Housing Plan Element and Fair Share Plan

Prepared for:

Dunellen Borough
Middlesex County, New Jersey

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HOUSING PLAN ELEMENT

Introduction

The New Jersey Municipal Land Use Law, N.J.S.A. 40:55D-1 to -136 ("MLUL") and the New Jersey Fair Housing Act, N.J.S.A. 52:27D-301 to -329 ("FHA") require every municipal planning board to adopt a Housing Plan Element to its Master Plan and further require the governing body of each municipality to adopt a Fair Share Plan. More specifically, the FHA and MLUL require municipalities to adopt a Housing Element that addresses the municipality's present and prospective housing needs, "with particular attention to low and moderate income housing." The Borough of Dunellen has prepared this Housing Plan Element and Fair Share Plan in response to the New Jersey Supreme Court's March 2015 Decision on Fair Share Housing. This Housing Plan Element and Fair Share Plan has been prepared in accordance with the provisions of N.J.A.C. 5:93 (the "Second Round Rules") as outlined in the Court's decision.

In accordance with the Fair Housing Act at N.J.S.A. 52:27D-310 and as reaffirmed in N.J.A.C. 5:93, a Housing Element shall contain at least the following:

1. 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;
2. 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;
3. An analysis of the municipality's demographic characteristics, including but not necessarily limited to, household size, income level and age;
4. An analysis of the existing and probable future employment characteristics of the municipality;
5. 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;
6. 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;

7. A map of all sites designated by the municipality for the production of low and moderate income housing and a listing of each site that includes its owner, acreage, lot and block;
8. The location and capacities of existing and proposed water and sewer lines and facilities relevant to the designated sites;
9. Copies of necessary applications for amendments to, or consistency determinations regarding applicable area wide water quality management plans (including wastewater management plans);
10. A copy of the most recently adopted municipal master plan and where required, the immediately preceding, adopted master plan;
11. For each designated site, a copy of the New Jersey Freshwater Wetlands Maps where available. When such maps are not available, municipalities shall provide appropriate copies of the National Wetlands Inventory maps provided by the U.S. Fish and Wildlife Service;
12. A copy of appropriate United States Geological Survey Topographic Quadrangles for the designated site(s); and
13. Any other documentation pertaining to the review of the municipal housing element as may be required by the Court.

The preparation and submission of a Housing Element of a municipality's Master Plan, and a Fair Share Plan, is the first major step in the process for petitioning the New Jersey Courts for a Judgment of Compliance.

Affordable Housing regulations define "Fair Share Plan" as follows:

> "Fair Share Plan" means that plan or proposal, which is in a form that may readily be converted into an ordinance, by which a municipality proposed to satisfy its obligation to create a realistic opportunity to meet its fair share of low and moderate income housing needs of its region and which details the affirmative measures the municipality proposes to undertake to achieve its fair share of low and moderate income housing, as provided in sections 9 and 14 of the Act, addresses the development regulations necessary to implement the housing element, and addresses the requirements of N.J.A.C. 5:93-7 through 11.

This Housing Element and Fair Share Plan ("Plan") satisfies all of the applicable requirements set forth within the MLUL, the FHA, and the Second Round Rules.

<u>History of Borough's Affordable Housing Obligation and Fair Share Plan</u>

The Borough of Dunellen prepared its first Housing Plan Element and Fair Share Plan in response to COAH's Third Round rules and to address its "growth share" obligation in January of 2006. The Borough subsequently petitioned COAH for substantive

certification of this plan on February 8, 2006. After the Appellate Division invalidated the Third Round Rules, COAH adopted a second iteration of these rules in 2008. The Borough re-petitioned COAH for substantive certification of its Housing Plan Element and Fair Share Plan in February of 2009. However, the Borough did not receive substantive certification from COAH for its 2006 Plan and the Appellate Division invalidated the revised Third Round Rules in 2010.

Summary of the Borough's Affordable Housing Obligation and Fair Share Plan

Inventory of Housing Stock

Age of Housing Stock

The age of a community's housing stock is considered a means of determining its overall condition and identifying housing units in need of rehabilitation, especially those units constructed 50 or more years ago. The Borough of Dunellen exhibits an older housing stock; approximately 40 percent of Dunellen's housing stock was constructed prior to 1939. In fact, nearly 85 percent of the Borough's total housing units were constructed prior to 1970. However, the Borough's housing stock is well-maintained despite its age as noted below.

Table 1: Age of Housing Stock		
Time of Construction	**Number of Units**	**Percent of Units**
Prior to 1939	1,140	40.77%
1940-1949	372	13.30%
1950-1959	535	19.13%
1960-1969	308	11.02%
1970-1979	110	3.93%
1980-1989	203	7.26%
1990-1999	58	2.07%
2000-2009*	70	2.50%
2010 or later*	0	0.0.%
Total	**2,796**	**100.00%**

** See Table 9 for building permit data related to residential construction.*
Source: U.S. Census Bureau, 2009-2013 5-Year American Community Survey

Condition of Housing Stock

In addition to age, other factors are taken into consideration to determine the quality and condition of a municipality's housing stock and whether units are substandard. 2013 American Community Survey (ACS) data is used to estimate the number of substandard housing units in Dunellen, taking into account:

- **Persons per room:** The number of persons per room is an index of overcrowding. Dwelling units exhibiting 1.01 or more occupants per room are

overcrowded as defined by the U.S. Department of Housing and urban Development and therefore considered substandard.

- **Adequacy of Plumbing Facilities:** The adequacy of plumbing facilities is used to determine if a unit is substandard. If a unit lacks complete plumbing facilities as indicated by either a lack of exclusive use of plumbing facilities or incomplete plumbing facilities, it is considered substandard.

- **Adequacy of Kitchen Facilities:** The adequacy of kitchen facilities is also used to determine the quality of a unit and determine if it is substandard. Inadequate kitchen facilities are marked by shared use of a kitchen or the lack of a sink with piped water, a stove, or a refrigerator.

Using the above indicators, the table below shows the number of substandard occupied housing units in the Borough of Dunellen.

Table 2: Housing Deficiency Characteristics		
	Total	**Percentage**
Number of Persons per Room		
1.01 or more	12	0.5%
Plumbing Facilities		
Occupied Units with Complete Plumbing Facilities	2,610	100%
Units Lacking Complete Plumbing Facilities	0	0.0%
Kitchen Equipment		
Occupied Units with Complete Kitchen Facilities	2,610	100%
Lacking Complete Kitchen Facilities	0	0.0%

Source: U.S. Census Bureau, 2009-2013 5-Year American Community Survey

As indicated in the table above, Dunellen has a total of 12 deficient units due to overcrowding. All of the Borough's occupied dwelling units have complete plumbing and kitchen facilities.

Purchase or Rental Value of Housing Stock

According to 2013 ACS 5-Year Estimates, the median value of owner-occupied housing units in Dunellen was $286,500. The median value of housing sales in Middlesex County in 2013 was $330,000, which is significantly more expensive than the Borough's median home value of owner-occupied housing units. Approximately 82 percent of the Borough's owner-occupied housing units are valued between $200,000 and $399,999. Table 3 depicts the value of owner-occupied units in the Borough according to 2013 ACS data.

Table 3: Value of Owner-Occupied Units		
Value ($)	**Units**	**Percentage**
Less than 50,000	23	1.2%
50,000-99,999	42	2.1%
100,000-149,999	0	0.0%
150,000-199,999	241	12.2%
200,000-299,999	818	41.5%
300,000-499,999	795	40.4%
500,000-999,999	50	2.5%
1,000,000 or more	0	0.0%
Total Occupied Housing Units	**1,969**	**100.0%**

Source: U.S. Census Bureau, 2009-2013 5-Year American Community Survey

With respect to rental units within the Borough, 593 occupied units were paying rent in 2013, while only 48 renter-occupied units within the Borough paid no rent. Approximately 70 percent of all renter-occupied units paid $1,000 or more for rent each month. Table 3 and Table 4 depict the value of owner-occupied units and gross rents paid for renter-occupied units in the Borough according to 2013 ACS data.

Table 4: Gross Rent Paid		
Contract Rent Specified	**Units**	**Percentage**
Less than $499	0	0.0%
$500-$749	21	3.5%
$750-$999	162	27.3%
$1,000-$1,499	237	40.0%
$1,500 or more	173	29.2%
No Rent Paid	48	---
Median Gross Rent	$1,233	---
Total Occupied Rental Units	**1,239**	**100%**

Source: U.S. Census Bureau, 2009-2013 5-Year American Community Survey

Occupancy Characteristics and Types of Housing Units

According to the 2013 ACS 5-Year Estimates, the Borough of Dunellen had 2,610 occupied housing units. 75.4 percent of all occupied units in the Borough were owner occupied, while the remaining 24.6 percent of units are renter-occupied. Only 186 of the Borough's 2,796 were vacant at the time of the ACS 5-Year Estimates.

Although the majority of housing units within the Borough are single-family, detached residences, the Borough does have a variety of housing stock. Table 5 below lists the housing units in the Borough by type.

Table 5: Housing Units by Type		
Units in Structure	**Number**	**Percent of Total Units**
1-Unit Detached	1,649	59.0%
1-Unit Attached	262	9.4%
2 Units	511	18.3%
3 or 4 Units	248	8.9%
5 to 9 units	126	4.5%
10 to 19 Units	0	0.0%
20 Units or more	0	0.0%
Mobile Home	0	0.0%
Other	0	0.0%
Total	**2,796**	**100.0%**

Source: U.S. Census Bureau, 2009-2013 5-Year American Community Survey

Units Affordable to Low and Moderate Income Households

N.J.A.C. 5:93 defines low-income households as those households earning less than or equal to 50 percent of the median gross household income for households of the same size within the housing region in which the housing is located and defines moderate-income households as those households earning more than 50 percent but less than 80 percent of the regional median household income. This definition is derived from the U.S. Department of Housing and Urban Development (HUD). A sliding scale based on household size has been developed to establish income limits for low- and moderate-income households. This sliding scale establishes income limits for households of one up to households of eight. Table 6 provides 2014 Regional Income Limits for Region 3.

Table 6: 2014 Income Limits Region 3 (Hunterdon, Middlesex, and Somerset Counties)				
	Median	**Moderate**	**Low**	**Very Low**
1 Person	$73,500	$58,800	$36,750	$22,050
1.5 Person	$78,750	$63,000	$39,375	$23,625
2 Person	$84,000	$67,200	$42,000	$25,200
3 Person	$94,500	$75,600	$47,250	$28,350
4 Person	$105,000	$84,000	$52,500	$31,500
4.5 Person	$109,200	$87,360	$54,600	$32,760
5 Person	$113,400	$90,720	$56,700	$34,020
6 Person	$121,800	$97,440	$60,900	$36,540
7 Person	$130,200	$104,160	$65,100	$39,060
8 Person	$138,600	$110,880	$69,300	$41,850

Source: NJ Council on Affordable Housing 2014 Affordable Housing Regional Income Limits

The Uniform Housing Affordability Controls (UHAC, N.J.A.C. 5:80 et seq.) establish occupancy standards to determine whether a specific housing unit can be considered an affordable unit. In order for a housing unit to be considered affordable, it must be priced to be affordable to those households that could reasonably be expected to live in the unit. For example, an efficiency unit must be affordable to a household of one, while a one-bedroom unit must be affordable to a 1.5-person household.

UHAC establishes that a household occupying a for-sale unit shall not pay more than 28 percent of its gross income on principal, interest, taxes and insurance, subsequent to a minimum down payment of 5 percent in order for that unit to be considered affordable. Similarly, a household occupying a rental unit shall not pay more than 30 percent of its income on rent and utilities in order for that unit to be considered affordable. Table 7 and Table 8 list the percentage of household income spent on selected ownership costs and gross rent in the Borough.

Table 7: Selected Monthly Owner Costs as a Percentage of Household Income

Percentage of Income	Number	Percent of Total
Less than 20%	491	24.9%
20% to 24.9%	289	14.7%
25% to 29.9%	287	14.6%
30% to 34.9%	191	9.7%
35% or more	711	36.1%
TOTAL	**1,969***	**100%**

Source: U.S. Census Bureau, 2009-2013 5-Year American Community Survey

Table 8: Gross Rent as a Percentage of Household Income

Percentage of Income	Number	Percent of Total
Less than 15%	64	11.1%
15% to 19.9%	52	9.0%
20% to 24.9%	191	33.0%
25% to 29.9%	7	1.2%
30% to 34.9%	14	2.4%
35% or more	250	43.3%
TOTAL	**578***	**100%**

**63 units not computed*
Source: U.S. Census Bureau, 2009-2013 5-Year American Community Survey

Projected Housing Stock

According to New Jersey Department of Community Affairs, Dunellen Borough has issued a total of 108 building permits for single family housing units, two to four family

housing units, and mixed use housing units during the time period from 2000-2015. It should be noted that the 2015 data is only current through September of 2015.

Using New Jersey Department of Community Affairs demolition data for the same period, Dunellen Borough approved 47 demolition permits, meaning the Borough experienced a net gain of only 61 housing units between 2000 and June of 2015. Table 9 lists the number of annual building permits and demolition permits issued in the Borough between 2000 and 2015.

Given the Borough's fully developed nature and the limited net increase in the number of dwelling units in the Borough between 2000 and 2015, a significant increase in the number of dwelling units is not anticipated between 2015 and 2025.

Table 9: Building Permits and Demolition Permits Issued, 2000 – June 2015

Year	Residential Building Permits Issued	Residential Demolitions*	Total Added
2000	3	1	2
2001	6	5	1
2002	25	20	5
2003	0	1	-1
2004	11	1	10
2005	8	1	7
2006	9	1	8
2007	2	0	2
2008	1	1	0
2009	7	3	4
2010	6	4	2
2011	1	1	0
2012	9	0	9
2013	14	6	8
2014	3	0	3
2015*	3	2	1
Total	**108**	**47**	**61**

Source: New Jersey Department of Community Affairs, Division of Codes and Standards website; Accessed on January 25, 2016.
**Through September 2015*

Municipality's Demographic Characteristics

As depicted in Table 10 below, the population of Dunellen Borough has fluctuated between 1930 and the present and has experienced periods of growth and decline. The Borough experienced its greatest population increase between 1940 and 1950 and its greatest decline in population between 1970 and 1980. The Borough exhibits a high population density given its relative small size.

In 2007, the North Jersey Transportation Planning Authority (NJTPA) prepared population projections for its jurisdiction, inclusive of the Borough, as part of its 2040 Regional Transportation Plan Update. The NJTPA projects the Borough's population to be 8,360 residents by 2040, which is an increase of 12.71 percent between 2014 and 2040 as noted in Table 10.

Table 10: Historical and Projected Population, 1930-2040

Year	Population	Percent Change	Population Density*
1930	5,148	---	4,912.21
1940	5,360	4.12%	5,114.50
1950	6,291	17.37%	6,002.86
1960	6,840	8.73%	6,526.72
1970	7,072	3.39%	6,748.09
1980	6,593	-6.77%	6,291.03
1990	6,528	-0.99%	6,229.01
2000	6,823	4.52%	6,510.50
2010	7,227	5.92%	6,895.99
2014^	7,417	2.63%	7,077.29
2040**	8,360	12.71%	7,977.10

**Population Density displayed as residents per square mile.*
^ Source: Annual Estimates of the Resident Population: April 1, 2010 to July 1, 2014,
U.S. Census Bureau, Population Division
*** Population Projections from North Jersey Transportation Planning Authority*
Sources: U.S. Census Bureau, North Jersey Transportation Planning Authority

Table 11 provides a breakdown of the Borough's population by age cohort. The Borough's age cohort distribution is generally similar to that of Middlesex County. However, the Borough exhibits a younger median age (34.8 years) than the County (37.4 years), which can be attributed to the fact that the percentage of County residents aged 75 or older is more than twice that of the percentage of Borough residents in the same aged cohorts.

Table 11: Population by Age Cohort				
Age	**Dunellen Borough**		**Middlesex County**	
	Population	**Percentage**	**Population**	**Percentage**
Under 5 years	583	8.0%	50,110	6.1%
5 to 9 years	400	5.5%	51,044	6.2%
10 to 14 years	469	6.5%	51,344	6.3%
15 to 19 years	467	6.4%	57,228	7.0%
20 to 24 years	423	5.8%	57,785	7.1%
25 to 34 years	1,326	18.3%	113,059	13.8%
35 to 44 years	945	13.0%	117,163	14.3%
45 to 54 years	1,232	17.0%	121,666	14.9%
55 to 59 years	373	5.1%	51,806	6.3%
60 to 64 years	384	5.3%	42,831	5.2%
65 to 74 years	369	5.1%	54,050	6.6%
75-84 years	155	2.1%	33,730	4.1%
85 years and over	134	1.8%	15,210	1.9%
Total	**7,227**	**100%**	**817,026**	**100%**
Median Age	**34.8**		**37.4**	

Source: U.S. Census Bureau, 2009-2013 5-Year American Community Survey

Table 12 provides a synopsis of households by type within the Borough at the time of the 2009-2013 5-Year ACS. Nearly three quarters of all households in the Borough were family households at the time of data collection, while slightly more than half of all family households were comprised of married-couple families. Approximately 36 percent of all family households in the Borough had children less than 18 years of age. Approximately 27 percent of all Borough households are identified as non-family households. Approximately 16 percent of all households in the Borough are comprised of the householder living alone, and approximately 33 percent of householders living alone (5.4 percent of all Borough households) are aged 65 years or older. The average household size in Dunellen Borough was 2.76 persons per household, which is slightly smaller than the County's average household size of 2.82 persons per household.

Table 12: Households by Type		
Household Type	**Number**	**Percent**
Total Households	2,610	100%
Family households (families)	1,892	72.5%
With own children under 18 years	950	36.4%
Married-couple Family	1,318	50.5%
Female householder, no husband present	384	14.7%
Male householder, no wife present	193	7.4%
Nonfamily households	718	27.5%

Table 12: Households by Type		
Household Type	**Number**	**Percent**
Householder living alone	415	15.9%
Householder 65 years and over	141	5.4%
Householder not living alone	303	11.6%

Source: U.S. Census Bureau, 2009-2013 5-Year American Community Survey

Table 13 below provides a percentage breakdown of household income in the Borough and in Middlesex County according to 2013 ACS 5-Year Estimates. The median household income in the Borough was $75,591, which is 5.3 percent less than the median household income for the County ($79,596).

Table 13: Households by Income in 2013		
Income ($)	**Dunellen Borough**	**Middlesex County**
Less than $10,000	2.6%	4.1%
$10,000-$14,999	5.7%	3.0%
$15,000-$24,999	2.6%	6.8%
$25,000-$34,999	5.4%	6.9%
$35,000-$49,999	9.7%	9.8%
$50,000-$74,999	23.4%	16.5%
$75,000-$99,999	19.6%	14.3%
$100,000-$149,999	19.0%	20.4%
$150,000-$199,999	7.8%	9.4%
$200,000 or more	4.1%	8.7%
Median Household Income	**$75,591**	**$79,596**

Source: U.S. Census Bureau, 2009-2013 5-Year American Community Survey

Employment Characteristics

The 2013 ACS also reports on work activity of residents 16 years and older. A total of 4,124 residents were 16 years or older and employed. As noted in Table 14, the majority of workers in the Borough (84 percent) are employed by the private sector, while only 2.4 percent of workers are self-employed.

Table 14: Classification of Workers		
Class	**Dunellen Borough**	**Percentage of Workers**
Private Wage and Salary	3,466	84.0%
Government Workers	561	13.6%
Self Employed	97	2.4%
Unpaid Family Workers	0	0.0%
TOTAL	**4,124**	**100%**

Source: U.S. Census Bureau, 2009-2013 5-Year American Community Survey

An analysis of the employees (over the age of 16) by economic sector indicates that Dunellen workers were involved in a broad array of economic sectors. As depicted in Table 15 below, the highest concentration of workers (25.3 percent) are employed in the educational, health, and social services sectors. The manufacturing; professional scientific, management, administrative and waste management services; and retail trade sectors all employ more than ten percent of the Borough's workforce and employ the next highest concentrations of Borough workers respectively.

Table 15: Workforce by Sector

Sector	Employees	Percentage of Workforce
Agriculture, Forestry, Fisheries & Mining	0	0.0%
Construction	281	6.8%
Manufacturing	494	12.0%
Wholesale Trade	173	4.2%
Retail Trade	415	10.1%
Transportation, Warehousing and Utilities	270	6.5%
Information	96	2.3%
Finance, Insurance & Real Estate	78	1.9%
Professional, Scientific, Management, Administrative, and Waste Management Services	490	11.9%
Educational, Health and Social Services	1,044	25.3%
Arts, Entertainment, Recreation, Accommodation and Food Services	369	8.9%
Other Services	226	5.%
Public Administration	188	4.6%

Source: U.S. Census Bureau, 2009-2013 5-Year American Community Survey

The workforce occupation characteristics in Dunellen Borough are compared against those of Middlesex County in Table 16. As indicated in Table 16, the occupation characteristics of the Borough's residents compare closely with that of workers residing in the County. The Borough maintained a slightly higher percentage of workers employed in the manufacturing, educational, health and social services sectors than the County. The County, however, had a significantly higher percentage of residents employed in Finance, Insurance and Real Estate.

Table 16: Comparison of Workforce by Sector

Sector	Dunellen Borough	Middlesex County
Agriculture, Forestry, Fisheries & Mining	0.0%	0.2%
Construction	6.8%	4.4%
Manufacturing	12.0%	10.1%
Wholesale Trade	4.2%	3.9%
Retail Trade	10.1%	11.2%

Table 16: Comparison of Workforce by Sector		
Sector	**Dunellen Borough**	**Middlesex County**
Transportation, Warehousing and Utilities	6.5%	6.6%
Information	2.3%	3.3%
Finance, Insurance & Real Estate	1.9%	9.5%
Professional, Scientific, Management, Administrative, and Waste Management Services	11.9%	14.4%
Educational, Health and Social Services	25.3%	21.9%
Arts, Entertainment, Recreation, Accommodation and Food Services	8.9%	7.0%
Other Services	5.0%	4.1%
Public Administration	4.6%	3.4%

Source: U.S. Census Bureau, 2009-2013 5-Year American Community Survey

In addition to the above, the New Jersey Department of Labor ("NJDOL") has prepared projections which analyze the expected increase or decrease in a particular employment sector by the year 2022. This data has been summarized and is illustrated within Table 17, below.

Table 17: Projected Employment, Middlesex County, 2022						
Industry Title	**2012 Estimated Employment**	**2022 Projected Employment**	**Numeric Change**	**Annual Growth Rate**	**Percent Change**	**Outlook**
Accommodation and Food Services	21,450	24,750	3,300	1.4	15.4	Growing
Administrative and Support and Waste Management and Remediation	44,500	48,250	3,750	0.8	8.4	Growing
Ambulatory Health Care Services	14,750	18,550	3,800	2.3	25.9	Growing
Arts, Entertainment, and Recreation	3,200	3,650	500	1.4	15.4	Growing
Construction	11,550	14,850	3,300	2.6	28.8	Growing
Education and Health Services	86,050	93,150	7,100	0.8	8.2	Growing
Educational Services	44,200	45,300	1,150	0.3	2.6	Stable
Federal Government, Excluding Post Office	850	750	-100	-1.2	-11	Declining

Table 17: Projected Employment, Middlesex County, 2022						
Industry Title	**2012 Estimated Employment**	**2022 Projected Employment**	**Numeric Change**	**Annual Growth Rate**	**Percent Change**	**Outlook**
Finance and Insurance	14,600	14,050	-550	-0.4	-3.8	Declining
Financial Activities	20,550	20,300	-200	-0.1	-1.1	Declining
Goods Producing	41,300	41,750	450	0.1	1.1	Stable
Government	17,800	16,350	-1,450	-0.8	-8.1	Declining
Health Care and Social Assistance	41,850	47,850	5,950	1.3	14.2	Growing
Hospitals	16,450	17,100	650	0.4	4	Stable
Information	9,550	9,050	-500	-0.5	-5	Declining
Leisure and Hospitality	24,650	28,450	3,800	1.4	15.4	Growing
Local Government, Excluding Education and Hospitals	11,700	11,300	-450	-0.4	-3.7	Declining
Management of Companies and Enterprises	8,950	10,900	2,000	2	22.1	Growing
Manufacturing	29,800	26,950	-2,850	-1	-9.6	Declining
Nursing and Residential Care Facilities	5,800	6,900	1,100	1.8	19.3	Growing
Other Services (except Government)	16,900	19,800	2,900	1.6	17.1	Growing
Postal Service	1,800	1,250	-550	-3.6	-30.5	Declining
Professional and Business Services	92,100	104,350	12,250	1.3	13.3	Growing
Professional, Scientific, and Technical Services	38,650	45,200	6,500	1.6	16.8	Growing
Real Estate and Rental and Leasing	5,900	6,250	350	0.6	5.8	Growing
Retail Trade	40,950	43,700	2,750	0.7	6.7	Growing
Self Employed and Unpaid Family Workers, All Jobs	25,200	26,000	850	0.3	3.3	Stable
Self Employed Workers, All Jobs	24,950	25,750	850	0.3	3.4	Stable

Table 17: Projected Employment, Middlesex County, 2022						
Industry Title	**2012 Estimated Employment**	**2022 Projected Employment**	**Numeric Change**	**Annual Growth Rate**	**Percent Change**	**Outlook**
Services Providing	368,000	402,150	34,200	0.9	9.3	Growing
Social Assistance	4,900	5,250	400	0.7	7.7	Growing
State Government, Excluding Education and Hospitals	3,400	3,050	-350	-1.1	-10.4	Declining
Total Federal Government Employment	2,700	2,050	-650	-2.7	-24.3	Declining
Total Self Employed and Unpaid Family Workers, All Jobs	25,200	26,000	850	0.3	3.3	Stable
Trade, Transportation, and Utilities	100,450	110,700	10,300	1	10.2	Growing
Transportation and Warehousing	24,200	28,000	3,800	1.5	15.7	Growing
Unclassified	25,200	26,000	850	0.3	3.3	Stable
Unpaid Family Workers, All Jobs	250	250	0	-0.7	-6.9	Declining
Utilities	800	900	100	1.1	12	Growing
Wholesale Trade	34,500	38,100	3,650	1	10.5	Growing
Total All Industries	**434,500**	**469,950**	**35,450**	**0.8**	**8.2**	**Growing**

Source: 2012-2022 Industry Employment Projections, NJ Department of Labor and Workforce Development

As indicated in Table 17, it is projected that 35,450 jobs will be added in Middlesex County over the projection period (2012 through 2022). The Service Providing and Trade, Professional Services Transportation and Utilities sectors are poised to experience the greatest increase in jobs over the course of the projection period.

Fair Share Plan

Fair Share Obligation Summary

The cumulative 1999-2025 affordable housing obligation for the Borough was calculated based upon the rehabilitation share, prior cycle new construction obligation, and the methodology outlined in the technical appendices of N.J.A.C. 5:93. The Borough's cumulative 1999-2025 affordable housing obligation is outlined in Table 18 below.

Table 18: Fair Share Obligation Summary	
Obligation Component	**Number of Credits Required**
Rehabilitation Share	12
Prior Round Obligation	0
Third Round Prospective Need	118

Source: New Jersey Low and Moderate Income Housing Obligations for 1999-2025 Calculated Using the NJ COAH Prior Round (1987-1999) Methodology Prepared by the Fair Share Housing Center and Kinsey & Hand, July 2015

The following sections outline how the Borough will comply with its Fair Share Obligation.

Vacant Land Adjustment

The cumulative 1999-2025 affordable housing obligation calculated as noted above does not factor in the availability of vacant and developable land within the Borough. The Borough has conducted an analysis of vacant parcels and has prepared an existing land use map, a map depicting vacant parcels, an inventory of vacant parcels as required by N.J.A.C. 5:93-4.2, which are attached herein as Appendix A. According to this analysis, the Borough has a Realistic Development Potential (RDP) of 22 units. Therefore, the Borough's 118-unit Third Round Obligation less the 22-unit RDP yields an unmet need of 96 units.

N.J.A.C. 5:93-4.2(g) permits a municipality to address its RDP through any activity permitted to be used to satisfy a municipality's new construction obligation outlined in N.J.A.C. 5:93-5. The mechanisms adopted by the Borough in accordance with N.J.A.C. 5:93-5 are specifically illustrated in the sections below.

Rehabilitation Share

The Borough of Dunellen has participated in Middlesex County's program for the rehabilitation of low- and moderate-income housing. This program, known as *Housing First*, provides up to $25,000 from the *Coming Home of Middlesex County, Inc.,* to qualifying low and moderate income homeowners. The program has been implemented in an effort to provide seed or leveraging funds for ending homelessness in the County. The Housing First Fund is funded by $1,000,000 included in the annual capital budget passed by the Board of Chosen Freeholders.

The Borough of Dunellen will satisfy its rehabilitation obligation of twelve units through its continued participation in the County's *Housing First* program. The Borough

anticipates completing one rehabilitation per year between 2016 and 2023 and will complete two rehabilitations annually in 2024 and 2025 to satisfy its 12-unit obligation.

Prior Round Obligation (1987-1999)

As noted above, the Borough has a prior round construction obligation of 0 units.

Third Round Obligation (1999-2025)

The Borough has a cumulative Third Round obligation of 118 units. However, the Borough lacks sufficient vacant land to accommodate its Third Round obligation and has a Realistic Development Potential of 22 units. Therefore, the Borough has an unmet need of 96 units. The Borough will implement the following mechanisms to address its Realistic Development Potential and unmet need:

Completed Inclusionary Zoning

The Borough has continually sought to require an affordable housing set-aside for multifamily or mixed-use projects located along North Avenue (Route 28) in the Borough. To date, there has been one mixed-use redevelopment project, which was approved by the Borough Planning Board in 2009 and constructed in 2013. Two of the eight residential units in this mixed-use building were designated for low- and moderate-income units in accordance with the provisions of the Dunellen Downtown Redevelopment Plan. Appendix B contains the Resolution of Approval for this project.

Mechanisms to Address Unmet Need

Proposed Inclusionary Development - Downtown Redevelopment Site #3 (Block 85, Lot 1)

The Borough of Dunellen will be eligible to claim 60 credits for the affordable component of a proposed 372-unit inclusionary development to be located on the former Art Color Factory site in the Borough's Downtown Redevelopment Area. The proposed development will consist of 372 rental units, 58 of which will be set aside as affordable family rental units. Pursuant to N.J.A.C. 5:93-5.15, the Borough is entitled to a total of 62 credits for this development (one credit per unit plus four bonus credits). The Borough will apply 22 credits toward satisfying its Realistic Development Potential and will allocate 38 units toward its unmet need.

Future Inclusionary Development – Downtown Redevelopment, Site #1 (Block 69, all lots) and Site #2 (Block 70, Lots 13 and 13.01), and Remainder Redevelopment Parcels

The Borough's Downtown Redevelopment Area is comprised of three sites and a number of additional parcels fronting upon North Avenue/Bound Brook Road (State Highway 28). These parcels are governed by the Dunellen Downtown Redevelopment Plan adopted by the Borough Council in 2003 and subsequently amended in 2004, 2011, 2013, 2014, and 2015. The 2014 amendments to the Redevelopment Plan (See

Appendix C) acknowledge the Borough's commitment to providing a realistic opportunity to generate affordable housing. Specifically, the redevelopment plan calls for an affordable housing set-aside of up to 20 percent for residential development projects within the Redevelopment Area. Thus, as the remaining sites in the Downtown Redevelopment Area are developed, it is anticipated that more affordable units will be constructed in the Borough. Any affordable units generated as a result of the continued redevelopment in the Redevelopment Area will be credited toward satisfying the Borough's unmet need.

The Borough has prepared an amendment to the Dunellen Downtown Redevelopment Plan to provide for a mandatory 15 percent affordable housing set-aside for rental units and a mandatory 20 percent affordable housing set-aside for for-sale units within future mixed-use or residential development projects of five (5) or more dwelling units within the area governed by the Redevelopment Plan. The proposed redevelopment plan amendment is included as Appendix F of this document.

Summary of Credits

Table 19 provides a summary of the Borough's Fair Share Plan to satisfy its Rehabilitation Obligation and 22-unit RDP. The balance of credits will be applied toward the Borough's unmet need.

Table 19: Fair Share Plan Summary, 2015-2025	
Obligation Component	**Number of Credits Required**
Rehabilitation Share	**12**
Housing First Program Rehabilitations, 2016-2025	12
Prior Round Obligation	**0**
Third Round Prospective Need	**118**
Realistic Development Potential per VLA	**22**
Unmet Need	**96**
Inclusionary Development, Block 85, Lot 1	58 units + 4 bonus credits
Inclusionary Development, 364-368 North Avenue	2
REMAINING REHABILITATION SHARE	**0**
REMAINING PRIOR ROUND OBLIGATION	**0**
REMAINING UNMET NEED	**54**

Appendix A

Vacant Land Inventory and Analysis Report

Vacant Land Inventory and Analysis Report

Prepared for:

Dunellen Borough

Middlesex County, New Jersey

October 7, 2015

Prepared By:

CME ASSOCIATES

1460 Route 9 South
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I. INTRODUCTION

As noted in N.J.A.C. 5:93, "there may be instances where a municipality can exhaust an entire resource (land, water or sewer) and still not be able to provide a realistic opportunity for addressing the need for low and moderate income housing." In recognition of the need to provide for the opportunity to adjust municipal affordable housing obligations, N.J.A.C. 5:93 outlines standards and procedures for municipalities to demonstrate that a municipal response to its housing obligation is limited by lack of land, water or sewer. This report outlines the vacant land analysis methodology and summarizes the results of the vacant land analysis prepared on behalf of the Borough of Dunellen by CME Associates.

The Borough of Dunellen is a densely populated, fully developed community located in northwest Middlesex County. The Borough has experienced limited residential growth as a result of infill development on small, scattered parcels and redevelopment of previously developed land. As such, the Borough's ability to accommodate its Mount Laurel obligation is limited due to lack of sufficient vacant and developable land to accommodate inclusionary zoning projects that generate affordable units.

The Borough's Third Round Housing Plan Element and Fair Share Plan, adopted in 2005, recognized the lack of sufficient vacant land in the Borough, noting that "future development in the Borough is largely restricted by the limited amount of vacant, developable land." The 2005 Plan also notes the presence of the Borough's Downtown Redevelopment Area, and identifies this area as the Borough's primary source of growth.

Given the Borough's relative lack of vacant and developable land, the Borough's ability to satisfy its Court-determined affordable housing obligation is limited. The Borough has taken steps to generate affordable units in the Downtown Redevelopment Area and Borough-wide as noted in the Borough's Housing Plan Element and Fair Share Plan. To demonstrate the lack of vacant developable land outside of the Downtown Redevelopment Area, the Borough has identified all vacant parcels and has listed each parcel on the vacant land inventory table in accordance with N.J.A.C. 5:93-4.2(b)(see Attachment A). A Vacant Land Map depicting vacant properties within the Borough is included as Attachment B. An existing land use map for the Borough has also been appended to this report as Attachment C in accordance with N.J.A.C. 5:93-4.2(a).

CME Associates has analyzed the realistic development potential (RDP) of the Borough's vacant land in accordance with the provisions of Subchapter 4 of N.J.A.C. 5:93. This analysis reveals the Borough of Dunellen does not have the acreage to accommodate its Third Round new construction obligation. After following the procedures for undertaking a vacant land analysis outlined in N.J.A.C. 5:93, the Borough's RDP for the prior round new construction obligation is 22 affordable units.

II. PERMITTED EXCLUSIONS

N.J.A.C. 5:93 establishes criteria by which sites, or portions thereof, in a municipal land inventory may be excluded from a municipality's RDP. Environmentally sensitive areas, including flood hazard areas, areas within Environmentally Sensitive Planning Areas according to the State Plan Policy Map, areas outside of the Sanitary Sewer Service Area (SSA), wetlands, and areas characterized by steep slopes of greater than 15 percent that render a site unsuitable for affordable housing may be excluded from consideration. In addition, small, isolated lots lacking sufficient acreage to generate an affordable housing set-aside as part of an inclusionary development may also be excluded. Vacant lots under development or properties for which site plan approval has been granted may also be excluded. Finally, landlocked parcels or sites with limited or no access may also be excluded from the calculation of the Borough's RDP.

The vacant land inventory table in Attachment A provides a parcel-by-parcel description of exclusions that have been made pursuant to N.J.A.C. 5:93.

It should be noted that the Borough is permitted to reserve up to three percent of its total developed and developable acreage, less existing active municipal recreation areas, for active municipal recreation and exclude this acreage from consideration as potential sites for low and moderate income housing pursuant to N.J.A.C. 5:93-4.2(e)4. Any such site designated for active recreation in accordance with this section must be purchased and limited to active recreational purposes within one year of substantive certification. Although this calculation has not been completed as part of this analysis, the Borough reserves the right to revise this analysis to complete this calculation.

III. Summary and Conclusion

Based on the procedures for municipal adjustments provided in N.J.A.C. 5:93, the Borough of Dunellen's RDP has been determined to be 22 affordable units. A significant portion of the Borough's vacant land is constrained by environmental features such as Flood Hazard Areas, wetlands, streams, or required buffer areas as noted in the Vacant Land Inventory Table included herein. The Borough's Realistic Development Potential stems from its Downtown Redevelopment Area. Block 85, Lot 1, the former Art Color site, which consists of 18.42 acres of vacant and developable land, is slated to be redeveloped as an inclusionary development. The proposed development will consist of 374 rental units, 56 of which will be set aside as affordable family rental units. The Borough's remaining vacant, unconstrained parcels are of insufficient size to result in the affordable housing set-aside through inclusionary development.

