

# FOURTH ROUND HOUSING ELEMENT AND FAIR SHARE PLAN

Washington Borough  
Warren County, New Jersey

May 2025

Adopted by the Land Use Board on June 16, 2025

Prepared By:



**Heyer, Gruel & Associates**  
Community Planning Consultants  
236 Broad Street, Red Bank, NJ 07701  
(732) 741-2900

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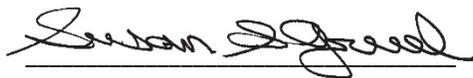
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The original of this report was signed and  
sealed in accordance with N.J.S.A. 45:14A-12



Susan Gruel, P.P. #1955

*With contributing content by Hanah Davenport, AICP Candidate*

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## EXECUTIVE SUMMARY

The following Fourth Round Housing Element and Fair Share Plan has been prepared for the Borough of Washington in the County of Warren in accordance with the Fair Housing Act as most recently amended (P.L.2024, c.2).

Washington Borough is a 2.0 square mile developed community located in northwest New Jersey, within the southern portion of Warren County. The Borough is surrounded entirely by Washington Township and is bisected by State Routes 31 and 57. Washington Borough is located in the Highlands Region, which is an environmentally rich area that provides approximately 70% of the State's potable drinking water.

The Borough falls within the Highlands Region Planning Area and, as of December 2024, is a fully conforming municipality. It was designated by the State as a Town Center in 1999 and more recently received Highlands Center designation in February 2021. These designations are broadly given to areas where development and redevelopment is encouraged, as a tool to prevent sprawl.

According to the 2020 Census, Washington Borough's population was 7,299, which represents an increase of 13% from 2010. In 2020, the Borough's median age was 40.9 years, representing a 6.8% increase from the median age of 38.3 years in 2010. The Borough's average household size in 2020 was 2.38 persons, which was slightly lower than the average at the County level (2.41 persons).

The housing stock of the Borough is predominantly single-family detached dwelling units. Approximately 63% of the housing stock was built prior to 1970, making over half of the Borough's housing older than fifty years.

The Borough is located in Housing Region 2, a region that consists of Essex, Morris, Union, and Warren counties. Based on the 2025 Regional Income Limits (released by New Jersey Housing and Mortgage Finance Agency on May 16, 2025), the median income in Region 2 for a four-person household is \$135,300, the moderate-income is \$108,240, the low-income is \$67,650, and the very-low-income level is \$40,590.

Affordable housing obligations in New Jersey are divided into "housing rounds," as will be discussed in detail later in this Plan. Each municipality in New Jersey has a constitutional obligation to provide their fair share of the calculated regional need for affordable housing within the respective housing round. These obligations to construct new affordable housing are known as the "Prospective Need" obligation. Municipalities also have an obligation to rehabilitate units that are deemed substandard, pursuant to the criteria of the Fair Housing Act. This obligation is known as the Present Need, or Rehabilitation Share. The housing rounds are as follows: Prior Round (1987-1999), Third Round (1999-2025), and Fourth Round (2025-2035).

The Borough of Washington has participated in each of the three housing rounds. In the Third Round, the Borough entered into separate Settlement Agreements with (a) intervening developer Washington Station

Venture, LP and Washington Venture Investment, Ltd., and (b) Fair Share Housing Center to establish its Third Round affordable housing obligation. The subsequent compliance efforts were approved by the Court in a Final Judgement of Compliance and Repose, dated November 16, 2021, confirming the Borough satisfied its Third Round obligations (see Appendix A).

The Borough was able to fully meet its Prior Round and Third Round obligations through credit-worthy units that are existing, under construction, or proposed as well as rental bonus credits.

The Borough has a Fourth Round obligation as follows:

Rehabilitation Share: 0 units

Prospective Need: 27 units

The Borough's Prospective Need is separated into a realistic development potential ("RDP") of 5 units and an unmet need of 22 units. The Borough will fully address its Fourth Round obligation through the following mechanisms:

- Existing Credits
- Inclusionary Zoning – Washington Downtown Redevelopment Area

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## INTRODUCTION

The need to provide a realistic opportunity for the construction of affordable housing in New Jersey, the country's most densely populated state, has been recognized for decades. In the case of Southern Burlington County NAACP v. the Township of Mount Laurel 67 N.J. 151 (1975) (commonly known as Mount Laurel I), the New Jersey Supreme Court established the doctrine that developing municipalities in New Jersey have a constitutional obligation to create a realistic opportunity for their fair share of low and moderate income housing.

In Southern Burlington County NAACP v. Township of Mount Laurel, 92 N.J. 158, 456 A.2d 390 (1983), decided on January 20, 1983 (commonly known as Mount Laurel II), the Supreme Court acted to address the response of municipalities to Mount Laurel I. The builder's remedy created a mechanism for developers to sue non-compliant municipalities and force them to comply. Mount Laurel II also created the Judgment of Repose to incentivize municipal compliance. A Judgment of Repose protected municipalities from potential lawsuits and those who would claim entitlement to a builder's remedy or other relief based upon the claim that the municipality was noncompliant.

In the wake of Mount Laurel II, developers sued municipalities seeking builder's remedies. The wave of builder's remedy lawsuits created the impetus for legislation to protect municipalities from builder's remedies. A decision by Judge Serpentelli, one of three judges appointed by Chief Justice Wilentz to implement Mount Laurel II, increased the need for a legislative cure. More specifically, in 1984, Judge Serpentelli issued the "AMG decision" (AMG Realty Co. v. Warren Twp.), which established a formula for any developer to determine the fair share obligation of any municipality.

The pressure of builder's remedy suits, combined with the ease in determining the fair share of any municipality through the AMG formula, culminated in the enactment of the New Jersey Fair Housing Act in 1985. The Fair Housing Act (FHA) is found at N.J.S.A. 52:270-301, et seq. The FHA established the Council on Affordable Housing (COAH) as an administrative alternative to builder's remedy lawsuits and the concomitant jurisdiction of the courts. COAH was given the responsibility of dividing the state into housing regions, determining regional and municipal fair share affordable housing obligations, and adopting regulations that would establish the guidelines and approaches that municipalities may use in addressing their affordable housing need.

In 2008, the Legislature amended the FHA to add requirements for very low-income housing. Very low-income households are those in which the gross household income is 30% or less than the region's median household income. Low-income households are those with incomes no greater than 50% of the region's median household income. Moderate-income households are those with incomes no greater than 80% and no less than 50% of the region's median household income. Each is adjusted for household size and is in relation to the median gross income of the housing region in which the municipality is located.

## FIRST AND SECOND ROUNDS

The First and Second Rounds under COAH are collectively referred to as the “Prior Round.” The Prior Round obligation is the cumulative 1987-1999 fair share obligation. The First Round consists of the six-year period between 1987 and 1993 for which COAH first established a formula for determining municipal affordable housing obligations (N.J.A.C. 5:92-1 *et seq.*). Then in 1994, COAH established amended regulations (N.J.A.C. 5:93-1.1 *et seq.*) and produced additional municipal affordable housing obligations for the years 1993 to 1999. This second round of obligations is known as the Second Round. When COAH adopted regulations for the Second Round, it made the First and Second Round obligations cumulative for both periods.

## THIRD ROUND

Housing rounds were originally established by the Fair Housing Act as six-year periods, but in 2001 the Legislature extended the rounds to 10-year periods. This should have meant that the Third Round ran from 1999 to 2009. However, COAH didn’t establish new rules for the Third Round until the end of 2004 (N.J.A.C. 5:94-1 and 95-1 *et seq.*). The Third Round time period was therefore extended to 2014. The Third Round rules established a new method for calculating a municipality’s affordable housing obligation, known as “growth share.” This method required municipalities to project future residential and non-residential development, and then derive their obligation from that growth.

After the New Jersey Appellate Court invalidated several components of the Third Round rules, COAH released revised rules in 2008. The Third Round was once again extended to 2018 to provide municipalities with the time to apply the amended rules and establish mechanisms to meet their obligations. The revised Third Round rules, like the initial Third Round rules, established the obligations based on a growth share approach.

On October 8, 2010, in response to numerous legal challenges to the second iteration of COAH’s Third Round regulations, the Appellate Divisions ruled that COAH could not allocate obligations through a “growth share” formula and directed COAH to use similar methods to those used in the First and Second Rounds. COAH proposed Third Round regulations a third time in 2014 using a formula similar to the ones it had used in the First and Second Rounds. However, when COAH met to consider adopting these rules on October 20, 2014, it deadlocked.

On March 10, 2015, the New Jersey Supreme Court decided In re Adoption of N.J.A.C. 5:96 & 5:97 by the N.J. Council on Affordable Housing, 221 N.J. 1 (2015) (Mount Laurel IV), wherein it responded to COAH’s failure to adopt defensible rules for the Third Round. This decision changed the landscape by which municipalities are required to comply with their constitutional obligation to provide their fair share of affordable housing. The Supreme Court held that since COAH was no longer functioning, trial courts were to resume their role as the forum of first instance for evaluating municipal compliance with Mount Laurel

obligations, and also established a transitional process for municipalities to seek temporary immunity and ultimately a Judgment of Compliance and Repose (“JOR”) from a Court, which was the “judicial equivalent” of Substantive Certification from COAH.

On January 18, 2017, the Supreme Court decided In Re Declaratory Judgment Actions Filed by Various Municipalities, County of Ocean, Pursuant To The Supreme Court’s Decision In In re Adoption of N.J.A.C. 5:96, 221 N.J. 1 (2015) (“Mount Laurel V”), which held that need having accrued during the Gap Period (1999-2015) was part of the Present Need rather than the Prospective Need. The Supreme Court held that there is an obligation with respect to households that came into existence during that gap that are eligible for affordable housing, that are presently (as of 2015) in need of affordable housing, and that are not already counted in the traditional present need.

As the methodology and obligations from the Gap and Prospective Need had not been fully adjudicated at that time, various trial judges issued opinions on the appropriate methodology and 354 municipalities reportedly settled with Fair Share Housing Center wherein they negotiated their obligations for the Third Round.

Municipal obligations were therefore broken down in Round Three Housing Element and Fair Share Plans as Present Need/Rehabilitation, Prior Round (1987-1999), and Third Round and Gap Period (1999-2015). Municipalities that received their Final Judgment of Compliance and Repose were guaranteed immunity from builders’ remedy lawsuits through the end of the Third Round, June 30, 2025.

## **FOURTH ROUND**

On March 18, 2024, the affordable housing legislation known jointly as Senate Bill S50 and Assembly Bill A4 passed both houses of the legislature. Governor Murphy signed the bill (P.L.2024, c.2) into law on March 20, 2024, establishing a new methodology for determining municipalities’ affordable housing obligations for the Fourth Round and beyond. The new legislation, which comprehensively amends the FHA, overhauled the process that municipalities undertake to establish and plan for their constitutionally mandated affordable housing obligation. Most notably, this legislation formally abolished COAH while transferring its functions to the New Jersey Department of Community Affairs (DCA) and Housing Mortgage and Finance Agency (HMFA). As a result, the legislation codified the method for calculating regional and municipal affordable housing needs and returned most of the process from the Courts to state administrative departments.

The amended FHA called on the DCA to issue a non-binding report on the new Present Need Obligation (commonly referred to as the rehab obligation) and the Prospective Need for the Fourth Round (2025-2035) and subsequent rounds. The amended FHA requires the DCA to base its analysis of the obligations for each municipality based upon the standards set forth in the amended FHA. Accordingly, on October 18, 2024 the DCA released a report outlining the Fourth Round Fair Share methodology and its calculations of low- and

moderate-income obligations for each of the State’s municipalities. The amended FHA gave municipalities until January 31, 2025 to review the obligation reported by the DCA and perform their own analysis of their obligation based on the methodology in the legislation and previously established by the Courts.

If any municipality wished to commit to an obligation different from the one reported by the DCA, the amended FHA required the municipality to adopt a resolution by January 31, 2025, committing to the number that it contended was the appropriate obligation. If a municipality wished to commit to the numbers that the DCA reported, the amended FHA required the municipality to adopt a resolution committing to the DCA numbers.

The amended FHA required any municipality that wished to participate in the new process that the Act created to file a declaratory relief action within 48 hours of adopting the resolution committing to the numbers the municipality deemed appropriate. Further, the amended FHA gave any interested party who wished to oppose the numbers to which any municipality committed until February 28, 2025 to file an Answer, which included a particularized objection to the numbers to which the municipality committed.

As established in the amended FHA, the “Affordable Housing Dispute Resolution Program” (“the Program”) was given until March 31, 2025 to try to resolve any disputes over the fair share numbers to which a municipality committed. The program is a new entity created by the amended FHA. It is staffed with seven current or retired judges who have the authority to use adjudicators to assist in mediating disputes over the obligations of municipalities.

The amended FHA gives municipalities until June 30, 2025, to file a Housing Element and Fair Share Plan and related documents showing how the municipality will comply with its obligations. The Fourth Round Plans will follow the same general format as plans from previous rounds, with certain updates to their requirements dealing with various types of housing and the bonus credit calculation system. Notably, HEFSPs are required to be consistent with the State Development and Redevelopment Plan (SDRP) (a new draft SDRP was released in late 2024 and has yet to be adopted) and the Highlands Regional Master Plan for conforming municipalities. As part of the HEFSP, municipalities shall include an assessment of the degree to which the municipality has met its fair share obligation from the prior rounds of affordable housing (i.e. First, Second, and Third Rounds).

### **WASHINGTON BOROUGH’S HISTORY OF AFFORDABLE HOUSING**

Washington Borough has a long history of compliance with COAH’s regulations. The Borough received First Round certification on May 20, 1987. Subsequently, the Borough petitioned COAH for Second Round Certification on January 17, 1995 and received substantive certification on June 7, 1995, with an extended certification date of February 9, 2005. The Borough’s Second Round Certification expired on December 20, 2005.

The Borough also participated in the Third Round Certification process. The Borough's Land Use Board adopted a Third Round Housing Element and Fair Share Plan on November 9, 2009. Washington Borough then petitioned COAH on January 6, 2010, and was deemed complete on April 16, 2010. However, the Borough did not receive Third Round Certification as the Third Round Rules were invalidated by the Court.

In response to Mount Laurel IV, the Borough filed a declaratory judgment action ("Action") on July 1, 2015 via Docket No. WRN-L-230-15. In an Order filed on August 25, 2015, the Borough was granted temporary immunity from builder's remedy actions.

On November 6, 2015, property owners Washington Station Venture, LP and Washington Venture Investment, Ltd. (collectively known as "Washington Venture Entities") was granted leave to intervene in the Borough's Action. Fair Share Housing Center ("FSHC") was also a participating party in the Action in accordance with Mount Laurel IV. A settlement agreement with FSHC was executed on December 10, 2018 (see Appendix B). A separate settlement agreement with Washington Ventures Entities was executed on October 9, 2018 and later amended via Rider dated December 18, 2018 (see Appendix C).

The Honorable Thomas C. Miller, P.J.S.C. conducted a Fairness Hearing on December 20, 2018, at which time he ruled that the settlement agreements between (a) the Borough and FSHC and (b) the Borough and Washington Venture Entities were fair and reasonable (see Appendices B and C). An Order was issued by the Honorable Thomas C. Miller on January 23, 2019.

The Settlement Agreement between the Borough and Washington Venture Entities was later amended by two subsequent agreements dated September 9, 2019 and June 16, 2020, respectively. The Borough came before the Court on August 27, 2020 for an Amended Fairness and Compliance Hearing and was granted a conditional JOR on December 1, 2020. After meeting the conditions of the JOR, which included the adoption of a Third Round Housing Element and Fair Share Plan (adopted by the Land Use Board on July 8, 2019), the Borough was issued a Final JOR on November 16, 2021 (see Appendix A). This Final JOR granted the Borough immunity from builder's remedy actions through the end of the Third Round, June 30, 2025.

On January 21, 2025, in accordance with the standards established by the amended FHA and described above, the Borough adopted Resolution #2025-35 (see Appendix D). This resolution maintained the DCA-generated obligation to establish the Borough's Fourth Round housing obligation, and thus guaranteed protection from builders' remedy suits. Further, on January 23, 2025, in accordance with the standards established by the amended FHA and described above, the Borough filed a Complaint (Docket No. WRN-L-000041-25) seeking the entry of a declaratory judgment. A Court-approved order fixing the Borough's obligation numbers was filed on March 25, 2025 (see Appendix E).

This Fourth Round Housing Element and Fair Share Plan outlines mechanisms implemented to address the Borough's affordable housing obligations, and has been prepared in accordance with the Fair Housing Act as most recently amended (P.L.2024, c.2).

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## **PLANNING FOR AFFORDABLE HOUSING**

Pursuant to both the FHA (N.J.S.A. 52:27D-310, et seq.) and the Municipal Land Use Law (MLUL) (N.J.S.A. 40:55D-28), municipalities in New Jersey are required to include a Housing Element in their Master Plans. The principal purpose of the housing element is to describe the specific, intended methods that a municipality plans to use in order to meet its low- and moderate-income housing needs. Further, the housing element is meant to demonstrate the existing zoning or planned zoning changes that will allow for the provision of adequate capacity to accommodate household and employment growth projections, to achieve the goal of access to affordable housing for present and future populations. The statutorily required contents of the housing element are:

- a. An inventory of the municipality's housing stock by age, condition, purchase or rental value, occupancy characteristics, and type, including the number of units affordable to low and moderate-income households and substandard housing capable of being rehabilitated;
- b. A projection of the municipality's housing stock, including the probable future construction of low- and moderate-income housing, for the next ten years, taking into account, but not necessarily limited to, construction permits issued, approvals of applications for development and probable residential development of lands;
- c. An analysis of the municipality's demographic characteristics, including but not necessarily limited to, household size, income level and age;
- d. An analysis of the existing and probable future employment characteristics of the municipality;
- e. A determination of the municipality's present and prospective fair share for low- and moderate-income housing and its capacity to accommodate its present and prospective housing needs, including its fair share for low- and moderate-income housing, as established pursuant to section 3 of P.L.2024, c.2 (C.52:27D-304.1);
- f. A consideration of the lands that are most appropriate for construction of low- and moderate-income housing and of the existing structures most appropriate for conversion to, or rehabilitation for, low- and moderate-income housing, including a consideration of lands of developers who have expressed a commitment to provide low- and moderate-income housing;
- g. An analysis of the extent to which municipal ordinances and other local factors advance or detract from the goal of preserving multigenerational family continuity as expressed in the recommendations of the Multigenerational Family Housing Continuity Commission, adopted pursuant to paragraph (1) of subsection f. of section 1 of P.L.2021, c.273 (C.52:27D-329.20);
- h. For a municipality located within the jurisdiction of the Highlands Water Protection and Planning Council, established pursuant to section 4 of P.L.2004, c.120 (C.13:20-4), an analysis of compliance

of the housing element with the Highlands Regional Master Plan of lands in the Highlands Preservation Area, and lands in the Highlands Planning Area for Highlands conforming municipalities. This analysis shall include consideration of the municipality's most recent Highlands Municipal Build Out Report, consideration of opportunities for redevelopment of existing developed lands into inclusionary or 100 percent affordable housing, or both, and opportunities for 100 percent affordable housing in both the Highlands Planning Area and Highlands Preservation Area that are consistent with the Highlands regional master plan; and

- i. An analysis of consistency with the State Development and Redevelopment Plan, including water, wastewater, stormwater, and multi-modal transportation based on guidance and technical assistance from the State Planning Commission.

**PART 1: HOUSING ELEMENT**

**DEMOGRAPHIC CHARACTERISTICS**

**Population**

Table 1 below depicts the population trends that occurred in Washington Borough, Warren County, and the State of New Jersey in the 93-year period between 1930 and 2023. In 2023, there were 7,287 residents in Washington Borough, which indicates a decrease of 12 people (-0.2%) from 2020. Overall, Washington Borough has experienced steady growth over the past 93 years, with minor decreases of less than 5% between 2010 and 2020 and 2020 and 2023. The Borough has seen a growth of 2,877 residents during this time frame, reflecting a 65.2% increase in its population. Proportionally speaking, the Borough’s most significant period of growth occurred in the decade between 1950 and 1960 when Washington saw a 19.2% increase in its population. These trends are reflected at the County and State level, as well, which saw a similarly significant increase in population throughout the 1950s. While population growth has been steady during this time period in Washington Borough, overall growth at the County (125.6% increase) and State (129.3% increase) levels has seen a more exaggerated increase than the Borough.

<b>Table 1: Population Trends, 1930-2023 Washington Borough, Warren County, and New Jersey</b>									
	<b>Washington Borough</b>			<b>Warren County</b>			<b>New Jersey</b>		
<b>Year</b>	<b>Population</b>	<b>Change</b>		<b>Population</b>	<b>Change</b>		<b>Population</b>	<b>Change</b>	
		<b>Number</b>	<b>Percent</b>		<b>Number</b>	<b>Percent</b>		<b>Number</b>	<b>Percent</b>
<b>1930</b>	4,410	-	-	49,319	-	-	4,041,334	-	-
<b>1940</b>	4,643	233	5.3%	50,181	862	1.7%	4,160,165	118,831	2.9%
<b>1950</b>	4,802	159	3.4%	54,374	4,193	8.4%	4,835,329	675,164	16.2%
<b>1960</b>	5,723	921	19.2%	63,220	8,846	16.3%	6,066,782	1,231,453	25.5%
<b>1970</b>	5,943	220	3.8%	73,960	10,740	17.0%	7,171,112	1,104,330	18.2%
<b>1980</b>	6,429	486	8.2%	84,429	10,469	14.2%	7,365,011	193,899	2.7%
<b>1990</b>	6,474	45	0.7%	91,607	7,178	8.5%	7,730,188	365,177	5.0%
<b>2000</b>	6,712	238	3.7%	102,437	10,830	11.8%	8,414,350	684,162	8.9%
<b>2010</b>	6,461	-251	-3.7%	108,692	6,255	6.1%	8,791,894	377,544	4.5%
<b>2020</b>	7,299	838	13.0%	109,632	940	0.9%	9,288,994	497,100	5.7%
<b>2023</b>	7,287	-12	-0.2%	111,252	1,620	1.5%	9,267,014	-21,980	-0.2%
<b>Total Change</b>	-	<b>2,877</b>	<b>65.2%</b>	-	<b>61,933</b>	<b>125.6%</b>	-	<b>5,225,680</b>	<b>129.3%</b>

Source: 1930-2020 U.S. Decennial Census; 2023 ACS 5-Year Estimates, Table S0101

**Population Composition by Age**

The median age of the residents in Washington Borough in 2020 was 40.9 years, which shows a 6.8% increase from the 2010 median age of 38.3 years. Analysis of age group characteristics provides insight into the actual changes in population. This comparison is helpful in determining the impacts these changes have on housing needs, community facilities and services for the municipality. As detailed in Table 2 below, the entire composition of Washington Borough experienced notable shifts in the years between 2010 and 2020. The most significant shift occurred in the population groups aged 55 and over, which collectively saw a 782-person (54.8%) increase. Simultaneously, the Borough experienced a decrease in its population under 14 years old (-3.9%) and between the ages 35 to 54 (-4.0%).

<b>Table 2: Population by Age, 2010 to 2020 Washington Borough</b>						
<b>Population</b>	<b>2010</b>		<b>2020</b>		<b>Change (2010 to 2020)</b>	
	<b>Number</b>	<b>Percent</b>	<b>Number</b>	<b>Percent</b>	<b>Number</b>	<b>Percent</b>
Under 5 years	415	6.4%	369	5.1%	-46	-11.1%
5 to 14	828	12.8%	825	11.3%	-3	-0.4%
15 to 24	845	13.1%	894	12.2%	49	5.8%
25 to 34	824	12.8%	964	13.2%	140	17.0%
35 to 44	1,038	16.1%	971	13.3%	-67	-6.5%
45 to 54	1,084	16.8%	1067	14.6%	-17	-1.6%
55 to 64	745	11.5%	1,116	15.3%	371	49.8%
65 and over	682	10.6%	1,093	15.0%	411	60.3%
<b>Total population</b>	<b>6,461</b>	<b>100.00%</b>	<b>7,299</b>	<b>100.00%</b>	<b>838</b>	<b>13.0%</b>
<b>Median Age</b>	<b>38.3</b>	<b>-</b>	<b>40.9</b>	<b>-</b>	<b>2.6</b>	<b>6.8%</b>

Source: 2010 and 2020 U.S. Decennial Census

Warren County experienced population fluctuation as well. The County also saw the greatest shift of roughly 33% in its population aged 55 and over, which was proportionally lower than the increase experienced at the Borough level. The County experienced rather significant decreases in its population aged 14 and below (16.9%) as well as those aged 35 to 54 (19.3%), directly mirroring shifting age trends occurring in the Borough. This data is displayed in Table 3 below.

<b>Table 3: Population by Age, 2010 to 2020 Warren County</b>						
<b>Population</b>	<b>2010</b>		<b>2020</b>		<b>Change (2010 to 2020)</b>	
	<b>Number</b>	<b>Percent</b>	<b>Number</b>	<b>Percent</b>	<b>Number</b>	<b>Percent</b>
Under 5 years	6,084	5.6%	4,951	4.5%	-1,133	-18.6%
5 to 14	14,725	13.5%	12,507	11.4%	-2,218	-15.1%
15 to 24	13,434	12.4%	13,220	12.1%	-214	-1.6%
25 to 34	10,671	9.8%	12,281	11.2%	1,610	15.1%
35 to 44	15,484	14.2%	12,551	11.4%	-2,933	-18.9%
45 to 54	19,174	17.6%	15,413	14.1%	-3,761	-19.6%
55 to 64	13,828	12.7%	18,054	16.5%	4,226	30.6%
65 and over	15,292	14.1%	20,655	18.8%	5,363	35.1%
<b>Total population</b>	<b>108,692</b>	<b>100.0%</b>	<b>109,632</b>	<b>100.0%</b>	<b>940</b>	<b>0.9%</b>
<b>Median Age</b>	<b>41.5</b>	<b>-</b>	<b>44.4</b>	<b>-</b>	<b>2.9</b>	<b>7.0%</b>

Source: U.S. Decennial Census, 2010 and 2020

### Households

A household is defined as one or more persons, either related or not, living together in a housing unit. In 2020 there was a total of 3,002 households in Washington Borough. Over half of the Borough’s households comprised two or less people. In fact, two-person households were the most common household size at both the Borough (31.9%) and County (34.3%) levels, followed closely by one-person households. The average household size in Washington Borough in 2020 was 2.38 people, which was slightly lower than the County’s average of 2.41 people.

<b>Table 4: Household Size of Occupied Housing Units, 2020 Washington Borough and Warren County</b>				
	<b>Washington Borough</b>		<b>Warren County</b>	
	<b>Number</b>	<b>Percent</b>	<b>Number</b>	<b>Percent</b>
1-person household	916	30.5%	11,741	27.7%
2-person household	957	31.9%	14,511	34.3%
3-person household	479	16.0%	7,024	16.6%
4-person household	371	12.4%	5,829	13.8%
5-person household	156	5.2%	2,583	6.1%
6-person household	77	2.6%	1,060	2.5%
7-or-more-person household	46	1.5%	579	1.4%
<b>Total Households</b>	<b>3,002</b>	<b>100.0%</b>	<b>42,327</b>	<b>100.0%</b>
<b>Average Household Size (2023)</b>	<b>2.38</b>		<b>2.41</b>	

Source: U.S. Decennial Census 2020, H9; 2023 ACS 5-Year Estimates, Table S1101

According to the United States Census, family households are defined as two or more persons living in the same household, related by birth, marriage, or adoption. As shown in Table 5, just over half (56%) of all households in the Borough in 2023 were categorized as family households, with just under one-quarter (23%) of the Borough’s family households considered as married-couple families with children.

In providing more detail on American households, the 2020 Census includes the sub-groups of non-traditional households, including “Other Family” and “Non-Family” households. “Non-Family” households are defined as those that consist of a householder living alone or sharing the home exclusively with people to whom he/she is not related.

“Other Family” households accounted for 18% of all households, broken down into 14% female householders with no spouse or partner present and 3% male householders with no spouse or partner present. Approximately 44% of the Borough’s households were nonfamily households, with female householders living alone (23%) and male householders living alone (21%) collectively accounting for the majority of the nonfamily households.

<b>Table 5: Household Size and Type, 2023 Washington Borough</b>		
	<b>Number</b>	<b>Percent of Total Households</b>
<b>Total Households</b>	<b>3,047</b>	<b>100%</b>
<b>Family Households</b>	<b>1694</b>	<b>56%</b>
Married Couple Family	1151	38%
With Children	705	23%
Without Children	446	15%
Other Family	543	18%
Male Householder, No Spouse	106	3%
With Children	46	2%
Without Children	60	2%
Female Householder, No Spouse	437	14%
With Children	252	8%
Without Children	185	6%
<b>Nonfamily Household</b>	<b>1353</b>	<b>44%</b>
Male Householder	626	21%
Living Alone	543	18%
Not Living Alone	83	3%
With Children	0	0%
Female Householder	727	24%
Living Alone	705	23%
Not Living Alone	22	1%
With Children	0	0%

Source: 2023 ACS 5-Year B110005 and B11010

**Income**

As measured in 2023, Washington Borough had a notably lower median household income compared to Warren County and the State of New Jersey. The median income in Washington Borough was \$79,280, which was roughly \$21,252 less than that of the County and \$21,770 less than that of the State. The per capita income in Washington Borough was also lower than that of the County and State, reflecting a gap of \$9,301 gap below the County per capita income and \$13,296 below the State per capita income. This data is outlined in Table 6 below.

<b>Table 6: Per Capita and Household Income, 2023 Washington Borough, Warren County, and New Jersey</b>		
	<b>Per Capita Income</b>	<b>Median Household Income</b>
<b>Washington Borough</b>	\$39,722	\$79,280
<b>Warren County</b>	\$49,023	\$100,532
<b>New Jersey</b>	\$53,118	\$101,050

*Source: 2023 ACS 5-Year Estimates, Tables S1901 and S1902*

In 2023 roughly 68.6% of all households in the Borough earned an income of \$50,000 or more, as compared to roughly 77.3% of households in the County. The income range that accounted for the most Borough households was the \$100,000 to \$149,999 bracket, which comprised nearly one-quarter (23.2%) of households in Washington; this was also the case across Warren County as a whole, at a comparable percentage of 23.4%. The second largest income bracket in the Borough was the \$50,000 to \$74,999 range, which comprised 16.9% of households. At the County level, this same income bracket accounted for a comparable 16.8% of households. Although the Borough’s household income distribution in these mid-ranges is consistent with that at the County level, the 2023 data shows that the County has a higher proportion of households earning \$150,000 or more as compared to the Borough. This may at least partially help explain the notable gap between the median income reported at the Borough and County levels.

<b>Table 7: Household Income, 2023 Washington Borough and Warren County</b>				
	<b>Washington Borough</b>		<b>Warren County</b>	
	<b>Number</b>	<b>Percent</b>	<b>Number</b>	<b>Percent</b>
Less than \$10,000	286	9.4%	2,082	4.6%
\$10,000 to \$14,999	52	1.7%	453	1.0%
\$15,000 to \$24,999	186	6.1%	2,218	4.9%
\$25,000 to \$34,999	98	3.2%	2,263	5.0%
\$35,000 to \$49,999	335	11.0%	3,214	7.1%
\$50,000 to \$74,999	515	16.9%	7,604	16.8%
\$75,000 to \$99,999	445	14.6%	4,617	10.2%
\$100,000 to \$149,999	707	23.2%	10,592	23.4%
\$150,000 to \$199,999	235	7.7%	5,522	12.2%
\$200,000 or more	189	6.2%	6,654	14.7%
<b>Total Households</b>	<b>3,047</b>	<b>100.0%</b>	<b>45,263</b>	<b>100.0%</b>
<b>Median Household Income</b>	<b>\$79,280</b>		<b>\$100,532</b>	

Source: 2023 ACS 5-Year Estimates, Table S1901

### Poverty Status

Of the 7,287 people in Washington Borough for which poverty status was determined, 839 (11.5%) individuals lived in poverty in 2023; this was slightly higher than the County’s poverty rate of 9.2%. Of Washington Borough’s population that fell below the poverty level in 2023, over half (54.8%) were between the ages of 18 to 64. This trend was mirrored at the County level as well, where 59.7% of the population living in poverty fell within this same age range. Proportionally the Borough had a greater percentage of children living in poverty (39.0%) than the County as a whole (26.8%), and a lesser percentage of residents aged 65 and over living in poverty (6.2%) as compared to the County (13.5%). This data is presented in Table 8 below.

<b>Table 8: Poverty Status, 2023 Washington Borough and Warren County</b>				
	<b>Washington Borough</b>		<b>Warren County</b>	
	<b>Number</b>	<b>Percent</b>	<b>Number</b>	<b>Percent</b>
<b>Total persons</b>	<b>7,287</b>	<b>100.0%</b>	<b>109,775</b>	<b>100.0%</b>
Total persons below poverty level	839	11.5%	10,061	9.2%
Under 18	327	4.5%	2,696	2.5%
18 to 64	460	6.3%	6,010	5.5%
65 and over	52	0.7%	1,355	1.2%

Source: 2023 ACS 5-Year Estimates, Table S1701

**Household Costs**

Tables 9 and 10 below outline the expenditures for housing as a percentage of household income for those who own and rent in Washington Borough and Warren County. In 2023, just over half (56%) of the Borough’s households lived in homes they owned, which was lower than that of the County level (76%). General affordability standards set a limit at 30% of gross income to be allocated for owner-occupied housing costs and 28% of gross income to be allocated for renter-occupied housing costs.

Approximately 33.9% of Borough households that owned the units they occupied spent 30% or more of their household income on housing, as compared to 51.7% of Borough households that rented the units they occupied. These figures were greater than the County level, in which a lesser 23.2% of households occupying units they owned and 43.4% of households occupying rental units spent 30% or more of the household income on housing.

<b>Table 9: Selected Monthly Owner Costs as a Percentage of Household Income, 2023 Washington Borough and Warren County</b>				
	<b>Washington Borough</b>		<b>Warren County</b>	
	<b>Number</b>	<b>Percent</b>	<b>Number</b>	<b>Percent</b>
<b>Total Owner-Occupied Housing Units</b>	<b>1,711</b>	<b>100.0%</b>	<b>34,186</b>	<b>100.0%</b>
Less than 20.0%	669	39.1%	17,503	51.2%
20.0 to 24.9%	277	16.2%	5,018	14.7%
25.0 to 29.9%	185	10.8%	3,704	10.8%
30.0 to 34.9%	234	13.7%	2,112	6.2%
35.0% or more	346	20.2%	5,829	17.1%
Not computed	0	0.0%	20	0.1%

Source: 2023 ACS 5-Year Estimates, Table DP04

<b>Table 10: Gross Rent as a Percentage of Household Income, 2023 Washington Borough and Warren County</b>				
	<b>Washington Borough</b>		<b>Warren County</b>	
	<b>Number</b>	<b>Percent</b>	<b>Number</b>	<b>Percent</b>
<b>Total Renter-Occupied Housing Units</b>	<b>1,336</b>	<b>100.00%</b>	<b>11,077</b>	<b>100.00%</b>
Less than 10.0%	39	2.9%	464	4.2%
10.0 to 14.9%	89	6.7%	965	8.7%
15.0 to 19.9%	240	18.0%	1,576	14.2%
20.0 to 24.9%	99	7.4%	1,244	11.2%
25.0 to 29.9%	144	10.8%	1,321	11.9%
30.0 to 34.9%	106	7.9%	1,050	9.5%
35.0 to 39.9%	77	5.8%	762	6.9%
40.0 to 49.9%	58	4.3%	809	7.3%
50.0% or more	450	33.7%	2,184	19.7%
Not computed	34	2.5%	702	6.3%

Source: 2023 ACS 5-Year Estimates, Table B25070

## EXISTING HOUSING CONDITIONS

### Housing Unit Data

The vast majority (80.1%) of Washington Borough’s housing stock consists of structures built prior to the year 2000. In 2023, Washington Borough had a total of 3,047 occupied housing units, roughly 56.2% of which were owner-occupied and 43.8% of which were renter-occupied. The Borough experienced housing booms in the 1950s and early 2000s, during which approximately 13.3% and 13.2% of the Borough’s housing structures were constructed, respectively. As reflected in the 2023 American Community Survey data, a slower rate of residential development has occurred since 2010. The median year of construction for the housing stock in Washington Borough is 1957. This data is outlined in Tables 11 and 12 below.

<b>Table 11: Housing Data, 2023 Washington Borough</b>			
	<b>Number</b>	<b>% of Total Housing Units</b>	<b>% of Occupied Housing Units</b>
<b>Total Housing Units</b>	<b>3,124</b>	<b>100.0%</b>	-
Occupied Housing Units	3,047	97.5%	100.0%
Owner Occupied	1,711	54.8%	56.2%
Renter Occupied	1,336	42.8%	43.8%
Vacant Housing Units	77	2.5%	-

Source: 2023 ACS 5-Year Estimates, Table DP04

<b>Table 12: Year Structure Built, 2023 Washington Borough</b>		
	<b>Number</b>	<b>Percent</b>
<b>Total Housing Units</b>	<b>3,124</b>	<b>100.00%</b>
Built 1939 or earlier	1128	36.1%
Built 1940 to 1949	151	4.8%
Built 1950 to 1959	416	13.3%
Built 1960 to 1969	281	9.0%
Built 1970 to 1979	267	8.5%
Built 1980 to 1989	174	5.6%
Built 1990 to 1999	85	2.7%
Built 2000 to 2009	412	13.2%
Built 2010 to 2019	210	6.7%
Built 2020 or later	0	0.0%
<b>Median Year Structure Built</b>	<b>1957</b>	

Source: 2023 ACS 5-Year Estimates, Tables B25034 and B25035

In 2023, Washington Borough had a high occupancy rate, with very few of its housing units vacant. Of the Borough’s 3,124 housing units, 97.5% were occupied and a mere 2.5% were vacant. Nearly two-thirds (61%) of vacant units could be attributed to “Sold, Not Occupied” categories, with “For Sale Only” accounting for the remainder of vacant units (39%). This data is represented in Table 13 below.

<b>Table 13: Housing Occupancy, 2023 Washington Borough</b>			
	<b>Total</b>	<b>% of Total Housing Units</b>	<b>% of Vacant Housing Units</b>
Total Housing Units	3,124	100.0%	-
Occupied	3,047	97.5%	-
Vacant Housing Units	77	2.5%	100.0%
For Rent/Rented Not Occupied	0	0.0%	0.0%
For Sale Only	30	1.0%	39.0%
Sold, Not Occupied	47	1.5%	61.0%
For Seasonal, Recreational or Occasional Use	0	0.0%	0.0%
For Migrant Workers	0	0.0%	0.0%
Other Vacant	0	0.0%	0.0%

Source: 2023 ACS 5-Year Estimates, Tables DP04 and B25004

### Housing Type and Size

In 2023, single-family detached housing made up just over half of the Borough’s housing stock at 52.6%. Single-family attached homes were the next most common housing type, representing another 14.5% of the Borough’s housing stock. The median number of rooms within housing structures in the Borough in 2023 was 5.7 rooms, with 69.1% of housing units having a minimum of 5 rooms and only 4.8% of housing units having 2 or less rooms.

<b>Table 14: Housing Type and Size, 2023 Washington Borough</b>		
<b>Units in Structure</b>	<b>Total</b>	<b>Percent</b>
1, detached	1,644	52.6%
1, attached	454	14.5%
2	328	10.5%
3 or 4	72	2.3%
5 to 9	194	6.2%
10 to 19	60	1.9%
20 or more	372	11.9%
Mobile home	0	0.0%
Boat, RV, van, etc.	0	0.0%
<b>Total Housing Units</b>	<b>3,124</b>	<b>100.0%</b>
<b>Rooms</b>	<b>Total</b>	<b>Percent</b>
1 room	22	0.7%
2 rooms	127	4.1%
3 rooms	423	13.5%
4 rooms	394	12.6%
5 rooms	438	14.0%
6 rooms	655	21.0%
7 rooms	323	10.3%
8 rooms	304	9.7%
9 or more rooms	438	14.0%
<b>Total Housing Units</b>	<b>3,124</b>	<b>100.0%</b>
<b>Median number of rooms</b>	<b>5.7</b>	

Source: 2023 ACS 5-Year Estimates, Table DP04

### Housing Growth and Projections

In terms of residential growth, the issuance of building permits serves as one of the indicators that help to determine housing needs in a given municipality. Table 15 below illustrates the number of building permits that were issued over the 10-year period between January 2013 through December 2023, when the Borough issued building permits authorizing the development of 93 housing units.

Within this time frame, the busiest years for building permits occurred in 2013, 2014, and 2018, with 95% of all building permits since 2013 having been issued in those years. Over half of the permits issued during this time frame were for multifamily units (51 permits), while the remaining 37 permits were issued for one- and two-family units. There were no permits issued for mixed use units during this time. If this rate were to remain relatively constant over the next 10-year period, the Borough could expect to see an additional 93 residential units authorized through the end of 2035. External factors such as zoning, redevelopment, environmental constraints, and economic cycles could cause this projection to fluctuate. Given the built-

out nature of the Borough, it is likely that the majority of future development will occur through infill and redevelopment.

Further, throughout the same 10-year period, Washington Borough issued permits authorizing the demolition of 10 units. The average demolition rate is approximately 10.7% of the abovementioned development rate (i.e., a home net increase of around 89.3%). If the demolition rate were to remain relatively constant over the next approximately 10-year period, an additional 10 residential units could be expected to be demolished through the end of 2035, resulting in a projected net increase of 83 units.

<b>Table 15: Housing Units Authorized by Building Permits, 2013-2023 Washington Borough</b>				
<b>Year</b>	<b>1 &amp; 2 Family</b>	<b>Multi Family</b>	<b>Mixed-Use</b>	<b>Total</b>
2013	23	0	0	23
2014	14	0	0	14
2015	0	0	0	0
2016	1	0	0	1
2017	0	0	0	0
2018	0	51	0	51
2019	1	0	0	1
2020	0	0	0	0
2021	0	0	0	0
2022	1	0	0	1
2023	2	0	0	2
<b>Total 2013-2023</b>	<b>42</b>	<b>51</b>	<b>0</b>	<b>93</b>
<b>10-Year Average</b>				<b>9.3</b>
<b>10-Year Permit Projection (2025-2035)</b>				<b>93</b>

Source: State of New Jersey Department of Community Affairs Building Permits: Yearly Summary Data

<b>Table 16: Housing Units Demolished by Building Permits, 2013-2023 Washington Borough</b>				
<b>Year</b>	<b>1 &amp; 2 Family</b>	<b>Multi Family</b>	<b>Mixed-Use</b>	<b>Total</b>
2013	1	0	0	1
2014	0	0	0	0
2015	0	0	0	0
2016	0	0	0	0
2017	1	0	0	1
2018	0	0	0	0
2019	0	0	0	0
2020	1	0	0	1
2021	0	0	0	0
2022	4	0	0	4
2023	3	0	0	3
<b>Total 2013-2023</b>	<b>10</b>	<b>0</b>	<b>0</b>	<b>10</b>
<b>10-Year Average</b>				<b>1</b>
<b>10-Year Demolition Projection (2025-2035)</b>				<b>10</b>

Source: State of New Jersey Department of Community Affairs Building Permits: Yearly Summary Data

**Housing Values and Contract Rents**

According to the American Community Survey, approximately half (61.1%) of the owner-occupied housing stock in Washington Borough in 2023 was valued between \$150,000 to \$299,999, as compared to 29.5% of the County’s housing stock. In addition, only 29.6% of the Borough’s housing stock was valued over \$300,000, whereas 61.6% of the County’s housing stock exceeded \$300,000 in value. The Borough had a significantly lower median home value (\$260,200) than the County (\$350,500) in 2023. This suggests that the Borough’s housing stock is more affordable than the County on a whole. This data is outlined in Table 17 below.

<b>Table 17: Value for Owner-Occupied Housing Units, 2023 Washington Borough and Warren County</b>				
	<b>Washington Borough</b>		<b>Warren County</b>	
	<b>Number</b>	<b>Percent</b>	<b>Number</b>	<b>Percent</b>
<b>Total</b>	<b>1,711</b>	<b>100.0%</b>	<b>34,186</b>	<b>100.0%</b>
Less than \$50,000	38	2.2%	1,511	4.4%
\$50,000 to \$99,999	44	2.6%	240	0.7%
\$100,000 to \$149,999	77	4.5%	1,028	3.0%
\$150,000 to \$199,999	330	19.3%	1,731	5.1%
\$200,000 to \$299,999	716	41.8%	8,347	24.4%
\$300,000 to \$499,999	473	27.6%	14,651	42.9%
\$500,000 to \$999,999	33	1.9%	6,403	18.7%
\$1,00,000 and greater	0	0.0%	275	0.8%
<b>Median Value</b>	<b>\$260,200</b>		<b>\$350,500</b>	

Source: 2023 ACS 5-Year Estimates, Tables B25075 and B25077

As shown on Table 18 below, it is estimated that 74.1% of owner-occupied units in the Borough were financed by a mortgage, contract to purchase, or similar debt in 2023. Of these units, approximately 3.4% were associated with multiple mortgages, another 2% were tied to a home equity loan without a primary mortgage, and the remaining 68.6% were associated with just a primary mortgage. Proportionally there were slightly less owner-occupied housing units with a mortgage at the County level; more specifically, 65.3% of such units had a primary mortgage, while 34.7% of units did not. Of those units in the County tied to a housing-related debt, 84.6% did not have any additional lines of credit associated with the unit, while 8.0% were associated with a home equity loan, 3.6% were associated with a second mortgage, and 3.8% were associated with a home equity loan without a primary mortgage.

**Table 18: Mortgage Status, 2023  
Washington Borough and Warren County**

	Washington Borough			Warren County		
	Number	% of Total Units	% of Mortgage Units	Number	% of Total Units	% of Mortgage Units
Total Owner-Occupied Units	1,711	100.0%	-	34,186	100.0%	-
Owner-Occupied Housing Units with a Mortgage, Contract to Purchase, or similar Debt	1,267	74.1%	100.0%	22,323	65.3%	100.0%
Housing Units with No Second Mortgage and No Home Equity Loan	1,173	68.6%	92.6%	18,880	55.2%	84.6%
Housing Units with Multiple Mortgages	59	3.4%	4.7%	2,595	7.6%	11.6%
Mortgage with Both Second mortgage and Home Equity Loan	0	0.0%	0.0%	0	0.0%	0.0%
Mortgage with Only Home Equity Loan	59	3.4%	4.7%	1,786	5.2%	8.0%
Mortgage with Only Second Mortgage	0	0.0%	0.0%	809	2.4%	3.6%
Home Equity Loan without a Primary Mortgage	35	2.0%	2.8%	848	2.5%	3.8%
Owner-Occupied Housing units without a Mortgage	444	25.9%	-	11,863	34.7%	-

Source: 2023 ACS 5-Year Estimates, Table B25081

As shown in Table 19 below, the median contract rent in Washington Borough in 2023 was \$1,185, which was roughly \$137 lower than the County median rent of \$1,322. Within the Borough the highest percentage of renters paid between \$1,000 to \$1,499 for monthly rent (58.8%), followed by \$1,500 to \$1,999 (20.1%), and less than \$1,000 (15.3%). Overall, nearly three-quarters (74.0%) of renters in the Borough paid less than \$1,500 for monthly rent in 2023. At the County level just less than half (42.3%) of renters paid between \$1,000 to \$1,499 for monthly rent, followed by 18.7% of renters paying between \$1,500 to \$1,999, and another 26.8% of renters paying less than \$1,000 for monthly rent. This data suggests that rent in the Borough is on par with—if not slightly more affordable than—rent in the County as a whole.

