to modify its Title Insurance Commitment to omit or provide affirmative insurance with respect to the Title Objection in question. Without limitation, the reasonable efforts of the Borough may include the commencement and prosecution of eminent domain proceedings to cure any Title Objection. If it is determined that the Title Objections are due to a procedural error during the condemnation

process by the Borough, then the Borough shall take corrective action to cure the procedural error and remove the Title Objection at its sole cost and expense.

17.09 No Warranties. The Redeveloper specifically acknowledges that the Borough makes no representation or warranty, expressed or implied, as to the fitness of any Designated Acquisition Parcel or any improvement thereon for any particular purpose, as to the condition or durability thereof, or that the Designated Acquisition Parcel is or will be suitable for the Redeveloper's intended purposes.

17.10 Payment of All Condemnation Costs by Redeveloper.

(a) Redeveloper shall be required to fund all Condemnation Costs on an ongoing basis by funding the Condemnation Costs Account (or if and to the extent agreed by the Borough in its discretion, by posting an irrevocable letter of credit in form and amount and issued by an underwriter acceptable to the City. If the Condemnation Costs exceed or will exceed, in the Borough's good faith estimate, the Condemnation Costs Deposit, then upon receipt of a written request by the Borough reflecting the actual amounts paid or reasonably anticipated to be required, Redeveloper shall be obligated to deposit within fifteen (15) business days of such request such additional funds to the Condemnation Costs Account. Failure of Redeveloper to make any additional Subsequent Condemnation Deposit as required herein shall constitute an Event of Default by the Redeveloper in the performance of its obligations under this Agreement. The Borough shall provide copies of all invoices for Condemnation Costs to Redeveloper, and Redeveloper shall have the ability to review and dispute same.

(b) If there are any outstanding Condemnation Costs as of the closing date for a Designated Acquisition Parcel, to the extent not deposited in the Condemnation Costs Account and as a condition of the closing, Redeveloper shall reimburse the Borough for all such outstanding Condemnation Costs at closing. Any unused balance in the Condemnation Costs Account on the closing date will be applied first to any outstanding Acquisition Costs, if any, and if there are no outstanding Acquisition Costs then any excess funds will be returned to the Redeveloper. If either Party exercises its right to terminate this Agreement as to all or any portion of the Privately-Owned Property prior to the transfer of title to Redeveloper, any funds left in the Condemnation Costs Account, after deduction of any outstanding Condemnation Costs, shall be the property of Redeveloper.

(c) Redeveloper hereby agrees to indemnify the Borough for all Condemnation Costs and all other reasonable costs, expenses, fees, and other monetary obligations or expenditures of funds (including professional fees and expenses) arising out of or in connection with acquisition of the Designated Acquisition Parcels by the Borough.

(d) Redeveloper's obligations to pay or to reimburse, and to indemnify, the Borough for Condemnation Costs shall survive termination of this Agreement by reason of an Event of Default of Redeveloper and conveyance of title of any Designated Acquisition Parcel to Redeveloper.

ARTICLE XVIII
MISCELLANEOUS

SECTION 18.01 Notices. Any notice to be provided pursuant to this Agreement shall be sent by overnight mail (signature required) or certified, return receipt requested, with a courtesy copy via email, as follows:

If to the Redeveloper:

Capodagli Property Company, LLC
201 South Wood Avenue
Linden, New Jersey 07036
Attn: Craig Ryno, VP
Email: craigryno@capodagli.com

With a copy to:
Capodagli Property Company, LLC
201 South Wood Avenue
Linden, New Jersey 07036
Attn: Dennis P. Liloia, General Counsel
Email: dennis@capodagli.com

If to the Borough:

Borough Hall
30 Mechanic Street
Freehold, New Jersey 07642
Attention: Mayor Kevin A. Kane and Stephen J. Gallo, Business Administrator

With a copy to:

Joseph P. Baumann, Jr., Esq.
McManimon, Scotland & Baumann, LLC
75 Livingston Avenue
Roseland, New Jersey 07068
Email: jbaumann@msbnj.com

SECTION 18.02 Non-Liability of Officials and Employees of the Borough. No member, agent, official, employee, representative, or consultant of the Borough shall be personally liable to the Redeveloper or any of the Redeveloper's successors in interest or assigns, for any Event of Default or breach by the Borough, for any amount which may become due to the Redeveloper or its successors in interest or assigns, or on any other obligation under the terms of this Agreement.

SECTION 18.03 Non-Liability of Officials and Employees of Redeveloper. No member, agent, officer, employee, representative, director, or partner of the Redeveloper shall be personally liable to the Borough or any of the Borough's successors in interest or assigns, in an Event of Default or breach by the Redeveloper, or for any amount which may become due to the

Borough or its successors in interest or assigns, on any other obligation under the terms of this Agreement.