ATTACHMENT A: VACANT LAND INVENTORY TABLE

GIS PIN	BLOCK	LOT	AREA	PROPRETY ADDRESS	OWNER	OWNER ADDRESS	OWNER CITY/STATE	COMMENTS
1203_13_1.01	13	1.01	0.355017	FOURTH ST REAR	RUSKUSKI, JOHN & LAURA	600 JACKSON AVE	DUNELLEN, NJ	Less than 0.5 Acres
1203_13_2	13	2	0.343892	FOURTH ST REAR	CRISPO,JAMES & DONNA	36 MILESTONE DRIVE	RINGOES, NJ	Less than 0.5 Acres
1203_18_8.05	18	8.05	2.031825	MADISON AVE	FISHER, PRISCILLA ESTATE	128 CHELSEA WAY	BRIDGEWATER, N.J.	Conservation Easement within Flood Zone
1203_2_17.01	2	17.01	0.448324	216-234 NORTH AVE.	216 NORTH AVE ASSOCIATES LLC	1879 MORRIS AVE	UNION, NJ	Less than 0.5 Acres
1203_2_21	2	21	0.13775	115 JACKSON AVE	PERRY JAMES PROPERTIES LLC	210 NORTH AVE	DUNELLEN, NJ	Less than 0.5 Acres
1203_32_19	32	19	0.208717	364-368 NORTH AVE.	364-368 NORTH AVE.ASSOC.LLC	1879 MORRIS AVE.	UNION, NJ	Less than 0.5 Acres
1203_33_19	33	19	0.172182	436 NORTH AVE	HACKETTSTOWN PROPERTIES INC	1201 NEW BRUNSWICK AVE	TRENTON, NJ	Less than 0.5 Acres
1203_36_3	36	3	0.172177	315 MADISON AVE	WEATHER TEK ALUMINUM CORP	123 NO WASHINGTON AVE	DUNELLEN, NJ	Less than 0.5 Acres
1203_39_11	39	11	0.130437	THIRD ST	SWITZER, RICKY L & SILVIA C	545 FOURTH ST	DUNELLEN, NJ	Less than 0.5 Acres
1203_39_12	39	12	0.043951	THIRD ST	SALVIN, BEATRICE R	704 THIRD ST	DUNELLEN, NJ	Less than 0.5 Acres
1203_40_1.02	40	1.02	0.270098	511 MOUNTAINVIEW TERRACE	GREGORY T. O'BRIEN & BRIDGETTE H/W	511 MOUNTAINVIEW TERRACE	DUNELLEN, NJ	Less than 0.5 Acres
1203_40_10	40	10	0.273658	MOUNTAINVIEW TERR	MUNDY, JR, WILLIAM S	227 DUNELLEN AVE	DUNELLEN, NJ	Less than 0.5 Acres
1203_45_14.01	45	14.01	0.161399	738 DUNELLEN AVE	SATOR, ANDREW	37 HAMPTON GARDENS	MIDDLESEX, NJ	Less than 0.5 Acres
1203_47_8.01	47	8.01	0.166479	729 DUNELLEN AVE	TIMKO, MARY ESTHER	727 DUNELLEN AVE	DUNELLEN, NJ	Less than 0.5 Acres
1203_48_16	48	16	0.286792	768 BOUND BROOK RD	OUTDOOR SYSTEMS,INC.	185 U.S. HIGHWAY 46	FAIRFIELD, NJ	Less than 0.5 Acres
1203_50_2	50	2	0.440767	BOUND BROOK RD	NOVKOVIC, JOHN R. & DOBRIVIER	501 NORTH AVE.	DUNELLEN, NJ	Less than 0.5 Acres
1203_50_5	50	5	0.364647	527 BOUND BROOK RD	RAK, RICHARD & CHRISTINE	2347 WICKFORD RD	UNION, NJ	Less than 0.5 Acres
1203_52_7	52	7	0.877282	620 SOUTH AVE	PAIKES ENTERPRISES, INC.	675 CALIFORNIA RD	QUAKERTOWN, PA	Constrained by Wetlands
1203_52_8	52	8	0.026646	SOUTH AVE	PAIKES ENTERPRISES, INC.	675 CALIFORNIA RD	QUAKERTOWN, PA	Less than 0.5 Acres
1203_54_18.02	54	18.02	0.575889	236 SO. MADISON AVE	POSLUSZNY,DAVID	242 SOUTH MADISON AVE	DUNELLEN, NJ	Located within Stream Buffer
1203_55_14.04	55	14.04	0.220956	303 PULASKI STREET	MASTROCOLA PARTNERS	973 DURHAM RD	EDISON, NJ	Less than 0.5 Acres
1203_55_5	55	5	0.578008	213-223 HALL ST	BOWMAN,JULIANNE	606 SOUTH AVENUE	DUNELLEN, NJ	Located within Stream Buffer
1203_57.02_27.02	57.02	27.02	0.152249	CENTER STREET	MURPHY, WARREN B	419 HIGH STREET	DUNELLEN, NJ	Less than 0.5 Acres
1203_59_20	59	20	0.072843	31 SO MADISON AVE	GALWAY PROPERTIES, LLC	351 WARRENVILLE RD	GREEN BROOK, NJ	Less than 0.5 Acres
1203_60_51	60	51	0.119542	623 WALNUT ST	SMITH, GORDON E. JR.	623 WALNUT ST	DUNELLEN, NJ	Less than 0.5 Acres
1203_64_38	64	38	0.414399	SOUTH MADISON AVE	MASTRIAN, BARBARA	241 SOUTH MADISON AVE	DUNELLEN, NJ	Less than 0.5 Acres
1203_67_4	67	4	0.112563	649 GROVE ST	KNIGHTS OF COLUMBUS HOME ASSN	649 GROVE ST	DUNELLEN, NJ	Less than 0.5 Acres
1203_70_12	70	12	0.497628	118 NEW MARKET RD.	ANZOVINO, LAWRENCE D	710 MADISON AVE	DUNELLEN, NJ	Less than 0.5 Acres
1203_76_13.02	76	13.02	0.114646	339 WALNUT ST	HAAS, CEZARA B-TRUSTEE	128 PINEHURST DR	WASHINGTON, NJ	Less than 0.5 Acres
1203_8_19.01	8	19.01	0.163085	236 FIRST ST	FACCIPONTI, CHARLES	123 NORTH WASHINGTON AVE	DUNELLEN, NJ	Less than 0.5 Acres
1203_8_19.02	8	19.02	0.162968	240 FIRST STREET	FACCIPONTI,CHARLES	123 NORTH WASHINGTON AVE	DUNELLEN, NJ	Less than 0.5 Acres
1203_82.01_11	82.01	11	0.052444	PEARL PLACE-REAR	NARY, ALAN E.	1780 WEST 4TH ST	PISCATAWAY, NJ	Less than 0.5 Acres
1203_83_1	83	1	0.225376	105 SOUTH WASHINGTON AVE	DUNELLEN ASSOCIATES	P.O. BOX 3726	WEST PALM BEACH, FL	Less than 0.5 Acres
1203_85_1	85	1	18.41885	100 SOUTH WASHINGTON AVE	DUNELLEN ASSOCIATES	P.O. BOX 3726	WEST PALM BEACH, FL	Inclusionary Affordable Housing Site
1203_86_4.02	86	4.02	0.162896	225 NORTH AVE	SEIF, GEORGE & BARBARA	701 MADISON AVE	DUNELLEN, N J	Less than 0.5 Acres

ATTACHMENT B: VACANT LAND MAPPING

Vacant Land Map, 2015
Borough of Dunellen
Middlesex County, New Jersey

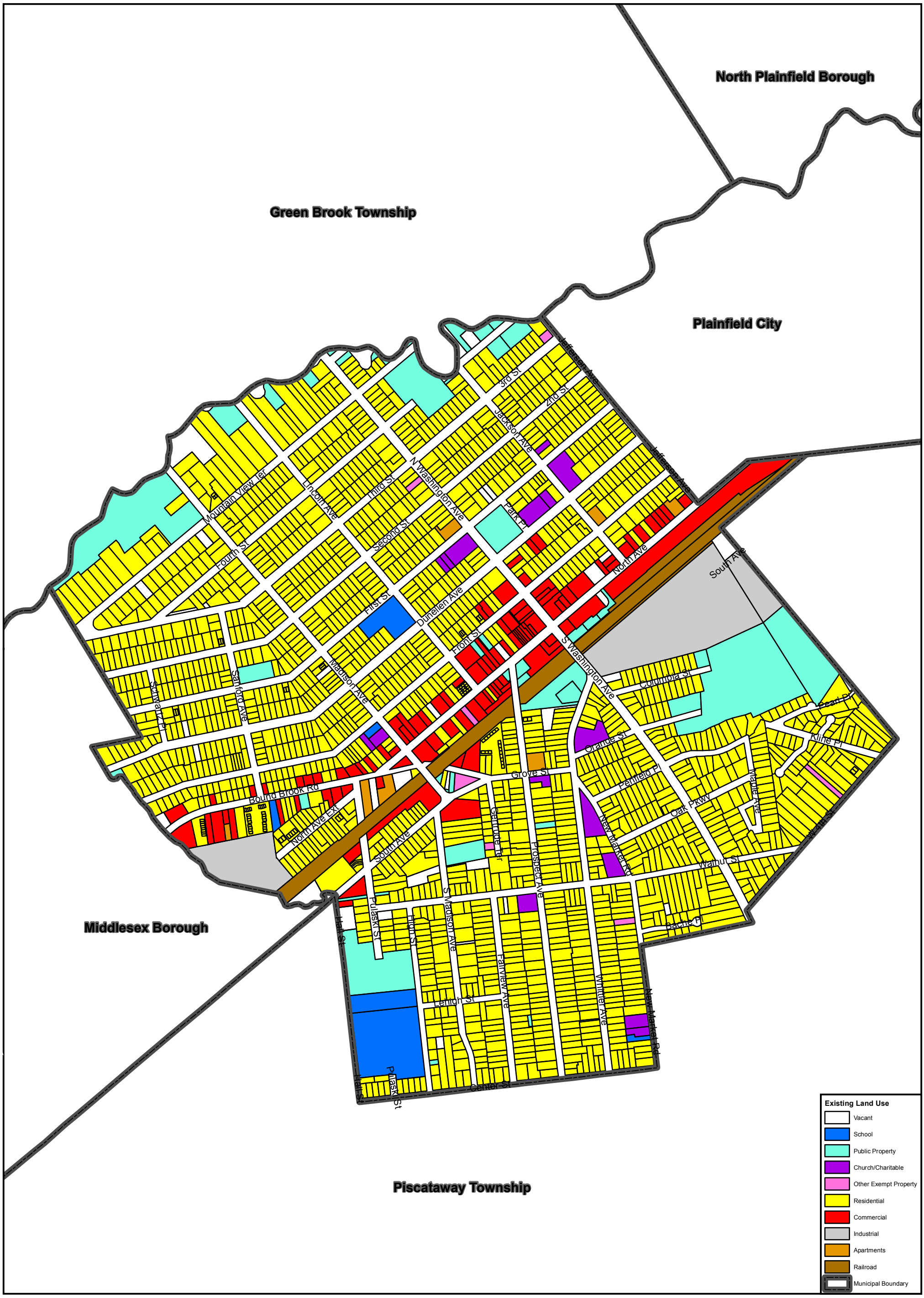
0 750 1,500 Feet

S:\Dunellen\Planning\2015 Housing Plan Element and Fair Share Plan\DunellenVLAMap_Exhibit_6Nov2015.mxd

Sources: Parcel Map, NJDEP, NJGIN, NJDOT

CME ASSOCIATES
1460 US Highway 9 South
Howell, New Jersey 07731

ATTACHMENT C: EXISTING LAND USE MAP



Existing Land Use Map
Borough of Dunellen
Middlesex County, New Jersey

0 750 1,500
Feet

S:\Dunellen\Planning\2015 Housing Plan Element and Fair Share Plan\DunellenELUMap_Exhibit_6Nov2015.mxd

Sources: Parcel Map, NJDEP, NJGIN, NJDOT, MOD-IV

CME ASSOCIATES
1460 US Highway 9 South
Howell, New Jersey 07731

Appendix B

Planning Board Resolution, 364-368 North Avenue

PLANNING BOARD
BOROUGH OF DUNELLEN
RESOLUTION

WHEREAS, 364-368 NORTH AVENUE ASSOCIATES, LLC has heretofore made application to the Dunellen Planning Board for certain variance relief with reference to certain property owed by it located at 364-368 North Avenue; and

WHEREAS, pursuant to the requirements of statute and due process of law, the Planning Board conducted public hearings on the aforesaid application on January 26th, 2009 and February 23rd, 2009; and

WHEREAS, at the aforesaid public hearings the Planning Board heard the testimony of the owners of the aforesaid property, received testimony from a professional engineer, and heard the arguments of applicant's counsel and opened the hearing to comments from members of the general public; and

WHEREAS, it appears that the jurisdictional requirements of this application have been met as the applicant has produced both proof of notice of public hearing in an official newspaper of the Borough of Dunellen, as well as produced proof of Notice of Hearing on the adjoining property owners required by law to be served with Notice of Public Hearing; and

WHEREAS, the Planning Board has duly considered all of the foregoing in arriving at its decision regarding the instant application, and the Dunellen Planning Board, therefore, makes the following **FINDINGS OF FACT:**

1. At the outset of the public hearings, the attorney for the applicant Darin Pinto, Esq., stated that the present building was a mixed use building of residential and commercial uses, and this was a site in need of re-development.

2. It was also represented that the instant proposal for an expanded mixed use building which would essentially occupy the footprint of the existing building, which is proposed to be razed down to the foundation.

3. The first witness produced in support of the applicant was JOSEPH VILLANI, JR., one of the principals of the applicant company.

Mr. Villani stated that he had a long involvement in the construction trade, and was produced to describe the proposed project.

4. With reference to the testimony of Mr. Villani, Jr., the Board finds the essential elements thereof to have been as follows:

(a) The present building is 2 ½ stories high, and before becoming vacant, had two commercial units on the first floor, and one large residential unit on the second floor.

(b) The proposed building would be three stories high, and would have two commercial units on the first floor, and four residential units on each of the second and third floors, for a total of eight residential units.

(c) After construction, the applicant would continue to own and manage the building.

(d) With reference to the removal of the present building, it was proposed that same would be razed by hand because of the close proximity of other buildings on both sides of the subject property.

(e) With reference to proposed commercial uses in the new building, Mr. Villani stated that there would be no food businesses, including take-out food, and also that the applicant would try to stay away from hair or nail establishments because of the odors associated therewith.

(f) With reference to the external appearance of the building, the witness indicated that it would be a masonry building with a full brick façade, with cornices.

He further stated that it would be a no steel structure and would have an elevator.

(g) With reference to the proposed parking for the building, Mr. Villani stated that a total of nine parking spaces were being proposed, with five of those spaces being against the rear of the building, and four located near the fence located on the rear of the property.

He went on to state that the applicant would be working with the Dunellen Parking Authority and the Borough to lease additional spaces for the tenants and employees who will be housed in the proposed building.

(h) Further testimony of Mr. Villani indicated that all units in the bui8lding would be handicapped accessible, and the building would be fully sprinklered.

(i) Mr. Villani also testified that there would be a small basement in the center of the building to accommodate the proposed elevator and mechanical systems.

(j) The remainder of the testimony of Mr. Villani can be summarized as follows:

1. Each apartment will have its own furnace unit.

2. The building would have no common areas.

3. The applicant intends to re-do its parking lot with two inch asphalt.

4. There is no change anticipated in the present traffic patterns in the parking area.

5. JOSEPH VILLANI, SR. was also produced as a witness to give some brief testimony in support of the instant application.

With reference to the testimony of Mr. Villani, Sr., the Board finds the essence of his testimony to have been as follows:

(a) The utility services are proposed to be underground.

(b) Existing sewer capacity will be utilized.

(c) There will be a fire suppression system for both the commercial and residential uses.

(d) With reference to landscaping, it was stated that the applicant would do whatever was necessary and required.

(e) The witness represented that every apartment will be wired for cable and satellite.

6. The applicant also produced as a witness in support of this application a professional planner, LESTER NEBENZAHL.

The apparent purpose of the testimony of Mr. Nebenzahl was to provide a legally sufficient planning and zoning basis for the nature of the relief being sought by this applicant.

With reference to the testimony of Mr. Nebenzahl, the Board finds the important elements thereof to have been as follows:

(a) The witness had reviewed all relevant documents involved in this matter and had also reviewed applicable Dunellen Ordinances, as well as the Borough Master Plan.

(b) He reiterated the earlier testimony concerning the size and nature of the proposed new building, and also stated that the subject lot had a lot area of 7,402.5 square feet, with a lot frontage of 49.4 feet.

(c) The witness noted that there were similar mixed uses on both sides of North Avenue in the area of the subject property, and also that this area had been designated for re-development as a part of Phase 2.

(d) It was further noted by Mr. Nebenzahl that the existing zoning permits such uses as are being proposed, and that, therefore, the only variances being required were (c) or bulk variances.

(e) With reference to the aforesaid (c) variances, the witness opined that all were (c)(2) or flexible (c) variances in that the benefits to be obtained from the approval of such variances far outweighed any detriments which might be occasioned thereby.

He felt that all of the said benefits were related to objectives of the Municipal Land Use Law.

(f) Mr. Nebenzahl then went on to explain what he perceived to be the benefits to be gained from the approval of this application, and essentially summarized same as follows:

(1) This application would promote an appropriate use and density of land and would result in the removal of an outdated structure and replace it with a state of the art building.

(2) He opined that the approval of this application would essentially constitute a re-development project at no cost to the Borough, and would encourage other Borough landowners to upgrade, rehabilitate and/or update their properties.

(3) The implementation of this would promote a desirable visual environment in that the new building would be aesthetically superior to the existing building.

(4) With reference to the satisfaction of the required negative criteria, Mr. Nebenzahl stated that there would be no substantial detriment to other area property owners as the proposed uses are permitted by Ordinance and are compatible with surrounding land uses.

(5) Concerning the issue of substantial impairment of the Zone Plan or Zoning Ordinance, the witness stated that there would be no such impairment by the approval of this application as the proposed uses are permitted by the Land Use Ordinance, and most of the variances, except for the density issue, are de minimis and reflect existing conditions in the general neighborhood.

(6) In addressing the density variance, the witness noted that the legal standard for determining same was whether the deviation from the standard in question adversely affected the suitability of the site for the proposed used.

In addressing this particular issue, the witness referred to the Dunellen Redevelopment Plan, and opined that even at the density proposed in the instant application, the approval of this application would further the goals of the Redevelopment Plan as it would satisfy many of said goals as referenced in the Plan.

For example, Mr. Nebenzahl felt that this application would meet the demands of the contemporary market, would promote the creation of job opportunities, would improve property values, and also assist in the accomplishment of comprehensive redevelopment.

He concluded his testimony by observing that this was an example of redevelopment by a private property owner which was encouraged by the Re-Development Plan.

7. As a part of the testimony of Mr. Nebenzahl, the issue of the permitted degree of density was discussed, and it was determined that the maximum dwelling net density for the property location is 20 units per acre.

It was also found and determined that the instant application proposes 47.8 units per acre.

8. Because of the lack of engineering testimony on behalf of the applicant at the first public hearing, a licensed professional engineer, Stephen Parker, was produced as a witness to discuss engineering questions and/or concerns.

It should be noted that at times during the testimony of Mr. Parker, a previous witness, Joseph Villani, Jr., provided some of the required information and /or answers.

9. In any case, the blended testimony produced at the second public hearing indicated essentially as follows:

(a) There would be a hallway on the first floor with a ramp to compensate for differences in elevations.

(b) The proposed front façade had been changed to remove the handrails.

(c) The back of the building has been changed to stucco.

(d) No large machinery would be used in the demolition of the existing building, but same would be razed by manpower for the safety of the structures on either side.

(e) The basement would contain a common laundry room.

(f) There would be a sprinkler system throughout the entire building, including the commercial, residential and basement.

(g) All of the engineering issues and/or questions contained in the January 10th, 2009 report from CME Associates to the Planning Board were discussed and resolved, including but not by way of limitation, by enumerating the following:

(1) The maximum permitted lot coverage is 90%, while the present is 93.5% which will be increased to 96.7% by this proposal.

(2) The applicant requires a variance for parking since nine parking spaces are being proposed, while a total of 29 such spaces are required by applicable Ordinance.

(3) A design waiver is required for the width of the proposed parking spaces as same are required to be not less than 10 feet wide, while the applicant proposes a width of 8 feet 6 inches.

(4) The architecture of the proposed building would be in accordance with the revised architectural plans submitted to the Board.

(5) The mechanical units and common laundry room will be located in the basement.

(6) No loading zone is proposed since it is anticipated that no large deliveries will be made to the site.

(7) The parking area pavement will be broken up and replaced.

(8) A dumpster will be located near the rear property line and will have a masonry enclosure to match the building.

(9) Any sidewalks or curbs will be reconstructed as required by the Borough Engineer.

(10) A variance will be required for the insufficient distance between the parking area and property line as two feet is required and only 1.83 feet is proposed.

(11) It was represented that the anticipated traffic demand should not change, and that access to the parking area will be from Front Street.

(12) The engineer supported the adequacy of the 19 foot access aisle between the last parking stall and the existing building.

(13) The engineer discussed the concern of the Borough Engineer concerning the adequacy of the drainage facilities to handle the

anticipated runoff from the site, and same will have to be done to the satisfaction of the Borough Engineer.

(14) Intent to serve letters will have to be obtained from all utility companies, and all utilities will be installed underground.

(15) The applicant shall provide a minimum lighting level of 25 foot candles for the entire parking area subject to the approval of the Borough Engineer.

(16) The applicant requires a waiver for the requirement that there be an eight foot landscaped buffer adjacent to a residential use.

(17) The applicant is aware that other approvals may be required from NJDOT and other agencies with jurisdiction concerning this application.

The Planning Board finds that the aforesaid constitute the factual basis on which the determination herein is made.

Based upon the foregoing, the Dunellen Planning Board makes the following **CONCLUSIONS:**

1. The instant application is initially being brought to the Planning Board pursuant to the provisions of N.J.S.A. 40:55D-70(d) in that the applicant is seeking a "d" variance because although all uses proposed are permitted, there is a deviation from the maximum permitted density of units per acre, 20 being the maximum permitted, while this application proposes 47.8 units per acre.

Therefore, under the applicable statute, namely N.J.S.A.40:55D-70 (d)(5) a "d" variance is required for any such deviation.

2. The Board concludes that in an application of the foregoing character an applicant must demonstrate legally, sufficient special reasons to justify the granting of the application in question, as well as satisfying the so-called "negative criteria" by showing that the granting of the variance will not work a substantial detriment to public good nor substantially impair the intent purpose of the Zone Plan and Zoning Ordinance.

3. In applying the aforesaid principles to the instant case, the Board concludes and finds that the statutory criteria to justify the granting of the variance relief had been satisfied in this case.

4. With reference to special reasons to justify the granting of the variance relief being sought herein, the Board notes that the Municipal Land Use Law specifically and N.J.S.A. 40:55D-2 provides that one of the purposes of the Act is to encourage municipal action to guide the appropriate use and development of lands in a manner that promotes the public health and safety, morals and general welfare.

The Planning Board in this case finds and concludes that the within application is consistent and would promote the re-development plan of the Borough of Dunellen in that it contributes to the development of the downtown area in a manner consistent with the long-range plan of the Borough in this regard, and would hopefully provide encouragement to other proper4ty owners to also rehabilitate their own properties.

Therefore, the Board finds that this would constitute a special reason as the consistency with the Master Plan and one of the purposes of

the Municipal Land Use Law would be advanced by the granting of this application.

Moreover, the Board finds and concludes that it accepts and agrees with the testimony of the applicant's professional planner, which indicated the following also as special reasons:

(a) The approval of this application would result in the removal of an outdated structure and replace it with a state of the art building.

(b) The approval of this application would essentially constitute a redevelopment project at no cost to the Borough.

(c) This project would promote a desirable visual environment in that the new building would be aesthetically superior to the existing one.

5. With regard to the satisfaction of the "negative criteria" as required by statute, the Board finds and concludes that the granting of the within "d" variance relief will not work a substantial detriment to the public good nor will it substantially impair the intent and/or purpose of the Zone Plan or Zoning Ordinance.

As indicated heretofore in this Resolution, all of the proposed uses are permitted by Ordinance just not in the density proposed herein.

However, in testimony before the board, it was indicated that said proposed density is not inconsistent with the degree of density of other buildings in the area of the subject site, including one approved recently by this board which has a somewhat greater density than that proposed herein.

Therefore, the Board concludes that the negative criteria have been satisfied herein.

6. Once having determined to grant the (d) variance herein, the Board concludes that it would now be appropriate to address and determine the propriety of granting the several bulk variances and waivers also being sought herein.

The Board concludes that that aforesaid are as follows:

(a) Variance for a lot area of 7,402.5 square feet when a minimum of 7,500 square feet is required. Such is a pre-existing condition and cannot be changed because of development on either side.

(b) Variance for a minimum lot width of 49.40 feet when a minimum of 50 feet is required. Same is also a pre-existing condition which will not be changed.

(c) A variance for the continuation of a front yard setback of 4 feet 10 inches, when a minimum of 15 feet is required. Same will not be changed by this application.

(d) A variance for lot coverage where a maximum of 90% is permitted and 96.7% is proposed.

(e) A variance and/or design waiver for number of parking spaces as 29 parking spaces are required herein, while the applicant proposes nine such spaces.

(f) A variance from the requirement that parking areas must be a minimum of 2 feet from the property line, while only 1.83 feet is being proposed herein.

(g) A design waiver is required for the width of the parking spaces to be only 8 feet 6 inches wide rather than the minimum required 10 foot width.

(h) A design waiver from the requirement of an 8 foot landscape buffer adjacent to a residential area, while same is being proposed.

(i) Finally, design waivers are required for failure to provide a loading zone and for the insufficient width of the access aisle on the parking area.

7. With reference to the aforesaid (c) or bulk variances, the Board concludes that same can be granted on the traditional hardship basis related to the condition, configuration and/or situation of the property.

In the alternative, the Board can approve (c)(2) variances based upon the finding that any benefits resulting from the project substantially outweigh any detriment to be occasioned thereby.

In applying the aforesaid principles to the instant situation, the Board concludes that the requested (c) variance can be granted under either the (c)(1) or (c)(2) standards as the variances herein are dictated to a large extent by conditions which cannot be changed thereby constituting the hardship.

Further, the Board also concludes that the benefits to be conferred hereby would greatly outweigh any potential detriments.

8. Based upon the foregoing, the Board concludes that it would also be appropriate to grant preliminary and final site plan approval to this application based upon the facts and circumstances set forth on the record of the Board of the public hearings in this matter.

NOW, THEREFORE, BE IT RESOLVED by the Planning Board of the Borough of Dunellen, County of Middlesex and the State of New Jersey, that pursuant to the foregoing **FINDINGS OF FACT and CONCLUSIONS** this Board hereby approves the variance application of **364-368 NORTH AVENUE ASSOCIATES, LLC** along with its application for certain design waivers and also for preliminary and final site plan approval to construct a certain mixed use building at property known as 364-368 North Avenue, Dunellen, Middlesex County, New Jersey, in the manner proposed in the plans submitted to the Board and consistent with the testimony presented to the Board concerning this application.

BEIT FURTHER RESOLVED that the within variance design waiver and site plan approval is granted on the following terms and conditions:

(1) In accordance with the requirements on New Jersey C.O.A.H., one of the eight residential units must be designated and retained as low income housing and one such unit must be designated and retained as moderate income housing.

(2) The applicant must negotiate in good faith with the Dunellen Parking Authority to obtain the exclusive use of at least an additional eight parking spaces, and will report back to the Planning Board within a reasonable time as to the results of such negotiation.

(3) The applicant must comply with all other conditions of approval as set forth in the February 28th, 2009 Memo from CME Associates to Planning Board Attorney, John M. Lore, Esq., a copy of which is attached hereto and incorporated by reference into this Resolution.

BE IT FURTHER RESOLVED that the applicant must comply with all of the terms and conditions of the January 10th, 2009 report from CME Associates to this Board, copy of which is attached hereto and incorporated herein.

BE IT FURTHER RESOLVED that the within variance approval is strictly limited to the facts and circumstances as set forth in the testimony before the Board at the public hearings conducted in conjunction with this matter, as well as the plans submitted with this application.

BE IT FURTHER RESOLVED that the within variance approval is subject to whatever other approvals are required by the applicant from any other Boards or bodies having jurisdiction over this application, including but not limited to any requirements of the Borough of Dunellen with reference to the issuance of building permits and/or certificates of occupancy.

APPROVED this **23rd** day of **March, 2009**.

ATTEST:

ROGER DORNBIERER, Chairman
Dunellen Planning Board

SCOTT LUTHMAN, Secretary
Dunellen Planning Board

Appendix C

Draft Redevelopment Agreement for Redevelopment of Block 85, Lot 1 (Site #3, Art Color Factory Site)

REDEVELOPMENT AGREEMENT
BY AND BETWEEN

THE BOROUGH OF DUNELLEN, NEW JERSEY,
as the Redevelopment Entity

and

BRUDNER REDEVELOPMENT PARTNERS URBAN RENEWAL, LLC,
as the Redeveloper

Dated as of _____ ___, 2016

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(TO BE INSERTED)

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EXHIBIT H FORM OF FINANCIAL AGREEMENT

THIS REDEVELOPMENT AGREEMENT (referred to herein as the "Agreement" or "Redevelopment Agreement"), dated as of _____ ___, 2016, by and between **THE BOROUGH OF DUNELLEN**, a municipal corporation of the State of New Jersey with offices at the 355 North Avenue, Dunellen, New Jersey 08812, acting in the capacity of a redevelopment entity pursuant to the provisions of the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq., as amended and supplemented (the "Redevelopment Law") and its respective successors and assigns (the "Borough"), and **BRUDNER REDEVELOPMENT PARTNERS URBAN RENEWAL, LLC**, a New Jersey urban renewal entity and limited liability company, and its permitted successors and assigns, with offices at c/o Davanne Realty Co., 80 Main Street, Suite 510, West Orange, New Jersey 07052 (the "Redeveloper" and, together with the Borough, the "Parties").

RECITALS:

WHEREAS, the Borough had previously created the Borough of Dunellen Redevelopment Agency ("Agency") pursuant to §§68-1 through 68-4 of the Borough Code and thereafter adopted Ordinance 04-12 which repealed the creation of the Agency and appointed the Council of Borough of Dunellen ("Council") as the municipal entity responsible for implementing the redevelopment plans and carrying out the redevelopment projects pursuant to the Redevelopment Law; and

WHEREAS, the Borough Council on [ ], 2003, adopted a resolution designating certain properties within the Borough, including Site #3 of the Redevelopment Plan, consisting of property located at South Washington Avenue between the rail line and Columbia Street, identified as Block 85, Lot 1 in the Borough as an area in need of redevelopment in accordance with the Redevelopment Law ("Redevelopment Area"); and

WHEREAS, the Borough Council on February [ ], 2003 adopted an ordinance approving and adopting the Dunellen Downtown Redevelopment Plan Phase I, which was thereafter revised on July 12, 2004, June 6, 2011, August 5, 2013, and November 3, 2014 (collectively the "Redevelopment Plan") in accordance with the Redevelopment Law; and

WHEREAS, the Redevelopment Plan relates to the Redevelopment Area; and

WHEREAS, Redeveloper is the fee simple owner of the Redevelopment Area (also referred to herein as the "Property"); and

WHEREAS, on _____ _____, ~~2015~~2016, the Borough Council adopted resolutions (1) designating Redeveloper as the redeveloper for the Redevelopment Area and (2) authorizing the execution and delivery of this Redevelopment Agreement; 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 redevelopment of the Redevelopment Area in accordance with the Redevelopment Plan, the Parties have determined to execute this

Redevelopment Agreement.

NOW, THEREFORE, for and in consideration of the mutual promises, representations, covenants and agreements contained herein and the undertakings of each Party to the other and such other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound hereby and to bind its successors and assigns, do mutually promise, covenant and agree as follows:

ARTICLE I
DEFINITIONS

SECTION 1.01 **Definitions.** In this Redevelopment Agreement, unless a different meaning clearly appears from the context:

"Adjudicated Reduction" is defined in Section 2.02 hereof.

"Affiliate" means with respect to the Redeveloper, any other Person directly or indirectly controlling or controlled by, or under direct or indirect common Control with the Redeveloper.

"Affordable Units" means low income and moderate income housing units as those terms are defined by N.J.S.A. 52:27D-304.

"Agreement" means this Redevelopment Agreement, as may be amended or supplemented from time to time.

"Applicable Law(s)" means any statute, law, constitution, charter, ordinance, resolution, judgment, order, decree, rule, regulation, directive, interpretation, standard or similarly binding authority which, in any case, shall be enacted, adopted, promulgated, issued or enforced by any Governmental Authority, and/or court of competent jurisdiction that relates to or affects the Parties or either of them, the Project, or any portion thereof, the performance by the Parties of their respective obligations or the exercise by the Parties of their respective rights under this Redevelopment Agreement, including without limitation, the Municipal Land Use Law and the Redevelopment Law.

"Approved Plan" shall mean Redeveloper's proposed plan for redevelopment of the Property attached hereto as **Exhibit G**, as same may be amended and modified during the course of seeking the applicable Governmental Approvals and the build out of the Sub-Phases and Phases of the Project.

"Borough" means the Borough of Dunellen, a political subdivision of the State of New Jersey, and its permitted successors and assigns.

"Borough Costs" is defined in Section 4.02 hereof.

"Borough Council" means the governing body of the Borough.

"Borough Indemnified Parties" means the Borough and its officers, elected officials, agents, employees, contractors and consultants.

"Certificate of Completion" means a certificate or certificates certifying that the Redeveloper has performed its duties and obligations under this Redevelopment Agreement with respect to the Project or any Phase or Sub-Phase thereof.

"Certificate of Occupancy" means a temporary or permanent Certificate of Occupancy, as such term is defined in the New Jersey Administrative Code, issued with respect to all or ~~a~~ any portion~~-~~, Phase or Sub-Phase of the Project Improvements.

"Claim(s)" means any pending or threatened claim, demand, notice, allegation, order, directive, suit, action, cause of action, judgment, lien, demand for arbitration, proceeding, or investigation by any Person.

"Commence[ment of] Construction" means for each separate Phase or Sub-Phase, as such terms are hereinafter defined, the undertaking by Redeveloper of any actual physical construction of ~~any~~ Project Improvements within such Phase or Sub-Phase, excluding Demolition.

"Complet[e], [ed] or [ion]" means for each separate Phase~~, as hereinafter defined~~ or Sub-Phase, as applicable, that all work related to the Project Improvements comprising ~~the Project~~ such Phase, ~~that are~~ Sub-Phase, or any independent portion thereof, required in order that a Certificate of Completion can be issued for the ~~Project~~ respective Phase, Sub-Phase or independent portion thereof, has been completed.

"Completion Dates" are those dates set forth herein for performance of obligations by Redeveloper for each separate Phase~~, as hereinafter defined~~ or Sub-Phase of the Project.

"Control" (including the correlative meanings of the terms "controlled by" and "under common control with"), as used with respect to the Redeveloper, means the possession, directly or indirectly, of the power to direct or cause the direction of the management policies of the Redeveloper, whether through the ownership of voting securities or by contract or otherwise.

"Declaration" is defined in Section 9.04 hereof.

"Declaratory Action" is defined in Section 2.02 hereof.

"Demolition" means (a) the complete demolition and clearance of the existing structures on the Property and (b) the demolition and clearance of infrastructure on the Property to the extent required for the redevelopment of the Property.

"Demolition Security" is defined in Section 15.16 hereof.

"Effective Date" means the date on which this Agreement is fully executed.

"Environmental Law" or "Environmental Laws" means any and all federal, State, regional, and local laws, statutes, ordinances, regulations, rules, codes, consent decrees, judicial or administrative orders or decrees, directives or judgments relating to pollution, damage to or protection of the environment, environmental conditions, or the use, handling, processing, distribution, generation, treatment, storage, disposal, manufacture or transport of Hazardous Substances, presently in effect or hereafter amended, modified, or adopted including, but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. sect. 9601-9675); the Resource Conservation and Recovery Act of 1976 (42 U.S.C. sect. 6901, et seq.), the Clean Water Act (33 U.S.C. sect. 1251, et seq.); the New Jersey Spill Compensation and Control Act (N.J.S.A. 58:10-23.11, et seq.); the Industrial Site Recovery Act, as amended (N.J.S.A. 13:1K-6, et seq.); the New Jersey Underground Storage of Hazardous Substances Act (N.J.S.A. 58:10A-21, et seq.), the New Jersey Water Pollution Control Act (N.J.S.A. 58:10A-1 et seq.); the New Jersey Environmental Rights Act (N.J.S.A. 2A:35A-1, et seq.); the New Jersey Site Remediation Reform Act (N.J.S.A. 58:10C-1 et seq.); and the rules and regulations promulgated thereunder.

"Escrow Account" means the non-interest bearing escrow account established by the Borough pursuant to the terms of the Interim Cost Agreement herein defined.

"Estoppel Certificate" is defined in Section 6.10 hereof.

"Event of Default" means the occurrence of any Redeveloper Event of Default or Borough Event of Default, as the case may be.

"Exhibit(s)" means any exhibit attached hereto which shall be deemed to be a part of this Agreement as if set forth in full in the text hereof.