**Table 19: Contract Rent, 2023  
Washington Borough and Warren County**

	Washington Borough		Warren County	
	Number	Percent	Number	Percent
<b>Total Renter-Occupied Units</b>	<b>1,336</b>	<b>100.0%</b>	<b>11,557</b>	<b>100.0%</b>
Less than \$500	110	8.2%	1004	8.7%
\$500 to \$999	94	7.0%	2094	18.1%
\$1,000 to \$1,499	785	58.8%	4,892	42.3%
\$1,500 to \$1,999	269	20.1%	2,162	18.7%
\$2,000 to \$2,499	44	3.3%	727	6.3%
\$2,500 to \$2,999	0	0.0%	116	1.0%
\$3,000 or More	0	0.0%	0	0.0%
No Rent Paid	34	2.5%	562	4.9%
<b>Median Contract Rent</b>	<b>\$1,185</b>		<b>\$1,322</b>	

Source: 2023 ACS 5-Year Estimates, Tables B25056 and B25058

**Housing Conditions**

Table 20 below details the conditions of the Borough’s housing stock in 2023. Overcrowding, plumbing, and kitchen facilities are used to determine housing deficiency. In 2023, nearly two-thirds (63.9%) of the Borough’s housing stock relied on utility gas for heating, followed by electricity (22.7%), and fuel, oil, and kerosene (9.1%). None of the occupied housing units in the Borough experienced overcrowding (more than one person per room). Further, a small number of occupied housing units lacked complete plumbing (1.9%), complete kitchen facilities (0.4%), or telephone service (1.2%).

<b>Table 20: Housing Conditions, 2023 Washington Borough</b>		
	<b>Number</b>	<b>Percent</b>
<b>House Heating Fuel-Occupied Housing Units</b>		
Total	3,047	100.0%
Utility Gas	1,948	63.9%
Bottled, Tank, or LP Gas	37	1.2%
Electricity	691	22.7%
Fuel Oil, Kerosene, etc.	278	9.1%
Coal or Coke	0	0.0%
Wood	0	0.0%
Solar Energy	0	0.0%
Other Fuel	80	2.6%
No Fuel Used	13	0.4%
<b>Occupants per Room – Occupied Housing Units</b>		
Total	3,047	100.0%
1.00 or Less	3,047	100.0%
1.01 to 1.50	0	0.0%
1.51 or More	0	0.0%
<b>Facilities – Total Units</b>		
Total	3,124	100.0%
Lacking Complete Plumbing Facilities	60	1.9%
Lacking Complete Kitchen Facilities	13	0.4%
<b>Telephone Service – Occupied Housing Units</b>		
Total	3,047	100.0%
No Service	37	1.2%

Source: 2023 ACS 5-Year Estimates, Tables DP04, B25047, and B25051

**EMPLOYMENT DATA**

Tables 21, 22, and 23 below detail the changes in employment between the years 2010 and 2023 in Washington Borough, Warren County, and New Jersey, respectively. Throughout this thirteen-year period, the Borough saw an overall 6.2% decrease in its unemployment rate. Although the Borough experienced a 6.1% spike in unemployment between 2019 and 2020 due to the COVID-19 pandemic, it has rebounded to a considerably lower unemployment rate in recent years. This overall trend is mirrored at both the County and State level as well. In 2023, the Borough’s unemployment rate was 4.5%, which was 0.5% higher than the County (4.0%) and 0.1% higher than the State (4.4%).

<b>Table 21: Employment and Residential Labor Force, 2010 to 2023 Washington Borough</b>				
<b>Year</b>	<b>Labor Force</b>	<b>Employment</b>	<b>Unemployment</b>	<b>Unemployment Rate</b>
2010	3,703	3,308	395	10.7%
2011	3,688	3,373	315	8.5%
2012	3,502	3,155	347	9.9%
2013	3,423	3,155	268	7.8%
2014	3,419	3,183	236	6.9%
2015	3,435	3,225	210	6.1%
2016	3,425	3,245	180	5.3%
2017	3,511	3,331	180	5.1%
2018	3,469	3,309	160	4.6%
2019	3,545	3,401	144	4.1%
2020	3,552	3,190	362	10.2%
2021	3,539	3,304	235	6.6%
2022	3,585	3,435	150	4.2%
2023	3,641	3,476	165	4.5%

Source: NJ Dept. of Labor & Workforce Development Labor Force Estimates, Municipal Historical Annual Data, 2010-2023

<b>Table 22: Employment and Residential Labor Force, 2010 to 2023 Warren County</b>				
<b>Year</b>	<b>Labor Force</b>	<b>Employment</b>	<b>Unemployment</b>	<b>Unemployment Rate</b>
2010	58,695	52,833	5,862	10.0%
2011	58,746	53,411	5,335	9.1%
2012	58,588	53,441	5,147	8.8%
2013	57,636	53,144	4,492	7.8%
2014	56,922	53,337	3,585	6.3%
2015	56,748	53,749	2,999	5.3%
2016	56,584	54,012	2,572	4.5%
2017	57,634	55,277	2,357	4.1%
2018	57,109	54,975	2,134	3.7%
2019	58,154	56,256	1,898	3.3%
2020	57,587	52,883	4,704	8.2%
2021	58,190	54,760	3,430	5.9%
2022	59,058	56,933	2,125	3.6%
2023	60,052	57,624	2,428	4.0%

Source: NJ Dept. of Labor & Workforce Development Labor Force Estimates, County Historical Annual Data, 2010-2023

<b>Table 23: Employment and Residential Labor Force, 2010 to 2023 New Jersey</b>				
<b>Year</b>	<b>Labor Force</b>	<b>Employment</b>	<b>Unemployment</b>	<b>Unemployment Rate</b>
2010	4,559,778	4,118,982	440,796	9.7%
2011	4,561,786	4,134,708	427,078	9.4%
2012	4,576,286	4,147,221	429,065	9.4%
2013	4,528,019	4,147,661	380,358	8.4%
2014	4,493,894	4,191,318	302,576	6.7%
2015	4,494,606	4,237,876	256,730	5.7%
2016	4,492,821	4,271,201	221,620	4.9%
2017	4,614,953	4,406,151	208,802	4.5%
2018	4,604,787	4,420,713	184,074	4.0%
2019	4,687,390	4,525,044	162,346	3.5%
2020	4,638,386	4,200,980	437,406	9.4%
2021	4,648,814	4,337,793	311,021	6.7%
2022	4,736,213	4,552,563	183,650	3.9%
2023	4,829,671	4,615,722	213,949	4.4%

Source: NJ Dept. of Labor & Workforce Development Labor Force Estimates, State Historical Annual Data, 2010-2023

### Employment Status

It is estimated that over two-thirds (69.0%) of Washington Borough’s population over the age of 16 was in the labor force in 2023, which was on par with the County’s rate of 69.9%. Of the Borough’s labor force, 100% of workers were civilians and a vast majority (95.5%) were employed. At the County level, 100% of workers were civilians and 96.1% of the labor force was employed, indicating that the Borough and County exhibited similar trends. This data is shown in Table 24 below.

<b>Table 24: Employment, 2023 Washington Borough and Warren County</b>						
	<b>Washington Borough</b>			<b>Warren County</b>		
	<b>Number</b>	<b>% of 16+ Population</b>	<b>% of Labor Force</b>	<b>Number</b>	<b>% of 16+ Population</b>	<b>% of Labor Force</b>
Population 16 years and over	5,772	100.0%	-	92,794	100.0%	-
In labor force	3,981	69.0%	100.0%	64,875	69.9%	100.0%
Civilian Labor Force	3,981	69.0%	100.0%	64,875	69.9%	100.0%
Employed	3,802	65.9%	95.5%	62,355	67.2%	96.1%
Unemployed	179	3.1%	4.5%	2,520	2.7%	3.9%
Armed Forces	0	0.0%	0.0%	0	0.0%	0.0%
Not in labor force	1,791	31.0%	-	27,919	30.1%	-

Source: 2023 ACS 5-Year Estimates, Table DP03

**Class of Worker and Occupation**

According to the American Community Survey Estimates, the majority of workers (73.9%) living in Washington Borough in 2023 were a part of the private wage and salary worker group. This group includes people who work for wages, salary, commission, and tips for a private for-profit employer. The next largest category was private not-for-profit wage and salary workers (10.8%) and local government workers (7.9%). This data is outlined in Table 25 below.

<b>Table 25: Class of Worker, 2023 Washington Borough</b>		
	<b>Number</b>	<b>Percent</b>
Employed Civilian Population 16 Years and Over	3,802	100.0%
Private Wage and Salary Worker	2,809	73.9%
Private Not-For-Profit Wage and Salary Workers	411	10.8%
Local Government Worker	302	7.9%
State Government Worker	145	3.8%
Federal Government Worker	61	1.6%
Self-Employed Worker or Unpaid Family Worker	74	1.9%

Source: 2023 ACS 5-Year Estimates, Table S2408

The occupational breakdown shown in Table 26 below includes only private wage and salary workers. Over half of the Borough’s residents who worked within the private wage field were concentrated in the Management, Business, Science and Arts Occupations (33.9%) and Sales and Office Occupations (24.7%). Collectively, the two fields accounted for 58.6% of the entire resident workforce over the age of 16. Production Transportation and Material Moving Occupations (17.9%) and Service Occupations (15.7%) collectively accounted for another one-third (33.6%) of this population.

<b>Table 26: Resident Employment by Occupation, 2023 Washington Borough</b>		
	<b>Number</b>	<b>Percent</b>
Employed Civilian Population 16 Years and Over	3,802	100.0%
Management, Business, Science and Arts Occupations	1,287	33.9%
Service Occupations	597	15.7%
Sales and Office Occupations	939	24.7%
Natural Resources, Construction and Maintenance Occupations	299	7.9%
Production Transportation and Material Moving Occupations	680	17.9%

Source: 2023 ACS 5-Year Estimates, Table DP03

As portrayed in Table 27, the industry that employed the greatest number of Washington Borough residents in 2023 was the Educational Services, and Health Care and Social Assistance sector, which accounted for 23.6% of the Borough’s resident workforce. The second most common industry during this time was the Retail Trade sector, which accounted for 18.9% of jobs occupied by Borough residents.

<b>Table 27: Employment by Industry, 2023 Washington Borough</b>		
<b>Industry</b>	<b>Number</b>	<b>Percent</b>
Employed Civilian Population 16 Years and Over	3,802	100.00%
Agriculture, Forestry, Fishing and Hunting, Mining	17	0.4%
Construction	160	4.2%
Manufacturing	371	9.8%
Wholesale Trade	155	4.1%
Retail Trade	718	18.9%
Transportation and Warehousing, and Utilities	193	5.1%
Information	53	1.4%
Finance and Insurance, and Real Estate and Rental and Leasing	197	5.2%
Professional, Scientific, and Management, and Administrative and Waste Management Services	278	7.3%
Educational Services, and Health Care and Social Assistance	898	23.6%
Arts, Entertainment, and Recreation, and Accommodation and Food Services	347	9.1%
Other Services, Except Public Administration	218	5.7%
Public Administration	197	5.2%

Source: 2023 ACS 5-Year Estimates, Table DP03

### **Commuting to Work**

In 2023, it is estimated that just over half (54.3%) of the employed population that did not work from home commuted up to 34 minutes to their place of work. Approximately 84% of the Borough’s workers commuted up to an hour, with the remaining 16% of workers travelling between an hour to an hour and a half to get to work. Just over three-quarters (77.5%) of the Borough’s working population drove alone as their primary means of travel to work. Less than 10% (9.4%) of workers carpooled, utilized public transportation, walked, or utilized a taxicab, motorcycle, bike, or other means of transportation to commute to work, while the remaining 13.1% of the population worked from home. This data is outlined in Tables 28 and 29 below.

<b>Table 28: Travel Time to Work, 2023 Washington Borough</b>		
	<b>Number</b>	<b>Percent</b>
Workers who did not work at home	3,152	100.0%
Less than 5 minutes	192	6.1%
5 to 9 minutes	350	11.1%
10 to 14 minutes	94	3.0%
15 to 19 minutes	341	10.8%
20 to 24 minutes	204	6.5%
25 to 29 minutes	205	6.5%
30 to 34 minutes	326	10.3%
35 to 39 minutes	118	3.7%
40 to 44 minutes	197	6.3%
45 to 59 minutes	623	19.8%
60 to 89 minutes	232	7.4%
90 or more minutes	270	8.6%
<b>Mean Travel Time to Work (minutes)</b>	<b>36.5</b>	

Source: 2013 ACS 5-Year Estimates, Tables DP03 and B08303

<b>Table 29: Means of Travel to Work, 2023 Washington Borough</b>		
	<b>Number</b>	<b>Percent</b>
Workers 16 years and over	3,626	100.0%
Car, Truck, Van - Drove Alone	2,811	77.5%
Car, Truck, Van - Carpooled	172	4.7%
Public Transportation	84	2.3%
Walked	69	1.9%
Taxicab, Motorcycle, Bike, or Other	16	0.4%
Worked at Home	474	13.1%

Source: 2023 ACS 5-Year Estimates, Table DP03

### **Covered Employment**

There is currently very limited information available on actual job opportunities within municipalities. The Department of Labor and Workforce Development collects information on covered employment, which is employment and wage data for private employees covered by unemployment insurance. The following table provides a snapshot of private employers located within Washington Borough. The first table reflects the number of jobs covered by private employment insurance from 2013 through 2023.

According to data from the New Jersey Department of Labor and Workforce Development, the highest number of covered jobs in Washington Borough between 2013 and 2023 was in 2016 when 2,024 jobs were covered by unemployment insurance. Private employment has remained relatively steady in the Borough since 2013, with its largest loss occurring between 2019 and 2020 (-9.7%), and largest gain occurring between 2020 and 2021 (+6.5%). Washington Borough experienced a gain of 73 jobs between 2022 and 2023, representing an increase of 3.9%.

<b>Table 30: Private Wage Covered Employment 2013 - 2023</b>			
<b>Washington Borough</b>			
<b>Year</b>	<b>Number of Jobs</b>	<b>Number Change</b>	<b>Percentage Change</b>
2013	1,897	-	-
2014	1,907	10	0.5%
2015	1,949	42	2.2%
2016	2,024	75	3.8%
2017	1,934	-90	-4.4%
2018	1,937	3	0.2%
2019	1,974	37	1.9%
2020	1,829	-145	-7.3%
2021	1,947	118	6.5%
2022	1,861	-86	-4.4%
2023	1,934	73	3.9%

Source: NJ Dept. of Labor & Workforce Development, Labor Force Estimates

**In-Borough Establishments and Employees by Industry: 2023**

Table 31 below depicts the average annual number of establishments and employees by industry sector that exist within the Borough, as reported in the Quarterly Census of Employment and Wages (“QCEW”) published by the New Jersey Department of Labor and Workforce Development (“NJDLWD”). The QCEW provides a quarterly accounting of employment, establishments, and wages throughout the State of New Jersey, and accounts for over 95% of available jobs in the state. The annual municipal reports group data according to the North American Industry Classification System (“NAICS”). The QCEW considers an establishment to be a single economic unit, which is located at one physical location and engaged in one type of economic activity. The NJDLWD specifies that establishments differ from firms or companies in the sense that the latter can have multiple establishments.

In 2023, the Borough had an annual average of 265 establishments employing an average of 1,934 persons in the private sector. In the public sector, the local government sector had an average of 3 units employing an average of 239 people. The healthcare and social services (“Health/Social”) sector was the Borough’s predominant private sector, accounting for approximately 23.4% of the average private establishments in Washington Borough and 18.9% of the Borough’s average private in-place employment.

<b>Table 31: Average Number of Establishments and Employees by Industry, 2023 Washington Borough</b>			
<b>Industry ID and Description</b>		<b>2023 Average</b>	
		<b>Units</b>	<b>Employment</b>
11	Agriculture	-	-
22	Utilities	-	-
23	Construction	-	-
31	Manufacturing	11	281
42	Wholesale Trade	-	-
44	Retail Trade	32	302
48	Transp/Warehousing	-	-
51	Information	-	-
52	Finance/Insurance	6	18
53	Real Estate	-	-
54	Professional/Technical	24	91
55	Management	3	73
56	Admin/Waste Remediation	12	47
61	Education	-	-
62	Health/Social	62	365
71	Arts/Entertainment	-	-
72	Accommodations/Food	24	257
81	Other Services	33	139
99	Unclassifieds	12	20
	<b>Private Sector Totals</b>	<b>265</b>	<b>1,934</b>
	<b>Local Government Totals</b>	<b>3</b>	<b>239</b>

Source: NJ Dept. of Labor & Workforce Development Labor Force, Quarterly Census of Employment and Wages (QCEW), Municipal Report by Sector (NAICS Based), 2022

Data have been suppressed (-) for industries with few units or where one employer is a significant percentage of employment or wages of the industry.

### Probable Future Employment Opportunities

The North Jersey Transportation Planning Authority (NJTPA) completes regional forecasts for the New York/New Jersey metropolitan area every four years for population, households, and employment. The most recent report was released in 2021, documenting projections between 2015 and 2050. The 2021 report predicts that the Borough’s population, households, and employment will see steady annualized growths through 2050. It is estimated that the population will see an overall 1.8% increase, while households will increase by 3.3% and employment will increase by 2.5%.

<b>Table 32: Population and Employment Projections, 2015 to 2050 Washington Borough</b>					
<b>Category</b>	<b>2015</b>	<b>2050 (Projected)</b>	<b>Annualized Percent Change</b>	<b>Overall Projected Change</b>	
				<b>Number</b>	<b>Percent</b>
Population	6,355	6,472	0.10%	117	1.8%
Households	2,623	2,710	0.10%	87	3.3%
Employment	1,258	1,290	0.10%	32	2.5%

Source: NJTPA Municipal Forecasts, dated 9/13/2021

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## **PART 2: FAIR SHARE PLAN**

### **INTRODUCTION**

The following Fair Share Plan (“Plan”) details the Borough’s Prior Round (1987-1999), Third Round (1999-2025), and Fourth Round (2025-2035) Prospective Need obligations. It should be noted that the Borough has no Present Need obligation for the Fourth Round.

This Plan proposes mechanisms by which the Borough can realistically provide opportunities for affordable housing for those moderate-, low-, and very low- income households.

### **CURRENT STANDARDS**

The below section outlines the current key standards applicable to the Borough’s Fourth Round obligation, including the various categories of credits.

#### **Age-Restricted Housing**

A municipality may not satisfy more than 30% of the affordable units, exclusive of bonus credits, to address its prospective affordable housing need through the creation of age-restricted housing.

#### **Transitional Housing**

Transitional housing units, which will be affordable for persons of low- and moderate-income, were not previously categorized by the Fair Housing Act as a standalone housing type. The amended legislation includes such transitional housing units as a new category which may be included in the HEFSP and credited towards the fulfillment of a municipality’s fair share obligations. This is limited to a maximum of 10% of the municipality’s obligations.

#### **Veterans Housing**

Up to 50% of the affordable units in any particular project may be prioritized for low- and moderate-income veterans.

#### **Families with Children**

A minimum of 50% of a municipality’s actual affordable housing units, exclusive of bonus credits, must be made available to families with children.

#### **Rental Units**

A minimum of 25% of a municipality’s actual affordable housing units, exclusive of bonus credits, shall be satisfied through rental units. At least half of that number shall be available to families with children.

#### **Very-Low Income Requirement**

At least 13% of the housing units made available for occupancy by low-income and moderate-income households shall be reserved for low-income households earning 30% or less of the median income

pursuant to the Fair Share Housing Act, N.J.S.A. 52:27D-301, et seq. Half of the very low-income units will be made available to families with children.

#### **Low/Moderate Income Split**

At least 50% of the units addressing the Borough's obligation shall be affordable to very-low income and low-income households, and the remaining may be affordable to moderate-income households.

#### **Affordability Controls**

Newly created rental units shall remain affordable to low-and moderate-income households for a period of not less than 40 years, 30 years for for-sale units, and 30 years for housing units for which affordability controls are extended for a new term of affordability, provided that the minimum extension term may be limited to no less than 20 years as long as the original and extended terms, in combination, total at least 60 years.

#### **Affirmative Marketing**

The affordable units shall be affirmatively marketed in accordance with UHAC and applicable law, to include the community and regional organizations identified in the agreement as well as the posting of all affordable units on the New Jersey Housing Resource Center website in accordance with applicable law.

#### **Uniform Housing Affordability Controls (UHAC)**

All affordable units created through the provisions of this Plan shall be developed in conformance with the Uniform Housing Affordability Controls (UHAC) pursuant to N.J.A.C. 5:80-26.1 et seq. as amended.

#### **Unit Adaptability**

All new construction units shall be adaptable in conformance with P.L.2005, c.250/N.J.S.A. 52:27D-311a and -311b and all other applicable laws.

**Bonus Credits**

Bonus credits shall not exceed 25% of a municipality’s prospective need obligation, nor shall a municipality receive more than one type of bonus credit for any one unit. Bonus credits may be granted based on the following schedule:

Unit Type	Unit Credit	Bonus Credit
Each unit of low- or moderate-income housing for individuals with special needs or permanent supportive housing, as those terms are defined in section 2 of P.L. 2004, c.70 (C.34:1B-21.24).	1	1
Each low- or moderate-income ownership unit created in partnership sponsorship with a non-profit housing developer.	1	0.5
Each unit of low- or moderate-income housing located within a one-half mile radius, or one-mile radius for projects located in a Garden State Growth Zone, as defined in section 2 of P.L.2011, c.149 (C.34:1B-243), surrounding a New Jersey Transit Corporation, Port Authority Transit Corporation, or Port Authority Trans-Hudson Corporation rail, bus, or ferry station, including all light rail stations. <sup>1</sup>	1	0.5
A unit of age-restricted housing, provided that a bonus credit for age-restricted housing shall not be applied to more than 10 percent of the units of age-restricted housing constructed in compliance with the Uniform Housing Affordability Controls promulgated by the New Jersey Housing and Mortgage Finance Agency in a municipality that count towards the municipality’s affordable housing obligation for any single 10-year round of affordable housing obligations.	1	0.5
A unit of low- or moderate-income housing constructed on land that is or was previously developed and utilized for retail, office, or commercial space.	1	0.5
Each existing low- or moderate-income rental housing unit for which affordability controls are extended for a new term of affordability, in compliance with the Uniform Housing Affordability Controls promulgated by the New Jersey Housing and Mortgage Finance Agency, and the municipality contributes funding towards the costs necessary for this preservation.	1	0.5
Each unit of low- or moderate-income housing in a 100 percent affordable housing project for which the municipality contributes toward the costs of the project. <sup>2</sup>	1	1
Each unit of very low-income housing for families above the 13 percent of units required to be reserved for very low-income housing pursuant to section 7 of P.L.2008, c.46 (C.52:27D-329.1).	1	0.5
Each unit of low- or moderate-income housing created by transforming an existing rental or ownership unit from a market rate unit to an affordable housing unit. <sup>3</sup>	1	1

<sup>1</sup> The distance from the bus, rail, or ferry station to a housing unit shall be measured from the closest point on the outer perimeter of the station, including any associated park-and-ride lot, to the closest point of the housing project property.

<sup>2</sup> This contribution may consist of: (a) real property donations that enable siting and construction of the project or (b) contributions from the municipal affordable housing trust fund in support of the project, if the contribution consists of no less than three percent of the project cost.

<sup>3</sup> A municipality may only rely on this bonus credit as part of its fair share plan and housing element if the municipality demonstrates that a commitment to follow through with this market to affordable agreement has been made and: (a) this agreement has been signed by the property owner; or (b) the municipality has obtained ownership of the property.

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## WASHINGTON BOROUGH AFFORDABLE HOUSING OBLIGATIONS

The Borough's affordable housing obligations are as follows:

Prior Round Prospective Need	0
Third Round Prospective Need	42
Fourth Round Prospective Need	27
Fourth Round Present Need / Rehabilitation Obligation	0

### REVIEW OF PREVIOUS ROUND COMPLIANCE

As part of any Housing Element and Fair Share Plan, a municipality shall include an assessment of the degree to which the municipality has met its fair share obligation from the previous rounds of affordable housing obligations as established by prior court approval or approval by COAH and determine to what extent this obligation is unfulfilled or whether the municipality has credits in excess of its previous round obligations. If a previous round obligation remains unfulfilled, or a municipality never received an approval from the court or COAH for any previous round, the municipality shall address such unfulfilled previous round obligation in its Housing Element and Fair Share Plan.

In addressing previous round obligations, the municipality shall retain any sites that, in furtherance of the previous round obligation, are the subject of a contractual agreement with a developer, or for which the developer has filed a complete application seeking subdivision or site plan approval prior to the date by which the Housing Element and Fair Share Plan are required to be submitted, and shall demonstrate how any sites that were not built in the previous rounds continue to present a realistic opportunity.

#### Prior Round Compliance (1987-1999)

The Borough had a Prior Round obligation of 0 units.

**Third Round Compliance (1999-2025)**

The Borough had a Third Round obligation of 42 units. Per the Court-approved Third Round Settlement Agreement and the Borough’s Third Round JOR, Washington has met their Third Round obligation through the following mechanisms:

<b>Summary of Washington Borough’s Third Round of 42</b>	
<b>Existing Group Home</b> <i>Gardners Court (Block 11, Lot 2)</i>	14
<b>Existing 100% Affordable Family Rentals</b> <i>Westgate Apartments (Block 6, Lots 11.01 &amp; 11.02)</i>	68
<b>Existing Family For-Sale</b> <i>HFH Marble Street (Block 100, Lot 41)</i> <i>HFH E. Washington Avenue (Block 69, Lots 12-14 &amp; 16)</i> <i>HFH Prosper Way (Block 68, Lot 2)</i>	1 1 1
<b>Proposed Inclusionary Family Rentals</b> <i>Towne Center Project (Block 95, Lots 3 &amp; 4)</i>	10
<b>Inclusionary Zoning</b> <i>Downtown Redevelopment Plan</i>	25
<b>Total Units</b>	<b>120</b>
<b>Rental Bonus Credits</b> <i>Gardners Court (Block 11, Lot 2)</i>	11
<b>Total Rental Bonus Credits</b>	<b>11</b>
<b>TOTAL THIRD ROUND (42 UNIT OBLIGATION + 89 UNIT EXCESS)</b>	
	<b>131</b>

**Towne Center Project (Block 95, Lots 3 & 4)**

The Towne Center Project is a proposed development located within the Washington Avenue Core District of the Borough’s Downtown Redevelopment Area. The project is proposed to include a 4-story mixed-used building with approximately 4,000 square feet of retail space and 2,750 square feet of restaurant space on the ground floor, plus 50 residential units on the upper floors (including 10 affordable units).

The project received site plan approvals from the Borough Land Use Board (then, the Planning Board) on December 9, 2013. The Borough designated Jade Partners Urban Renewal, LLC as the redeveloper and executed an initial redevelopment agreement on September 16, 2014, which was subsequently amended in August 2016 and April 2021 (see Appendix F). Although demolition on the site has occurred, construction on the site has been delayed due to a change in ownership and the need for the new owner to arrange for sufficient financing associated with the project.

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As noted in the Third Round Housing Element and Fair Share Plan, the property meets the criteria to be considered “available, suitable, developable, and approvable.” The analysis as outlined below remains accurate at the time of the writing of this Plan:

- *Available:* This site falls within the Washington Avenue Core District of the Washington Downtown Redevelopment Area, which permits three- to four-story mixed-use buildings. The site has no easements or title issues preventing its development.
- *Suitable:* The site is surrounded by compatible land uses including mixed-use developments and has access to appropriate rights-of-way. The approved site plan provides ingress only from Washington Avenue, egress only to Lincoln Boulevard, and ingress and egress to Broad Street. The property is within a designated Highlands Center, where development is encouraged.
- *Developable:* In accordance with the 2012 New Jersey Department of Environmental Protection’s Land Use Land Cover (LULC), there are no wetlands or surface water resources on the subject property or within 50 feet of the subject property. Further, the site is not located within a FEMA 100-year flood plain. The area on the site proposed for the buildings are not within the 300-foot buffer. The site is served by both public sewer and public water.
- *Approvable:* The site received Planning Board approval on December 9, 2013 and was memorialized in a resolution dated January 13, 2014 (see Appendix G). An initial redevelopment agreement plus two amended redevelopment agreements have been executed with the redeveloper, Jade Partners Urban Renewal, LLC, agreeing to the provision of 10 affordable units in alignment with UHAC regulations.

Additionally, the Highlands Council requires that all conforming municipalities include a narrative analysis discussing any site specific consistency issues and the viability for any development related to affordable housing that is proposed. The Highlands Council released a Highlands Affordable Housing Implementation Guideline document in October 2024, which outlines core planning principles for affordable housing in the Highlands Region as well as siting guidance. The site in question aligns with the following principles and guidelines:

- “The majority of new development in the Highlands Region will likely consist of redevelopment of existing developed lands. Reuse/redevelopment of previously disturbed sites should be prioritized.” This particular project consists of the redevelopment of a previously disturbed lot.
- “The extent and capacity of existing infrastructure should be considered in site selection, zoning ordinance amendments, and total number of projected new units.” This site falls within a designated Highlands Center, where sewer and public water are available.
- “[...] Municipalities that invite nonresidential development should seek to balance that development with residential development with an affordable housing component so that low- and moderate-

income households have easier access to the jobs created.” The Towne Center project is a mixed-use development with commercial activity on the ground floor and residential uses on the upper floors.

- Policy 604 of the RMP is “to encourage the targeting of new housing to areas with compatible existing densities and within walking distance of schools, employment, transit, and community facilities and services.” The Towne Center project is located within the Washington Downtown Redevelopment Area, in which a majority of the Borough’s economic activity is based. The site is located in proximity to communal infrastructure including schools, places of employment, public library, parks and recreation, etc.
- Lastly, no extension of sewer or water is required for the site, and it is not in proximity to industrial or other uses with potential for health and safety impacts.



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### *Downtown Redevelopment Plan (Inclusionary Zoning)*

The Washington Borough Downtown Redevelopment Area encompasses approximately 41.5 total acres, and consists of five subdistricts, including:

- **Washington Avenue Core District**, which permits a mix of residential and commercial uses;
- **Route 31 Gateway District**, which permits mixed uses with residential on upper floors;
- **Theater District**, which permits a mix of multifamily residential, commercial, and mixed uses;
- **Residential District**, which permits single-, two-, and multi-family residential as well as mixed use with commercial on the ground floor and residential on upper floors; and
- **Public Park District**, which permits public facilities and green stormwater management facilities.

Washington Borough adopted the Washington Downtown Redevelopment Plan in 2009. The Redevelopment Plan was subsequently amended and adopted on September 20, 2022 to include a 20% affordable housing set-aside for residential or mixed use projects yielding 5 or more units (see Appendix H). Since this amendment, two separate applications triggering the set-aside have received site plan approvals from the Land Use Board, the details of which are outlined below.

#### 1 West Washington Avenue (Block 95, Lot 7)

The property received Land Use Board approvals on October 17, 2022 for the renovation of an existing three-story building and the conversion of vacant office units into residential units (see Appendix K). A total of 20 units were approved, 4 of which were required to be affordable. Renovation work on this project began in 2023 but has since been on hold while the redeveloper and Borough finalize the redevelopment agreement. The property meets the criteria to be considered “available, suitable, developable, and approvable,” as outlined below:

- *Available*: This site falls within the Washington Avenue Core District of the Washington Downtown Redevelopment Area, which permits residential uses on upper stories for properties fronting on Washington Avenue. The site is identified in the Redevelopment Plan as a targeted site for redevelopment. The site has no easements or title issues preventing its development.
- *Suitable*: The site is surrounded by compatible land uses including mixed-use developments and has access to appropriate rights-of-way. The site has frontage on Washington Avenue and Broad Street. The property is within a designated Highlands Center, where development is encouraged.
- *Developable*: The site is not located within a FEMA 100-year flood plain, has no steep slopes, and does not fall within any wetlands areas. The site is served by both public sewer and public water.
- *Approvable*: The site received Land Use Board approval on November 11, 2022 and was memorialized in a resolution reflecting the same date. An initial Redevelopment Agreement was executed between the Borough and redeveloper, 1 West Washington Ave Urban Renewal, LLC in

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March 2023, which stipulates affordable housing requirements in alignment with UHAC regulations (see Appendix L).

Additionally, the property aligns with the following core principles and guidelines as set forth in the Highlands Council's Affordable Housing Implementation Guideline document:

- “The majority of new development in the Highlands Region will likely consist of redevelopment of existing developed lands. Reuse/redevelopment of previously disturbed sites should be prioritized.” This particular project consists of the reuse of an existing, underutilized building.
- “The extent and capacity of existing infrastructure should be considered in site selection, zoning ordinance amendments, and total number of projected new units.” This site falls within a designated Highlands Center, where sewer and public water are available.
- “[...] Municipalities that invite nonresidential development should seek to balance that development with residential development with an affordable housing component so that low- and moderate-income households have easier access to the jobs created.” The 1 West Washington project is a mixed-use development with existing commercial activity on the ground floor and residential uses on the upper floors.
- Policy 604 of the RMP is “to encourage the targeting of new housing to areas with compatible existing densities and within walking distance of schools, employment, transit, and community facilities and services.” The 1 West Washington project is located within the Washington Downtown Redevelopment Area, in which a majority of the Borough’s economic activity is based. The site is located in proximity to communal infrastructure including schools, places of employment, public library, parks and recreation, etc.
- Lastly, no extension of sewer or water is required for the site, and it is not in proximity to industrial or other uses with potential for health and safety impacts.



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2 West Washington Avenue (Block 23, Lots 17 & 18 / Block 24, Lot 25)

This project received Land Use Board approvals on June 13, 2022 for the renovation of a three-story building and the conversion of office spaces to residential units (see Appendix I). A total of ten units were approved, two of which were required to be affordable. As of the writing of this Plan, the majority of the renovations have been completed, and the redeveloper is working to affirmatively market the affordable units. The property meets the criteria to be considered “available, suitable, developable, and approvable,” as outlined below:

- *Available:* This site falls within the Washington Avenue Core District of the Washington Downtown Redevelopment Area, which permits residential uses on upper stories for properties fronting on Washington Avenue. The site is identified in the Redevelopment Plan as a targeted site for redevelopment. The site has no easements or title issues preventing its development.
- *Suitable:* The site is surrounded by compatible land uses including mixed-use developments and has access to appropriate rights-of-way. The approved site plan provides ingress from Belvidere Avenue and egress onto Washington Avenue. The property is within a designated Highlands Center, where development is encouraged.
- *Developable:* The site is not located within a FEMA 100-year flood plain, has no steep slopes, and does not fall within any wetlands areas. The site is served by both public sewer and public water.
- *Approvable:* The site received Land Use Board approval on June 13, 2022 and was memorialized in a resolution dated September 12, 2022. An initial Redevelopment Agreement was executed between the Borough and redeveloper, 2 West Washington, LLC in November 2024, which stipulates affordable housing requirements in alignment with UHAC regulations (see Appendix J). The Borough and redeveloper are in the process of finalizing an amended redevelopment agreement.

Additionally, the property aligns with the following core principles and guidelines as set forth in the Highlands Council’s Affordable Housing Implementation Guideline document:

- “The majority of new development in the Highlands Region will likely consist of redevelopment of existing developed lands. Reuse/redevelopment of previously disturbed sites should be prioritized.” This particular project consists of the reuse of an existing building.
- “The extent and capacity of existing infrastructure should be considered in site selection, zoning ordinance amendments, and total number of projected new units.” This site falls within a designated Highlands Center, where sewer and public water are available.
- “[...] Municipalities that invite nonresidential development should seek to balance that development with residential development with an affordable housing component so that low- and moderate-income households have easier access to the jobs created.” The 2 West Washington project is a

mixed-use development with existing commercial activity on the ground floor and residential uses on the upper floors.

- Policy 604 of the RMP is “to encourage the targeting of new housing to areas with compatible existing densities and within walking distance of schools, employment, transit, and community facilities and services.” The 2 West Washington project is located within the Washington Downtown Redevelopment Area, in which a majority of the Borough’s economic activity is based. The site is located in proximity to communal infrastructure including schools, places of employment, public library, parks and recreation, etc.
- Lastly, no extension of sewer or water is required for the site, and it is not in proximity to industrial or other uses with potential for health and safety impacts.



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## **FOURTH ROUND PRESENT NEED / REHABILITATION NEED**

As previously noted, the Borough has a Present/Rehabilitation Need of 0 units for the Fourth Round.

## **FOURTH ROUND PROSPECTIVE NEED OBLIGATION**

On October 20, 2024, the New Jersey Department of Community Affairs (“DCA”) released a report outlining the Fourth Round (2025-2035) Fair Share methodology and its calculations of low- and moderate-income obligations for each of the State’s municipalities. The obligations were calculated in alignment with the formulas and criteria found in P.L.2024, c.2. On January 21, 2025, the Borough adopted Resolution #2025-35 accepting the DCA calculated Fourth Round Present/Rehabilitation Need of 0 units and Prospective Need obligation of 27 units. The Borough subsequently received a Court Order dated March 25, 2025 regarding Docket No. WRN-L-41-25 (see Appendix E). This Order served to “fix” Washington Borough’s established Fourth Round Present Need of 0 and Prospective Need of 27 and authorized the Borough to prepare a Fourth Round HEFSP.

As outlined below, the Borough proposes to meet its entire Fourth Round obligation through the following mechanisms.

### **Highlands Build Out Update**

Due to the unique natural resources and environmental sensitivity of the Highlands region, the revised Fair Housing Act (“FHA”) (adopted March 2024) directs the DCA and Highlands municipalities to account for the Highlands Regional Master Plan (“RMP”) when considering affordable housing. The amendment specifically requires that a conforming municipality include a “consideration of the most recent Highlands Municipal Build Out report” in its Housing Element and Fair Share Plan. Following this, the Highlands Council adopted on April 18, 2024 a Highlands Affordable Housing amendment to the RMP establishing standards for the location of affordable housing based on the RMP and FHA. More specifically, Policy 607 of the RMP requires that conforming municipalities provide for a realistic opportunity for affordable housing while also complying with Highlands resource protection requirements.

In support of the goals, objectives, and policies of the RMP, the Highlands Council prepared and released a Highlands Municipal Build-Out Update and Build-Out Portal in November 2024 as a tool for fully conforming municipalities. The Build-Out functions similarly to a traditional Vacant Land Adjustment (“VLA”), which examines the amount of acreage available for development and determines a municipality’s Realistic Development Potential (“RDP”), or the portion of its affordable housing obligation that can be realistically addressed with inclusionary development. After subtracting out the RDP from the obligation, the remaining calculation is known as the “unmet need.”

As a fully conforming municipality, the Borough utilized the Highlands Build-Out Portal as a tool to calculate its RDP and remaining unmet need. The Borough’s analysis indicated that 10 of the 13 parcels identified in

the portal were not developable based on a number of factors including development status. Utilizing the Highlands Build-Out portal, the Borough calculated a RDP of 5 units and an unmet need of 22 units.

### **Realistic Development Potential**

#### *Prior Round / Third Round Credits Carried Over*

##### Westgate Apartments (Block 6, Lots 11.01 & 11.02)

The Borough intends to address the entirety of its 5 unit RDP through excess units from the Westgate Apartments. The Westgate Apartments is an existing 100% affordable development consisting of 68 affordable 1- and 2-bedroom family rental units. The property is located off of Kinnaman Avenue in the northeastern portion of the Borough within the R-4 Residential Zoning District. This development received credit in the Borough's Certified Second Round Fair Share Plan as well as the Third Round Fair Share Plan.

The complex was funded through the USDA Rural Development Agency and was constructed in two separate phases: Westgate I, which received Certificates of Occupancy in 1981; and Westgate II, which received Certificates of Occupancy in 1985. Both Westgate I and Westgate II are under a 50-year deed restriction, which expire in 2031 and 2035, respectively. Both phases of the project are additionally subject to 30-year affordability controls that extend through the year 2043. These additional controls were set forth in a mortgage agreement executed between the developer and the USA Rural Housing Service on June 18, 2013 (see Appendix M).

### **Unmet Need**

#### *Inclusionary Zoning*

##### Washington Downtown Redevelopment Plan

The Borough intends to address the entirety of its unmet need through the inclusionary set-aside provision of the Washington Downtown Redevelopment Plan. As discussed above, this set-aside requirement has already triggered the approval of six affordable units at 1 and 2 West Washington. The Washington Downtown Redevelopment Plan meets the criteria to be considered "available, suitable, developable, and available" as previously detailed.

**Fourth Round Summary**

Summary of Washington Borough’s Fourth Round of 27	
<b>Realistic Development Potential</b>	<b>5</b>
<i>Excess Credits: Westgate I &amp; II</i>	5
<b>Unmet Need</b>	<b>22</b>
<i>Downtown Redevelopment Area</i>	16
<i>1 W. Washington Avenue</i>	4
<i>2 W. Washington Avenue</i>	2
<b>TOTAL FOURTH ROUND (27 UNIT OBLIGATION)</b>	
	<b>27</b>

**CONSISTENCY WITH STATE PLANNING REQUIREMENTS**

**State Plan**

In accordance with the amended Fair Housing Act, Housing Elements and Fair Share Plans shall provide an analysis of consistency with the State Development and Redevelopment Plan (SDRP), including water, wastewater, stormwater, and multi-modal transportation based on guidance and technical assistance from the State Planning Commission.

New Jersey adopted its last SDPR in 2001. A draft amendment to the SDRP was prepared in 2011 but ultimately never adopted. The Office of Planning Advocacy released a new draft SDRP on December 4, 2024. The State is currently undergoing the cross acceptance process in relation to the draft SDRP.

The 2024 draft SDRP outlines the following overarching goals:

- **Economic:** Promote economic growth that benefits all residents of New Jersey.
- **Housing:** Provide an adequate supply of housing for residents of all ages and incomes in communities of their choosing that meet their needs and offer ready access to the full range of supportive goods and services.
- **Infrastructure:** Economic opportunity through nation leading infrastructure.
- **Revitalization and Recentering:** Revitalize and recenter the State’s underutilized developed areas.
- **Climate Change:** Effectively address the adverse impacts of global climate change.
- **Natural and Water Resources:** Protect, maintain, and restore the State’s natural and water resources and ecosystems.
- **Pollution and Environmental Clean-Up:** Protect the environment and prevent and clean up pollution.
- **Historic and Scenic Resources:** Protect, enhance, and improve access to areas with exceptional archaeological, historic, cultural, scenic, open space, and recreational value.
- **Equity:** Implement equitable planning practices to promote thriving communities for all New Jerseyans.

- **Comprehensive Planning:** Foster sound and integrated planning and implementation at all level Statewide.

This Plan broadly aligns with the goals of the draft SDRP, specifically due to the fact that the entirety of the Borough is designated as a Highlands Center, which is equivalent to a SDRP Center. Because of this, the sites and mechanisms discussed in this Plan are appropriately located in the sense that they: are located within existing sewer and public water service areas; provide walkable access to a number of amenities including employment, shopping, schooling, municipal services, and more; and encourage growth and the revitalization of the Borough as a whole.

Further, because the mechanisms addressed in this Plan are either already existing or are concentrated in the Downtown Redevelopment Area, the use of undisturbed sites is not proposed and, in turn, the Borough's environmentally sensitive lands and resources are not impacted. This protects the natural and water resources within both the Borough and surrounding areas, effectively protecting the water quality of the State as a whole as well. Lastly, the Plan balances the State's goals of providing equitable opportunities for affordable housing while encouraging sound and comprehensive planning practices.

#### [Highlands Regional Master Plan Conformance](#)

Washington Borough entirely falls within the Highlands Planning Area, wherein plan conformance is voluntary. The Borough petitioned the Highlands Council for Plan Conformance as a Highlands Center on October 26, 2020, which was subsequently approved by the Highlands Council on February 18, 2021 (see Appendix N). In the years since this approval, the Borough has adopted several Master Plan Elements and Ordinances to further its goal of becoming fully conforming under the Highlands.

One recent example of this includes the Borough's adoption of Ordinance #2024-27, "Ordinance for Highlands Council Regional Master Plan Conformance" (see Appendix O). This Ordinance was the final requirement for the Borough to become fully conforming under the Highlands Council. The Highlands Council issued a letter on March 20, 2025 deeming Ordinance #2024-27 technically complete and consistent with the Highlands Regional Master Plan (see Appendix P).

Section XIV "Affordable Housing" of the Conformance Ordinance stipulates that "any development consisting of newly constructed residential units shall reserve for occupancy at least 20% [...] for low- or moderate-income households" in accordance with the requirements of the FHA. The Borough intends to further codify this by adopting the Highlands Affordable Housing Ordinance in accordance with the timeline set forth in the FHA.

This Housing Element and Fair Share Plan was prepared with careful consideration of the Regional Master Plan. In particular, the Borough's designation as a Highlands Center, existing water and sewer availability, and resource protection provisions were taken into account. Further, the mechanisms outlined in this Plan to address the Borough's Fourth Round obligation are consistent with the Highlands siting guidelines

outlined in the October 2023 Affordable Housing Implementation Guide. More specifically, this Plan furthers the goals outlined in the Highlands Regional Master Plan including, but not limited to, the following:

- **2A:** Protection of the value of the Highlands Region as an “essential source of drinking water, providing clean and plentiful drinking water for one-half of the State’s population.”
- **2J:** All existing and future development in the Highlands Region that use public water supply systems are served by adequate and appropriate infrastructure.
- **2K:** All existing and future development in the Highlands Region that use public wastewater treatment systems are served by adequate and appropriate infrastructure.
- **6H:** Guide development away from environmentally sensitive and agricultural lands and promote development and redevelopment in or adjacent to existing developed lands.
- **6J:** Accommodation of regional growth and development needs through the reuse and redevelopment of previously developed areas, including brownfields, grayfields, and underutilized sites.
- **6K:** Concentrate residential, commercial, and industrial development, redevelopment, and economic growth in existing developed areas in locations with limited environmental constraints, access to existing utility, and transportation infrastructure.
- **6N:** Use of smart growth principles, including low impact development, to guide development and redevelopment in the Highlands Region.
- **6O:** Market-rate and affordable housing sufficient to meet the needs of the Highlands Region within the context of economic, social, and environmental considerations and constraints.