SECTION 18.04 Provisions Not Merged with Deeds. The provisions of this Agreement shall not be merged by reason of any deeds transferring title to any portion of the Property from Redeveloper, and any such deed shall not be deemed to affect or impair the provisions, covenants or conditions of this Agreement.

SECTION 18.05 No Financial Consideration for Redevelopment Agreement. The Redeveloper warrants that it has not paid or given, and will not pay or give, any third person any money or other consideration in connection with this Agreement, other than the costs of conducting business and costs of professional services such as architects, engineers, financial consultants and attorneys. The Redeveloper further warrants it has not paid or incurred any obligation to pay any officer or official of the Borough any money or other consideration for or in connection with this Agreement.

SECTION 18.06 Conflict of Interest. No member, agent, official, employee, or representative of the Borough has or shall acquire any interest, direct or indirect, in the Project or the Property or in any additional property included or planned to be included in this Project, or has or shall have any interest, direct or indirect, in any contract or proposed contract for materials or services to be furnished or used in connection with the Project or Property.

SECTION 18.07 Successors and Assigns/No Third Party Beneficiary. This Agreement shall be binding upon and inure to the benefit of the permitted successors in interest and assigns of the Parties and their heirs, executors, and administrators. No provision of this Agreement shall be deemed to be for the benefit of, or enforceable by, any third party.

SECTION 18.08 Titles of Articles and Sections. The titles of the several Articles and Sections of this Agreement are inserted for the convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.

SECTION 18.09 Severability. If any term or provision of this Agreement or the application thereof shall to any extent be held to be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, and each other term and provision of this Agreement shall be valid and shall be enforced to the extent permitted by law.

SECTION 18.10 Execution of Counterpart. This Agreement may be executed in one or more counterparts. This Agreement shall become binding upon the Parties and such counterparts shall constitute one and the same instrument, upon the Effective Date of this Agreement.

SECTION 18.11 Modification of Agreement. No modification, waiver, amendment, discharge, or change of this Agreement shall be valid unless the same is in writing, duly authorized, and signed by the Party against which the enforcement of such modification, waiver, amendment, discharge, or change is or may be sought.

SECTION 18.12 Drafting Ambiguities and Interpretation. In the interpretation of any provision of this Agreement, no weight shall be given to, nor shall any construction or interpretation be influenced by, the fact that counsel for one of the Parties drafted this Agreement,

each of the Parties acknowledging that it and its counsel have had ample opportunity to review this Agreement and have contributed to the final form of same.

SECTION 18.13 Time Period for Notices. All notices to be served hereunder shall be provided in writing in conformance with the terms of this Agreement and, unless a certain number of days is specified, within a reasonable time.

SECTION 18.14 Governing Law. This Agreement shall be governed by and construed in accordance with all Applicable Law(s) of the State of New Jersey.

SECTION 18.15 Recitals, Definitions, and Exhibits Incorporated. The Recitals, Definitions, and Exhibits to this Agreement are hereby incorporated by reference into this Agreement, as if fully set forth herein.

SECTION 18.16 Recording. This Agreement shall be recorded in the land records of Monmouth County in the sole discretion of the Borough.

SECTION 18.17 Entire Agreement. This Agreement constitutes the entire agreement for the redevelopment of the Property between the Parties. Any prior redevelopment, development or similar agreements between the Parties, or between the Borough and any predecessors in title or other parties to the related to any portion of the Property are hereby terminated and superseded. To the extent any documents related to any such prior agreements have been recorded in the land records of Monmouth County, the Parties shall cooperate to cause them to be terminated of record.

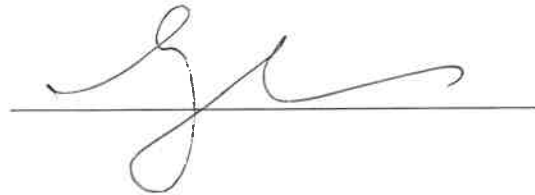
SECTION 18.18 Borough Approval. Any approvals of the Borough referenced in this Agreement shall be by Resolution of the Borough Council, unless expressly stated otherwise.

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed, all as of the date first above written.

Attest:

BOROUGH OF FREEHOLD



By:


Kevin A. Kane
Mayor, Borough of Freehold

STATE OF NEW JERSEY

ss:

COUNTY OF MONMOUTH

I CERTIFY that on September 25, 2024, Kevin A. Kane personally came before me, and this person acknowledged under oath, to my satisfaction, that:

- (a) this person is the Mayor of the Borough, named in this document;
- (b) this document was signed and delivered by the Borough as its voluntary act, duly authorized by a proper resolution of the Borough; and
- (c) this person signed this proof to attest to the truth of these facts.