"Financial Agreement" or "Financial Agreements" means one or more agreements, to be executed by the Borough and the Redeveloper, pursuant to the Long Term Tax Exemption Law with respect to tax exemption of all or a portion of the Project, in a form substantially similar to that attached hereto as **Exhibit H**.

"Foreclosure" is defined in Section 13.03(b) hereof.

"Governmental Approvals" means all necessary reviews, consents, permits or other approvals of any kind legally required by any local, county, state or federal governmental or quasi-governmental entity, including without limitation the Borough and the Planning Board, required to be obtained in order to construct the Project Improvements, including without limitation, any necessary amendment to the Redevelopment Plan to be consistent with the Approved Plan, the execution of the Financial Agreement(s) (with all funding sources therein

approved by ordinance and the Borough having issued the RAB bond offerings), the issuance (following the Demolition and Remediation) of a Response Action Outcome by a licensed site remediation professional pursuant to the New Jersey Site Remediation Reform Act, and the issuance of all permits, approvals and allocations for sanitary sewer and potable water.

"Governmental Authority" 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 over the Project or the Property, including without limitation, the Borough and the Planning Board.

"Hazardous Substance" or "Hazardous Materials" means any substance, chemical or waste that is listed as hazardous or toxic under any applicable federal, state, county or local statute, rule, regulation, ordinance or order.

"Holder(s)" is defined in Section 13.01 hereof.

"Holder Failure" is defined in Section 13.04 hereof.

"Infrastructure Improvements" means any improvements outside the Property, to satisfy the requirements of any applicable Governmental Approvals or within the Property (excepting the Retail/Commercial ~~Space~~Component, Townhouse Component, Rental Residential Component and Remediation) or as required by this Redevelopment Agreement, including, without limitation, (a) all roadways, bridges and on-site and off-site infrastructure improvements, (b) grading, site drainage, drainage outfalls, walkways, subsurface excavation and other site preparatory work for the Project, lighting within on-site and off-site parking areas, landscaping, fire hydrants and interior roadways, in each case, (c) water and sewer service lines for the Property, including hook-ups and service laterals from a building to the curb for water, storm and sanitary sewers, and other utilities, including electric, gas, telephone and cable services (all of which are to be built underground), (d) improvements to be undertaken by third-party utility providers (i.e., electric, water, cable, telephone, etc.), and (e) all other improvements which are or may be required to accommodate construction, occupancy and use of the Project Improvements.

"Interim Cost Agreement" is an agreement entered into on September 13, 2013, between Borough and Redeveloper with respect to, inter alia, the Borough's Interim Costs, as such term is defined therein.

"Interior Plans" is defined in Section 8.02 hereof.

"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, and any

successor agency to which its powers are transferred.

"Party" means each of Borough and Redeveloper.

"Permitted Transfers" is defined in Section 11.04 hereof.

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

"Phase" means the ~~construction and Completion of the Improvements~~ improvements constituting a portion of the Project, as further delineated in Section 2.02 hereof, with the components of an individual Phase being described in **Exhibit A** hereto.

"Phase I Rental Residential Units" mean the improvements and the associated portion of the Property constituting the rental residential units in Phase I, as described in **Exhibit A**.

"Phase II Rental Residential Units" mean the improvements and the associated portion of the Property constituting the rental residential units in Phase II, as described in **Exhibit A**.

~~"Phase III Rental Residential Units" mean the improvements and the associated portion of the Property constituting the rental residential units in Phase III, as described in **Exhibit A.**~~

~~"Phase IV Rental Residential Units" mean the improvements and the associated portion of the Property constituting the rental residential units in Phase IV, as described in **Exhibit A.**~~

"Phase I Townhouse Residential Units" mean the improvements and the associated portion of the Property constituting the for-sale stacked market-rate townhouse units in Phase I, as described in **Exhibit A**.

"Phase II Townhouse Residential Units" mean the improvements and the associated portion of the Property constituting the for-sale stacked~~-~~, market-rate townhouse units in Phase II, as described in **Exhibit A**.

"Phase III Townhouse Residential Units" mean the improvements and the associated portion of the Property constituting the for-sale stacked market-rate townhouse units in Phase III, as described in **Exhibit A**.

~~"Phase IV Townhouse Residential Units" mean the improvements and the associated portion of the Property constituting the for-sale stacked market-rate townhouse units in Phase IV, as described in **Exhibit A.**~~

~~"Phase V Townhouse Residential Units" mean the improvements and the associated~~

~~portion of the Property constituting the for-sale stacked market-rate townhouse units in Phase V, as described in **Exhibit A**.~~

"Plan Change" means any change in a proposed use within the Project Improvements and, with respect to the Site Plan or Plans, any change in the Site Plan or Plans that would result in any material change (a) in the placement, footprint or square footage of any building that would require an amendment to the Site Plan, (b) in the height of any building, (c) in the type of material to be used for the exterior of any building, (d) the exterior appearance of any building, except for color, (e) in the type of material, or any other change that would alter the placement or appearance of any of the roads, roadways, driveways, parking areas (including the number of parking spaces), walkways, sidewalks, or exterior lighting and fixtures that would require an amendment to the Site Plan, (f) in the placement, grade, or point of connection or hook-up, for any site drainage, drainage outfalls, detention basins, water, storm or sewer service lines that would require an amendment to the Site Plan, (g) that would cause any of the utilities to be built or constructed at ground level or grade, and (h) in the Interior Plans or in the Project landscaping or amenities.

"Planning Board" means the Planning Board of the Borough.

"Plans" means those plans and specifications as defined in Section 8.02 hereof.

"Preliminary Site Plan" is defined in Section 8.02 hereof.

"Progress Meeting" is defined in Section 7.01 hereof.

"Project" means the Project Improvements.

"Project Costs" means all costs of the Project, including, without limitation, the design, permitting and construction of the Project Improvements, and the payment of the Borough Costs.

"Project Improvements" means, ~~collectively~~the improvements to be constructed within each Phase or Sub-Phase, ~~construction~~ as applicable, of the Project, consisting of the Retail/Commercial ~~Space~~Component, Townhouse Component, Rental Residential Component, the Infrastructure Improvements, and the Remediation for the respective Project ~~or~~ Phase ~~thereof as set forth in **Exhibit A**~~or Sub-Phase.

"Property" is defined in the Recitals.

"Redeveloper Covenants" shall have the meaning ascribed to such term in Section 9.03 hereof.

"Redeveloper Event of Default" means, with respect to the Redeveloper, an Event of Default as defined in Section 15.01 hereof.

"Redevelopment Agreement" is defined in the Recitals.

"Redevelopment Area" is defined in the Recitals.

"Redevelopment Law" is defined in the Recitals.

"Redevelopment Plan" is as defined in the Recitals, together with any amendments thereto.

"Remediation" means the performance and completion of all investigations and remediation required by a Governmental Authority for all Hazardous Substances, known or unknown, on, under or migrating to or from the Property, and the construction of the remedial systems, all in compliance with Applicable Law and Governmental Approvals, and in accordance with Environmental Laws, to address any environmental contamination or environmental damage on the Property.

"Rental Residential Component" means the Phase I Rental Residential Units~~,~~ and/or the Phase II ~~Rental Residential Units, the Phase III Rental Residential Units, and the Phase IV~~ Rental Residential Units of the Project.

"Request for Qualifications" means the letter dated October 10, 2014 from Charles B. Liebling, the Borough's special redevelopment counsel, to John C. Phillips, Redeveloper's counsel, requesting qualifications and information regarding the Redeveloper.

~~"Sub-Phase" is defined in Section 10.02 hereof.~~

~~"Sub-Redeveloper" is defined in Section 11.04(g) hereof.~~

"Retail/Commercial ~~Space~~Component" means the retail and commercial ~~space~~ component of Phase II described in **Exhibit A**.

"Section" means a section or subsection of this Agreement.

"Site Plan(s)" means the Preliminary Site Plan or Final Site Plan, as applicable, for each respective Phase or Sub-Phase, as applicable, of the Project, depicting those aspects of the Project Improvements to be constructed within such Phase or Sub-Phase, as required pursuant to the Borough's site plan ordinance and pursuant to N.J.S.A. 40:55D-7.

"State" means the State of New Jersey.

"Sub-Redeveloper" is defined in Section 11.04(g) hereof.

"Sub-Phase" shall mean any independent, freestanding portion of a Phase within the Project, including each of the following which shall all be deemed a separate Sub-Phase of the Project: the Phase I Rental Residential Units, the Phase II Rental Residential Units, the Phase I Townhouse Residential Units, the Phase II Townhouse Residential Units, the Phase III Townhouse Residential Units and the Retail/Commercial Component within Phase II.

"Term" means that period of time from the Effective Date of this Agreement until the Borough issues the final Certificate of Occupancy for the last of the Project Improvements~~, or a Phase thereof~~ to be constructed on the Property.

"Townhouse Component" means the Phase I Townhouse Residential Units, the Phase II Townhouse Residential Units, and the Phase III Townhouse Residential Units~~, the Phase IV Townhouse Residential Units, and the Phase V Townhouse Residential Units~~ of the Project.

"Transfer" is defined in Section 11.03 hereof.

"Uncontrollable Circumstance" means the events or conditions set forth below, or any combination thereof, that has (have) had or may reasonably be expected to have a material adverse effect on the rights or obligations of the Parties to this Agreement, provided however, that such act, event or condition shall be beyond the reasonable control of the Party relying thereon as justification for not performing obligation or complying with any condition required of such Party under the terms of this Agreement:

(a) An act of God, such as severe natural conditions such as landslide, lightning strike, earthquake, flood, hurricane, blizzard, tornado or other severe weather conditions, severe sea conditions affecting delivery of materials or similar cataclysmic occurrence, nuclear catastrophe, an act of a public enemy, war, blockade, insurrection, riot, general unrest or general restraint of government and people.

(b) Action or inaction by any Governmental Authority which precludes or delays the Party relying thereon from performing its obligations under this Agreement, including, without limitation any moratorium or delay in the ability to obtain the Utilities necessary to service the Project, provided however, that (i) such action or failure to act shall not be the result of the willful, intentional or grossly negligent action or inaction of the Party relying thereon and/or (ii) such action, inaction, issuance, denial or suspension shall not be the result of the illegal or unlawful actions of the Party relying thereon, shall not constitute an Uncontrollable Circumstance under this paragraph (b).

(c) The suspension, termination, interruption, denial, failure of or delay in the renewal or issuance of any Governmental Approval, provided however, that such suspension, termination, interruption, denial or failure of or delay in renewal or issuance shall not be the result of the willful, intentional or negligent action or inaction of the Party relying thereon and that neither the contesting of any such suspension, termination, interruption, denial or failure of renewal or issuance, in good faith, nor the reasonable failure to so contest (up to thirty (30)

days following such suspension, termination, interruption or failure of renewal or issuance) shall constitute or be construed as a willful, intentional or negligent action or inaction by such Party.

(d) The damage or destruction of the Project Improvements or any portion thereof or of the Property, unless a result of the willful, intentional or grossly negligent action or inaction of Redeveloper or its contractors.

(e) Delay caused by or arising out of legal action or lawsuits filed in challenge of the issuance, grant or denial of any Governmental Approval, including, but not limited to, local Planning Board approval of the Redeveloper's Site Plans.

(f) Delay caused by or arising out of the inability of any contractor or materials supplier to make timely delivery or materials.

(g) Delay caused by or arising due to strike, labor unrest, national emergency or generally recognized materials shortage, or other delays in the industry.

(h) Significant change of market conditions which establish that the Project or any Phase thereof will not be reasonably viable from an economic standpoint, provided, however, that a claim by Redeveloper of the existence of such condition as an Uncontrollable Circumstance shall not be permitted to exceed a period of ~~eighteen (18~~thirty-six (36) months. For purposes of this provision, market conditions shall mean conditions of the real estate and/or financing markets as they affect the Project or any Phase thereof, as demonstrated by an independent market study reasonably acceptable to the Borough.

(i) Holdover by a tenant of Property, which tenant shall be a tenant of the Property as of the Effective Date, subsequent to reasonable notice by Redeveloper or its Affiliate, as landlord.

(j) The occurrence of any new environmental contamination or defect requiring remediation in accordance with Applicable Law in order to develop the Project, provided such new environmental defect was not caused or created by the gross negligence or willful misconduct of Redeveloper.

(k) A change in any Applicable Law, which establishes requirements affecting performance by the Party relying thereon as a justification for its failure to perform any obligation under this Redevelopment Agreement which are materially more burdensome than and adversely inconsistent with the requirements which are applicable to the performance of such obligations as of the Effective Date; provided, however, that actions or inactions of the Borough shall not constitute a change in law giving rise to a suspension of any performance or other obligation of the Borough under this Redevelopment Agreement. Nothing herein shall preclude the Redeveloper from challenging any change in Applicable Law by the Borough or

any action or in action which materially, adversely affects the Project as proposed by the Redeveloper.

The Parties acknowledge that the acts, events or conditions set forth in paragraphs (a) through (~~g~~k) of this definition are intended to be the only acts, events or conditions which may (upon satisfaction of the criteria set forth above) constitute an Uncontrollable Circumstance.

"Utilities" means water, sanitary sewer and storm water provisions, natural gas, electricity, and voice and data transmission facilities.

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

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

ARTICLE II
DESCRIPTION OF PROPERTY AND THE PROJECT IMPROVEMENTS

SECTION 2.01 Intentionally Left Blank.

SECTION 2.02 Proposed Development.

(a) The Project consists of the construction of the Project Improvements in the respective Phase or Sub-Phase, as applicable, of the Project. Within thirty (30) days of the Effective Date, the Borough shall amend the Redevelopment Plan, without any further application or other action by Redeveloper, so that the Redevelopment Plan is consistent with the Approved Plan. The Project shall be constructed consistent with the amended Redevelopment Plan, as it may be further amended from time to time, this Agreement, the Site ~~Plan~~Plans, the Plans and all Applicable Laws.

(b) The Borough and the Redeveloper hereby expressly acknowledge, represent and agree that the Project will be undertaken in three separate Phases, each as described in **Exhibit A**, with Redeveloper having the right to develop each Phase in the Sub-Phases described herein.

(c) Redeveloper shall make good faith efforts to identify tenants for the Project in order to facilitate Redeveloper's ability to obtain financing for the Project and shall make good faith efforts to obtain such financing. Redeveloper shall keep the Borough regularly informed of its marketing efforts for tenants for Phase I~~, Phase II, Phase III,~~ and Phase ~~IV~~II.

(d) Based on discussions with the Elizabeth McKenzie, P.P., the special master appointed by the New Jersey Superior Court, Law Division, in connection with the Borough's ongoing declaratory judgment action, In the Matter of the Application of the Borough of Dunellen, County of Middlesex, Docket No. _____ ("Declaratory Action"), the Borough has determined that the Project is required to have a minimum of 58 Affordable Units, as described in greater detail in **Exhibit A**, in order for the Borough to meet its affordable housing obligations under Applicable Law. However, in the event that the final judgment of the New Jersey Superior Court in the Declaratory Action provides for an affordable housing obligation for the Borough of fewer than 58 Affordable Units (an "Adjudicated Reduction"), the Parties shall adjust the number of Affordable Units for the Project accordingly. ~~In the event that the final judgment of the New Jersey Superior Court in the Declaratory Action provides for an affordable housing obligation for the Borough of more than 58 Affordable Units, the Redeveloper may, in its sole discretion, either terminate this Agreement or enter into an amendment to the Agreement with the Borough to provide for such additional Affordable Units within the Project.~~

SECTION 2.03 **Infrastructure Improvements; Remediation.** Redeveloper shall timely implement the Infrastructure Improvements and Remediation, if any, in order to Complete each Phase or Sub-Phase of the Project ~~or Phase thereof~~. Redeveloper shall provide all performance and maintenance bonds as required by the Governmental Approvals for the respective Phase or Sub-Phase thereof.

SECTION 2.04 **Redevelopment Project Schedule.** ~~**PLEASE REVISE PER OUR DISCUSSION - LOOKING FOR COMPLETION OF FULL PROJECT IN 2 YEARS AFTER GOVERNMENTAL APPROVALS OBTAINED**~~

(a) Phase I Rental Residential Component:

(i) With respect to the Phase I Rental Residential Units, Redeveloper shall:

- A. Submit Plans to the Borough within six (6) months of the later of (i) the Effective Date, and (ii) final non-appealable amendment to the Redevelopment Plan to be consistent with the Approved Plan.

- B. Submit a complete site plan application to the Planning Board within ten (10) months of the late of (i) Effective Date, and (ii) final non-appealable amendment to the Redevelopment Plan to be consistent with the Approved Plan.

- C. At the time of site plan submission, provide the Borough with a schedule for obtaining the remaining Governmental Approvals and Commencing Construction of such Sub-Phase.

- ~~C. Submit complete applications for~~ D. Diligently pursue all Governmental Approvals ~~that are not affected by site plan configuration or density within ten (10) months of the Effective Date~~required for the construction of such Sub-Phase.

~~D. Submit complete applications for all other Governmental Approvals that are necessary to Commence Construction of the Project Improvements by no later than one (1) month from the receipt of final, non-appealable Planning Board approval, or _____, whichever is later.~~

- E. Commence Construction of ~~the Project Improvements~~ such Sub-Phase within three (3) months from the date all final, non-appealable Governmental Approvals necessary to Commence Construction of ~~the Project Improvements~~ such Sub-Phase are obtained.

- F. ~~Obtain~~ Complete construction of such Sub-Phase and apply for a Certificate of Completion for such Sub-Phase within ~~thirty-six (36~~twenty-four (24) months from the ~~date all final, non-appealable Governmental Approvals necessary to Commence~~ Commencement of Construction ~~of the Project Improvements are obtained~~thereof, or _____, whichever is later.

- G. Diligently ~~pursue all Governmental Approvals required for the construction of the Project Improvements and diligently~~ prosecute to Completion all construction of ~~Project Improvements~~ the Sub-Phase once commenced.

(ii) All of the above Completion Dates are subject to, and shall be extended by, Uncontrollable Circumstances.

(iii)~~If~~ If the Redeveloper ~~fails~~ is notified by the Township that it has failed to meet ~~a~~ the Completion Date for the Phase I Rental Residential Units Sub-Phase, Redeveloper shall promptly provide notice to the Borough stating the reason for the failure to complete the applicable task and shall propose a new Completion Date for such Sub-Phase for the Borough's consideration~~. Compliance with the preceding sentence shall not be deemed a cure of any default by Redeveloper resulting from its failure to meet a Completion Date.~~, which new Completion Date shall in all instances be subject to the provisions of Section 14.01(a)(ii) below.

(b) Phase II Rental Residential Component and the Retail/Commercial Component:

~~Phase II:~~

(i) With respect to the Sub-Phases consisting of the Phase II Rental Residential Units and the Retail/Commercial Component within Phase II, Redeveloper shall:

- A. Submit Plans to the Borough simultaneously with the Plans for the Phase I Rental Residential Units.

- B. Submit any revisions to the Plans to the Borough within twelve (12) months of the original submission of the Plans.

- C. Submit a complete site plan application to the Planning Board within ~~twelve (12~~six (6) months of the Completion of the Phase I Rental Residential Units.

- D. At the time of site plan submission, provide the Borough with a schedule for obtaining the remaining Governmental Approvals and Commencing Construction of the respective Phase II Sub-Phases.

- E. Diligently pursue all Governmental Approvals required for the construction of the ~~Project Improvements~~ respective Phase II Sub-Phases and diligently prosecute to Completion all construction of ~~Project Improvements~~ such Sub-Phases once commenced.

- F. ~~Obtain~~ Complete Construction of the respective Phase II Sub-Phases and apply for a Certificate of Completion no later than ~~thirty-six (36~~twenty-four (24) months from the later of (i) the date final, non-appealable Governmental Approvals necessary to Commence Construction of the Project Improvements ~~for Phase II~~ in such Sub-Phases are obtained, and (ii) the date the Phase I Rental Residential Units are Completed.

~~If Redeveloper fails to meet a Completion Date with respect to Phase II, Redeveloper shall promptly provide notice to the Borough stating the reason for the failure to complete the applicable task and shall propose a new Completion Date for Borough's~~

~~consideration. Compliance with the preceding sentence shall not be deemed a cure of any default by Redeveloper resulting from its failure to meet a Completion Date.~~

~~Phase III:~~

~~With respect to Phase III, Redeveloper shall:~~

~~A. Submit Plans to the Borough simultaneously with the Plans for Phase I.~~

~~B. Submit any revisions to Plans to the Borough within twelve (12) months of the original submission of the Plans.~~

~~C. Submit a complete site plan application to the Planning Board within twelve (12) months of the Completion of Phase II.~~

~~D. At the time of site plan submission, provide Borough with a schedule for obtaining remaining Governmental Approvals and Commencing Construction.~~

~~E. Diligently pursue all Governmental Approvals required for the construction of the Project Improvements and diligently prosecute to Completion all construction of Project Improvements once commenced.~~

~~F. Obtain a Certificate of Completion no later than thirty-six (36) months from the date final, non-appealable Governmental Approvals necessary to Commence Construction of the Project Improvements for Phase III are obtained.~~

(ii) All of the above Completion Dates are subject to, and shall be extended by, Uncontrollable Circumstances.

(iii)~~If Redeveloper fails~~ If Redeveloper is notified by the Township that it has failed to meet a Completion Date with respect to ~~Phase III~~the Phase II Rental Residential Component or the Phase II Retail/Commercial Component, Redeveloper shall promptly provide notice to the Borough stating the reason for the failure to complete the applicable task and shall propose a new Completion Date for ~~Borough's consideration. Compliance with the preceding sentence shall not be deemed a cure of any default by Redeveloperresulting from its failure to meet a Completion Date.~~such Phase II Sub-Phases for the Borough's consideration.

(c) Townhouse Component:

(i) Redeveloper shall complete each Sub-Phase of the Townhouse Component within five (5) years from the date Redeveloper Commences construction of the Project Improvements within such respective Sub-Phase.

(ii) The above Completion Date is subject to, and shall be extended by, Uncontrollable Circumstances.

(iii) If Redeveloper is notified by the Township that it has failed to meet a Completion Date with respect to any Townhouse Component Sub-Phase, Redeveloper shall promptly provide notice to the Borough stating the reason for the failure to complete the applicable task and shall propose a new Completion Date for the Borough's consideration. Compliance with the preceding sentence shall not be deemed a cure of any default by Redeveloper or resulting from its failure to meet a Completion Date.

~~Phase IV:~~

~~With respect to Phase IV, Redeveloper shall:~~

~~A. Submit Plans to the Borough simultaneously with the Plans for Phase I.~~

~~B. Submit any revisions to Plans to the Borough within twelve (12) months of the original submission of the Plans.~~

~~C. Submit a complete site plan application to the Planning Board within twelve (12) months of the Completion of Phase III.~~

~~D. At the time of site plan submission, provide Borough with a schedule for obtaining remaining Governmental Approvals and Commencing Construction.~~

~~E. Diligently pursue all Governmental Approvals required for the construction of the Project Improvements and diligently prosecute to Completion all construction of Project Improvements once commenced.~~

~~F. Obtain a Certificate of Completion no later than thirty-six (36) months from the date final, non-appealable Governmental Approvals necessary to Commence Construction of the Project Improvements for Phase IV are obtained.~~

~~If Redeveloper fails to meet a Completion Date with respect to Phase IV, Redeveloper shall promptly provide notice to the Borough stating the reason for the failure to complete the applicable task and shall propose a new Completion Date for Borough's consideration. Compliance with the preceding sentence shall not be deemed a cure of any default by Redeveloper resulting from its failure to meet a Completion Date.~~

~~Phase V:~~

~~With respect to Phase V, Redeveloper shall:~~

~~A. Submit Plans to the Borough simultaneously with the Plans for Phase I.~~

~~B. Submit any revisions to Plans to the Borough within twelve (12) months of the original submission of the Plans.~~

~~C. Submit a complete site plan application to the Planning Board within twelve (12) months of the Completion of Phase IV.~~

~~D. At the time of site plan submission, provide Borough with a schedule for obtaining remaining Governmental Approvals and Commencing Construction.~~

~~E. Diligently pursue all Governmental Approvals required for the construction of the Project Improvements and diligently prosecute to Completion all construction of Project Improvements once commenced.~~

~~F. Obtain a Certificate of Completion no later than thirty-six (36) months from the date final, non-appealable Governmental Approvals necessary to Commence Construction of the Project Improvements for Phase V are obtained.~~

~~If Redeveloper fails to meet a Completion Date with respect to Phase V, Redeveloper shall promptly provide notice to the Borough stating the reason for the failure to complete the applicable task and shall propose a new Completion Date for Borough's consideration. Compliance with the preceding sentence shall not be deemed a cure of any default by Redeveloper resulting from its failure to meet a Completion Date.~~

(d) Notwithstanding the above timelines, the development of any Sub-Phase within Phase II~~,~~ and Phase III~~, Phase IV, and Phase V~~ may commence concurrently with the development of any Sub-Phase within Phase I, in the sole discretion of the Redeveloper, provided that the respective Completion Dates for Phase I, Phase II, and Phase III~~, Phase IV, and Phase V~~ are satisfied (subject to Uncontrollable Circumstances).

(e) Further notwithstanding the above timelines, a failure by any Sub-Redeveloper to meet a Completion Date with respect to any Sub-Phase that may be assigned to such Sub-Redeveloper pursuant to the terms of Section 11.04(g) hereof, shall not trigger a default or Event of Default on the part of Redeveloper or any other Sub-Redeveloper, and in such event, the Borough's only recourse shall be against such Sub-Redeveloper and the respective Sub-Phase of the Project assigned to and assumed by such Sub-Redeveloper pursuant to the terms of this Agreement.

ARTICLE III
INTENTIONALLY LEFT BLANK

ARTICLE IV
FINANCIAL OBLIGATIONS

SECTION 4.01 **The Redeveloper's Financial Commitment.** The Redeveloper warrants that it will use diligent efforts to obtain the requisite equity and debt financing in an amount necessary to implement and Complete the Project, subject to Uncontrollable Circumstances. If Redeveloper's inability to obtain financing results in a failure by Redeveloper to meet Completion Dates or in other Events of Default, Borough shall have all of its remedies as set forth herein.

SECTION 4.02 **Borough Costs.** The Redeveloper agrees to provide funding to the Borough for all reasonable out-of-pocket costs incurred by the Borough in connection with the redevelopment of the Property (the "Borough Costs"). The Borough Costs shall include, but not be limited to any reasonable fees and costs of any professional consultant, contractor or vendor retained by the Borough including attorneys, engineers, technical consultants, environmental consultants, planners and financial consultants, among others, and all out-of-pocket costs and expenses of the Borough, which are incidentally and necessary for the Borough to meet its obligations as it pertains to the Project.

SECTION 4.03 **Payment of Borough Costs.**

(a) The Redeveloper has established an Escrow Account (also referred to as the "Interim Fund"), pursuant to the Interim Cost Agreement, having an initial balance of Twenty Thousand Dollars ($20,000.00). The Interim Fund defined therein shall now be referred to as the "Escrow Account." If the balance of the Escrow Account drops below Five Thousand Dollars ($5,000.00), within ten (10) days of the Borough's request, the Redeveloper will replenish the Escrow Account to Twenty Thousand and 00/100 Dollars ($20,000.00). Simultaneously with such replenishment request, the Borough shall use good faith efforts to provide Redeveloper with a reasonable estimate of the Borough's remaining costs to be paid.

(b) Funds in the Escrow Account will be applied to the payment or reimbursement of the Borough Costs as provided in this Redevelopment Agreement. Prior to making any disbursement from the Escrow Account, written notice of the proposed disbursement shall be mailed to the Redeveloper, setting forth: (i) the amount of the disbursement; (ii) the name of the person, company or entity designated to receive payment; and (iii) a description, in reasonable detail, of the particular cost to be paid or reimbursed in accordance with this Redevelopment Agreement. If the Redeveloper does not object to such disbursement within fifteen (15) days of receipt of such notice, the Redeveloper will be deemed to have approved same. Any dispute concerning payment of the Borough Costs shall be resolved in accordance with the procedures set forth in N.J.S.A. 40:55D-53.2a. Upon the issuance of the Certificate of Completion for Phase ~~V~~ III of the Project, or upon termination of this Redevelopment Agreement, any money remaining in the Escrow Account shall be

disbursed to the Redeveloper, except that the Borough may retain an amount sufficient to cover incurred expenses.

(c) On the Effective Date of this Agreement, the Interim Cost Agreement shall cease to be operative and effective and the terms and obligations contained therein shall be subsumed by the terms contained herein.

SECTION 4.04 **Governmental Approval Fees.** The Redeveloper shall pay all fees, including without limitation, any and all application and permit fees, required by the Borough (in accordance with standard fees provided in the Borough's ordinances) and any other Governmental Authority for the acquisition, development and construction of the Project. Redeveloper shall pay all other fees, including without limitation, any and all permit fees payable by the Borough or Redeveloper to all required Governmental Authorities other than the Borough, or for which the Borough is required to reimburse other Governmental Authorities or is required to pay other third party contractors retained by or on behalf of the Borough to perform services that the Borough would otherwise be required to perform itself. The Borough shall use reasonable efforts to predetermine the amounts of such costs referenced in the preceding sentence and give Redeveloper prior notice thereof.

SECTION 4.05 **Affordable Housing Fees; Agent.**

(a) With respect to the Retail/Commercial ~~Space~~Component, the Redeveloper of such Sub-Phase shall comply with the Statewide Non-Residential Development Fee Act, N.J.S.A. 40:55D-8.1 et seq., as applicable. However, nothing herein shall bar or prevent Redeveloper to protest the payment of these fees, which challenge may include, but shall not be limited to Redeveloper's ability to challenge the underlying statutory obligation to make this payment and/or secure a refund of sums paid as may be permitted by any amendment to modification of or repeal of the Act. Redeveloper expressly reserves the right to withhold payment of seek a refund in the event the Act is tolled or repealed.

(b) The agent for approving the tenants for the Affordable Units shall be ~~hired at the sole discretion of~~ selected by the Borough and approved by the Redeveloper, ~~provided that such agent has~~ which approval shall not be unreasonably withheld, conditioned, or delayed. Such agent shall have the proper certifications and credentials as required by Applicable Law.~~AWAITING EXPLANATION~~

SECTION 4.06 **Long Term Tax Exemption/Redevelopment Area Bond Financing.** It is the expectation of Redeveloper that the financial viability of the Project will require Redeveloper and Borough to agree to a long term tax exemption with a term of at least 30 years and redevelopment area bond financing resulting in proceeds not to exceed $7 million for the Project pursuant to N.J.S.A. 40A:20-1 et seq. and N.J.S.A. 40A:12A-65 et seq., respectively ("PILOT/RAB"). Redeveloper acknowledges that a PILOT/RAB for the Project is subject to separate approval by the Borough's governing body and to Redeveloper's demonstration, to Borough's satisfaction, of the financial need for same. The Parties acknowledge that Redeveloper has provided the Borough with Project financial information necessary for Borough

to evaluate such need. However, in the event that Redeveloper shall determine that the Project requires more than $7 million in redevelopment area bond financing proceeds with respect to the PILOT/RAB, Redeveloper agrees that, within forty-five (45) days from the Effective Date, it shall provide the Borough with Project financial information necessary for the Borough to evaluate and make a decision regarding such increased redevelopment area bond financing. In the event that Borough does not approve a PILOT/RAB on terms acceptable to Redeveloper prior to the date that Redeveloper is required to Commence Construction of any Phase I Project Improvements hereunder, Redeveloper may terminate this Agreement, in which event, any money remaining in the Escrow Account shall be disbursed to the Redeveloper. Such failure to approve by Borough shall not be an Uncontrollable Circumstance.

ARTICLE V
ENVIRONMENTAL MATTERS

SECTION 5.01 **Environmental Compliance.** All costs for Remediation shall be the responsibility of Redeveloper. Redeveloper shall diligently prepare and submit all applications and documentation required to comply with the requirements of all Environmental Laws. The Redeveloper shall also use diligent efforts to obtain all environmental approvals for the Remediation of the Property. The status of Redeveloper's investigation and characterization of contamination on the Property and Redeveloper's plan and timetable for the Remediation thereof is set forth on **Exhibit D** hereof. The information set forth in **Exhibit D** shall be kept current, and, no less frequently than ~~monthly~~quarterly, Redeveloper shall provide Borough with information regarding the implementation of and revisions to the process set forth on **Exhibit D**.

SECTION 5.02 **Redeveloper Indemnification of Borough regarding Hazardous Materials.** Without limitation on any obligation to defend and indemnify under this Article, and without limitation to such obligation which the Redeveloper may have as a matter of law, the Redeveloper shall indemnify, defend, release and hold the Borough Indemnified Parties harmless against (a) all Claims or alleged Claims and response costs and fines and penalties against the Borough Indemnified Parties or the Redeveloper by any Governmental Authority or third party which concern the presence of Hazardous Materials which become present on or within the Property, or the discharge of Hazardous Materials in excess of any limitations provided by Applicable Law, whenever such Materials become present on or within the Property, whether prior to or after the Effective Date, (b) all Claims or alleged Claims against the Borough Indemnified Parties by any Governmental Authority or third party for injunctive relief for the abatement of a nuisance or related to the presence of Hazardous Materials which become present on or within the Property or the discharge of Hazardous Materials in excess of any limitations provided by Applicable Law, whenever such Materials become present on or within the Property, whether prior to or after the Effective Date, and (c) all Claims or alleged Claims of bodily injury or property damage asserted against the Borough Indemnified Parties by third parties which are related to the presence of Hazardous Materials which become present on or within the Property, or the discharge of Hazardous Materials in excess of any limitations provided by Applicable Law, whenever such Hazardous Materials become present on or within the Property whether prior to or after the Effective Date. This indemnity ~~shall survive delivery of the Deed or any termination of this Agreement~~expressly excludes any Claims or alleged Claims, damage, liability, costs or expenses to the extent that same may result from the gross

negligence or willful misconduct of the Borough or any of its employees, representatives or agents.

ARTICLE VI
CONSTRUCTION OF PROJECT IMPROVEMENTS

SECTION 6.01 **Construction of Project Improvements.** The Redeveloper shall construct or cause to be constructed the Project Improvements in accordance with this Agreement and all Applicable Law. Subject to the provisions of Section 2.04 hereof, it is understood and agreed that the Redeveloper ~~will~~ may construct the Project in ~~five~~ three separate Phases: Phase I, Phase II, and Phase III~~, Phase IV, and Phase V~~.

SECTION 6.02 **Relocation of Utilities.** The Redeveloper acknowledges that utility providers may have certain rights with respect to the Property and may own certain facilities located therein. The Redeveloper shall negotiate with, acquire, relocate or otherwise address the existence of these utilities and improvements and easements therefor to construct the Project Improvements. Upon the Redeveloper's request, the Borough shall cooperate in facilitating the installation and/or relocation of any such affected utilities.

SECTION 6.03 **First Source Employment.** The Redeveloper shall make good faith efforts~~-~~, or cause its Construction Manager to make good faith efforts, to employ and shall attempt to provide in its contracts with its contractors and subcontractors that they must make good faith and commercially reasonable efforts to employ qualified residents of the Borough in the construction of the Project ~~Improvements to be constructed by Redeveloper~~, consistent with market wages and the financial success of the Project. If so requested by the Borough, Redeveloper agrees or to cause its Construction Manager (i) to cooperate with the Borough or its designee in developing a plan to coordinate training programs and employment recruitment efforts for Borough residents; (ii) to cooperate with efforts to recruit Borough residents for all employment opportunities in connection with the Project, including participation in Borough job fairs or similar events; and (iii) to meet with appropriate Borough officials to determine the status of recruitment and training efforts, and to plan future employment training and recruitment activities. Notwithstanding anything herein to the contrary, Redeveloper shall not be in default of this Agreement for any claims that it or its Construction Manager or any of their contractors or sub-contractors, did not employ Borough residents.

SECTION 6.04 **No Rent Control.** The Parties agree that the market-rate units of the Project shall not be subject to any rent control or rent stabilization requirements. This provision shall not apply in any way to the Affordable Units. In the event of any conflict or inconsistency between the terms of this Redevelopment Agreement and any Borough rent control or rent stabilization requirements, the terms of this Redevelopment Agreement shall control.

SECTION 6.05 **Affirmative Action.** During the construction of the Project Improvements, the Redeveloper, where applicable, will at all times conform to all Applicable Laws with respect to affirmative action and equal employment opportunities requirements and, if there is any government-sponsored funding for the Project Improvements, those requirements

that are imposed as a condition to receipt of such government-sponsored funding, notwithstanding any other provision of this Redevelopment Agreement to the contrary.

SECTION 6.06 **Nondiscrimination During Construction; Equal Opportunity.** The Redeveloper for itself and its successors and assigns agrees that in the construction of the Project Improvements:

(a) The Redeveloper will not discriminate against any employee or applicant for employment because of race, color, religion, creed, national origin, ancestry, physical handicap, age, marital status, affectional preference or gender. The Redeveloper will ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, creed; national origin, ancestry, physical handicap, age, marital status, or gender. 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 notices on the Property, available to employees and applicants for employment, setting forth the provisions of this nondiscrimination clause.

(b) The Redeveloper will use good faith efforts to cause the foregoing provisions to be inserted in all contracts entered into by the Redeveloper for any work covered by this Redevelopment Agreement.

SECTION 6.07 **Maintenance of Property.** Following commencement of physical construction of the Project Improvements, the Redeveloper will maintain all areas of the Property in conformance with Borough Code.