#### Multigenerational Family Housing Continuity Commission

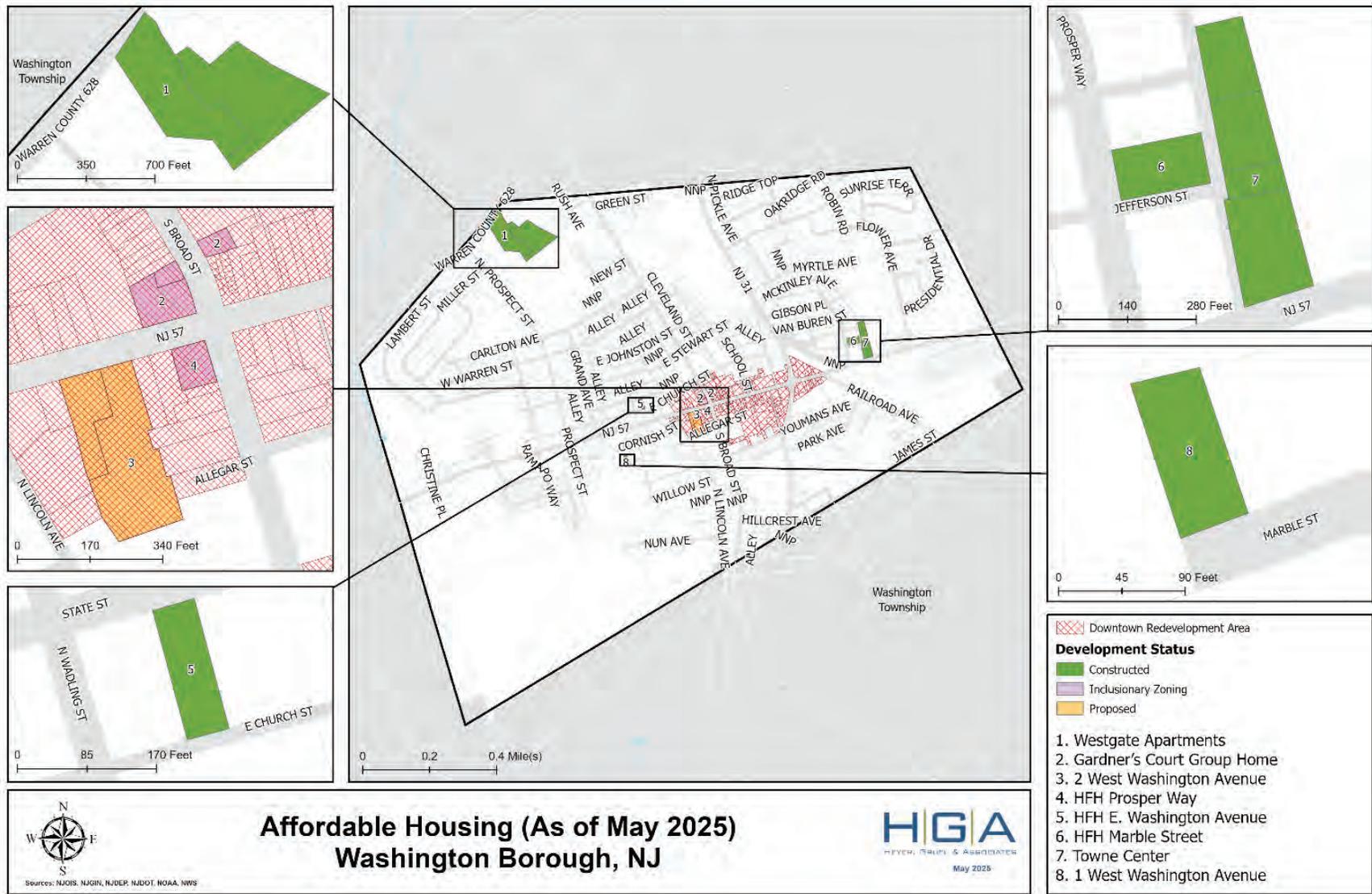
A previous amendment to the Fair Housing Act requires “an analysis of the extent to which municipal ordinances and other local factors advance or detract from the goal of preserving multigenerational family continuity as expressed in the recommendations of the Multigenerational Family Housing Continuity Commission, adopted pursuant to paragraph (1) of subsection f. of section 1 of P.L.2021, c.273 (C.52:27D-329.20).” As of the date of this Housing Plan there have been no recommendations by the Multigenerational Family Housing Continuity Commission for which to provide an analysis.

#### **USE OF SURPLUS CREDITS**

Any surplus credits generated would be applied to any future obligation that the Borough may have.

**SUMMARY OF FAIR SHARE COMPLIANCE**

Summary of Washington Borough's Obligation				
	Total	Very Low	Low	Moderate
<b>Prior Round Obligation</b>	<b>0</b>	-	-	-
<b>TOTAL PRIOR ROUND</b>	<b>0</b>	-	-	-
<b>Third Round Obligation</b>	<b>42</b>			
Westgate Apartments	68	-	-	68
Gardners Court	14	9	5	-
<i>Rental Bonus</i>	11	-	-	-
Downtown Redevelopment Plan	25	2-3	10-11	12
Towne Center Project	10	1	4	5
Habitat for Humanity	3	-	-	3
<b>TOTAL THIRD ROUND</b>	<b>131</b>	<b>12-13</b>	<b>19-20</b>	<b>20</b>
<b>Fourth Round Obligation</b>	<b>27</b>			
RDP	5	-	-	-
<i>Excess Credits: Westgate I &amp; II</i>	5	-	-	-
Unmet Need	22	-	-	-
<i>1 W. Washington Avenue</i>	4			
<i>2 W. Washington Avenue</i>	2			
<i>Downtown Redevelopment Area</i>	16	-	-	-
<b>TOTAL FOURTH ROUND</b>	<b>27</b>	-	-	-



**Appendix A**  
**Washington Borough Third Round JOR**

**TARA ST. ANGELO, ESQ.**  
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**GEBHARDT & KIEFER, P.C.**  
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Attorneys for Petitioner, Borough of Washington

IN THE MATTER OF THE  
APPLICATION OF BOROUGH OF  
WASHINGTON, A Municipal Corporation  
of the State of New Jersey,

Petitioner.

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION-WARREN COUNTY

DOCKET NO. **L-230-15**

CIVIL ACTION  
(Mount Laurel)

**FINAL JUDGMENT OF COMPLIANCE  
AND REPOSE**

**THIS MATTER** having come before the Court on the application of Gebhardt & Kiefer, PC, attorneys for Petitioner, Borough of Washington (the “Borough”), appearing, and on consent of Intervenors Fair Share Housing Center (“FSHC”) by Emily Smith, Esq., and Washington Venture Investment Limited Partnership and Washington Station Venture Limited Partnership (the “Washington Venture Entities”) by Danielle Novak Kinback, Esq.; and upon approval of the court-appointed special master, the Honorable Peter A. Buchsbaum, JSC (ret.); and

**WHEREAS**, the Court having entered a Conditional Judgment of Compliance and Repose on December 1, 2020 (“Conditional Judgment”) which memorialized the determination by the Court that the Borough is in compliance with its constitutional obligation to provide a realistic opportunity for the development of affordable housing in accordance with the New Jersey Fair Housing Act, N.J.S.A. 52:27d-301, *et seq.* as set forth in the Settlement Agreement between the Borough and FSHC dated December 10, 2018, and the Settlement Agreement

between the Borough and intervenors, Washington Venture Entities dated July 10, 2018 (as amended by two subsequent agreements dated September 9, 2019, and June 16, 2020) (collectively, the “Settlement Agreements”); and

**WHEREAS**, all criteria required to demonstrate compliance as set forth in East/West Venture v. Borough of Fort Lee, 286 N.J. Super. 311 (App. Div. 1996) have been satisfied; and

**WHEREAS**, the Borough has satisfied all conditions set forth in the Conditional Judgment, including:

- a. Adoption by resolution of program manuals for rental units, for sale units, market to affordable units, and rehabilitation units;
- b. Adoption of ordinances applicable to the property owned by the intervenors
- c. Adoption of a revised spending plan
- d. Extension of the agreement with Warren County Housing for the rehabilitation program, which is expected to be approved by the Warren County Commissioners within the next 30 days
- e. With regard to the Westgate Apartments, the Borough will reach out to the USDA for information on how and under what circumstances the deed restriction could be lifted and request that the Borough be provided notice in the event the deed restriction is lifted.

**WHEREAS**, the Special Master has advised the Court by Memorandum ~~dated~~ \_\_\_\_\_ that the Borough satisfied all terms and conditions to receive a Final Judgment of Compliance and Repose and immunity from Mt. Laurel litigation through July 1, 2025 and recommends the entry of Final Judgment of Compliance and Repose be entered without a second compliance hearing; and

**WHEREAS**, Council for FSHC and the Washington Venture Entities has consented to the entry of this Final Judgment of Compliant and Repose.

**IT IS** on this 16th day of November 2021,

**ORDERED** as follows:

1. Judgment is hereby declared in favor of the Borough of Washington for a Final Judgment of Compliance and Repose (the “Judgment”) pursuant to East/West Venture v. Borough of Fort Lee and the Mount Laurel line of cases.
2. The Court hereby declares the land use regulations and affirmative devices in the Borough of Washington’s Housing Element and Fair Share Plan (“HEFSP”), to be in compliance with the Borough’s constitutional obligation to create a realistic opportunity for affordable housing under the Mount Laurel doctrine.
3. The Borough, through the adoption of the HEFSP and the implementation of that plan and the Settlement Agreements and the fulfillment of all of the conditions recommended by the Special Master satisfies its obligations under the Mount Laurel doctrine and Fair Housing Act of 1985, N.J.S.A. 53:27D-301, *et seq.*, for the Prior Round (1987-1999) and Third Round (1999-2025).
4. In addition to the annual monitoring and reporting requirements set forth in the Settlement Agreements, the Borough shall contact USDA annually to confirm that the deed restriction on the Westgate Apartments remains valid.
5. The Borough is hereby granted continuing repose and immunity from exclusionary zoning litigation through July 1, 2025 except for actions brought to enforce this Court’s Orders, the Borough’s HESP, and terms of the Settlement Agreements.

6. All other requirements or provisions of the Conditional Judgment that are not otherwise addressed in this Final Judgment shall remain and are incorporated herein, including all ongoing reporting and monitoring requirements detailed therein.
7. The Court shall retain jurisdiction over this matter solely for the purposes of enforcement of this Judgment of Complaint and Repose, the Borough's HEFSP, and the Settlement Agreements.
8. Service of Order. A copy of the within Order shall be served on counsel for all persons and/or entities on the municipal service list within five (5) days of receipt of this Order by counsel for the Borough.

**/S/ THOMAS C. MILLER, A.J.S.C.**  
Hon. Thomas C. Miller, ~~P.J. Civ.~~  
A.J.S.C.

**Appendix B**  
**Washington Borough Third Round**  
**Settlement Agreement with FSHC**



Peter J. O'Connor, Esq.  
Kevin D. Walsh, Esq.  
Adam M. Gordon, Esq.  
Laura Smith-Denker, Esq.  
David T. Rammler, Esq.  
Joshua D. Bauers, Esq.

December 10, 2018

Tara Ann St. Angelo, Esq.  
Gebhardt & Kiefer, P.C.  
1318 Route 31 North  
P.O. Box 4001  
Clinton, NJ 08809

**Re: In the Matter of the Borough of Washington, Docket No. WRN-L-230-15**

Dear Ms. St. Angelo:

This letter memorializes the terms of an agreement reached between the Borough of Washington (the "Borough" or "Washington"), the declaratory judgment plaintiff, and Fair Share Housing Center (FSHC), a Supreme Court-designated interested party in this matter in accordance with In re N.J.A.C. 5:96 and 5:97, 221 N.J. 1, 30 (2015) ("Mount Laurel IV") and, through this settlement, a defendant in this proceeding.

### **Background**

Washington filed the above-captioned matter on or about July 1, 2015 seeking a declaration of its compliance with the Mount Laurel doctrine and Fair Housing Act of 1985, N.J.S.A. 52:27D-301 et seq. in accordance with In re N.J.A.C. 5:96 and 5:97, supra. Through the declaratory judgment process, the Borough and FSHC agreed to settle the litigation and to present that settlement to the trial court with jurisdiction over this matter to review, recognizing that the settlement of Mount Laurel litigation is favored because it avoids delays and the expense of trial and results more quickly in the construction of homes for lower-income households.

### **Settlement terms**

The Borough and FSHC hereby agree to the following terms:

1. FSHC agrees that the Borough, through the adoption of a Housing Element and Fair Share Plan conforming with the terms of this Agreement (hereafter "the Plan") and through the implementation of the Plan and this Agreement, satisfies its obligations under the Mount Laurel doctrine and Fair Housing Act of 1985, N.J.S.A. 52:27D-301 et seq., for the Prior Round (1987-1999) and Third Round (1999-2025).
2. At this time and at this particular point in the process resulting from the Supreme Court's Mount Laurel IV decision, when Third Round fair share obligations have yet to be definitively determined, it is appropriate for the parties to arrive at a settlement regarding a municipality's Third Round present and prospective need instead of doing so through plenary adjudication of the present and prospective need.
3. FSHC and Washington hereby agree that Washington's affordable housing obligations are as follows:

00213907

Rehabilitation Share (per Kinsey Report <sup>1</sup> )	69
Prior Round Obligation (pursuant to N.J.A.C. 5:93)	0
Third Round (1999-2025) Obligation	42

4. For purposes of this Agreement, the Third Round Obligation shall be deemed to include the Gap Period Present Need, which is a measure of households formed from 1999-2015 that need affordable housing, that was recognized by the Supreme Court in In re Declaratory Judgment Actions Filed By Various Municipalities, 227 N.J. 508 (2017).
5. The Borough's efforts to meet its present need will include the following: creation of a housing rehabilitation program for ownership and rental housing utilizing future affordable housing trust funds. This will include hiring of an affordable housing administrator, creation of a housing rehabilitation program manual, and marketing of the program, all of which shall occur prior to the compliance hearing in this matter. Additionally, the Borough has funded and completed 31 rehabilitation units in conjunction with the Warren County Housing Rehabilitation Program. The Borough will continue to work with such Program and utilize funds from its Affordable Housing Trust Fund. This will be sufficient to satisfy the Borough's present need obligation of 69 units. It is the Borough's intent to satisfy its remaining present need apart from its Third Round obligation set forth in Paragraph 7 hereunder.
6. As noted above, the Borough has a Prior Round prospective need of 0 units.
7. The Borough has implemented or will implement the following mechanisms to address its Third Round Obligation of 42 units:

Project	# Units	Rental Bonuses	
Westgate Apartments (family rental) – built, Block 6, Lots 11.01 and 11.02	68	0	This is an existing 100% affordable development consisting of a total of 68 affordable 1 and 2 bedroom units. Certificates of Occupancy were issued for the project in 1981 and 1985 and the deed restrictions run through 2031 and 2035. During the compliance phase of this litigation, the municipality will provide documentation evidencing the creditworthiness of these units.
Gardner's Court (special needs rental) – built	14	11	This is an existing special needs housing consisting of 8-2 bedroom units. However, 2 of the units are designed to be occupied by a parent and child. Therefore, the development is eligible for 14 credits. The development is operated by the ARC and was renovated and operational in 1999. During the compliance phase of this litigation, the municipality will provide documentation evidencing the creditworthiness of these units.
Redevelopment Plan (family rental) – proposed	25	0	The Borough adopted a redevelopment plan in 2009. Based upon a survey conducted by the Borough's planner, it is anticipated that that the plan will yield 25 affordable rental units. The parties to this Agreement

<sup>1</sup> David N. Kinsey, PhD, PP, FAICP, NEW JERSEY LOW AND MODERATE INCOME HOUSING OBLIGATIONS FOR 1999-2025 CALCULATED USING THE NJ COAH PRIOR ROUND (1987-1999) METHODOLOGY, May 2016.

			acknowledge that these units do not currently provide a realistic opportunity for affordable housing, but would upon the development of the affordable housing.
Towne Center Project (family rental) (Block 95, Lot 1) – proposed, under construction	10	0	This site is in the downtown redevelopment zone. The original site plan was approved without any affordable units because, at the time, the Borough did not have an assigned obligation. Therefore, the Borough entered into an agreement with the developer to deed restrict 10 units.
Habitat for Humanity (family, for sale) – existing, Block 100, Lot 41	1	0	
<b>Total</b>	<b>118</b>	<b>11</b>	<b>Total credits: 129</b>

The parties acknowledge that the Borough's Plan as set forth above exceeds the 42-unit Third Round obligation assigned to it pursuant to this Agreement. Therefore, Borough may carry over any resulting extra credits to future rounds in conformance with the then-applicable law and may take additional bonus credits in such future rounds in conformance with the then-applicable law.

8. The Borough agrees to require 13% of all units referenced in this Agreement, excepting those units that were constructed or granted preliminary or final site plan approval prior to July 1, 2008, to be very low income units, with half of the very low income units being available to families. The municipality will comply with those requirements as follows:

Project	# Affordable Units	# VLI Affordable Unit
Towne Center Project (family rental) – under construction	10	0
Redevelopment Zone (family rental) – proposed	25	5
<b>Total</b>	<b>35</b>	<b>5</b>

9. The Borough shall meet its Third Round Obligation in accordance with the following standards as agreed to by the Parties and reflected in the table in paragraph 7 above:

- a. Third Round bonuses will be applied in accordance with N.J.A.C. 5:93-5.15(d).
- b. At least 50 percent of the units addressing the Third Round Obligation shall be affordable to very-low-income and low-income households with the remainder affordable to moderate-income households.
- c. At least twenty-five percent of the Third Round Obligation shall be met through rental units, including at least half in rental units available to families.
- d. At least half of the units addressing the Third Round Obligation in total must be available to families.

- e. The Borough agrees to comply with an age-restricted cap of 25% and to not request a waiver of that requirement. This shall be understood to mean that in no circumstance may the municipality claim credit toward its fair share obligation for age-restricted units that exceed 25% of all units developed or planned to meet its cumulative prior round and third round fair share obligation.
10. The Borough shall add to the list of community and regional organizations in its affirmative marketing plan, pursuant to N.J.A.C. 5:80-26.15(f)(5), Fair Share Housing Center, the New Jersey State Conference of the NAACP, the New Brunswick, Plainfield Area, Perth Amboy, Warren/Sussex, and Metuchen/Edison branches of the NAACP, the Latino Action Network, NORWESCAP, the Supportive Housing Association, and the Central Jersey Housing Resource Center, and shall, as part of its regional affirmative marketing strategies during its implementation of the affirmative marketing plan, provide notice to those organizations of all available affordable housing units. The Borough also agrees to require any other entities, including developers or persons or companies retained to do affirmative marketing, to comply with this paragraph.
11. All units shall include the required bedroom distribution, be governed by controls on affordability and affirmatively marketed in conformance with the Uniform Housing Affordability Controls, N.J.A.C. 5:80-26.1 et. seq. or any successor regulation, with the exception that in lieu of 10 percent of affordable units in rental projects being required to be at 35 percent of median income, 13 percent of affordable units in such projects shall be required to be at 30 percent of median income, and all other applicable law. The Borough as part of its Plan shall adopt and/or update appropriate implementing ordinances in conformance with standard ordinances and guidelines developed by COAH to ensure that this provision is satisfied. Income limits for all units that are part of the Plan required by this Agreement and for which income limits are not already established through a federal program exempted from the Uniform Housing Affordability Controls pursuant to N.J.A.C. 5:80-26.1 shall be updated by the Borough within 30 days of the publication of determinations of median income by HUD as follows:
  - a. Regional income limits shall be established for the region that the Borough is located within ~~Region 2~~ based on the median income by household size, which shall be established by a regional weighted average of the uncapped Section 8 income limits published by HUD. To compute this regional income limit, the HUD determination of median county income for a family of four is multiplied by the estimated households within the county according to the most recent decennial Census. The resulting product for each county within the housing region is summed. The sum is divided by the estimated total households from the most recent decennial Census in the Borough's housing region. This quotient represents the regional weighted average of median income for a household of four. The income limit for a moderate-income unit for a household of four shall be 80 percent of the regional weighted average median income for a family of four. The income limit for a low-income unit for a household of four shall be 50 percent of the HUD determination of the regional weighted average median income for a family of four. The income limit for a very low income unit for a household of four shall be 30 percent of the regional weighted average median income for a family of four. These income limits shall be adjusted by household size based on multipliers used by HUD to adjust median income by household size. In no event shall the income limits be less than those for the previous year.

- b. The income limits attached hereto as Exhibit A are the result of applying the percentages set forth in paragraph (a) above to HUD's determination of median income for FY 2018, and shall be utilized until the Borough updates the income limits after HUD has published revised determinations of median income for the next fiscal year.
  - c. The Regional Asset Limit used in determining an applicant's eligibility for affordable housing pursuant to N.J.A.C. 5:80-26.16(b)3 shall be calculated by the Borough annually by taking the percentage increase of the income limits calculated pursuant to paragraph (a) above over the previous year's income limits, and applying the same percentage increase to the Regional Asset Limit from the prior year. In no event shall the Regional Asset Limit be less than that for the previous year.
  - d. The parties agree to request the Court prior to or at the fairness hearing in this matter to enter an order implementing this paragraph of this Agreement.
12. All new construction units shall be adaptable in conformance with P.L.2005, c.350/N.J.S.A. 52:27D-311a and -311b and all other applicable law.
13. As an essential term of this Agreement, within 120 days of Court's approval of this Agreement, the Borough shall introduce and adopt an ordinance or ordinances providing for the amendment of the Borough's Affordable Housing Ordinance and Zoning Ordinance to implement the terms of this Agreement and the zoning contemplated herein and adopt a Housing Element and Fair Share Plan and Spending Plan in conformance with the terms of this Agreement.
14. The parties agree that if a decision of a court of competent jurisdiction in Hunterdon, Warren, or Somerset County, or a determination by an administrative agency responsible for implementing the Fair Housing Act, or an action by the New Jersey Legislature, would result in a calculation of an obligation for the Borough for the period 1999-2025 that would be lower by more than twenty (20%) percent than the total prospective Third Round Obligation established in this Agreement, and if that calculation is memorialized in an unappealable final judgment, the Borough may seek to amend the judgment in this matter to reduce its fair share obligation accordingly. Notwithstanding any such reduction, the Borough shall be obligated to adopt a Housing Element and Fair Share Plan that conforms to the terms of this Agreement and to implement all compliance mechanisms included in this Agreement, including by adopting or leaving in place any site specific zoning adopted or relied upon in connection with the Plan adopted pursuant to this Agreement; taking all steps necessary to support the development of any 100% affordable developments referenced herein; maintaining all mechanisms to address unmet need; and otherwise fulfilling fully the fair share obligations as established herein. The reduction of the Borough's obligation below that established in this Agreement does not provide a basis for seeking leave to amend this Agreement or seeking leave to amend an order or judgment pursuant to R. 4:50-1. If the Borough prevails in reducing its Third Round Obligation, the Borough may carry over any resulting extra credits to future rounds in conformance with the then-applicable law.
15. The Borough shall prepare a Spending Plan within the period referenced above, subject to the review of FSHC and approval of the Court, and reserves the right to seek approval from the Court that the expenditures of funds contemplated under the Spending Plan

constitute "commitment" for expenditure pursuant to N.J.S.A. 52:27D-329.2 and -329.3, with the four-year time period for expenditure designated pursuant to those provisions beginning to run with the entry of a final judgment approving this settlement in accordance with the provisions of In re Tp. Of Monroe, 442 N.J. Super. 565 (Law Div. 2015) (aff'd 442 N.J. Super. 563). On the first anniversary of the execution of this Agreement, which shall be established by the date on which it is executed by a representative of the Borough, and on every anniversary of that date thereafter through the end of the period of protection from litigation referenced in this Agreement, the Borough agrees to provide annual reporting of trust fund activity to the New Jersey Department of Community Affairs, Council on Affordable Housing, or Local Government Services, or other entity designated by the State of New Jersey, with a copy provided to Fair Share Housing Center and posted on the municipal website, using forms developed for this purpose by the New Jersey Department of Community Affairs, Council on Affordable Housing, or Local Government Services. The reporting shall include an accounting of all housing trust fund activity, including the source and amount of funds collected and the amount and purpose for which any funds have been expended.

16. On the first anniversary of the execution of this Agreement, and every anniversary thereafter through the end of this Agreement, the Borough agrees to provide annual reporting of the status of all affordable housing activity within the municipality through posting on the municipal website with a copy of such posting provided to Fair Share Housing Center, using forms previously developed for this purpose by the Council on Affordable Housing or any other forms endorsed by the Special Master and FSHC.
17. The Fair Housing Act includes two provisions regarding action to be taken by the Borough during the ten-year period of protection provided in this Agreement. The Borough agrees to comply with those provisions as follows:
  - a. For the midpoint realistic opportunity review due on July 1, 2020, as required pursuant to N.J.S.A. 52:27D-313, the Borough will post on its municipal website, with a copy provided to Fair Share Housing Center, a status report as to its implementation of the Plan and an analysis of whether any unbuilt sites or unfulfilled mechanisms continue to present a realistic opportunity and whether any mechanisms to meet unmet need should be revised or supplemented. Such posting shall invite any interested party to submit comments to the municipality, with a copy to Fair Share Housing Center, regarding whether any sites no longer present a realistic opportunity and should be replaced and whether any mechanisms to meet unmet need should be revised or supplemented. Any interested party may by motion request a hearing before the court regarding these issues.
  - b. For the review of very low income housing requirements required by N.J.S.A. 52:27D-329.1, within 30 days of the third anniversary of this Agreement, and every third year thereafter, the Borough will post on its municipal website, with a copy provided to Fair Share Housing Center, a status report as to its satisfaction of its very low income requirements, including the family very low income requirements referenced herein. Such posting shall invite any interested party to submit comments to the municipality and Fair Share Housing Center on the issue of whether the municipality has complied with its very low income housing obligation under the terms of this settlement.

18. FSHC is hereby deemed to have party status in this matter and to have intervened in this matter as a defendant without the need to file a motion to intervene or an answer or other pleading. The parties to this Agreement agree to request the Court to enter an order declaring FSHC is an intervenor, but the absence of such an order shall not impact FSHC's rights.
19. This Agreement must be approved by the Court following a fairness hearing as required by Morris Cty. Fair Hous. Council v. Boonton Twp., 197 N.J. Super. 359, 367-69 (Law Div. 1984), aff'd o.b., 209 N.J. Super. 108 (App. Div. 1986); East/West Venture v. Borough of Fort Lee, 286 N.J. Super. 311, 328-29 (App. Div. 1996). The Borough shall present its planner as a witness at this hearing. FSHC agrees to support this Agreement at the fairness hearing. In the event the Court approves this proposed settlement, the parties contemplate the municipality will receive "the judicial equivalent of substantive certification and accompanying protection as provided under the FHA," as addressed in the Supreme Court's decision in In re N.J.A.C. 5:96 & 5:97, 221 N.J. 1, 36 (2015). The "accompanying protection" shall remain in effect through July 1, 2025. If this Agreement is rejected by the Court at a fairness hearing it shall be null and void.
20. The Borough entered into a Settlement Agreement with Defendant / Intervenor Washington Station Venture, LP and Washington Venture Investment, Ltd. (the Washington Venture Entities"). The development of property owned by the Washington Venture Entities shall supply the Borough with residential development fees to fund its rehabilitation program set forth in Paragraph 5. The funds anticipated through that agreement shall be included in the Borough's Spending Plan required by this Agreement.
21. The Borough agrees to pay FSHC's attorneys fees and costs in the amount of \$3500 within ten (10) days of the Court's approval of this Agreement pursuant to a duly-noticed fairness hearing. The Borough may delegate this payment obligation to a third party, but if payment is not received by FSHC by the date set forth in this paragraph the Borough shall make payment within 10 days after the date on which the 10-day period ends.
22. If an appeal is filed of the Court's approval or rejection of this Agreement, the Parties agree to defend the Agreement on appeal, including in proceedings before the Superior Court, Appellate Division and New Jersey Supreme Court, and to continue to implement the terms of this Agreement if the Agreement is approved before the trial court unless and until an appeal of the trial court's approval is successful, at which point the Parties reserve their right to rescind any action taken in anticipation of the trial court's approval. All Parties shall have an obligation to fulfill the intent and purpose of this Agreement.
23. This Agreement may be enforced through a motion to enforce litigant's rights or a separate action filed in Superior Court, Warren County. A prevailing movant or plaintiff in such a motion or separate action shall be entitled to reasonable attorney's fees.
24. Unless otherwise specified, it is intended that the provisions of this Agreement are to be severable. The validity of any article, section, clause or provision of this Agreement shall not affect the validity of the remaining articles, sections, clauses or provisions hereof. If any section of this Agreement shall be adjudged by a court to be invalid, illegal, or unenforceable in any respect, such determination shall not affect the remaining sections.

25. This Agreement shall be governed by and construed by the laws of the State of New Jersey.
26. This Agreement may not be modified, amended or altered in any way except by a writing signed by each of the Parties.
27. This Agreement may be executed in any number of counterparts, each of which shall be an original and all of which together shall constitute but one and the same Agreement.
28. The Parties acknowledge that each has entered into this Agreement on its own volition without coercion or duress after consulting with its counsel, that each party is the proper person and possess the authority to sign the Agreement, that this Agreement contains the entire understanding of the Parties and that there are no representations, warranties, covenants or undertakings other than those expressly set forth herein.
29. Each of the Parties hereto acknowledges that this Agreement was not drafted by any one of the Parties, but was drafted, negotiated and reviewed by all Parties and, therefore, the presumption of resolving ambiguities against the drafter shall not apply. Each of the Parties expressly represents to the other Parties that: (i) it has been represented by counsel in connection with negotiating the terms of this Agreement; and (ii) it has conferred due authority for execution of this Agreement upon the persons executing it.
30. Any and all Exhibits and Schedules annexed to this Agreement are hereby made a part of this Agreement by this reference thereto. Any and all Exhibits and Schedules now and/or in the future are hereby made or will be made a part of this Agreement with prior written approval of both Parties.
31. This Agreement constitutes the entire Agreement between the Parties hereto and supersedes all prior oral and written agreements between the Parties with respect to the subject matter hereof except as otherwise provided herein.
32. No member, official or employee of the Borough shall have any direct or indirect interest in this Agreement, nor participate in any decision relating to the Agreement which is prohibited by law, absent the need to invoke the rule of necessity.
33. Anything herein contained to the contrary notwithstanding, the effective date of this Agreement shall be the date upon which all of the Parties hereto have executed and delivered this Agreement.
34. All notices required under this Agreement ("Notice[s]") shall be written and shall be served upon the respective Parties by certified mail, return receipt requested, or by a recognized overnight or by a personal carrier. In addition, where feasible (for example, transmittals of less than fifty pages) shall be served by facsimile or e-mail. All Notices shall be deemed received upon the date of delivery. Delivery shall be affected as follows, subject to change as to the person(s) to be notified and/or their respective addresses upon ten (10) days notice as provided herein;

**TO FSHC:**

Kevin D. Walsh, Esq.  
Fair Share Housing Center  
510 Park Boulevard  
Cherry Hill, NJ 08002

Phone: (856) 665-5444  
Telecopier: (856) 663-8182  
E-mail: kevinwalsh@fairsharehousing.org

**TO THE BOROUGH:**

Tara Ann St. Angelo, Esq.  
Gebhardt & Kiefer, P.C.  
1318 Route 31 North  
P.O. Box 4001  
Clinton, NJ 08809  
Telecopier: 908-735-9351  
Email: [tstangelo@gklegal.com](mailto:tstangelo@gklegal.com)

**WITH A COPY TO THE  
MUNICIPAL CLERK:**

Borough Clerk  
Laurie Barton  
100 Belvidere Avenue  
Washington, NJ 08827  
Email: [lbarton@washingtonboro.nj.gov](mailto:lbarton@washingtonboro.nj.gov)

**WITH A COPY TO  
INTERVENOR /  
DEFENDANT:**

Robert A. Kasuba, Esq.  
Bisgaier Hoff, LLC  
25 Chestnut Street, Suite 3  
Haddonfield, NJ 08033  
[rkasuba@bisgaierhoff.com](mailto:rkasuba@bisgaierhoff.com)

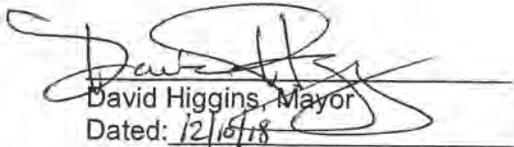
Please sign below if these terms are acceptable.

Sincerely,



Kevin D. Walsh, Esq.  
Counsel for Intervenor/Interested Party  
Fair Share Housing Center

On behalf of the Borough of Washington, with the authorization  
of the governing body:



David Higgins, Mayor  
Dated: 12/16/18

**EXHIBIT A: 2018 INCOME LIMITS**

**2018 AFFORDABLE HOUSING REGIONAL INCOME LIMITS BY HOUSEHOLD SIZE**

Income limits not officially adopted by the State of New Jersey. Contact your municipality to see if applicable in your jurisdiction. Additional information about AHPPU income limits is posted on

	1 Person	*1.5 Person	2 Person	*3 Person	4 Person	*4.5 Person	5 Person	6 Person	7 Person	8+ Person	Max Increase Rents** Sols***	Regional Asset Limit****
<b>Region 1</b>												
Median	\$63,597	\$68,140	\$72,682	\$81,767	\$90,853	\$94,487	\$98,121	\$105,389	\$112,657	\$119,926		
Moderate	\$50,878	\$54,512	\$58,146	\$65,414	\$72,682	\$75,589	\$78,497	\$84,311	\$90,126	\$95,940	2.2%	\$175,679
Low	\$31,798	\$34,070	\$36,341	\$40,884	\$45,426	\$47,243	\$49,060	\$52,695	\$56,329	\$59,963	2.2%	
Very Low	\$19,079	\$20,442	\$21,805	\$24,530	\$27,256	\$28,346	\$29,436	\$31,637	\$33,797	\$35,978		
<b>Region 2</b>												
Median	\$66,755	\$71,533	\$76,311	\$85,828	\$95,346	\$99,179	\$102,993	\$110,622	\$118,252	\$125,881		
Moderate	\$53,404	\$57,218	\$61,033	\$68,662	\$76,291	\$79,343	\$82,395	\$88,498	\$94,601	\$100,705	2.2%	\$182,955
Low	\$33,377	\$35,762	\$38,146	\$42,914	\$47,682	\$49,589	\$51,497	\$55,311	\$59,126	\$62,940		
Very Low	\$20,026	\$21,457	\$22,887	\$25,748	\$28,609	\$29,754	\$30,898	\$33,187	\$35,475	\$37,764		
<b>Region 3</b>												
Median	\$75,530	\$80,925	\$86,320	\$97,110	\$107,900	\$112,126	\$116,352	\$125,164	\$133,976	\$142,788		
Moderate	\$60,424	\$64,740	\$69,056	\$77,688	\$86,320	\$89,773	\$93,226	\$100,131	\$107,037	\$113,942	2.2%	\$205,458
Low	\$37,765	\$40,463	\$43,161	\$48,555	\$53,950	\$56,108	\$58,266	\$62,582	\$66,898	\$71,214		
Very Low	\$22,659	\$24,278	\$25,897	\$29,133	\$32,370	\$33,665	\$34,960	\$37,549	\$40,139	\$42,728		
<b>Region 4</b>												
Median	\$69,447	\$74,407	\$79,367	\$89,289	\$99,209	\$103,178	\$107,146	\$115,083	\$123,020	\$130,956		
Moderate	\$55,557	\$59,526	\$63,494	\$71,431	\$79,368	\$82,542	\$85,717	\$92,066	\$98,416	\$104,765	2.2%	\$186,516
Low	\$34,723	\$37,204	\$39,684	\$44,644	\$49,605	\$51,589	\$53,573	\$57,541	\$61,510	\$65,478		
Very Low	\$20,834	\$22,322	\$23,810	\$26,787	\$29,763	\$30,953	\$32,144	\$34,525	\$36,906	\$39,287		
<b>Region 5</b>												
Median	\$61,180	\$65,550	\$69,920	\$78,660	\$87,400	\$90,896	\$94,392	\$101,384	\$108,376	\$115,368		
Moderate	\$48,944	\$52,440	\$55,936	\$62,928	\$69,920	\$72,717	\$75,514	\$81,107	\$86,701	\$92,294	2.2%	\$161,977
Low	\$30,590	\$32,775	\$34,960	\$39,330	\$43,700	\$45,448	\$47,196	\$50,692	\$54,188	\$57,684		
Very Low	\$18,354	\$19,665	\$20,976	\$23,998	\$26,220	\$27,269	\$28,318	\$30,415	\$32,513	\$34,610		
<b>Region 6</b>												
Median	\$51,085	\$54,734	\$58,383	\$65,681	\$72,979	\$75,898	\$78,817	\$84,655	\$90,494	\$96,332		
Moderate	\$40,868	\$43,787	\$46,706	\$52,545	\$58,383	\$60,718	\$63,054	\$67,724	\$72,395	\$77,066	2.2%	\$136,680
Low	\$25,543	\$27,367	\$29,192	\$32,840	\$36,488	\$37,949	\$39,409	\$42,328	\$45,247	\$48,166		
Very Low	\$15,326	\$16,420	\$17,515	\$19,704	\$21,894	\$22,769	\$23,645	\$25,397	\$27,148	\$28,900		

\* These columns are for calculating the pricing for one, two and three bedroom sale and rental units as per N.J.A.C. 5:80-26.4(a).

\*\* This column is used for calculating the pricing for rent increases for units (as previously calculated under N.J.A.C. 5:97-9.3). The increase for 2015 was 2.3%, the increase for 2016 was 1.1%, the increase for 2017 was 1.7%, and the increase for 2018 is 2.2% (Consumer Price Index for All Urban Consumers (CPI-U)). Regions by expenditure category and commodity and service group). Landlords who did not increase rents in 2015, 2016, or 2017 may increase rent by up to the applicable combined percentage from their last rental increase for that unit. In no case can rent for any particular apartment be increased more than one time per year.

\*\*\* This column is used for calculating the pricing for resale increases for units (as previously calculated under N.J.A.C. 5:97-9.3). The price of owner-occupied low and moderate income units may increase annually based on the percentage increase in the regional median income limit for each housing region. In no event shall the maximum resale price established by the administrative agent be lower than the last recorded purchase price.

Low income tax credit developments may increase based on the low income tax credit regulations.

\*\*\*\* The Regional Asset Limit is used in determining an applicant's eligibility for affordable housing pursuant to N.J.A.C. 5:80-26.16(b)(3).

Note: Since the Regional Income Limits for Region 6 in 2017 were higher than the 2018 calculations, the 2017 income limits will remain in force for 2018 (as previously required by N.J.A.C. 5:97-9.2(c)).

**Appendix C**

**Washington Borough Third Round  
Settlement Agreement with Washington Ventures**

**FILE COPY**

**SETTLEMENT AGREEMENT**

**THIS AGREEMENT** is herewith made this \_\_\_\_\_ day of \_\_\_\_\_ 2018 by and between the **BOROUGH OF WASHINGTON**, a municipal corporation of the State of New Jersey, with its municipal office located at 100 Belvidere Ave., Washington, NJ 07882, (hereinafter "WASHINGTON"), the **PLANNING BOARD OF THE BOROUGH OF WASHINGTON**, a duly constituted planning board under the laws of New Jersey, with its municipal office located at 100 Belvidere Ave., Washington, NJ 07882, (hereinafter the "PLANNING BOARD"), and **WASHINGTON STATION VENTURE, LP** and **WASHINGTON VENTURE INVESTMENT, LTD.** having an address at c/o CBD Real Estate Investment, LLC, 3000 Atrium Way, Suite 233, Mount Laurel, New Jersey 08054 (hereinafter the "WASHINGTON VENTURE ENTITIES").

**WITNESSETH:**

**WHEREAS**, Washington has filed a Declaratory Judgment Action in the Superior Court of New Jersey, Warren County, captioned IMO Borough of Washington, Docket No. WRN-L-230-15 (the "Declaratory Judgment Action"), in furtherance of the Supreme Court's March 10, 2015, decision In re Adoption of N.J.A.C. 5:96 & 5:97 by N.J. Council on Affordable Housing, 221 N.J. 1 (2015) (the "Supreme Court Decision"), which was assigned to the Honorable Thomas C. Miller P.J. Cv.; and

10/2/18 gave Matt H  
(2) originals of signatures

**WHEREAS**, pursuant to a Consent Order filed on or about November 6, 2015, the Washington Venture Entities are defendant-intervenors in the above-referenced Declaratory Judgment Action; and

**WHEREAS**, the Washington Venture Entities are the owners of certain property designated as Block 97, Lots 2, 3 and 4 and Block 97.01, Lot 1 on the Tax Maps of the Borough of Washington and consisting of approximately 126 acres (the "Property"); and

**WHEREAS**, the Property is currently zoned for M-3 (Mountain District) with a minimum lot size of 3 acres; and

**WHEREAS**, Washington and the Washington Venture Entities have engaged in extensive settlement discussions; and

**WHEREAS**, through such settlement discussions, the Washington Venture Entities have stated that it desires to develop a portion of the Property as a for-sale residential development, and through such development, assist Washington in its efforts to meet its affordable housing obligations in connection with the Declaratory Judgment Action; and

**WHEREAS**, the Washington Venture Entities have also stated that it desires to develop a small section of the property with a cell tower, sell a portion of the Property to the adjacent

cemetery, and sell the remaining portion of the Property to Washington as preserved open space; and

WHEREAS, the Parties understand that the Borough will be able to maintain its Judgment of Compliance and Repose (if issued by the Court) and the open space acquisition described herein, even if the remainder of the Property is ultimately not developable due to circumstances outside the Borough's control (i.e. engineering or environmental);

**NOW, THEREFORE,** in consideration of the mutual promises, covenants, and representations herein contained, the parties hereto, for themselves, their heirs, successors and assigns, hereby agree as follows:

1. Single Family Home Development.

a. As part of Washington's compliance plan that shall be developed to address its affordable housing obligation under the Declaratory Judgment Action, a portion of the Property shall be re-zoned to enable the Washington Venture Entities, or its successors in interest, to develop as of right a portion of the Property consisting of approximately 35 acres as depicted on Exhibit A, with no more than fifty (50) for sale single family homes (the "Residential Lot). It is contemplated that the Residential Lot will be further subdivided into fifty (50)

individual, small lot residential lots and common areas for open space, roadways, and stormwater management facilities. It is further contemplated that a home owners' association will be established. Washington shall re-zone such portion of the Property pursuant to an ordinance to allow for such development within reasonable parameters customary for single-family home subdivisions while taking into account specific constraints of the Property. The specific zoning standards are to be developed by the Parties' professionals. If the Parties are unable to come to an agreement, the Court shall appoint an individual with planning and engineering experience to make recommendations regarding the items of disagreement, which shall be subject to the Court's review if challenged by either Party.

b. Access to the Property shall primarily be through Nunn Avenue. The Washington Venture Entities, or their successor in interest, shall be responsible for any off-tract improvements to Nunn Avenue in accordance with applicable law if required by another other Federal, State, or County agency. It is the Parties' understanding that any off-tract improvements to Nunn Avenue shall not require a widening of the cartway of Nunn Avenue, and that the existing cartway width of Nunn Avenue may be extended into the site for purposes of the wetlands crossing. Should it be found that Nunn Avenue is not compliant with the

Residential Site Improvement Standards ("RSIS"), if applicable, the Parties will cooperate in granting a waiver for such width requirements or such other relief as appropriate. . Emergency access *only* can be provided through the adjacent cemetery pursuant to an access easement, which restriction the Washington Venture Entities agree shall be a condition of any subdivision or site plan approval. Sufficient barriers shall be provided to restrict such access to emergency vehicles.

c. The roads within the residential development shall be private roads, and Washington shall bear no obligation or responsibility to maintain such, except for any obligations set forth in the Municipal Services Act, N.J.S.A. 40:67-23.2 et seq.

d. Washington shall provide services, or the appropriate reimbursement, to the residential development in compliance with the Municipal Services Act, N.J.S.A. 40:67-23.2 et seq.

d. In order to assist Washington's efforts to comply with its affordable housing obligation, and as part of Washington's compliance plan that shall be developed to address its affordable housing obligation under the Declaratory Judgment Action, the Washington Venture Entities shall pay a residential development fee of one and one half (1 ½) percent of equalized assessed value of the residential units in lieu of providing an affordable housing set aside on the Property as part of its

residential development. The Washington Venture Entities, or their successor in interest, further agree to pay any other non-residential development fee required by applicable statute, rule, regulation, or ordinance.

e. Development of the residential units on the Residential Lot contemplated by this Agreement may proceed independent of development of the cell tower or sale to the cemetery contemplated by this Agreement. Development of the residential units may proceed in phases, at the discretion of the Washington Venture Entities or its successors in interest.

2. Sale to Cemetery.

The parties understand that, as part of this Agreement, the Washington Venture Entities, or its successors in interest, desire to sell a portion of the Property consisting of approximately 10 acres as depicted on Exhibit A to the owner of the adjacent cemetery, with the intended use to expand the cemetery (the "Cemetery Lot").

Washington shall re-zone the Cemetery Lot, within reasonable parameters, for uses consistent with and supportive of the existing, adjacent cemetery. The specific zoning standards are to be developed by the Parties' professionals. If the Parties are unable to come to an agreement, the Court shall

appoint an individual with planning and engineering experience to make recommendations regarding the items of disagreement, which shall be subject to the Court's review if challenged by either Party. Nothing herein shall relieve the Washington Venture Entities or their successors in interest from any requirement to obtain site plan or other governmental approvals in compliance with applicable statutes, rules, regulations, or ordinances.

3. Cell Tower Development. The parties understand that, as part of this Agreement, the Washington Venture Entities, or its successors in interest, desire develop a portion of the Property consisting of approximately 10,000 sq. feet as depicted on Exhibit A with a cell tower.

Washington shall make cell towers a permitted use in the proposed cemetery zone within reasonable parameters and customary to cell tower use. The specific zoning standards are to be developed by the Parties' professionals. If the Parties are unable to come to an agreement, the Court shall appoint an individual with planning and engineering experience to make recommendations regarding the items of disagreement, which shall be subject to the Court's review if challenged by either Party. Nothing herein shall relieve the Washington Venture Entities or their successors in interest from any requirement to obtain site

plan or other governmental approvals in compliance with applicable statutes, rules, regulations, or ordinances.

4. Open Space Preservation. The portion of the Property not intended for development for residential, cemetery, or cell tower use, consisting of approximately 80 acres as approximated on Exhibit A, shall be sold to Washington and deed-restricted as public open space. Notwithstanding the above provisions, nothing herein shall prohibit the Washington Venture Entities from donating or selling a portion of the Property to a non-profit or government entity to be restricted for use as open space in the future.

a. Purchase Price. The purchase price shall be \$1,000,000.00, contingent upon an appraisal of the Property, or as otherwise agreed to by the Parties.

b. Payment of Purchase Price. Washington will pay the purchase price at closing of title, by attorney trust account check.

c. Washington's Contingencies. Washington's obligation to close is contingent upon the following:

i. passage of an ordinance by Washington approving the open space purchase, contemplated herein, which shall be done within sixty (60) days of passage of the bond ordinance contemplated in subsection (c.ii) hereunder;

ii. passage of a bond ordinance by Washington to fund the purchase, which shall be done within ninety (90) days of receipt of an appraisal of the Property; and

iii. receipt of grant monies from the State of New Jersey Green Acres Program and Warren County.