Barbara Ehlen
Name:

Signed and sworn to before me

on September 25, 2024

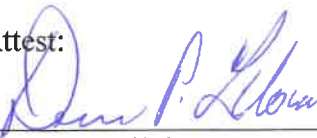


Notary Public

BARBARA EHLEN
NOTARY PUBLIC
STATE OF NEW JERSEY
ID # 50140710
MY COMMISSION EXPIRES OCT. 15, 2025

**CAPODAGLI PROPERTY COMPANY,
LLC**

Attest:


Dennis P. Liloia

By:


Name: George M. Capodagli
Title: Managing Member

State of New Jersey)
) ss:
County of Union)

Be it remembered, that on this 20th day of January, 2025, before me the subscriber, personally appeared George M. Capodagli, authorized signatory as Managing Member of **CAPODAGLI PROPERTY COMPANY, LLC**, the limited liability company named in and on whose behalf executed the within instrument, and thereupon he acknowledged that she/he signed, sealed and delivered the same as the act and deed of the limited liability company for the uses and purposes therein expressed, that she/he was authorized by the limited liability company to execute the within instrument on behalf of the limited liability company.

Signed and sworn to before me

On January 20, 2025



Dennis P. Liloia, Attorney at
Law State of New Jersey

(Signature Page for Redevelopment Agreement)

EXHIBIT A

LEGAL DESCRIPTION



Fidelity National Title Insurance Company

LEGAL DESCRIPTION

All that certain Lot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in Freehold Borough, County of Monmouth, State of New Jersey, being bounded and described as follows:

Lot 15:

Beginning at a point on the southeasterly sideline of Broad Street (66 feet ROW), said point being distant the following 3 courses and distances from the intersection of the northwesterly sideline of West Main Street (66 feet ROW) with the southwesterly sideline of Throckmorton Street (51.91 feet ROW), and running thence;

- a) Along said sideline of West Main Street South 52 degrees 00 minutes 00 seconds West, 611.00 feet to a point, thence;
- b) Leaving said sideline of West Main Street North 38 degrees 00 minutes 00 seconds West 300.00 feet to a point, thence;
- C) North 44 degrees 22 minutes 00 seconds West 210.88 feet at said sideline of Broad Street to the point and place of beginning, and running thence;
- 1) Along said sideline of Broad Street North 47 degrees 07 minutes 00 seconds East 198.00 feet to a point thence;
- 2) Leaving said sideline of Broad Street South 44 degrees 04 minutes 30 seconds East 227.71 feet to a point, thence;
- 3) South 52 degrees 00 minutes 00 Seconds West 197.99 feet to a point, thence;
- 4) North 44 degrees 22 minutes 00 seconds West 210.88 feet at said sideline of Broad Street to the point and place of beginning.

Lot 16:

BEGINNING at the northeasterly corner of lands belonging to the Board of Education of the Borough of Freehold, N.J., located on the southeasterly side of Broad Street; thence

1. Running in a northeasterly direction along the southeasterly line of Broad Street, 76 feet to the northwesterly corner of lot belonging to Ms. Catherine Allen; thence
2. Running in a southeasterly direction at right angles to the line of Broad Street and along the southwesterly line of lot belonging to Mrs. Catherine Allen, 233.75 feet; thence
3. Running in a southwesterly direction along the northwesterly line of lot belonging to Dr. George G. Reynolds, 76 feet to a corner of lands belonging to the Board of Education of the Borough of Freehold N.J.; thence
4. Running in a northwesterly direction along the line of lands belonging to the Board of Education, 225.75 feet to the point of BEGINNING.

Being further described as follows:

BEGINNING at a point in the southeasterly line of Broad Street, said point being distant the following 2 courses from the intersection of the southwesterly line of Throckmorton Street with the southeasterly line of Broad Street;

- a) Along the southeasterly line of Broad Street, in a southwesterly direction, 311.00 feet more or less to a point; thence
- b) South 46 degrees 20 minutes 25 seconds East, 76.07 feet to a point, said point being the point and place of Beginning and running; thence
- 1) Along the southeasterly line of Broad Street, North 46 degrees 20 minutes 25 seconds East, 76.07 feet to a point; thence

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Fidelity National Title Insurance Company

- 2) South 43 degrees 55 minutes 45 seconds East, 235.19 feet to a point; thence
- 3) South 52 degrees 00 minutes 00 seconds West, 75.90 feet to a point; thence
- 4) North 44 degrees 04 minutes 30 seconds West, 227.71 feet to the point and place of Beginning

Lot 17:

BEGINNING at a point in the southeasterly side of Broad Street formerly called High Street, said point being also the beginning and northwesterly corner of the First lot conveyed by Edward G. Forman to Anthony Deedmeyer by deed dated May 27, 1910 and recorded in Book 879 of Deeds page 58&c., and the northeast corner of lot belonging to David Vanderveer Perrine; thence (1) northeasterly along the southeasterly side of said Broad Street 40 feet strict measure; thence (2) southeasterly and parallel with the easterly line of said David V. Perrine's lot and 40 feet therefrom a distance of 241 feet more or less to the lot formerly owned by Peter Rue now owned by Holmes Patterson; thence (3) southwesterly along the northerly line of said Holmes Patterson's property 40 feet more or less to the line of lands of David V. Perrine; thence (4) northwesterly along the easterly line of said David V. Perrine's lands 238 feet more or less to the Beginning.