SECTION 6.08 **Traffic.** The direction, flow and amount of traffic in and around the Property will be addressed during the site plan approval process and construction of the Project Improvements. The Redeveloper shall satisfy all New Jersey Department of Transportation requirements regarding any traffic improvements to Route 28, and all County requirements regarding traffic improvements to South Washington Avenue, and any other requirements to obtain Governmental Approvals.

SECTION 6.09 **Project Roadways.** The interior roadways of the Project are to remain private, with the Redeveloper not being required to post a bond for such roadway improvements. Redeveloper shall be responsible for snow plowing and maintenance costs for such roadways, with the Borough to provide reasonable reimbursement of such costs. No roadway ~~or pedestrian~~ connections to adjacent developments shall be permitted. The Redeveloper shall, within applicable legal requirements, reasonably cooperate with the Borough in rendering reasonable Project ingress and egress compatible with that of adjoining properties, including but not limited to the laying out, design and construction of all roadways, streets and curb cuts on the Project Premises.

SECTION 6.10 **Intentionally Deleted.**

SECTION 6.11 **NJTransit.** Redeveloper and Borough shall cooperate to engage NJTransit in discussions regarding the involvement of NJTransit in improvements, investments, planning, etc. associated with the development of the Project. Notwithstanding the above, however, Redeveloper shall be under no obligation to implement improvements suggested by NJTransit or by the Borough in concert with NJTransit; provided, however, that in the event that NJTransit, the Borough, or another governmental or quasi-governmental entity agrees to implement such improvements, including, but not limited to, access from the Project to the train platform of the Dunellen NJTransit station, Redeveloper shall provide for nominal consideration the necessary easements and/or licenses, provided that such easements and/or licenses do not interfere with the development of the Project or any Phase or portion thereof and provided that such easements and/or licenses affect only the northwestern portion of the Property.~~TO BE REVISED TO ADDRESS NW CORNER OF PROEPRTY~~

SECTION 6.12 **Estoppel Certificates.** Within fourteen (14) days following written request therefor by a Party hereto, or by any Holder, purchaser, tenant or other party having an interest in the Property, the other Party shall issue a signed certificate ("Estoppel Certificate") either stating that this Redevelopment Agreement is in full force and effect and that there is no Event of Default under this Redevelopment Agreement, or stating the nature of the Event of Default, if any. If there is such an Event of Default, the Estoppel Certificate shall also state the manner in which such Event of Default may be cured. No more than a reasonable number of Estoppel Certificates may be requested per year.

SECTION 6.13 **Standards of Construction.** The Project Improvements shall be constructed in a good and workmanlike manner and in accordance with the Governmental Approvals.

~~**Payment of Project Costs.** Unless otherwise required herein ID SUCH COSTS OR DELETE, the Redeveloper shall pay all costs and expenses in connection with work on and services performed in connection with the Project Improvements.~~

~~**Liens.** The Redeveloper shall indemnify and hold the Borough harmless from all liens, or claims or rights to enforce liens, against the Property, or the improvements arising out of any activities or work performed by (or on behalf of) the Redeveloper or labor or materials furnished to the Redeveloper under this Redevelopment Agreement. Without limitation, in all events, not less than ten (10) days prior to the date on which the Redeveloper might be divested of any interest in the Property, or portion thereof, as a result of any such lien, the Redeveloper shall cause any such lien to be lifted and removed, by bonding or other action and shall provide the Borough with acceptable evidence that title is free and clear of such lien.~~

SECTION 6.14 **Cooperation.** The Parties shall fully cooperate with each other as necessary to effectuate the Project Improvements, including any application to the NJDOT or any other Government or quasi-government agency. Such cooperation shall also include 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 obligations hereunder.

SECTION 6.15 **Redevelopment Fee**. In order to offset certain costs incurred and revenues forgone by Borough in connection with the redevelopment of the Property and the development of the Project, and to defray certain expenses of Borough acting as the redevelopment entity, all of which actions have benefitted and will benefit Redeveloper, Redeveloper shall pay to Borough, beginning with the Commencement of Construction of the Phase I Project Improvements and/or Demolition of any existing improvements on the Property (but in no event earlier than _____, 2016), the sum of Twenty Thousand Seven Hundred Dollars ($20,700) monthly, with such payment obligation to end ~~ADD PROVISION REGARDING RAMP UP OF PILOT TO REACH~~ when the property taxes and/or annual service charges paid to the Borough for the Project Improvements total at least Sixty Two Thousand One Hundred Dollars ($62,100) quarterly. In addition, upon the commencement of the payment of property taxes and/or annual service charges to the Borough for the Project Improvements, and prior to the total of same reaching $~~20,700~~ ~~In~~ 62,100 quarterly, the Redeveloper shall receive a credit against the monthly redevelopment fee for any such property taxes and/or annual service charge payments made. By way of non-exhaustive example, upon the payment of a quarterly annual service charge payment of $20,000 to the Borough for the Project Improvements, the next monthly redevelopment fee payment due to the Borough will be reduced by that $20,000 amount to $700. Moreover, in the event of an Adjudicated Reduction, an additional lump-sum payment shall be made to the ~~Township~~ Borough in an amount equal to $_____ for each ~~affordable unit~~ Affordable Unit that is not required to be built pursuant thereto, payable within thirty (30) days following the Adjudicated Reduction. The aforestated amounts shall be and constitute a continuous municipal lien on the Property and the Project Improvements. ~~In order to secure the full and timely payment of such amounts, the Borough on its own behalf reserves the right to prosecute an In Rem Tax Foreclosure action against the Property and the Project Improvements.~~

ARTICLE VII
PROJECT OVERSIGHT

SECTION 7.01 **Progress Meetings**. The Parties shall attend quarterly progress meetings ("Progress Meetings") to report on the status of the Governmental Approvals and the Project Improvements. Progress Meetings may be held more frequently at the request of the Borough. At the request of Borough, Redeveloper shall appear at meetings of the Borough Council to discuss the Project.

ARTICLE VIII
APPLICATIONS FOR GOVERNMENTAL APPROVALS

SECTION 8.01 **Copies to Borough**. The Redeveloper shall provide the Borough with a copy of each application for Governmental Approvals submitted to Governmental Authorities at the same time the Redeveloper submits those applications to such Governmental Authorities, provided that the Borough shall not charge the Redeveloper any review fees for such

applications. Attached hereto as **Exhibit E** is a list of the Governmental Approvals that Redeveloper believes will be required for the Project.

SECTION 8.02 **Borough Review and Approval.**

(a) Prior to Redeveloper's submission of a preliminary site plan/subdivision application ("Preliminary Site Plan") to the Planning Board for the construction of any Sub-Phase within any Phase of the Project ~~(or any Phase thereof)~~, Redeveloper shall submit to the Borough concept plans for the ~~Project or such~~ respective Sub-Phase ("Plans") for its review and approval, not to be unreasonably withheld, conditioned or delayed. The Plans shall include the following information:

(i) Location of buildings, parking areas (vehicular and bicycle), driveways, site features of such Sub-Phase.

(ii) A plan and colorized renderings showing the elevations of the building(s), the exterior treatment of the building(s) including color, type and texture of material(s) to be used, and a sample of the actual construction materials being used on all facades within the Sub-Phase. Such plan and renderings for the retail building facing South Washington Avenue (shown on the Project layout sheet in Exhibit A) shall be consistent with the concept drawing attached hereto as Exhibit F.

(iii) A plan and colorized renderings showing the interiors of the dwelling units, hallways and amenity spaces, including typical color, type and texture of material(s) to be used, finishes, appliances, fixtures, flooring and lighting for such Sub-Phase ("Interior Plans"), all of which shall be reflective of the Project's "luxury" classification.

(iv) A signage plan.

(v) A plan showing ~~Project~~ the respective Sub-Phase landscaping and amenities;

(vi) A plan estimating the timing of any soil or environmental remediation and/or engineering and institutional controls (if any, and subject to NJDEP requirements), final site preparations, foundations, construction, landscaping, installation of drives, sidewalks, and completion of construction, and any information and data necessary to enable the Borough to schedule any public improvements required for the particular Sub-Phase.

~~Identification of the proposed tenants and uses.~~

(vii) A status report on Governmental Approvals for the respective Sub-Phase.

(viii) A traffic impact study for the respective Sub-Phase.

(ix) Such other plans as the Borough may from time to time reasonably require to promote the orderly construction of the ~~Project~~respective Sub-Phase.

(b) The review and approval of the Plans shall be carried out by the Redevelopment Committee of the Borough Council with the advice and consent of the Borough Council. If the Borough determines that the Plans require revision, the revised Plans shall be submitted to the Borough, which shall have a period of fifteen (15) days after receipt thereof to approve the revised Plans or to furnish to the Redeveloper in writing notice of any changes or of any modifications required to be made along with the reason(s) therefor. Upon reasonable request of the Borough, the Redeveloper shall consent to an additional fifteen (15) day period to review the Plans, or any revisions thereof. If changes or modifications shall be required by the Borough, the Redeveloper shall incorporate such changes and modifications and furnish the revisions to the Borough for approval within forty-five (45) days after receipt of written notice thereof. The Redeveloper agrees that the Preliminary Site Plan shall not be filed with the Planning Board without Borough's prior written approval of the Plans and that the Preliminary and Final Site Plan shall reflect the approved Plans. In the event that the Borough shall fail to notify the Redeveloper within thirty (30) days of its receipt of the Plans, or revisions thereof, then the Borough shall be deemed to have accepted such Plans. In performing its review of the Plans, or revisions thereof, the Borough shall not unreasonably withhold its approval of same, nor shall it unreasonably withhold its consent to the Redeveloper's request for additional time to submit any revisions to its Plans.

SECTION 8.03 **Change in Plans.** If at any time there shall be any material Plan Change, for any reason whatsoever, including without limitation, any Plan Change as may be requested or desired by the Redeveloper, or otherwise required by any Governmental Authority, other than the Borough (including the Planning Board or any of the Borough's agencies), or any contractor or sub-contractor, Redeveloper shall promptly notify Borough of same. The Redevelopment Committee of the Borough Council, acting on behalf of the Borough, shall have the right to review such Plan Change as set forth in Section 8.02 or to waive such right. The Redevelopment Committee of the Borough Council shall have fifteen (15) days to ~~approve or disapprove of any such Plan Change, or to waive the right to same, otherwise~~ provide written notice either (i) approving the Plan Change, which approval shall not be unreasonably withheld, conditioned or delayed, (ii) disapproving the Plan Change, which disapproval shall be accompanied with a statement detailing the reasons for such disapproval, or (iii) waiving the right to review such Plan change. If the Borough fails to respond within such fifteen (15) day period such Plan Change shall automatically be deemed approved by the Borough. Notwithstanding the foregoing to the contrary, the Borough may not object to any Plan Change that would render the Project in violation of any law, rule, ordinance or other governmental requirement. In addition to the foregoing, and notwithstanding any provision in this Redevelopment Agreement that may be construed to the contrary, if following construction of any Phase I Sub-Phase, the Redeveloper determines, in its commercially reasonable discretion, that in order for the Project to succeed, the remainder of the Project needs to be re-designed, Redeveloper shall have the right to request a Plan Change for the re-design of the remainder of the Project and the Borough shall reasonably cooperate with such request. In such event, all time periods and payment obligations set forth in

this Redevelopment Agreement, including without limitation the Completion Dates for the remainder of the Project and the obligation to make the monthly development fee payments, shall be tolled for such period of time as Redeveloper reasonably requests in order to effectuate a Plan Change to re-design the remainder of the Project.

SECTION 8.04 **Effect of Review of Plans.** The review of the Plans by the Borough and the Borough Council Redevelopment Committee shall not constitute a representation, warranty or guaranty by the Borough as to the substance or quality of the documents, work or other matter reviewed, approved or accepted. The Redeveloper acknowledges that the Borough has relied on Article XIV hereof, along with its rights to review and approve the Plans, in entering into its obligations under this Redevelopment Agreement.

SECTION 8.05 **Cooperation.**

(a) Upon Redeveloper's request 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 support and assistance to the Redeveloper in facilitating the prompt 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, including the Planning Board, as applicable. Any delay in inspections or issuance of permits or approvals shall be accounted for as an Uncontrollable Delay.

(b) To the extent permitted by Applicable Law, the Borough shall cooperate ~~to~~ with and assist the Redeveloper in applying for any subsidies or funding for the Project from any Governmental Authority.

(c) The Redeveloper and the Borough shall cooperate and use diligent efforts to secure, or cause to be secured, any and all Governmental Approvals which may be required to be obtained from any Governmental Authority having jurisdiction over the Project Improvements. The Borough shall fully cooperate with the Redeveloper in obtaining the Governmental Approvals, at no expense to Borough, including without limitation, execution (as a co-applicant) of any application relating to such Governmental Approvals.

SECTION 8.06 **Notice of Commencement.** At least ten (10) days prior to the date that the Redeveloper expects to commence construction of the Project Improvements for a particular Phase or Sub-Phase, the Redeveloper shall notify the Borough of the estimated date that construction will commence.

ARTICLE IX
REPRESENTATIONS AND WARRANTIES; REDEVELOPER COVENANTS

SECTION 9.01 **Representations and Warranties by the Redeveloper.** In addition to, but not limited by, any and all other representations and warranties of the Redeveloper contained in this Agreement, the Redeveloper hereby represents and warrants the following to the Borough

for the purpose of inducing the Borough to enter into this Redevelopment Agreement and to consummate the transactions contemplated hereby, all of which shall be true as of the date hereof:

(a) The Redeveloper is a limited liability company organized under the laws of the State, is in good standing under the laws of the State, 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 Redevelopment Agreement.

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

(c) This Redevelopment Agreement has been duly authorized, executed and delivered 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.

(d) 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.

(e) 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.

(f) No indictment has been returned against any partner, member or officer of the Redeveloper with respect to any transaction contemplated by the terms of this Redevelopment Agreement.

(g) There is no pending or, to Redeveloper's actual knowledge, threatened litigation that would prevent the Redeveloper from performing its duties and obligations hereunder.

(h) There are no suits, other proceedings or investigations pending or, to Redeveloper's actual knowledge, threatened against the Redeveloper that would have a material adverse effect on the financial condition of the Redeveloper.

(i) 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 as of the Effective Date, materially accurate, and the Redeveloper shall continue to inform the Borough

of any material and adverse changes in the documentation submitted. The Redeveloper acknowledges that the facts and representations contained in the information submitted by the Redeveloper are a material factor in the decision of the Borough to enter into this Redevelopment Agreement.

(j) The Redeveloper is capable of developing, designing, and constructing the Project Improvements.

(k) The cost and financing of the Project is the responsibility of the Redeveloper. Absent an agreement to the contrary, the Borough shall not be responsible for any cost whatsoever in respect to same.

(l) The ownership structure of the Redeveloper is set forth in **Exhibit B** attached hereto. The Redeveloper shall, at such times as the Borough may request, furnish the Borough with a complete statement subscribed and sworn to by a partner, member or officer of the Redeveloper, setting forth all of the ownership interests of the Redeveloper and the extent of their respective holdings.

(m) Redeveloper's responses to Sections II E., III, and IV E. of the Borough's Request for Qualifications continues to be true and correct, as said responses may be revised and updated from time to time.

SECTION 9.02 **Representations and Warranties by the Borough.** In addition to, but not limited by, any and all other representations and warranties of the Borough contained in this Redevelopment Agreement, the Borough hereby represents and warrants the following to the Redeveloper for the purpose of inducing the Redeveloper to enter into this Redevelopment Agreement and to consummate the transactions contemplated hereby, all of which shall be true as of the date hereof:

(a) The Borough has the legal power, right and authority to enter into this Redevelopment 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) This Redevelopment 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 Applicable Laws presently in effect and the execution and delivery thereof shall not, with due notice or 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.

(c) To the best of the Borough's knowledge and belief, there is no pending litigation that would in any way (i) contest or seek to invalidate the Redeveloper's ability to

commence performance of its obligations under the Redevelopment Agreement, or (ii) prevent the Borough from performing its duties and obligations hereunder.

(d) There are no suits, other proceedings or investigations pending against the Borough that would have a material adverse effect on the Borough's financial condition.

(e) To the best of the Borough's knowledge and belief, the Redevelopment Plan has been adopted in accordance with all Applicable Laws at the time of its adoption.

SECTION 9.03 **Delivery of Documents by the Redeveloper.** The Redeveloper shall deliver the following fully executed collateral documents simultaneously with the execution of this Redevelopment 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.

SECTION 9.04 **Redeveloper Covenants.** In addition to, but not limited by, any and all other covenants and agreements of the Redeveloper contained in this Redevelopment Agreement, the Redeveloper covenants and agrees to the following for the purpose of inducing the Borough to enter into this Redevelopment Agreement and to consummate the transactions contemplated hereby (collectively, "Redeveloper Covenants"):

(a) Commence construction of the Project Improvements within the time set forth in this Redevelopment Agreement, subject to all provisions of the Agreement;

(b) Upon completion of the development and construction of the Project Improvements in any Phase or Sub-Phase, as applicable, the Redeveloper shall use diligent efforts to obtain all Governmental Approvals authorizing the occupancy and uses of the Project Improvements for the purposes contemplated hereby.

(c) The Redeveloper shall not discriminate against or segregate any person, or group of persons, on account of race, color, religion, creed, national origin, ancestry, physical handicap, age, marital status, affectional preference or gender in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Project Improvements, 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 tenants, lessees, subtenants, sublessees, or vendees of the Project Improvements.

(d) The Redeveloper shall not restrict the sale, lease, sublease, rental, transfer, use, occupancy, tenure, or enjoyment of the Project Improvements on the basis of race, color, religion, creed, national origin, ancestry, physical handicap, age, marital status, affectional preference or gender of any person.

(e) The Redeveloper shall promptly notify the Borough of any ~~Plan Change~~ material adverse change in its financial condition from the information provided to the Borough by the Redeveloper indicating the Redeveloper's financial capability to develop and construct the Project Improvements.

(f) The Redeveloper shall not use the Property or any Project Improvements in a manner that is inconsistent with the Redevelopment Plan, this Redevelopment Agreement, and the Governmental Approvals.

(g) The Redeveloper shall not use the Property, Project Improvements or any part thereof for which a Certificate of Completion has not been issued, as collateral for an unrelated transaction.

(h) The Redeveloper shall promptly pay and discharge all taxes, payments in lieu of taxes, assessments and other levies imposed upon it, the Property and/or the Project Improvements, or any other of its property located within the Borough, before the same shall become in default.

(i) Redeveloper hereby waives and relinquishes any and all statutory, contractual, common law or other claim, right or claim of right, action, or cause of action it may otherwise have, at law, in equity, or otherwise, to challenge, bring suit or any other legal action, or otherwise use as a defense, in any and all legal, administrative, judicial or other proceedings, including without limitation, any condemnation proceeding, or before any Governmental Authority, or arbitration board or panel, or otherwise, with respect to any and all of the following: (i) the determination, decision, finding, conclusion or action, official or otherwise, by the Borough that the Property is an area in need of redevelopment pursuant to, and in accordance with, the Redevelopment Law, and (ii) that the Property is properly, appropriately, and for all purposes, legally, included within the Redevelopment Area.

SECTION 9.05 **Recording, Project Covenants.** Upon the execution and delivery of this Redevelopment Agreement, the Redeveloper shall file and record against the Property a Declaration of Covenants and Restrictions in the form attached hereto as **Exhibit C** (hereinafter referred to as the "Declaration") in the Office of the Middlesex County Clerk, at the Redeveloper's expense, which Declaration shall, inter alia, disclose the existence of the above covenants and all restrictions on Transfers, their running with the Property, and other information as required by law. Redeveloper shall deliver to the Borough a copy of such filed and recorded Declaration. Upon issuance of a Certificate of Occupancy for the Project or any particular Phase or Sub-Phase, as applicable, the Borough will provide a rescission letter removing the Declaration of Record for the Project Improvements forming a part of the particular Phase or Sub-Phase thereof.

SECTION 9.06 **Effect and Duration of the Covenants.** Except as otherwise set forth herein, the agreements and covenants in this Redevelopment Agreement shall run with the Property until a Certificate of Completion has been issued for the respective Project Improvements ~~(or~~ within an applicable Phase or Sub-Phase thereof~~)~~, and until such time they

shall, in any event, and without regard to technical classifications or designation, legal or otherwise, and except only as otherwise specifically provided in this 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 Redeveloper, its successors and assigns and every successor in interest therein, and any party in possession or occupancy of the Property or any part thereof.

SECTION 9.07 **Enforcement of Covenants by the Borough.** In amplification, and not in restriction of the provisions of this Article IX, it is intended and agreed that the Borough and its successors and assigns shall be deemed beneficiaries of the agreements and covenants set forth in this Redevelopment Agreement, both for and in their own right but also for the purposes of protecting the interests of the community and other parties, public or private, in whose favor or for whose benefit such agreements and covenants have been provided. Such agreements and covenants shall run in favor of the Borough for the entire period during which such agreements and covenants shall be in force and effect, or in favor of which such agreements and covenants relate. The Borough shall have the right, in the event of any breach of any such agreement or covenant, to exercise all the rights and remedies and to maintain any actions or suits at law or in equity or other proper proceedings to enforce the curing of such breach of agreement or covenant, to which it or any other beneficiaries of such agreement or covenant may be entitled, including, without limitation, all other rights as more specifically set forth in Article XIV and Article XV hereof. This Section is not intended to confer standing to sue on any party other than the Borough.

ARTICLE X
CERTIFICATES OF OCCUPANCY AND COMPLETION

SECTION 10.01 **Certificate of Occupancy.** Upon completion of any ~~Project Improvements, or portion thereof, eligible to receive a Certificate of Occupancy~~structure or building within a Phase or Sub-Phase, the Redeveloper shall apply to the appropriate governmental officer or body for a Certificate of Occupancy for such Project Improvements, or portion thereof. The Borough hereby acknowledges that with respect to the Certificate of Occupancy requirements for the Affordable Units under the New Jersey Council on Affordable Housing regulations and other Applicable Law, as long as the Project is in compliance with the Declaratory Action, the issuance of Certificates of Occupancy for any townhomes or units within the Townhouse Component of a Phase or Sub-Phase shall not be dependent upon or held up by Completion of the Affordable Units within the Rental Residential Component of such Phase or Sub-Phase.

SECTION 10.02 **Certificate of Completion.** The completion of any Phase~~, or independent, freestanding portion thereof ("Sub-Phase"),~~ or Sub-Phase shall be evidenced by a certificate of the Borough in recordable form ("Certificate of Completion") accepting the terms of a certificate of the Redeveloper, delivered no later than ten (10) days following the issuance of the final Certificate of Occupancy for such Phase, ~~or~~ Sub-Phase or any portion thereof, stating that: (a) the applicable Project Improvements have been completed (excluding any normal and

customary tenant improvements) in accordance with the all Governmental Approvals and Applicable Laws and that all labor, services, materials and supplies used in connection therewith have been paid for or adequate security has been posted in connection therewith; and (b) a Certificate of Occupancy, if required, and any other permissions required, if any, of Governmental Authority for the occupancy and use of all portions of the applicable Project Improvements (excluding vacant portions of any building) for the purposes contemplated by this Redevelopment Agreement have been obtained. Notwithstanding any provision in this Redevelopment Agreement that may be construed to the contrary, the Borough hereby expressly acknowledges that the issuance of a Certificate of Occupancy for any individual townhome, building or unit within the Project or any Sub-Phase thereof shall be conclusive determination that such townhome, building or unit has been completed in accordance with the terms of this Redevelopment Agreement and Applicable Laws and that such townhome, building or unit is released from all obligations, liabilities and covenants hereunder and same shall no longer be subject to eminent domain as a result and the conditions and requirements of N.J.S.A. 40A:12A-9. The Borough shall not unreasonably withhold or delay the delivery of a Certificate of Completion with respect to any Phase or Sub-Phase. If the Borough determines that the Redeveloper is not entitled to a Certificate of Completion, the Borough shall, within fifteen (15) days of receipt of Redeveloper's written request for a Certificate of Completion, provide the Redeveloper with a written statement of the items to be addressed or remedied to furnish a Certificate of Completion. If the reason for the non-issuance is confined to the availability of specific minor finish items, the Borough will issue its Certificate of Completion upon the posting of a bond (or other reasonably satisfactory security) by the Redeveloper with the Borough in an amount representing 125% of the value of the work not yet completed unless Completion of such work is covered by and secured by a bond or other security reasonably acceptable to the Borough. Upon the Completion of the Project (or any Phase ~~or~~, Sub-Phase or portion thereof) in accordance with the terms hereof, the conditions that were found and determined to exist at the time the Redevelopment Area was determined to be in need of redevelopment shall be deemed to no longer exist with respect to the corresponding portion of the Property, and same shall no longer be subject to eminent domain as a result and the conditions and requirements of N.J.S.A. 40A:12A-9 shall be deemed to have been satisfied with respect to the corresponding portion of the Property.

~~**As-Built Plans**. Within ninety (90) days following the issuance of a Certificate of Completion by the Borough under this Agreement, Redeveloper shall be required to submit "as-built" site plans for the applicable Phase that are final in nature and that reflect compliance with the Governmental Approvals and the Site Plan Approval.~~

ARTICLE XI
TRANSFERS

SECTION 11.01 **Prohibition Against Speculative Development.** The Redeveloper covenants that its undertakings pursuant to this Redevelopment Agreement shall be for the purpose of redevelopment of the Property and not for speculation in land holding.

SECTION 11.02 **Prohibition Against Transfers.**

(a) The Redeveloper recognizes that, in view of (i) the importance of the redevelopment to the general welfare of the community; (ii) the public assistance to be made available by law and by the Borough on the conditions stated herein, for the purpose of making such redevelopment possible; and (iii) the fact that a change in ownership or control of the Redeveloper, or any other act or transaction involving or resulting in a change in ownership or control of the Redeveloper to the degree thereof, is for practical purposes a transfer or disposition of the property interest then owned by the Redeveloper, the qualifications and identity of the Redeveloper and its principals are of particular concern to the Borough, no voluntary or involuntary successor in interest of the Redeveloper shall acquire any interest in or rights or powers under this Redevelopment Agreement except as expressly set forth herein.

(b) With respect to Phases~~-~~, Sub-Phases (or portions thereof) for which a Certificate of Completion has not been issued, during the period between the Effective Date and the Completion of the Project as evidenced by the issuance of Certificates of Completion for all Phases, the Redeveloper shall, at such time or times as the Borough may request, furnish the Borough with a complete statement subscribed and sworn to by the managing partner, managing member or other executive officer or member of the Redeveloper, setting forth all of the partners, both general and limited, managing members, shareholders, or other owners of equity interests of the Redeveloper and the extent of their respective holdings.

SECTION 11.03 **Retention of Title to Property; Redeveloper to Maintain its Existence.** Except where expressly permitted hereunder, during the term of this Redevelopment Agreement, the Redeveloper shall not, prior to the issuance of the Certificate of Completion for ~~a~~ any Phase or Sub-Phase: (a) effect or permit any change, directly or indirectly, in the ownership or control of the applicable Property, Project Improvements, or any portion thereof, or Redeveloper (b) assign or attempt to assign this Redevelopment Agreement or any rights herein, or (c) make any total or partial sale, transfer, or conveyance of the whole or any part of its interest in the applicable Property or Project Improvements (individually and collectively, a "Transfer").

SECTION 11.04 **Permitted Transfers.** The Redeveloper, without violating the provisions of Section 11.02 or Section 11.03 hereof, may effect the following Transfers ("Permitted Transfers"), without the necessity of further action by the Borough; provided that the requirements set forth in Section 11.05 have been satisfied:

(a) security for, and only for, the financing necessary to enable the Redeveloper to perform its obligations under this Redevelopment Agreement with respect to the Completion of the Project Improvements and any other purpose authorized by this Redevelopment Agreement;

(b) a mortgage or mortgages and other liens and encumbrances (including mechanic's liens) for the purposes of financing the acquisition, development, construction and marketing of the Project;

(c) utility and other development easements;

(d) environmental covenants and restrictions imposed by a regulatory agency as a condition of any permit or approval;

(e) the Transfer, in the aggregate, of less than ten (10%) percent of the ownership interest of the Redeveloper;

(f) any leasing or sale of a unit within any Phase or Sub-Phase, including, the Phase I Rental Residential Units, the Phase I Townhouse Residential Units, the Phase ~~I Townhouse~~ II Rental Residential Units, the Phase II ~~Rental Residential Units, the Phase II~~ Townhouse Residential Units and Retail/Commercial Component, ~~the Phase III Rental Residential Units,~~ and the Phase III Townhouse Residential Units~~, the Phase IV Rental Residential Units, the Phase IV Townhouse Residential Units, the Phase V Townhouse Residential Units, or the Retail/Commercial Space~~, as applicable, in the ordinary course of business, provided that the closing on such lease or sale occurs following the issuance of a Certificate of ~~Completion~~ Occupancy as to the applicable Phase~~ or~~, Sub-Phase or portion thereof;

(g) a Transfer to (and corresponding assumption by) a transferee (a "Sub-Redeveloper") of ~~all~~ the rights and obligations as Redeveloper hereunder applicable to ~~the Townhouse Component, Rental Residential Component and/or the Retail/Commercial Space~~any Sub-Phase of the Project, including, without limitation, the right to develop ~~the Townhouse Component~~any Sub-Phase within any Phase, ~~the Rental Residential Component and/or the Retail/Commercial Space,~~ as applicable, provided that any such Transfer (and corresponding assumption) shall occur subsequent to the Redeveloper's obtaining ~~all Governmental Approvals and completion of all Remediation for the Townhouse Component, the Rental Residential Component and/or the Retail/Commercial Space, as applicable~~the Governmental Approvals necessary to Commence Construction of the Phase I Rental Residential Units, including, but not limited to, Preliminary and Final Subdivision Approval for the Phase I Residential Units, and provided that any such proposed transferee:

(i) shall be a reputable homebuilder (for the Townhouse Component and/or the Rental Residential Component) and/or a reputable mixed-use/commercial developer (for the Retail/Commercial ~~Space~~Component);

(ii) shall have the qualifications and financial responsibility, as reasonably determined by the Borough, necessary and adequate to fulfill the obligations undertaken in this Agreement by the Redeveloper; ~~and~~

(iii) by instrument in writing reasonably satisfactory to the Borough and in recordable form, shall, for itself and its successors and assigns, and expressly for the benefit of the Borough, have expressly assumed ~~all of~~ the applicable obligations of the Redeveloper under this Redevelopment Agreement and agree to be subject to ~~all~~ the applicable conditions and restrictions to which the Redeveloper is subject~~,~~ with respect to the respective Townhouse Component, Rental Residential Component and/or Retail/Commercial ~~Space~~ Component only, as applicable, and subject to the requirements of Section 11.07 of this Agreement~~.~~; and

(iv) by instrument in writing reasonably satisfactory to the Borough shall, for itself and its successors and assigns, enter into an agreement with the Redeveloper and any other Sub-Redeveloper, as applicable, for the shared use of Project infrastructure, including, but not limited to, stormwater/drainage, utilities, and access.

For purposes of this Section 11.04(g), there may be up to two Sub-Redevelopers (not including the Redeveloper) for the Project: one Sub-Redeveloper for the Townhouse Component and one Sub-Redeveloper for the Rental Residential Component and Retail/Commercial ~~Space~~Component.

(h) any contract or agreement with respect to any of the foregoing exceptions.

SECTION 11.05 **Notice of Permitted Transfers.** Except as further set forth below, with respect to any Permitted Transfers, the Redeveloper shall provide to the Borough written notice thereof no more than twenty (20) days following such Permitted Transfer, including a description of the nature of such Permitted Transfer, and the name(s) and address(es) of the transferee and any parties, individuals and/or entities comprising such transferee. In connection with a Permitted Transfer involving a ground lease, purchase option agreement, contract of sale or conveyance to an urban renewal entity, at closing thereon, the Redeveloper shall cause the transferee to execute such documentation as is reasonably requested by the Borough in order to assure that the transferee has assumed all of the Redeveloper's obligations under this Redevelopment Agreement as to the Property and/or Project Improvements, or any portion thereof (if the Redeveloper's right, title and interest in the Property and/or Project Improvements is being transferred). The Redeveloper shall exercise diligent efforts with respect to the provisions of any documentation relating to the Permitted Transfer as the Borough may reasonably request. With respect to Permitted Transfers involving a ground lease, purchase option agreement, contract of sale or conveyance to an urban renewal entity, the Redeveloper shall provide to the Borough written notice thereof no less than twenty (20) days prior to such Permitted Transfer, including a description of the nature of such Permitted Transfer, and the name(s) and address(es) of the transferee and any parties, individuals and/or entities comprising such transferee.

SECTION 11.06 **Transfers Void.** Any transfer by Redeveloper in violation of this Redevelopment Agreement shall be a Redeveloper Event of Default and shall be null and void ab initio. Such default shall entitle the Borough to seek all remedies available under the terms hereof, including termination of this Redevelopment Agreement, and Borough may also seek equitable relief to cause the reversal of the transfer. The Declaration shall contain a restriction against Transfers as set forth in Section 11.02 and, in addition, shall provide that in the event of any attempted transfer in violation of the restriction in Section 11.02, the Borough shall be entitled to the ex parte issuance of an injunction restraining such Transfer, and the recovery of reasonable legal fees and related expenses of the Borough in connection with any such legal action. Upon the recording of the Declaration in the Office of the Middlesex County Clerk, the provision affording such injunctive relief shall have the same force and effect as a Notice of Lis Pendens.

SECTION 11.07 **Assignment/Assumption of Rights and Obligations with respect to Transfer of the Townhouse Component, the Rental Residential Component and/or the**

Retail/Commercial ~~Space~~Component. ~~Redeveloper and the Transferees of the Townhouse Component, the Rental Residential Component and/or the Retail/Commercial Space shall be jointly and severally liable for performance under this Redevelopment Agreement.~~ Upon the Transfer of the Townhouse Component, the Rental Residential Component and/or the Retail/Commercial Component, as applicable, in accordance with Section 11.04(g) of this Agreement, with no further or other actions required by Redeveloper, Sub-Redeveloper(s), or Borough:

(a) Redeveloper shall have no rights, no obligations and no liabilities whatsoever under the Relevant Provisions (as defined below) with respect to the Townhouse Component, the Rental Residential Component and/or the Retail/Commercial Component, as applicable;

(b) the Borough shall have no recourse against Redeveloper with respect to the Townhouse Component, the Rental Residential Component and/or the Retail/Commercial Component, as applicable;

(c) the Sub-Redeveloper shall have all the rights, obligations and liabilities under the Relevant Provisions with respect to only the Townhouse Component, the Rental Residential Component and/or the Retail/Commercial Component, as applicable; and

(d) the Borough shall have recourse against the Sub-Redeveloper only with respect to the Townhouse Component, the Rental Residential Component and/or the Retail/Commercial Component, as applicable to such Sub-Redeveloper. As such, a default by a Sub-Redeveloper shall not be deemed a default by Redeveloper or any other Sub-Redeveloper.

"Relevant Provisions" means the following provisions of the Agreement: Article II, Article IV, Article VI, Section 7.01 (Article VII), Article VIII, Article IX, Article X, Article XI, Article XII, Article XIII, Article XIV, Article XV, and Article XVI. Accordingly, upon such Transfer of the Townhouse Component, the Rental Residential Component and/or the Retail/Commercial Component, as applicable, each Relevant Provision shall be (and shall deemed to be) amended to implement the provisions of this Section 11.07. By way of non-exhaustive example, upon a Transfer of the Townhouse Component, each reference in each Relevant Provision to "Redeveloper" means the Sub-Redeveloper to the extent such Relevant Provision is applicable to the Townhouse Component.

Moreover, notwithstanding the Transfer of any Townhouse Component, Rental Residential Component and/or Retail/Commercial Component to a Sub-Redeveloper (or Sub-Redevelopers), Article V of the Agreement shall apply only to the undersigned Redeveloper and, as applicable, those portions of the Project Improvements and Property retained by the undersigned Redeveloper. The Borough shall have no recourse against a Sub-Redeveloper with respect to Article V of this Agreement.

ARTICLE XII
INDEMNIFICATION; INSURANCE

SECTION 12.01 **Redeveloper Indemnification.**

(a) The Redeveloper covenants and agrees, at its expense, to pay and to indemnify, protect, defend and hold the Borough Indemnified Parties harmless from and against all liability, losses, damages, demands, costs, claims, lawsuits, administrative proceedings, fines, penalties, and expenses (including attorneys' fees and court costs) of every kind, character and nature resulting, wholly or partially, from the condition, use, possession, conduct, management, planning, design, acquisition, construction, installation, financing, leasing or sale of the Property and/or the Project Improvements, including but not limited to, (i) the death of any person or any accident, injury, loss, and damage whatsoever to any person or to the property of any person which shall occur on or adjacent to the Property and/or Project Improvements and which results, wholly or partially, from any negligence or willful misconduct of Redeveloper, its agents, servants, employees, or contractors, but excluding damage, liability, costs and expenses to the extent that same may result from gross negligence or willful misconduct of the Borough or any of the Borough Indemnified Parties, ~~its employees, representatives or agents,~~ or (ii) any lawsuit or other proceeding commenced by any person or entity, because of action(s) or omissions taken by the Redeveloper, its contractors, employees, agents, representatives and elected or appointed officials in connection with the Property and/or Project Improvements or this Redevelopment Agreement; and

(b) The Redeveloper shall defend, indemnify and hold harmless the Borough Indemnified Parties ~~and its officers, agents, employees, contractors, and consultants~~ from any claims, investigations, liability, loss, injury, damage, remediation costs, lawsuits, civil proceedings, fines, penalties, and expenses including reasonable attorneys fees and disbursements (but excluding damage, liability, costs and expenses to the extent that same may result from gross negligence or willful misconduct of the Borough or any of the Borough Indemnified Parties) which result, wholly or partially, from (i) the performance or any failure or delay of performance by the Redeveloper of its obligations under the Redevelopment Agreement; (ii) any bodily injury or property damage that may occur in the Property during the term of the Redevelopment Agreement, provided however, that such indemnity shall not include the actions or inactions of third-parties over whom the Redeveloper does not exercise control, as long as the Redeveloper maintains and enforces commercially reasonable security measures and commercial liability insurance to protect against such actions or inactions.