The parties understand that Washington's purchase of a portion of the Property is to be funded by grant monies. Washington will take all reasonable actions necessary to cooperate in and facilitate the grant process. However, in the event that Washington does not receive such monies, Washington can waive such contingency. Once these contingencies have been met or waived, Washington will notify the Washington Venture Entities in writing.

The foregoing contingencies must be satisfied before the Final Compliance Hearing. If the foregoing contingencies are not satisfied and do not appear to be able to be satisfied, the Parties shall consult with the Court regarding whether the purposes of the Agreement can be fulfilled and, if so, shall remain in effect or whether the Agreement shall be void and of no effect.

d. Agreement of Sale / Time and Place of Closing. The closing date is subject to the contingencies set forth herein and cannot be made final at this time. The Parties shall

cooperate regarding a reasonable closing date, which shall occur as soon as possible following the Final Compliance Hearing.

5. Subdivision Approval. The Planning Board is a signatory and party to this Agreement and hereby endorses this Agreement and its role in the process contemplated for development of the Property.

The Washington Venture Entities shall apply to the Planning Board within a reasonable time of the signing of this Agreement to subdivide the Property into the four (4) lots as set forth herein (1 residential; 1 cemetery; 1 cell tower and 1 open-space), in order to facilitate the development contemplated. The Subdivision Plan shall be substantially consistent with **Exhibit A**. It is contemplated that the Residential Lot shall be further subdivided into fifty (50) lots for the single-family homes and potentially additional lots for the common open space to be managed by a homeowners' association.

6. Adoption of Zoning Ordinances. Within sixty (60) days of the Court conducting a Fairness Hearing in the Declaratory Judgment Action, Washington shall introduce an ordinance to re-zone the newly created lots, in accordance with this Agreement, subject to the standards set forth in Sections 1-3 above (the "Zoning Ordinances"). Mayor and Council shall adopt the Zoning Ordinances within thirty (30) days of their introduction. These

time periods may be extended by agreement of the Parties, provided that the Zoning Ordinance must be adopted before the Final Compliance Hearing. The Zoning Ordinances may contain a provision that the rezoning shall only become effective upon the Court's approval at a Final Compliance Hearing.

Following their adoption, the Zoning Ordinances shall not be amended or rescinded, without written approval of the Washington Station Venture Entities, or order of the Court for a period of at least ten (10) years.

7. Approvals Required. Site plan, subdivision, and other necessary land development approvals by the Planning Board and all other necessary outside governmental approvals are required. All applications for such approvals shall comply with the MLUL.

7. Necessary Infrastructure and Water Availability. The Washington Venture Entities shall be responsible for the design, permitting, and construction of all infrastructure improvements that are necessitated or required for development of the Property, including any off-tract improvements, subject to the MLUL. Required infrastructure improvements will be designed in connection with the preliminary site plan and subdivision application(s). Review of proposed infrastructure improvements by Washington professionals shall be funded through any escrow account established pursuant to such subdivision or site plan applications. Washington makes no representations regarding the

availability of water or sewer to serve the proposed development, but shall cooperate with the Washington Venture Entities, or their successors in interest, in obtain approvals for any necessary infrastructure to serve the proposed development pursuant to Paragraph 8. The Washington Venture Entities shall be responsible for making any required applications for sewer and / or water reservation.

8. Municipal Obligation to Cooperate. The Parties recognize that the development contemplated by this Agreement may require approvals from other governmental agencies and bodies, including but not limited to those at the county, regional, State, and federal levels; and that to construct its proposed project, the Washington Venture Entities will be required to obtain any and all necessary and applicable agreements, approvals, and permits from all relevant public entities and utilities, such as, by way of example only, the Planning Board, the County of Warren, the Warren County Planning Board, the New Jersey Department of Environmental Protection, New Jersey Department of Transportation, and the Warren County Soil Conservation District. Washington, including all of its respective members, officials, employees, consultants, agents, and representatives, agree to cooperate with the Washington Venture Entities, through action, word, and deed, including the execution of any writing, resolution, plan, application, or document needed to assist and

support the Washington Venture Entities in obtaining all necessary approvals, including but not limited to, revisions or amendments to its sewer service areas, and cooperation with any efforts by the Washington Venture Entities to obtain sufficient capacity and quality of water to serve the residential component contemplated for the Property. However, such cooperation from Washington and the Planning Board shall not include any financial obligation or ownership obligation by Washington or the Planning Board.

Washington and the Planning Board agree to cooperate with the Washington Venture Entities, through action, word, and deed, including the execution of any writing, resolution, plan, application, and/or document needed to assist and support the Washington Venture Entities with respect to any applications for approval of any wastewater management plan amendments, section 208 plan amendments, or any other outside approvals necessary to construct the project improvements as contemplated under this Agreement. The Washington Venture Entities shall pay the cost for any required applications or reimburse Washington for these costs upon presentation of certified invoices for such costs. Upon such payment, the Washington Venture Entities shall be entitled to reserve its rights to contest the magnitude of the costs before an appropriate administrative tribunal with jurisdiction, or the Superior Court of New Jersey, Law Division,

under a procedure similar to the procedure in the MLUL, N.J.S.A. 40:55D-53.2a ("Applicant notification to dispute charges; appeals; rules, regulations"), which provides for the challenge of professional fees placed in escrow.

Notwithstanding the foregoing, Washington and the Planning Board shall not be obligated to expend any funds to obtain, or assist in obtaining, the required approvals, except for the costs of municipal employees, as is ordinary and customary in the conduct of Washington's and the Planning Board's business, and except that Washington and the Planning Board shall be financially liable for their counsel and professional consultants in connection with the drafting review and execution of this Agreement, and the fees of counsel and professionals associated with the review of and hearings on the Zoning Ordinances and Master Plan amendments contemplated by this Agreement. The Washington Venture Entities shall be responsible for all professional review fees authorized by applicable statutes, regulations, and Washington ordinances for the subdivision and land use application(s) contemplated by this Agreement. The obligation to cooperate is subject to the obligation of the Washington Venture Entities to make timely payment of all real property taxes, and any other relevant fees due and owing during the term of this Agreement.

9. Court Approval and Contingencies. This Agreement does not purport to resolve entirely Washington's compliance with its obligations under the Mount Laurel Doctrine. The parties anticipate that Washington will amicably satisfy its entire obligations under the Mount Laurel Doctrine by entering into a separate settlement agreement with Fair Share Housing Center ("FSHC"), which will be subject to a Fairness Hearing and a Final Compliance Hearing. This Agreement and the satisfaction of the obligations of Washington and the Planning Board shall be made a material and integral part of Washington's compliance plan that is contemplated to be presented to the Court in the Declaratory Judgment Action, and this Agreement and the satisfaction of the obligations of Washington and of the Planning Board shall be made a material and integral part of any settlement Washington enters into with FSHC in connection with the Declaratory Judgment Action.

Should the contingencies of this Agreement not be satisfied and this Agreement becomes void and of no effect, then any agreement the Borough has entered into with FSHC with reliance on this Settlement Agreement shall also become void and of no effect, and the Parties and FSHC must begin negotiations anew or otherwise continue with the litigation with no prejudice to any Party. This Agreement shall be contingent upon the approval

by the Superior Court of a settlement of the Declaratory Judgment Action at a Fairness Hearing.

Any determination of fairness made by the Superior Court and any judgment of compliance and order of repose entered by the Superior Court in the Declaratory Judgment Action shall include a determination and condition ordering Washington to satisfy and implement its obligations of re-zoning and cooperation under this Agreement as a material and integral part of any such determination or Judgment, if Washington has not already done so.

10. No Objection to Amended Fair Share Plan. By executing this Agreement, the Washington Venture Entities agree not to object to any settlement reached between Washington and Fair Share Housing Center or to any compliance plan that is a result of such settlement or at any resulting fairness or compliance hearings, provided this Settlement Agreement is made a material and integral part of any settlement with FSHC and any compliance plan of Washington.

11. Appeals. In the event an appeal is filed by a third party from entry of a Final Judgment of Compliance relating to the provisions of this Settlement Agreement or from any other action taken pursuant this Settlement Agreement, the Washington Venture

Entities shall have the right to defend the action, intervening if necessary to do so. Washington shall also defend in any appeal from adoption of the Zoning Ordinances contemplated herein as well as in any appeal where the Washington Venture Entities are not permitted by the court to intervene with full rights to brief and argue the appeal. If Washington is obligated to defend an appeal of the adoption of the Zoning Ordinances and the Washington Venture Entities are not permitted to intervene in such action, the Washington Venture Entities shall reimburse Washington for all reasonable attorney's fees expended in defending such action.

The Washington Venture Entities shall also have the right to appeal any decision of NJDEP if the Washington Venture Entities determine such decision will detrimentally affect the development of the Property as proposed under this Agreement. Washington will not oppose any such appeal, but will not have any obligation to participate in such proceedings.

12. Agreement Binding and Enforceable. Upon execution, this Agreement shall be binding upon the parties, their heirs, successors-in-interest and assigns. This Agreement shall be enforceable in the Law Division of Superior Court.

13. Miscellaneous.

a. The Parties hereto hereby represent and warrant to each other that the execution and delivery of this Agreement by

the designated signatories hereto has been duly authorized by all necessary and appropriate actions and that this Agreement is therefore binding upon each of the Parties hereto.

b. The Parties hereto hereby covenant and agree to cooperate with each other in good faith and in a timely manner to implement the provisions of this Agreement and to satisfy the contingencies set forth herein.

c. This Agreement may only be modified by a writing signed by authorized representatives of each of the Parties hereto.

d. This Agreement shall be governed by and construed and enforced pursuant to the laws of the State of New Jersey, without regard to its conflict of laws principles. Any action hereunder shall be brought exclusively in a court of the State of New Jersey sitting in Hunterdon County, New Jersey, and the Parties hereby waive all objections to such venue.

e. In the event that any of the parties shall fail to perform any material obligation on its part to be performed pursuant to the terms and conditions of this Agreement, unless such obligation is waived by all of the other parties for whose benefit such obligation is intended, or by the Court, such failure to perform shall constitute a default of this Agreement. Upon the occurrence of any default, the non-defaulting party shall provide notice of the default and the defaulting party

shall have a reasonable opportunity to cure the default within forty-five (45) days. In the event the defaulting party fails to cure within forty-five (45) days or such reasonable period of time as may be appropriate, the party(ies) for whose benefit such obligation is intended shall be entitled to exercise any and all rights and remedies that may be available in equity or under the laws of the State of New Jersey, including the right of specific performance to the extent available. Further the parties may apply to the Court for relief, by way of a motion for enforcement of litigant's rights.

f. Effect of Counterparts. This Agreement may be executed in any number of counterparts and by the different parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement. Delivery of an executed counterpart of a signature page to this Agreement by facsimile or in Portable Document Format (PDF Adobe Acrobat) or other means of electronic transmission shall be as effective as delivery of a manually executed counterpart of this Agreement and shall be deemed to be an original signature. Any signature by facsimile or Portable Document Format (PDF Adobe Acrobat) or other means of electronic transmission shall be supplemented by the delivery of an original counterpart upon request of any party pursuant to the terms for notice set forth herein.

g. Voluntary Agreement. The parties acknowledge that each has entered into this Agreement on its own volition without coercion or duress after consulting with its counsel, that each party is the proper person and possess the authority to sign the Agreement, that this Agreement contains the entire understanding of the parties and that there are no representations, warranties, covenants or undertakings other than those expressly set forth herein.

h. Interpretation. Each of the parties hereto acknowledges that this Agreement was not drafted by any one of the parties, but was drafted, negotiated and reviewed by all parties, and, therefore, the presumption of resolving ambiguities against the drafter shall not apply, Each of the parties expressly represents to the other Parties that: (a) it has been represented by counsel in connection with negotiating the terms of this Agreement; and (b) it has conferred due authority for execution of this Agreement upon the person(s) executing it.

i. Entire Agreement. This Agreement constitutes the entire agreement between the parties hereto and supersedes all prior oral and written agreements between the parties with respect to the subject matter hereof except as otherwise provided herein.

j. Effective Date. Anything herein contained to the contrary notwithstanding, the effective date ("Effective Date") of this

Agreement shall be the date upon which all of the parties hereto have executed and delivered this Agreement.

k. Waiver. Each of the parties waives all rights to challenge the validity or the ability to enforce this Agreement. Failure to enforce any of the provisions of this Agreement by any of the Parties shall not be construed as a waiver of these or other provisions.

l. Notice of Actions. The parties and their respective counsel agree immediately to provide each other with notice of any lawsuits, actions or governmental declarations threatened or pending by third parties of which they are actually aware which may affect the provisions of this Agreement.

**IN WITNESS WHEREOF**, Property Owner has executed this Agreement the date and year above first appearing.

[SIGNATURE PAGE FOLLOWS]

WASHINGTON STATION VENTURE, LP &  
WASHINGTON VENTURE INVESTMENT, LTD.

WITNESS:

\_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

WITNESS:

Laurie Barton

Laurie Barton, Clerk

BOROUGH OF WASHINGTON

By: David Higgins

David Higgins, Mayor

WITNESS:

Patricia Titus

Patricia Titus, Clerk

BOROUGH OF WASHINGTON  
PLANNING BOARD

By: Marianne Van Deursen

Marianne Van Deursen, Chair

WASHINGTON STATION VENTURE, LP &  
WASHINGTON VENTURE INVESTMENT, LTD.

WITNESS:

raj bely

By: 

Name: David Wamoner

Title: Managing Member/President

BOROUGH OF WASHINGTON

WITNESS:

\_\_\_\_\_

Laurie Barton, Clerk

By: \_\_\_\_\_

David Higgins, Mayor

BOROUGH OF WASHINGTON  
PLANNING BOARD

WITNESS:

\_\_\_\_\_

Patricia Titus, Clerk

By: \_\_\_\_\_

Marianne Van Deursen, Chair

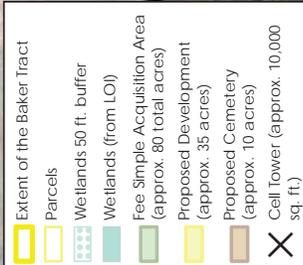
Project Name: Shabbecong Mountain Preserve / Baker Tract  
 Location: 55 Nunn Avenue, Washington Borough, Warren County, New Jersey Highlands Planning Area  
 Current Owner: Washington Station Ventures LP  
 Total Acreage of Site: 125.95 acres  
 Dimensions of Each Lot: see tax map  
 Existing Improvements: None

Free Simple Acquisition Area:  
 Approx. 80 total acres  
 Approx. 20.3 acres of wetlands;  
 Approx. 7.7 acres of wetland buffer

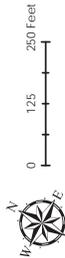
Proposed Development Area:  
 Approx. 35 acres  
 Approx. 1 acre of wetlands  
 Approx. 1 acre of wetland buffer

Proposed Cemetery Area:  
 Approx. 10 acres

Proposed Cell Tower:  
 Approx. 10,000 sq. ft.



Note: There appears to be no waterbodies (i.e. streams/rivers), tidelands, floodplains, or coastal wetlands on the site.  
 Freshwater wetlands are based off an LOI prepared by ARH Engineering.



Source: NJGIS, NJGIN, NJDEP, NJDOT



**Concept Plan for Proposed Subdivision  
 Shabbecong Mountain Preserve/Baker Tract Fee-Simple Acquisition  
 Washington Borough Open Space Acquisition**

**RIDER AND AMENDMENT TO SETTLEMENT AGREEMENT**

**THIS RIDER AND AMENDMENT TO A SETTLEMENT**

**AGREEMENT** ("Rider") is herewith made this 18<sup>th</sup> day of December 2018 by and between the **BOROUGH OF WASHINGTON**, a municipal corporation of the State of New Jersey, with its municipal office located at 100 Belvidere Ave., Washington, NJ 07882, (hereinafter "WASHINGTON"), and **WASHINGTON STATION VENTURE, LP** and **WASHINGTON VENTURE INVESTMENT, LTD.** having an address at c/o CBD Real Estate Investment, LLC, 3000 Atrium Way, Suite 233, Mount Laurel, New Jersey 08054 (hereinafter the "WASHINGTON VENTURE ENTITIES").

**WITNESSETH:**

**WHEREAS**, Washington entered into a Settlement Agreement with the Washington Venture Entities pursuant to Borough Council Resolution 2018-98 adopted on July 10, 2018 (the "Settlement Agreement"); and

**WHEREAS**, Paragraph 4 of the Settlement Agreement contemplates purchase of certain property for open space purposes by Washington from the Washington Venture Entities utilizing a combination of Borough funding and grant funding from the State of New Jersey Green Acres Program ("Green Acres") and Warren County; and



**WHEREAS**, since the execution of the Settlement Agreement, Washington has executed a Project Agreement with the New Jersey Department of Environmental Protection ("NJDEP") concerning the Green Acres funding, obtained approval of funding from Warren County, and obtained two appraisals on the property sought to be acquired as open space; and

**WHEREAS**, one of the appraisals dated August 21, 2018, prepared by Norman J. Goldberg, Inc., established a valuation of \$863,000, and another appraisal dated August 30, 2018, prepared by Mark Tinder Appraisals, Inc., established a valuation of \$813,000; and

**WHEREAS**, the parties wish to amend the Settlement Agreement to reflect the grant funding obtained and Washington's commitment to provide certain funding for the purchase of the open space parcel.

**NOW, THEREFORE**, in consideration of the mutual promises, covenants, and representations herein contained, the parties hereto, for themselves, their heirs, successors and assigns, hereby agree as follows:

1. Paragraph 4(a) of the Settlement Agreement shall be amended to read as follows, "The purchase price shall be eight



hundred thirty-eight thousand dollars (\$838,000.00), which is the average of the two appraisals."

2. The following shall be added to the end of Paragraph 4(b) of the Settlement Agreement, "The Borough hereby agrees to contribute funding for the purchase of the open space parcel in an amount equal to the difference of appraisal price and the total grant funding obtained from the NJDEP and Warren County."

3. The contingencies set forth in Paragraph 4(c) of the Settlement Agreement are hereby deemed to be satisfied, and the Borough shall be obligated to proceed with the acquisition of the open space parcel.

4. Paragraph 4(d) of the Settlement Agreement is hereby amended as follows, "The Borough shall promptly schedule a closing to acquire the open space parcel, which may include the passing of a bond ordinance to fund the Borough's contribution to the purchase price, upon receipt of a commitment to fund by the NJDEP."

5. The following sentence of Paragraph 9 of the Settlement Agreement is deleted, "Should the contingencies of this Agreement not be satisfied and this Agreement becomes void and of no effect, then the agreement the Borough has entered into with FSHC with reliance on this Settlement Agreement shall also become void and of no effect, and the Parties and FSHC must begin negotiations anew or otherwise continue with the

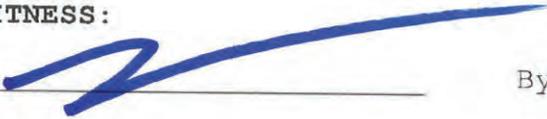
litigation with no prejudice to any Party." The other terms and conditions of Paragraph 9 remain in full force and effect.

6. This Rider shall be governed by the same terms as set forth in Paragraph 13 of the Settlement Agreement titled, "Miscellaneous."

**IN WITNESS WHEREOF**, the Parties have executed this Agreement the date and year above first appearing.

**WASHINGTON STATION VENTURE, LP &  
WASHINGTON VENTURE INVESTMENT, LTD.**

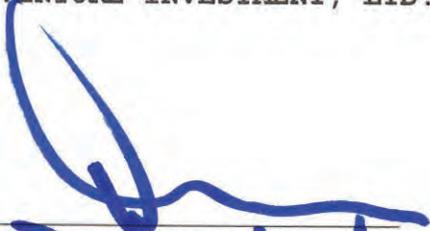
**WITNESS:**

  
\_\_\_\_\_

By: \_\_\_\_\_

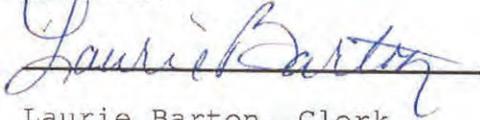
Name: \_\_\_\_\_

Title: \_\_\_\_\_

  
Name: David Wank  
Title: Manager, Asset Portfolio

**BOROUGH OF WASHINGTON**

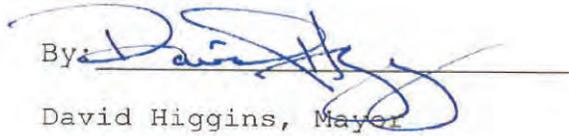
**WITNESS:**

  
\_\_\_\_\_

Laurie Barton, Clerk

By: \_\_\_\_\_

David Higgins, Mayor

  
\_\_\_\_\_

**SECOND AMENDMENT TO SETTLEMENT AGREEMENT**

**THIS SECOND AMENDMENT TO A SETTLEMENT AGREEMENT** ("Second Amendment") is herewith made this 16<sup>th</sup> day of June 2020 by and between the **BOROUGH OF WASHINGTON**, a municipal corporation of the State of New Jersey, with its municipal office located at 100 Belvidere Ave., Washington, NJ 07882, (hereinafter "Washington"), and **WASHINGTON STATION VENTURE, LP** and **WASHINGTON VENTURE INVESTMENT, LTD.** having an address at c/o CBD Real Estate Investment, LLC, 3000 Atrium Way, Suite 233, Mount Laurel, New Jersey 08054 (hereinafter, the "Washington Venture Entities").

**WITNESSETH:**

**WHEREAS**, pursuant to Resolution 2018-98 adopted on July 10, 2018, the Mayor and Council of the Borough of Washington (the "Borough Council") approved the execution of a Settlement Agreement between Washington and the Washington Venture Entities (the "Settlement Agreement"); and

**WHEREAS**, on or about December 18, 2020, pursuant to Resolution 2018-166, Washington and the Washington Venture Entities entered into a Rider and Amendment to Settlement Agreement (the "Rider") concerning the sale and acquisition of the Open Space Parcel, which is defined below; and

**WHEREAS**, by Resolution dated September 9, 2019, the Borough of Washington Land Use Board of Washington (the "Land Use Board") memorialized its approval of an application for a minor subdivision to create the following lots: Block 97, Lot 1.03 (which is the "Open Space Parcel"), Block 97, Lot 1.04 (the "Remainder Lot" which will subsequently be subdivided into the "Residential Lot" and the "Cemetery Lot"), and such subdivision was perfected by Subdivision Deed dated December 27, 2019, which is about to be recorded at the Warren County Clerk's Office.

**WHEREAS**, on or about March 4, 2020, Washington acquired title to the Open Space Parcel, as set forth in the Settlement Agreement and Rider, and such lot will be deed-restricted and preserved as public open space in accordance with regulations of the New Jersey Department of Environmental Protection's ("NJDEP") Green Acres Program; and

**WHEREAS**, the Settlement Agreement, specifically Paragraph 1, provides that the Residential Lot, which is approximately 35 acres, can be developed with up to fifty (50) single-family homes pursuant to zoning standards that were to be developed by the parties; and

**WHEREAS**, the Settlement Agreement provides that the Cemetery Lot can be developed as a Cemetery and contain a cell tower; and

**WHEREAS**, the Parties have spent considerable time discussing the zoning standards that should govern the development of the Residential Lot if public sanitary sewer service is provided to the Residential Lot, and if the Residential Lot is developed with on-site individual septic systems to dispose wastewater; and

**WHEREAS**, pursuant to Resolution 2019-44, adopted by the Borough Council on February 5, 2019; Washington intends to revise its planning documents and ordinances to conform with the Highlands Water Protection and Planning Act, N.J.S.A. 13:20-1, et seq., the applicable Highlands Council regulations, N.J.A.C. 7:38, and the Regional Master Plan of the Highlands Water Protection and Planning Council (collectively, the "Highlands Rules"); and

**WHEREAS**, the entirety of the Borough is included in a Town Center with certain undeveloped portions designated as part of the Highlands Environmental Resource Zone ("HERZ"), which denotes sensitive resources that may require additional protections; and

**WHEREAS**, the Residential Lot will not be included in the HERZ; and

**WHEREAS**, based upon a review of the applicable regulations and guidelines and conversations with representatives of the Highlands Council, Washington represents that it will not be able to obtain plan conformance with applicable Highlands Rules, regulations, and guidelines if the existing permitted residential septic density of the Residential Lot is increased and the proposed fifty (50) single-family homes are developed with individual septic systems to dispose of the wastewater; and

**WHEREAS**, as a result, the Parties desire to have the Residential Lot developed with sanitary sewers consistent with the original executed Settlement Agreement; and

**WHEREAS**, the Residential Lot is not currently located within a Sanitary Sewer Service Area according to the applicable Wastewater Management Plan ("WMP"), and, among other approvals needed, a site-specific amendment must be made to the WMP to allow the Residential Lot to be developed with sanitary sewer service; and

**WHEREAS**, the Parties have amicably resolved the form of the Ordinances and enter into this Second Amendment to the Settlement Agreement to reflect their understanding concerning the obligations of the Parties regarding the provision of sanitary sewerage service for the Residential Lot, to set forth

mutually agreeable zoning standards to govern the development of the Residential Lot and Cemetery Lot, and

**NOW, THEREFORE,** in consideration of the mutual promises, covenants, and representations herein contained, the parties hereto, for themselves, their heirs, successors and assigns, hereby agree as follows:

**1. Recitals.** The recitals set forth above are hereby incorporated into this Second Amendment as if set forth herein at length.

**2. Adoption of Ordinances.**

a. The Parties hereby agree that the form of Ordinances (the "Ordinances") attached hereto as Exhibit A shall govern the development of the Residential Lot, the Cemetery Lot and the Cell Tower as set forth in the Settlement Agreement.

b. The provisions of Paragraph 6 of the Settlement Agreement are hereby deleted and replaced with the following. The following timeline shall govern the adoption of the Ordinance. The Parties acknowledge and agree that compliance with this timeline is an essential, material term of this Agreement.

i. On June 16, 2020, the Borough Council shall introduce the Ordinances and refer them to the Land Use Board.

ii. On July 13, 2020, the Land Use Board shall consider the Ordinances at its regular meeting and thereafter make a recommendation of whether the Ordinances are inconsistent with Washington's Master Plan.

iii. On July 21, 2020 the Borough Council shall consider the Ordinances for adoption on second reading at a public hearing regardless of any inconsistency determination by the Land Use Board.

c. All of the foregoing public meetings and hearings shall be permitted to occur on Zoom or such other online platform consistent with P.L. 2020, c. 11 given the current restrictions on public assembly due to the COVID-19 public health emergency.

d. The Parties agree that the form of the Ordinances satisfies the Parties' rights and obligations regarding the development standards to govern the development of the Residential Lot, the Cemetery Lot and the Cell Tower pursuant to Paragraphs 1.a, 2 and 3 of the Settlement Agreement. Other than as set forth above, no other provision of Paragraphs 1, 2 and 3 of the Settlement Agreement are modified or amended by this Second Amendment.

e. Following their adoption, the Ordinances shall not be amended or rescinded, without the prior written approval of the

Washington Venture Entities for a period of at least ten (10) years.

**3. Provision of Sanitary Sewerage Service.**

a. The terms and provisions set forth in this paragraph shall be in addition to the Parties' rights and obligations to facilitate the provision of sanitary sewerage service to the Residential Lot and to cooperate with each other as set forth in Paragraphs 7 (Necessary Infrastructure and Water Availability) and 8 of the Settlement Agreement.

b. The Washington Venture Entities shall make a good faith effort to secure all required approvals from the NJDEP for connections to public water and sewer, including but not limited to an application for a site-specific amendment to the WMP to include the Residential Lot in Washington's sewer service area. The Washington Venture Entities shall solely bear the cost of such application. The burden is on the Washington Venture Entities (or their successors or assigns) to make the WMP site-specific amendment application to include the Residential Lot in the sewer service area and provide all information and evidence required by NJDEP. Washington shall fully cooperate with these efforts to provide public water and sanitary sewerage service to the Residential Lot, which shall include but not be limited to attending meetings, submitting correspondence, signing documents and taking whatever further actions are needed to assist in

obtaining such approvals. It is the Borough's intention that such actions will be taken by the Borough's Manager or Engineer, who are salaried employees. If NJDEP, or other applicable government-entity, requires meeting attendance or other work by other Borough professionals (i.e. the Borough Attorney or Planner), the Washington Venture Entities shall reimburse the Borough for reasonable fees expended.

c. Notwithstanding the foregoing, the request to include the Residential Lot in the sewer service area shall be deemed futile (and thereby connection to public sewer infeasible) if there is a written communication from the NJDEP that makes it apparent the Residential Lot will not be included in the sewer service area or that the resolution of the issue will be unduly prolonged. In the event public sewer extension is deemed infeasible, Washington Ventures will develop the Residential Lot on individual septic systems in compliance with the existing standards for the M-3 Mountain Zone, which permits detached single-family dwellings with a minimum lot area of 3 acre.

**4. Plan Conformance.** The entirety of Washington shall be placed in the Town Center in any application for plan conformance with the Highlands Rules with a portion of the Borough designated as the HERZ. The Residential Lot will not be designated as part of HERZ. Washington has begun the plan conformance process. Washington shall provide contemporaneous

copies of any documents approved by Borough Council to be submitted to the Highlands Council in pursuit of the Borough's Plan Conformance Petition. Washington Ventures shall have the opportunity to respond to the Borough's Petition for Plan Conformance in accordance with the Highlands Council's Public Meeting for Review of Plan Conformance Petitions, as specified below:

- a. The Executive Director will post the draft report on the Highlands Council website for a minimum thirty (30) day public comment period. Notice of the public comment period shall be made in accordance with both the Council and local government's policies for public notice, including publishing such notice in print and digital media.
- b. Upon receipt of the final report, including any public comments received, the Highlands Council shall conduct such deliberations as needed and shall, within 60 days of the date of receipt of the final report, approve, reject, or approve with conditions the revised master plan and development regulations and any other aspects of the Petition as it deems appropriate. The Highlands Council decision shall be by resolution, with an opportunity for public comment. Nothing herein shall

preclude an extension of the 60-day time period, by consent of the Petitioner.

c. The Highlands Council shall adopt a memorializing resolution on each Petition for Plan Conformance providing its findings, conclusions, and final determination in the matter and a listing of any conditions pertaining thereto, a copy of which shall be provided to the Petitioner.

d. The Executive Director shall provide public notice of any determination on the Highlands Council web site and shall publish any other notices as legally required.

**5. Open Space Parcel.** The Parties acknowledge that the closing on the Open Space Parcel has concluded, and that the provisions of Paragraph 4 of the Settlement Agreement and the provisions of the Rider relating to the Open Space Preservation and the sale of the Open Space Parcel have been satisfied.

**6. Court Approval.** This Second Amendment shall be subject to court review and approval at a duly noticed hearing, which is anticipated to take place in or about August 2020.

**7. Miscellaneous.** The provisions of Paragraphs 12 and 13 of the Settlement Agreement shall govern this Second Amendment as if set forth herein at length. Notwithstanding the foregoing, the time period for the adoption of the Ordinance (Paragraph 1.b

of this Second Amendment) shall not be subject to the notice and default provision set forth in Paragraph 13.e of the Settlement Agreement.

[REMINDER OF THE PAGE IS INTENTIONALLY BLANK]

IN WITNESS WHEREOF, the Parties have executed this Agreement the date and year above first appearing.

WASHINGTON STATION VENTURE, LP &  
WASHINGTON VENTURE INVESTMENT, LTD.

WITNESS:

\_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

BOROUGH OF WASHINGTON

WITNESS:

Laurie Barton

Laurie Barton, Clerk

By: David Higgins

David Higgins, Mayor

BOROUGH OF WASHINGTON  
PLANNING BOARD

WITNESS:

\_\_\_\_\_

By: \_\_\_\_\_

Patricia Titus, Clerk

Marianne Van Deursen, Chair

**Appendix D**  
**Washington Borough Resolution #2025-35**  
**Establishing Fourth Round Obligation**

**RESOLUTION 2025-35**  
**BOROUGH OF WASHINGTON RESOLUTION COMMITTING**  
**TO DCA’S FOURTH ROUND AFFORDABLE HOUSING PRESENT**  
**NEED AND PROSPECTIVE NEED NUMBERS**

**WHEREAS**, on March 20, 2024, Governor Murphy signed into law an Amendment to the Fair Housing Act (N.J.S.A. 52:27D-301 *et seq.*) (hereinafter “Amended FHA”); and

**WHEREAS**, the Amended FHA requires the Department of Community Affairs (“DCA”) to produce non-binding estimates of fair share obligations on or before October 20, 2024; and

**WHEREAS**, the DCA issued a report on October 18, 2024 (“DCA Report”) wherein it reported its estimate of the obligation for all municipalities based upon its interpretation of the standards in the Amended FHA; and

**WHEREAS**, the DCA Report calculates the **BOROUGH OF WASHINGTON**’s Round 4 (2025-2035) obligations as follows: a Present Need or Rehabilitation Obligation of zero (0) and a Prospective Need or New Construction Obligation of twenty-seven (27); and

**WHEREAS**, the Amended FHA provides that the DCA Report is non-binding, thereby inviting municipalities to demonstrate that the Amended FHA would support lower calculations of Round 4 affordable housing obligations; and

**WHEREAS**, the Amended FHA further provides that “[a]ll parties shall be entitled to rely upon regulations on municipal credits, adjustments, and compliance mechanisms adopted by COAH unless those regulations are contradicted by statute, including P.L. 2024, c.2, or biding court decisions” (N.J.S.A. 52:27D-311(m)); and

**WHEREAS**, COAH regulations authorize vacant land adjustments as well as durational adjustments; and

**WHEREAS**, based on the foregoing, the **BOROUGH OF WASHINGTON** accepts the DCA calculations of the Borough of Washington’s fair share obligations and commits to its fair share of zero (0) units present need and twenty-seven (27) units prospective need subject to any vacant land and/or durational adjustments it may seek as part of the Housing Plan element and Fair Share Plan element it subsequently submits in accordance with the Amended FHA; and

**WHEREAS**, the **BOROUGH OF WASHINGTON** reserves the right to comply with any additional amendments to the FHA that the Legislature may enact; and

**WHEREAS**, the **BOROUGH OF WASHINGTON** also reserves the right to adjust its position in the event of any rulings in the *Montvale* case (MER-L-1778-24) or any other such action that alters the deadlines and/or requirements of the Amended FHA; and

**WHEREAS**, in the event that a third party challenges the calculations provided for in this Resolution, the **BOROUGH OF WASHINGTON** reserves the right to take such position as it

deems appropriate in response thereto, including that its Round 4 Present or Prospective Need Obligations should be lower than described herein; and

**WHEREAS**, in light of the above, the Mayor and Council of **BOROUGH OF WASHINGTON** finds that it is in the best interest of the **BOROUGH OF WASHINGTON** to declare its commitment to the obligations reported by the DCA on October 18, 2024 subject to the reservations set forth herein; and

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

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

**WHEREAS**, the **BOROUGH OF WASHINGTON** seeks a certification of compliance with the FHA and, therefore, directs its ATTORNEY, THE LAW OFFICES OF ERIK C. PETERSON, LLC to file a declaratory relief action within 48 hours of the adoption of this resolution in XX County.

**NOW, THEREFORE, BE IT RESOLVED** on this 21<sup>st</sup> day of January, 2025 by the Mayor and Council of the **BOROUGH OF WASHINGTON** as follows:

1. All of the above Whereas Clauses are incorporated into the operative clauses of this resolution.
2. The **BOROUGH OF WASHINGTON** hereby commits to the DCA Round 4 Present Need Obligation of zero (0) units and the Round 4 Prospective Need Obligation of twenty-seven (27) units described in this resolution, subject to all reservations of rights set forth above.
3. The **BOROUGH OF WASHINGTON** hereby directs its attorney, the Law Offices of Erik C. Peterson, LLC to file a declaratory judgment complaint in Warren County within 48 hours after adoption this resolution, attaching this resolution.
4. The **BOROUGH OF WASHINGTON** authorizes its attorney, the Law Offices of Erik C. Peterson, LLC to attach this resolution as an exhibit to the declaratory judgment action that is filed and to submit and/or file this resolution with the Program or any other such entity as may be determined to be appropriate.
5. the **BOROUGH OF WASHINGTON** also authorizes its affordable housing professionals to prepare the appropriate Housing Element and Fair Share Plan as a component of the Borough's Master Plan so that is filed with DCA on or before June 30, 2025; and

6. This resolution shall take effect immediately, according to law.

**Certification**

*I, Laurie A Courter, Clerk of the Borough of Washington, County of Warren, State of New Jersey, do hereby certify that the foregoing Resolution is a true and exact copy of a Resolution adopted by the Borough Council of The Borough of Washington on January 21, 2025*

*Laurie A. Courter*

---

Laurie A. Courter, RMC  
Borough Clerk

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal of the Borough this

<sup>21st</sup> day of January, 2025.

[SEAL]

**Appendix E**

**Court Order Fixing Washington Borough's  
Obligations for "Present Need" and "Prospective Need"  
for the Fourth Round Housing Cycle**

**FILED**

March 25, 2025

HUNTERDON COUNTY SUPERIOR COURT

WILLIAM G. MENNEN, J.S.C.

PREPARED BY THE COURT:

**IN THE MATTER OF THE  
DECLARATORY JUDGMENT  
ACTION OF THE BOROUGH  
OF WASHINGTON, WARREN  
COUNTY PURSUANT TO P.L.  
2024, CHAPTER 2**

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION – CIVIL PART  
WARREN COUNTY  
DOCKET NO. WRN-L-41-25

Civil Action

**ORDER FIXING MUNICIPAL  
OBLIGATIONS FOR “PRESENT NEED”  
AND “PROSPECTIVE NEED” FOR THE  
FOURTH ROUND HOUSING CYCLE**

**THIS MATTER**, having come before the Court on its own motion, *sua sponte*, on the Complaint for Declaratory Judgment filed on January 23, 2025 (“DJ Complaint”) by the Petitioner, **BOROUGH OF WASHINGTON** (“Petitioner” or “Municipality”), pursuant to N.J.S.A. 52:27D-304.2, -304.3, and -304.1(f)(1)(c) of the New Jersey Fair Housing Act, N.J.S.A. 52:27D-301, *et seq.* (collectively, the “FHA”), and in accordance with Section II.A of Administrative Directive #14-24 (“Directive #14-24”) of the Affordable Housing Dispute Resolution Program (the “Program”), seeking a certification of compliance with the FHA;

**AND IT APPEARING**, that on October 18, 2024, pursuant to the FHA (as amended), the New Jersey Department of Community Affairs (“DCA”) issued its report entitled *Affordable Housing Obligations for 2025-2035 (Fourth Round)*,<sup>1</sup> therein setting forth the present need and prospective need obligations of all New Jersey municipalities for the Fourth Round housing cycle (the “DCA’s Fourth Round Report”);

<sup>1</sup> See [https://nj.gov/dca/dlps/pdf/FourthRoundCalculation\\_Methodology.pdf](https://nj.gov/dca/dlps/pdf/FourthRoundCalculation_Methodology.pdf)

**AND IT APPEARING** that, pursuant to the DCA's Fourth Round Report, the present need obligation of the Petitioner has been calculated and reported as 0 affordable units, and its prospective need obligation of the Petitioner has been calculated and reported as 27 affordable units, and which calculations have been deemed presumptively valid for purposes of the FHA;

**AND THE COURT**, having determined that no interested party has filed a challenge to the Petitioner's DJ Complaint by way of an Answer thereto as provided for and in accordance with Section II.B of Directive #14-24 of the Program;

**AND THE COURT**, having found and determined, therefore, that the present need and prospective need affordable housing obligations of the Petitioner for the Fourth Round housing cycle as calculated and reported in the DCA's Fourth Round Report have been committed to by the Petitioner and are uncontested, and for good cause having otherwise been shown:

**IT IS, THEREFORE**, on this 25th day of **MARCH 2025 ORDERED AND ADJUDGED** as follows:

1. That the present need obligation of the Municipality, be, and hereby is fixed as zero (0) affordable units for the Fourth Round housing cycle.
2. That the prospective need obligation of the Municipality, be, and hereby is fixed as twenty-seven (27) affordable units for the Fourth Round Housing cycle; and
3. That the Petitioner is hereby authorized to proceed with preparation and adoption of its proposed Housing Element and Fair Share Plan for the Fourth Round, incorporating therein the present need and prospective need allocations aforesaid (and which plan shall include the elements set forth in the "Addendum" attached to Directive #14-24), by or before June 30, 2025, as provided for and in accordance with Section III.A of Directive #14-24, and without further delay.

**IT IS FURTHER ORDERED**, that a copy of this Order shall be deemed served on the Petitioner and Petitioner's counsel.

SO ORDERED:



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**Hon. William G. Mennen, J.S.C.**  
*Designated Mt. Laurel Judge – Vicinage 13*

Uncontested.

**Appendix F**  
**Towne Center**  
**Redevelopment Agreement Documentation**

REDEVELOPER'S AGREEMENT

THIS AGREEMENT, made and entered this 16 day of August, 2014

BY AND BETWEEN:

JADE PARTNERS WASHINGTON, LLC, a New Jersey limited liability company with offices located at 16 Wolfe Run, Long Valley, New Jersey 07054,

hereinafter referred to as the "Redeveloper;"

AND

BOROUGH OF WASHINGTON, a Municipal Corporation in the County of Warren and State of New Jersey, with offices located at 100 Belvidere Avenue, Washington, New Jersey 07822,

hereinafter referred to as the "Borough."

WITNESSETH

WHEREAS, the Redeveloper is the current owner of the tract or parcel of land (the "Property") described on the Borough Tax Map as Block 95, Lots 3 and 4; and

WHEREAS, the Redeveloper received preliminary and final site plan approval with variance relief and conditions from the Borough of Washington Planning Board (the "Planning Board") pursuant to a resolution adopted on January 13, 2014, memorializing the Board's action on December 9, 2013 undamended pursuant to a resolution adopted on June 9, 2014, memorializing the Board's action on May 12, 2014 and further amended pursuant to a resolution adopted on September 8, 2014 memorializing the Board's action on August 11, 2014 for the redevelopment of the Property consisting of demolition of the current structures on the Property and construction of a four story mixed use building of approximately 15,344 square feet with parking for 95 cars; and

WHEREAS, the Property is located in the Washington Avenue Core District of the Borough Redevelopment Plan and is required to be developed in accordance with the Redevelopment Plan; and

WHEREAS, the Redeveloper and Borough desire to enter into a Redeveloper's Agreement setting forth the rights, duties and obligations of the parties in connection with the Approval and approved Plans; and

WHEREAS, the Redeveloper desires to proceed with the Redevelopment of the Property and to install the improvements in accordance with the Approval and approved Plans; and

WHEREAS, the Borough Ordinance Chapter 94-15A indicates that no final plat shall be approved until all items required to be bonded have been either installed or guaranteed; and

WHEREAS, since there is storm drainage and driveway work required within the right-of-way of South Lincoln Avenue (off-site), prior to the commencement of any work within South Lincoln, the Redeveloper shall be required to obtain a street opening permit and post a Performance Guarantee pursuant to Chapter 75 Streets and Sidewalks of the Borough ordinances. The amount of the Performance Guarantee has not been determined at this time.

NOW, THEREFORE, in consideration of the foregoing, and the agreements and conditions of the Approval and approved Plans, it is mutually agreed by and between parties hereto, as follows:

Prior to the start of any work within South Lincoln Avenue the Redeveloper shall obtain the required Borough street opening permit and post the required Performance Guarantee. The form of the guarantee shall be a 10% cash deposit and the balance a surety bond or letter of credit. The amount of the Performance Guarantee shall be determined by the Municipal Engineer based upon an Engineering Estimate of Quantities and Cost to be provided by the Redeveloper. The Redeveloper, upon satisfactory completion of the work shall deliver to the Borough a twenty-four (24) month surety maintenance bond, or letter of credit, which shall be in a form satisfactory to the Borough, and the maximum sum permitted by statute.

2. Prior to the start of any work within the right-of-way of West Washington Avenue (New Jersey Route 57) the Redeveloper shall obtain a Utility Opening Permit from NJDOT and shall post any bonds and inspection escrows required by NJDOT.

3. Prior to the start of any site work, the Redeveloper shall submit an initial escrow deposit of \$10,000.00 to cover engineering inspection fees. The Redeveloper agrees that it will make subsequent installment deposits in the event the deposit balance reaches \$2,500.00. Each subsequent installment shall not cause the total escrow balance to exceed \$10,000.00. The Borough agrees to place the cash deposit in a separate savings account, in escrow, in a banking institution or savings and loan association in this State insured by an agency of the federal government, in the name of the Borough, and to hold and dispose of the said account (including the interest earned thereon) as hereinafter provided.

4. The Redeveloper will, at the Redeveloper's own cost and expense, in a good and workmanlike manner, install and complete all of the improvements in accordance with the approved plans and specifications, and the applicable ordinances, rules and regulations of the Borough. The Borough Engineer shall inspect and approve the work as installed in accordance with the approved plans and final plat and the requirements of the Borough's ordinances, rules and regulations.

5. Signing of the approved Plans is specifically conditioned upon the Redeveloper's compliance with the requirements contained in the Approval as well as the various reports prepared by the Borough's professionals, including the Planning Board Engineer, Planning Board Planner and the Borough Engineer, both prior to and after the date of approval, including:

but not limited to, the reports of the Planning Board Engineer dated November 11, 2013 and December 4, 2013, and the reports of the Planning Board Planner dated November 8, 2013 and December 6, 2013, except as such requirements may be modified by the Approval. Proof of compliance shall be submitted to the Borough Engineer and the Borough Attorney.

6. All of the work and improvements set forth above under the terms of this Agreement shall be completed within two (2) years of the signing of the final site plan; provided that the Redeveloper may request in writing a one (1) year extension for completion of the work and improvements which shall not be unreasonably withheld. Should the Redeveloper fail, refuse or neglect to complete, to the satisfaction of the Borough Engineer and in accordance with this Agreement, all of said work and improvements within the above time limit, then the Borough shall be free to take whatever legal steps the Borough desires. The Redeveloper shall have the right to petition the Planning Board for extensions of the completion date in accordance with the provision of the Municipal Land Use Law.

7. The Redeveloper shall and will comply fully with all applicable Borough ordinances, rules, regulations and all other requirements of governmental bodies having jurisdiction over any aspect of this Redevelopment or the improvements or facilities thereof, including all applicable requirements, rules, regulations and statutes of the State of New Jersey, all conditions of the approving Board and all representations made to the approving Board. The Redeveloper shall and will comply fully with all of the findings, conditions, and requirements of the Approval which are incorporated in this Agreement.

8. The Redeveloper shall replenish the inspection fees deposit as required by the applicable Borough ordinance and be responsible, in any event, for the payment of the Borough Engineer's inspection fees, as required by such ordinance, subject to the provisions of the Municipal Land Use Law.

9. All stumps, dead trees or debris created in connection with the construction of the Redevelopment will be removed from the Redevelopment by the Redeveloper unless otherwise authorized by the Borough Engineer.