Lot 18:

BEGINNING at a hub stake on the southeasterly side of Broad Street, which point is also the most northwesterly corner of land belong now or formerly to Gilbert Combs Co. and continuing thence according to the magnetic meridian of March 29, 1950, as shown on a map entitled "Property Survey for Borough of Freehold by George J. DeGarmo, Engineer and Surveyor" (1) South fifty degrees twenty-one minutes West forty-five (45) feet to a hub stake; thence (2) South thirty-nine degrees twenty-three minutes East two hundred and thirty-nine and eighty-six hundredths (239.86) feet to a hub stake; thence (3) North fifty-seven degrees one minute East eighty-eight and sixty-nine hundredths (88.69) feet to a hub stake, which point is also on a line of land belonging to the Borough of Freehold; thence (4) North thirty-seven degrees twenty-three and one-half minutes West along the Borough of Freehold line thirty-six and eighty hundredths (36.80) feet to a hub stake, which point is also on the most southeasterly line of the Gilbert Combs property; thence (5) South fifty-five degrees thirty-six and one-half minutes West along the Gilbert Comb's property forty-four and eighty-three hundredths (44.83) feet to a hub stake; thence (6) North thirty-nine degrees nineteen minutes West still along the Combs property two and nine fifty-one hundredths (209.51) feet to the point or place of Beginning.

Lot 19:\line

Tract 1:

Beginning at a point on the southerly side broad Street on a course of South 50 degrees 21 minutes west a distance 37.30 feet from where the southerly side of Broad Street intersects the easterly right of way of Pennsylvania Railroad and continuing according to the Magnetic Meridian of July 25, 1950;

1. South 41 degrees 11 minutes East, along the westerly right of way of Pennsylvania Railroad 192.28 feet to a concrete monument; thence
2. still along the Pennsylvania Railroad right of way South 49 degrees 5 1/2 minutes West 2.11 feet to a concrete monument; thence
3. South 35 degrees 40 minutes East along the westerly right of way of Pennsylvania Railroad 30.96 feet to a stake; thence
4. South 50 degrees 49 1/2 minutes West along the northerly line of property now or formerly owned by the Borough of Freehold 34.79 feet to a stake; thence
5. North 41 degrees 11 minutes West 222.82 feet to the south side of Broad Street; thence
6. Along the south side of Broad Street North 40 degrees 21 minutes East 40 feet to the point or place of beginning.

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Tract 2:

BEGINNING at a point in the southerly line of Broad Street at the northwesterly corner of a lot belonging to the Borough of Freehold, thence

1. along the southerly line of Broad Street, South 50 degrees 21 minutes West 51.68 feet; thence
2. South 39 degrees 19 minutes East, 209.51 feet; thence
3. North 55 degrees 36 1/2 minutes East, 44.83 feet; thence
4. South 37 degrees 23 1/2 minutes East 9.24 feet; thence
5. North 50 degrees 49 1/2 minutes East 14.71 feet; thence
6. North 41 degrees 11 minutes West, 222.82 feet to the point or place of BEGINNING.

Lot 26.02:

BEGINNING at a point where the general northeasterly line of land of the Borough of Freehold Meets the southeasterly line of Broad Street, at the distance of 117.84 feet bearing South 50 degrees 21 minutes West along said southeasterly line of Broad Street, from the point of meeting with the southwesterly line of Throckmorton Street and beginning point being also at the distance of 15.81 feet bearing s 50 degrees 21 minutes West along said southeasterly of Broad Street, from the point of intersecting with said center line of the main track of railroad; Extending from said beginning point the following five courses and distances first three thereof being along said general northeasterly line of land of the Borough of Freehold;

1. South 41 degrees 11 minutes East 192.28 feet to a corner;
2. South 49 degrees 45 minutes West, 2.14 feet to another corner;
3. South 35 degrees 37 minutes East, 63.88 feet to an angle corner all of said last mentioned land; the following two courses and distances being along remaining land of the Freehold & Jamesburg Agricultural Railroad Company;
4. North 57 degrees 07 minutes East 7.95 feet to a point distant 15.81 feet southwestwardly at right angles from center line of the main track of railroad;
5. Northwestwardly a curve to the right having a radius of 1960.75 said curve being subtended by a chord having a bearing of North 49 degrees 39 minutes 30 seconds West a length of 265.59, an arc length of 269.79 to the point of BEGINNING.