(c) When a Borough Indemnified Party claims to be entitled to receive indemnification by the Redeveloper, the Borough Indemnified Party shall give prompt notice of such situation to the Redeveloper. Failure to give prompt notice to the Redeveloper shall not relieve the Redeveloper of any liability to indemnify the Borough Indemnified Party, unless such failure materially impairs the Redeveloper's ability to defend such party. Upon receipt of such notice, the Redeveloper shall, if applicable, resist and defend any action or proceeding on behalf of the Borough Indemnified Party, including the employment of counsel reasonably acceptable to the Borough Indemnified Party, the payment of all expenses and the

right to negotiate and consent to settlement. The Borough Indemnified Parties shall have the right to employ separate counsel in any such action and to participate in the defense thereof, but the fees and expenses of such separate counsel shall be at the expense of the indemnified party unless the employment of such counsel is specifically authorized by the Redeveloper, which authorization shall not be unreasonably withheld or delayed. The Redeveloper shall not be liable for the settlement of any such action effected without its consent, but if settled with the consent of the Redeveloper or if there is a final judgment against the Borough Indemnified Party in any such action, the Redeveloper agrees to indemnify and hold harmless the Borough Indemnified Party from and against any loss or liability by reason of such settlement or judgment if the Borough Indemnified Party is entitled to indemnification hereunder. The Redeveloper may settle any such action on terms it deems appropriate provided that a full release of the Borough Indemnified Party is obtained and no admission of liability by the Borough Indemnified Party is required. If the Borough refuses to provide a release of such action, and a final judgment is rendered against the Redeveloper, the Borough shall be responsible for the Redeveloper's counsel fees and costs incurred subsequent to the Borough's refusal to release the action and for that amount of the judgment which is in excess of the sum for which the Redeveloper would have otherwise settled the action.

SECTION 12.02 **Insurance Required.**

(a) At all times during the construction of the Project, Redeveloper shall maintain commercial general liability insurance, naming the Borough as an additional insured, insuring the Borough against losses, costs, liabilities, claims, causes of action and damages for bodily injury and property damage on all property in the Property or related to the construction thereon, in the amount of at least One Million Dollars ($1,000,000.00) primary and Five Million Dollars ($5,000,000.00) excess combined single limit coverage. Such insurance shall include blanket contractual liability coverage. All such policies shall be written to apply to all bodily injury, property damage, personal injury and other covered loss, including, but not limited to, claims of subcontractors, however occasioned, occurring during the policy term, shall be endorsed to add the Borough as an additional insured, and to provide that such coverage shall be primary and that any insurance maintained by the Borough shall be excess insurance only. Such coverage shall be endorsed to waive the insurer's rights of subrogation against the Borough.

(b) At all times during the construction of the Project, Redeveloper shall maintain Comprehensive Automobile Liability Insurance covering all owned, hired and non-owned vehicles with at least the following limits of liability: Bodily Injury Liability and Property Damage Liability in the amount of at least One Million Dollars ($1,000,000.00) primary and Five Million Dollars ($~~5,000,000.00~~2,000,000.00) excess combined single limit coverage.

(c) Prior to the commencement of the construction of those Project Improvements applicable to a particular Phase, the Redeveloper shall furnish or cause to be furnished to the Borough duplicate originals of 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 fire and lightning, the standard extended coverage perils, vandalism, and malicious mischief. The limits of liability will be equal to one hundred percent (100%) of the replacement cost (to current building code) of the applicable Project Improvements, including items of labor and materials connected therewith, whether in or adjacent to the structure(s) insured, and materials in place or to be used as part of the permanent construction.

(d) Upon request, the Redeveloper shall also furnish or cause to be furnished to the Borough evidence satisfactory to the Borough that the Redeveloper and any contractor with whom it has contracted for the construction of the Project Improvements carries workers' compensation insurance as required by law, and an employer's liability insurance endorsement with customary limits, and shall be endorsed with a waiver of subrogation clause for the Borough.

(e) All insurance policies required by this Section shall be obtained from insurance companies licensed in the State of New Jersey and rated at least A in Best's Insurance Guide or such lesser rated provider that is proposed by the Redeveloper and is reasonably acceptable to the Borough.

(f) All insurance policies required by this Section shall be non-assignable and shall contain language to the effect that (i) the policies are primary and noncontributing with any insurance that may be carried by the Borough, (ii) the policies cannot be canceled or materially changed except after thirty (30) days prior written notice by the insurer to the Borough, and (iii) the Borough shall not be liable for any premiums or assessments. All such insurance shall have deductibility limits reasonably satisfactory to the Borough and shall contain cross liability endorsements. Satisfactory evidence of such insurance shall be provided to Borough prior to the Commencement of Construction.

(g) The Redeveloper's obligation to maintain insurance pursuant to, and in accordance with, this Section 12.02 shall terminate upon issuance of a Certificate of Completion with respect to the Project, or Phase thereof, as set forth in this Section 12.02.

ARTICLE XIII
MORTGAGE FINANCING; NOTICE OF DEFAULT TO MORTGAGEE; RIGHT TO CURE

SECTION 13.01 **Mortgage Financing.** The Redeveloper, or its successor in interest, shall notify the Borough in advance of any such financing secured by a mortgage or other lien instrument which it proposes to enter into with respect to the Property and/or Project Improvements, or any part thereof (the mortgagee thereunder, a "Holder", it being hereby expressly acknowledged that under no circumstances shall an Affiliate be deemed a Holder hereunder) and, in any event, the Redeveloper shall promptly notify the Borough of any encumbrance or lien (other than liens for governmental impositions) that has been created on or attached to any portion of the Property and/or the Project Improvements, whether by voluntary act of the Redeveloper or otherwise, upon obtaining knowledge or notice of same. Redeveloper shall provide Borough with written notice that Redeveloper has obtained financing for the

Project, or Phase thereof, within fifteen (15) days after Redeveloper's acceptance of the financing commitment.

SECTION 13.02 **Forbearance**. If any Holder is required to foreclose against any lien it has with respect to the Property and/or Project Improvements (as a result of a default by the Redeveloper under any agreements executed by the Redeveloper), the Borough agrees to forebear from the enforcement of any remedies provided under this Redevelopment Agreement that it may have against the Redeveloper in order to permit such Holder to assume the obligations of the Redeveloper under this Redevelopment Agreement, provided however, that the Borough shall not be obligated to forebear from the exercise of any remedies available to it against the Redeveloper or the Property or Project hereunder if such forbearance will result (or may result, in the reasonable judgment of the Borough) in a waiver of the Borough's rights under this Redevelopment Agreement or a material and adverse effect on the Borough's rights or performance obligations hereunder or any material increase in the Borough's financial obligations hereunder.

SECTION 13.03 **No Guarantee of Construction or Completion by Holder.**

(a) A Holder shall in no manner be obligated by the provisions of this Redevelopment Agreement to construct or Complete the Project Improvements, or to guarantee such construction or Completion; nor shall any covenant or any other provisions be construed so to obligate a Holder. Nothing contained in this Redevelopment Agreement shall be deemed to permit or authorize such Holder to undertake or continue the construction or Completion of the Project Improvements (beyond the extent necessary to conserve or protect the Holder's security, including the improvements or construction already made) without the Holder first having expressly assumed the Redeveloper's obligations to the Borough with respect to the Project Improvements by written agreement reasonably satisfactory to the Borough.

(b) If a Holder forecloses its mortgage secured by the Property or Project Improvements, or takes title (in its name or the name of an Affiliate) to the Property or Project Improvements by deed-in-lieu of foreclosure or similar transaction (collectively a "Foreclosure"), the Holder or its Affiliate shall have the option to either (i) sell the Property or Project Improvements, as applicable, to a responsible Person reasonably acceptable to the Borough, which Person shall expressly assume the obligations of the Redeveloper under this Redevelopment Agreement, and/or (ii) itself, or its Affiliate, expressly assume the obligations of the Redeveloper under this Redevelopment Agreement. In the event of a Foreclosure and provided the Holder or the purchaser is in compliance with this Redevelopment Agreement, the Borough shall not seek to enforce against the Holder or purchaser of such parcel any of the remedies available to the Borough pursuant to the terms of this Redevelopment Agreement available in connection with the events preceding the Foreclosure. The Holder, or the entity assuming the obligations of the Redeveloper as to the parcel affected by such Foreclosure or sale, in that event must agree to Complete the Project Improvements as per this Redevelopment Agreement, but subject to reasonable extensions, and shall submit evidence reasonably satisfactory to the Borough that it has the qualifications and financial ability to perform such obligations. Any such Holder, or other entity assuming such obligations of the Redeveloper,

properly Completing the Project Improvements shall be entitled, upon written request made to the Borough, to Certificates of Completion. Nothing in this Redevelopment Agreement shall be construed or deemed to permit or to authorize any Holder, or such other entity assuming such obligations of the Redeveloper, to devote the Property, or any part thereof, to any uses, or to construct any improvements thereon, other than those uses or improvements provided for or authorized by this Redevelopment Agreement. The Holder or such other entity that assumes the obligations of the Redeveloper shall be entitled to develop the Property or Project Improvements in accordance herewith.

SECTION 13.04 **Borough's Option to Pay Mortgage Debt or Purchase Land**. In any case where, subsequent to an Event of Default by Redeveloper under this Agreement and/or Foreclosure, the Holder:

(a) has, but does not exercise, the option to construct or complete the Project or part thereof covered by its mortgage or to which it has obtained title, and such failure continues for a period of ~~sixty~~ ninety (~~60~~90) calendar days after the Holder has been notified or informed of the Event of Default; or

(b) undertakes construction or completion of the Project but does not complete such work within a reasonable period, and such default shall not have been cured within sixty (~~60~~90) calendar days after written demand by Borough so to do unless such work cannot be reasonably completed in such time frame but the Holder is diligently and continuously undertaking construction and completion then Borough will extend such time frames accordingly, ((a) and (b) each a "Holder Failure");

(c) then Borough, or its designee, shall have the option of paying to the Holder the amount of the mortgage debt including all accrued and unpaid interest and obtaining an assignment of the mortgage and the debt secured thereby, or, in the event ownership of the Project Improvements and Property (or part thereof) has vested in such Holder by way of foreclosure or action in lieu thereof, Borough, or its designee, shall be entitled, at its option, to a conveyance to it of the Project Improvements and Property or part thereof (as the case may be) upon payment to such Holder of an amount equal to the sum of: (a) the mortgage debt inclusive of all costs and expenses Holder was so entitled under the Mortgage documents, at the time of foreclosure or action in lieu thereof (less all appropriate credits, including those resulting from collection and application of rentals and other income received during foreclosure proceedings); (b) all expenses with respect to the foreclosure, including reasonable attorney's fees and expenses; (c) the net expense, if any (exclusive of general overhead), incurred by such Holder in and as a direct result of the subsequent management of the mortgaged property; (d) the costs incurred by such Holder in making any Project Improvements; and (e) an amount equivalent to the interest that would have accrued on the aggregate of such amounts had all such amounts become part of the mortgage debt and such debt had continued in existence. Every mortgage instrument made prior to completion of the Project with respect to any phase of development of the Project by Redeveloper shall provide for the foregoing.

SECTION 13.05 **Cooperation with Holder.**

Borough shall reasonably cooperate with a Holder to modify the provisions of this Agreement if reasonably requested by Holder or a proposed Holder, provided, however, that such modifications shall not substantially reduce the rights or increase the responsibilities of Borough hereunder.

ARTICLE XIV
ADDITIONAL TERMINATION RIGHTS

SECTION 14.01 **Additional Termination Rights of Borough.**

(a) Notwithstanding any other provision of this Redevelopment Agreement, including, but not limited to Section 2.04, this Redevelopment Agreement shall terminate upon notice by the Borough to the Redeveloper of its decision to so terminate, whether or not an Event of Default by the Redeveloper has occurred or is ongoing and/or whether or not an Uncontrollable Circumstance has occurred or is ongoing and/or whether or not Completion Dates have been extended as result of an Uncontrollable Circumstance, if:

(i) On a date ~~twelve (12~~thirty-six (36) months following the deadline for same set forth in Section 2.04, the Redeveloper has not Commenced Construction of Phase I; or

(ii) ~~A final~~ Redeveloper has not Completed construction and applied to the Borough for a Certificate of Completion for the Phase I ~~has not been issued~~ Residential Units within ~~twelve (12~~thirty-six (36) months following the deadline for same set forth in Section 2.04; ~~or~~ provided, however, that if Redeveloper has Commenced Construction of Phase I and is proceeding in a reasonable and diligent manner, the Borough shall not unreasonably withhold its consent to an extension of such thirty-six (36) month period.

~~On a date twelve (12) months following the deadline for same set forth in Section 2.04, the Redeveloper has not Commenced Construction of Phase II; or~~

~~A final Certificate of Completion for Phase II has not been issued within twelve (12) months following the deadline for same set forth in Section 2.04; or~~

~~On a date twelve (12) months following the deadline for same set forth in Section 2.04, the Redeveloper has not Commenced Construction of Phase III; or~~

~~A final Certificate of Completion for Phase III has not been issued within twelve (12) months following the deadline for same set forth in Section 2.04; or~~

~~On a date twelve (12) months following the deadline for same set forth in Section 2.04, the Redeveloper has not Commenced Construction of Phase IV; or~~

~~A final Certificate of Completion for Phase IV has not been issued within twelve (12) months following the deadline for same set forth in Section 2.04; or~~

~~On a date twelve (12) months following the deadline for same set forth in Section 2.04, the Redeveloper has not Commenced Construction of Phase V; or~~

~~A final Certificate of Completion for Phase V has not been issued within twelve (12) months following the deadline for same set forth in Section 2.04; or~~ ~~TO BE REVISED WHEN PHASES ARE REDUCED~~

~~The Redeveloper experiences a substantial change in its financial condition which the Borough determines, in its sole and reasonable judgment, would significantly impair the Redeveloper's ability to Complete the Project Improvements.~~

(b) Nothing in this Section 14.01 shall prevent the Borough from declaring, in accordance with the terms of this Redevelopment Agreement, that an Event of Default by the Redeveloper hereunder has occurred nor from pursuing any of its other remedies hereunder. Notwithstanding anything of the immediately above to the contrary, the Borough will not declare an Event of Default if Redeveloper is entitled to the extension in (ii) above.

ARTICLE XV
EVENTS OF DEFAULT AND REMEDIES

SECTION 15.01 **Events of Default.** Any one or more of the following shall constitute an event of default ("Event of Default") hereunder (with none of the following to be construed as a limitation on any other):

(a) Failure of the Redeveloper or the Borough to observe and perform any covenant, condition or agreement under this Redevelopment Agreement, and continuance of such failure for a period of forty-five (45) days, after receipt by the defaulting Party of written notice from the non-defaulting Party specifying the nature of such failure and requesting that such failure be remedied, provided however, if the failure is one which cannot be remedied within the forty-five (45) days after such written notice has been given, it shall not be an Event of Default as long as the defaulting Party is proceeding with due diligence to remedy the same as soon as practicable but in no event later than one hundred fifty (150) days after such written notice (extendable in the sole discretion of the Borough).

(b) (i) The Redeveloper shall have applied for or consented to the appointment of a custodian, receiver, trustee or liquidator of all or a substantial part of its assets; (ii) a custodian shall have been legally appointed with or without consent of the Redeveloper and shall not have been stayed or dismissed for ninety (90) consecutive days; (iii) the Redeveloper (A) has made a general assignment for the benefit of creditors, or (B) has filed a voluntary petition in bankruptcy or a petition or an answer seeking an arrangement with creditors or has taken advantage of any insolvency law; (iv) the Redeveloper has filed an answer admitting the

material allegations of a petition in any bankruptcy or insolvency proceeding; or (v) the Redeveloper shall take any action for the purpose of effecting any of the foregoing; (vi) a petition in bankruptcy shall have been filed against the Redeveloper and shall not have been dismissed for a period of ninety (90) consecutive days; (vii) an order for relief shall have been entered with respect to or for the benefit of the Redeveloper under the Bankruptcy Code; (viii) an order, judgment or decree shall have been entered, without the application, approval or consent of the Redeveloper by any court of competent jurisdiction appointing a receiver, trustee, custodian or liquidator of the Redeveloper or a substantial part of its assets and such order, judgment or decree shall have continued unstayed and in effect for any period of ninety (90) consecutive days; or (ix) the Redeveloper shall have suspended the transaction of its usual business.

(c) The filing of a complaint in Foreclosure against the Redeveloper that is not stayed or dismissed for ninety (90) consecutive days or the issuance of a deed in lieu of Foreclosure for any financing in connection with the Project or Phase thereof.

(d) The Redeveloper substantially abandons or suspends construction of any Project Improvements, for a period in excess of ninety (90) days not resulting from the occurrence of Uncontrollable Circumstance. On a maximum of two occasions, if, following such ninety (90) day period, Redeveloper recommences construction prior to notice of termination being given by the Borough, Borough shall not have the right to terminate in connection with such suspension of construction.

(e) There is a Transfer in violation of this Redevelopment Agreement.

SECTION 15.02 **Uncontrollable Circumstance.** Except as otherwise set forth in this Agreement, including Article XIV hereof, an Event of Default shall not be deemed to have occurred where delays or failure to perform are the result of an Uncontrollable Circumstance. Completion Dates shall be extended for the period of delay resulting from the occurrence of an Uncontrollable Circumstance. Redeveloper shall provide Borough with prompt notice of the occurrence of an Uncontrollable Circumstance of which Redeveloper becomes aware.

SECTION 15.03 **Remedies Upon Event of Default by the Redeveloper.** If an Event of Default by the Redeveloper occurs then the Borough may, in its sole and absolute discretion, upon sixty (60) days' prior notice to the Redeveloper and any Holder, terminate this Redevelopment Agreement unless such Holder is entitled to keep such agreement in place pursuant to terms elsewhere in this agreement.

SECTION 15.04 **Disposition of Property Upon Termination of Redevelopment Agreement.** In the event that, prior to the issuance of the final Certificate of Completion for the Project Improvements, (i) an Event of Default by the Redeveloper occurs and the Borough terminates this Redevelopment Agreement and/or (ii) Borough terminates this Redevelopment Agreement pursuant to Section 14.01 hereof, then, Borough shall have all rights with respect to same under the Redevelopment Law and otherwise.

SECTION 15.05 **Condemnation/Casualty.** In the event that all or any substantial portion of the Property is condemned or taken by eminent domain by any condemning authority or is damaged or destroyed by casualty prior to commencement of construction (other than casualty to any portion of the Property that will be demolished as part of the Project), the Redeveloper may, at its option, terminate this Redevelopment Agreement by written notice to the Borough within thirty (30) days after Redeveloper is notified of the condemnation, taking, damage or casualty. For purposes of this provision, "Substantial Portion" shall be defined as any portion which is equal to or in excess of fifty (50%) percent of the total acreage of the Property or that portion which, in the reasonable business judgment of the Redeveloper, would prevent the successful completion of construction or operation of the Project as envisioned by this Redevelopment Agreement. The Parties agree that the Redeveloper alone shall be entitled to any condemnation awards for the Property. The Borough hereby represents and warrants to the Redeveloper that the Borough presently has no intention or plans to acquire all or any portion of the Property, and, to the best of its knowledge, no other Governmental Authority has any intention or plans to acquire all or any portion of the Property, by condemnation and eminent domain.

SECTION 15.06 **Remedies Upon Events of Default by the Borough.** In the event that an Event of Default by the Borough occurs, then the Redeveloper may take whatever action at law or in equity as may appear necessary or desirable to enforce the performance or observance of any rights, remedies, obligations, agreements, or covenants of the Borough, as applicable, under this Redevelopment Agreement, including the seeking of damages (including reasonable counsel fees and costs). Further, but subject to any cure provisions afforded the Borough hereunder, the Redeveloper shall have the right, in its sole and absolute discretion, upon sixty (60) days' notice to the Borough, to terminate this Redevelopment Agreement.

SECTION 15.07 **Specific Performance.** Except where remedies are otherwise limited by this Agreement, if an Event of Default occurs, or a Party hereto threatens to take an action that will result in the occurrence of an Event of Default, the non-defaulting (or non-threatening) Party shall have the right and remedy, without posting bond or other security, to have the provisions of this Redevelopment Agreement specifically enforced by any court having equity jurisdiction, it being acknowledged and agreed that any such breach or threatened breach may cause irreparable injury to the Borough or the Redeveloper and that money damages may not provide an adequate remedy thereto.

SECTION 15.08 **Failure or Delay.** Except as otherwise expressly provided in this Redevelopment Agreement, the failure or delay by either Party in asserting any of its rights or remedies shall not operate as a waiver of any such rights or remedies, or deprive either such Party of its right to institute and maintain any actions or proceedings it may deem necessary to protect, assert or enforce any such rights or remedies.

SECTION 15.09 **Remedies Cumulative.** No remedy conferred by any of the provisions of this Redevelopment Agreement is intended to be exclusive of any other remedy and each and every remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. The election of one or

more remedies shall not constitute a waiver of the right to pursue other available remedies. In no event, however, shall a Party be entitled to recover more than its actual damages.

SECTION 15.10 **Continuance of Obligations.** The occurrence of an Event of Default shall not relieve the defaulting Party of its obligations under this Redevelopment Agreement unless this Redevelopment Agreement is terminated as a result of such Event of Default, as and to the extent permitted hereunder.

SECTION 15.11 **Litigation Costs.** In the event that a Party to this Redevelopment Agreement successfully pursues an action to enforce any remedy provided in this Article, that Party shall be entitled to payment by the other Party of all reasonable costs and expenses incurred in connection with such action.

SECTION 15.12 **Mitigation.** The parties shall act reasonably to mitigate any damages that may be incurred as a result of an Event of Default hereunder.

SECTION 15.13 **Documents to be Delivered Upon Termination.** In the event this Redevelopment Agreement is terminated for any reason, except as a result of the default of the Borough, the Redeveloper shall deliver to the Borough, within sixty (60) days after such termination, copies of all reports, studies, data, plans, surveys, title reports, subdivision maps and specifications prepared by the Redeveloper and third parties with respect to the Property and the Project Improvements and all documents, reports, permits and approvals obtained by the Redeveloper relating to the Property and the Project Improvements, (all collectively called, "Project Information"). Unless expressly provided for by any third party, Borough shall not be permitted to rely on such Project Information and shall have no claim against any third party who prepared such Project Information for any inaccuracies or faults contained therein.

SECTION 15.14 **Agreement Not to Develop Upon Termination.** Subject to the rights of any Holders, in the event this Redevelopment Agreement is terminated with respect to any Phase or Sub-Phase, as applicable, as a result of a Redeveloper Event of Default, then, in order to give the Borough the opportunity to address any issues resulting from such termination, the Redeveloper agrees that, for a period of six (6) months following such termination, in the event that the Redeveloper still owns or controls the Property (or any part thereof), it shall take no further steps to construct the Project Improvements or to develop the Property, except as may be agreed to by the Borough, in its sole discretion, notwithstanding the fact that the Redeveloper may be in possession of Governmental Approvals required for such development; provided, however, that if such termination is the result of the expiration of a permitted period of delay for Uncontrollable Circumstances or is pursuant to Article XIV hereof, such termination shall not prevent or delay Redeveloper from constructing the Project Improvements for which it is in possession of Governmental Approvals at the time of termination.

SECTION 15.15 **Security for Redeveloper Obligations.** Simultaneously with and as a condition of the commencement of Demolition as required in **Exhibit A** hereof, Redeveloper shall deliver to Borough an irrevocable, stand-by letter of credit, in favor of Borough as beneficiary, in the amount of $1,000,000, in a form reasonably acceptable to Borough, as

security for (a) payment by Redeveloper of costs to complete such Demolition as required in **Exhibit A** hereof and (b) the cost to demolish an unfinished Project and to clear, restore, grade and seed the Land ("Demolition Security"), which letter of credit can be drawn on by Borough to (y) carry out the Demolition described in (a) if same is not completed within the required four (4) month period, with Redeveloper hereby granting all licenses to Borough and its contractors to carry out same and/or (z) carry out the demolition and restoration described in (b) if this Redevelopment Agreement shall be terminated as a result of an Event of Default by Redeveloper, subject to all rights of Redeveloper's senior mortgage lender. After the first [ ] Million Dollars ($[ ],000,000) of hard costs for the Phase II Residential Units have been expended, Redeveloper shall no longer be obligated to maintain the Demolition Security, which shall be promptly returned to Redeveloper, together with Borough's executed instructions for cancellation of the letter of credit in the form required by the issuer. In lieu of a stand-by-letter of credit, at Redeveloper's option, Redeveloper will deposit in escrow with the Borough an amount equal to 125% of the estimated costs to complete such demolition and borough will release on a basis of not more than once monthly, the amount certified by Redeveloper in an executed AIA Continuation Application, as the actual amount expended. Upon completion of the Demolition, the Borough shall release any remaining funds to Redeveloper on ten (10) business days' notice following notice that demolition is completed.

ARTICLE XVI
MISCELLANEOUS

SECTION 16.01 **Notices.** Formal notices, demands and communications between the Borough and the Redeveloper shall be deemed given if dispatched to the address set forth below by registered or certified mail, postage prepaid, return receipt requested, or by a commercial overnight delivery service with packaging tracking capability and for which proof of delivery is available. In this case such notice is deemed effective upon delivery. Such written notices, demands and communications may be sent in the same manner to such other addresses as either Party may from time to time designate by written notice.

Copies of all notices, demands and communications shall be sent as follows:

If to the Borough:

Borough of Dunellen
355 North Avenue
Dunellen, New Jersey 08812
Attn: Borough Clerk

with copies to:

Borough Attorney
355 North Avenue
Dunellen, New Jersey 08812

John E. Bruder, Esq.
2 West Union Ave
Bound Brook, NJ 08805

Charles B. Liebling, Esq.
Windels Marx Lane & Mittendorf, LLP
120 Albany Street Plaza, Sixth Floor
New Brunswick, New Jersey 08901

If to the Redeveloper:

Brudner Redevelopment Partners Urban Renewal, LLC
c/o Davanne Realty Co.
80 Main Street, Suite 510
West Orange, New Jersey 07052
attn: Michael J. Mandelbaum, Esq.

with copy to:

Peter M. Flannery, Esq.
Sills Cummis & Gross, P.C.
600 College Road East
Princeton, NJ 08540

SECTION 16.02 **Conflict of Interest.** No member, official or employee of the Borough shall have any direct or indirect interest in this Redevelopment Agreement, nor participate in any decision relating to this Redevelopment Agreement which is prohibited by law.

SECTION 16.03 **No Consideration For Redevelopment Agreement.** The Redeveloper warrants it has not paid or given, and will not pay or give, any third person any money or other consideration in connection with obtaining this Redevelopment Agreement, other than normal 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 Redevelopment Agreement.

SECTION 16.04 **Non-Liability of Officials and Employees of the Borough.** No member, official, employee agent or consultant of the Borough shall be personally liable to the Redeveloper, or any successor in interest, in the event of any default or breach by the Borough, or for any amount which may become due to the Redeveloper or its successor, or on any obligation under the terms of this Redevelopment Agreement.

SECTION 16.05 **Non-Liability of Officials and Employee of Redeveloper.** No member, officer, shareholder, director, partner or employee of the Redeveloper shall be personally liable to the Borough, or any successor in interest, in the event of any default or breach by the

Redeveloper or for any amount which may become due to the Borough, or their successors, on any obligation under the terms of this Redevelopment Agreement.

SECTION 16.06 **No Brokerage Commissions.** The Borough and the Redeveloper each represent one to the other that no real estate broker initiated, assisted, negotiated or consummated this Redevelopment Agreement as broker, agent, or otherwise acting on behalf of either the Borough or the Redeveloper, and the Borough and the Redeveloper shall indemnify each other with respect to any claims made by any person, firm or organization claiming to have been so employed by the indemnifying Party.

SECTION 16.07 **Provisions Not Merged With Deeds.** To the extent that the provisions of this Redevelopment Agreement are intended to bind the Redeveloper's assigns and successors, its provisions shall not be merged by reason of any deeds transferring title to any portion of the Property from the Redeveloper or any successor in interest, and any such deeds shall not be deemed to affect or impair the provisions and covenants of this Redevelopment Agreement.

SECTION 16.08 **Successors and Assigns.** This Redevelopment Agreement shall be binding upon and inure to the benefit of the permitted successors and assigns of the parties hereto, and their heirs, executors, and administrators.

SECTION 16.09 **Titles of Articles and Sections.** The titles of the several Articles and Sections of this Redevelopment Agreement are inserted for the convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.

SECTION 16.10 **Severability.** If any term or provision of this Redevelopment Agreement or the application thereof shall be held to be invalid or unenforceable, the remainder of this Redevelopment Agreement, or the application of such term or provision to circumstances other than those to which it is invalid or unenforceable, shall not be affected thereby, and each other term and provision of this Redevelopment Agreement shall be valid and shall be enforced to the extent permitted by law.

SECTION 16.11 **Modification.** No modification, waiver, amendment, discharge, or change of this Redevelopment 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 16.12 **Counterparts.** This Redevelopment Agreement may be executed in one or more counterparts and when each Party has executed and delivered at least one counterpart, this Redevelopment Agreement shall become binding on the parties and such counterparts shall constitute one and the same instrument.

SECTION 16.13 **Prior Agreements Superseded.** This Redevelopment Agreement integrates all of the terms and conditions mentioned herein or incidental hereto, and supersedes

any prior agreement and all negotiations or previous agreements between the parties with respect to all or any part of the subject matter hereof.

SECTION 16.14 **Drafting Ambiguities; Interpretation.** In interpreting any provision of this Redevelopment 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 Redevelopment Agreement, each Party acknowledging that it and its counsel have had an opportunity to review this Redevelopment Agreement and have contributed to the final form of same.

SECTION 16.15 **Governing Law.** This Redevelopment Agreement shall be governed by and construed and interpreted in accordance with the laws of the State of New Jersey without regard to conflict of laws principles thereunder and no defense given or allowed by the laws of any other state shall be interposed in any action or proceeding hereon unless such defense is also given or allowed by the laws of the State of New Jersey. Any action or proceeding brought by the Redeveloper arising out of this Redevelopment Agreement shall be brought solely in a court of competent jurisdiction located in the County of Middlesex, State of New Jersey, or in a United States District Court in New Jersey. Redeveloper hereby waives any right to seek removal of any action or proceeding. If the Borough commences such an action in a court located in the County of Middlesex, State of New Jersey, or any United States District Court in New Jersey, the Redeveloper hereby waives any right to seek removal of any action or proceeding. Additionally, the Redeveloper agrees to submit to the personal jurisdiction of such courts and will not attempt to have such action dismissed, abated or transferred on the ground of forum non conveniens. Without limiting other methods of obtaining jurisdiction, Redeveloper agrees that personal jurisdiction over it and any process or notice of motion or other application to any such court in connection with any such action or proceeding may be served upon the Redeveloper by registered mail to or by personal service at the last known address of the Redeveloper pursuant to the notice section set forth in this Redevelopment Agreement.

SECTION 16.16 **No Restriction on Police Powers.** Nothing in this Redevelopment Agreement shall in any way limit or affect the right of the Borough or any municipal board, department, agency, authority, official, or representative to enforce any generally applicable municipal ordinance, regulation, rule, procedure or other requirement, including, but not limited to, with respect to the Project, the Property or Redeveloper.

SECTION 16.17 **No Third Party Beneficiaries.** This Redevelopment Agreement does not and is not intended to confer any rights or remedies upon any person other than the Parties.

[SIGNATURES APPEAR ON SUCCESSIVE PAGE]

IN WITNESS WHEREOF, the parties hereto have caused this Redevelopment Agreement to be executed, all as of the date first above written.

WITNESS:

_____

REDEVELOPER:

BRUDNER REDEVELOPMENT PARTNERS URBAN RENEWAL, LLC,
a New Jersey limited liability company

By: **DUNELLEN ASSOCIATES, LLP**
a New Jersey limited partnership

By: **SOUTHWIND EQUITIES, INC.**
Its general partner

By: _____
Richard Brudner, President

ATTEST:

_____
William M. Robins, RMC,
Borough Clerk

BOROUGH OF DUNELLEN

By: _____
Robert J. Seader, Mayor

STATE OF NEW JERSEY)
:
COUNTY OF _____)

On this, the _____ day of _____, ~~2015~~2016, before me, the subscriber, personally appeared Richard Brudner, who I am satisfied is the person who executed the foregoing instrument as the President of Southwind Equities, Inc., the general partner of Dunellen Associates, LLP, the sole member of Brudner Redevelopment Partners Urban Renewal, LLC, a New Jersey limited liability company, and who acknowledged that he, in such capacity, being authorized to do so, executed the foregoing instrument as such entity's voluntary act and deed for the purposes therein contained by signing on behalf of said limited liability company.

_____
Notary Public

Commission Expiration: _____

STATE OF NEW JERSEY)
:
COUNTY OF MIDDLESEX)

The foregoing instrument was acknowledged before me this ____ day of _____, ~~2015~~2016, by the Borough of Dunellen (the "Borough"), a municipal corporation of the State of New Jersey, by Robert J. Seader, its Mayor, on behalf of the Borough.

_____
Notary Public

Commission Expiration: _____

EXHIBIT A

DESCRIPTION OF PHASE I OF PROJECT

Phase I shall consist of: (1) ~~7~~ 15 for-sale stacked market-rate townhouse units (none of which shall be Affordable Units) in the corresponding area of the Property shown on the layout plan included in this exhibit (the "Phase I Townhouse Residential Units"); and (2) a multi-story (up to four stories in height) residential development with ~~74~~ 147 residential units in the center of the Property (the "Phase I Rental Residential Units"). Phase I shall utilize an entry/exit at a signalized intersection on South Washington Avenue.

The Phase I Rental Residential Units shall consist of rental apartments with ~~6~~ 29 of such apartments being Affordable Units, which Affordable Units may be spread out equally throughout the rental buildings to be constructed in Phase I.

The Phase I Rental Residential Units shall also include amenities typical to the Project's "luxury" classification, which may also serve other Phases, including a club house, pool and similar accessory uses, to be determined in detail during the Borough's approval of the Plans.

Phase I shall also include performance of the Demolition, with same to occur prior to the start of construction of Phase I. Once such Demolition is commenced, Redeveloper shall be required to promptly complete same, in no event to exceed six (6) months.

DESCRIPTION OF PHASE II OF PROJECT

Phase II shall consist of: (1) ~~8~~ 20 for-sale stacked market-rate townhouse units (none of which shall be Affordable Units) in the corresponding area of the Property shown on the layout plan included in this exhibit (the "Phase II Townhouse Residential Units"); ~~and~~ (2) a multi-story (up to four stories in height) residential development with ~~70~~ 105 residential units in the corresponding area of the Property shown on the layout plan included in this exhibit (the "Phase II Rental Residential Units"). ~~Phase II shall utilize an entry/exit~~; and (3) retail/commercial uses on in the corresponding area of the Property shown on the layout plan included in this exhibit (the "Retail/Commercial Component"). There will be a single entry/exit from Phase II at a signalized intersection on South Washington Avenue.

The Phase II Rental Residential Units shall consist of rental apartments with ~~22~~ 29 of such apartments being Affordable Units, which Affordable Units may be spread out equally throughout the rental buildings to be constructed in Phase I.

The Phase ~~I~~ II Rental Residential Units shall also include amenities typical to the Project's "luxury" classification, which may also serve other Phases, including a club house, pool and similar accessory uses, to be determined in detail during the Borough's approval of the Plans.

~~DESCRIPTION OF PHASE III OF PROJECT~~

~~Phase III shall consist of: (1) 10 for-sale stacked market-rate townhouse units (none of which shall be Affordable Units) in the corresponding area of the Property shown on the layout plan included in this exhibit (the "Phase III Townhouse Residential Units"); and (2) a multi-story (up to four stories in height) residential development with 70 residential in the corresponding area of the Property shown on the layout plan included in this exhibit (the "Phase III Rental Residential Units"). Phase III shall utilize an entry/exit at a signalized intersection on South Washington Avenue.~~

~~The Phase III Rental Residential Units shall consist of rental apartments with 14 of such apartments being Affordable Units.~~

~~The Phase I Rental Residential Units shall also include amenities typical to the Project's "luxury" classification, which may also serve other Phases, including a club house, pool and similar accessory uses, to be determined in detail during the Borough's approval of the Plans.~~

~~DESCRIPTION OF PHASE IV OF PROJECT~~

~~Phase IV shall consist of: (1) 10 for-sale stacked market-rate townhouse units (none of which shall be Affordable Units) in the corresponding area of the Property shown on the layout plan included in this exhibit (the "Phase IV Townhouse Residential Units"); (2) a multi-story (up to four stories in height) residential development with 38 residential units in the corresponding area of the Property shown on the layout plan included in this exhibit (the "Phase IV Rental Residential Units"); and (3) retail/commercial uses on in the corresponding area of the Property shown on the layout plan included in this exhibit (the "Retail/Commercial Space"). There will be a single entry/exit from Phase IV at a signalized intersection on South Washington Avenue.~~

~~The Phase IV Rental Residential Units shall consist of rental apartments with 14 of such apartments being Affordable Units.~~

~~The Phase I Rental Residential Units shall also include amenities typical to the Project's "luxury" classification, which may also serve other Phases, including a club house, pool and similar accessory uses, to be determined in detail during the Borough's approval of the Plans.~~

The Retail/Commercial ~~Space~~ Component shall be in one or more buildings and shall constitute between 10,000 and 15,000 square feet. At least one of such buildings shall be a two-story (or, at Redeveloper's option, have the appearance of a two-story through use of dormers or the like) "railroad" style building that shall immediately front on South Washington Avenue and shall be designed to reflect design elements of the Dunellen Train Station across the street. Any other buildings containing Retail/Commercial ~~Space~~Component, which may include one or more pad sites for stand-alone commercial users, shall also reflect this design theme.