10. Redeveloper shall remove any silt deposited in the Redevelopment and/or Borough's storm sewers, brooks, catch basins or other drainage areas resulting from erosion or siltation of soil or debris during the course of construction by this Redeveloper. Any instruction given by the Borough Engineer, Construction Official or Soil Conservation District to prevent such erosion or siltation shall be performed by the Redeveloper in a reasonably prompt manner.

11. After completing the construction of the improvements, the Redeveloper shall furnish the Borough with "as built" plans which are acceptable to the Municipal Engineer.

12. The Redeveloper shall ensure that all lots and other areas in said Redevelopment shall be properly graded and properly drained in accordance with the approved Plans and at the direction of the Borough Engineer.

13. Although the Borough shall issue certain construction permits pursuant to its ordinances from time to time after the execution of this Agreement and proper application by Redeveloper, no Certificates of Occupancy for any unit shall be issued until all site

improvements have been completed and as-built plans have been submitted and approved by the Municipal Engineer. The Redeveloper may request and the Borough may authorize the release of Certificates of Occupancy prior to the completion of all site improvements subject to all work being completed to the satisfaction of the Municipal Engineer except the final course of paving and landscaping and further subject to the Redeveloper posting a suitable performance guaranty or guarantee the completion of all remaining work. The amount of the performance guarantee shall be established by the Municipal Engineer based upon an Engineer's Estimate of Quantities and Cost to be provided by the Redeveloper.

14. The Planning Board reserves the right to revoke or withdraw any approval granted in the Resolution, upon notice to the Redeveloper and a public hearing, in the event that there is any deviation from or alteration to the Plans approved by the Resolution, unless prior written approval for the deviation or alteration has been obtained by the Redeveloper from the Planning Board. Minor deviations and field changes may be authorized in writing by the Borough Engineer.

15. In addition to the conditions contained in the Approval, the approved Plans, and in any reports of the Borough's various professionals, any Certificates of Occupancy are also specifically conditioned upon the Redeveloper's full compliance with all conditions, requirements or other terms of this Agreement.

16. The Redeveloper shall obtain final, unconditional approval and/or permits from all agencies and entities having jurisdiction over any aspects of the proposed Redevelopment, including, but not limited to: A) Warren County Planning Board; B) New Jersey Department of Transportation; C) Washington Borough Fire Chief.

17. The Redeveloper shall also obtain a written agreement from New Jersey American Water Company to provide water service and written approval of sewerage allocation as well as a Sewer Connection Permit from the Borough. The Redeveloper represents that as of the date of this Agreement, it has obtained the required written agreement from New Jersey American Water Company and written approval of sewerage allocation from the Borough. Redeveloper shall provide copies of the agreement and approval to the Borough upon request.

18. All documents required to be prepared by the Redeveloper by the terms or provision of this agreement or the Approval shall be approved by the Board Attorney and Board Engineer prior to execution.

19. No work shall occur on the project by the Redeveloper until a preconstruction meeting has been held between the Redeveloper and the Borough Engineer and the Redeveloper's contractor.

20. The Redeveloper's contractor shall maintain the insurance coverages as required by the Borough and shall name the Borough of Washington and the Municipal Engineer as additional insureds.

21. A. While the terms and conditions set forth in this Agreement are binding upon the Borough, the approving Board, and the Redeveloper, nothing herein contained shall be construed as preventing the Borough, the approving Board or the Redeveloper from exercising in

any court of law or elsewhere any rights or duties which it may have by statute, ordinance or other law. This Agreement shall not operate to confer upon any such public body any powers, rights or duties it does not now possess, nor abridge the rights of the Redeveloper vis-a-vis any such public body.

B. The covenants, undertakings, agreements and other obligations mentioned in this Agreement shall not be construed as a representation by the Borough, the approving Board, or by any Borough officer, board or employee to have or to assume any contractual or other liability to or with any persons, firms or corporations purchasing any land, buildings or improvements from the Redeveloper or otherwise using or having an interest in the same, nor shall this Agreement be construed to create any liability on the Borough or the approving Board to third persons.

C. Nothing herein contained shall be construed to render the Borough or any of its officers, boards or employees liable for any charges, costs or debts for material, labor or other expenses incurred in the making of the improvements.

D. Redeveloper shall be and remain liable for any and all damage or money loss occasioned by the Borough or its officers or agents by any neglect, wrongdoing, omission or commission of or by the Redeveloper or by any person, firm or corporation acting for the Redeveloper or Applicant hereunder arising from the making of the improvements or the performance of the terms hereof. The Redeveloper and Applicant shall save, indemnify and hold harmless the Borough, its officers, agents, boards and employees from any and all liability and reasonable costs incurred in defending, negotiating or settling any action which may arise from any such damage or loss, from the making of the improvements by Redeveloper or Applicant or the performance of the terms hereof except for improvements not installed by Redeveloper or Applicant unless the Borough or its agents shall have acted contrary to law or failed to perform acts required by law or by this Agreement.

E. Nothing contained in this Agreement shall be construed to give any person or legal entity, not a party to this Agreement, any claim against the Borough or any of its agencies with respect to the manner of the installation of improvements, or for any damages arising therefrom.

22. All notices sent pursuant to this Agreement shall be in writing and directed to the party at the address set forth at the beginning of this Agreement, unless prior to the notice being sent the party has delivered a substitute address to the other party by certified mail, return receipt requested, in which case the notice shall be sent to that address.

23. The Redeveloper further agrees that this Agreement shall be binding upon the Redeveloper and the Redeveloper's heirs, personal representatives, successors or assigns (as the case may be), notwithstanding the fact that it may sell, transfer, encumber or otherwise dispose of the property or any portion thereof, and the performance guarantee called for herein shall remain in full force and effect in any such event. In the event of such transfer, the escrow accounts and any bonds posted by the Redeveloper shall not be released in whole or in part, until the successor Redeveloper, assignee, person or entity has posted sufficient review and inspection escrows and bonds, as determined by the Borough Attorney and Chief financial Officer, and

countersigns this Agreement, or executes a new Redeveloper's agreement with the Borough as directed by the Borough Attorney.

24. Per the Approval, the Redeveloper shall comply with any and all Affordable Housing Contributions that may be required by Chapter 94, Article X, "Development Fees" of the Borough Code, or obtain relief from the Borough Council or, in the alternative, the Planning Board.

25. The Property shall be subject to Chapter 79, Article I, "Five-Year Tax Exemption and Abatement" of the Code of the Borough of Washington, which implements the Five Year Tax Exemption and Abatement Law, codified at N.J.S.A. 40A:21-1 et seq., providing for temporary tax relief for property owners, upon completion of the project and compliance by the Redeveloper with the terms of that Ordinance, including but not limited to entry into a Tax Agreement between Redeveloper and the Borough as provided by N.J.S.A. 40A:21-10.

IN WITNESS WHEREOF, the said parties have hereunto caused this Agreement to be signed by their proper representatives (and, if a corporation, have caused their proper seal to be hereunto affixed) the day and year first above written.

ATTEST:



JADE PARTNERS WASHINGTON, LLC

By:  \_\_\_\_\_

ATTEST:

  
Borough Clerk

BOROUGH OF WASHINGTON

By:  \_\_\_\_\_  
Mayor

CONTRACT FOR SALE OF REAL ESTATE

This Contract for Sale is made on Dec 19<sup>th</sup> 2013

BETWEEN THE BOROUGH OF WASHINGTON, IN THE COUNTY OF WARREN, a municipal corporation of the State of New Jersey, having a mailing address at 100 Belvidere Ave., Washington, New Jersey 07882,

referred to as the Seller,

AND JADE PARTNERS WASHINGTON, LLC, having a mailing address of 16 Wolfe Run Court, Long Valley, NJ 07853

referred to as the Buyer.

The words "Buyer" and "Seller" include all Buyers and Sellers listed above.

1. **Purchase Agreement:** The Seller agrees to sell and the Buyer agrees to buy the property described in this contract (the "Property").
2. **Property:** The Property consists of: (a) the land; (b) all buildings, other improvements and fixtures on the land, if any; (c) all of the Seller's rights relating to the land. The real property to be sold is known by the street address of 12 South Lincoln Avenue in the Borough of Washington, County of Warren, State of New Jersey, and is shown as Lot 31 in Block 95 on the Tax Map of the Borough of Washington, Warren County. The property is also described on Schedule A attached hereto.
3. **Purchase Price:** The purchase price is: \$95,000.00
4. **Payment of Purchase Price:** The Buyer will pay the purchase price as follows:
  - Deposit paid upon execution of Contract: \$9,500.00 (10% of the purchase price)
  - Balance to be paid at closing of title, in cash or by certified or bank cashier's check (subject to adjustment at closing in accordance with this Contract.): \$85,500.00
5. **Deposit Moneys:** All deposit moneys will be held in a non-interest-bearing attorneys' trust account by the Seller's attorneys, Gebhardt & Kiefer, P.C. (the "Escrow Agent"), and will be paid in accordance with the following: (a) in the event that the transaction contemplated herein is closed in accordance with the provisions hereof, all deposit monies shall be paid to the Seller; (b) in the event that the Buyer shall default in the performance of its obligation hereunder, all deposit monies shall be paid to the Seller upon written demand therefor by the Seller stating the nature and particulars of the default; (c) in the event that the Seller shall default in the

performance of its obligation hereunder, all deposit monies shall be paid to the Buyer upon written demand therefor by the Buyer stating the nature and particulars of the default, upon three (3) days' prior written notice to the Seller, unless in the event that subsequent to the default, the Seller shall cure such default and close in accordance with the terms hereof, in which case the deposit monies shall be paid to the Seller as a part of the Purchase Price; and (d) in the event that the parties shall agree in writing to terminate this Contract, the deposit monies shall be paid to whichever party is specified in such writing. In the event that a dispute shall arise with regard to the deposit monies, the Escrow Agent shall have the right to deliver the deposit monies to the Superior Court of Warren County to be held by such Court until the dispute is resolved, and upon such delivery, the Escrow Agent shall be relieved of all further obligations to either party with respect to such deposit monies. In addition, the Buyer acknowledges that the Escrow Agent is the Seller's attorney and waives any right to object to the continued representation by the Escrow Agent of the Seller in any action or proceeding involving the deposit monies or this transaction.

**6. Time and Place of Closing:** The closing date shall be on or before January 13, 2014, (the "Closing Date"). The closing will be held at the offices of Seller on such date between the hours of 10:00 a.m. and 4:00 p.m. If the closing does not occur on or before the Closing Date, the Seller shall have the option to cancel this Contract unilaterally by delivering written cancellation notice to the Buyer and retaining the deposit monies as liquidated damages in addition to all rights the Seller shall have at law and in equity.

**7. Transfer of Ownership:** At the closing, the Seller will transfer ownership of the Property to the Buyer. The Seller will give the Buyer a properly executed deed, an adequate affidavit of title, an Affidavit of Consideration, a Seller's Residency Certification, and a certified Resolution of the governing body of the Borough pertaining to the sale contemplated under this Contract.

**8. Type of Deed:** A deed is a written document used to transfer ownership of property. In this sale, the Seller agrees to provide and the Buyer agrees to accept a deed known as a Bargain and Sale Deed with covenants against grantors acts.

**9. Physical Condition of the Property:** This Property is being sold "as is". The Seller does not make any claims or promises about the condition or value of any of the Property, including, but not limited to, environmental matters, suitability for construction of structures or residences thereon, compliance with zoning codes, compliance with construction codes, viability of the issuance of a building permit with regard thereto, or the financing requirements of the Buyer. The Seller makes no representations as to the Property's precise acreage, subject to Paragraph 11 hereof.

**10. Adjustments at Closing.** The Buyer and Seller agree to adjust the following expenses as of the closing date: real estate taxes and any municipal assessments. The Buyer or the Seller may require that any person with a claim or right affecting the Property be paid off from the proceeds of this sale.

11. **Matters Prior to Closing.** The Buyer shall have the right to have a survey and a metes and bounds description of the Property prepared by a licensed surveyor prior to closing, and if such survey is certified to the Seller and the Seller's attorneys, the Seller will include such description and acreage in the Deed. The Seller shall not be liable to any person injured in the course of said survey, and the Buyer agrees to hold harmless the Seller from any claim for injury or property damage which arises from the presence of the surveyors, and other related individuals on the Property.

12. **Due Diligence.** The Seller shall afford the Buyer thirty (30) days from the execution of this Agreement by both parties to perform any and all due diligence or inspections with respect to the use of the Property and to notify Seller as to whether, based on the results of all such due diligence and inspections, Seller will proceed with this transaction. All such due diligence and inspections shall be paid for by Buyer. The Sellers shall cooperate with all reasonable requests made by the Buyer to access and investigate the Property. During the period of due diligence, the Buyer, its agents, employees, consultants and contractor shall have the right to enter onto the Property to perform the necessary inspections, including, but not limited to, wetlands; surveys; percolation tests; soil analysis; soil borings; environmental tests, including, but not limited to, Phase I environmental audit; feasibility studies; and any other test or investigation of a similar nature. If any testing to be done requires the Property to be disturbed, the Buyer shall remediate and restore the Property to its pre-existing condition. The Buyer may also have a survey of the Property completed. All inspections shall be at the Buyer's sole risk, and the Buyer hereby indemnifies and holds the Seller and its agents harmless, inclusive of legal fees and costs, with regard to the claims of any third party who enter upon the Property at the request of or for the benefit of the Buyer, regardless of whether the Seller was the cause in whole or in part of the condition that the caused the injury.

During this period of due diligence, the Sellers shall also provide Buyer with the opportunity to make a full and independent investigation of any correspondence, instruments, agreements, documents, records, plans, drawings, permits, approvals, survey and topographical maps, engineering data, and/or prior investigative reports done by the Sellers or in its possession.

The results of any inspections including, but not limited to, environmental inspections, shall be deemed confidential and shall not be disclosed to any third parties, other than the Buyer's agents, without the Sellers' expressed written authorization, unless required by judicial order.

If the Buyer is satisfied with the results of all inspections, investigations and/or studies, it shall notify the Sellers of the foregoing and further notify the Sellers that it shall proceed with the transaction, as agreed to herein. If the Buyer is dissatisfied with the results of its due diligence inquiry, it may elect to terminate this Agreement whereupon it shall be entitled to a refund of its deposit.

11. **Matters Prior to Closing.** The Buyer shall have the right to have a survey and a metes and bounds description of the Property prepared by a licensed surveyor prior to closing, and if such survey is certified to the Seller and the Seller's attorneys, the Seller will include such description and acreage in the Deed. The Seller shall not be liable to any person injured in the course of said survey, and the Buyer agrees to hold harmless the Seller from any claim for injury or property damage which arises from the presence of the surveyors, and other related individuals on the Property.

12. **Due Diligence.** The Seller shall afford the Buyer thirty (30) days from the execution of this Agreement by both parties to perform any and all due diligence or inspections with respect to the use of the Property and to notify Seller as to whether, based on the results of all such due diligence and inspections, Seller will proceed with this transaction. All such due diligence and inspections shall be paid for by Buyer. The Sellers shall cooperate with all reasonable requests made by the Buyer to access and investigate the Property. During the period of due diligence, the Buyer, its agents, employees, consultants and contractor shall have the right to enter onto the Property to perform the necessary inspections, including, but not limited to, wetlands; surveys; percolation tests; soil analysis; soil borings; environmental tests, including, but not limited to, Phase I environmental audit; feasibility studies; and any other test or investigation of a similar nature. If any testing to be done requires the Property to be disturbed, the Buyer shall remediate and restore the Property to its pre-existing condition. The Buyer may also have a survey of the Property completed. All inspections shall be at the Buyer's sole risk, and the Buyer hereby indemnifies and holds the Seller and its agents harmless, inclusive of legal fees and costs, with regard to the claims of any third party who enter upon the Property at the request of or for the benefit of the Buyer, regardless of whether the Seller was the cause in whole or in part of the condition that the caused the injury.

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The results of any inspections including, but not limited to, environmental inspections, shall be deemed confidential and shall not be disclosed to any third parties, other than the Buyer's agents, without the Sellers' expressed written authorization, unless required by judicial order.

If the Buyer is satisfied with the results of all inspections, investigations and/or studies, it shall notify the Sellers of the foregoing and further notify the Sellers that it shall proceed with the transaction, as agreed to herein. If the Buyer is dissatisfied with the results of its due diligence inquiry, it may elect to terminate this Agreement whereupon it shall be entitled to a refund of its deposit.

13. **Possession.** At the closing the Buyer will be given possession of the Property. No tenant will have any right to the Property unless otherwise agreed in this Contract.

14. **Ownership:** The Seller agrees to transfer and the Buyer agrees to accept ownership of the Property free of all claims and rights of others, except for:

(a) the rights of utility companies to maintain pipes, poles, cables and wires over, on and under the street, the part of the Property next to the street or running to any house or other improvement on the property, roadways or watercourses which may abut or traverse the Property;

(b) such facts as an accurate and current survey may reveal;

(c) Buyer intends to use the property for parking purposes. Buyer agrees to reserve 6 parking spaces, 24 hours per day, for the exclusive use of Borough residents that do not have off-street parking on their property; and

(d) any other recorded easements or restrictions which limit the use of the Property and which have been provided to the Buyer prior to the execution of this Contract by the Buyer.

15. **Complete Agreement:** This contract, *together with the Ordinance and Resolution Authorizing the Sale of Surplus Property* (hereinafter "contract documents") constitutes the entire and only agreement between the Buyer and the Seller. The contract documents replace and cancel any previous agreements between the Buyer and the Seller. The contract documents can only be changed by an agreement in writing signed by both Buyer and Seller.

16. **Parties Liable:** This contract is binding upon all parties who sign it and all who succeed to their rights and responsibilities.

17. **Notices:** All notices under this contract must be in writing. The notices must be delivered personally or mailed by certified mail, return receipt requested, to the other party at the address written in this contract or to the party's attorney, or sent by confirmed telefax, with a hard copy following immediately by regular mail; or by confirmed overnight courier.

18. **Realtor's Commission.** Both the Buyer and the Seller hereby represent and warrant to the other that they have not dealt with any real estate broker or real estate salesperson in connection with the transaction which is contemplated hereunder. Each party hereby agrees that they will indemnify, save harmless and defend the other from and against any and all claims which may be advanced against the other party for a brokerage commission, finder's fee or other similar fee which may be advanced in connection with the transaction contemplated hereunder.

19. **Both parties agree that the three (3) day attorney review period does not apply to this transaction.**

Signed and Agreed to by:

WITNESS:

2/19/13

Date Signed:

[Signature]  
Buyer

ATTEST:

BOROUGH OF WASHINGTON, IN THE  
COUNTY OF WARREN

[Signature]

Name: Kristine Blanchard  
Title: Borough Clerk

Date Signed:

11/26/13

By [Signature]  
Name: Scott McDermott  
Title: Mayor

# Request for Taxpayer Identification Number and Certification

Give form to the requester. Do not send to the IRS.

Name (See Specific Instructions on page 2)  
Paul Thomas L. ...

Business name (if different from above) (See Specific Instructions on page 2)  
...

Check appropriate box:  Individual/Sole proprietor  Corporation  Partnership  Other

Address (number, street, apt. no., or suite no.)  
6 ...

City, state, and ZIP code  
... 07853

Requester's name and address (optional)  
...

**Part I Taxpayer Identification Number (TIN)** List account numbers here (optional)

Enter your TIN in the appropriate box. For individuals, this is your social security number, SSN, however, for a resident alien, sole proprietor, or disregarded entity, see the Part I instructions on page 2. For other entities, it is your employer identification number (EIN). If you do not have a number, see how to get a TIN on page 2.

Note: If the account is in more than one name, see the chart on page 2 for guidelines on which number to enter.

(Social security number) 7766883448

or

(Employer identification number) 412322124

**Part II For U.S. Payees Exempt From Backup Withholding** (See the instructions on page 2)

**Part III Certification**

Under penalties of perjury, I certify that:

- The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me, and I am not subject to backup withholding because (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and
- I am a U.S. person (including a U.S. resident alien).

Certification instructions: You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return, for real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and general payments/other than interest and dividends, you are not required to sign the Certification, but you must provide your correct TIN. (See the instructions on page 2.)

Sign Here Signature of U.S. person [Signature] Date 9/27/13

**Purpose of Form**

A person who is required to file an information return with the IRS must get your correct taxpayer identification number (TIN) to report, for example, income paid to you for estate transactions, mortgage interest you paid, acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA.

Use Form W-9 only if you are a U.S. person (including a resident alien) to give your correct TIN to the person requesting it. Use requester and when applicable to:

- Certify the TIN you are giving is correct (or you are waiting for a number to be issued).
- Certify you are not subject to backup withholding, or
- Claim exemption from backup withholding if you are a U.S. exempt payee.

If you are a foreign person, use the appropriate Form W-8. See Pub. 515, Withholding of Tax on Nonresident Aliens and Foreign Corporations.

Note: If a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.

**What is backup withholding?** Persons making certain payments to you must withhold and pay to the IRS 31% of such payments under certain conditions. This is called "backup withholding." Payments that may be subject to backup withholding include interest, dividends, broker and dealer exchange transactions, rents, royalties, nonemployee pay, and certain payments from fishing boat operators. Real estate transactions are not subject to backup withholding.

If you give the requester your correct TIN, make the proper certifications, and report all your taxable interest and dividends on your tax return, payments you receive will not be subject to backup withholding. Payments you receive will be subject to backup withholding if:

- You do not furnish your TIN to the requester, or
- You do not certify your TIN when required (see the Part III instructions on page 2 for details), or
- The IRS tells the requester that you furnished an incorrect TIN, or
- The IRS tells you that you are subject to backup withholding because you did not report all your interest and dividends on your tax return (for reportable interest and dividends only), or
- You do not certify to the requester that you are not subject to backup withholding under 5 above (for reportable interest and dividend accounts opened after 1985 only).

**Penalties**

**Civil penalty for false information with respect to withholding.** If you make a false statement with no reasonable basis that results in no backup withholding, you are subject to a 50% penalty.

**Criminal penalty for falsifying information.** Willfully falsifying certifications or affirmations may subject you to criminal penalties including fines and/or imprisonment.

**Misuse of TINs.** If the requester discloses or uses TINs in violation of Federal law, the requester may be subject to civil and criminal penalties.

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RESOLUTION # 127-2016

**RESOLUTION AUTHORIZING THE BOROUGH OF WASHINGTON TO EXECUTE AN AMENDMENT TO THE REDEVELOPER AGREEMENT**

**WHEREAS**, pursuant to the Local Redevelopment and Housing Law (N.J.S.A. 40A:12A-1 et seq.), the Borough of Washington acting by resolution, determined that the Washington Avenue Core District was an "area in need of redevelopment" in accordance with N.J.S.A. 40A:12A-6(b); and

**WHEREAS**, in furtherance of same, the Borough of Washington and Jade Partners LLC ("Jade") entered into a certain Redevelopment Agreement dated \_\_\_\_\_, 2014; and

**WHEREAS**, the Redevelopment Agreement authorized Jade to redevelop Block 95, Lots 3 & 4 on New Jersey Route 57 also known as West Washington Avenue, in accordance with the terms thereof; and

**WHEREAS**, the Borough and Jade have since determined that it would be in the best interest of all parties to amend the existing Agreement in order for the parties to enter into an agreement pursuant to the New Jersey Long Term Tax Exemption Law, N.J.S.A. 40A:20-1; and

**WHEREAS**, Jade has also negotiated a contract for the purchase of surplus land owned by the Borough and designated as Block 95, Lot 31 ("Property"); and

**WHEREAS**, the Borough passed Ordinance # 5-2013, which authorized the sale of the Property to Jade and provided that the specific terms of the sale would be set forth in a resolution authorizing the sale; and

**WHEREAS**, Borough Resolution # 198-2013 further specified the terms and authorized the sale of said Property; and

**WHEREAS**, the Borough of Washington now wishes to amend the existing Redeveloper Agreement to reflect the new agreement pursuant to the New Jersey Long Term Tax Exemption Law, N.J.S.A. 40A:20-1; and

**WHEREAS**, because title to the aforementioned Property did not close as of the date of this Resolution, the Borough has determined that the Amendment set forth below shall be subject to the closing of title on the Property within sixty (60) days of the passage of this Resolution.

**NOW, THEREFORE BE IT RESOLVED** by the Mayor and Council of the Borough of Washington, in the County of Warren, New Jersey, as follows:

**I. AMENDMENT**

**If within sixty (60) days of the passing of the instant Resolution, the closing on the aforementioned Property occurs, Paragraph 25 of the Redeveloper Agreement shall be deleted in its entirety and replaced with following:**

Tax Abatements. The Borough acknowledges and agrees that the Redeveloper will be submitting a Governmental Application to the Borough under the Long Term Tax Exemption Law for approval of an agreement for payment in lieu of taxes, (hereinafter referred to as a "Financial Agreement"). The

Redeveloper and the Borough recognize that the Financial Agreement will benefit the Redeveloper, the Borough, and the potential residents and/or tenants of the Project. If proposed by the Redeveloper, the Borough may consider and approve such application and adopt the required ordinance within sixty (60) days of the date the Redeveloper files the application with the Borough. The proposed terms of the Financial Agreement are set forth in Exhibit "\_\_\_" attached hereto. The Financial Agreement shall be subject to the receipt of all Governmental Approvals required by the Applicable Laws. If Redeveloper defaults under this Agreement or fails to obtain all Governmental Approvals within the specified time period or Commence Construction within the specified time period, the Borough is not obligated to enter into the Financial Agreement or may void such Agreement if already executed.

## II. EXECUTION

(a) The Mayor is hereby authorized to execute an amendment to the Original Redevelopment Agreement, a form of which is attached hereto as Exhibit B (the "Amendment"), together with such additions, deletions and modifications as are necessary and desirable in consultation with counsel to effectuate the same.

(b) The Borough Clerk hereby authorized and directed, upon execution of the Amendment in accordance with the terms of Section II(a) hereof, to attest to the signature of the Mayor upon such document and is hereby further authorized and directed to affix the corporate seal of the Borough upon such document.

## III. SEVERABILITY

If any part of this Resolution shall be deemed invalid, such parts shall be severed and the invalidity thereby shall not affect the remaining parts of this Resolution.

## IV. AVAILABILITY OF THE RESOLUTION

A copy of this resolution shall be available for public inspection at the offices of the Borough

## V. EFFECTIVE DATE

This Resolution shall take effect upon final passage.

BOROUGH OF WASHINGTON

By \_\_\_\_\_

Scott McDonald, Mayor

ATTEST:

\_\_\_\_\_  
Jasmine Lin, R.M.C.

Dated:

The above Resolution was moved by \_\_\_\_\_, seconded by  
\_\_\_\_\_, voted and carried this \_\_\_\_\_ day of \_\_\_\_\_ 2016

Roll Call: Ayes:  
Nays:  
Abstentions:

\_\_\_\_\_  
Ann Kilduff, R.M.C.  
Borough Clerk

**SECOND AMENDMENT TO REDEVELOPER'S AGREEMENT**

THIS AGREEMENT, made and entered this *22<sup>nd</sup>* day of *June* 2017

BY AND BETWEEN:

**JADE PARTNERS WASHINGTON, LLC** (soon to be known as **JADE PARTNERS URBAN RENEWAL, LLC**), a New Jersey limited liability company with offices located at 16 Wolfe Run, Long Valley, New Jersey 07054,

hereinafter referred to as the "**Redeveloper**"

AND

**BOROUGH OF WASHINGTON**, a Municipal Corporation in the County of Warren and State of New Jersey, with offices located at 100 Belvidere Avenue, Washington, New Jersey 07822,

hereinafter referred to as the "**Borough.**"

**WITNESSETH:**

WHEREAS, the Redeveloper is the current owner of the tract or parcel of land (the "Property") described on the Borough Tax Map as Block 95, Lots 3 and 4, which have been merged in a single Lot 4; and

WHEREAS, the Redeveloper received preliminary and final site plan approval with various relief and conditions from the Borough of Washington Planning Board (the "Planning Board") pursuant to a resolution adopted on January 13, 2014, memorializing the Board's action on December 9, 2013 and amended pursuant to a resolution adopted on June 9, 2014, memorializing the Board's action on May 12, 2014 and further amended pursuant to a resolution adopted on September 8, 2014 memorializing the Board's action on August 11, 2014 (collectively, the "Resolutions") for the redevelopment of the Property consisting of demolition of the current structures on the Property and construction of a four story mixed use building of approximately 15,344 square feet with parking for 95 cars (the "Project"); and

WHEREAS, the Property is located in the Washington Avenue Core District of the Borough Redevelopment Plan and is required to be developed in accordance with the Redevelopment Plan; and

WHEREAS, the Redeveloper entered into a Redeveloper's Agreement with the Borough dated September 16, 2014, which was amended on August 16, 2016 by Borough Council Resolution #127-16, setting forth the rights, duties and obligations of the parties in connection with the Approval and approved Plans, which are attached hereto as **Exhibit A** and **Exhibit B**

respectively and incorporated herein by reference (collectively, "Redeveloper's Agreement"); and

WHEREAS, since execution of the Redeveloper's Agreement, the circumstances regarding the Borough's requirement to provide affordable housing for low and moderate income families have drastically changed;

WHEREAS, the Borough of Washington has filed a Declaratory Judgment Action in the Superior Court of New Jersey, Hunterdon County, in furtherance of the Supreme Court's March 10, 2015, decision captioned In re Adoption of N.J.A.C. 5:96 & 5:97 by N.J. Council on Affordable Housing, 221 N.J. 1 (2015) (the "Supreme Court Decision"), which was assigned to the Honorable Thomas C. Miller P.J. Cv.; and

WHEREAS, the Borough anticipated that as part of that litigation, it will be assigned, for the first time, a prospective affordable housing obligation; and

WHEREAS, the Borough has identified Redeveloper's site as a suitable site on which to provide for affordable housing; and

WHEREAS, the Resolutions did not require the Redeveloper to provide a set aside for affordable housing; and

WHEREAS, the Redeveloper has proposed to set aside twenty percent (20%) of the proposed fifty units on the Property (i.e. ten units) and deed restrict such for affordable housing as rental units in exchange for a \$30,000 per unit contribution from the Borough's Affordable Housing Trust Fund; and

WHEREAS, N.J.A.C. 5:93-8.16 provides that "A municipality may use revenues collected from development fees for any activity approved by the Council for addressing the municipal fair share. Such activities include, but are not limited to: rehabilitation, *new construction*, RCAs, ECHO housing, purchase of land for low and moderate income housing, improvement of land to be used for low and moderate income housing, extensions and/or improvements of roads and infrastructure to low and moderate income housing sites, assistance designed to render units to be more affordable and administration of the implementation of the housing element." [emphasis added]; and

WHEREAS, due to the above-referenced Declaratory Judgment Action and the Supreme Court Decision, the Borough will be required to receive approval from the Superior Court to amend its affordable housing spending plan to disburse funds under this Agreement; and

WHEREAS, the Borough desires to provide Redeveloper with such funds and the Redeveloper desires to proceed with the Redevelopment of the Property and to install the improvements in accordance with the Approval and approved Plans; and

WHEREAS, pursuant to Ordinance #5-2013, Resolution #198-2013, and the First Amendment to the Redeveloper's Agreement, the Borough agreed to sell to Redeveloper a

certain parking lot deemed to be surplus property and designated as Block 95, Lot 31 ("Parking Lot"); and

WHEREAS, due to financial circumstances, the closing on the sale of the Parking Lot was not completed in the agreed upon time; and

WHEREAS, the Borough and the Redeveloper desire to complete such transaction; and

WHEREAS, the Borough and Redeveloper have determined that it is in the best interest all parties to amend the Redeveloper's Agreement to enter into an agreement pursuant to the New Jersey Long Term Tax Exemption Law, N.J.S.A. 40A:20-1 et seq.; and

WHEREAS, the Borough and Redeveloper wish to amend the existing Redeveloper's Agreement to reflect the new agreements regarding the provision of affordable housing units, the sale of the Parking Lot, and the New Jersey Long Term Tax Exemption Law, N.J.S.A. 40A:20-1 et seq.; and

WHEREAS, any term of the Redeveloper's Agreement not specifically modified herein remains in full force and effect and binding upon Redeveloper.

NOW, THEREFORE, in consideration of the foregoing, and the agreements and conditions of the Redeveloper's Agreement, Approval and approved Plans, it is mutually agreed by and between parties hereto, as follows:

**1. Affordable Housing Trust Fund Contribution.**

a. *Amount.* In exchange for the promises and covenants set forth herein, the Borough shall pay to the Redeveloper the amount of \$300,000, subject to all terms and conditions herein.

b. *Recording of Deed Restriction.* Redeveloper and the Borough shall execute a Deed Restriction a form substantially the same as attached hereto as **Exhibit D**. The Deed Restriction Such document shall be recorded with the Warren County Clerk upon issuance of the first certificate of occupancy for the Project.

If the affordable rental units are not completed within two (2) years' of the execution of this Agreement, the Borough shall have the right pursuant to subsection (g) hereunder to seek return of any monies paid to the Owner hereunder. The Owner shall have the right to request an extension of this deadline from the Township Committee, which shall not be unreasonably withheld.

c. *Recording of Temporary Mortgage on Parking Lot Property.* Pursuant to Section 7 hereunder, Redeveloper shall purchase certain property from the Borough located at Block 95, Lot 31 and currently used as a municipal parking lot (the "Parking Lot"). In order to secure the Borough's interest in the completion of the affordable rental units, Redeveloper and the Borough shall execute a Temporary Mortgage on the Parking Lot in a form substantially the same as attached hereto as **Exhibit E**. The Temporary Mortgage is only intended to remain in effect until the residential portion of the Project is complete to ensure that the affordable rental

units are completed. The Temporary Mortgage shall be recorded with the Warren County Clerk upon execution of this Agreement. Within thirty (30) days of the issuance of the final certificate of occupancy for all ten (10) of the affordable rental units in the Project, the Borough shall file a discharge of the Temporary Mortgage. However, such discharge shall not occur until the Deed Restriction pursuant to subsection (b) hereunder is duly recorded.

If the affordable rental units are not completed within two (2) years of the execution of this Agreement, the Borough shall have the right to enforce the Temporary Mortgage. The Owner shall have the right to request an extension of this deadline from the Township Committee, which shall not be unreasonably withheld.

d. *Payment Schedule.* Payment from the Affordable Housing Trust Fund shall be made in six (6) installments based upon the below construction schedule. After the requisite work is complete, Redeveloper shall contact the Township Engineer in writing with a copy to the Borough Manager to inspect that such work was completed. The Borough Construction Code Official shall inspect the Property within thirty (30) days of receipt of such request from the Redeveloper. The Borough Construction Code Official shall then make a recommendation to the Borough's governing body regarding completion of the requisite work. All payments shall be made to Redeveloper within thirty (30) days of recommendation of the Borough Construction Code Official and submission of a proper payment voucher by Redeveloper to the Borough.

- i. First payment in the amount of \$75,000 shall be due upon demolition of the existing structures on the Property. However, such payment shall not be made until and unless the Borough receives approval from the Superior Court to amend its spending plan pursuant to subsection 2 below. If the demolition is completed prior to the Court's approval, the first payment shall be issued within 30 days of receipt of approval from the Court.
- ii. Second Payment in the amount of \$45,000 shall be due upon excavation and preparation of footing trenches and satisfactory inspections and approvals thereof.
- iii. Third Payment in the amount of \$45,000 shall be due upon complete erection of rough framing and satisfactory inspections and approvals thereof.
- iv. Fourth Payment in the amount of \$45,000 shall be due upon dry-in of structure and rough-in of all electrical, plumbing, HVAC, and mechanical systems and satisfactory inspections and approvals thereof.
- v. Fifth Payment in the amount of \$45,000 shall be due upon substantial completion of structure including but not limited to, finish of exterior façade, external utility (water, sewer, electric, and natural gas) hookups, finish plumbing, and interior trim-out.

vi. Sixth Payment in the amount of \$45,000 shall be due upon issuance of Certificates of Occupancy by Construction Code Official.

e. *Designation and Construction of Units.* Redeveloper agrees to designate ten (10) units to be constructed on the Property as affordable housing rental units. Redeveloper shall construct all affordable rental housing and provide for appropriate bedroom mixes in compliance with the current Council on Affordable Housing substantive rules and the Uniform Housing Affordability Control Regulations.

f. *Administration.* Redeveloper shall be responsible for administering the affordable housing units. The Borough shall have no financial obligations under this provision to assure the creditworthiness of the units, and all associated expenses shall be solely borne by the Developer, its successors, or assigns, which expenses include, but are not limited to providing an Administrative Agent at its exclusive expense to perform all administrative tasks. The administrative tasks include those responsibilities as set forth in N.J.A.C. 5:80-26.14 including, but not limited to, conducting an outreach process, conducting interviews with interested households, creating and maintaining a list of eligible households, determining income eligibility and all other activities to ensure that restricted units are rented to low- and moderate-income households. Redeveloper shall also be responsible for the costs of all funding applications including, but not limited to, low income housing tax credits, special needs trust funds, County HOME funds, Federal Home Loan Bank financing, construction and permanent financing.

g. *Cooperation with Reporting.* The Parties acknowledge that the Borough may have the obligation from time to time to generate information necessary to demonstrate the creditworthiness of the units. Redeveloper will cooperate with the Town and provide all monitoring and reporting requirements within fifteen (15) business days of the request.

h. *Remedies and Enforcement.* In the event that Redeveloper fails to complete the Project within two (2) years of the date of this Agreement, the Borough shall have all remedies in law or equity, including seeking a return of all monies paid pursuant to subsection (c) hereunder and all remedies available pursuant to the Temporary Mortgage and Deed Restriction set forth in subsection (b) hereunder.

2. **Amendment of Spending Plan.** Pursuant to N.J.S.A. 52:27D-329.2 et seq. and Borough Code Section 94-92, the Borough is not authorized to make any payments from its Affordable Housing Trust Fund without approval of a spending plan by the Council on Affordable Housing or a Court of competent jurisdiction. The payment to Redeveloper was not included in the Borough's previously approved spending plan. Therefore, the Borough must apply to the Superior Court of New Jersey in order to amend its spending plan. Within thirty days of execution of this Agreement, the Borough shall make such necessary application.

3. **Waiver of Payment of Development Fees.** Pursuant to Paragraph 24 of the Redeveloper's Agreement, Redeveloper was required to comply with Chapter 94, Article X, "Development Fees" of the Borough Code requiring certain contributions to the affordable housing trust fund or obtain relief from such requirement from the Borough Council. In light of the fact that such project is located in a redevelopment district and the Redeveloper shall be providing for affordable housing; such requirement is hereby waived.

4. **Stormwater Maintenance and Drainage Facilities.** Storm and surface waters shall be directed to drainage facilities in accordance with the drainage system shown on the approved Plans and said installation shall meet the approval of the Borough Engineer and any other required State or County entity. The Redeveloper represents that such drainage facilities shall be located on the Property and no other easements are required. The Redeveloper shall ensure that all lots and other areas in said development shall be graded and proper drainage installed in accordance with the Plans and at the direction of the Borough Engineer. The Redeveloper shall be responsible for all maintenance of stormwater management measures incorporated into the design of the development of the Property. Therefore, if required by applicable ordinances, statutes or regulations, the Redeveloper must file a maintenance plan with the Warren County Clerk's Office with a copy to the Borough Clerk and Engineer. If required by applicable ordinances, statutes, regulations, or project operations manual the Redeveloper shall file copies of all inspection and maintenance logs annually by April 1<sup>st</sup> of each year with the Borough Clerk and Borough Engineer. Redeveloper and its successors and / or assigns shall allow the Borough access to such stormwater and drainage facilities in order to inspect such as the Borough deems necessary. The purpose would be to inspect the stormwater management facilities as we deemed necessary in order to comply with applicable NJDEP regulations.

5. **Construction and Staging.** In accordance with the approved Plans, during construction of the project, construction vehicles shall enter the Property via West Washington Avenue and shall not utilize the Access Easement off of South Lincoln Avenue. This shall not restrict permitted ingress and egress use of the easement.

6. **Outstanding Borough Fines.** As a condition of this Agreement, Redeveloper shall pay any outstanding fines assessed against the property for Borough ordinance violations.

7. **Purchase of Parking Lot.** By Ordinance 5-2013 (the "Ordinance"), the Borough Council previously authorized the sale of the certain surplus property (Block 95, Lot 31) owned by the Borough and currently used as a municipal parking lot (the "Parking Lot") to Redeveloper, for \$95,000.00, with a deposit of \$9,500.00. Such deposit is already held in escrow by the Borough Attorney. On or about December 19, 2013, the Borough and Redeveloper executed a Contract of Sale, which is attached hereto as **Exhibit F**. By this Agreement, the closing date of such Contract of Sale is extended.

Title shall close within thirty (30) days from the date of the execution of this Agreement. If title does not close on such date due to any default of the Redeveloper, the Borough shall have the option to cancel the Contract of Sale and this Agreement unilaterally by writing to the Redeveloper and retaining the deposit monies as liquidated damages, in addition to any rights the Borough shall have at law and in equity against the Redeveloper. Redeveloper shall be required to execute an addendum to the Contract of Sale at closing acknowledging the extension of the closing date.

The conveyance shall be subject to public and private rights in any roadways or water courses which may abut or traverse the Parking Lot, restrictions and easements of record, if any, such facts as an accurate and current survey may reveal, and zoning ordinances of the municipality.

The sale of the Parking Lot is "as is" and without contingency, warranty or representation including, by way of example, as to condition of land, suitability for construction of structures thereon, compliance with zoning regulations, subdivision approval, issuance of building permit, environmental factors affecting the Property, and any financing requirements of purchaser. No financing contingencies shall be allowed.

The sale is final and the Redeveloper's deposit will not be returned for any reason except as otherwise provided in the Ordinance, Notice of Sale, this Agreement and the Contract of Sale. It will not be a reason to return the Redeveloper's deposit that the Parking Lot cannot be used for the purpose intended by the Redeveloper or that the Redeveloper cannot obtain the funds necessary to complete the purchase of the Parking Lot by the assigned closing date.

As a condition of the sale, Redeveloper agrees to reserve 6 parking spaces, 24 hours per day, for the exclusive use of Borough residents that do not have off-street parking on their property.

8. **Long Term Tax Exemption.** The Borough acknowledges that the Redeveloper will be submitting an application to the Borough under the New Jersey Long Term Tax Exemption Law, N.J.S.A. 40A:20-1 et seq. for approval of an agreement for a payment in lieu of taxes, (hereinafter, the "Financial Agreement"). The Redeveloper and the Borough recognize that the Financial Agreement will benefit the Redeveloper, the Borough, and the potential residents and/or tenants of the Project. If proposed by the Redeveloper, the Borough shall consider and approve such application and adopt the required ordinance within sixty (60) days of the date the Redeveloper files the application with the Borough. Such approval is conditioned upon such application being complete and in compliance with all applicable ordinances, laws, statutes, and regulations. The proposed terms of the Financial Agreement are set forth in **Exhibit C** attached hereto. The Financial Agreement shall be subject to the receipt of all governmental approvals required by the applicable laws. If Redeveloper defaults under this Agreement or fails to obtain all Governmental Approvals within the specified time period or commence construction within the specified time period, the Borough is not obligated to enter into the Financial Agreement or may void such Agreement if already executed.

The Borough further recognizes that in order to be eligible for a tax abatement pursuant to the New Jersey Long Term Tax Exemption Law, N.J.S.A. 40A:20-1 et seq., Redeveloper must be an urban renewal entity as defined in N.J.S.A. 40A:20-5. Redeveloper shall make all necessary applications and other arrangements to meet the requirements of the New Jersey Long Term Tax Exemption Law, N.J.S.A. 40A:20-1 et seq. In the event that Redeveloper cannot meet such requirements and upon request of the Redeveloper, this provision shall be amended by mutual agreement of the parties to allow for a five-year tax abatement pursuant to N.J.S.A. 40A:21-1 et seq.

9. **Inspection Fees and Escrow.** Pursuant to the Redeveloper's Agreement and Resolutions, Redeveloper established an escrow in the amount of \$10,000 to facilitate payment of attorney review and engineering inspection fees in accordance with N.J.S.A. 40:55D-53.1. Redeveloper further agreed that it would make subsequent installment deposits in the event the deposit balance reaches \$2,500.00. Such account has been depleted and not replenished by the

Redeveloper. Redeveloper is obligated to replenish the inspection fees deposit as required by Borough Ordinance. Within fifteen (15.) days of the execution of this Agreement, Redeveloper shall deposit into said escrow the amount of \$10,000. Moreover, no construction permit or certificate of occupancy shall be issued if such account has not been replenished in accordance with the Redeveloper's Agreement or this Amendment thereto. In the event there is a portion of any amount unused, it shall be returned to the Redeveloper upon approval of the Township Committee.

10. **Extension for Completion of Work.** Pursuant to Paragraph 6 of the Redeveloper's Agreement, Redeveloper was to complete work within two years of signing of the final site plan. Such period has expired. Therefore, Redeveloper shall request a one year extension of such time period from the Planning Board pursuant to Paragraph 6 thereof.

11. **Severability of Provisions.** If any paragraph, section, clause, sentence, provision or other part of this Agreement, or the application thereof to any person, firm or corporation, or its application to any facts or circumstances, shall for any reason be adjudged by a Court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remaining paragraphs, sections, clauses, sentences, provisions, or other parts of this Agreement. The provisions of this contract are intended to be severable.

12. **Limitation of Municipal Liability.** While the terms and conditions set forth in this Agreement are binding upon the Borough, the Board, and the Redeveloper, nothing herein contained shall be construed as preventing the Borough, the Board or the Redeveloper from exercising in any court of law or elsewhere any rights or duties which it may have by statute, ordinance or other law. This Agreement shall not operate to confer upon any such public body any powers, rights or duties it does not now possess, nor abridge the rights of the Redeveloper vis-a-vis any such public body.

a. The covenants, undertakings, agreements and other obligations mentioned in this Agreement shall not be construed as a representation by the Borough, the Board, or by any Borough officer, board or employee to have or to assume any contractual or other liability to or with any persons, firms or corporations purchasing any land, buildings or improvements from the redeveloper or otherwise using or having an interest in the same, nor shall this Agreement be construed to create any liability on the part of the Borough or the Board to third persons.

b. Nothing herein contained shall be construed to render the Borough or any of its officers, boards or employees liable for any charges, costs or debts for material, labor or other expenses incurred in the making of the improvements.

c. Redeveloper shall be and remain liable for any and all damage or money loss incurred by the Borough or its officers or agents by any neglect, wrongdoing, omission or commission of or by the Developer or by any person, firm or corporation acting for the redeveloper hereunder arising from the making of the improvements or the performance of the terms hereof. The Redeveloper shall save, indemnify and hold harmless the Borough, its officers, agents, boards and employees from any and all liability and reasonable costs incurred in defending, negotiating or settling any action which may arise from any such damage or loss, from the making of the improvements by Redeveloper or the performance of the terms hereof

except for improvements not installed by Redeveloper unless the Borough or its agents shall have acted contrary to law or failed to perform acts required by law or by this Agreement.

d. Nothing contained in this Agreement shall be construed to give any person or legal entity, not a party to this Agreement, any claim against the Borough or any of its agencies with respect to the manner of the installation of improvements, or for any damages arising therefrom.