Lot 28:

BEGINNING at a post on the northerly side of Main Street the southeasterly corner (Formerly) Peter Rue's lot, thence along the easterly line of said Rue's lot as the fence now (1876) stands, and as the magnetic needle of William Segoine, Surveyor, pointed March 17, 1876, (1) North fifty two degrees West three hundred feet to an iron pin, thence (2) North thirty nine degrees and sixteen minutes East parallel with and one foot North of the barn fifty five feet to an iron pin in the line of the lot of (formerly) the Estates of Thomas P. Barkalow deceased and Joseph S. Conover deceased, thence along the same as the fence now (1876) stands, thence (3) South fifty six degrees and twenty two minutes East fifty one feet along said line of Estates of said Barkalow and Conover, thence (4) South fifty five degrees and thirty minutes East twenty feet still along said line, thence (5) South fifty four degrees and forty five minutes East two hundred and thirty feet to northerly edge of Main Street, thence (6) along the same, South thirty eight degrees West seventy one feet to the place of beginning.

BEGINNING at a point on the Northwestern side of West Main Street, distant two hundred thirty-eight and eighty hundredths feet (238.80) Southwesterly from the intersection of the Northwestern side of West Main Street with the Northeasterly side of Throckmorton Street; and continuing thence according to a former bearing:

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1. South thirty-eight degrees and no minutes West along the Northwestern side of West Main Street, seventy-one feet (71.00) to a concrete monument (found); thence
2. North fifty-two degrees and no minutes West along the line of lands, now or formerly owned by the Central Jersey Bank and Trust Co., three hundred feet (300.00) to a concrete monument (found); thence
3. North thirty-nine degrees and sixteen minutes East along the line of lands owned by the Borough of Freehold, fifty-five feet to a point; thence
4. South fifty-six degrees and twenty-two minutes East still along the line of lands the Borough of Freehold, fifty-one feet (51.00) to a point; thence
5. South fifty-five degrees and twenty-six minutes East still along the line lands of the Borough of Freehold, eighteen and twenty-three hundredths feet (18.23) to a point; thence
6. South fifty-four degrees and forty-five minutes East still along the line of lands of the Borough Freehold, two hundred thirty feet (230.00) to the point and place of Beginning.

Lot 29:

Beginning at a concrete monument on the northerly side of West Main Street, distant three hundred nine and eighty hundredths feet (309.80) on a course of South fifty-nine degrees and forty-four minutes West from a cross in the concrete, marking the intersection of the northerly side of West Main Street with the easterly side of Throckmorton Street, and continuing according to a former Magnetic Meridian; thence (1) North thirty degrees and sixteen minutes West along the westerly line of property owned by H. W. Ingling, three hundred feet (300.00) to a concrete monument; thence (2) South fifty-nine degrees and forty-four minutes West parallel with West Main Street, seventy-five feet (75.00) to a concrete monument; thence (3) South thirty degrees and sixteen minutes East along the easterly line of property owned by Georgia and Barton Callahan, three hundred feet (300.00) to a concrete monument on the northerly side of West Main Street; thence (4) North fifty-nine degrees and forty-four minutes East along the northerly side of West Main Street, seventy-five feet (75.00) to the point or place of beginning.

Lot 30:

Beginning at a point along the northwesterly line of West Main Street, southwesterly 336.00 feet from the intersection of the southwesterly line of Throckmorton Street with the northwesterly line of West Main Street and thence,

1. North 38 degrees 00 minutes 00 seconds West 300.00 feet to a nail in concrete and thence,
2. South 52 degrees 00 minutes 00 seconds West 75.00 feet to a point and thence,
3. South 38 degrees 00 minutes 00 seconds East 300.00 feet to a point along the northwesterly line of West Main Street and thence,
4. Along the northwesterly line of West Main Street, North 52 degrees 00 minutes 00 seconds East 75.00 feet to the point or place of beginning.

Lot 31:

Tract 1:

BEGINNING at a stone planted at the foot of a post standing at the southwest corner of David C. Perrine's lot (being the southeast corner of the lot hereby conveyed) and in the line of the iron fence, and running thence as the needle pointed A.D. 1833

1. North 38 degrees West, 300 feet along the lands of the said David C. Perrine to the barn lot of Amos Richardson; thence

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2. Along the southerly line of said Richardson's lot, South 52 degrees West, 75 feet to the strip of land owned by William H. Conover, Charles H. Conover, Andrew Perrine and others, and known as the "Horse shed lot"; thence

3. South 38 degrees East, 300 feet along the eastern line of said strip to a stake on the northerly side of Main Street standing in the line of old cherry trees as they stood A.D. 1933, and as they now stand, being the lot of Richard Davis; thence

4. West 52 degrees East, 75 feet to the beginning.

Tract 2:

BEGINNING on the westerly side of Mount Holly Road, now Main Street, in Freehold, at the easterly corner of the Seminary Lot, and runs

1. Northerly along the northerly line thereof, 114 feet 6 inches, more or less, to the place where the horse shed stood; thence

2. Southerly and westerly along the line of said Seminary lot, 8 feet 8 inches, parallel with the Mount Holly Road; thence

3. Along the line of the Seminary Lot northerly and westerly, 185 feet 6 inches more or less, to Joseph Combs line; thence