DESCRIPTION OF PHASE ~~V~~ III OF PROJECT

Phase ~~V~~ III shall consist of up to ~~87~~ 95 for-sale stacked market-rate townhouse units (none of which shall be Affordable Units) in the corresponding area of the Property shown on the layout plan included in this exhibit (the "Phase ~~V~~ III Townhouse Residential Units"). Phase ~~V~~ III shall utilize an entry/exit at a signalized intersection on South Washington Avenue.

ATTACH MAP OF PHASE I, PHASE II, ~~PHASE III, PHASE IV,~~ AND PHASE ~~V~~ III AREAS

EXHIBIT B

OWNERSHIP STRUCTURE

1. Brudner Redevelopment Partners Urban Renewal, LLC

   a. 50% - Dunellen Associates, 22 North McCauley Road, Travels Rest, South Carolina 29060, attn: Mr. Richard Brudner

   b. 50% - Davanne Realty Co., 80 Main Street, Suite 510, West Orange, New Jersey 07052, attn: Michael J. Mandelbaum, Esq.

EXHIBIT C

DECLARATION OF COVENANTS AND RESTRICTIONS

~~INCLUDE 6.09~~

EXHIBIT D

ENVIRONMENTAL STATUS/REMEDIATION PLAN

EXHIBIT E

LIST OF GOVERNMENTAL APPROVALS

- **Borough of Dunellen Planning Board Approval**
- **Middlesex County Planning Board Approval**
- **Freehold Soil Conservation District Approval**
- **New Jersey Department of Transportation Access Permit**
- **New Jersey Department of Environmental Protection ("NJDEP") Treatment Works Approval**
- **NJDEP Water Connection Permit**
- **NJDEP Environmental Approvals, as applicable.**

EXHIBIT F
CONCEPT PLAN FOR RETAIL BUILDING

Appendix D

Downtown Redevelopment Plan, Adopted February 2003 and Last Revised August 5, 2013

Dunellen Downtown Redevelopment Plan, Phase 1

Borough of Dunellen

Middlesex County

February 2003

(Revised July 12, 2004)

(Revised August 5, 2013)

Downtown Redevelopment Plan

Borough of Dunellen Mayor and Council

Mayor Robert J. Seader

Council President:	Frank Bieniek
Councilman:	James Ashworth
Councilman:	Kevin Bachorik
Councilman:	Ken Baudendistel
Councilman:	Jeffrey Dunsavage
Councilman:	Joseph Petracca

Borough of Dunellen Planning and Zoning Board

Members	Class Membership
Mayor Robert J. Seader	I
Scott Luthman, Zoning Official	II
Joseph Petracca, Council Representative	III
Roger Dombierer, Chairperson	IV
Barbara Seif, Vice Chairperson	IV
Robert F. Krause	IV
Randee Staats	IV
Greg Bullwinkle	IV

Secretary:	Chris Mueller
Recording Secretary:	Donna Murray

Consultants

Middlesex County Improvement Authority
Richard Pucci, Executive Director
Donna Renderio, Director of Economic Development

DeCotiis, Fitzpatrick, Cole & Wisler, *LLP*
Francis X. Regan, Esq.

CME Associates
3141 Bordentown Avenue
Parlin, NJ 08859
Michael J. McClelland, P.E., P.P., C.M.E.
Bruce J. Rydel, P.P., AICP

Law Offices of Robert F. Dato
313 Amboy Avenue
Woodbridge, NJ 07095
Robert F. Dato, Esq.

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SECTION 1 - INTRODUCTION

1.1 Introduction

During the past few years, the Borough of Dunellen has focused its efforts to an ongoing project to redevelop its downtown or "Main Street", which are North Avenue and Bound Brook Road (State Highway 28) from the municipal boundaries with the City of Plainfield in the east to the Borough of Middlesex in the west. This area also includes Washington Avenue (County Road 529) from Front Street (north) to New Market Road (south) (County Road 665). The decline of industry and the increase of storefront vacancies prompted this effort.

To revitalize this area, the Mayor and Council have determined that one of the most effective planning and implementation strategies is the use of the redevelopment process in accordance with the Local Redevelopment and Housing Law (N.J.S.A. 40A: 12A-1 et seq.). It is the conjunction of Washington Avenue at New Jersey Transit's Raritan Valley Line and North Avenue that is the epicenter of Dunellen Downtown Center, and the catalyst for the redevelopment of the Borough's "Main Street" district.

SECTION 2 - DESIGNATION OF AREA AND PLAN DEVELOPMENT

2.1 Designation of Redevelopment Area

The process, consistent with Local Redevelopment and Housing Law, followed by the Borough in the determination as to the area's qualification and designation as an area in need of redevelopment, is summarized as follows:

- The Dunellen Borough Council on October 15, 2001 authorized the Dunellen Planning Board to conduct a preliminary investigation as to whether the study area qualifies as an area in need of redevelopment.

- To assist the Dunellen Planning Board in that preliminary investigation, the Borough of Dunellen retained the firm of DeCotiis, FitzPatrick, Cole and Wisler, LLP ("DeCotiis"). The Middlesex County Improvement Authority ("MCIA") also assisted the Borough in its redevelopment efforts. In addition, the Planning Board Chairman created a sub-committee of Planning Board members to conduct a study and survey of the area and prepare a report on the findings of the survey, entitled "Report on a Study to Determine the Qualification of the Dunellen Downtown Redevelopment Study Area as a Redevelopment Area" undated as referred to in resolution of the Borough of Dunellen Borough Council dated October 15, 2001. This report had been reviewed and revised by DeCotiis and the MCIA to assure consistency with the requirements of the Local Redevelopment and Housing Law.

- The Dunellen Planning Board at their December 9, 2002 meeting scheduled a public hearing for February 24, 2003 at which time the matter of the designation of the area as an area in need of redevelopment would be considered.

- Prior to the hearing, a legal notice was published twice in the Borough's official newspaper and a map of the area and statement as required by statute was prepared and the owner of record of all the properties in the study area were duly notified of the hearing.

- At the hearing, the Dunellen Planning Board considered information and objections both oral and written and made them parts of the public record.

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- The Dunellen Planning Board, after due consideration of applicable documentation and objections, recommended to the Dunellen Borough Council by resolution granted April 28, 2003 and memorialized May 12, 2003, that the study area be designated as an area in-need of redevelopment.

- After receiving the recommendation of the Dunellen Planning Board, the Dunellen Borough Council adopted a resolution dated May 5, 2003 determining the area in need of redevelopment.

2.2 Redevelopment Plan Preparation Process

As a result of the area being recommended by the Dunellen Planning Board to be designated as a redevelopment area, a redevelopment plan must be prepared and adopted by ordinance by the Dunellen Borough Council prior to undertaking any redevelopment project. The process, consistent with Local Redevelopment and Housing Law, to be followed by the Borough in the preparation of a redevelopment plan is summarized as follows:

The Dunellen Borough Council authorizes the Dunellen Planning Board to prepare a redevelopment plan for the area.

- To assist the Dunellen Planning Board, the Borough of Dunellen originally retained DeCotiis, FitzPatrick, Cole and Wisler, LLP. The Middlesex County Improvement Authority also assisted in preparing the first edition of the required redevelopment plan. In February of 2004, the Planning Board retained Robert Dato, Esq., as Planning Board attorney, and CME Associates, as Planning Board planner.

- The redevelopment plan is to be considered by the Dunellen Planning Board following the public hearing at which time the Planning Board recommends adopting a reconstituted redevelopment plan.

- The Dunellen Planning Board after considering the redevelopment plan provides a report to the Dunellen Borough Council of its recommendation concerning the redevelopment plan.

- The Dunellen Borough Council considers the redevelopment plan for adoption as an ordinance.

SECTION 3 - STATUTORY REQUIREMENTS OF REDEVELOPMENT PLAN

3.1 Statutory Requirements

According to "Local Redevelopment and Housing Law", the redevelopment plan shall include an outline for the planning, development, redevelopment or rehabilitation of the area sufficient to indicate:

1. Its relationship to definitive 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:

   - the Master Plans of contiguous municipalities;
   - the Master Plan of the County in which the municipality is located; and
   - the State Development and Redevelopment Plan adopted pursuant to the "State Planning Act" PL 1985, C398 (C52:18A-196 et al.).

SECTION 4 - REDEVELOPMENT AREA DESCRIPTION AND CONTEXT

4.1 Description of the Redevelopment Area

As a result of the Planning Board reexamining the original redevelopment plan, it was decided that a phased timing approach would better suit the needs of the Borough by focusing first on redevelopment of the Dunellen Downtown Center. One or more subsequent phases may be considered to address the remaining areas identified in the determination of need study. This Redevelopment Plan is applicable to the following properties located in the Borough of Dunellen, County of Middlesex, State of New Jersey identified as the Dunellen Downtown Redevelopment Area, Phase I, consisting of Blocks and Lots as depicted on the Official Tax Map of the Borough of Dunellen, and as shown on the attached "Redevelopment Area Map" that has been determined by the Dunellen Planning Board and the Dunellen Borough Council as "an area in need of redevelopment":

Phase 1 – Redevelopment Area – See Map #1

Area	Block Number	Lot Number
Site #1 South side of North Avenue between Prospect Avenue, South Washington Avenue, and NJ Transit property	69	1, 1.01, 2, 2.01, and 3
Site #2 South Washington Avenue, New Market Road, Prospect Avenue, and NJ Transit property	70	13 and 13.01
Site #3 South Washington Avenue between NJ Transit property and Columbia Street (Art Color Property)	85	1

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This Redevelopment Plan also considers the following properties located in the Borough of Dunellen, County of Middlesex, State of New Jersey as future areas to be redeveloped consistent with the initial Dunellen Redevelopment Area.

Remainder Parcels – Redevelopment Area – See Map #2

Area	Block Number	Lot Number
North Avenue between Jackson Avenue and Jefferson Avenue	1	14, 15.01, 15.02, 16, 17, 18, 19, 20, 21, 22, 23
Between North Avenue and Front Street between North Washington Avenue and Jackson Avenue	2	10, 11.01, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20
Between North Avenue and Front Street between Lincoln Avenue, North Washington Avenue	32	1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14.01, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 24.01, 25, 26, 27, 28
North Avenue between Madison Avenue and Lincoln Avenue	33	14, 14.01, 15, 16, 17, 18, 19, 20, 21, 22, 23
Bound Brook Road from Sanford Avenue to Madison Avenue	34	10.01, 22, 23, 24, 24.01, 25, 26, 27.01, 27.02, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 38.01
Bound Brook Road from Sanford Avenue to Middlesex border	48	16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28
Bound Brook Road from Middlesex border to Pulaski Street	49	25, 26, 27.01, 28, 29, 30, 31, 32, 33, 34, 35, 37, 38, 39.01, 39.02, 40, 41, 43, 44
Bound Brook Road between Pulaski Street and Madison Avenue and bordered on NJ Transit	50	1, 2, 3, 4, 5, 6
Rail Right of Way	51	1, 2 & 3 - NJ Transit property
Bordered by Bound Brook Road, Madison Avenue and North Avenue	65	1
North Avenue between Madison Avenue and Prospect Street	66	1, 2, 3, 4, 5, 6.01, 7, 8, 9, 10.01, 10.02, 11, 12, 13, 14, 15.01, 15.02, 16, 17, 17.01, 18, 19, 20
South east corner of North Avenue and North Washington Avenue to NJ Transit property, and northeast to the Plainfield City border	86	1, 2, 3, 4, 4.02, 4.03, and 5

4.2 Redevelopment Area Context

The Borough of Dunellen is located in the northwest section of Middlesex County, approximately thirty miles southwest of New York and sixty-five miles northeast of Philadelphia. Encompassing approximately one square mile, Dunellen has an estimated 2001 population of 6,700 persons. Abutting the communities of Plainfield in Union County, Green Brook in Somerset County and Piscataway and Middlesex in Middlesex County, Dunellen is traversed by State Highway Route 28, which is the Borough's main street running east/west. State Highway Route 22 is located about one mile north of and parallel to Route 28. Washington Avenue (County Road 529) runs north/south intersecting North Avenue and is a major connection to Interstate 287 and Route 22.

The Borough is a developed residential community with a central commercial area. In the center of the business district is a train station served by the New Jersey Transit Raritan Valley Line that terminates at Newark Penn Station. The train station is viewed by the Borough as a key element of the redevelopment of the area. The area is also served by two bus lines.

Like many similar urban communities, Dunellen has experienced the loss of manufacturing jobs that developed along the rail lines in the early 20th century. While the loss of jobs and ratables has impacted the community and resulted in a lack of investment in the business district, the rail lines continues to be a focus of the Borough with commuters from the Borough and surrounding communities using the train station to access jobs in the employment centers of Newark, Jersey City and New York City. The rail line still represents opportunities for the Borough's future, but rather than as a center of manufacturing, the Borough hopes to be a center for residential and commercial development, which takes advantage of its location near the train station.

The redevelopment area is located generally in the center of the Borough along the Borough's main commercial thoroughfare, North Avenue/Bound Brook Road (State Highway 28), which intersects with Washington Avenue (County Road 529). The area includes all properties along North Avenue from Bound Brook Road to Jefferson Avenue, Bound Brook Road from Madison Avenue to Borough of Middlesex border, together with properties along Washington Avenue from Columbia Street to Front Street. The south side of Front Street between Lincoln Avenue and Jackson Avenue are also included in the redevelopment area.

4.3 Existing Land Uses

The redevelopment area as noted above encompasses the entire downtown commercial area. The area includes approximately 150 properties varying in use. The area consists of more than 70 acres, excluding the rail right-of-way. The uses include retail, office, residential, industrial, public and vacant land.

Approximately two-thirds of the area is zoned B-Business, which permits typical commercial uses, along with both single and two-family dwellings. The area zoned B-Business is generally located along North Avenue/Bound Brook Road. The RB-Two family residential zone is located along Bound Brook Road between Madison Avenue and Pulaski Street.

The generality of uses noted in the redevelopment area may be summarized as follows:

4.3.1 Retail Uses

As may be expected in a business district, retail uses are the most significant land use in the area. The majority of these land uses are located on the ground floor of the structures located along North Avenue from Madison Avenue to Jefferson Avenue with some retail uses being located on North Washington Avenue.

4.3.2 Residential Uses

Residential uses comprise almost one-third of the properties in the area. This excludes apartments that may be located above or behind retail uses. The presence of single and two-family dwellings in the study area, while permitted by zoning, is inconsistent with the typical downtown business district.

4.3.3 Industrial Uses

The three major industrial properties in the area are the former Art Color property that consists of approximately 19 acres with 450,000 square feet of warehouse and manufacturing space; the former Dande Plastics building on North Avenue with approximately 40,000 square feet of space, that is presently vacant; and the former National Starch property also on North Avenue, much of which remains vacant, except for a warehouse that has been converted to an indoor ice rink.

4.3.4 Public Uses

The public uses located in the area include Borough Hall at the corner of North and Prospect Avenues, the public library on New Market Road and the extensive holdings of the Dunellen Parking Authority, which include the Skinner Plaza parking lot on South Washington Avenue, public parking along the rail embankments and along Front Street, and two buildings on Front Street.

4.3.5 Vacant Land

There are two unimproved parcels on Bound Brook Road between Madison Avenue and Pulaski Street that are presently used for storage of vehicles and equipment numbered Block 49, Lot 29, and Block 34, Lot 28.

4.3.6 Other Uses

There are at least eight (8) automotive related uses including a gas station in the area.

SECTION 5 - PLAN GOALS AND OBJECTIVES

5.1 Plan's Goals

In general, the Plan attempts to revitalize the Borough's economic base and create locations for new job opportunities and locations for uses that are currently in demand. The specific goals of the Plan are as follows:

1. To promote the effective use of all the Redevelopment property and to increase the property tax base of the Borough.

2. To improve utilization of the land in the Redevelopment Area, which by virtue of its proximity to transportation could be more effectively employed for the community benefit.

3. To revitalize the area with the inclusion of land uses of appropriate type, scope and scale to meet the demands of the market area.

4. To remediate contaminated sites as part of the redevelopment process.

5. To create a new mixed-use area.

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6. To promote the creation of job opportunities in the Borough that will provide opportunities for both existing residents as well for others in the area.

7. To improve business opportunities through promotion of new and diverse economic activities.

8. To maximize the leveraging of public and private funds to accomplish comprehensive redevelopment of the area.

9. To redevelop land occupied by obsolete structures and uses.

10. To improve property values within the area to increase local revenues.

11. To enhance the image of the area.

12. To improve the public image elements of the streetscape through landscaping, street furniture, paving, lighting and pedestrian linkages.

5.2 Plan's Objectives

1. Physical Objectives - to enhance the physical environment present in the redevelopment area including the following:

    - Eliminate physical and functional deterioration by removing structures, which are either substandard, functionally obsolete, or exert an adverse influence on the area

    - Support private and public improvements intended to develop an attractive and aesthetically pleasing environment for residents, workers and users of the area.

2. Land Use Objectives - to support better land use in the redevelopment area including the following:

    - Support residential uses appropriate to the redevelopment area as a means of expanding the vitality of the area

    - Discourage industrial uses which are nonconforming to the zoning codes and detrimental to the surrounding neighborhood.

3. Transportation Objectives - objectives to support transportation initiatives in the redevelopment area including the following:

    - Continue the NJDOT enhancement program by bringing decorative lights from the train station down into the business district.

    - Construct a shared parking deck on the existing lot for both commuters and consumers.

    - Encourage the improvement through consolidation and redesign of existing public and private parking areas throughout the redevelopment area, in particular in the rear of properties in Block 32 commonly known as the block fronting on North Avenue and Front Street between Lincoln Avenue and North Washington Avenue and Block 66 commonly known as the block fronting on North Avenue between Madison Avenue and Prospect Avenue.

- Enhance traffic flow through the parking deck to maximize efficient traffic flow and allow access to downtown shops.

- Create pedestrian oriented and Transit Village oriented development as the town's central focus.

4. Recreational Objectives - to support recreational uses in the redevelopment area to include the following:

   - Require large development parcels to provide a portion of the developed area for recreation and open space use.

5. Other Public Improvements Objectives - to support the upgrading of public infrastructure such as sewers, streets, sidewalks and similar public improvements.

6. Economic Objectives - to support economic development initiatives in the redevelopment area of the redevelopment plan.

   - Encourage economic development and related activities, which will support increased employment opportunities, tax ratables, and economic growth in the area and borough.

   - Support private and public investment in the area, which will tend to generate economic growth and expanded employment opportunities in the area and borough

   - Leverage private capital investment with available state and federal programs.

Amendments to Section 6, June 2011

Section 6.1.1 to be amended by the addition of the following paragraph:

This site must include the appropriate number and type of affordable housing units as required by the State of New Jersey affordable housing laws that are in place at the time the site is developed.

Section 6.1.2 to be amended by the addition of the following paragraph:

This site must include the appropriate number and type of affordable housing units as required by the State of New Jersey affordable housing laws that are in place at the time the site is developed.

Section 6.1.3 to be amended by the addition of the following paragraph:

This site must include the appropriate number and type of affordable housing units as required by the State of New Jersey affordable housing laws that are in place at the time the site is developed.

SECTION 6 - REDEVELOPMENT OPPORTUNITIES

6.1 Redevelopment Opportunities

The Redevelopment Area is located in the center of the Borough, paralleling State Highway Route 28 and County Road Route 529. Based upon such assets as its regional location, train station, public parking, visibility from the adjacent roadways and the desire of the Borough leaders and private property owners to effectuate change, the development opportunities for the area are significant. The Plan recognizes all these features and provides the groundwork for the development of varied uses that integrate the principals of comprehensive planning. During the Borough's redevelopment planning process, it has identified four (4) areas that it believes represent the greatest opportunities for redevelopment in the Borough. The following is a summary of those areas and the types of uses the Borough envisions for the redevelopment of the areas:

6.1.1 Site #1. Train Station North - (Block 69/All Lots)

This area is located in the heart of downtown Dunellen and includes the entire south side of the block along North Avenue from Washington Avenue to Prospect Avenue. North Avenue (State Highway 28) is the major north/south road through the center of the Borough. Washington Avenue is a major county connector road between Route 22 in Green Brook and Route 287 in Piscataway. Borough Hall is located on the opposite corner of Prospect Avenue.

The entire area is approximately 1.84 acres and consists of a gas station, the Borough post office, a Provident Bank branch with drive-up windows, a parking lot for municipal business and a vacant gas station. All properties are occupied with the exception of gas station, which has been identified as a

brownfield site. The Borough has foreclosed on the property due to unpaid taxes and is seeking grant money to undertake a remedial investigation and if necessary, remediation of the site.

Due to its prime location in the downtown, this area is a priority for redevelopment. The redevelopment area should be redeveloped to include a full service municipal complex envisioning municipal offices including all police functions, library relocation and other "Towne Center" amenities such as the Post Office, a bank, and retail establishments. This assemblage should maximize utilization of the real estate in this central location contemplating structured parking and three or four story massing taking full advantage of the location for central services.

Approximately 50% of the area is presently used for parking to support the bank, post office, train station and Borough Hall. The shared use of this parking should be better defined in order to enhance the viability of the area. While this parking is necessary, it is unattractive and inefficient. Ideally, structured parking to accommodate the master municipal complex, post office, bank, and retail/office should be constructed. The parking areas may be enhanced with the construction of a small plaza with planting areas and street furniture to create a "sense of place". This will require coordination and cooperation amongst the Borough, the bank and the post office. Generally, these types of users are amenable to cooperating with these types of civic improvements.

Since this area is at the center of the downtown area, with the train station, Borough Hall and post office all in close proximity, it is the place where many visitors first experience Dunellen. Therefore, focusing the redevelopment of this area in this manner should enable the Borough to achieve immediate visible improvements. The redeveloper should include in his proposal, the interaction of this main site with Sites 2 and 3 in order to create a harmonious redevelopment setting with all three sites having some degree of pedestrian/Transit Village orientation.

The redevelopment of the former gas station property will likely be achieved through the use of private financing by the developer. It is anticipated that the developer would contribute toward the enhancement of the area's public improvements. The Borough has received grant funding to pay for part or all of the site investigation and remediation.

The improvements proposed, such as a small plaza, landscaping, parking lot improvements and street furniture, will be paid for through a variety of sources including public and private funds. Federal, state, county and local funds, including community development block grants, N.J. Transit, N.J.D.O.T., along with funds from the private property owners will be used.

6.1.2 Site #2. Train Station South - (Block 70/Lot 13 and 13.01)

This area is located on the other side of the railroad from the Train Station North area and is adjacent to the N.J. Transit train station and the Borough's library. The property is triangular in shape and is 2.66 acres in size. It is owned by the Borough and used for public parking, primarily for commuter use. The parking lot is currently operated by the Dunellen Parking Authority. The neighborhood located south of the area is primarily single family residential.

This area is attractive for redevelopment due to its location adjacent to the train station and the fact that it is already owned by the Borough. However, the cooperation of the Parking Authority is required due to its leasing of the property for public parking. The redevelopment of this area may also require the relocation or reconfiguration of the library's parking lot. Alternatively, the library should ideally be incorporated into the new municipal complex and the library and surface parking of this tract replaced with structure parking and retail/office.

The goals for redeveloping this area include, an increase in the number of public parking spaces, while encouraging new development with a mix of commercial uses. Due to the nearby single family

residential uses, the height of any structures will be limited to no more than three stories. The redeveloper should include in its proposal, the interaction of this site with Sites 1 and 3 in order to create a harmonious redevelopment setting with all three sites having some degree of pedestrian/Transit Village orientation. The site should contain a pedestrian feature so as to permit those utilizing the site to gain access to the other sites. Integrated into the design for this site should be a covered bus station.

It is likely that the South Washington Avenue/New Market Road frontage would include ground floor commercial with parking or residential above. The interior of the area, near the train station, should be developed with multi-level parking connected to the South Washington Avenue development and the train station.

It is anticipated that the Borough, in conjunction with the Parking Authority, would utilize a request for proposal process to solicit redevelopment proposals from developers for this area. Any development would be privately financed. The public parking component of the project would be constructed and financed through creative means to reduce the Borough's need to incur public debt. The Borough's ownership of the project area should provide it greater flexibility in structuring financing for the parking. Also, the involvement of the Parking Authority and its ability to issue debt represents another alternative for financing the public parking component.

6.1.3 Site #3. South Washington Avenue between rail line and Columbia Street - (Block 85/Lot 1)

This area is located south of the rail line with frontage on South Washington Avenue and runs east to the Township of Piscataway municipal boundary. The adjacent neighborhood is single family residential with a Borough park, Columbia, located south of the area, currently undergoing major revitalization and enhancement.

The area consists of approximately 19 acres and contains a large industrial building, formerly a manufacturing plant, which currently contains a mix of uses including a gym, and warehousing and manufacturing facilities.

Due to the previous use for manufacturing, the area may have environmental issues that would have to be addressed prior to its redevelopment. In addition, the buildings are occupied and may require the relocation of the tenants.

The Borough would like to encourage the redevelopment of the area for mixed residential/commercial development with unobtrusive parking facilities. The average density for this area should be 20 units per acre. The Borough encourages the redeveloper to consider retention of the front two story brick portion of the Art Color building adjoining South Washington Avenue as a component of the redevelopment proposal. The redeveloper should also include in its proposal the interaction of this site with Sites 1 and 2 in order to create a harmonious redevelopment setting with all three sites having some degree of pedestrian/Transit Village orientation. The site should contain a pedestrian feature so as to permit those utilizing the site to gain access to the other sites.

6.1.4 Remainder Parcels in Vicinity of Route 28

Drawing momentum from the successful redevelopment of the Downtown Center, it is anticipated that redevelopment of the remaining parcels will occur in subsequent phase or phases as redevelopment or perhaps rehabilitation. Such activity should be contemplated in concert with the Downtown Redevelopment Phase 1 to ensure consistency of effort and to provide guidance to property owners looking to capitalize on the anticipated dramatic downtown enhancement that will draw pedestrians throughout the length of the commercial district.

SECTION 7 - PROPOSED REDEVELOPMENT AREA LAND USE AND BUILDING REQUIREMENTS

7.1 Land Use and Building Requirements

Based upon preliminary interest and analysis of the Areas opportunities and constraints, a land use plan was created to take advantage of existing and potential physical and economic opportunities in the Area and to achieve the goals and objectives of the Redevelopment Plan. The proposed land uses in the Area are varied to take advantage of the different opportunities that are present in the Area, and are flexible enough to respond to market conditions at the time of site planning and development. The land uses are proposed for each Redevelopment Site, and standards for each site have been created. The permitted uses and design standards within each site and the design standards to the entire Area are detailed in the following Parcel Standards and General Standards section.

7.2 Relationship of Plan to the Borough Land Development (Zoning) Regulations

The land use controls and building restrictions set forth in this Redevelopment Plan shall apply to all new development within the redevelopment area and shall supercede any requirements set forth in the Borough of Dunellen Zoning Ordinance. All existing uses will be permitted to remain in the Redevelopment Area, however, any change in use or major alterations to any building or structures will be required to meet the land use and building requirements contained in this Redevelopment Plan. All other development regulations not addressed herein shall remain applicable. It is recognized that all development is contingent upon all necessary state, county and local approvals.

7.3 Land Use Map

A Land Use Map has been developed to highlight the various areas for redevelopment keyed to the following Land Use and Building Requirements.

7.4 Land Use and Building Requirements

7.4.1 Site #1. Train Station North (Block 69/All Lots)

Principal Permitted Uses:

- **Commercial/Residential.** This land use designation contemplates a mixed-use development that may include commercial uses on the ground floor and office commercial and residential uses on the upper floors. The commercial uses to be limited to the ground floor include personal and business service establishments, offices, and restaurants. Office uses also may be permitted on the upper floors.

  The predominant commercial use shall be commercial/residential including 2 bedroom units. The residential units shall be "for sale" with a possible exception for age restricted rentals.

  Public open space should be included in this parcel as a Town Park center that can be enjoyed by the pedestrians of the Borough.

Building Requirements:

1. Building height requirements. The maximum building height shall be three (3) stories.

2. Materials. Materials used shall be conducive to creating a Railroad Town (Transit Village) environment, encouraging the use of brick, awnings, planters, and wrought iron railings.
3. Density requirements. The maximum dwelling unit density shall be twenty (20) per acre.
4. Front, side, and rear setback requirements. There shall be no front yard, side yard or rear yard setback requirements. All new structures or buildings shall be located at the front property line to provide a continuous street wall.
5. Landscape Requirements. The minimum area devoted to landscaped open space shall be ten (10) percent of the total lot area. *
6. Lighting. Decorative lighting in accordance with Borough specifications shall be used. Alternative lighting designs will be considered by the Planning Board.
7. Walkways. All walkways shall use decorative pavers.
8. Trash receptacles and benches. Both trash receptacles and benches are required and shall be of materials complimenting the buildings and the Railroad Town theme as selected by the Planning Board.

7.4.2 Site #2.. Train Station South (Block 70/Lot 13 and 13.01)

Principal Permitted Uses:

- **Commercial/Parking Garage.** This land use designation contemplates a mixed-use development that may include commercial uses on the ground floor or outer edge of a parking deck, possibly mixed with residential units. The commercial uses to be primarily on the ground floor include personal and business service establishments, offices, coffee shops and restaurants. The parking deck should be designed and utilized as shared parking for the downtown commercial district as well as for commuters utilizing the train and buses.

  Potential public open space should be considered in this parcel as a Town Park center that can be enjoyed by the pedestrians of the Borough.

Building Requirements:

1. Building height requirements. The maximum building height shall be three stories.
2. Materials. Materials used shall be conducive to creating a Railroad Town (Transit Village) environment, encouraging the use of brick, awnings, planters, and wrought iron railings.
3. Density requirements. The maximum dwelling unit density shall be twenty (20) per acre.
4. Front, side, and rear Setback Requirements. There shall be no front yard, side yard or rear yard setback requirements. All new structures or buildings shall be located at the front property line to provide a continuous street wall.
5. Landscape Requirements. The minimum area devoted to landscaped open space shall be ten (10) percent of the total lot area. *
6. Lighting. Decorative lighting in accordance with Borough specifications shall be used. The specifications are in the process of being developed.
7. Walkways. All walkways shall use decorative pavers.
8. Trash receptacles and benches. Both trash receptacles and benches are required and shall be of materials complimenting the buildings and the Railroad Town theme.

7.4.3. Site #3. South Washington Avenue (Block 85/Lot 1)

Principal Permitted Uses:

- Commercial/Retail/Residential/Recreational. This land use designation contemplates a mixed-use development not exceeding three stories that may include residential, commercial, recreational or retail uses. Retail and commercial uses shall be permitted only on the first floor of buildings ("First Floor Commercial/Retail") unless the building(s) immediately fronts or faces South Washington Avenue, then, in addition to the above, office and residential uses, shall be permitted on the upper floors of said buildings. Residential development shall be permitted on any or all floors in one or more buildings constructed in the easterly portion of the property north of the Borough recreational site on Columbia Street (with a maximum number of market rate units in such residential buildings not to exceed 240 in number). To facilitate this development the property may be subdivided into two or more parcels but shall be subject to a unified development plan and density shall be calculated based upon the total land area in the unified plan. First Floor Commercial/Retail may include (but is not limited to) personal and business service establishments, restaurants, retail stores, bakeries, delicatessens, drug stores, beauty parlors, food stores and supermarkets. First Floor Commercial/Retail uses may include drive thru facilities. Any residential development may be for sale or rental at the option of the developer.

Building Requirements:

1. Building height requirements. The maximum building height shall be three (3) stories, with age-restricted housing being permitted to four (4) stories.
2. Materials. Materials used shall be conducive to creating a Railroad Town (Transit Village) environment. Encouraging the use of brick, awnings, planters, and wrought iron railings
3. Density requirements. The maximum dwelling unit density shall be ~~ten~~ (20) per acre. twenty
4. Front, side, and rear Setback Requirements. There shall be no front yard, side yard or rear yard setback requirements. All new structures or buildings shall be located at the front property line to provide a continuous street wall.
5. Landscape Requirements. The minimum area devoted to landscaped open space shall be ten (10) percent of the total lot area. *
6. Lighting. Decorative lighting in accordance with Borough specifications shall be used. The specifications are in the process of being developed.
7. Walkways. All walkways shall use decorative pavers.
8. Trash receptacles and benches. Both trash receptacles and benches are required and shall be of materials complimenting the buildings and the Railroad Town theme.

7.4.4 Remainder Properties Designated as Next Phase(s) Redevelopment Areas

Principal Permitted Uses:

- **Commercial/Residential.** This land use designation contemplates a mixed-use development that may include commercial uses on the ground floor and office commercial and residential uses on the upper floors. The commercial uses to be limited to the ground floor include personal and business service establishments, offices, and restaurants. Office uses also may be permitted on the upper floors.

  Public open space should be including in this parcel as a Town Park center that can be enjoyed by the pedestrians of the Borough.

Building Requirements:

1. Building height requirements. The maximum building height shall be three stories
2. Materials. Materials used shall be conducive to creating a Railroad Town (Transit Village) environment encouraging the use of brick, awnings, planters; and wrought iron railings
3. Density requirements. The maximum dwelling unit density shall be twenty (20) per acre.
3. Front, side, and rear Setback Requirements. There shall be no front yard, side yard or rear yard setback requirements. All new structures or buildings shall be located at the front property line to provide a continuous street wall.
4. Landscape Requirements. The minimum area devoted to landscaped open space shall be ten (10) percent of the total lot area.
5. Lighting. Decorative lighting in accordance with Borough specifications shall be used. The specifications are in the process of being developed.
6. Walkways. All walkways shall use decorative pavers.
7. Trash receptacles and benches. Both trash receptacles and benches are required and shall be of materials complimenting the buildings and the Railroad Town theme.

• Additional Landscape Note:
To effectuate meaningful landscape elements, the selected Redeveloper may vary the percentage of area devoted to landscaped open space in Sites #1, 2, and 3 provided that the 10% minimum landscape area is provided as a composite when considering all three areas together. This will enable the greatest degree of flexibility in design while meeting the Borough's aesthetic and open space desires.

Amended Section 8, June 2011

Section 8 is hereby replaced as follows:

SECTION 8 - GENERAL DESIGN STANDARDS

8.1 Design Standards

This section details the overall design standards in the Area in terms of streetscape design; the visual appearance of Route 28/North Avenue and Washington Avenue; open space design, lighting and landscaping design; site design guidelines; storage, service and loading areas; refuse and recycling collection areas; the screening of exterior mechanical equipment; signage; outdoor dining; architectural design; and parking requirements. These standards are to be used in conjunction with Site Standards. Any deviation from these standards must be considered by the Planning Board.

8.2 Streetscape Requirements

The streetscape is the primary image-setting area and includes all public and private streets. The area between the face of the building and the edge of the pavement is designated streetscape landscape area and is subject to the following standards:

- Benches, recycled plastics with wrought iron frame
- Metal or Iron Trash Receptacles matching benches
- Shrubs, trees, and ground cover
- Walkways made of brick and or decorative mason materials
- Planters
- Awnings [types, style, signage, lighting]
- Decorative and/or American Flags
- Porches/Steps
- Flower pots
- Bicycle racks

8.3 Along North Avenue and Bound Brook Road (State Highway Route 28)

The visual appearance of this roadway is important because it serves as an entranceway into the commercial/office portion of the Area, which then leads into downtown Dunellen. The aesthetics of this area is extremely important. The following standards should be considered in streetscape design of this area:

- Deciduous trees, native to New Jersey, should be planted approximately 50-foot on-center and in relation to building façade. Trees shall be over 12 feet in height; a minimum 3-inch caliper (dbh) and shall be planted on the street side of any sidewalk. The Borough Shade Tree Commission shall be consulted regarding all specifications

regarding new or replacement street trees, and Shade Tree Commission comments shall be provided to the Planning Board for action.

8.4 Along Washington Avenue

This roadway serves as the main entranceway into downtown Dunellen and its commercial area. The aesthetics and visual appearance of this area is extremely important. The following standards should be considered in streetscape design of this area:

- Deciduous trees, native to New Jersey, should be planted approximately 50-foot on-center and in relation to building façade. Trees shall be over 12 feet in height; a minimum 3-inch caliper (dbh) and shall be planted on the street side of any sidewalk. The Borough Shade Tree Commission shall be consulted regarding all specifications regarding new or replacement street trees, and Shade Tree Commission comments shall be provided to the Planning Board for action.

8.5 Open Space Design, Lighting and the Public Realm

The goal of the open space design standards is to improve the visual environment of the area through landscaping and other amenities in order to attract people to the area. People are naturally attracted to areas that appear inviting, comfortable and safe. The following standards have been created to achieve this goal.