13. **Indemnification.** Redeveloper shall be and remain liable for any and all damage or money loss occasioned to the Borough or the Board or their officers or agents by any neglect, wrongdoing, omission or commission of or by the Redeveloper or by any person, firm or corporation acting for the developer arising from the making of the site improvements, from the performance of the terms hereof, from the granting of site plan approval, or from or out of this Agreement, and shall save, indemnify and hold harmless the Borough, its officers, agents, boards and employees, and the Board, its members, officer, agents and employees, from any and all actions at law or in equity, charges, debts, liens, encumbrances, costs, counsel fees, and engineer and surveying fees which may arise from any such damage or loss, from the making or the improvements, from the performance of the terms hereof, from the granting of site plan approval or from or out of this Agreement unless the Borough or its agents shall have been judicially determined to have acted contrary to law or failed to perform acts required by law or by this Agreement or have been guilty of negligence which is actionable by law under N.J.S.A. 59:1-1 et seq. This indemnification shall not affect the Redeveloper's right to proceed against any third parties.

14. **Notices.** All notices sent pursuant to this Agreement shall be in writing and directed to the party at the address set forth at the beginning of this Agreement, unless prior to the notice being sent the party has delivered a substitute address to the other party by certified mail, return receipt requested, in which case the notice shall be sent to that address.

15. **Successors Bound.** The Redeveloper further agrees that this Agreement shall be binding upon the Redeveloper and the Redeveloper's heirs, personal representatives, successors or assigns (as the case may be), notwithstanding the fact that it may sell, transfer, encumber or otherwise dispose of the property or any portion thereof, and the performance guarantee called for herein shall remain in full force and effect in any such event. In the event of such transfer, the escrow accounts and any bonds posted by the Developer shall not be released in whole or in part, until the successor developer, assignee, person or entity has posted sufficient review and inspection escrows and bonds, as determined by the Town Attorney and Chief Financial Officer, and countersigns this Agreement, or executes a new developer's agreement with the Borough, as directed by the Borough Attorney.

16. **No Waiver.** Nothing contained in this Agreement shall be deemed a waiver by any party of its rights under any ordinance or state statute or other law, or be construed as an abridgment, preemption or waiver of the powers of the Borough, approving authority, or any other agency or public body.

17. **Provisions Enforceable as Conditions.** Each of the provisions of this Agreement shall have the same force and effect as if set forth at length as conditions of the grant of site plan approval.

18. **Amendments in Writing.** This Agreement may be changed, modified, or amended only by a written instrument signed by the parties hereto or their successors.

19. **Recording.** This Agreement may be recorded in the discretion of the Borough. It is understood and agreed that the continuing easements and obligations contained in this Agreement may also be included in a Declaration of Covenants and Restrictions filed by the Redeveloper in the Warren County Clerk's Office with such easements and obligations to run with the land.

20. **Deposits as Preconditions.** Building/construction permits or certificates of occupancy shall not be issued unless the deposits mentioned in this Agreement, or other necessary deposits, have been made.

21. **Costs of Enforcement.** If the Redeveloper neglects or fails to carry out any provision of this Agreement within a reasonable time period, the Borough shall have the authority to have the necessary work performed and to charge the Redeveloper or owner for the cost of work done.

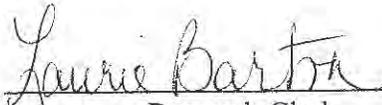
IN WITNESS WHEREOF, the said parties have hereunto caused this Agreement to be signed by their proper representatives (and, if a corporation, have caused their proper seal to be hereunto affixed) the day and year first above written.

ATTEST:

\_\_\_\_\_

JADE PARTNERS WASHINGTON, LLC  
By: 

ATTEST:

  
Borough Clerk

BOROUGH OF WASHINGTON  
By:  Mayor

**TEMPORARY REPAYMENT MORTGAGE**  
**BLOCK 95, LOT 31**

THIS REPAYMENT MORTGAGE, made and entered this            day of  
2017

**BY AND BETWEEN:**

**JADE PARTNERS WASHINGTON, LLC** (soon to be known as **JADE PARTNERS URBAN RENEWAL, LLC**), a New Jersey limited liability company with offices located at 16 Wolfe Run, Long Valley, New Jersey 07054, hereinafter referred to as the "**Owner**"

**AND**

**BOROUGH OF WASHINGTON**, a Municipal Corporation in the County of Warren and State of New Jersey, with offices located at 100 Belvidere Avenue, Washington, New Jersey 07822, hereinafter referred to as the "**Municipality**" or the "**Borough.**"

**WITNESSETH:**

**WHEREAS**, the Owner is the current owner of the tract or parcel of land (the "Parking Lot") described on the Borough Tax Map as Block 95, Lot 31; and

**WHEREAS**, the Owner received preliminary and final site plan approval with variance relief and conditions from the Borough of Washington Planning Board (the "Board") pursuant to a resolution adopted on January 13, 2014, memorializing the Board's action on December 9, 2013 and amended pursuant to a resolution adopted on June 9, 2014, memorializing the Board's action on May 12, 2014 and further amended pursuant to a resolution adopted on September 8, 2014 memorializing the Board's action on August 11, 2014 (collectively, the "Resolutions") for the redevelopment of Property adjacent to the Parking Lot (Block 95, Lots 3 and 4, which have been merged into a single Lot 4) consisting of demolition of the current structures on the Property and construction of a four story mixed use building of approximately 15,344 square feet with fifty residential rental units (the "Project"); and

**WHEREAS**, the Owner has agreed to set aside twenty percent (20%) of the proposed fifty residential rental units within the Project (i.e. ten units) and deed restrict

such for affordable housing as rental units in exchange for a \$30,000 per unit contribution from the Borough's Affordable Housing Trust Fund; and

**WHEREAS**, N.J.A.C. 5:93-8.16 provides that "A municipality may use revenues collected from development fees for any activity approved by the Council for addressing the municipal fair share. Such activities include, but are not limited to: rehabilitation, **new construction**, RCAs, ECHO housing, purchase of land for low and moderate income housing, improvement of land to be used for low and moderate income housing, extensions and/or improvements of roads and infrastructure to low and moderate income housing sites, assistance designed to render units to be more affordable and administration of the implementation of the housing element." [emphasis added]; and

**WHEREAS**, this Temporary Repayment Mortgage is only intended to ensure completion of the ten (10) affordable rental units and shall cease to be effective upon issuance of all certificates of occupancy for the ten (10) affordable rental units; and

**WHEREAS**, this Temporary Repayment Mortgage is intended to encumber the Parking Lot, Block 95, Lot 31 *only*; and

**NOW, THEREFORE**, in consideration of the foregoing, and the agreements and conditions of the Redeveloper's Agreement (and all amendments thereto), Approval and approved Plans, it is mutually agreed by and between parties hereto, as follows:

**I. Second Amended Redeveloper's Agreement**

In consideration of value received, the Owner has signed a Second Amended Redeveloper's Agreement dated June 21, 2017 (the "Redeveloper's Agreement"). The Owner promises to pay to the Municipality the amounts due under the Redeveloper's Agreement upon default, and to abide by all obligations contained therein.

**II. Mortgage as Security for Amount Due**

Although this Mortgage only encumbers the Parking Lot (Block 95, Lot 31), this Mortgage is given to the Municipality as security to ensure completion of the ten (10) rental affordable units to be constructed on the Property. This Mortgage shall cease to be effective once all certificates of occupancy are issued for the ten (10) affordable rental units mentioned herein. Within thirty (30) days' of the issuance of the final certificate of occupancy for the affordable rental units or the recording of a valid deed restriction on such units (whichever occurs later), the Borough shall file a Discharge of this Mortgage. The obligation evidenced by the Redeveloper's Agreement does not accrue interest.

### **III. Description of Property**

All of the land and improvements thereon located in the Borough of Washington in the County of Warren, State of New Jersey, described more specifically as Block No. 95, Lot 31.

### **V. Default**

The Municipality may declare the Owner in default on this Mortgage and on the Note if:

1. The Owner attempts to convey an interest in the Parking Lot without giving prior written notice to the Municipality;
2. The holder of any lien on the Parking Lot starts foreclosure proceedings;  
or
3. Bankruptcy, insolvency or receivership proceedings are commenced by or against the Owner.
4. Construction of the ten (10) affordable rental units is not complete within two (2) years of the execution of the Redeveloper's Agreement or any reasonable extensions permitted thereto.

### **VI. Municipality's Rights Upon Default**

If the Municipality declares that the Owner is in default of the Redeveloper's Agreement and / or this Mortgage, the Municipality shall have all of the rights given by law or set forth in this Mortgage.

### **VII. Notices.**

*ALL NOTICES MUST BE IN WRITING AND PERSONALLY DELIVERED OR SENT BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, TO THE ADDRESSES FIRST SET FORTH HEREIN ABOVE. ADDRESS CHANGES MAY BE MADE UPON WRITTEN NOTICE, MADE IN ACCORDANCE WITH THIS ARTICLE 7.*

### **VIII. No waiver by Municipality**

The Municipality may exercise any right under this Mortgage or under any law, even if the Municipality has delayed in exercising that authority, or has agreed in an earlier instance not to exercise that right. The Municipality does not waive its right to declare the Owner is in default by making payments or incurring expenses on behalf of the Owner.

**IX. Each Person Liable.**

The Mortgage is legally binding upon each Owner individually and all their heirs, assigns, agents and designees who succeed to their responsibilities. The Municipality may enforce any of the provisions of the Note and of this Mortgage against anyone or more liable individual.

**X. Subordination.**

This Mortgage will not be subordinate, and will not be subordinated by the Municipality, to any mortgage, refinancing, equity loan, secured letter of credit, or any other obligation secured by the Property, except with respect to (a) any such obligation which was duly recorded prior to the recording hereof, and (b) any such obligation which, when added to all other such obligations recorded against the Property, shall result in total debt secured by the Property being an amount less than the maximum resale price that would be applicable were the Control Period (as such term is defined by law) still in effect.

**XI. Subsequent Owners**

This Mortgage shall not be released, with respect to any subsequent owner who acquires the property through an exempt transfer unless the transferee shall execute 8 note and mortgage in the form of the Note and this Mortgage, and the same has been duly recorded.

**XII. Amendments.**

No amendment or change to the Note and this Mortgage may be made, except in a written document signed by both parties.

**XIII. Signatures.**

By executing this Mortgage, hereof, the Owner agrees to all of its terms and conditions.

**[SIGNATURE PAGES FOLLOW]**

ATTEST:

JADE PARTNERS WASHINGTON, LLC  
By: 

STATE OF New Jersey SS:  
COUNTY OF Warren

I CERTIFY that on this 21 day of June, 2017,  
Ray Rice personally came before me and stated to my satisfaction  
that this person

- (a) was the maker of the attached instrument;
- (b) was authorized to and did execute this instrument as  
Ray Rice of JADE PARTNERS WASHINGTON, LLC, the entity  
named in this instrument; and
- (c) executed this instrument as the act of JADE PARTNERS WASHINGTON, LLC

Witness my hand and seal.

Notary Public 

Printed Name: Susan Fleming

**SUSAN FLEMING**  
**NOTARY PUBLIC OF NEW JERSEY**

My Commission Expires: \* My Commission Expires 9/5/2018

ATTEST:

**BOROUGH OF WASHINGTON**

  
Laurie Barton, Borough Clerk

By:   
David Higgins, Mayor

I CERTIFY that on June 22, 2017, Laurie Barton personally came before me and acknowledged under oath, to my satisfaction, that:

- (a) She is the Acting Clerk of the **BOROUGH OF WASHINGTON**, the municipal corporation named in the attached document;
- (b) She is the attesting witness to the signing of this document by the proper municipal officer, who is David Higgins, Mayor of the municipal corporation;
- (c) this document was signed and delivered by the municipal corporation as its duly authorized voluntary act;
- (d) She knows the proper seal of the municipal corporation which was affixed to this document; and

She signs this proof to attest to the truth of these facts.

Witness my hand and seal.

Notary Public 

Printed Name: Susan Fleming

My Commission Expires: **SUSAN FLEMING**  
**NOTARY PUBLIC OF NEW JERSEY**  
~~My Commission Expires 9/5/2018~~

**DEED RESTRICTION**

THIS DEED RESTRICTION, made and entered this *22<sup>nd</sup>* day of *June* 2017

**BY AND BETWEEN:**

**JADE WASHINGTON URBAN RENEWAL, LLC**, a New Jersey limited liability company with offices located at 16 Wolfe Run, Long Valley, New Jersey 07054, hereinafter referred to as the "Owner"

**AND**

**BOROUGH OF WASHINGTON**, a Municipal Corporation in the County of Warren and State of New Jersey, with offices located at 100 Belvidere Avenue, Washington, New Jersey 07822, hereinafter referred to as the "Municipality" or the "Borough."

**WITNESSETH:**

**WHEREAS**, the Owner is the current owner of the tract or parcel of land (the "Property") described on the Borough Tax Map as Block 95, Lots 3 and 4, which have been merged in a single Lot 4; and

**WHEREAS**, the Owner received preliminary and final site plan approval with variance relief and conditions from the Borough of Washington Planning Board (the "Board") pursuant to a resolution adopted on January 13, 2014, memorializing the Board's action on December 9, 2013 and amended pursuant to a resolution adopted on June 9, 2014, memorializing the Board's action on May 12, 2014 and further amended pursuant to a resolution adopted on September 8, 2014 memorializing the Board's action on August 11, 2014 (collectively, the "Resolutions") for the redevelopment of the Property consisting of demolition of the current structures on the Property and construction of a four story mixed use building of approximately 15,344 square feet with fifty residential rental units; and

**WHEREAS**, the Owner has agreed to set aside twenty percent (20%) of the proposed fifty residential rental units on the Property (i.e. ten units) and deed restrict such for affordable housing as rental units in exchange for a \$30,000 per unit contribution from the Borough's Affordable Housing Trust Fund; and

**WHEREAS**, N.J.A.C. 5:93-8.16 provides that "A municipality may use revenues collected from development fees for any activity approved by the Council for addressing the municipal fair share. Such activities include, but are not limited to: rehabilitation, **new construction**, RCAs, ECHO housing, purchase of land for low and moderate income housing, improvement of land to be used for low and moderate income housing, extensions and/or improvements of roads and infrastructure to low and moderate income housing sites, assistance designed to render units to be more affordable and administration of the implementation of the housing element." [emphasis added]; and

**NOW, THEREFORE**, in consideration of the foregoing, and the agreements and conditions of the Redeveloper's Agreement, Approval and approved Plans, it is mutually agreed by and between parties hereto, as follows:

**I. Consideration**

In consideration of value received, the Owner hereby agrees to abide by the covenants, terms, and conditions set forth in this Deed Restriction, with respect to the land and improvements described more specifically in Section 2 hereof (the "Property").

**II. Description of Property**

All of the land and improvements thereon located in the Borough of Washington in the County of Warren, State of New Jersey (the "Property"), described more specifically as Block No. 95, Lots 3 and 4 (which have been merged into a single Lot 4).

**III. Affordable Housing Covenants.**

The following covenants (the "Covenants") shall run with the land for the period of time (the "Control Period"), until the Municipality elects to release the units from such requirements. Prior to such a municipal election, a restricted unit must remain subject to the requirements of this subchapter for a period of thirty (30) years from the date of recording of this document.

A. Sale and use of the Property is governed by regulations known as the Uniform Housing Affordability Controls, which are found in New Jersey Administrative Code at Title 5, chapter 80, subchapter 26 (N.J.A.C. 5:80-26.1, *et seq.* the "Uniform Controls").

B. The restricted units shall be designated as follows, in accordance with the uniform controls: Five (5) rental dwelling units to low-income households, and five (5) rental dwelling units for moderate-income household; and no commitment for any such dwelling unit shall be given or implied, without exception, to any person who has not been certified for that unit in writing by the Municipality or the Administrative Agent hired

by the Owner. So long as any dwelling unit remains within its Control Period, sale of the Property must be expressly subject to these Deed Restrictions. Nothing herein shall prevent the sale of the within described property or any interest therein by the owner, provided that any sale or any interest therein is subject to the restrictions herein set forth. The Owner shall provide reasonable notice in writing to the Borough prior to a sale of the within described property.

C. No improvements may be made to the Property that would affect the bedroom configuration of any of its dwelling units, and any improvements to the Property must be approved in advance and in writing by the Municipality. Notwithstanding said language, the Owner shall not require any additional approval for the improvements already approved by the Borough Planning Board as may be amended from time to time, and pursuant to the Developer's Agreement and all amendments thereto.

D. The Owner shall notify the Municipality and the State of any foreclosure actions filed with respect to the Property within five (5) business days of service upon Owner.

E. The Owner shall notify the Municipality and the State within three (3) business days of the filing of any petition for protection from creditors or reorganization filed by or on behalf of the Owner.

F. So long as this restriction shall remain in effect, the Owner shall be precluded from converting any of the residential units on the premises into condominium units pursuant to the New Jersey Condominium Act.

#### **IV. Remedies for Breach of Affordable Housing Covenants.**

A breach of the Covenants will cause irreparable harm to the Municipality, to the State and to the public, in light of the public policies set forth in the New Jersey Fair Housing Act, the Uniform Housing Affordability Control rules found at N.J.A.C. 5:80-26, and the obligation for the provision of low and moderate-income housing.

A. In the event of a threatened breach of any of the Covenants by the Owner, or any successor in interest of the Property, the Municipality and the State shall have all remedies provided at law or equity, including the right to seek injunctive relief or specific performance.

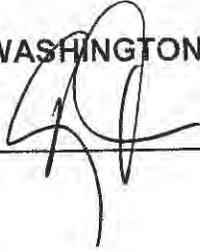
B. Upon the occurrence of a breach of any Covenants by the Grantee, or any successor in interest or other owner of the Property, the Municipality shall have all remedies provided at law or equity including but not limited to recouping of any funds from a sale in violation of the Covenants, diverting of rent proceeds from illegal rentals, injunctive relief to prevent further violation of said Covenants, entry on the premises, those provided under Title 5, Chapter 80, Subchapter 26 of the New Jersey Administrative Code and specific performance.

730 [ATURE PAGES FOLLOW]

ATTEST:

JADE WASHINGTON URBAN RENEWAL, LLC

By: \_\_\_\_\_



STATE OF New Jersey SS:  
COUNTY OF Warren

I CERTIFY that on this 21 day of June, 2017,  
Ray Rice personally came before me and stated to my satisfaction  
that this person

- (a) was the maker of the attached instrument;
- (b) was authorized to and did execute this instrument as  
Ray Rice of JADE WASHINGTON URBAN RENEWAL, LLC,  
the entity named in this instrument; and
- (c) executed this instrument as the act of JADE WASHINGTON URBAN RENEWAL,  
LLC

Witness my hand and seal.

Notary Public Susan Fleming

Printed Name: Susan Fleming

**SUSAN FLEMING**  
NOTARY PUBLIC OF NEW JERSEY  
My Commission Expires 9/5/2018

My Commission Expires: \_\_\_\_\_

ATTEST:

**BOROUGH OF WASHINGTON**

*Laurie Barton*  
Laurie Barton, Borough Clerk

By: *David Higgins*  
David Higgins, Mayor

I CERTIFY that on June 22, 2017, Laurie Barton personally came before me and acknowledged under oath, to my satisfaction, that:

- (a) She is the Acting Clerk of the **BOROUGH OF WASHINGTON**, the municipal corporation named in the attached document;
- (b) She is the attesting witness to the signing of this document by the proper municipal officer, who is David Higgins, Mayor of the municipal corporation;
- (c) this document was signed and delivered by the municipal corporation as its duly authorized voluntary act;
- (d) She knows the proper seal of the municipal corporation which was affixed to this document; and

She signs this proof to attest to the truth of these facts.

Witness my hand and seal.

Notary Public *Susan Fleming*

Printed Name: Susan Fleming

My Commission Expires: **SUSAN FLEMING**  
**NOTARY PUBLIC OF NEW JERSEY**  
My Commission Expires 9/5/2018

## FINANCIAL AGREEMENT

THIS FINANCIAL AGREEMENT (hereinafter this "Agreement"), made this 22<sup>nd</sup> day of \_\_\_\_\_, 2016, (the "Effective Date") by and between

\_\_\_\_\_ an urban renewal entity qualified to do business under the provisions of the Long Term Tax Exemption Law, *N.J.S.A. 40A:20-1 et seq.*, as amended and supplemented (the "**Long Term Tax Exemption Law**"), with offices located at 16 Wolfe Run, Long Valley, New Jersey 07054,

**hereinafter referred to as the "Entity"**

**AND**

**BOROUGH OF WASHINGTON**, a Municipal Corporation in the County of Warren and State of New Jersey, with offices located at 100 Belvidere Avenue, Washington, New Jersey 07822,

**hereinafter referred to as the "Borough."**

(the Borough and Entity are collectively referred to as the "Parties").

### WITNESSETH:

**WHEREAS**, the Entity is the contract purchaser of the property commonly known as 95, Lot 4 on the tax map of the Borough; and

**WHEREAS**, the Property is located within the Washington Avenue Core District of the Borough Redevelopment Plan (the "**Redevelopment Area**"), which has been designated by the Borough as an area in need of redevelopment pursuant to the Local Redevelopment and Housing Law, *N.J.S.A. 40A:12A-1 et seq.*, as amended and supplemented (the "**Local Redevelopment and Housing Law**") by adopted resolution by the governing body of the Borough of Washington ("**Borough Council**"); and

**WHEREAS**, pursuant to *N.J.S.A. 40A:12A-7*, the Borough Council adopted an ordinance approving and adopting a redevelopment plan for the Redevelopment Area ("**Redevelopment Plan**"); and

**WHEREAS**, the proposed project to be undertaken by the Entity on the Property is the demolition of the current structures on the Property and construction of a four-story mixed use building of approximately 15,344 square feet, including fifty (50) residential rental units (40 to be market rate and 10 to be affordable units) and associated supporting facilities, amenities and parking, consistent with the Redevelopment Plan (the "**Project**"); and

**WHEREAS**, the Entity has submitted an application to the Borough for the approval of a long-term tax exemption for the Project pursuant to the Long Term Tax Exemption Law, which application is attached hereto as Exhibit B (the "**Application**"); and

**WHEREAS**, on \_\_\_\_\_ 201\_\_, the Borough Council adopted an ordinance, entitled, “ \_\_\_\_\_”, approving the application and authorizing the execution of this Agreement, a copy of which is attached hereto as Exhibit C (the “**Ordinance**”); and

**WHEREAS**, the Borough has undertaken a policy to encourage redevelopment of underutilized areas within the Borough; and

**WHEREAS**, the Borough made the following findings with respect to the Project:

A. Relative Benefits of the Project:

i. The Project site is a site which is currently vacant and underutilized. The Project will redevelop the site with a 4-story mixed use project, containing 50 residential units in accordance with the Redevelopment Plan. The Entity will generate significant amounts of new (otherwise unavailable) municipal revenues through the Annual Service Charge and water/sewer fees. In light of the cost of environmental remediation market conditions, economic factors, and development costs impacting this Project, it is not financially feasible to undertake the development of this Project in the absence of the tax exemption. Accordingly, without the incentive the tax exemption, it is unlikely that the Project would be undertaken. Without the Project, the benefits described above would not be realized.

B. Assessment of the importance of the tax exemption in obtaining development of the Project and influencing the locational decisions of probable occupants:

i. The tax exemption permits the development of underutilized property and provides a stream of revenue in the form of the Annual Service Charges. The relative stability and predictability of the Annual Service Charges will allow the owners and, by extension, the occupants, of the Project to stabilize their expenses, which will ensure the likelihood of the success of the Project and ensure that it will have a positive impact on the surrounding area. Further, the relative stability and predictability of the Annual Service Charge makes the Project more attractive to investors and lenders needed to finance the Project. The tax exemption permits the development of the Project in an area that cannot otherwise be developed by reducing the expenses associated with the operation of the Project. Reduced expenses allows for more competitive rents in an otherwise untested market. As a result, the locational decisions of the probable tenants will be influenced positively by the tax exemption.

**NOW, THEREFORE**, in consideration of the mutual covenants herein contained and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is mutually covenanted and agreed as follows:

## ARTICLE I

### GENERAL PROVISIONS

#### SECTION 1.01 Governing Law.

This Agreement shall be governed by the provisions of the Long Term Tax Exemption Law, the Local Redevelopment and Housing Law, the Ordinance, and all other Applicable Laws. It is expressly understood and agreed that the Borough expressly relies upon the facts, data, and representations contained in the Application in granting this tax exemption.

#### SECTION 1.02 General Definitions.

The following terms shall have the meanings assigned to such term in the preambles hereof:

Agreement

Application

Entity

Effective Date

Local Redevelopment and Housing Law

Long Term Tax Exemption Law

Borough Committee

Ordinance

Party/Parties

Planning Board

Project

Property

Redevelopment Agreement

Redevelopment Area

Redevelopment Plan

Borough

Unless specifically provided otherwise or the context otherwise requires, the following terms when used in this Agreement shall mean:

Administrative Fee – The annual fee paid to the Borough by the Entity, as set forth in Section 4.06 of the Agreement.

Allowable Net Profit - The amount arrived at by applying the Allowable Profit Rate to Total Project Cost pursuant to the provisions of *N.J.S.A. 40A:20-3(b)*.

Allowable Profit Rate - The greater of (a) twelve percent (12%) or (b) the percentage per annum arrived at by adding one and one-quarter percent (1¼%) to the annual interest percentage rate payable on the Entity's initial permanent mortgage financing. If the initial permanent mortgage is insured or guaranteed by a governmental agency, the mortgage insurance premium or similar charge, if payable on a per annum basis, shall be considered as interest for this purpose. If there is no permanent mortgage financing, or if the financing is internal or undertaken by a related

party, the Allowable Profit Rate shall be the greater of (x) twelve percent (12%) or (y) the percentage per annum arrived at by adding one and one-quarter percent (1¼%) to the interest rate per annum that the Borough determines to be the prevailing rate of mortgage financing on comparable improvements in the County. The provisions of *N.J.S.A.* 40A:20-3(b) are incorporated herein by reference.

Annual Gross Revenue – Pursuant to *N.J.S.A.* 40A:20-3(a), the annual gross revenue shall be calculated as one hundred percent (100%) of the rental charges generated from the residential units comprising the Project including pet rents, parking rents, floor or view premiums and any other similar charges that may be collected from tenants of the Project; provided, however, that Annual Gross Revenue shall not include application fees, lost key charges, telecommunications charges, utility charges and late fees.

Annual Service Charge - The amount the Entity has agreed to pay the Borough, or its designee, pursuant to Article IV for municipal services supplied to the Project, which sum is in lieu of any taxes on the Land and Improvements, which amount shall be pro-rated in the year in which the Annual Service Charge begins and the year in which the Annual Service Charge terminates.

Annual Service Charge Start Date – The Annual Service Charge Start Date shall be, for each residential building which constitutes a phase of the Project, the date of the issuance of the Certificate of Occupancy for the first residential unit within that building to be constructed in the Project.

Applicable Law – All federal, State and local laws, ordinances, approvals, rules, regulations and requirements applicable thereto including, but not limited to, the Local Redevelopment and Housing Law and the Long Term Tax Exemption Law, as applicable, relevant construction codes including construction codes governing access for persons with disabilities, and such zoning, sanitary, pollution and other environmental safety ordinances, laws and such rules and regulations thereunder, including all applicable environmental laws, and applicable federal and State labor standards.

Auditor's Report - A complete financial statement outlining the financial status of the Project (for a period of time as indicated by context), which shall also include a certification of Total Project Cost and clear computation of Net Profit as provided in *N.J.S.A.* 40A:20-3(c). The contents of the Auditor's Report shall have been prepared in conformity with generally accepted accounting principles. The Auditor's Report shall be certified as to its conformance with such principles by a certified public accountant who is licensed to practice that profession in the State of New Jersey.

Certificate of Occupancy - A temporary (if temporary or conditional for the limited reasons of grading, seeding, landscaping and/or surface pavement course) or permanent Certificate of Occupancy, as such term is defined in the New Jersey Administrative Code issued by the Borough authorizing occupancy of a building, in whole or in part, pursuant to *N.J.S.A.* 52:27D-133.

Clerk - The municipal clerk of the Borough.

County – The County of Warren.

County Share – The first five percent (5%) of the Annual Service Charge, which shall be payable to the County in accordance with the provisions of *N.J.S.A.* 40A:20-12.

Default - A breach or the failure of either Party to perform any obligation imposed upon such Party by the terms of this Agreement, or under Applicable Law, beyond any applicable grace or cure periods after written notice of such failure.

Default Notice – As defined in Section 15.02.

Financial Plan – The financial plan prepared pursuant to *N.J.S.A.* 40A:20-8(e) attached to the Application as Exhibit I.

Improvements - Any building, structure or fixture permanently affixed to the Land and to be constructed and exempt under this Agreement.

In Rem Tax Foreclosure - A summary proceeding by which the Borough may enforce the lien for taxes due and owing by a tax sale in accordance with the provisions of the In Rem Tax Foreclosure Act and Tax Sale Law.

In Rem Tax Foreclosure Act – *N.J.S.A.* 54:5-104.29 et seq., as may be amended or supplemented from time to time.

Land – The real property, but not the Improvements, commonly known as Block 95, Lots 3 and 4 (merged into a single Lot 4) on the tax maps of the Borough, as more particularly described by the metes and bounds description set forth in Exhibit A of this Agreement.

Land Taxes - The amount of taxes assessed on the value of the Land exclusive of the value of any Improvements related thereto, in accordance with Applicable Laws.

Land Tax Payments - Payments made on the quarterly due dates, including approved grace periods, if any, for Land Taxes as determined by the Tax Assessor and the Tax Collector.

Lease-up Period- For each phase of the project, the 24-month period commencing with the date of substantial completion.

Material Conditions – As defined in Section 4.07.

Mayor - The Mayor of the Borough.

Minimum Annual Service Charge – The total taxes levied against all real property constituting the Project Site in the last full tax year in which the Property was subject to taxation.

Net Profit – The Annual Gross Revenue of the Entity pertaining to the Property, less all operating and non-operating expenses of the Entity, all determined in accordance with generally accepted accounting principles and the provisions of *N.J.S.A.* 40A:20-3(c), which includes, but is not limited to, an annual amount sufficient to amortize (utilizing the straight line method-equal annual amounts) the Total Project Cost over the term of the abatement granted pursuant to this

Agreement as well as all other expenses permitted under the provisions of N.J.S.A. 40A:20-3(c).

Notice of Termination – As defined in Section 15.04.

State – The State of New Jersey.

Tax Assessor – The Borough Tax Assessor.

Tax Collector – The Borough Tax Collector.

Tax Sale Law – N.J.S.A. 54:5-1 *et seq.*, as the same may be amended or supplemented from time to time.

Termination – Expiration of the term of this Agreement in accordance with Section 3.01 or any action or omission which by operation of the terms of this Agreement shall cause the Entity to relinquish or forfeit the tax exemption granted pursuant to this Agreement.

Total Project Cost – The total cost of construction and/or rehabilitation of the Project through the date a Certificate(s) of Occupancy is issued for the entire Project, which categories of cost are as defined in N.J.S.A. 40A:20-3(h). There shall be included in Total Project Cost the actual costs incurred to construct the Improvements which are specifically described in the Application.

### **SECTION 1.03 Interpretation and Construction.**

In this Agreement, unless the context otherwise requires:

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

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

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

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

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

F. All notices to be given hereunder and responses thereto shall be given, unless a certain number of days is specified, within a reasonable time, which shall not be less than ten (10) days nor more than twenty (20) days, unless the context dictates otherwise.

G. All exhibits referred to in this Agreement and attached hereto are incorporated herein and made part hereof.

**SECTION 1.04 Reliance by Borough.** It is expressly understood and agreed that the Borough has relied upon the facts and representations contained in the Application in granting the tax exemption described in this Agreement.

**{End of Article I}**

## **ARTICLE II** **APPROVAL**

### **SECTION 2.01 Approval of Tax Exemption**

The Borough does hereby grant its approval for a tax exemption for the Project in accordance with the provisions of the Long Term Tax Exemption Law on the Property. Pursuant to the Ordinance, the Improvements to be constructed and maintained by the Entity shall be exempt from taxation as provided for herein.

### **SECTION 2.02 Approval of the Entity**

Approval is granted to the Entity based on its representation that its Certificate of Formation, attached to the Application as Exhibit A thereto, contains all the requisite provisions of law, has been reviewed and approved by the Commissioner of the Department of Community Affairs, and has been filed with, as appropriate, the Secretary of State, all in accordance with *N.J.S.A. 40A:20-5*.

### **SECTION 2.03 Improvements to be Constructed**

The Entity represents that it will construct or cause the Improvements to be constructed in phases in accordance with the Redevelopment Plan, the approved site plan, and the Redevelopment Agreement.

### **SECTION 2.04 Construction Schedule**

The Entity agrees to diligently undertake to complete construction within 24 months of the issuance of the first building permit subject only to "Force Majeure".

### **SECTION 2.05 Ownership, Management and Control**

The Entity represents that it is currently the owner of the Property or will become same prior to the start of construction. The Entity expressly covenants, warrants and represents that upon completion, the Project, including all Land and Improvements, shall be used, managed and operated for the purposes set forth in the Application and in accordance with the Redevelopment Plan and all Applicable Laws.

### **SECTION 2.06 Financial Plan**

The Entity represents that the Improvements shall be financed substantially in accordance with the representations set forth in the Financial Plan. The Application and Financial Plan, made a part hereof, set forth the estimated Total Project Cost, amortization rate on Total Project Cost, the source of funds, the interest rates to be paid on construction financing, the source and amount of paid-in capital, the terms of any mortgage amortization, and rental schedules and lease terms, as applicable, in accordance with the Long Term Tax Exemption Law.

### **SECTION 2.07 Affordable Housing**

The Entity will be required to provide ten (10) affordable housing rental units within the Project in accordance with the Deed Restriction executed by the Entity in favor of the Borough.

**{End of Article II}**

## ARTICLE III

### DURATION OF AGREEMENT

#### SECTION 3.01 Term

This Agreement is effective on the Effective Date. So long as there is compliance with the Applicable Laws and this Agreement, it is understood and agreed by the Parties that this Agreement, including the obligation to pay Annual Service Charges under Article IV and the tax exemption granted and referred to in Section 2.01, shall remain in effect until the earlier of (i) twelve (12) years from the date of the Effective Date or (ii) for ten (10) years from the Annual Service Charge Start Date for the Project as that term is defined herein. The tax exemption shall only be effective during the period of usefulness of the Project and shall continue in force only while the Project is owned by a corporation, association or other entity formed and operating under the Long Term Tax Exemption Law. Upon Termination, the tax exemption for the Project shall expire and the Land and Improvements shall thereafter be assessed and taxed according to the general laws applicable to other non-exempt property in the Borough. Upon Termination all restrictions and limitations upon the Entity shall terminate upon the Entity's rendering and the Borough's acceptance of its final accounting, pursuant to *N.J.S.A. 40A:20-12*. Notwithstanding the above, if the Entity fails to commence construction within the timeframe set forth in Section 2.04, above, then the Borough may terminate the Agreement upon ten (10) days prior written notice to the Entity.

#### SECTION 3.02 Date of Termination

Upon any Termination of the tax exemption, as described in Section 3.01, the date of such Termination shall be deemed to be the last day of the fiscal year of the Entity.

#### SECTION 3.03 Voluntary Termination by Entity

The Entity may at any time after the expiration of one year from the completion of the Project notify the Borough that as of a certain date designated in the notice, it relinquishes its status under the Long Term Tax Exemption Law and that the Entity has obtained the consent of the Commissioner of the Department of Community Affairs. Upon Termination of the Agreement, all restrictions and limitations upon the Entity shall terminate upon the Entity's rendering and the Borough's acceptance of its final accounting, pursuant to *N.J.S.A. 40A:20-12*.

{End of Article III}

## ARTICLE IV

### ANNUAL SERVICE CHARGE

#### SECTION 4.01 Annual Service Charge Consent

The Entity hereby consents and agrees to the amount of Annual Service Charge and to the liens described in this Agreement, and the Entity shall not contest the validity or amount of any such lawfully imposed lien. Notwithstanding anything herein to the contrary, the Entity's obligation to pay the Annual Service Charge shall be absolute and unconditional and shall not be subject to any defense, set-off, recoupment or counterclaim under any circumstances, including without limitation any loss of the status of the Entity as an urban renewal entity qualified under and as defined in the Long Term Tax Exemption Law, or any violation by the Borough of any provisions of this Agreement. The Entity's remedies shall be limited to those specifically set forth herein and otherwise provided by Applicable Law.

#### SECTION 4.02 Payment of Annual Service Charge

A. In consideration of the tax exemption, the Entity shall make payment of the Annual Service Charge commencing on the Annual Service Charge Start Date.

B. Payment of the Annual Service Charge shall be made to the Borough on a quarterly basis on February 1, May 1, August 1, and November 1 after the Annual Service Charge Start Date in accordance with the Borough's tax collection schedule, subject, nevertheless, to adjustment for over or underpayment within ninety (90) days after the close of each calendar year. The obligation to pay the Annual Service Charge shall continue until the Termination of the Agreement.

C. In the event that the Entity fails to timely pay the Annual Service Charge or any installment thereof, the amount past due shall bear interest at the rate of 10% per year until paid.

D. In accordance with the Long Term Tax Exemption Law, specifically *N.J.S.A. 40A:20-12*, in the event of any change in the tax-exemption status as provided herein during any tax year, including but not limited to any Termination, the procedure for the apportionment of any taxes and/or Annual Service Charge, as the case may be, shall be the same as in the case of other changes in tax exemption status to any other property located within the Borough during the tax year, in accordance with Applicable Law.

#### SECTION 4.03 Annual Service Charge Amount

Pursuant to *N.J.S.A. 40A:20-12*, the Annual Service Charge shall be an amount equal to the greater of: (a) (i) 11% of Annual Gross Revenues for the first two years after the Annual Service Charge Start Date provided, however in no event shall the Annual Service Charge be less than \$ \_\_\_\_\_; (ii) 12% of Annual Gross Revenues for years 3-4 after the Annual Service Charge Start Date but in no event less than \$ \_\_\_\_\_; (iii) 13% of Annual Gross Revenues for the years 5-6 after the Annual Service Charge Start Date but in no event less than \$ \_\_\_\_\_; (iv) 14% of Annual Gross Revenues for the years 7-8 after the Annual Service

Charge Start Date but in no event less than \$ \_\_\_\_\_; (v) 15% of Annual Gross Revenues for the years 9-10 after the Annual Service Charge Start Date but in no event less than \$ \_\_\_\_\_; or (b) the Minimum Annual Service Charge. Subject to the Minimum Annual Service Charge, during the Lease-up Period, the Annual Service Charge for that phase shall be billed based on the Entity's actual Annual Gross Revenue for that period.

Notwithstanding the provisions of the Long Term Tax Exemption Law or any provision of the Agreement to the contrary, including Section 4.04 herein, the Annual Service Charge shall never be reduced below the Minimum Annual Service Charge through any tax appeal on the Land and/or Improvements or any other legal proceeding regarding the Project during the period that this Agreement is in force and effect.

#### **SECTION 4.04 Land Taxes and Credits**

A. For each year during the term of this Agreement, the Land Tax payments shall be applied as a credit against the Annual Service Charge. In any year that the Entity fails to make any Land Tax Payments when due and owing, such delinquency shall render the Entity ineligible for any land tax credits against the Annual Service Charge for such tax year, subject to a right to cure any such delinquency prior to the end of the applicable tax year. The Entity is required to make payment of both the Annual Service Charge and the Land Tax Payments, if applicable. The Entity is required to pay the full Land Tax Payments in any given year, and no credits will be applied against the Annual Service Charge for partial payment of the Land Taxes, where delinquency extends beyond the cure period. The Entity's failure to make the requisite Annual Service Charge payment and/or the requisite Land Tax Payment in a timely manner shall constitute a violation and breach of this Agreement. The Borough shall, among its other remedies, have the right to proceed against the Property pursuant to the Tax Sale Law and/or may declare a Default under this Agreement upon sixty (60) days written notice to the Entity.

#### **SECTION 4.05 Schedule of Staged Adjustments to Annual Service Charge**

Pursuant to *N.J.S.A.* 40A:20-12(b), the Annual Service Charge shall be adjusted as follows:

A. Stage One. Commencing on the Annual Service Charge Start Date through the 2<sup>nd</sup> year of the Agreement, the Annual Service Charge shall be the amount established in accordance with Section 4.03 of the Agreement.

B. Stage Two. From the 3<sup>rd</sup> year through the 4<sup>th</sup> year of the Agreement, the Annual Service Charge shall be the amount established in accordance with Section 4.03 or 4.04 of the Agreement, as applicable, or 20% of the amount of the taxes otherwise due on the Land and Improvements, whichever is greater.

C. Stage Three. From the 5<sup>th</sup> year through the 6<sup>th</sup> year of the Agreement, the Annual Service Charge shall be the amount established in accordance with Section 4.03 or 4.04 of the Agreement, as applicable, or 40% of the amount of the taxes otherwise due on the Land and Improvements, whichever is greater.

D. Stage Four. From the 7<sup>th</sup> year through the 8<sup>th</sup> year of the Agreement, the Annual Service Charge shall be the amount established in accordance with Section 4.03 or 4.04 of the Agreement, as applicable, or 60% of the amount of the taxes otherwise due on the Land and Improvements, whichever is greater.

E. Stage Five. For the 9<sup>th</sup> and 10<sup>th</sup> years of the Agreement, the Annual Service Charge shall be the amount established in accordance with Section 4.03 or 4.04 of the Agreement, as applicable, or 80% of the amount of the taxes otherwise due on the Land and Improvements, whichever is greater.

There is any dispute as to the amount of taxes which would otherwise be due on the land and improvements under any of the stages as set forth above, said issue shall be resolved by filing a Complaint with the Warren County Tax Board and/or New Jersey Tax Court.

#### SECTION 4.06 Administrative Fee

The Entity shall pay annually an administrative fee to the Borough in addition to the Annual Service Charge. The Administrative Fee shall be computed as two percent (2%) of the Annual Service Charge required pursuant to Section 4.03. This fee shall be payable and due on or before February 1<sup>st</sup> of each year for the Administrative Fee accrued in the prior calendar year, and collected in the same manner as the Annual Service Charge. In the event the Entity fails to pay the Administrative Fee when due and owing, the amount unpaid shall bear the highest rate of interest permitted under applicable New Jersey law in the case of unpaid taxes or tax liens until paid.

#### SECTION 4.07 Material Conditions

It is expressly agreed and understood that all payments of Annual Service Charges and any interest payments, penalties or costs of collection due thereon, Land Taxes and the Administrative Fee are material conditions of this Agreement (the "**Material Conditions**"). If any other term, covenant or condition of this Agreement, as to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement or the application of such term, covenant or condition to persons or circumstances other than those held invalid or unenforceable, shall not be affected thereby, and each remaining term, covenant or condition of this Agreement shall be valid and enforced to the fullest extent permitted by Applicable Law.

#### SECTION 4.08 No Reduction in Payment of the Annual Service Charge

Neither the amounts nor dates established for payment of the Annual Service Charge, as provided in Sections 4.02 and 4.03 hereof shall be reduced, amended or otherwise modified during the term of this Agreement.

#### SECTION 4.09 Annual Service Charges as Municipal Lien

In accordance with the provisions of the Long Term Tax Exemption Law, the Annual Service Charge shall be a continuous municipal lien on the Property and the Improvements.

#### SECTION 4.10 Security for Payment of Annual Service Charges

In order to secure the full and timely payment of the Annual Service Charges, the Borough on its own behalf reserves the right to prosecute an In Rem Tax Foreclosure action against the Property, as more fully set forth in this Agreement.

**SECTION 4.11 County Portion Paid to the County**

In accordance with the provisions of *N.J.S.A.* 40A:20-12, upon the payment of the Annual Service Charge, the Borough shall remit the County Share to the County.

**{End of Article IV}**

## **ARTICLE V**

### **REMEDIES**

#### **SECTION 5.01 Dispute Resolution**

Pursuant to N.J.S.A. 40A:20-9(f), any resolution of a dispute must be pursuant to an arbitration proceeding.

#### **SECTION 5.02 Remedies**

In the event of a Default on the part of the Entity to pay any installment of the Annual Service Charge required by Article IV, the Borough in addition to its other remedies, reserves the right to proceed against the Project, in the manner provided by Applicable Law, including the Tax Sale Law and the In Rem Tax Foreclosure Act, and any act supplementary or amendatory thereof. Whenever the word "Taxes" appears, or is applied, directly or implied, to mean real estate taxes or municipal liens on land, such statutory provisions shall be read, as far as it is pertinent to this Agreement, as if the Annual Service Charges were taxes or municipal liens on land. In either case, however, the Entity does not waive any defense it may have to contest the rights of the Borough to proceed in the above-mentioned manner.

**{End of Article V}**

## ARTICLE VI

### CERTIFICATE OF OCCUPANCY

#### SECTION 6.01 Certificate of Occupancy

It is understood and agreed that it shall be the obligation of the Entity to obtain all Certificates of Occupancy in a reasonably timely manner.

#### SECTION 6.02 Filing of Certificate of Occupancy

It shall be the responsibility of the Entity to promptly file with both the Tax Assessor and the Tax Collector a copy of any Certificate of Occupancy issued for the Project.

Failure of the Entity to file such issued Certificate of Occupancy as required by the preceding paragraph shall not militate against any action or non-action, taken by the Borough, including, if appropriate retroactive billing with interest for any charges determined to be due, in the absence of such filing by the Entity.

{End of Article VI}

## ARTICLE VII

### ANNUAL AUDITS

#### SECTION 7.01 Accounting System

The Entity agrees to maintain a system of accounting and internal controls established and administered in accordance with generally accepted accounting principles and as otherwise prescribed by Applicable Law.

#### SECTION 7.02 Periodic Reports

A. Auditor's Report: Within one hundred twenty (120) days after the close of each fiscal or calendar year, depending on the Entity's accounting basis, for the duration of this Agreement, the Entity shall submit to the Mayor, Borough Council, the Tax Collector and the Borough Clerk, who shall advise those municipal officials required to be advised, and the Division of Local Government Services in the Department of Community Affairs, its Auditor's Report for the preceding fiscal or calendar year pursuant to *N.J.S.A. 40A:20-3(c)*. The Report shall clearly identify and calculate all items comprising the Annual Gross Revenue and the Net Profit for the Entity during the previous year. The Entity assumes all costs associated with preparation of the periodic reports.

B. Total Project Cost Audit: Within ninety (90) days after the final Certificate of Occupancy is issued for the Project, the Entity shall, unless this Agreement is terminated, submit to the Mayor, Borough Council, the Tax Collector and the Borough Clerk, who shall advise those municipal officials required to be advised, an audit of Total Project Cost, certified as to actual construction costs by the Entity's architect.