4. 14 feet 2 inches, to the Church lot, (now Jacob B. Rue's); thence

5. Along the Southwesterly line of the Church lot (now Jacob B. Rue's) 300 feet more or less to the said Mount Holly Road, thence

6. Southerly and westerly 5 feet 6 inches to the place of beginning.

Lot 32:

Beginning at a point in the northwesterly line of West Main Street, said point being distant along said line South 52 degrees 00 minutes 00 seconds West, 611.00 feet from the intersection of said line with the southwesterly line of Throckmorton Street, said point being also the southeasterly corner of Lot 33, and from said beginning point running; thence

1. Along the northeasterly line of Lot 33, North 38 degrees 00 minutes 00 seconds West, 300.00 feet to an angle-point therein, said point being also the southwesterly corner of Lot 15; thence

2. Along the southeasterly line of Lot 15, North 52 degrees 00 minutes 00 seconds East, 110.83 feet to the northwesterly corner of Lot 31; thence

3. Along the southwesterly line of Lot 31, South 38 degrees 00 minutes 00 seconds East, 185.50 feet to an angle point therein; thence

4. Along the same, North 52 degrees 00 minutes 00 seconds East, 8.67 feet to an angle point there; thence

5. Along the same, South 38 degrees 00 minutes 00 seconds East, 114.50 feet to a point in the northwesterly line of West Main Street; thence

6. Along said line, South 52 degrees 00 minutes 00 seconds West, 119.50 feet to the point and place of beginning.

Note: Being Lot(s) 15, 16, 17, 18, 19, 26.02, 28, 29, 30, 31 and 32, Block 35, Tax Map of the Freehold Borough, County of Monmouth.

Note: Lot and Block shown for informational purposes only.

EXHIBIT B**FORM OF CERTIFICATE OF COMPLETION**

Record and Return to:

CERTIFICATE OF COMPLETION

Pursuant to Section 4.07 of the Redevelopment Agreement by and between the Borough of Freehold (the “**Borough**”) and Capodagli Property Company, LLC (the “**Redeveloper**”), dated as of January 20, 2025, (the “**Redevelopment Agreement**”), the undersigned, as of the date hereof, certifies that (all undefined capitalized terms used herein shall have the same meaning ascribed to them in the Redevelopment Agreement):

(i) the Project in its entirety has been completed as of _____, in accordance with the Redevelopment Agreement and in compliance with Applicable Laws so that the Project in its entirety may, in all material respects, be used and operated under the applicable provisions of the Redevelopment Agreement;

(ii) all permits, licenses and approvals that are required in order for the Redeveloper to Complete the Project or such other work or action to which such term is applied are, to the extent so required, in full force and effect;

(iii) such Completion has been further evidenced by a written certificate of the Redeveloper and a certificate of the Redeveloper’s engineer evidencing completion of the Project, which certificates are attached hereto as **Exhibit 1**:

(iv) the Project is being operated in accordance with the terms and provisions of the Redevelopment Agreement, the Redevelopment Plan and Applicable Laws; and

(v) a copy of any Certificate of Occupancy issued with respect to any portion or portions of the Project for which a Certificate of Occupancy is required is attached hereto as **Exhibit 2**.

The conditions determined to exist at the time the Redevelopment Area was determined to be an area in need of redevelopment no longer exist with respect to the Property. The Property shall no longer be subject to the covenants running with the land covered by this Certificate of Completion for the benefit of the Borough provided however, that the covenants in Sections A(c) and A(d) within the Declaration (as defined in the Redevelopment Agreement) shall remain in effect without limitation as to time, and the covenant in Section A(g) shall remain in effect for the duration agreed upon in the Redevelopment Agreement and the Affordable Housing Deed Restriction.

The Declaration recorded in the office of the Monmouth County clerk on _____ in deed book _____, page _____ is hereby discharged of record and is void and of no further force and effect provided however, that the covenants in Sections A(c) and A(d) within the Declaration shall

remain in effect without limitation as to time, and the covenant in Section A(g) shall remain in effect for the duration agreed upon in the Redevelopment Agreement and the Affordable Housing Deed Restriction.

This certificate is given without prejudice to any rights against third parties which exist on the date hereof or which may subsequently come into being.

IN WITNESS WHEREOF, the undersigned has caused this Certificate of Completion of Project to be executed as of the ____ day of _____.

WITNESS OR ATTEST:

BOROUGH OF FREEHOLD

By: _____

By: _____

Acknowledgment

STATE OF NEW JERSEY :

:SS

COUNTY OF MONMOUTH:

On this ____ day of _____, 202__, before me, personally appeared _____, the _____ of the Borough of Freehold, a public body corporate and politic organized and existing under and by virtue of the laws of the State of New Jersey , who I am satisfied is the person who executed the foregoing instrument; and s/he acknowledged that s/he executed the foregoing instrument as the act of the corporation and that s/he was authorized to execute the foregoing instrument on behalf of the corporation.