1. All new open space in the transit village district must be designed to be integrated into the public pedestrian circulation system. Open spaces shall be so located as to provide for maximum usability and to create a harmonious relationship between buildings and the open space within the Area.

2. New open space in the transit village district cannot be designed as a residual space between buildings. It must contribute to the public's safe and direct pedestrian access to the train station. It must be designed without barriers, fences, gates or signs that imply that the route is for use of the development's residents only.

3. All improved open space shall incorporate elements such as shrubbery, attractive paving materials, street furniture, lighting, low walls, gazebos, fountains and other architectural and artistic amenities so as to produce a pleasant environment at all levels. Benches shall be placed perpendicular to the street, or, if necessary, parallel but facing away from the street. Bollards, trees, and other street furniture should be used to protect pedestrians and buildings from errant drivers. Comfortable and attractive street furniture that is accessible to the physically disabled should be provided in public spaces for public enjoyment and comfort. Street furniture may include seating and tables, drinking fountains, trash receptacles, information kiosks, and directories. Street furniture such as benches, planters, trash receptacles, bollards, kiosks, public art, bulletin boards, parking meters, newspaper racks, mail boxes, and light poles shall be installed so they are out of the way of the main pedestrian walkway.

4. All areas not covered by building, pavement or impervious surface shall be landscaped by a mix of evergreen and deciduous trees, shrubbery and herbaceous plants, including grass--native species proven to resist the urban environment in this area. Evergreen screen planting shall be a minimum of four (4) feet in height. Deciduous planting shall be a minimum of three feet in height. Material shall be planted, balled, and burlapped and be of specimen quality as established by the American Association of Nurserymen. At initial planting said material shall provide a screen from the top of the planting to within six (6) inches of grade. Other plant materials shall be dense and of specimen quality as determined above. All deciduous trees shall be a minimum of three (3) inches in caliper or twelve (12) feet in height.

5. Outdoor plazas shall be encouraged. Adequate landscaping and street furniture of a style complementary to the surrounding facades shall be used.

6. Public art in the forms of sculpture, murals, artist-designed street furnishings, etc. should be integrated into the outdoor environments associated with new public or private redevelopment projects.

7. Adequate and appropriate lighting shall be provided to promote a sense of security in the open space.

8. All trash receptacles shall be adequately secured, enclosed, and screened on all sides by landscaping or other types of attractive materials.

9. All fences and walls shall be designed as integrated parts of the overall architectural and site design. All materials shall be durable and finished in textures and colors complementary to the overall architectural design.

10. Conspicuous chain link fencing without screening and/or landscaping shall not be permitted.

11. Sidewalk areas shall be landscaped and durably paved and shall be properly illuminated with safe and adequate lighting.

12. Maintenance of landscaping on public property or right-of-way shall be the subject of a Developer's Agreement.

13. All utilities shall be located underground.

8.6 Transit Supportive Site Design Guidelines

Strong transit supportive site design guidelines are essential for insuring a compact and pedestrian friendly environment with a successful public realm. An important goal of the Plan is

to seamlessly knit together public and private sites with each other, the downtown, and the train station.

All buildings in their design and layout should be an integral part of the total development for the parcel. The building's design must endeavor to achieve excellence in scale, form, functional utility, appropriateness and relationship to adjoining buildings. Each building must use materials appropriate for fostering a Railroad Town feel, brick or durable masonry material being the most desirable, subject to the review of the Technical Review Board.

When buildings in an area are of similar and/or compatible scale, materials and massing, the area becomes harmonious thereby providing a more comfortable human experience. The Transit Supportive Site Design Guidelines standards section seeks to achieve a continuity of design that allows for individuality of design while still providing a distinct identity for the Area.

All structures within the Redevelopment Area shall be designed and maintained so as to improve the visual appearance of Dunellen as viewed from within and beyond the borough's borders.

1. Integration of Transit
    a. All new development should embrace the transit station as a vital element of the downtown.
    b. The transit station should be fully integrated into the design of the pedestrian environment.
    c. Where any new development is located on an established bus route, bus turnouts and shelters should be incorporated into the site design in consultation with NJ Transit.

2. Pedestrian Connectivity
    a. Continuous sidewalks should be provided along all street frontages.
    b. Sidewalks connecting the transit station to key destinations should be as direct and visually unobstructed as possible.
    c. In areas slated for outdoor dining, there must be six feet of unobstructed sidewalk available for the exclusive use of pedestrians
    d. Driveway curb cuts should be kept to a minimum on primary pedestrian routes.
    e. Where sidewalks interface with driveways, the sidewalk material and level should continue across the driveway.
    f. Eliminate security fences, gates and barriers between different uses (except to protect the privacy and security of private open space). Where practical, create public through-routes with line-of-sight connections to adjacent neighborhoods without barriers, fences, gates or signs that imply that the route is for use of the development's residents only.
    g. Bicycle networks should run throughout the transit village district and link directly to the transit station with clear signage leading the way.
3. Building Placement and Streetwalls
    a. All structures within the Redevelopment Area shall be situated with proper consideration of their relationship to other buildings, both existing and proposed, in terms of light, air, and usable open spaces, access to public rights-of-way and off-street parking, height, and bulk.

b. Groups of related buildings shall be designed to present a harmonious appearance in terms of building silhouette; architectural style and scale; massing of building form; surface material, finish, and texture; decorative features; window and doorway proportions; entry way placement and location; signage; and landscaping.
c. All buildings should be placed directly up to the sidewalk in order to maintain a continuous building street wall.
d. Buildings should be oriented so that the entrances are clearly identifiable and open directly onto a public sidewalk or plaza.
e. Primary entrances shall conveniently be oriented towards transit.
f. The main entrance of a corner building should be placed on a diagonal and oriented to the intersection.
g. Buildings should be placed in order to allow for the use of common driveways (especially along arterial streets) where a reduction in the number of curb openings will enhance the streetscape and promote traffic safety.
h. Rows of buildings which create a monotonous, "cookie-cutter" design are discouraged.
i. All loading areas must be located in a rear yard and screened from view from public rights-of-way.
j. No drive-through establishments are permitted within the transit village district, with the exception of banks.

4. New Streets
   a. The layout of new streets shall be in a grid pattern or modified grid pattern, emphasizing interconnected streets and the ability to reach local destinations without crossing major streets or primary arterials.
   b. The street grid should be maintained and extended wherever possible. Where the street grid is interrupted by steep slopes or other topographical variations, walkways or stairways should be built to maintain pedestrian continuity.
   c. It is desirable to have streets with block faces of 400 feet in length or less. For blocks over 600 feet, provide a mid-block cut-through for pedestrians.
   d. The use of service alleys is encouraged.

5. Off-Street Parking and Circulation
   a. Off-street parking is an integral component of the Plan. The importance of such parking, however, is not intended to dictate project design. Off-street parking is encouraged to be as inconspicuous as possible and to incorporate landscaping and screening to the greatest extent possible to minimize its physical and visual impact.
   b. Off Street parking facilities shall be provided with convenient and safe access to public rights of way and shall be illuminated so as to reflect light away from any adjoining properties.
   c. Minimum Off-Street Parking Standards will be in conformance with the current municipal code.
   d. Off-Street parking and loading areas shall be coordinated with the public street system. Shared parking among mixed uses shall be encouraged and may be

factored in for purposes of calculations. Shared usage of parking is encouraged. Off-street parking for one use shall not be considered as providing the required parking for any other use; however, one-half of the parking requirements for any use whose peak attendance will be at night or on Sundays may be assigned to a use which will be closed at night or on Sundays.

e. Parking for principal permitted uses may, at the discretion of the Planning Board and in conjunction with a site plan and/or subdivision application, be granted relief from the parking requirements provided credible evidence is presented that the parking needs of such uses can be met by existing on-street spaces and off-street public or private parking lots. The Planning Board may require the furnishing of written authorization of the owners of such off-street parking lots that the specified numbers of parking spaces in such a lot are available and will be designated for daily or overnight parking for such use.
f. No off-street parking shall be allowed between a public street or pedestrian way and the required frontage for a building.
g. Off-street parking lots shall only be allowed in surface lots on the side or rear of a lot, in an underground lot or in a parking structure.
h. Parking lots should be designed to minimize conflicts between vehicles and pedestrians.
i. Pedestrian walkways are required throughout the parking area.
j. Where a parking lot is located along a public street, no more than 60 feet of frontage is permitted.
k. Parking lot entrances and exits should be designed away from primary pedestrian routes.
l. Parking bays in excess of 10 spaces in length should be divided by intermediate landscaped islands. Landscape islands should provide at least one parking stall width of landscape area for planting trees and groundcovers.
m. A minimum of ten (10) percent of any surface parking facility shall be landscaped and include (1) shade tree for every twenty (20) parking spaces. The perimeter of the parking area shall be landscaped. A landscape buffer strip should be provided between all parking areas and the sidewalk or street. The buffer strip should consist of shade trees with a decorative fence, a solid wall or dense hedge. Such fence, wall or hedge should be no less than three feet and no more than four feet in height to allow views into and out of parking areas.
n. Gaps should be left in these screens to allow for pedestrian connections between the parking lot and the street.
o. Lighted sidewalks should extend between rear or side parking areas and building entrances.
p. Residential garages should be as invisible from the street as possible to maintain a traditional neighborhood feel.

6. Parking Structures
    a. The ground floor façade of any parking structure abutting a street or walkway should be wrapped with retail or office use.
    b. Facades should be designed and architecturally detailed like other commercial buildings within the district.

c. Windows or other openings should be provided that echo those of surrounding buildings.
d. Top decks of parking structures visible from other properties should be designed with trellises and for landscaping sufficient to screen portions of the visible area.

8.7 Storage, Service and Loading Areas

Storage, service, maintenance, and loading areas shall be constructed, maintained, and used in accordance with the following conditions:

1. Off-street loading shall be provided for all commercial uses in accordance with the municipal code or in accordance with the following schedule where specific provision is not addressed by Code.

    a. One off-street loading space for the first 25,000 square feet of total gross building floor area.
    b. One additional off-street loading space for each subsequent 25,000 square feet or portion thereof of total gross building floor area.

    Each off-street loading space shall be at least 12 feet in width, 50 feet in length and have a height clearance of at least 14 feet and shall be separate from off-street parking facilities.

2. Loading areas are permitted in rear yards or side yards only, provided that they are screened from public view.

3. No loading, storage or service area shall be located between the building line and the street line, i.e., in the front yard.

4. Provisions shall be made on site for any necessary vehicle loading, and no on-street vehicle loading or idling shall be permitted.

5. No materials, supplies, or equipment, including trucks or other motor vehicles, shall be stored upon site except inside a closed building or behind a durable material wall not less than six (6) feet in height, screening such materials, supplies, or vehicles from adjacent sites so as not to be visible from neighboring properties and streets. Any outdoor storage areas shall be located within the rear portions of a site.

8.8 Refuse and Recycling Collection Areas

1. All outdoor refuse and recycling containers shall be visually screened within a durable enclosure, six (6) feet or higher, so as not to be visible from adjacent lots or sites.

2. Refuse and recycling collection enclosures should be designed of durable materials with finishes and colors which are unified and harmonious with the overall architectural theme.

3. Refuse and recycling collection areas should be so located upon the lot as to provide clear and convenient access to refuse collection vehicles.

4. Refuse collection areas should be designated and located upon the lot as to be convenient for the deposition of refuse generated on the site.

5. Refuse and recycling collection areas should be effectively designed to contain all refuse generated on site and deposited between collections. Deposited refuse should not be visible from outside the refuse enclosure.

8.9 Screening of Exterior Mechanical Equipment

1. In areas where rooftops can be viewed from adjacent roadways, rooftop equipment shall be screened to the greatest extent possible, and/or shall be painted to match the roof. If such rooftop equipment is visible from the public road, it shall be finished to match the façade of the building.

2. Conventional mechanical and electrical equipment, which is part of the building space, such as heating, ventilating, the air conditioning system and lighting and general power, where ground mounted, shall be screened from view with evergreen landscaping.

3. Electrical equipment shall be mounted on the interior of a building wherever possible. When interior mounting is not practical, electrical equipment shall be mounted in a location where it is substantially screened from public view. In no case shall exterior electrical equipment be mounted on the street side or primary exposure side of any building.

4. Process equipment such as stacks, hoppers, bins, storage vessels, blowers, compressors, piping, ducting, conveyors and the like, which are ground mounted, shall be enclosed with screen walls to match the principal buildings.

5. Transformers that may be visible shall be screened with either plantings or a durable noncombustible enclosure. Transformer enclosures should be designed of durable materials with finishes and colors which are unified and harmonious with the overall architectural theme.

6. Satellite dishes shall be roof mounted and shall not be visible from the public road or sidewalks.

8.10 Signage

Signage shall be an essential and permanent component of the building design and shall be compatible with building materials and colors. Design of the signs shall be compatible to the Railroad Town (Transit Village) environment. Only signs that identify uses within the buildings are permitted.

The standards for signage are to be found in the Municipal Code and based on the United States Sign Council recommendations.

8.11 Outdoor Dining

Where permitted, seasonal outdoor dining as an accessory use to a restaurant shall be permitted with the following provisions:

1. Restaurants shall not place any table, sign, or umbrella, or other item in such a manner as to block or impair pedestrians utilizing the sidewalk, any walkways or building entrances/egress, municipal signs, receptacles or garbage, public bench, or other public amenity including fire hydrants. Outdoor seating is only permitted if indoor seating is also available. The materials used for outdoor furniture must be approved by the Planning Board.
2. Restaurants must provide for the disposal of recycled cans/bottles and garbage. Receptacles for garbage shall be used for commercial refuse. Sidewalk areas shall be kept clean during hours of operation.

3. Drive-in or drive-through service shall be prohibited.

4. No portion of any sidewalk dining equipment, including chairs, table and opened umbrellas, shall encroach upon the sidewalk in a manner to block, impede or cover adjacent store fronts, doors, or windows in front of any other business establishment.

5. An outdoor dining permit must be visibly displayed for all outdoor seating.

8.12 Transit Supportive Architectural Design Guidelines

Transit supportive architectural design guidelines are important for insuring, among other goals, appropriate building massing, orientation, scale, entries, windows, facades and roofs. Buildings shall be designed to have attractive, finished appearances from all public spaces.

1. Facades
   a. Buildings should have a well-defined front façade with primary entrances facing the street.
   b. Buildings should be aligned so that the dominant lines of their facades parallel the line of the street and create a well-defined edge.
   c. New building facades should have a pedestrian scale aesthetic. This can be accomplished by establishing a layering of rhythmic patterns and architectural elements such as windows, columns, rooflines, building materials and colors.
   d. The primary façade(s) (viewable by the public from streets and parking lots) of buildings of 36 feet or greater in width should be articulated into smaller increments through the following or similar techniques:
      1. Stepping back or extending forward abut compatible materials

2. Division into storefronts with separate display windows and entrances
3. Arcades, awnings, window bays, balconies or similar ornamental features
4. Variation in rooflines to reinforce the articulation of the primary façade

e. It should be recognized that buildings will be viewed from a variety of vantage points. Consequently, the placement of doors, windows, balconies, changes in materials, or roof height, etc., should be designed to provide an attractive and harmonious design on all sides.
f. Rear facades should be designed as an integral part of the overall building with similar materials and detail treatments.
g. In general, buildings over two stories should have a well-defined base, middle and top. The base, or ground floor, should appear visually distinct from the upper stories, through the use of a change in building materials, window shape or size, an intermediate cornice line, an awning, arcade or portico, or similar techniques.
h. Portions of upper stories (above the second or third level) should be stepped back from the line of the front façade to provide areas for outdoor terraces, rooftop patios, etc.
i. Architectural details such as ornamental cornices, arched windows and warm-toned brick with bands of contrasting color are encouraged in new construction. The contemporary adaptation of historic and vernacular residential, institutional and commercial styles found elsewhere in the municipality is encouraged.

2. Transparency: Window and Door Openings
   a. For nonresidential or mixed-use buildings, window and door openings should comprise at least 60 percent of the length and at least 30 percent of the area of the ground floor of the primary street façade.
   b. For nonresidential or mixed-use buildings, a minimum of 20 percent of the ground level of side and rear facades not fronting a public street should consist of window and door openings.
   c. For nonresidential or mixed-use buildings, a minimum of 20 percent of all sides of upper story facades should consist of window or balcony/door openings.
   d. For residential buildings, a minimum of 20 percent of primary (street-facing) facades and 15 percent of other facades including upper stories should consist of window and door openings providing residents within the buildings a visual connection to activity on the sidewalk and street.
   e. Glass on street facing doors and windows should be clear or lightly tinted, allowing views into and out of the interior. Mirrored, dark tinted, or opaque or glass block should not be used.

3. Building Entrances
   a. Primary building entrances on all buildings should face on a public street or walkway, or be linked to that street by a clearly defined and visible walkway or courtyard. Additional secondary entrances should be oriented to a secondary street or parking area.
   b. Residential entries should be separate and distinct from commercial entrances.

c. In the case of a corner building or a building abutting more than one street, the street with the higher classification should be considered primary. The main entrance should be placed at sidewalk grade.
d. Non-residential building entries should be designed with one or more of the following:
    1. Canopy, portico, overhang, arcade or arch above the entrance
    2. Recesses or projections in the building façade surrounding the entrance
    3. Display windows surrounding the entrance
    4. Architectural detailing such as brickwork or ornamental moldings
    5. Planting areas, pots or window boxes for seasonal landscaping
e. Porches, steps, roof overhangs, hooded front doors or similar architectural elements should be used to define the primary entrances to all residences.

4. Building Materials
    a. Buildings should be constructed of durable, high-quality materials such as: brick, natural stone, manufactured stone, textured, patterned and/or integrally colored cast-in-place concrete, integrally colored, precast concrete masonry units (provided that surfaces are molded, serrated or treated to give wall surfaces a three-dimensional texture).
    b. Stucco or exterior insulating finish system is acceptable above the first floor of the façade visible to public sidewalks and street.
    c. Buildings may include architectural metal decorative panels, structural elements and decorative support or trim members.
    d. Buildings may not be constructed of unadorned plain or painted concrete block, unarticulated or blank, tilt-up concrete panels, pre-fabricated metal building systems, glass curtain wall systems, aluminum, vinyl, fiberglass, asphalt or fiberboard siding.

5. Roof Design
    a. Roof lines and cornice details shall be completed in a three-dimensional manner so that the features on the back of the roof or similar unfinished areas are not visible.
    b. Buildings may be designed with pitched and/or flat roofs. Flat roofs should be defined with a discernable cornice line.
    c. Variations in roof type, height, and/or distinct, separate roof segments should be considered as a means of creating greater visual interest, identifying changes in use, areas of ownership or reducing monotony.
    d. Pitched roofs such as gable, hip, shed or mansard roofs should be clad with highly durable materials such as standing seam metal, slate, ceramic or fireproof composite tiles. Use of asphalt shingles is discouraged.

6. Equipment Screening
    a. All rooftop equipment should be screened from view from adjacent streets, public rights-of-way and adjacent properties. Preferably, rooftop equipment should be screened by the building parapet, or should be located out of view from the ground.

b. Exterior mechanical equipment such as ductwork should not be located on primary building facades.
c. Soft water tanks, gas meters, and electrical meters should also be screened from public view wherever possible.
d. All screening shall be architecturally compatible with the primary structure. The screening should be part of the articulation of the building and not appear to be an afterthought. Sound attenuation to mechanical equipment is also encouraged.

7. Franchise Architecture
   a. Franchise architecture (building design that is trademarked or identified with a particular chain or corporation and is generic in nature) is generally discouraged unless it employs a traditional storefront commercial style. Franchises or national chains should create context sensitive buildings that are sustainable and reusable.

8. Awnings
   a. Awnings, overhangs and arcades are encouraged, where pedestrians are expected to walk and shop, to provide overhead protection and to create significant entrances.
   b. Where awnings are used, canvas or fabric awnings are preferable. If glass or metal awnings are employed, they should closely complement the building's architectural character and aesthetic. Back lighted awnings and canopy signs should not be used.
   c. Awning standards are found within the Borough's sign ordinance.

8.13 Transit Supportive Parking Requirements

Parking standards within the transit village district should reflect proximity to high frequency transit service, pedestrian-friendly built forms, and a mix of uses.

1. There will be no minimum on-site parking requirement for sites under 20,000 sf.
2. All parking spaces shall be a minimum of nine (9) feet in width by eighteen (18) feet in depth. Aisles shall be a minimum of twenty-four (24) feet in width.
3. Parking requirements for similar uses shall be reduced up to 90 percent to account for the likely cross patronage among the adjacent uses located within a maximum walking distance of 500 feet.
4. For uses that are ancillary to a larger business, no additional parking will be required. [Example – a snack shop within an office building or hotel.]
5. Parking should be shared among different buildings and facilities whenever possible to take advantage of different peak periods. [Example – an office building can share parking with a restaurant.]
6. For large shared parking arrangements, jurisdictions are encouraged to require formal shared parking agreements that are recorded with the jurisdiction.
7. A reduction in the number of off-street parking spaces required (excluding parking spaces for persons with disabilities) shall be permitted for the provision of bicycle parking provided that no fee is required for using the bicycle parking.

8. The reduction in the number of automobile parking spaces shall be reduced by one (1) space for each bicycle parking space provided up to thirty (30) percent of the total required spaces.
9. Bicycle parking shall be at least as conveniently located as the most convenient automobile spaces, other than those spaces for persons with disabilities.
10. Bicycle parking shall be an integral part of the overall site layout and designed to minimize visual clutter.
11. Bicycle parking shall be provided in a well-lighted area.
12. Bicycle Parking Spaces outside of a building shall be located within a one hundred (100) foot diameter of the primary building entrance.
13. All bicycle parking areas shall afford a four (4) foot wide access aisle to ensure safe access to spaces.
14. Bicycle parking shall be located so as to protect bicycles from automobile damage.
15. All Bicycle Racks and lockers shall be securely anchored to the ground or building structure.
16. Bicycle Parking Spaces shall not interfere with pedestrian circulation and shall adhere to ADA requirements.

SECTION 9 - PLAN OF ACTION

9.1 Development Schedule

Due to the magnitude of the proposed Plan, redevelopment can be expected to occur in multiple phases with one or more developers. The interrelationships among the components of the Plan may require careful sequencing so that there can synergy among the redevelopment sites.

Each phase may consist of a single land use or a mixture of land uses provided that such phases shall be capable of operating in a manner consistent with the intent and purpose of the Plan. As a result of phased development, sureties or other performance guarantees for completion of infrastructure and the project components may be required.

9.2 Property To Be Acquired

The intent of this Redevelopment Plan is to facilitate private property redevelopment and ownership. Therefore, no acquisition of privately owned properties by the Borough is anticipated by this Plan. However, a public-private joint venture between a governmental agency and the redevelopers may be possible.

9.3 Relocation

The Borough of Dunellen will provide all displaced tenants and landowners with the appropriate relocation assistance, pursuant to applicable State and Federal law, should relocation be necessary. Such assistance will be provided through an appropriately designated office that will assist in any

relocation of persons, businesses or other entities. If relocation is not directly caused by the Redevelopment Plan, the Borough assumes no responsibility for relocation of people or businesses.

9.4 Incentives and Project Funding

The Borough of Dunellen, working with the Middlesex County Improvement Authority, has identified sources of funding to assist the Borough in achieving the goals and objectives of the Redevelopment Plan. Sources of funding were identified on the federal, state, county and local levels. Incentives are essential to successful redevelopment. These incentives may include public financial assistance and tax abatement programs.

SECTION 10 - RELATIONSHIP TO PLANS OF OTHER JURISDICITIONS

10.1 Contiguous Municipalities

Dunellen lies adjacent to the City of Plainfield, the Township of Piscataway, Boroughs of Greenbrook and Middlesex. The Redevelopment Area is contiguous to the City of Plainfield, Borough of Middlesex and the Township of Piscataway.

- The northeast portion of the redevelopment area, at North Avenue and Jefferson Avenue is contiguous to the City of Plainfield. The uses in Plainfield are industrial and commercial, including National Starch.
- The southwest portion of the redevelopment area, at Bound Brook Road, is contiguous to the Borough of Middlesex. The uses in Middlesex are commercial, which is inconsistent with the business zoning in Dunellen.
- The northeast portion of the redevelopment area, at the Art Color property, is contiguous to the Township of Piscataway. The uses in Piscataway are industrial, which is consistent with the industrial zoning in Dunellen.
- The Borough of Green Brook is located approximately one mile from the redevelopment area and is not contiguous to the redevelopment area.

10.2 Middlesex County Growth Management Plan

The Middlesex County Growth Management Plan has been adopted in three phases: Phase I in June 1990; Phase 11 in July 1992; and Phase III in December 1995. The redevelopment plan is consistent with the goals and objectives of the Growth Management Plan.

10.3 State Development and Redevelopment Plan

The State Development and Redevelopment Plan (SDRP) adopted March 1, 2001 designates the area of Dunellen in which the redevelopment plan is situated as being part of the PA1 Metropolitan Planning Area (PA1). The PA1 includes a variety of communities that range from large urban centers to 19th century towns shaped by commuter rail and post-war suburbs. The SDRP policies for the PA1 are to provide for much of the state's future redevelopment. The redevelopment plan will promote for the following PA1 policy objectives of the SDRP in the following ways:

(1) **Land Use:** Promote redevelopment and development in Cores and Neighborhoods of Center

and in Nodes that have been identified through cooperative regional planning efforts. Promote diversification of land uses, including housing where appropriate, in single-use developments and enhance their linkages to the rest of the community. Ensure efficient and beneficial utilization of scarce land resources throughout the Planning Area to strengthen its existing diversified and compact nature.

The redevelopment plan's primary focus is to revitalize the downtown area of the Borough, an area that has seen limited investment, but an area that has many opportunities to become a vital part of the community again through the development of underutilized properties and the enhancement of existing properties.

(2) **Housing:** Provide a full range of housing choices through redevelopment, new construction, rehabilitation, adaptive reuse of non-residential buildings, and the introduction of new housing stock through maintenance, rehabilitation and flexible regulation.

While the redevelopment plan notes the inconsistencies in development in the downtown area with a mix of dwellings in the business zone, one of the goals is to encourage mixed use development with residential and commercial focusing on the proximity to the train station.

(3) **Economic Development:** Promote economic development by encouraging strategic land assembly, site preparation and infill development, public/private partnerships and infrastructure improvements that support an identified role for the community within the businesses. Encourage job training and other incentives to retain and attract businesses. Encourage private sector investment through supportive government regulations, policies, and programs, including tax policies and expedited review of proposals that support appropriate redevelopment.

The major goals and objectives of the redevelopment plan are to encourage new investment that will result in the generation of tax ratables, jobs and an increase in property values throughout the community.

(4) **Transportation:** Maintain and enhance a transportation system that capitalizes on high-density settlement patterns by encouraging the use of public transit systems, walking, and alternative modes of transportation to reduce automobile dependency, link Centers and Nodes, and create opportunities for transit oriented redevelopment. Facilitate efficient goods movement through strategic investments and intermodal linkages. Preserve and stabilize general aviation airports and, where appropriate, encourage community economic development and promote complementary uses for airport property such as business centers.

The train station and the location of the downtown at the crossroads of State Highway 28 and County Road 529 are key elements to the redevelopment of the area. Focusing redevelopment in and around the train station is critical to encouraging greater use of public transit and alternative means of transportation to reduce automobile dependency and reduce air pollution.

(5) **Natural Resource Conservation:** Reclaim environmentally damaged sites and mitigate future negative impacts, particularly to waterfronts, scenic vistas, wildlife habitats and to Critical Environmental Sites and Historic and Cultural Sites. Give special emphasis to improving air quality. Use open space to reinforce neighborhood and community identity, and protect natural linear systems, including regional systems that link to other Planning Areas.

The redevelopment area includes a number of former industrial and commercial properties that are vacant and underutilized and have environmental problems. The goal is to remediate and

reuse these properties in a beneficial manner that will support the revitalization of the downtown area and the community.

(6) **Agriculture:** Use development and redevelopment opportunities wherever appropriate and economically feasible to meet the needs of the agricultural industry for intensive agricultural production, packaging and processing, adding value operations, marketing, exporting and other shipping. Provide opportunities for farms, greenhouses, farmers markets and community gardens.

Not applicable in the Borough.

(7) **Recreation:** Provide maximum active and passive recreational opportunities and facilities at the neighborhood, local and regional levels by concentrating on the maintenance and rehabilitation of existing parks and open space while expanding and linking the system through redevelopment and reclamation projects.

The redevelopment plan includes requirements for the enhancement of the streetscape and for the provision of additional open space in any new development for the benefit of the community.

(8) **Redevelopment:** Encourage redevelopment at intensities sufficient to support transit, a broad range of uses and efficient use of infrastructure. Promote design that enhances public safety, encourages pedestrian activity and reduces dependency on the automobile.

The nature of the redevelopment plan is "redevelopment". It takes advantage of the state statutes to provide for mixed use development working with property owners and developers to induce development in an area which has been underutilized and has lacked new investment.

(9) **Historic Preservation:** Encourage the preservation and adaptive reuse of historic or significant buildings, Historic and Cultural Sites, neighborhoods and districts in ways that will not compromise either the historic resource or the area's ability to redevelop. Coordinate historic preservation with tourism efforts.

While the redevelopment area does not contain a large number of historically significant structures, the goal is to rehabilitate and reuse those that do exist. The larger vision is to encourage the revitalization of a downtown area that grows around the rail as an early suburb and industrial hub. The changing economics dictates that the future of the downtown is for mixed use residential and commercial development that will serve the larger community and utilize the benefits of the train station.

(10) **Public Facilities and Services:** Complete, repair or replace existing infrastructure systems to eliminate deficiencies and provide capacity for sustainable development and redevelopment in the region. Encourage the concentration of public facilities and services in Centers and Cores.

The infrastructure of the redevelopment area will be improved through streetscape improvements, improvements for expanded public parking, enhancements to the train station, along with creation of public open spaces.

(11) **Intergovernmental Coordination:** Regionalize as many public services as feasible and economical to enhance the cost-effective delivery of those services. Establish multi-jurisdictional policy and planning entities to guide the efforts of State, county and municipal governments to ensure compatible and coordinated redevelopment.

The very ideology of this policy is embodied in the spirit and thrust of the redevelopment plan. The redevelopment plan is a progressive initiative undertaken by the Borough to facilitate redevelopment in an area of its community that needs it most. In addition, the effort is being supported by the County of Middlesex, through the involvement of the Middlesex County Improvement Authority (MCIA). The Borough, working closing with the MCIA is aggressively seeking funding from all levels of government and from the private sector to the support this redevelopment.

SECTION 11 - ADMINISTRATIVE AND PROCEDURAL REQUIREMENTS

11.1 Amending the Redevelopment Plan

Upon compliance with the requirements of applicable law, the Mayor and Council of the Borough of Dunellen may amend, revise or modify this redevelopment Plan as circumstances may make such changes appropriate.

11.2 Duration of Redevelopment Plan

The Redevelopment Plan, as amended, and as addressed by Phases, shall be in full force and effect for a period of time from the date of approval of this Plan by the Mayor and Council, until either:

a) all the redevelopment phases have been certified as complete and the redevelopment plan has been fully implemented, or
b) for the duration of any long-term tax exemption that has been granted;

whichever date is later.

11.3 Conveyance of Land

The intent of this Redevelopment Plan is to facilitate private property redevelopment and ownership. The Local Redevelopment and Housing Law and the Plan, however, authorizes the Borough or its designee, to exercise its powers to acquire property or to eliminate or modify any restrictive covenants, easements or similar property interests which may undermine the implementation of the Plan on all properties in the Redevelopment Area. The Mayor and Council or its designee, may sell, lease, or otherwise convey to a redeveloper(s) for redevelopment, subject to the restriction, controls and requirements of this Redevelopment Plan, all or any portion of the land within the Redevelopment Area that becomes available to disposal by the municipality as a result of public action under the Plan. The Borough reserves the right to formulate an agreement under any of the above-referenced arrangements and to enforce resale covenants.

11.4 Redeveloper(s) Selection

The Borough or its designee will implement elements of the Plan by participating in a Request for Proposal (RFP) process. It is anticipated that the Mayor and Council, or its designee will designate a redeveloper(s) for the project and the Mayor and Council will formalize the designation through execution of a redevelopment agreement(s). The Mayor and Borough Council will determine the specifics of the RFP process.

11.5 Redeveloper(s) Agreements

All agreements with redeveloper(s) shall contain the following provisions:

1. The redeveloper(s) will be obligated to carry out the specific improvements in accordance with the Redevelopment Plan.

2. The redeveloper(s), its successors or assigns shall devote land within the Redevelopment Area to the uses specified in this Redevelopment Plan.

3. The redeveloper(s) shall begin and complete the development of said land for the uses required in this Redevelopment Plan within a period of time which the Mayor and Council fixes as reasonable.

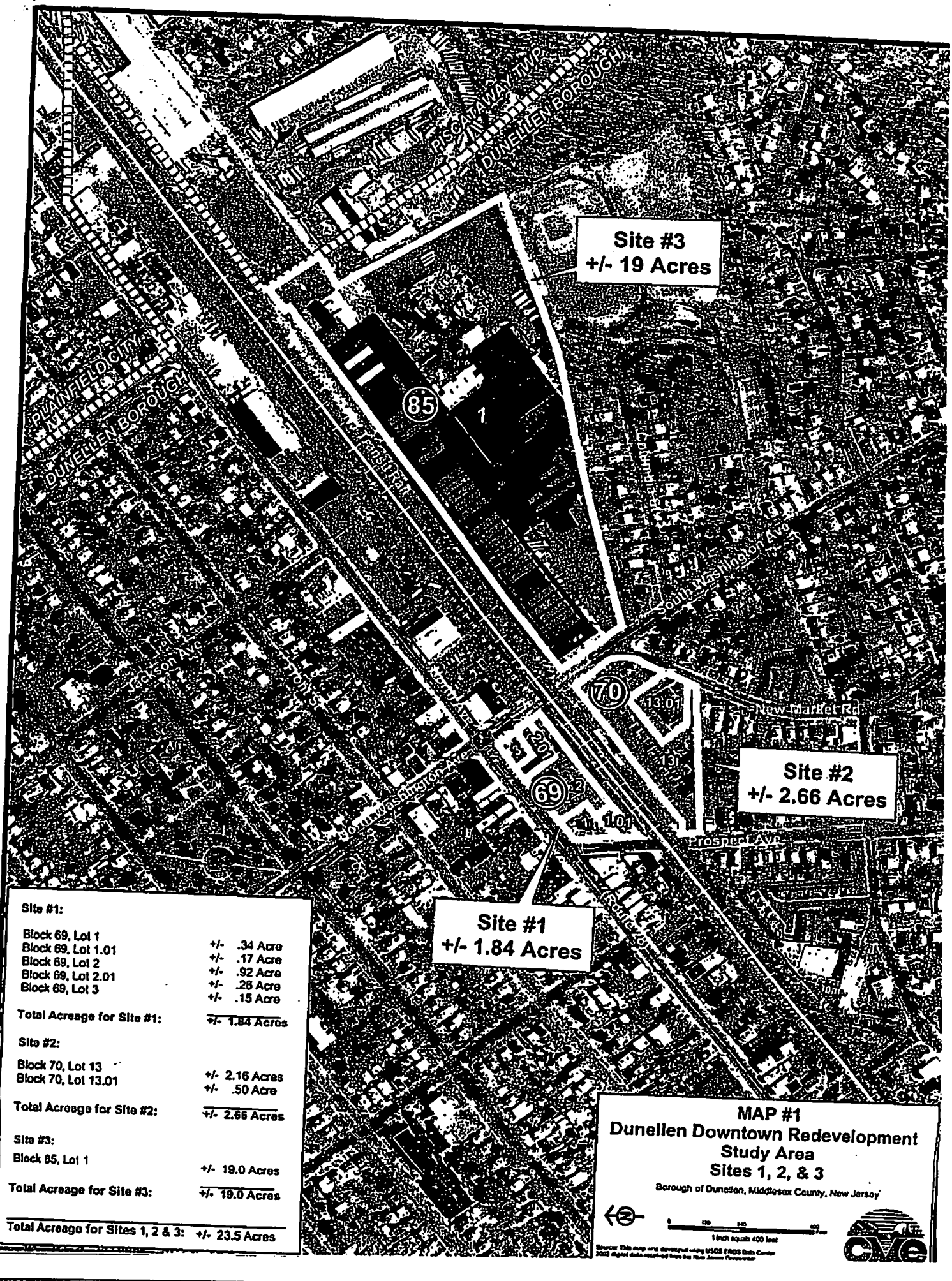
4. The redeveloper(s) will not be permitted to sell, lease, or otherwise transfer or dispose of property within the Redevelopment Area without prior written consent of the Mayor and Council.

5. Upon completion of the required improvements, the conditions determined to exist at the time the Redevelopment Area was determined to be in need of redevelopment shall be deemed to no longer exist, and the land and improvements thereon shall no longer be subject to eminent domain as a result of those determinations.

6. No covenant, agreement, lease, conveyance or other instrument shall be effected or executed by the redeveloper(s), the Mayor and Council, or successors, lessees, or assigns of either of them, by which land in the Redevelopment Area is restricted as to sale, lease, or occupancy upon the basis of race, color, creed, religion, ancestry, national origin, gender or marital status.

7. Neither the redeveloper(s) nor the Mayor and Council, nor the successors, lessees, or assigns or either of them shall discriminate upon the basis of race, creed, religion, ancestry, national origin, gender or marital status in the sale, lease or rental or in the use and occupancy of the land or improvements erected or to be erected thereon, or any part thereof, in the Redevelopment Area.