C. Disclosure Statement: On each anniversary date of the execution of this Agreement, if there has been a change in ownership or interest from the prior year's filing, the Entity shall submit to the Mayor, Borough Council, the Tax Collector and the Borough Clerk, who shall advise those municipal officials required to be advised, a disclosure statement listing the persons having an ownership interest in the Project, and the extent of the ownership interest of each and such additional information as the Borough may request from time to time.

#### SECTION 7.03 Inspection

The Entity shall permit the inspection of its property, equipment, buildings and other facilities of the Project and, if deemed appropriate or necessary, by representatives duly authorized by the Borough and Division of Local Government Services in the Department of Community Affairs pursuant to *N.J.S.A. 40A:20-9(e)*. The Entity shall also permit, upon written request, examination and audit of its books, contracts, records, documents and papers relating to the Project by representatives duly authorized by the Borough and Division of Local Government Services in the Department of Community Affairs pursuant to *N.J.S.A. 40A:20-9(e)*. Such inspection shall be made upon ten (10) days' written notice during the Entity's regular business hours, in the presence of an officer or agent designated by the Entity. To the extent

reasonably possible, the inspection will not materially interfere with construction or operation of the Project.

#### **SECTION 7.04 Limitation on Profits and Reserves**

During the period of tax exemption as provided herein, the Entity shall be subject to a limitation on its profits and dividends pursuant to the provisions of *N.J.S.A. 40A:20-15*. Pursuant to *N.J.S.A. 40A:20-3(b)* and (c), this calculation shall be completed in accordance with generally accepted accounting principles.

The Entity shall have the right to establish a reserve against vacancies, unpaid rentals, and reasonable contingencies in an amount up to ten percent (10%) of the Annual Gross Revenues of the Entity for the last full fiscal year preceding the year and may retain such part of the excess Net Profits as is necessary to eliminate a deficiency in that reserve, as provided in *N.J.S.A. 40A:20-15*. The reserve shall be noncumulative.

There is expressly excluded from calculation of Annual Gross Revenue and from Net Profit as set forth in *N.J.S.A. 40A:20-3* for the purpose of determining compliance with *N.J.S.A. 40A:20-15* or *N.J.S.A. 40A:20-16*, any gain realized by the Entity on the sale of all or a portion of the Project, whether or not taxable under Applicable Law.

#### **SECTION 7.05 Payment of Dividend and Excess Profit Charge**

In the event the Net Profits of the Entity in any fiscal year shall exceed the Allowable Net Profits for such period, then the Entity, within ninety (90) days after the end of such fiscal year, shall pay such excess Net Profits to the Borough as an additional service charge; provided, however, that the Entity may maintain a reserve as determined pursuant to aforementioned Section 7.04. The calculation of Net Profit and Allowable Net Profit shall be made in the manner required pursuant to *N.J.S.A. 40A:20-3(c)* and *40A:20-15*.

The Parties agree that any excess Net Profit will be paid to the Borough as additional Annual Service Charge.

**{End of Article VII}**

## ARTICLE VIII

### ASSIGNMENT AND/OR ASSUMPTION

#### SECTION 8.01 Approval of Sale of Project to Entity Formed and Eligible to Operate Under Applicable Law

The Entity shall not voluntarily transfer more than ten percent (10%) of the Project, until it has removed itself and the Project from all restrictions under this Agreement. The Entity shall, however, be permitted to transfer all or any portion of the Project to another urban renewal entity approved by the Borough as follows:

A. As permitted by *N.J.S.A. 40A:20-10(a)*, it is understood and agreed that the Borough, on written application by the Entity after completion of the Project, may consent to a sale of the Project and the transfer of this Agreement provided: (i) the transferee entity does not own or lease any other Project subject to long term tax exemption at the time of transfer; (ii) the transferee entity is formed and eligible to operate under the Long Term Tax Exemption Law; (iii) the Entity is not then in Default of this Agreement or the Long Term Tax Exemption Law; (iv) the Entity's obligations under this Agreement are fully assumed by the transferee entity; and (v) the transferee entity agrees to abide by all terms and conditions of this Agreement including, without limitation, the filing of an application pursuant to *N.J.S.A. 40A:20-8*, and any other terms and conditions of the Borough in regard to the Project. In the event that the transfer contemplated in this Section 8.01(A) is for less than the whole of the Project, the Annual Service Charge to be paid each by the Entity and the transferee entity after the transfer shall be pro-rated based on the land area being transferred compared to the total land area for the Project.

B. Nothing contained herein shall prohibit any transfer of any ownership interest in the Entity of ten percent (10%) or less, provided that any such transfer shall be disclosed to the Borough Council in the next Auditor's Report or in correspondence sent to the Borough Clerk in advance of the next Auditor's Report.

C. If the Entity transfers the Project to another urban renewal entity, and the transferee entity has assumed all of the Entity's contractual obligations under this Agreement, then, pursuant to *N.J.S.A. 40A:20-6*, the Entity shall be discharged from any further obligation under this Agreement and shall be qualified to undertake another project pursuant to the Long Term Tax Exemption Law. The date of transfer of title of the Project to a purchasing entity shall be considered to be the close of the fiscal year of the Entity. Within ninety (90) days after that date of the transfer of title, the Entity shall pay to the Borough the amount of reserve, if any, maintained by it, as well as the excess Net Profit, if any, pursuant to *N.J.S.A. 40A:20-15*.

#### SECTION 8.02 Severability

It is an express condition of the granting of this tax exemption that during its duration, the Entity shall not, without the prior consent of the Borough Council by ordinance, convey, mortgage or transfer, all or part of the Project so as to sever, disconnect, or divide the

Improvements from the Land which are basic to, embraced in, or underlying the exempt Improvements.

**SECTION 8.03 Subordination of Fee Title**

It is expressly understood and agreed that the Entity has the right, subordinate to the lien of the Annual Service Charges, and to the rights of the Borough hereunder to encumber and/or lease the Land and/or Improvements, and that any such encumbrance or assignment shall not be deemed to be a violation of this Agreement.

**{End of Article VIII}**

## ARTICLE IX

### BOROUGH DETERMINATIONS AND OBLIGATIONS

#### SECTION 9.01 Relative Benefits

In accordance with the Long Term Tax Exemption Law, specifically *N.J.S.A. 40A:20-11(a)*, the Borough hereby finds and determines that this Agreement is to the direct benefit of the health, safety, welfare and financial well-being of the Borough and its citizens despite the tax exemption granted hereunder. The Project site is vacant and underutilized. The Project will redevelop the site with a 50-unit residential rental project in accordance with the Redevelopment Plan. The Project will create approximately \_\_ construction jobs and \_\_ permanent jobs. The Project will generate significant amounts of new (otherwise unavailable) municipal revenues through the Annual Service Charge and water/sewer fees. In light of the substantial cost of remediating environmental conditions, market conditions, economic factors and development costs impacting this Project, it is not financially feasible to undertake the development of this Project in the absence of the tax exemption. Accordingly, without the incentive the tax exemption, it is unlikely that the Project would be undertaken. Without the Project, the benefits described above would not be realized.

#### SECTION 9.02 Importance of Tax Exemption

In accordance with the Long Term Tax Exemption Law, specifically *N.J.S.A. 40A:20-11(b)*, the Borough hereby finds and determines that it has reviewed the Application and accompanying financial information and it has determined that this Agreement is a critical incentive for the Entity to undertake the Project in the Borough due to the extraordinary costs associated with the development of the Property. The tax exemption permits the development of underutilized property and provides a stream of revenue in the form of the Annual Service Charges. The relative stability and predictability of the Annual Service Charges will allow the owners and, by extension, the occupants, of the Project to stabilize their expenses, which will ensure the likelihood of the success of the Project and ensure that it will have a positive impact on the surrounding area. Further, the relative stability and predictability of the Annual Service Charge makes the Project more attractive to investors and lenders needed to finance the Project. The tax exemption permits the development of the Project in an area that cannot otherwise be developed by reducing the expenses associated with the operation of the Project. Reduced expenses allows for more competitive rents in an otherwise untested market. As a result, the locational decisions of the probable tenants will be influenced positively by the tax exemption.

{End of Article IX}

## **ARTICLE X**

### **WAIVER**

#### **SECTION 10.01 Waiver**

Nothing contained in this Agreement or otherwise shall constitute a waiver or relinquishment by the Borough or the Entity of any rights and remedies provided by the Applicable Law except for the express waiver herein of certain rights of acceleration and certain rights to terminate the Agreement and tax exemption for violation of any of the conditions provided herein. Nothing herein shall be deemed to limit any right of recovery that the Borough or the Entity has under law, in equity, or under any provision of this Agreement.

**{End of Article X}**

**ARTICLE XI**

**NOTICE**

**SECTION 11.01 Notice**

Any notice required hereunder to be sent by any Party to another Party shall be sent to all other Parties hereto simultaneously by certified or registered mail, return receipt requested or by commercial overnight delivery service with package tracking capabilities and for which proof of delivery is available, as follows:

A. When sent to the Entity it shall be addressed as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**with copies to:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

B. When sent to the Borough, it shall be addressed as follows:

Borough Clerk  
100 Belvidere Avenue  
Washington, New Jersey 07822

**with copies to:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

The notice to the Borough shall identify the subject with the tax account numbers of the tax parcels comprising the Property.

**{End of Article XI}**

## **ARTICLE XII**

### **COMPLIANCE**

#### **SECTION 12.01 Statutes and Ordinances**

The Entity hereby agrees at all times prior to the expiration or Termination of this Agreement to remain bound by the provisions of Applicable Law and any lawful ordinances and resolutions of the Borough, including, but not limited to, the Long Term Tax Exemption Law. The Entity's failure to comply with such statutes or ordinances shall constitute a violation and breach of the Agreement.

**{End of Article XII}**

## **ARTICLE XIII**

### **CONSTRUCTION**

#### **SECTION 13.01 Construction**

This Agreement shall be construed and enforced in accordance with the laws of the State of New Jersey, and without regard to or aid or any presumption or other rule requiring construction against the Party drawing or causing this Agreement to be drawn, since counsel for both the Entity and the Borough have combined in their review and approval of same.

**{End of Article XIII}**

## ARTICLE XIV

### INDEMNIFICATION

#### SECTION 14.01 Indemnification

It is understood and agreed that in the event the Borough shall be named as a party defendant in any action respecting the Property brought against the Borough or the Entity by allegation of any breach, Default or a violation of any of the provisions of this Agreement and/or the provisions of the Long Term Tax Exemption Law or any other Applicable Law, the Entity shall indemnify and hold the Borough harmless from and against all liability, losses, damages, demands, costs, claims, actions or expenses (including reasonable attorneys' fees and expenses) of every kind, character and nature arising out of or resulting from the action or inaction of the Entity and/or by reason of any breach, Default or a violation of any of the provisions of this Agreement, the provisions of *N.J.S.A. 40A:20-1 et seq.*, and/or any other Applicable Law except for any misconduct by the Borough or any of its officers, officials, employees or agents, and the Entity shall defend the suit at its own expense. However, the Borough maintains the right to intervene as a party thereto, to which intervention the Entity hereby consents, the expense thereof to be borne by the Entity.

{End of Article XIV}

## ARTICLE XV

### DEFAULT

#### **SECTION 15.01** Default

Default shall be failure of either Party to conform to the terms of this Agreement and/or perform any obligation imposed by statute, ordinance or lawful regulation beyond any applicable notice, cure or grace period.

#### **SECTION 15.02** Cure Upon Default

Should a Party be in Default of any obligation under this Agreement, the non-defaulting Party shall notify the defaulting Party and any mortgagee, if applicable, of the Entity in writing of said Default (the "**Default Notice**"). Said Default Notice shall set forth with particularity the basis of said Default. Except as otherwise limited by law, the defaulting Party shall have sixty (60) days to cure any Default (other than a Default in payment of any installment of the Annual Service Charge which default must be cured within ten (10) days from the date of its receipt of the Default Notice) provided such cure can reasonably be effected within such sixty (60) day period in which case Entity shall have such additional time to cure as reasonably necessary to effect same. In the event of any uncured Default by the Entity, the Borough shall have the right to proceed against the Property pursuant to Applicable Law. Upon any Default in payment of any installment of the Annual Service Charge, the Borough shall have the right to proceed with an In Rem Tax Foreclosure consistent with the provisions and procedures of the In Rem Tax Foreclosure Act.

#### **SECTION 15.03** Remedies Upon Default Cumulative; No Waiver

Subject to the other terms and conditions of this Agreement, all of the remedies provided in this Agreement to the Borough, and all rights and remedies granted to it by law and equity shall be cumulative and concurrent and no determination of the invalidity of any provision of this Agreement shall deprive the Borough of any of its remedies or actions against the Entity because of Entity's failure to pay Land Taxes, the Annual Service Charge, and/or the Administrative Fee and interest payments. This right shall only apply to arrearages that are due and owing at the time, and the bringing of any action for Land Taxes, Annual Service Charges, Administrative Fee or other charges, or for breach of covenant. The resort of any other remedy herein provided for the recovery of Land Taxes, Annual Service Charges, Administrative Fee or other charges shall not be construed as a waiver of the right to proceed with an In Rem Tax Foreclosure action consistent with the terms and provisions of this Agreement.

#### **SECTION 15.04** Termination Upon Default of the Entity

In the event the Entity fails to cure or remedy any Default within the time period provided in Section 15.02, the Borough has the right to terminate this Agreement upon thirty (30) days written notice to the Entity (the "**Notice of Termination**").

**SECTION 15.05 Final Accounting**

Within ninety (90) days after the date of Termination, the Entity shall provide a final accounting and pay to the Borough the reserve, if any, pursuant to the provisions of *N.J.S.A.* 40A:20-13 and 15 as well as any excess Net Profits. For purposes of rendering a final accounting the Termination of the Agreement shall be deemed to be the end of the fiscal year for the Entity.

**SECTION 15.06 Conventional Taxes**

Upon Termination or expiration of this Agreement, the tax exemption for the Project shall expire and the Land and the Improvements thereon shall thereafter be assessed and conventionally taxed according to the general law applicable to other nonexempt taxable property in the Borough.

**{End of Article XV}**

## ARTICLE XVI

### MISCELLANEOUS

#### **SECTION 16.01** Conflict

The Parties agree that in the event of a conflict between the Application and this Agreement, the language in this Agreement shall govern and prevail.

#### **SECTION 16.02** Oral Representations

There have been no oral representations made by either of the Parties hereto which are not contained in this Agreement. This Agreement, the Ordinance of the Borough authorizing this Agreement, and the Application constitute the entire agreement between the Parties and there shall be no modifications thereto other than by a written instrument executed by the Parties hereto and delivered to each of them.

#### **SECTION 16.03** Entire Document

All conditions in the Ordinance of the Borough Committee approving this Agreement are incorporated in this Agreement and made a part hereof. This Agreement, the Ordinance and the Application constitute the entire agreement between the Parties and there shall be no modifications thereto other than by a written instrument executed by the Parties hereto and delivered to each of them.

#### **SECTION 16.04** Good Faith

In their dealings with each other, the Parties agree that they shall act in good faith.

#### **SECTION 16.05** Recording

This entire Agreement will be filed and recorded with the Warren County Clerk by the Entity at the Entity's expense.

#### **SECTION 16.06** Municipal Services

The Entity shall make payments for municipal services, including water and sewer charges and any services that create a lien on a parity with or superior to the lien for Land Taxes, if applicable, and Annual Service Charges, as required by law. Nothing herein is intended to release Entity from its obligation to make such payments.

#### **SECTION 16.07** Annual Service Charge Paid to County

Pursuant to *N.J.S.A. 40A:20-12*, the Borough shall remit five percent (5%) of the Annual Service Charge to Warren County.

**SECTION 16.08 Financing Matters**

The financial information required by the final paragraph of *N.J.S.A.* 40A:20-9 is set forth in the Application, which Application is incorporated herein by reference. The parties acknowledge that this Project will be financed by a first mortgage from the First Bank of Hope in the principal amount of \$4,365,000. During the period of this Agreement, the Entity shall have the right to refinance the Property without approval from the Borough, provided that any refinancing does not exceed the principal amount of the original financing of \$4,365,000. The Entity, however, will provide reasonable notice in writing to the Borough of any refinancing.

**SECTION 16.09 Counterparts**

This Agreement may be simultaneously executed in counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

**SECTION 16.10 Amendments**

This Agreement may not be amended, changed, modified, altered or terminated without the written consent of the Parties hereto.

**SECTION 16.11 Certification**

The Clerk shall certify to the Tax Assessor, pursuant to *N.J.S.A.* 40A:20-12, that an agreement with an urban renewal entity, i.e., the Entity, for the development of the Redevelopment Area, has been entered into and is in effect as required by *N.J.S.A.* 40A:20-1, *et seq.* Delivery by the Clerk to the Tax Assessor of a certified copy of the Ordinance adopted by the Borough Council approving the tax exemption described herein and this Agreement shall constitute the required certification. Upon certification as required hereunder, the Tax Assessor shall implement the exemption and continue to enforce that exemption without further certification by the Clerk until the expiration of the entitlement to exemption by the terms of this Agreement or until the Tax Assessor has been duly notified by the Clerk that the exemption has been terminated.

Further, upon the adoption of this Agreement, a certified copy of the Ordinance adopted by the Borough Council approving the tax exemption described herein and this Agreement shall forthwith be transmitted to the Director of the Division of Local Government Services by the Clerk.

**SECTION 16.12 Severability**

If any one or more of the covenants, agreements or provisions herein contained shall be held to be illegal or invalid in a final proceeding, then any such covenants, agreements or provisions shall be null and void and shall be deemed separable from the remaining covenants, agreements or provisions and shall in no way affect the validity of any of the other provisions hereof.

**SECTION 16.13 Effect of Amendment and Restatement**

This Agreement integrates all of the terms and conditions mentioned herein or incidental hereto, and supersedes all negotiations or previous agreements between the Parties with respect to all or any part of the subject matter hereof.

**{End of Article XVI}**

**[SIGNATURE PAGES FOLLOW]**





**Appendix G**  
**Planning Board Resolution**  
**Approving Towne Center Site Plan**  
**And Subsequent Amendments**

Application #:           #4-13          

Approved:           8/11/14          

**BOROUGH OF WASHINGTON  
PLANNING BOARD**

**FINDINGS OF FACT, CONCLUSIONS AND RESOLUTION  
REGARDING THE APPLICATION OF  
JADE PARTNERS WASHINGTON, LLC  
FOR PRELIMINARY AND FINAL SITE PLAN APPROVAL WITH  
VARIANCE RELIEF FOR BLOCK 95, LOTS 3 AND 4  
AMENDED CONDITION (TWO)**

The Planning Board of the Borough of Washington, in the County of Warren and State of New Jersey, upon motion of McDonald, seconded by Conry, adopts the following findings of fact, conclusions and resolution:

**Findings of Fact:**

1. The applicant, Jade Partners Washington, L.L.C., received preliminary and final site plan approval with variance relief for redevelopment of Block 95, Lots 3 & 4 by way of Resolution adopted by the Planning Board of the Borough of Washington, Warren County, on January 13, 2014, to memorialize the Board's action on December 9, 2013.
2. One of the conditions of the approval was the following:
  - A. Compliance with the Board Engineer's Review correspondence marked Exhibits B-1 and B-2 as clarified during the testimony.
3. On August 11, 2014, the applicant presented before the Board with a request to modify the above condition of the Resolution of approval as it pertains to the following item:

Item No. 30 Truck turning templates should be provided for the various types of trucks entering and exiting the site including as a minimum fire trucks, garbage trucks, and moving vans.

4. The applicant testified that it submitted a Truck Turning Radius Plan dated September 13, 2013 that adequately addresses the issues raised by the Board's Engineer.

5. The Board Engineer issued compliance review correspondence dated April 4, 2014 indicating the following:

We have the following comments on the Truck Turning Analysis plan submitted by Whitman.

a. The plan does not indicate the type of truck which has been utilized. Analysis needs to confirm the adequacy for fire trucks, garbage trucks and moving vans.

b. The plan should include an analysis of the Route 57 movement into the site and movement at South Lincoln Avenue exiting the site.

c. Trucks exiting the site from the main parking area and main driveway heading towards South Lincoln Avenue impinge on concrete islands. Trucks entering the site from the municipal parking lot heading towards South Lincoln Avenue impinge on the concrete island at the dumpster.

d. The fire chief should be consulted to determine where access is required and the necessary movements should be analyzed based upon the turning radius for the required fire apparatus.

6. The identical concerns were raised by the Board Engineer in his compliance review correspondence dated June 19, 2014.

7. Testimony was received from the applicant that the Turning Radius Analysis provided demonstrates proof of adequate turning radii for all vehicles with the exception of the fire ladder truck which is approximately 194 feet long. Nevertheless, there are presently three points of ingress and egress to the property and the site plans themselves indicate adequate access to the site by fire truck apparatus. The property fronts on Route 57 and there are three opportunities for a ladder truck to access the property from a roadway. The property will be developed with up to date structures and fully sprinklered.

8. The applicant agreed to depressed curbing in the areas of concern as set forth by the Board Engineer.

9. The Fire Official indicated that there are no areas of concern with adequate access to the site for the Borough's Fire apparatus.

10. The matter was opened to the public for comment or questions. None was received.

11. A motion was made, seconded and passed by a majority of the Board members present to grant the relief requested.

#### CONCLUSION:

The majority of the Board finds that the applicant has demonstrated adequate access and turning radius to the site in light of the Fire Official's indication of a lack of concerns. Under the unique circumstances presented, the Board will not require a more specific Turning Radius Analysis and Truck Circulation Plan.

#### RESOLUTION:

The applicant is granted the relief from Item 30 of the Board Engineer's review correspondence to the extent it requires an additional Turning Radius Analysis to be provided. Applicant shall comply in all respects with the remaining conditions of the memorializing resolution as amended.

BOROUGH OF WASHINGTON  
PLANNING BOARD  
APPLICATION #

SECRETARY: Pat Titus

APPROVAL DATE: August 11, 2014

BLOCK 95, LOTS 3 AND 4

VOTE: Conry, Aron, McDonald, Turner, Pohorely, Frascella, Gonzales

Ayes: 7

Nays: 0

I certify that this is a true copy of a resolution adopted by the Planning Board of the Borough of Washington, Warren County, on September 8, 2014, to memorialize the Board's action on August 11, 2014.

  
PAT TITUS, Secretary

Application #: \_\_\_\_\_

Approved: \_\_\_\_\_

**BOROUGH OF WASHINGTON  
PLANNING BOARD**

**FINDINGS OF FACT, CONCLUSIONS AND RESOLUTION  
REGARDING THE APPLICATION OF  
JADE PARTNERS WASHINGTON, LLC  
FOR PRELIMINARY AND FINAL SITE PLAN APPROVAL WITH  
VARIANCE RELIEF FOR BLOCK 95, LOTS 3 AND 4  
AMENDED CONDITION (THREE)**

The Planning Board of the Borough of Washington, in the County of Warren and State of New Jersey, upon motion of \_\_\_\_\_, seconded by \_\_\_\_\_, adopts the following findings of fact, conclusions and resolution:

**Findings of Fact:**

1. The applicant, Jade Partners Washington, L.L.C., received preliminary and final site plan approval with variance relief for redevelopment of Block 95, Lots 3 & 4 by way of Resolution adopted by the Planning Board of the Borough of Washington, Warren County, on January 13, 2014, to memorialize the Board's action on December 9, 2013.

2. One of the conditions of the approval was the following:

A. Compliance with the Board Engineer's Review correspondence marked Exhibits B-1 and B-2 as clarified during the testimony.

3. On October 20, 2014, the applicant presented before the Board with a request to again modify the above conditions of the Resolution of approval. Mr. Rice testified that there are three conditions which must be satisfied in order for the applicant to obtain signatures on the

Final Site Plans. The three items are identified in the October 8, 2014 Sixth Compliance Review of the Board Engineer and are identified as follows:

31. We have the following comments on the document entitled "Extinguishment of Existing Easement and Granting of New Easement" received via email from Attorney Cohen on October 8, 2014 as related to access for Lot 5.
  - a. The easement should be reviewed by the Board Attorney and then fully executed and recorded. A copy of the recorded document should be provided.
  - b. The site plan should be revised to note the extinguishment of the former 21' wide access easement and the proposed new access easement(s) for the owner of Lot 5.

38. We have the following comments on the Deed of Consolidation.

- a. The first page should indicate Jade Washington Group Limited Liability Company as the "Grantor" and Jade Partners Washington, LLC as the "Grantee".
- b. Course 2 of Exhibit B should be revised to indicate that the course terminates on the right of way line of West Washington Avenue.
- c. Course 3 of Exhibit B should be revised to indicate that the course runs along the right of way line of West Washington Avenue.
- d. The deed should be reviewed by the Attorney prior to recording. A copy of the recorded deed should be provided.

We have the following comments on the two (2) proposed drainage/access easements.

- a. Based upon an October 7, 2014 phone conversation with Attorney Cohen the proposed drainage pipe in the driveway on Lots 29 and 30 is being relocated to traverse Lot 29 only. The site plan should be revised to reflect these changes.
- b. A copy of the proposed drainage easement on Lot 29 should be provided for review by this office and the attorney prior to recording. A copy of the recorded document should be provided.

40. Confirmation should be provided from NJ American Water as to the adequacy of their system to provide adequate pressure and flow for domestic service and for fire protection.

4. The applicant testified that appropriate correspondence from the Water Company referenced in Item 40 and that same would be forwarded to the Board's Engineer.

5. As to items 31 and 38, the deeds are in the process of being finalized with the Board's professionals and executed by the appropriate parties. The applicant testified that it is imperative to receive a signed set of plans as soon as possible in order for the project to proceed forward with financing. The applicant assured the Board that the execution of the deeds was ministerial and that no plan changes would be required. The Board and Borough would be protected if the fully executed and recorded easements were made a condition of the issuance of any building permit. Further, no site construction shall take place until Items 31 and 38 are satisfied and a pre-construction conference is held.

6. The matter was opened to the public for comment or questions. None was received.

7. A motion was made, seconded and passed by a majority of the Board members present to grant the relief requested.

#### CONCLUSION:

The majority of the Board finds that the applicant has demonstrated that Items 31 and 38 may properly be considered conditions for the issuance of a building permit and that the final plans may be executed so long as all other relevant conditions of the approval are adhered to including, but not limited to the requirement of a positive balance in the escrow account.

#### RESOLUTION:

The applicant is granted the relief from Item 31 and 38 of the Board Engineer's review correspondence dated October 8, 2014 which shall be made a condition for the issuance of any

building permit. Applicant shall comply in all respects with the remaining conditions of the memorializing resolution as amended including the requirement to maintain a positive balance in its escrow account to reimburse the Borough for its professional expenses in the review of this application and compliance with this approval. Further, no site construction shall take place until Items 31 and 38 are satisfied and a pre-construction conference is held.

BOROUGH OF WASHINGTON  
PLANNING BOARD  
APPLICATION #

SECRETARY: Pat Titus

APPROVAL DATE: \_\_\_\_\_

BLOCK 95, LOTS 3 AND 4

VOTE:

Ayes:

Nays: .

I certify that this is a true copy of a resolution adopted by the Planning Board of the Borough of Washington, Warren County, on November 10, 2014, to memorialize the Board's action on October 20, 2014.

\_\_\_\_\_  
PAT TITUS, Secretary

Application #: 1-17

Approved: 9/11/2017

**BOROUGH OF WASHINGTON  
PLANNING BOARD**

**FINDINGS OF FACT, CONCLUSIONS AND RESOLUTION  
REGARDING THE APPLICATION OF  
JADE PARTNERS WASHINGTON, LLC  
FOR PRELIMINARY AND FINAL SITE PLAN APPROVAL WITH  
VARIANCE RELIEF FOR BLOCK 95, LOTS 3 AND 4  
AMENDED APPROVAL AND  
REQUEST FOR EXTENSION**

The Planning Board of the Borough of Washington, in the County of Warren and State of New Jersey, upon motion of Aron, seconded by Higgins, adopts the following findings of fact, conclusions and resolution:

**Findings of Fact:**

1. The applicant, Jade Partners Washington, L.L.C., received preliminary and final site plan approval with variance relief for redevelopment of Block 95, Lots 3 & 4 by way of Resolution adopted by the Planning Board of the Borough of Washington, Warren County, on January 13, 2014, to memorialize the Board's action on December 9, 2013.

2. The applicant now presents before the Planning Board for approval of revisions to the approved plans required by the New Jersey Department of Environmental Protection as it relates to the project's location in the Special Water Resources Protection Area of the Shabbecong Creek. The change required the applicant to remain in place some of the existing impervious coverage on the property such that the total land disturbance onsite would be below

7. Exhibits marked into evidence:

Exhibit A-1

Exhibit A-2 Revised Grading Plan

Exhibit B-1 September 7, 2017 Correspondence of Board Engineer, Eugene N. Weber,  
P.E.

8. Mr. Rice provided information regarding the current status of the site and intentions to continue with the site work as soon as possible.

9. The Board Engineer's Review correspondence was reviewed by the applicant's attorney and Engineer and testimony provided as such:

Comment 2 - Applicant shall provide details to the satisfaction of the Board Engineer.

Comment 3 - Applicant shall amend the plans and provide an amendment to the report to the satisfaction of the Board Engineer.

Comment 4 - Applicant will provide a revised summary to the satisfaction of the Board Engineer.

Comment 5 - Applicant will comply

Comment 6 - Applicant will comply

Comment 7 - Applicant shall provide a revised Grading Plan to the satisfaction of the Board Engineer or return to the Planning Board for further relief.

Comment 8 - Applicant shall provide a statement in the drainage report to the satisfaction of the Board Engineer that the proposed activities are not regulated activities within the riparian area that require a permit under the NJDEP Flood Hazard Area rules at N.J.A.C. 7:13 or return to the Planning Board for further relief.

Comment 9 Applicant will comply

Comment 10 Applicant will comply

Comment 11 The Board agreed that the applicant need not provide the analysis requested.

Comment 12 Applicant will comply

Comment 13 Applicant will comply

Comment 14 d Applicant will comply

10. The applicant also requested an extension of Final Approval pursuant to N.J.S.A. 40:55D-52(a). That statute permits the Board to grant extensions of final approval of one year but not to exceed three extensions. The original approval was granted on January 13, 2014 and extended the period of protection contemplated under the statute to January 13, 2016. The first one year extension would be until January 13, 2017. The second one year extension would be to January 13, 2018. The third and last one year extension would be to January 13, 2019. The applicant just received a Second Revision to the Redevelopers Agreement with the Borough of Washington on June 22, 2017. Given the proximity to the January 13, 2018 time period, the applicant requested all three one year extensions of approval to January 13, 2019.

11. A motion was made, seconded and unanimously passed by a majority of the Board members present to grant the relief requested subject to conditions.

#### CONCLUSION:

The majority of the Board finds that the applicant has demonstrated that the proposed changes to the site plan are minor in nature and do not substantially deviate from the prior approvals. The Board finds the proposed changes appropriate under the circumstances subject to

conditions. Moreover, the Board finds that the extension of approval to January 13, 2019 is appropriate under the circumstances.

RESOLUTION:

The applicant is granted the relief as set forth above subject to the following conditions:

A. Applicant shall comply in all respects with the remaining conditions of the memorializing resolution as amended including the requirement to maintain a positive balance in its escrow account to reimburse the Borough for its professional expenses in the review of this application and compliance with this approval.

B. Applicant shall comply with the Board Engineer's review correspondence marked as Exhibit "B-1" as clarified above.

C. No site construction shall take place without the applicant obtaining a ~~zoning~~ ~~permit~~, building permit and closing of title on the property owned by the Borough of Washington on formal permission from the governing body.

BOROUGH OF WASHINGTON  
PLANNING BOARD  
APPLICATION #1-17

SECRETARY: Pat Titus

APPROVAL DATE: 9/11/2017

BLOCK 95, LOTS 3 AND 4

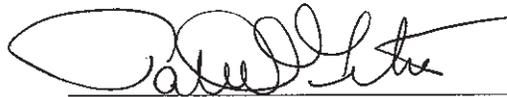
VOTE: Valle, Post, Aron, Higgins, Pohorely,  
Frascella, Lopez, VanDeVersen

Ayes: 7

Abstain: 1

Nays: 0

I certify that this is a true copy of a resolution adopted by the Planning Board of the  
Borough of Washington, Warren County, on October <sup>16</sup>~~4~~, 2017, to memorialize the Board's action  
on September 11, 2017.



PAT TITUS, Secretary

# **Appendix H**

## **Washington Borough Amended Downtown Redevelopment Plan**



# WASHINGTON BOROUGH

## DOWNTOWN REDEVELOPMENT PLAN

Borough of Washington | Warren County, New Jersey

August 2022

*Adopted by the Borough Council on September 20, 2022*

**Prepared by:**

**Heyer, Gruel & Associates  
Community Planning Consultants**

**236 Broad Street  
Red Bank, NJ 07701  
732-741-2900**

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



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Elena Gable, AICP, CFM, PP #6356

Funding for the plan was provided through a grant from the New Jersey Highlands Council as part of the Borough's Plan Conformance initiatives.

## ACKNOWLEDGMENTS

### **Borough Council**

Ethel Conry, Deputy Mayor  
Josephine Noone, Councilwoman  
Michael Heinrich, Councilman  
Louann Cox, Councilwoman  
Keith Norris, Councilman  
Sonia Ron, Councilwoman

### **Borough Clerk**

Laurie Barton, RMC

### **Borough Attorney**

Leslie A. Parikh, Esq.  
Tara St. Angelo, Esq.

### **Borough Engineer**

Kevin Smith, PE

### **Borough Planner**

Elena Gable, PP, AICP, CFM

### **Land Use Board**

Marianne Van Deursen, Chair  
Andrew Turner, Vice-Chair  
Dan Frascella, III  
Cynthia Valle  
Scott McDonald  
Susan Henderson  
Darryl Wright, Employee Representative  
Ethel Conry, Deputy Mayor  
Sonia Ron, Council Representative  
Angela Bridygham, Alternate

### **Land Use Board Attorney**

Steve P. Gruenberg, Esq.

### **Land Use Board Engineer**

Stan Schrek, PE, AIA, PP, CME, LEED AP

### **Land Use Board Planner**

Elena Gable, PP, AICP, CFM

### **Land Use Board Secretary**

Pat Titus

## Introduction

The Borough of Washington is located in the southern portion of Warren County and is entirely surrounded by Washington Township. The Borough is a “crossroads” community with its downtown located at the intersection of Routes 31 and 57, two major roadways in the region. The Borough’s downtown is a prominent, if underutilized, center of commercial activity, providing goods and services to nearby municipalities.

The Borough’s location is in close proximity to several major transportation links. The Morris Canal runs along the north end, while the Morris & Essex Railroad runs through the southern portion of the Borough. Much of the development of the Borough’s downtown can be attributed to the generation of a niche market in the late 19<sup>th</sup> century to the early 20<sup>th</sup> century. At the time, the Borough served as a hub for the manufacturing of musical instruments, primarily organs and pianos. Several of the Borough’s Victorian style homes and public buildings were built during this period.

The automobile made the Borough more accessible to and from the Lehigh Valley and New York City. These areas gradually became employment centers for Borough residents. Several apartment complexes and residential buildings were constructed during the later part of the 20<sup>th</sup> century to serve the growing population.

The Borough eventually faced a decline due to the development of strip shopping malls and supermarkets along major highways within the region. In addition, rapid growth of big-box commercial stores increased automotive usage, leading to suburban sprawl. Large commercial supermarkets and several shopping centers are located near the Borough, providing shopping and entertainment alternatives to the Borough’s downtown.

Over the past decade, the increase in online shopping from online marketplaces such as Amazon and E-bay, as well as directly from brands that once occupied brick and mortar stores, has created another challenge for local businesses. These alternatives provide competition which have negatively impacted the Borough’s downtown.

In 2002, the Borough produced the Downtown Revitalization Plan that outlined a vision and action plan for revitalizing the downtown business district (“Downtown”).

In 2009, the Borough designated the Downtown area as an Area in Need of Redevelopment and adopted the Downtown Redevelopment Plan, which provided an opportunity for redevelopment within the Borough’s commercial core and created incentives to create and enhance a traditional town center with vibrant streetscapes, quality open space, pedestrian comfort, and adequate parking.

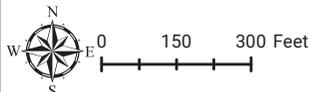
Since 2009, several sites within the downtown have been redeveloped. A CVS opened in the Fall of 2021, Taco Bell opened in early 2022, as well as other projects, such as the Towne Center located at Block 95 and Lots 3 and 4, receiving Board approval at the end of 2013. Additional businesses have opened within the downtown over the past decade. Restaurants, both for dining in and to-go orders, bakeries, the Buttsville Brewery, New Jersey School of Woodwork, and other uses have made downtown Washington Borough their home.



## Statutory Requirements

According to the Local Redevelopment and Housing Law (N.J.S.A. 40A:12A-1, et seq.), the Redevelopment Plan shall include an outline for the planning, development, redevelopment or rehabilitation of the project area sufficient to indicate:

1. Its relationship to definite local objectives as to appropriate land uses, density of population and improved traffic and public transportation, public utilities, recreational and community facilities and other public improvements;
2. Proposed land uses and building requirements in the project area;
3. Adequate provision for the temporary and permanent relocation as necessary of residents in the project area including an estimate of the extent to which decent, safe and sanitary dwelling units affordable to displaced residents will be available to them in the existing local housing market;
4. An identification of any property within the redevelopment area proposed to be acquired in accordance with the redevelopment plan;
5. Any significant relationship of the redevelopment plan to:
  - a. The Master Plan of contiguous municipalities;
  - b. The Master Plan of the County in which the municipality is located; and
  - c. The State Development and Redevelopment Plan adopted pursuant to the “State Planning Act” P.L. 1985, C398 (C52:18A-196 et al.).
6. As of the date of the adoption of the resolution finding the area to be in need of redevelopment, an inventory of all housing units affordable to low and moderate income households, as defined pursuant to section 4 of P.L. 1985 c.222 (C.52:27D-304), that are to be removed as a result of implementation of the redevelopment plan, whether as a result of subsidies or market conditions listed by affordability level, number of bedrooms, and tenure.
7. A plan for the provision, through new construction or substantial rehabilitation of one comparable, affordable replacement housing unit for each affordable housing unit that has been occupied at any time within the last 18 months, that is subject to affordability controls and that is identified as to be removed as a result of implementation of the redevelopment plan.
8. Proposed locations for public electric vehicle charging infrastructure within the project area in a manner that appropriately connects with an essential public charging network.



Source: NJDEP, NJOGIS, NJDOT, NJGIN

2020 Aerial

Downtown Redevelopment Plan - Washington Borough, NJ



## Location and Description

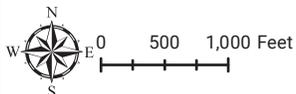
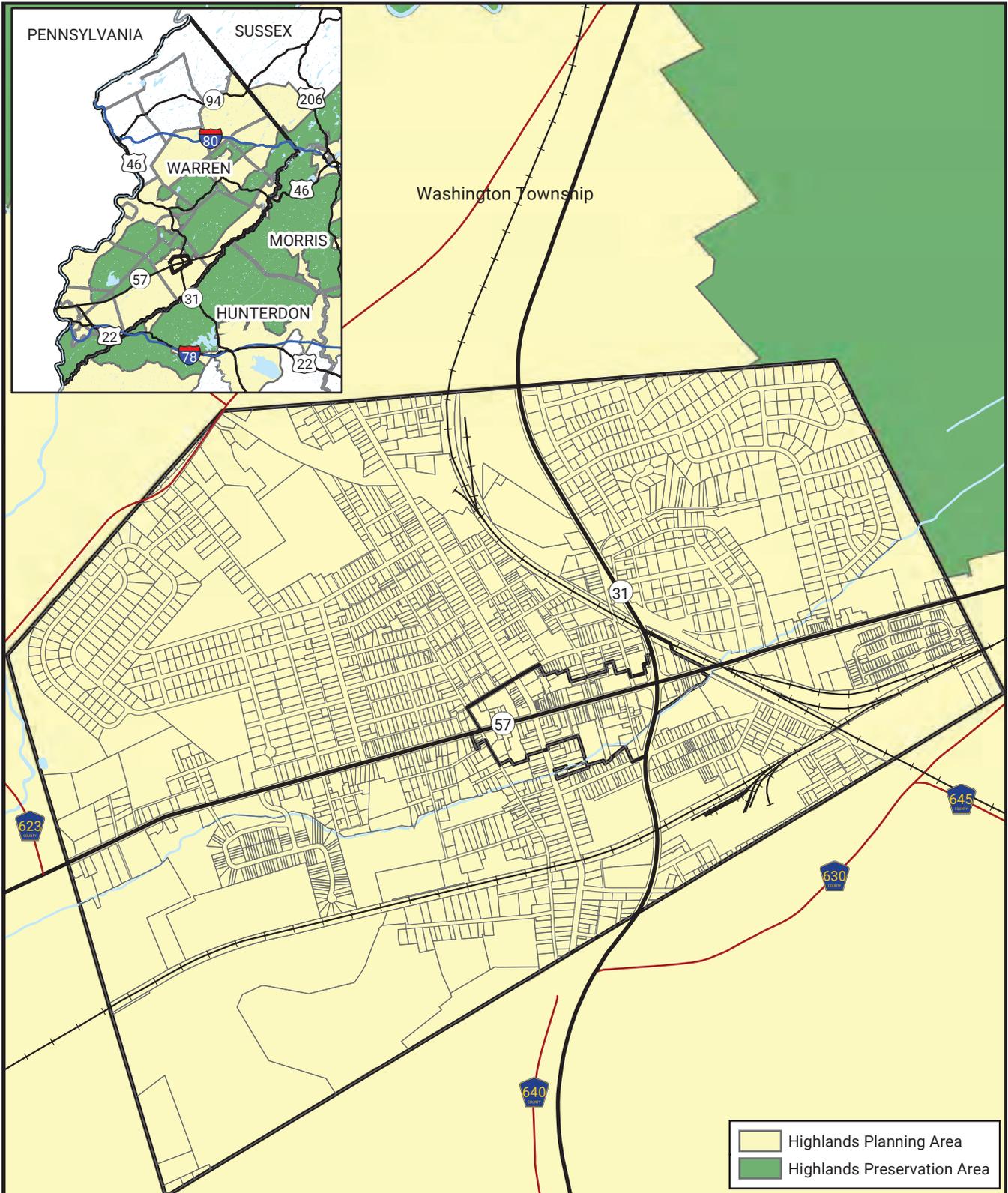
Washington Borough is a 2.0 square mile developed community located in northwest New Jersey in the County of Warren. The Borough is surrounded entirely by Washington Township. The Borough is bisected by State Routes 31 and 57. The Borough can be characterized as a rural municipality and, according to the State Development and Redevelopment Plan (SDRP), is located in Rural Planning Area 4 and Rural Environmentally Sensitive Planning Area 4B. Washington Borough was designated a Town Center in 1999 and is continuing its Center Designation through Highlands Plan Conformance, as growth is encouraged within designated Highlands Centers in the Planning Area.

The Downtown Redevelopment Area is located in the heart of the Borough, including the area surrounding the intersection of Route 57 (Washington Avenue) and Route 31. The Borough is located approximate 9 miles north of the interchange between Interstate 78 and Route 31, and approximately 12 miles south of Interstate 80.

The entirety of Washington Borough is located within the Planning Area of the Highlands. The Borough is in the process of conforming its land development regulations to the Highlands Regional Master Plan. The Borough has petitioned the Highlands Council for Plan Conformance as a Highlands Center.

The Highlands District map shows the locations of the Planning Area and Preservation Area within and surrounding the Borough and the Region. The Downtown Redevelopment Area is also located within the Planning Area.





Source: NJDEP, NJOGIS, NJDOT, NJGIN

### Highlands Preservation and Planning Area

Downtown Redevelopment Plan - Washington Borough, NJ



## Existing Conditions

### Existing Land Uses

The Borough's Downtown Redevelopment Area is composed of 41.5 acres (including roadways) across approximately 163 properties. The land uses within the Redevelopment Area primarily consist of a combination of commercial, residential, and mixed-use buildings. Restaurants, retail stores, personal service establishments, as well as education centers are all located within the Borough's downtown core.

Washington Avenue (Route 57) serves as the Borough's "Main Street" and is the primary focus of commercial activity within the Redevelopment Area. The majority of the mixed-use commercial/residential properties are located along Washington Avenue, with residential properties scattered throughout. The majority of purely residential properties (consisting of 1-4 units) are located along Vanatta Street and to the east of Washington Avenue's intersection with Route 31.

The following chart details the existing land uses within the Redevelopment Area based upon the Borough's 2021 Tax Assessment Records and a site visit conducted in June 2021.

Existing Land Use				
Category	Acres	Percentage	# of Lots	Percentage
Residential (1-4 units)	7.7	23.1%	59	36.2%
Apartments (5+ units)	0.4	1.2%	2	1.2%
Mixed Use	3.6	10.8%	42	25.8%
Proposed Mixed Use (Town Center)	1.6	4.8%	2	1.2%
Commercial	8.8	26.4%	25	15.3%
Utilities	0.9	2.7%	1	0.6%
Church & Charitable	1.7	5.1%	4	2.5%
Public Property	0.8	2.4%	4	2.5%
Parking Lots (private)	2.6	7.8%	5	3.1%
Parking Lots (public)	2.2	6.6%	7	4.3%
Vacant Lots	0.7	2.1%	2	1.2%
Vacant Buildings (no tenants)	2.3	6.9%	10	6.1%
<b>Total</b>	<b>33.3</b>	<b>100.0%</b>	<b>163</b>	<b>100.0%</b>

Source: Based upon site visit conducted in June 2021 and 2021 Tax Assessment Records

The Existing Land Use map shows the location of the existing land uses within the Downtown Redevelopment Area.

As shown in the chart above, approximately 37.2% of the Redevelopment Area consists of active commercial uses as either standalone buildings (1-story), or as part of existing mixed-use (commercial/residential) projects. Commercial properties include restaurants, retail shops, banks, personal service establishments, offices, and other commercial uses.

Residential properties, consisting of 1-4 units, comprise 23.1% of the Redevelopment Area, and 36.2% of the number of lots within the Redevelopment Area. There are two existing properties containing apartments, one is located to the rear of Block 24 Lot 19 and the other is located off of Broad Street, adjacent to the Shabbecong Creek.

There are 10 buildings within the Redevelopment Area that are currently vacant, including several buildings located at the northeastern intersection of Washington Avenue and Belvidere Avenue (Block 24 Lots 27, 29, 30, 32, and 33), the former QuickChek/CVS Pharmacy (Block 24 Lot 36), the Washington Theater (Block 80 Lot 2), and a 3-story building that was formerly used as office space by Warren County (Block 65 Lot 3). The Redevelopment Area also has two vacant lots, including the former Mobil/Lukoil Gas Station (Block 81 Lot 8), which is undergoing remediation, as well as a small property, located on Hill Street that is owned by the United Methodist Church.