Exhibit 1
REDEVELOPER'S CERTIFICATE

Pursuant to Section 4.07 of the Redevelopment Agreement by and between the Borough of Freehold (the “**Borough**”) and Capodagli Property Company, LLC (the “**Redeveloper**”), dated as of January 20, 2025, (the “**Redevelopment Agreement**”), the Redeveloper certifies as follows to the best of its knowledge information and belief (capitalized terms used herein and not otherwise defined shall have the same meanings ascribed to them in the Redevelopment Agreement):

(i) the Project in its entirety has been completed as of _____, in accordance with the Borough’s building and construction code, the Redevelopment Agreement, the Redevelopment Plan and in compliance with Applicable Laws so that the Project in its entirety may, in all material respects, be used and operated under the applicable provisions of the Redevelopment Agreement;

(ii) all permits, licenses and approvals that are required in order for Redeveloper to Complete the Project or such other work or action to which such term is applied are, to the extent so required, in full force and effect;

(iii) Redeveloper has performed or has caused to be performed all of its duties and obligations under the Redevelopment Agreement with respect to the Project;

(iv) attached hereto is a certificate of _____, Redeveloper’s engineer, evidencing completion and certification of the Project; and

(v) the Project is being operated in accordance with the terms and provisions of the Redevelopment Agreement, the Redevelopment Plan and Applicable Laws.

CAPODAGLI PROPERTY COMPANY, LLC

By: _____

Name:

Title:

Exhibit 2
CERTIFICATE OF OCCUPANCY

EXHIBIT C
CONCEPT PLAN

EXHIBIT D

DECLARATION OF COVENANTS AND RESTRICTIONS

Record and Return to:

Joseph P. Baumann, Jr., Esq.
McManimon, Scotland & Baumann, LLC
75 Livingston Avenue, Suite 201
Roseland, New Jersey 07068

DECLARATION OF COVENANTS AND RESTRICTIONS

THIS DECLARATION OF COVENANTS AND RESTRICTIONS (hereinafter, the “**Declaration**”) made this ____ day of _____, 2025, by **CAPODAGLI PROPERTY COMPANY, LLC**, a limited liability company authorized to do business in New Jersey and having offices at 201 South Wood Avenue, Linden, New Jersey 07036 (hereinafter, the “**Declarant**”).

W I T N E S S E T H:

WHEREAS, the Declarant is the fee simple owner and Redeveloper of certain real property located in the Borough of Freehold, Monmouth County, New Jersey (the “**Borough**”) designated as Block 35, Lots 15, 16, 17, 18, 19, 26.02, 28, 29, 30, 31, and 32 on the official tax map of the Borough and set forth and described on Schedule A attached hereto (the “**Property**”); and

WHEREAS, in accordance with the criteria set forth in the Local Redevelopment and Housing Law, *N.J.S.A. 40A:12A-1 et seq.* (the “**Redevelopment Law**”), the Borough duly adopted Resolution No. 31-22 on February 7, 2022, designating the following properties as a condemnation area in need of redevelopment: Block 34, Lots 31 and 37, and Block 35, Lots 15, 16, 17, 18, 19, 23, 24, 26, 26.01, 26.02, 27, 28, 29, 30, 31, and 32 (the “**Redevelopment Area**”); and

WHEREAS, in accordance with the Redevelopment Law, by Ordinance #2023/11 adopted on February 27, 2023, the Borough Council adopted a redevelopment plan for the Property entitled (as may be amended and supplemented from time to time, the “**Redevelopment Plan**”); and

WHEREAS, in furtherance of the Redevelopment Plan, the Borough, with its office at 30 Mechanic Street, Freehold, New Jersey 07728, and Declarant have entered into a Redevelopment Agreement (the “**Redevelopment Agreement**”) dated January 20, 2025, concerning the Redevelopment of the Property; and

WHEREAS, pursuant to the Redevelopment Agreement, the Declarant is required to record this Declaration setting forth certain covenants and restrictions concerning the use and transfer of the Property; and

WHEREAS, the Declarant desires and intends to give notice to all future owners of the Property in accordance with the Redevelopment Agreement as set forth herein,

NOW THEREFORE, in consideration of the facts recited above, the Declarant for itself, its successors and assigns, hereby covenants, agrees and declares, in perpetuity, the following:

The terms of the attached Restrictions shall run with and be binding upon the Property.