8. Any other provisions as may be deemed necessary to effectuate the purposes of the local Redevelopment and Housing Law.



Site #1:

Block 69, Lot 1	+/- .34 Acre
Block 69, Lot 1.01	+/- .17 Acre
Block 69, Lot 2	+/- .92 Acre
Block 69, Lot 2.01	+/- .26 Acre
Block 69, Lot 3	+/- .15 Acre
Total Acreage for Site #1:	**+/- 1.84 Acres**

Site #2:

Block 70, Lot 13	+/- 2.16 Acres
Block 70, Lot 13.01	+/- .50 Acre
Total Acreage for Site #2:	**+/- 2.66 Acres**

Site #3:

Block 85, Lot 1	+/- 19.0 Acres
Total Acreage for Site #3:	**+/- 19.0 Acres**

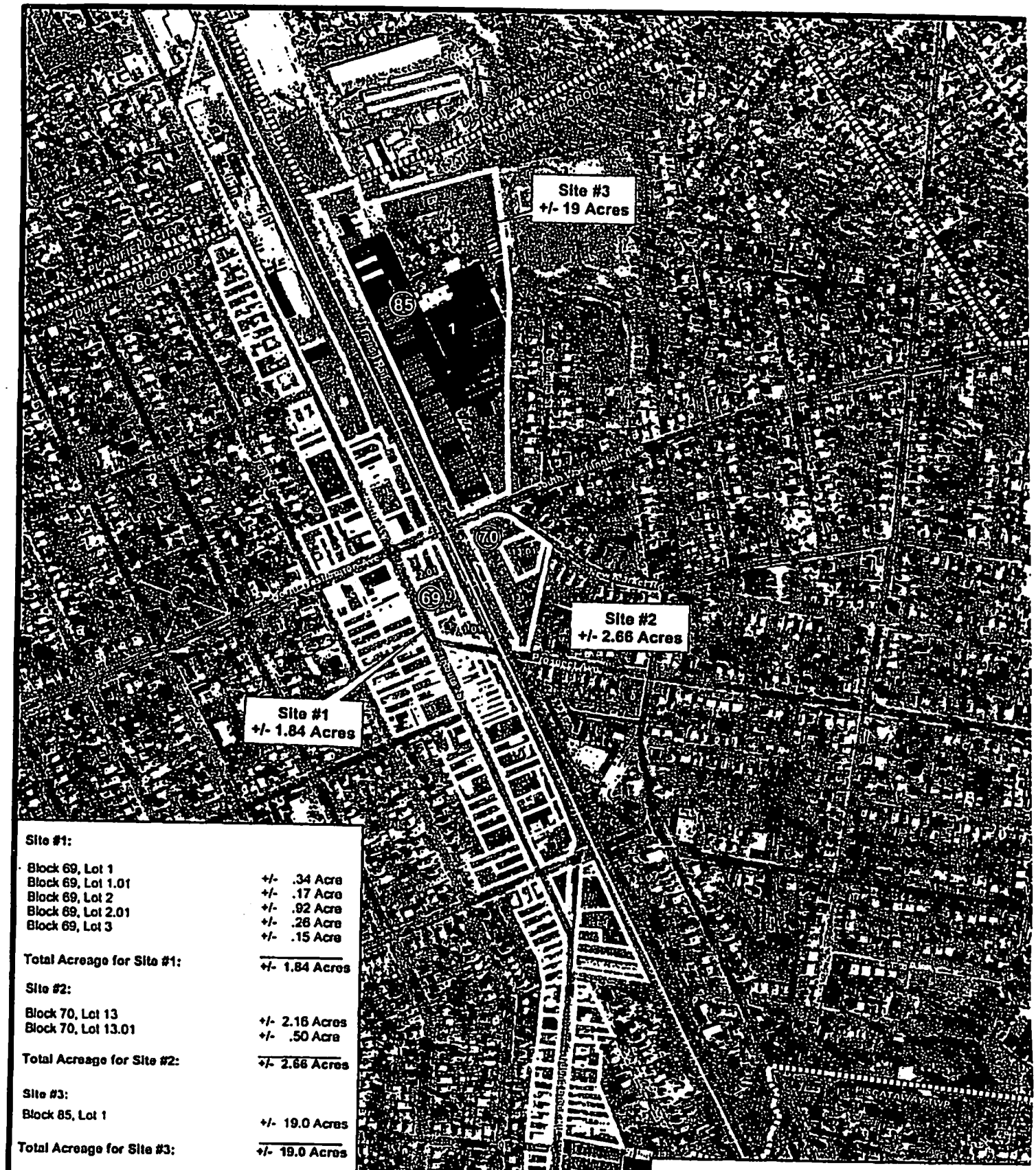
Total Acreage for Sites 1, 2 & 3: +/- 23.5 Acres

MAP #1
Dunellen Downtown Redevelopment Study Area
Sites 1, 2, & 3

Borough of Dunellen, Middlesex County, New Jersey

1 inch equals 400 feet

Source: This map was developed using NJGIS FEMA Data Center 2002 digital data retrieved from the New Jersey Partnership



Site #1:

Block 69, Lot 1	+/- .34 Acre
Block 69, Lot 1.01	+/- .17 Acre
Block 69, Lot 2	+/- .92 Acre
Block 69, Lot 2.01	+/- .26 Acre
Block 69, Lot 3	+/- .15 Acre
Total Acreage for Site #1:	**+/- 1.84 Acres**

Site #2:

Block 70, Lot 13	+/- 2.16 Acres
Block 70, Lot 13.01	+/- .50 Acre
Total Acreage for Site #2:	**+/- 2.66 Acres**

Site #3:

Block 85, Lot 1	+/- 19.0 Acres
Total Acreage for Site #3:	**+/- 19.0 Acres**

Total Acreage for Sites 1, 2 & 3	**+/- 23.5 Acres**

Remainder Redevelopment Parcels:

Various Blocks & Lots	+/- 35.03 Acres
Total Acreage for Remainder Parcels:	**+/- 35.03 Acres**

MAP #2
Dunellen Downtown Redevelopment Study Area - Phase 1
Sites 1, 2 & 3 and Remainder Redevelopment Parcels

Borough of Dunellen, Middlesex County, New Jersey

1 inch equals 600 feet

Source: This map was developed using USGS EROS Data Center 2002 digital data conveyed from the New Jersey Geographic Information Network. This map [illegible]

Appendix E

2014 and 2015 Amendments to

Downtown Redevelopment Plan

BOROUGH OF DUNELLEN

ORDINANCE 2014-04

The following Amendments to Section 6.1.1, Site #1, Train Station North (Block 69/All Lots), Section 6.1.2, Site #2, Train Station South (Block 70/Lot 13 and 13.01), Section 6.1.3, Site #3, South Washington Avenue between rail line and Columbia Street (Block 85/Lot 1), Section 7.4.3 Site #3. South Washington Avenue (Block 85/Lot 1) and Section 7.4.3, Site #3, South Washington Avenue (Block 85/Lot 1) of Dunellen's Redevelopment Plan and the addition of Section 9.5, Redevelopment Agreement was Introduced for first reading on September 22, 2014. It was reviewed and approved by the Dunellen Planning Board on October 27, 2014, and was presented for Public Hearing and Adoption on November 3, 2014 at 7:30 p.m. in the Dunellen Borough Municipal Building, 355 North Avenue, Dunellen, New Jersey.

This ordinance amends the Dunellen Downtown Redevelopment Plan, Phase One that was adopted in February 2003 and revised on July 12, 2004 with further Amendments in June 2011 and August 2013.

Section 6.1.1, Site #1, Train Station North (Block 69/All Lots) is to be amended by the addition of the following paragraph:

Notwithstanding the foregoing, the Borough may require a redevelopment project on the site to include residential units for low and moderate income persons in an amount of up to 20% of the total number of residential units in the project.

Section 6.1.2, Site #2, Train Station South (Block 70/Lot 13 and 13.01) is to be amended by the addition of the following paragraph:

Notwithstanding the foregoing, the Borough may require a redevelopment project on the site to include residential units for low and moderate income persons in an amount of up to 20% of the total number of residential units in the project.

Section 6.1.3, Site #3, South Washington Avenue between rail line and Columbia Street (Block 85/Lot 1) is to be amended by the addition of the following paragraph:

Notwithstanding the foregoing, the Borough may require a redevelopment project on the site to include residential units for low and moderate income persons in an amount of up to 20% of the total number of residential units in the project.

Section 7.4.3, Site #3, South Washington Avenue (Block 85/Lot 1) is to be amended by deleting Principal Permitted Uses and replacing with the following:

Principal Permitted Uses:

• **Commercial/Retail/Residential/Recreational.** This land use designation contemplates a mixed-use development not exceeding four stories that may include residential, commercial, recreational or retail uses. Retail and commercial uses shall be permitted only on the first floor of buildings ("First Floor Commercial/Retail") unless the building(s) immediately fronts or faces South Washington Avenue, then, in addition to the above, offices and residential uses shall be permitted on the upper floors of said buildings. Residential development shall be permitted on any or all floors in one or more buildings constructed in the easterly portion of the property north of the Borough recreational site on Columbia Street (with a maximum number of market rate units in such residential buildings not to exceed 340 in number). The Residential development may include an activity center and other typical types of amenities in connection with such Residential use. To facilitate this development the property may be subdivided into two or more parcels but shall be subject to a unified development plan and density shall be calculated based upon the total land area in the unified plan. First Floor Commercial/Retail may include (but is not limited to) personal and business service establishments, restaurants, retail stores, bakeries, delicatessens, drug stores, beauty parlors, food stores and supermarkets. First Floor Commercial/Retail uses may include drive thru facilities. Any residential development may be for sale or rental at the option of the developer.

Section 7.4.3, Site #3, South Washington Avenue (Block 85/Lot 1) will be further amended by replacing the "Building Requirements: Density Requirements" subsection with the following:

3. Density Requirements. The maximum dwelling unit density shall be twenty (20) per acre.

Section 9.5, Redevelopment Agreement is to be added containing the following language:

A redeveloper undertaking a redevelopment project under this Redevelopment Plan shall do so only pursuant to and in accordance with a Redevelopment Agreement between the redeveloper and the Borough of Dunellen.

Adopted: November 4, 2014

ORDINANCE 2015-09

BOROUGH OF DUNELLEN

The following Amendment to Section 7.4.3 Site #3. South Washington Avenue (Block 85/Lot 1) of Dunellen's Redevelopment Plan is being Introduced for first reading on November 2, 2015. It will be presented for Public Hearing and Adoption on November 16, 2015 at 7:30 p.m. in the Dunellen Borough Municipal Building, 355 North Avenue, Dunellen, New Jersey. Copies of this ordinance have been posted on the Municipal Bulletin Board, and have been available at the Office of the Borough Clerk for any interested members of the public.

This ordinance amends the Dunellen Downtown Redevelopment Plan, Phase One, that was adopted in February 2003 and revised on July 12, 2004, with further Amendments in June 2011, August 2013, and November 2014.

Section 7.4.3, Site #3, South Washington Avenue (Block 85/Lot 1) is to be amended as follows:

Principal Permitted Uses:

- **Commercial/Retail/Residential/Recreational.** This land use designation contemplates a mixed-use development not exceeding four stories that may include residential, commercial, recreational or retail uses. Retail and commercial uses shall be permitted only on the first floor of buildings ("First Floor Commercial/Retail") unless the building(s) immediately fronts or faces South Washington Avenue, then, in addition to the above, offices and residential uses, shall be permitted on the upper floors of said buildings. Residential development shall be permitted on any or all floors in one or more buildings (with a maximum number of market rate units in such residential buildings not to exceed 374 in number). The Residential development may include an activity center and other typical types of amenities in connection with such Residential use. To facilitate this development the property may be subdivided into two or more parcels but shall be subject to a unified development plan and density shall be calculated based upon the total land area in the unified plan. First Floor Commercial/Retail may include (but is not limited to) personal and business service establishments, restaurants, retail stores, convenience stores, bakeries, delicatessens, drug stores, beauty parlors, food stores and supermarkets. First Floor Commercial/Retail uses may include drive thru facilities. Any residential portion(s) of the development may be for sale or rental at the option of the developer.

Approved .....11/2/15.....

.....
Mayor of the Borough of Dunellen

.....
Clerk of the Borough of Dunellen

I *certify* the foregoing to be a true and correct abstract of a resolution regularly passed at a meeting of the Common Council of the Borough of Dunellen, held

.....11/2/15.....

and in that respect a true and correct copy of its minutes.

.....
Clerk of the Borough of Dunellen

Appendix F

Draft Redevelopment Plan Amendment

for Inclusionary Development

BOROUGH OF DUNELLEN

ORDINANCE 2016-XX

This ordinance amends the Dunellen Downtown Redevelopment Plan, Phase One that was adopted in February 2003 and revised on July 12, 2004 with further Amendments in June 2011, August 2013, November 2014, and November 2015.

Section 6.1.1, Site #1, Train Station North (Block 69/All Lots) is to be amended by the addition of the following paragraph:

Notwithstanding the foregoing, the Borough ~~may~~ shall require ~~a~~ redevelopment projects comprised of five (5) or more residential dwelling units on the site to include ~~residential units for~~an affordable housing set-aside for low and moderate income ~~persons~~ individuals and households in ~~an amount of up to 20% of the total number of residential units in the project.~~accordance with the Borough's Housing Plan Element and Fair Share Plan prepared February 1, 2016. Redevelopment projects consisting of five (5) or more residential dwelling units shall provide a mandatory minimum fifteen percent (15%) affordable housing set-aside for rental units and a mandatory twenty percent (20%) set-aside for for-sale units. Such units shall be constructed, marketed, administered and occupied by income eligible households in accordance with the Uniform Housing Affordability Controls (UHAC, N.J.A.C. 5:80-26.1 et seq.)

Section 6.1.2, Site #2, Train Station South (Block 70/Lot 13 and 13.01) is to be amended by the addition of the following paragraph:

Notwithstanding the foregoing, the Borough shall require redevelopment projects comprised of five (5) or more residential dwelling units on the site to include an affordable housing set-aside for low and moderate income individuals and households in accordance with the Borough's Housing Plan Element and Fair Share Plan prepared February 1, 2016. Redevelopment projects consisting of five (5) or more residential dwelling units shall provide a mandatory minimum fifteen percent (15%) affordable housing set-aside for rental units and a mandatory twenty percent (20%) set-aside for for-sale units. Such units shall be constructed, marketed, administered and occupied by income eligible households in accordance with the Uniform Housing Affordability Controls (UHAC, N.J.A.C. 5:80-26.1 et seq.)

~~Notwithstanding the foregoing, the Borough may require a redevelopment project on the site to include residential units for low and moderate income persons in an amount of up to 20% of the total number of residential units in the project.~~

Section 6.1.3, Site #3, South Washington Avenue between rail line and Columbia Street (Block 85/Lot 1) is to be amended by the addition of the following paragraph:

Notwithstanding the foregoing, the Borough shall require redevelopment projects comprised of five (5) or more residential dwelling units on the site to include an

affordable housing set-aside for low and moderate income individuals and households in accordance with the Borough's Housing Plan Element and Fair Share Plan prepared February 1, 2016. Redevelopment projects consisting of five (5) or more residential dwelling units shall provide a mandatory minimum fifteen percent (15%) affordable housing set-aside for rental units and a mandatory twenty percent (20%) set-aside for for-sale units. Such units shall be constructed, marketed, administered and occupied by income eligible households in accordance with the Uniform Housing Affordability Controls (UHAC, N.J.A.C. 5:80-26.1 et seq.)

~~Notwithstanding the foregoing, the Borough may require a redevelopment project on the site to include residential units for low and moderate income persons in an amount of up to 20% of the total number of residential units in the project.~~

Section 6.1.4. Remainder Parcels in Vicinity of Route 28 is amended to read as follows:

Drawing momentum from the successful redevelopment of the Downtown Center, it is anticipated that redevelopment of the remaining parcels will occur in subsequent phase or phases as redevelopment or perhaps rehabilitation. Such activity should be contemplated in concert with the Downtown Redevelopment Phase 1 to ensure consistency of effort and to provide guidance to property owners looking to capitalize on the anticipated dramatic downtown enhancement that will draw pedestrians throughout the length of the commercial district.

As with Site #1, Site #2, and Site #3, the Borough shall require redevelopment projects comprised of five (5) or more residential dwelling units to include an affordable housing set-aside for low and moderate income individuals and households in accordance with the Borough's Housing Plan Element and Fair Share Plan prepared February 1, 2016. Redevelopment projects consisting of five (5) or more residential dwelling units shall provide a mandatory minimum fifteen percent (15%) affordable housing set-aside for rental units and a mandatory twenty percent (20%) set-aside for for-sale units. Such units shall be constructed, marketed, administered and occupied by income eligible households in accordance with the Uniform Housing Affordability Controls (UHAC, N.J.A.C. 5:80-26.1 et seq.)

Appendix G: Development Fee Ordinance

BOROUGH OF DUNELLEN
ORDINANCE 09-09

Development Fee Ordinance

BE IT ORDAINED by the Mayor and Council of the Borough of Dunellen, in the County of Middlesex and the State of New Jersey, as follows:

1. Purpose

a) In Holmdel Builder's Association v. Holmdel Township, 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.

b) 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.

c) This ordinance establishes standards for the collection, maintenance, and expenditure of development fees pursuant to COAH's regulations and in accordance P.L.2008, c.46, Sections 8 and 32-38. Fees collected pursuant to this ordinance shall be used for the sole purpose of providing low- and moderate-income housing. This ordinance shall be interpreted within the framework of COAH's rules on development fees, codified at N.J.A.C. 5:97-8.

2. Basic requirements

a) This ordinance shall not be effective until approved by COAH pursuant to *N.J.A.C.* 5:96-5.1.

b) The Borough of Dunellen shall not spend development fees until COAH has approved a plan for spending such fees in conformance with *N.J.A.C.* 5:97-8.10 and *N.J.A.C.* 5:96-5.3.

3. Definitions

a) The following terms, as used in this ordinance, shall have the following meanings:

i. "**Affordable housing development**" means 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 100 percent affordable development.

ii. "**COAH**" or the "**Council**" means the New Jersey Council on Affordable Housing established under the Act which has primary jurisdiction for the administration of housing obligations in accordance with sound regional planning consideration in the State.

iii. "**Development fee**" means money paid by a developer for the improvement of property as permitted in *N.J.A.C.* 5:97-8.3.

iv. "**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.

v. "**Equalized assessed value**" means 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).

vi. "**Green building strategies**" means 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.

4. Residential Development fees

a) Imposed fees

i. Within the RA and RB district(s), residential developers, except for developers of the types of development specifically exempted below, shall pay a fee of one and a half percent of the equalized assessed value for residential development provided no increased density is permitted and that the proposed density complies with applicable standards of the Dunellen land use ordinances.

ii. When an increase in residential density pursuant to N.J.S.A. 40:55D-70d(5) (known as a "d" variance) has been permitted, developers may be required to pay a development fee of six percent of the equalized assessed value for each additional unit in excess of applicable ordinance standards that may be realized. However, if the zoning on a site has changed during the two-year period immediately 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 the filing of the variance application.

Example: If an approval allows four units to be constructed on a site that was zoned for two units, the fees could equal one percent of the equalized assessed value on the first two units; and the specified higher percentage up to six percent of the equalized assessed value for the two additional units, provided zoning on the site has not changed during the two-year period preceding the filing of such a variance application.

b) Eligible exactions, ineligible exactions and exemptions for residential development

i. Affordable housing developments and developments where the developer has made a payment in lieu of on-site construction of affordable units shall be exempt from development fees.

ii. Developments that have received preliminary or final site plan approval prior to the adoption of a municipal development fee ordinance shall be exempt from development fees, unless the developer seeks a substantial change in the approval. Where a site plan approval does not apply, a zoning and/or building permit shall be synonymous with preliminary or final site

plan approval for this purpose. The fee percentage shall be vested on the date that the building permit is issued.

iii. Development fees shall be imposed and collected when an existing structure undergoes a change to a more intense use, is demolished and replaced, or is expanded, 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 improved structure.

iv. Developers of one and two family homes shall be exempt from paying a development fee under the following circumstances: Residential structures demolished and replaced as a result of a natural disaster, including fire, Green buildings, and property converted from commercial to residential use, creating additional housing.

5. Non-residential Development fees

a) Imposed fees

i. Within all zoning districts, non-residential developers, except for developers of the types of development specifically exempted, shall pay a fee equal to two and one-half (2.5) percent of the equalized assessed value of the land and improvements, for all new non-residential construction on an unimproved lot or lots.

ii. Non-residential developers, except for developers of the types of development specifically exempted, shall also pay a fee equal to two and one-half (2.5) percent of the increase in equalized assessed value resulting from any additions to existing structures to be used for non-residential purposes.

iii. Development fees shall be imposed and collected when an existing structure is demolished and replaced. The development fee of two and a half percent (2.5%) shall be calculated on the difference between the equalized assessed value of the pre-existing land and improvement and the equalized assessed value of the newly improved structure, i.e. land and improvement, at the time 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.

b) Eligible exactions, ineligible exactions and exemptions for non-residential development

i. The non-residential portion of a mixed-use inclusionary or market rate development shall be subject to the two and a half (2.5) percent development fee, unless otherwise exempted below.

ii. The 2.5 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.

iii. Non-residential developments shall be exempt from the payment of non-residential development fees in accordance with the exemptions required pursuant to P.L.2008, c.46, as specified in the Form N-RDF "State of New Jersey Non-Residential Development Certification/Exemption" Form. Any exemption claimed by a developer shall be substantiated by that developer.

iii. A developer of a non-residential development exempted from the non-residential development fee pursuant to P.L.2008, c.46 shall be subject to it 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 of the non-residential development, whichever is later.

iv. 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 45 days of the termination of the property tax exemption. Unpaid non-residential development fees under these circumstances may be enforceable by the Borough of Dunellen as a lien against the real property of the owner.

6. Collection procedures

a) 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 construction official responsible for the issuance of a building permit.

b) 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.

c) 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.

d) Within 90 days of receipt of that notice, the municipal tax assessor, based on the plans filed, shall provide an estimate of the equalized assessed value of the development.

e) The construction official responsible for the issuance of a final certificate of occupancy notifies the local assessor of any and all requests for the scheduling of a final inspection on property which is subject to a development fee.

f) Within 10 business days of a request for the scheduling of a final inspection, the municipal 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.

g) Should the Borough of Dunellen fail to determine or notify the developer of the amount of the development fee within 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).

h) Fifty percent of the 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.

i) Appeal of development fees

1) A developer may challenge residential development fees imposed by filing a challenge with the County Board of Taxation. Pending a review and determination by the Board, collected fees shall be placed in an interest bearing escrow account by The Borough of Dunellen. 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 90 days after the date of such determination. Interest earned on amounts escrowed shall be credited to the prevailing party.

2) 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 45 days of receipt of the challenge, collected fees shall be placed in an interest bearing escrow account by The Borough of Dunellen. 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 90 days after the date of such determination. Interest earned on amounts escrowed shall be credited to the prevailing party.

7. Affordable Housing trust fund

a. There is hereby created a separate, interest-bearing housing trust fund to be maintained by the Municipal Clerk/Municipal Housing Liaison for the purpose of depositing development fees collected from residential and non-residential developers and proceeds from the sale of units with extinguished controls.

b) The following additional funds shall be deposited in the Affordable Housing Trust Fund and shall at all times be identifiable by source and amount:

1. payments in lieu of on-site construction of affordable units;
2. developer contributed funds to make ten percent (10%) of the adaptable entrances in a townhouse or other multistory attached development handicapped accessible;
3. rental income from municipally operated units;
4. repayments from affordable housing program loans;
5. recapture funds;
6. proceeds from the sale of affordable units; and
7. any other funds collected in connection with the Borough of Dunellen's affordable housing program.

c) Within seven days from the opening of the trust fund account, The Borough of Dunellen shall provide COAH with written authorization, in the form of a three-party escrow agreement between the municipality, the bank, and COAH to permit COAH to direct the disbursement of the funds as provided for in N.J.A.C. 5:97-8.13(b).

d) All interest accrued in the housing trust fund shall only be used on eligible affordable housing activities approved by COAH.

8. Use of funds

a) The expenditure of all funds shall conform to a spending plan approved by COAH. Funds deposited in the housing trust fund may be used for any activity approved by COAH to address

the Borough of Dunellen'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, rehabilitation, new construction of affordable housing units and related costs, accessory apartment, market to affordable, or 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 pursuant to N.J.A.C. 5:97-8.7 through 8.9 and specified in the approved spending plan.

b) Funds shall not be expended to reimburse the Borough of Dunellen for past housing activities.

c) At least 30 percent of all development fees collected and interest earned shall be used to provide affordability assistance to 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 30 percent or less of median income by region.

i. 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.

ii. Affordability assistance to households earning 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 30 percent or less of median income. The use of development fees in this manner shall entitle the Borough of Dunellen to bonus credits pursuant to N.J.A.C. 5:97-3.7.

iii. Payments in lieu of constructing affordable units on site and funds from the sale of units with extinguished controls shall be exempt from the affordability assistance requirement.

d) The Borough of Dunellen may contract with a private or public entity to administer any part of its Housing Element and Fair Share Plan, including the requirement for affordability assistance, in accordance with N.J.A.C. 5:96-18.

e) No more than 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 consultant fees necessary to develop or implement a new construction program, a Housing Element and Fair Share Plan, and/or an affirmative marketing program. In the case of a rehabilitation program, no more than 20 percent of the revenues collected from development fees shall be expended for such administrative expenses. Administrative funds may be used for income qualification of households, monitoring the turnover of sale and rental units, and compliance with COAH's monitoring requirements. Legal or other fees related to litigation opposing affordable housing sites or objecting to the Council's regulations and/or action are not eligible uses of the affordable housing trust fund.

9. Monitoring

a) The Borough of Dunellen shall complete and return to COAH all monitoring forms included in monitoring requirements related to the collection of development fees from residential and non-residential developers, payments in lieu of constructing affordable units on site, funds from the sale of units with extinguished controls, barrier free escrow funds, rental income, repayments from affordable housing program loans, and any other funds collected in connection with Dunellen's housing program, as well as to the expenditure of revenues and implementation of the plan certified by COAH. All monitoring reports shall be completed on forms designed by COAH.

10. Ongoing collection of fees

a) The ability for the Borough of Dunellen to impose, collect and expend development fees shall expire with its substantive certification unless the Borough of Dunellen has filed an adopted Housing Element and Fair Share Plan with COAH, has petitioned for substantive certification, and has received COAH's approval of its development fee ordinance. If the Borough of Dunellen fails to renew its ability to impose and collect development fees prior to the expiration of substantive certification, 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). The Borough of Dunellen 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 the Borough of Dunellen retroactively impose a development fee on such a development. The Borough of Dunellen shall not expend development fees after the expiration of its substantive certification or judgment of compliance.

Appendix H: Draft Development Fee Spending Plan

Borough of Dunellen
Development Fee Spending Plan

INTRODUCTION

The Township of Borough of Dunellen, Middlesex County has prepared a Housing Element and Fair Share plan that addresses its regional fair share of the affordable housing need in accordance with the Municipal Land Use Law (N.J.S.A. 40:55D-1 et seq.), the Fair Housing Act (N.J.S.A. 52:27D-301) and the affordable housing regulations of the Council on Affordable Housing (COAH) (N.J.A.C. 5:93-1 et seq. and N.J.A.C. 5:91-1 et seq.). A development fee ordinance creating a dedicated revenue source for affordable housing will be adopted by the Borough after the adoption and endorsement of the Housing Plan Element and Fair Share Plan by the Borough Planning Board and Governing Body. The Borough previously established an affordable housing trust fund with an initial deposit of $500.00 in 2009.

1. REVENUES FOR CERTIFICATION PERIOD

As of December 31, 2015, the Borough of Dunellen has collected $500.00, expended $0.00, resulting in a balance of $500.00. All development fees, payments in lieu of constructing affordable units on site, funds from the sale of units with extinguished controls, and interest generated by the fees are deposited in a separate interest-bearing affordable housing trust fund in for the purposes of affordable housing. These funds shall be spent in accordance with N.J.A.C. 5:97-8.7-8.9 as described in the sections that follow.

To calculate a projection of revenue anticipated during the period of third round substantive certification, the Borough of Dunellen considered the following:

(a) Development fees:

1. Residential and nonresidential projects which have had development fees imposed upon them at the time of preliminary or final development approvals;
2. All projects currently before the planning board for development approvals that may apply for building permits and certificates of occupancy; and
3. Future development that is likely to occur based on historical rates of development.

(b) Other funding sources:
Funds from other sources, including, but not limited to, the sale of units with extinguished controls, repayment of affordable housing loans, rental income, and proceeds from the sale of affordable units. All monies in the Affordable Housing Trust Fund are anticipated to come from development fees and interest.

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(c) Projected interest:

Interest projected revenue in the municipal affordable housing trust fund at the current average interest rate. The current interest rate is variable but as of January of 2016 the rate is 0.54%.

Table 1. Projected Revenues-Housing Trust Fund 2016-2025											
Initial Balance	**$500.00**										
Source of Funds	**2016**	**2017**	**2018**	**2019**	**2020**	**2021**	**2022**	**2023**	**2024**	**2025**	**Total**
(a) Development Fees											**$0.00**
Approved Development	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	**$0.00**
Pending Development Approval	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	**$0.00**
Projected Development	$0.00	$3,000.00	$3,000.00	$3,000.00	$3,000.00	$3,000.00	$3,000.00	$3,000.00	$3,000.00	$3,000.00	$27,000.00
Total Programs	**$0**	**$3,000.00**	**$3,000.00**	**$3,000.00**	**$3,000.00**	**$3,000.00**	**$3,000.00**	**$3,000.00**	**$3,000.00**	**$3,000.00**	**$27,000.00**
(d) Interest*	$19.00	$19.00	$19.00	$19.00	$19.00	$19.00	$19.00	$19.00	$19.00	$19.00	**$190.00**
TOTAL	$519.00	$3,019.00	$3,019.00	$3,019.00	$3,019.00	$3,019.00	$3,019.00	$3,019.00	$3,019.00	$3,019.00	**$27,690.00**
* Interest has been calculated by assuming an Affordable Housing Trust Fund annual year-end balance of $3,500.00 and interest rates described in the spending plan narrative											

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The Borough of Dunellen projects a total of **$27,190.00** in revenue to be collected between January 1, 2016 and December 31, 2022. This projected amount, when added to Dunellen's trust fund balance of $500.00 as of December 31, 2015, results in anticipated total revenue of **$27,690.00** available to fund and administer its affordable housing plan. All interest earned on the account shall accrue to the account and be used only for the purposes of affordable housing.

2. ADMINISTRATIVE MECHANISM TO COLLECT AND DISTRIBUTE FUNDS

The following procedural sequence for the collection and distribution of development fee revenues shall be followed by the Borough of Dunellen:

(a) Collection of development fee revenues:

Collection of development fee revenues shall be consistent with the Borough of Dunellen's development fee ordinance for both residential and non-residential developments in accordance with Department of Community of Affairs rules and P.L.2008, c.46, sections 8 (C. 52:27D-329.2) and 32-38 (C. 40:55D-8.1 through 8.7).

(b) Distribution of development fee revenues:

Development Fee revenues are distributed under the same procedures for any bill or purchase in the Borough. Purchase orders are requested and processed and eventually approved by the Governing Body.

3. DESCRIPTION OF ANTICIPATED USE OF AFFORDABLE HOUSING FUNDS

(a) **Rehabilitation and new construction programs and projects (N.J.A.C. 5:97-8.7)**

The Borough of Dunellen will dedicate **$13,845.00** to rehabilitation pursuant to (N.J.A.C. 5:97-8.7) as follows:

Rehabilitation program: The Borough has a rehabilitation obligation of 12 units between 2015 and 2025, which the Borough proposes to satisfy partially through its Trust Fund. The Borough has allocated $13,845.00 or approximately $1,153.75 per unit on average.

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(b) **Affordability Assistance (N.J.A.C. 5:97-8.8)**

Projected minimum affordability assistance requirement:

Table 2. Minimum Affordability Assistance		
Actual development fees through 12/31/15		$500.00
Development fees projected* 2016-2025	+	$27,000.00
Interest projected* 2016-2025	+	$190.00
Less Housing activity expenditures through 12/31/2015	-	$0
Total	**=**	**$27,690.00**
30 percent requirement	x 0.30 =	$8,307.00
Less affordability assistance expenditures through 12/31/2015	-	$0
Projected Minimum Affordability Assistance Requirement 1/1/2016 through 12/31/2025	**=**	$8,307.00
Projected Minimum Very Low-Income Affordability Assistance Requirement 1/1/2016 through 12/31/2025	x .34 =	$2,824.38

The Borough of Dunellen will dedicate **$8,307.00** from the affordable housing trust fund to render units more affordable, including **$2,824.38** to render units more affordable to households earning 30 percent or less of median income by region, as follows: down payment/closing cost assistance; security deposit assistance; housing association fee assistance; rental assistance program(s) and emergency rental assistance.

(c) **Administrative Expenses (N.J.A.C. 5:97-8.9)**

Table 3. Administrative Expense Calculation		
Actual dev fees and interest thru 12/31/2015		$500.00
Projected dev fees and interest 2016 thru 2025	+	$27,190.00
Payments-in-lieu of construction and other deposits thru 12/31/10	+	$0.00
Less RCA expenditures thru 12/31/2018	-	$0.00
Total	**=**	**$27,690.00**
Calculate 20 percent	x .20 =	$5,538.00
Less admin expenditures thru 12/31/2015	-	$0.00
PROJECTED MAXIMUM available for administrative expenses 1/1/2016 thru 12/31/2025	**=**	**$5,538.00**

The Borough of Dunellen projects that a total of **$5,538.00** will be available from the affordable housing trust fund for administrative purposes. The Borough has not expended any funds on administrative expenses to date, and thus may spend up to **$5,538.00** to cover administrative expenses**.**

Projected administrative expenditures, subject to the 20 percent cap, are as follows: Planner and Administrative Agent Fees.

4. EXPENDITURE SCHEDULE

The Borough of Dunellen intends to use affordable housing trust fund revenues for the creation and/or rehabilitation of housing units. Where applicable, the creation/rehabilitation funding schedule below parallels the implementation schedule set forth in the Housing Element and Fair Share Plan and is summarized as follows:

Table 4. Projected Expenditure Schedule 2016-2025												
Program	**Number of Units**	**2016**	**2017**	**2018**	**2019**	**2020**	**2021**	**2022**	**2023**	**2024**	**2025**	**TOTAL**
Rehabilitation	12	$1,153.75	$1,153.75	$1,153.75	$1,153.75	$1,153.75	$1,153.75	$1,153.75	$1,153.75	$2,307.50	$2,307.50	**$13,845.00**
Other Housing Activity												
Total Programs	1	$1,153.75	$1,153.75	$1,153.75	$1,153.75	$1,153.75	$1,153.75	$1,153.75	$1,153.75	$2,307.50	$2,307.50	**$13,845.00**
Affordability Assistance		$830.70	$830.70	$830.70	$830.70	$830.70	$830.70	$830.70	$830.70	$830.70	$830.70	**$8,307.00**
Administration		$553.80	$553.80	$553.80	$553.80	$553.80	$553.80	$553.80	$553.80	$553.80	$553.80	**$5,538.00**
TOTAL		**$2,538.25**	**$2,538.25**	**$2,538.25**	**$2,538.25**	**$2,538.25**	**$2,538.25**	**$2,538.25**	**$2,538.25**	**$3,692.00**	**$3,692.00**	**$27,690.00**

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5. EXCESS OR SHORTFALL OF FUNDS

In the event of any expected or unexpected shortfalls if the anticipated revenues are not sufficient, the Borough will appropriate funds from general revenues. In the event more funds than anticipated are collected, these excess funds will be used to fund additional rehabilitation, the affordability assistance program and/or new construction.

6. BARRIER FREE ESCROW

Collection and distribution of barrier free funds shall be consistent with the Borough of Dunellen's Affordable Housing Ordinance in accordance with N.J.A.C. 5:97-8.5. A process describing the collection and distribution procedures for barrier free escrow funds pursuant to N.J.A.C. 5:97-8.5 will be detailed within the Borough's Affordable Housing Ordinance.

SUMMARY

The Borough of Dunellen intends to spend affordable housing trust fund revenues pursuant to N.J.A.C. 5:97-8.7 through 8.9 and consistent with the housing programs outlined in the housing element and fair share plan dated February 1, 2016. The Borough has a balance of **$500.00** as of December 31, 2015 and anticipates an additional **$27,190.00** in revenues, including interest, before the end of the period governed by this spending plan for a total of **$27,690.00**. The municipality will dedicate a total of **$13,845.00** towards rehabilitation projects and **$8,307.00** toward affordability assistance. In addition, the Township has dedicated an additional **$5,538.00** for administrative costs, within the threshold of the 20% cap on administrative costs. Total expenditures are anticipated to be **$27,690.00.**

Table 5. Spending Plan Summary		
Balance as of 12/31/2015		$500.00
Projected REVENUE		
Development fees	+	$27,000.00
Payments in lieu of construction	+	
Other funds	+	
Interest	+	$190.00
Total Revenue	=	$27,690.00
EXPENDITURES		
Funds Used for Rehabilitation	-	$13,845
Affordability Assistance	-	$8,307.00
Administration	-	$5,538.00
Excess Funds for Additional Housing Activity	=	-
Total Projected Expenditures	=	$27,690.00
Remaining Balance	=	$0.00

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