A. **RESTRICTIONS.** Declarant for themselves and on behalf of their successors and assigns, covenant and agree that each shall:

(a) Use commercially reasonable efforts to complete the Project in accordance with the provisions of the Redevelopment Agreement and all Applicable Law(s), including construction of the Affordable Housing Units (as defined in the Redevelopment Agreement); and

(b) Devote the Property to the uses specified in the Redevelopment Plan, as may be amended, and shall not devote the Property to any other use(s); and

(c) Not discriminate upon the basis of age, race, color, creed, religious principles, ancestry, national origin, disability, gender identity or expression, sex, affectional or sexual orientation, familial or marital status in the sale, lease, rental, use or occupancy of the Property or any buildings or structures erected or to be erected thereon, or any part thereof; and

(d) Not discriminate against any person or group of persons, on account of age, race, color, creed, religious principles, ancestry, national origin, disability, gender identity or expression, sex, affectional or sexual orientation, familial or marital status in the sale, lease, sublease, rental, transfer, use, occupancy, tenure or enjoyment of the Project (as defined in the Redevelopment Agreement) or any portion thereof, nor shall the Declarant itself, or any person claiming under or through the Declarant, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use of occupancy of owners, tenants, lessees, subtenants, sublessees, or vendees, as applicable; and

(e) Use the Property solely for the purpose of the redevelopment of the Property as provided in the Redevelopment Agreement and not for speculation in land holding; and

(f) As further described in Articles IX and XII of the Redevelopment Agreement, prior to the issuance of a Certificate of Completion, not effect or execute any Transfer which is not permitted in accordance with the terms of the Redevelopment Agreement. Any such Transfer shall be void *ab initio*; and

(g) Manage, operate and restrict the rental of the Affordable Housing Units in accordance with Article III of the Redevelopment Agreement, the Affordable Housing Deed Restriction, and the contract with the Borough's Administrative Agent for the administration of the Affordable Housing Units; and

(h) Prior to the issuance of a Certificate of Occupancy for the Project (or portion thereof) and prior to occupancy of the Affordable Housing Units, Redeveloper shall execute and record the Affordable Housing Deed Restriction (in substantially the form attached to the Redevelopment Agreement as Exhibit I) on the Property.

The agreements and covenants set forth 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 the Redevelopment Agreement, be binding, to the fullest extent permitted by law and equity, for the benefit and in favor of, and enforceable by, the Borough, its successors and assigns, and any successor in interest to the Property, or any part thereof, against the Declarant, their successors and assigns and every successor in interest therein, and any party in possession or occupancy of the Property or any part thereof. The agreements and covenants set forth in Sections A(b) shall remain in effect until the expiration of the Redevelopment Plan (at which time such agreements and covenants shall cease and terminate) and the agreements and covenants provided in Sections A(c) and A(d) shall remain in effect without limitation as to time. The agreements and covenants provided in Section A(a), A(e), A(f), and A(h) shall remain in effect until the issuance of the Certificate of Completion of the Project. The agreements and covenants set forth in Section A(g) shall remain in effect for the duration agreed upon in the Redevelopment Agreement and the Affordable Housing Deed Restriction. In the event of any conflict between the terms and conditions set forth in this Declaration and the Redevelopment Agreement, the terms and conditions set forth in the Redevelopment Agreement shall prevail.

B. RESTRAINTS AGAINST TRANSFERS. In addition to and not limitation of the restraints set forth at (A)(f) above, with the exception of “Permitted Transfers” as that term is defined in the Redevelopment Agreement, Declarant represents and agrees for itself, its members, and any successor in interest of itself and its members, respectively, that prior to completion of the improvements on the Property as certified by the Borough, and without the prior written approval of the Borough, which shall not be unreasonably withheld, it shall not: effect or permit any change, directly or indirectly, in the majority ownership or control of the Declarant; assign or attempt to assign this Agreement; or make any total or partial sale, lease, transfer or conveyance of the whole or any part of its interest in the Property or the Redevelopment Agreement.

In the event of any attempted transfer in violation of this Section B or Section (A)(f), the Borough shall be entitled to the *ex parte* issuance of an injunction restraining such transfer, and the recovery of legal fees and related expenses of the Borough in connection with any such legal action. Upon the issuance of a Certificate of Completion in accordance with the Redevelopment Agreement, the prohibitions against transfers set forth in this Section B shall be of no further force and effect with respect to the Property.

IN WITNESS WHEREOF, CAPODAGLI PROPERTY COMPANY, LLC, the Declarant, has set its hand and seal on the day and year first above written and directs that this instrument be recorded in the office of the Register of Hudson County.

WITNESS:

**CAPODAGLI PROPERTY COMPANY,
LLC, a New Jersey limited liability
company, Declarant**

By: _____

By: _____
Name:
Title:

STATE OF)
) **SS:**
COUNTY OF)

BE IT REMEMBERED, that on _____, 2024, before me, the subscriber, a Notary Public of the State of _____, personally appeared _____, who, being by me duly sworn on her/his oath, deposes and makes proof to my satisfaction, that s/he is _____ of CAPODAGLI PROPERTY COMPANY, LLC, the entity named in the within Instrument and that s/he signed, sealed and delivered the attached document as and for her/his act and deed and as the authorized act and deed of CAPODAGLI PROPERTY COMPANY, LLC.

Sworn and subscribed to before me
this ____ day of _____, 2024