Parking Lots, that are both publicly owned and privately owned, occupy approximately 14.4% of the Redevelopment Area. The majority of the publicly owned parking lots are centrally located in the downtown, located north of Washington Avenue and to the east of Belvidere Avenue. The largest privately-owned parking lot, owned by Gibson's Gym, is located to the south of Washington Avenue, and is accessible via Allegar Street and curb cut along Washington Avenue.

There are 4 properties within the Redevelopment Area that are publicly owned. One of the properties serves as an alleyway, leading to the surface parking lot owned by Gibson's Gym. A small park, formerly known as the "Pocket Park" and renamed by the Borough Council in 2021 as Veterans Park, is located adjacent to the access aisle to the Borough parking lot, located north of Washington Avenue. The NJ Department of Transportation owns a small lot at the intersection of Washington Avenue and Highway 31, that is currently developed with landscaping, flag poles, and a monument sign. The US Post Office is also located within the Redevelopment Area at the southeastern corner of Belvidere Avenue and Church Street.



## Environmental Constraints

The Shabbecong Creek flows through the southern portion of the Redevelopment Area. The Creek is identified as a Riparian Area and as a Highlands Open Water Protection Area. Riparian Areas are identified in the Highlands Council Regional Master Plan as the integration of flood prone area, riparian soils, wetlands and streams, and wildlife corridors. Highlands Open Water Protection Area is a 300-foot buffer around Highlands Open Waters, which are defined by the Highlands Act as all springs, streams, wetlands, and bodies of surface water, whether natural or artificial, that are located wholly or partially within the boundaries of the Highlands Region.

Highlands Open Waters buffers provide or contribute to habitat, stormwater and flood water management and filtration, water quality protection, temperature moderation, aquatic ecosystem integrity and channel integrity.

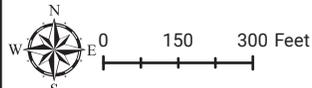
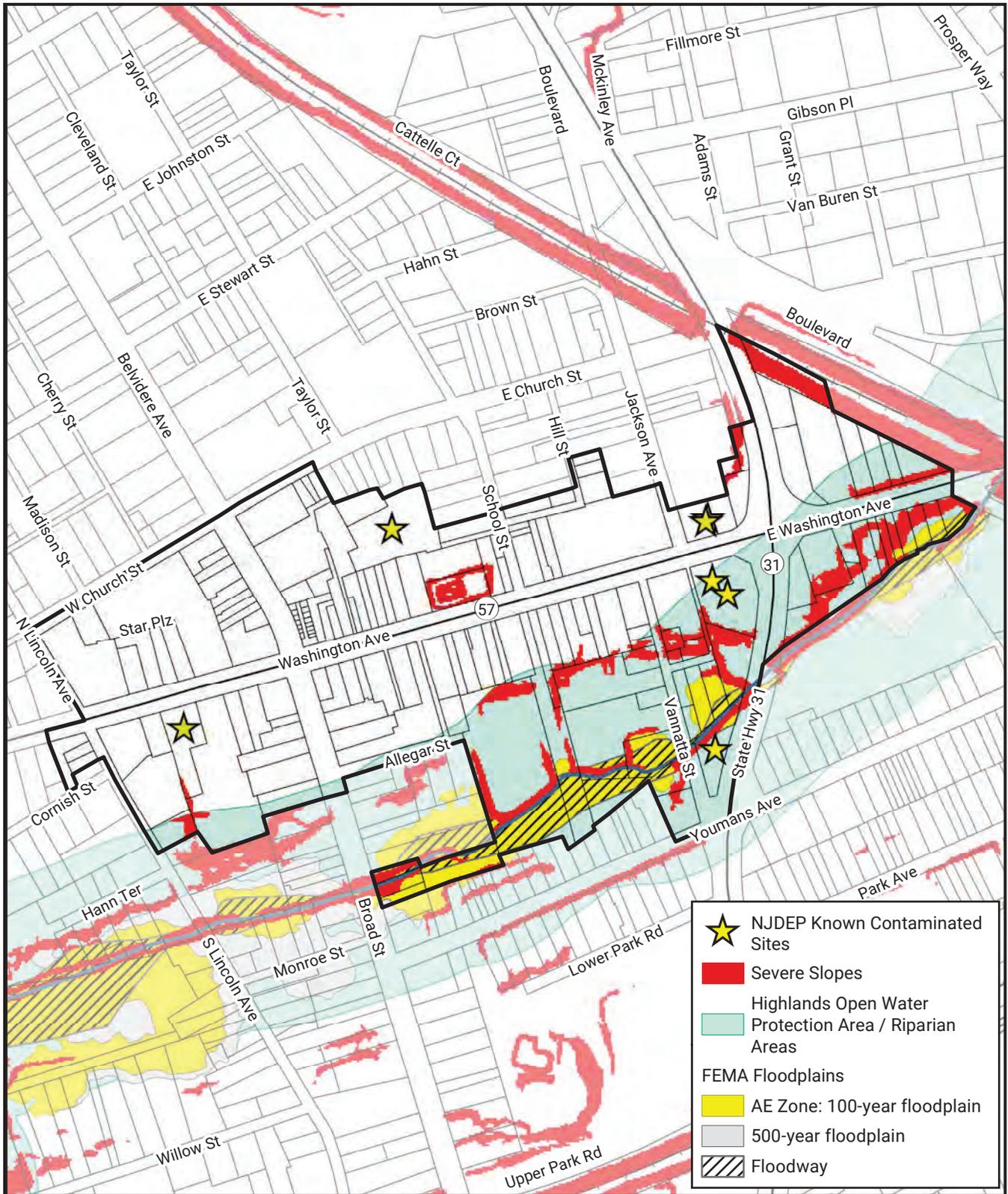
Further, the Shabbecong Creek is identified by NJDEP as a Freshwater 2-Trout Maintenance (FW2-TM) waterway and is a Category 1 (C1) waterway. C1 waterways are surface waters that are protected from any measurable change to existing water quality, because of their exceptional ecological significance, recreational significance, water supply significance, or fisheries resource. Since the Shabbecong Creek is identified as being a trout maintenance waterway, the waterway is relatively free of chemical or biological contaminants. Wild trout are important indicators of high-water quality and the ability of waterways to support reproducing trout populations is recognized and protected through NJDEP regulatory programs.

Portions of the Redevelopment Area are also constrained by steep slope protection areas. Steep slope protection areas are defined by the Highlands Council as areas that have grades that are 15% or greater, or, if in a Riparian area, 10% and greater. The Downtown Redevelopment Area has several areas that are classified as severe slopes, which are all lands with slopes of 20% or greater as well as lands within Riparian Areas with slopes of 10% and greater. The majority of the severe slopes are located within the Riparian Area associated with the Shabbecong Creek.

Adjacent to the Shabbecong Creek are FEMA Floodplains. The southern portion of the Redevelopment Area is constrained by the 100-year floodplain and its associated floodway. Portions of this area currently undeveloped, however, there are existing structures located within the floodplain and the floodway. The 100-year floodplain are areas with a 1% annual chance of flooding. The floodway is defined by FEMA as “the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height. Communities must regulate development in these floodways to ensure that there are no increases in upstream flood elevations.” Structures are permitted within the 100-year floodplain; however, new development should comply with FEMA and NJDEP floodplain regulations. Within the floodway, structures are not encouraged, and no new structures should be located, although it should be noted that

there are existing structures within this area. The Redevelopment Area includes approximately 2.7 acres of the 100-year floodplain including 1.8 acres of the floodway.

Several sites in the Redevelopment Area are identified by NJDEP as Known Contaminated Sites. These sites include the municipal parking lot located to the north of Washington Avenue (Block 24 Lot 24.01), the redeveloped CVS property that was formerly the Delta gas station (Block 26 Lot 5.01), the former Lukoil Gas Station that is currently a vacant lot (Block 81 Lot 8), the proposed Town Center property (Block 95 Lot 3), and Munheisen Bagel and Deli (Block 81 Lot 1).



Source: NJDEP, NJOGIS, NJDOT, NJGIN

### Environmental Constraints

Downtown Redevelopment Plan - Washington Borough, NJ



## Key Opportunity Sites

There are several key properties within the Downtown Redevelopment Area that would have a significant impact on the revitalization efforts within the Area.

The former Mobil/Lukoil Gas Station property (Block 81 Lot 8) represents a unique opportunity for the Borough; the property is located at the southwestern intersection of Washington Avenue and Route 31 and is currently undergoing remediation. The site is poised to be redeveloped in a manner that can create a gateway to the Borough's downtown. Directly across the street, on Block 26 Lot 5.01, a new CVS was constructed at the location of the former Delta Gas Station and convenience store. Any new development proposed at the former Mobil/Lukoil site should be compatible with the provisions of this Plan to ensure new development is appropriate for the Borough.

Further, the Washington Theater, located at the southeastern corner of the Washington Avenue and Route 31 intersection, is also poised for redevelopment. Building upon the new construction of the CVS, this intersection could be revitalized in a way that is compatible with the requirements of this Redevelopment Plan as well as the aesthetics of the Borough's downtown. The Washington Theater received a Certificate of Eligibility by the New Jersey Department of Environmental Protection Historic Preservation Office on June 21, 2017.



The Washington Theater



Stover Building

The Stover Building, located at 1 West Washington Avenue, is a landmark within the Borough. However, over the years, the exterior façade of the building has become disfigured. The Stover Building should be renovated in a manner that is compatible with the Borough's historical heritage that capitalizes upon its cornerstone presence within the downtown. The exterior of the first floor of the building should be renovated to have a more inviting streetscape presence.

Directly across the street, the Wells Fargo Bank, located at 2 Washington Avenue, recently received Land Use Board approval in June 2022 to convert the upper stories from office space into residential apartments, while maintaining the bank on the first floor. The first floor of the existing structure is currently vacant; the Wells Fargo bank only operates an ATM at this location. However, the property has an unused drive thru and an awkward parking arrangement.

Should the bank no longer operate on the site, the site should be redeveloped to remove the nonconforming drive-thru and reduce the width of the curb cut leading to Washington Avenue. A better parking arrangement behind a garden wall and a landscaped buffer could be used to screen the parked cars from the roadway.

Portions of the existing downtown that consist of one-story structures have the potential to be expanded into two- and three-story buildings, with either office space or residential units on the upper stories while maintaining commercial uses on the first floor.



Wells Fargo Bank



Existing 1-Story Buildings

Should these 1-story building be renovated into 2 or 3-story structures, the facades, overall structure height, and setbacks should be compatible with one another.

Due to the configuration of the existing lots under separate ownership, several buildings along the Washington Avenue corridor appear mismatched. *(See below)* Adjacent properties under separate ownership should be cognizant of one another and be redeveloped with special attention paid to the front façade along Washington Avenue and public rights-of-way. Details regarding sign placement, façade materials, and the height of the first floor should be complimentary to one another.



Further, several existing buildings within the Redevelopment Area with vacant storefronts have the ability to be redeveloped and/or rehabilitated in a manner that will contribute to the overall redevelopment of the Borough's downtown.



## Vision for the Downtown

This Plan envisions a vibrant Downtown that includes a healthy mix of commercial and residential space within a functional and coherent architectural theme. Vibrant, pedestrian-friendly streetscapes with ornamental lighting, seating, outdoor cafes, and public art will serve to attract people of all ages.

### Plan Principles and Vision Statement

The following principles are the benchmarks by which the process of implementing this Plan will be measured:

1. The Downtown will provide an experience of shopping, dining, socializing, and entertainment.
2. The Residential Area will foster a vibrant business environment. The ground floor of each building along the main portion of the Borough's downtown will have mercantile and service businesses allowing residential uses on the upper stories.
3. The Redevelopment Area will provide a unique living experience that will include higher density residential units incorporated with parks, plazas and other public spaces.
4. The Redevelopment Area will be a vibrant, well-maintained, safe, clean and attractive place that is both functional and convenient to the public. Entrances, open spaces, and architecture will coordinate with the pedestrian circulation system.
5. The Redevelopment Area will be friendly to the needs of pedestrians while providing convenient access to those who take advantage of public transportation, bicycles, and motor vehicles. The Plan includes bike racks, indoor storage facilities and locker rooms where appropriate and feasible.

### Goals and Objectives

#### **LAND USE AND DESIGN GOALS**

1. Provide incentives to update commercial space in the Redevelopment Area through new construction, rehabilitation and/or redevelopment.
2. Ensure that new commercial space caters to consumer needs not yet met by existing viable businesses.
3. Maintain the Washington Avenue orientation of the existing Downtown to enhance the function and character of the area.
4. Replace gaps in street frontage, such as off-street parking areas, with viable retail and mixed-use buildings.
5. Develop a direct access to the Shabbecong Creek while utilizing the area adjacent to this creek for public open space and resiliency.

6. Establish a restaurant and entertainment center that provides convenience goods and services within the Redevelopment Area.
7. Use zoning and design standards to reinforce pedestrian-scaled storefront design.
8. Prohibit development in the Redevelopment Area that would disrupt the unique pedestrian character of the Downtown.
9. Encourage one-story buildings in the Redevelopment Area to redevelop/renovate into two- or three-story buildings that are more appropriate for the Downtown.
10. Encourage adjacent property owners to align development and improvements, such as shared parking and façade improvements, that create a well-designed and architecturally pleasing downtown.

#### ***PEDESTRIAN CIRCULATION GOALS***

1. Create a welcoming environment for pedestrians throughout the Redevelopment Area.
2. Investigate the use of multiple mid-block pedestrian crossings on Route 57 that utilize appropriate crosswalk design to afford safe pedestrian crossing.
3. Maximize pedestrian connections within the Redevelopment Area and adjacent neighborhoods.
4. Provide for pedestrian circulation to Route 31 from the Redevelopment Area.
5. Investigate the feasibility of developing a pedestrian corridor along the Shabbecong Creek as a connector to the adjacent residential neighborhoods.

#### ***VEHICULAR CIRCULATION GOALS***

1. Reduce the negative impacts of vehicular traffic on the pedestrian environment to the extent possible.
2. Retain traffic on Route 57 to maintain commercial viability.
3. Incorporate traffic calming measures on Route 57 and its intersection with Route 31.
4. Divert truck traffic from residential streets.

#### ***PARKING GOALS***

1. Consolidate small parking areas and strongly encourage shared parking facilities in order to maximize the use of existing parking areas.
2. Encourage adjacent property owners to utilize access easements and create unified parking areas.
3. Employ environmentally conscious and pedestrian friendly design principles in the redevelopment of parking areas.
4. Centralize new parking facilities and phase the construction of parking facilities.
5. Adopt parking regulations tailored to support mixed-use development in the Redevelopment Area.

6. Maintain on-street parking, where possible, throughout the Redevelopment Area.

***PRESERVATION OF RESIDENTIAL NEIGHBORHOODS GOALS***

1. Preserve existing viable neighborhoods that abut the Redevelopment Area.
2. Target properties in decline for renovation efforts.

***HISTORIC PRESERVATION GOALS***

1. Adopt architectural, design and signage standards consistent with the Borough's historic character.
2. Provide for the rehabilitation of older structures and encourage adaptive reuse.
3. Maintain, enhance, and preserve the quaint, historic character of the Downtown and ensure that the new infill development is consistent with the historic nature of older buildings.
4. Preserve the Victorian building character of the western end of the Downtown while ensuring continuity in the character of the Redevelopment Area.

## The Relationship of the Plan to Borough Land Development Regulations

The Redevelopment Area shall be redeveloped in accordance with the standards detailed in this Plan. The Plan supersedes the use and bulk provisions of the Borough Zoning and Land Development (Chapter 94) for the Redevelopment Area unless specifically referenced. Other Borough regulations affecting development that are in conflict are superseded by this Plan. However, engineering standards, performance standards and definitions shall apply unless otherwise noted herein.

No deviations may be granted which will result in permitting a use that is not a permitted use within this Redevelopment Plan. Any deviation from standards of this Plan that results in a “d” variance pursuant to N.J.S.A. 40:55D-70d shall be addressed as an amendment to the Plan rather than via variance relief through the Borough’s Land Use Board. An application requesting a deviation from the requirements of this Redevelopment Plan shall provide public notice of such application in accordance with the public notice requirement set forth in N.J.S.A. 40:55D-12a.&b. All development must be approved by the Land Use Board and shall be submitted through the normal site plan and subdivision procedures as identified by N.J.S.A. 40:55D, et seq.

Any deviations from bulk standards shall require “c” variance relief. The Land Use Board shall have the power to grant relief to the same extent as the Board may grant relief from bulk and dimensional requirements pursuant to N.J.S.A. 40:55D-70.c.

The Land Use Board may grant exceptions or waivers from design standards for site plan or subdivision approval as may be reasonable and within the general purpose and intent of the provisions for site plan review and/or subdivision approval within the Plan. The Board may grant exceptions or waivers if it is determined that the literal enforcement of one or more provisions of the Plan is impracticable or would exact undue hardship because of peculiar conditions pertaining to the site. No deviations may be granted under the terms of this section unless such deviations can be granted without resulting in substantial detriment to the public good and will not substantially impair the intent and purpose of the Redevelopment Plan and Master Plan.

Final adoption of this Redevelopment Plan by the Borough Council shall be considered an amendment to the Borough of Washington Zoning and Land Development Ordinance and Zoning Map. Unless otherwise defined in the Plan, terms used in this Plan shall have the same meaning as defined in the Borough’s Zoning and Land Development Ordinance.

## Land Use Plan

The Plan proposes the following five Land Use districts:

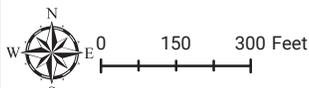
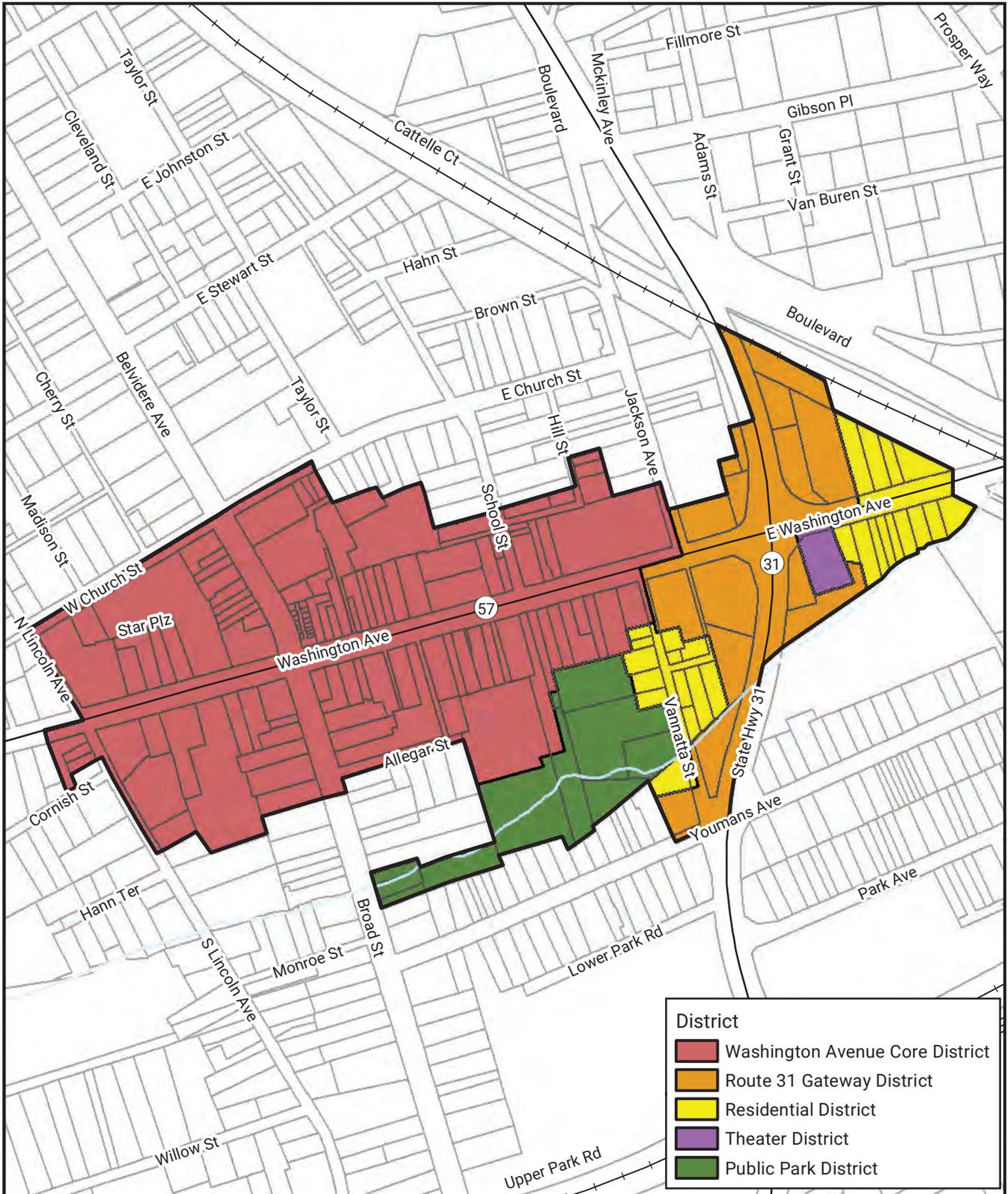
- Washington Avenue Core District
- Route 31 Gateway District
- Theater District
- Residential District
- Public Park District

The approximately 41.4-acre area has been divided into five districts as depicted in the Land Use District Map.

The evaluation of any proposal submitted under this Plan shall be based upon the sections of this Plan entitled “Relationship of Plan to the Borough Land Development Regulations,” “District Standards,” and “Design Standards.”

### Affordable Housing

Any residential or mixed-use development producing 5 or more residential units shall be required to provide 20% of the units as affordable to moderate, low, and very low income households in accordance with the executed Settlement Agreement between the Borough of Washington and Fair Share Housing Center. See the Administrative and Procedural Requirements section of this Plan for more information regarding affordable housing within the Area. Affordable units created within the Redevelopment Plan shall be subject to the Borough’s Affordable Housing Ordinance (Article VIII of the Borough’s Land Development Ordinance).



Land Use Plan / Redevelopment Area Districts

Downtown Redevelopment Plan - Washington Borough, NJ



Source: NJDEP, NJOGIS, NJDOT, NJGIN

## Definitions

All definitions in Article III Definitions and Word Usage, Chapter 94 Zoning and Land Development of the Borough of Washington Ordinance shall apply to this Plan, except as noted herein.

**Artisan Studio:** A place of work for an artist, artisan, or craftsperson which is required to include a retail shop to purchase products produced on the premises, and may also include the application, teaching or performance of the arts. Artisans shall include those engaged with sculpture, painting, drawing, woodwork, dance, instrumental music, jewelry making, soap making, and candle making. In no event shall hazardous materials be permitted to be stored on site or used for the trade.

**Bar:** An establishment in which alcoholic beverages and food are served for on-site consumption, primarily by the drink.

**Brewpub:** An establishment licensed as a restricted brewery by the State of New Jersey under N.J.S.A. 33:1-10, where malt alcoholic beverages are brewed and manufactured, served and consumed on the premises, and which is operated in conjunction with a restaurant use that possesses a plenary retail consumption license. Such uses shall be used principally for the purpose of providing meals to its customers with adequate kitchen and dining room facilities immediately adjoining licensed brewery facilities.

**Cidery and Meadery:** An establishment licensed by the State of New Jersey as a cider and meadery under N.J.S.A. 33:1-10, producing hard cider and/or mead, including the sale and distribution of the product to licensed wholesalers and retailers, and including the retail sale of the product at retail to consumers on the licensed premises for consumption on or off the premises, and the offering of samples for consumption on the premises.

**Craft Distillery:** An establishment licensed by the State of New Jersey as a craft distillery under N.J.S.A. 33:1-10, to manufacture distilled alcoholic beverages to rectify, blend, treat and mix distilled alcoholic beverages, and to sell and distribute the products to licensed wholesalers and retailers. The distillery may sell the product at retail to consumers on the licensed premises for consumption off the premises or, in connection with a tour of the distillery, the retail sale or offering of samples for consumption on the premises.

**Craft Brewery:** An establishment licensed by the State as a limited brewery under N.J.S.A. 33:1-10, to manufacture malt alcoholic beverages to sell and distribute the products to licensed wholesalers and retailers. The craft brewery may sell and serve the product at retail to consumers on the licensed premises for consumption on the premises but only in connection with tours of the brewery, or for consumption off premises, and to offer samples for sampling purposes only pursuant to an annual permit issued by the State. A craft brewery shall not sell food or operate a restaurant on the licensed premises

**Health Club and Fitness Studios:** An establishment that houses exercise equipment and space for the purposes of physical exercise which may include group fitness classes.

**Home Office:** An office conducted in a residential unit occupied by its proprietor or operator which does not involve the presence of customers at the office or the transmission of goods other than documents, either electronically or by mail, to or from the office. In no event shall a Home Occupation, as defined by the Borough's Zoning and Land Development Ordinance, be considered a Home Office.

**Hotel:** A facility offering transient lodging accommodations to the general public and that may include additional facilities and services, such as a restaurant or tavern and meeting rooms. In no event is access to individual rooms provided exterior to the building.

**Medical Offices:** An establishment that provides medical and health-care services.

**Mural:** A large image painted directly on an exterior wall of a building.

**Personal Services:** Establishments primarily engaged in providing services involving the care of a person or their personal goods or apparel, including but not limited to barber/beauty salon, nail salon, shoe repair, tailors, laundry, and similar services. In no event shall massage parlors (including all non-certified and/or unlicensed medicinal massage therapy) operating without appropriate certifications and licenses required by federal, state and local law be considered Personal Services.

**Restaurant:** A commercial establishment where food and drink are prepared, served by waiters/waitresses, and consumed on the premises.

**Restaurant, fast food:** A commercial establishment where food and drink prepared for immediate consumption are purchased at a counter and eaten on the premises, in the purchaser's automobile, or off the premises. Bakeries, delicatessens, ice cream parlors, and candy shops, are examples of restaurant, fast food.

**Retail Services:** The rendering of services or entertainment, as opposed to products, to the general public. Retail Services shall include theaters, amusement and recreation services and facilities, studios for the instruction of the arts, including dance studios, music, gymnastics or martial arts, museums and galleries. Cooking classes, escape rooms, pottery and painting classes, and other instructional classes shall be considered retail services. Retail services shall not include outdoor services or amusement parks.

**Retail Stores:** Establishments engaged in the selling or rental of goods or merchandise (usually to the general public for personal use or household consumption) and in rendering services incidental to the sale of such goods. In no event shall a retail store include adult shops or adult media stores, pawn shops or other similar institutions, establishments that advertise that over 90% of the merchandise purchased be sold for \$1 or less, or shops displaying or selling paraphernalia used for the ingestion or injection of illegal drugs be considered retail stores.

**Tavern:** An establishment in which alcoholic beverages are served, primarily by the drink, that offers a menu of food items. Packaged liquors may also be served or sold.

**Winery Salesroom:** An establishment licensed by the State as a winery sales room under N.J.S.A 33:1-15, that is owned and operated by the holder of a plenary winery license or out of state winery license issued by the State under N.J.S.A. 33:1-10, where wine produced by the licensee is sold at retail in original packages for consumption on or off the premises, and for the offering of samples.

## Washington Avenue Core District Standards

### Permitted Principal Uses

1. Residential (upper stories only for properties fronting on Washington Avenue, Broad Street, and/or Belvidere Avenue)
2. Restaurants
3. Restaurants, fast food
4. Bars and taverns
5. Retail stores and shops
6. Retail services
7. Personal services, excluding on-site dry cleaning
8. Health clubs and fitness studios
9. Craft distilleries
10. Craft breweries
11. Brewpubs
12. Cideries and meaderies
13. Winery salesroom
14. Artisan studios
15. Banks, savings and loan institutions, and other fiduciary institutions, without drive-thru
16. Professional offices
17. Business offices
18. Medical offices
19. Educational institutions
20. Public purposes and quasi-public uses
21. Public parking facilities
22. Private parking lot on Block 95 Lot 10
23. Drive-thru as accessory to fast food restaurant uses subject to the following conditions:
  - a. Minimum Lot Size – 30,000 square feet
  - b. Corner lots which front on Washington Avenue.
  - c. Only one curb cut shall be permitted per street, unless there are existing curb cuts approved by the New Jersey Department of Transportation (NJDOT).
  - d. Where there are existing and NJDOT-approved curb cuts, those curb cuts may be utilized to provide access. However, each existing curb cut shall be limited to one-way traffic and a maximum driveway width of 12 feet.
  - e. On the secondary street, one two-way curb cut shall be permitted.
  - f. There shall be no parking or drive aisle between the building and the Washington Avenue right-of-way.
  - g. The drive-thru shall be designed to stack a minimum of 8 cars and shall be designed to not interfere with parking and on-site vehicle circulation.
  - h. Where an outdoor dining area is proposed, the building may be set back a maximum of 25 feet. Where an outdoor dining area is not proposed, a maximum building setback of 15 feet shall be required.

### Permitted Accessory Uses and Structures

The following uses and structures shall be permitted as accessory to a permitted principal use. In addition, customarily incidental accessory uses, and structures shall be permitted.

1. On-site storage of goods incidental to the daily conduct of the on-site principal use within buildings.
2. Signs in accordance with the requirements in this Plan.
3. Outdoor dining areas for restaurants.
4. Onsite parking associated with a permitted principal use.
5. Common amenity spaces associated with a residential use.
6. Roof-mounted Photovoltaic (Solar) energy systems.
7. Electric Vehicle Charging Stations and Make-Ready Parking Spaces in accordance with P.L. 2021, c. 171, which was signed into law on July 9, 2021, and the DCA Model Electric Vehicle Ordinance.

### Height, Area, and Yard Requirements

The height, area, and yard requirements for the properties in the Washington Avenue Core District shall be as specified in the tables below. Any deviation from these standards will require variance relief pursuant to the MLUL at N.J.S.A. 40:55D-70c.

Minimum lot area	5,000 sq. ft.
Minimum lot width	50 feet
Minimum front yard setback (Washington Avenue)	0 feet
Maximum front yard setback (Washington Avenue)	10 feet
Minimum front yard setback (all other streets)	5 feet
Minimum side yard setback (each)	0 feet
Minimum rear yard setback	15 feet
Maximum building coverage	80%
Maximum lot coverage	90%
Minimum building height (stories / feet)	2 stories / 25 feet
Maximum building height (stories / feet)	4 stories / 50 feet
Minimum first floor floor-to-ceiling height	12 feet
Orientation of primary entrance	Street facing façade
In no event shall parking be permitted between the principal building and the right-of-way	
Additional disturbance within the Highlands Open Water Protection Area is subject to Highlands Council Regulations	

## Route 31 Gateway District Standards

### Permitted Principal Uses

1. Restaurants
2. Restaurants, fast food
3. Bars and taverns
4. Retail stores and shops
5. Retail services
6. Personal services, excluding on-site dry cleaning
7. Gyms and fitness studios
8. Craft distilleries
9. Craft Breweries
10. Brewpubs
11. Cidery and Meadery
12. Winery Salesroom
13. Artisan studios
14. Hotels
15. Banks, savings and loan institutions, and other fiduciary institutions, without drive-thru
16. Professional offices
17. Business offices
18. Medical offices
19. Educational institutions
20. Public parking facilities
21. Public purposes and quasi-public uses
22. Mixed-use projects consisting of the above permitted uses with residential units on the upper stories.
23. Drive-thru as accessory to fast food restaurant uses subject to the following conditions:
  - a. Minimum Lot Size: 30,000 square feet
  - b. All access to the site shall be provided to the site from Route 31.
  - c. There shall be no parking or drive aisle between the building and the right-of-way.
  - d. The drive-thru shall be designed to stack a minimum of 8 cars and shall be designed to not interfere with parking and on-site vehicle circulation.

### Permitted Accessory Uses and Structures

The following uses and structures shall be permitted as accessory to a permitted principal use. In addition, customarily incidental accessory uses and structures shall be permitted.

1. On-site storage of goods incidental to the daily conduct of the on-site principal use within buildings.
2. Signs in accordance with the requirements in this Plan.
3. Outdoor dining areas for restaurants.
4. Parking associated with the permitted principal use.
5. Common amenity spaces associated with a residential use.
6. Roof-mounted Photovoltaic (Solar) energy systems.
7. Electric Vehicle Charging Stations and Make-Ready Parking Spaces in accordance with P.L. 2021, c. 171, which was signed into law on July 9, 2021, and the DCA Model Electric Vehicle Ordinance.

### Height, Area, and Yard Requirements

The height, area, and yard requirements for the properties in the Route 31 Gateway District shall be as specified in the tables below. Any deviation from these standards will require variance relief pursuant to the MLUL at N.J.S.A. 40:55D-70c.

Minimum lot area	10,000 sq. ft.
Minimum lot width	70 feet
Minimum front yard setback	25 feet
Minimum side yard setback (each)	5 feet
Minimum side yard setback (combined)	10 feet
Minimum rear yard setback	25 feet
Maximum building coverage	50%
Maximum lot coverage	80%
Maximum building height (stories / feet)	3 stories / 40 feet
Minimum first floor floor-to-ceiling height	12 feet
Orientation of primary entrance	Street facing façade
In no event shall parking be permitted between the principal building and the right-of-way	
Additional disturbance within the Highlands Open Water Protection Area is subject to Highlands Council Regulations	

## Theater District

The intention of this District is to redevelop or rehabilitate the property while also preserving the existing front façade and marquis of the former Washington Theater.

### Permitted Principal Uses

- |  |   |  |
|--|---|--|
| 1. Multi-family residential                          | 7. Banks, savings and loan institutions, and other fiduciary institutions, without drive-thru | 11. Educational institutions   |
| 2. Restaurants                                       | 8. Professional offices   | 12. Public purposes  |
| 3. Bars and taverns                                  | 9. Business offices   | 13. Mixed-use projects consisting of the above permitted uses with residential units on the upper stories. |
| 4. Retail stores and shops                           | 10. Medical offices   |  |
| 5. Retail services                                   |   |  |
| 6. Personal services, excluding on-site dry cleaning |   |  |

### Permitted Accessory Uses and Structures

The following uses and structures shall be permitted as accessory to a permitted principal use. In addition, customarily incidental accessory uses and structures shall be permitted.

1. Signs in accordance with the requirements in this Plan.
2. Outdoor dining areas for restaurants.
3. Onsite parking associated with a permitted principal use.
4. Common amenity space associated with the residential component.
5. Roof-mounted Photovoltaic (Solar) energy systems.
6. Electric Vehicle Charging Stations and Make-Ready Parking Spaces in accordance with P.L. 2021, c. 171, which was signed into law on July 9, 2021, and the DCA Model Electric Vehicle Ordinance.

### Height, Area, and Yard Requirements

The height, area, and yard requirements for the properties in the Theater District shall be as specified in the table below. Any deviation from these standards will require variance relief pursuant to the MLUL at N.J.S.A. 40:55D-70c.

Minimum lot area	15,000 sq. ft.
Minimum lot width	60 feet
Maximum building height (stories/feet)**	4 stories / 48 feet
Maximum lot coverage	80%
Orientation of primary entrance	Washington Avenue facade
The third and fourth stories of the building shall be setback a minimum of 3.5 feet from the first and second story of the existing theater façade along Washington Avenue.	
Vehicular access to the Theater may be provided via access easements on adjacent properties in the Route 31 Gateway District or the Residential District.	
In no event shall parking be permitted between the principal building and the right-of-way.	
**The building height shall be measured along the Washington Avenue frontage. The Redevelopment Area is subject to Highlands Council and NJDEP regulations	

Projects that are proposed to restore and preserve the entirety of the existing Theater, including the marquis sign, shall be subject to the existing location and setbacks of the existing Theater on the property.

Projects that restore and preserve the front façade and marquis of the building along Washington Avenue are subject to the bulk standards below.

Minimum front yard setback	3 feet
Minimum side yard setback	3 feet
Minimum combined side yard setback	10 feet
Minimum rear yard setback	0 feet
Maximum building coverage	70%

## Residential District

The intention of the Residential District is to create a district that reflects the existing residential development within the Redevelopment Area. However, commercial uses shall also be permitted within this district as mixed-use structures with commercial uses on the first floor and residential on the upper stories. Parking is required to be provided on site for the residential and commercial uses.

### Permitted Principal Uses

1. Single-Family Dwellings
2. Two-Family Dwellings
3. Multi-Family Residential
4. Mixed use with commercial on the first floor and residential on the upper floors consisting of the following commercial uses:
  - a. Retail stores and shops
  - b. Retail services
  - c. Artisan studios
  - d. Professional offices
  - e. Business offices
  - f. Medical offices
5. Public parking facilities
6. Public purposes and quasi-public uses

### Permitted Accessory Uses

1. On-site storage of goods incidental to the daily conduct of the on-site principal use within buildings
2. Home offices
3. Signs in accordance with the requirements of this Plan.
4. Parking associated with a principal permitted use
5. Roof-mounted Photovoltaic (Solar) energy systems.
6. Electric Vehicle Charging Stations and Make-Ready Parking Spaces in accordance with P.L. 2021, c. 171, which was signed into law on July 9, 2021, and the DCA Model Electric Vehicle Ordinance.

### Height, Area, and Yard Requirements

The height, area and yard requirements for the properties in the Residential District shall be as specified in the tables below. Any deviation from these standards will require variance relief pursuant to the MLUL at N.J.S.A. 40:55D-70c.

<b>One- and Two-Family Dwelling Bulk Standards</b>	
Minimum lot area- One Family Dwelling	5,000 sq. ft.
Minimum lot area- Two Family Dwelling	6,500 sq. ft.
Minimum lot width	50 feet
Minimum front yard setback	25 feet, or the average setback of the adjacent properties within 100 feet on either side of the property along the same street frontage
Minimum side yard setback	6 feet
Minimum combined side yard setback	12 feet
Minimum rear yard setback	25 feet
Maximum building coverage	40%
Maximum lot coverage	50%
In no event shall parking be permitted between the principal building and the right-of-way.	
Parking shall be required to be provided on site in accordance with the standards in this Plan.	
*The Redevelopment Area is subject to Highlands Council and NJDEP regulations	

<b>Multi-Family and Mixed-Use Bulk Standards</b>	
Minimum lot area- Multi-Family Residential	8,000 sq. ft.
Minimum lot area- Mixed Use	8,000 sq. ft.
Minimum lot width	50 feet
Minimum front yard setback	25 feet, or the average setback of the adjacent properties within 100 feet on either side of the property along the same street frontage
Minimum side yard setback	5 feet
Minimum combined side yard setback	10 feet
Minimum rear yard setback	25 feet
Maximum building coverage	40%
Maximum lot coverage	70%
Maximum building height (stories / feet)	3 stories / 38 feet
In no event shall parking be permitted between the principal building and the right-of-way.	
Parking shall be required to be provided on site in accordance with the standards in this Plan.	
*The Redevelopment Area is subject to Highlands Council and NJDEP regulations	

## Public Park District Standards

### Permitted Principal Uses

1. Public park and open space.

### Permitted Accessory Uses and Structures

The following uses and structures shall be permitted as accessory to a permitted principal use. In addition, customarily incidental accessory uses and structures shall be permitted.

1. Public facilities typically found in support or consistent with public park space such as kiosks, walking trails, and community centers.
2. Green stormwater management facilities

## Parking

### Minimum Vehicle Required Parking

The following minimum parking requirements shall apply for the Redevelopment Area. Where multiple uses exist on a site, or within a building, the requirement for each use shall be calculated separately based on the floor area allotted to that use. The total parking requirement shall be the sum of the individual requirements.

Use	Number of Spaces
Multi-family dwelling units	RSIS: One-bedroom/studio: 1.8 spaces Two-bedroom: 2.0 spaces Three-bedroom: 2.1 spaces
One- and Two-Family Dwellings	RSIS: Two-bedroom: 1.5 spaces Three-bedroom: 2.0 spaces Four-bedroom: 2.5 spaces Five-bedroom: 3.0 spaces
Commercial Uses within the Washington Avenue Core District, except for hotels	1 space per 500 gross square feet
Hotels	1 space per room plus 1 space per employee
Medical, Professional, and Business Offices	1 space per 275 square feet of gross floor area
Restaurants, taverns, breweries, distilleries, wine-tasting rooms, cideries and meaderies	1 space per 3 seats; 1 space per 50 square feet of gross floor area for restaurant, fast food

### Additional Parking Standards

- In no event shall parking be permitted between the principal building and the right-of-way.
- Should on-site parking not be feasible, parking shall be provided utilizing shared parking facilities.
- Public parking lots located within 100 feet of the property may be utilized to off-set commercial parking requirements only.

## DESIGN STANDARDS

These standards are meant to encourage design that is consistent with the historic character of downtown and incorporate principles of sustainability.

### Architectural Design Standards

The following standards apply to all development in the Redevelopment Area. Deviations shall be considered design standard exceptions per N.J.S.A. 40:55D-51.

#### **GENERAL**

- All new/infill development, additions, alterations, renovations to building facades, and modifications of buildings shall comply with the architectural standards of this Plan and shall be subject to review by the Land Use Board prior to approval. Changes to the colors, materials, and overall aesthetics of approved applications shall require amended site plan approval.
- New buildings shall relate to public streets both functionally and visually.
- All pedestrian entryways and/or lobbies shall be prominent, well-lit and separate from service entrances.
- The façade of buildings abutting public parking lots shall be complimentary to the front façade of the development.

#### **BUILDING MATERIALS**

- Materials are the most identifiable element of the built environment and shall be of high quality. Materials used shall be durable and long-lasting, and appropriate to both the climate and visual environment of the region. Material samples and colors shall be provided for review and approval at the time of site plan application.
- EIFS (Exterior Insulation Finish Systems) are prohibited.

#### **ARCHITECTURAL ELEMENTS**

- Architectural elements that are not habitable, and do not occupy more than 5% of floor area of the first-floor level, may extend up to a height of 6 feet beyond the maximum building height. Elevator equipment on roofs is not subject to this restriction.
- All building façades that face a public right-of-way shall be treated as a front façade and shall utilize the same materials and decorative features.
- Street-facing blank walls are prohibited. In order to encourage a sense of community and promote public safety, windows, doors, public art, and other façade articulation shall be utilized to limit blank areas.

- Buildings greater than 50 feet in width shall be vertically broken up into “bays” and shall incorporate elements to create depth and visual interest. Projections, indentations, changes in materials/material colors, and other architectural features shall be utilized. It is encouraged that selected architectural ornamentation is based on the Borough’s historic character.
  - A horizontal division shall define the ground floor from the upper floors on the street-facing façades of mixed-use buildings.
  - Roof-mounted appurtenances such as mechanical equipment, amenity space, or other features shall be set-back from the roof edge at a distance equal to the height of the appurtenance. These features shall be designed to blend in with the overall architectural design of the building and shall employ screening when deemed necessary by the Board.
  - Opening for windows and windowpanes shall have a vertical dimension greater than or equal to the horizontal dimension.
- Street facing façade transparency
  - Residential buildings shall have a minimum street facing façade transparency of 25%.
  - Commercial and mixed-use building shall have a minimum first floor street facing façade transparency of 60%. Upper stories shall have a minimum street facing façade transparency of 20%.
  - The visible light transmittance of all transparency and glazing shall be at least 70%.

### **BALCONIES**

- Terraces and balconies shall be permitted. The design of these elements shall be compatible with the architectural style of the building and shall contribute to the visual interest. All balconies shall be of the “Juliet” style or recessed into the building and shall not project into the right-of-way. Balconies facing the right-of-way shall not extend more than 24 inches from the front of the façade.
- Balconies and terraces shall not be used for outdoor storage of materials, trash/recycling, laundry, grill, etc., so as not to create a fire hazard or other nuisance. The landlord shall prohibit the use of balconies and terraces from such uses in its residential lease and/or Master Deed to the extent the residential units are condominiums. Further, balconies and terraces shall be kept free of clutter as a means to maintain the overall aesthetics of the building façade. Enclosure of balconies shall be prohibited.
- Glass parapets or glass railings are prohibited.
- Rear porches and decks are permitted, provided they are not visible from the right-of-way.

**AWNINGS**

- Awnings shall be permitted. In no event shall an awning be permitted to extend more than 4 feet from the face of the building.
- Awnings shall be designed to be compatible with the overall aesthetics of the building. In developments with multiple first floor tenants, either all entrances to the tenant space shall have awnings, or none of the tenant space shall have awnings.
- Awnings shall have a metal structure covered with canvas or a similar material.
- The bottom edge of an awning shall be a minimum of 8 feet above grade.

**STOREFRONTS**

- The maximum height of the sill above the sidewalk shall be 30 inches.
- Entrances shall be recessed so that doors do not open into the sidewalk's flow of pedestrians.
- Each individual use on the ground floor is required to have its own primary entrance.
- Security gates are not permitted.

**FRONT PORCHES**

- Front porches shall be permitted and encouraged for residential buildings within the Redevelopment Area.
- Front porches shall comply with the setback regulations.

## Signage

Signage shall be used to identify businesses located on the premises and to aid in the circulation into, throughout, and out of the site. Signage shall be in accordance with the below standards. Where there is a conflict between Borough Ordinance and this Plan, the Plan shall supersede.

All signs within a development shall be designed in a manner that is complimentary to one another and to the overall development and aesthetic of the site.

### **INDIVIDUAL SIGN AREA MEASUREMENTS**

Sign area shall be measured by the means of the smallest shape that will encompass the extreme limits of all writing, logos, graphic illustration, pictures, or other display areas, along with any material or color forming an integral part of the background of the sign.

### **GENERAL SIGN REQUIREMENTS**

- All signs shall have a coordinated theme throughout the site plan. The theme shall include the style and size of the lettering, sign material, colors, size, lighting, and background characteristics.
- Buildings shall be designed to include a “signage zone” above the commercial use frontage and integrated into the overall architectural design of the building.
- No sign shall be permitted which is not accessory to the business conducted on the property.
- All signs shall be legible and be of professional quality.
- The total sign area for sign or signs permitted on the face of any wall shall not exceed 20% of the area of the face of the wall upon which sign or signs are attached.

### **WALL SIGNS**

Signs attached to building façade shall be permitted as follows:

- One (1) primary flat wall mounted sign shall be permitted to be located above the entrance to each storefront space.
- The total area of a wall sign shall not exceed 5% of the area of the face of the wall which it is attached.
- The maximum lettering height of wall signs shall not exceed 36 inches.
- Wall signs shall not project more than 3 inches from the surface of the building.
- No sign may project above the roofline.
- The maximum height of any wall sign shall not exceed 36 inches.

- Wall signs shall not be located above the first floor of the building, with the exception of the Theater District. The Theater District shall be required to restore and utilize the existing marquis sign as part of the proposed development.
- Wall signs may be externally illuminated utilizing gooseneck light fixtures or similar. In no event shall a wall sign be internally illuminated. Sign lighting shall be directed towards the sign and the building. In no event shall sign lighting be permitted to shine towards the sidewalk or street.

#### ***PROJECTING SIGNS***

Projecting signs are signs that are attached and perpendicular to the storefront at a 90-degree angle located above an entrance. Projecting signs are permitted as follows:

- Not more than one projecting sign shall be permitted on the exterior wall of a business establishment which faces an abutting street. Corner lots shall be construed as having frontage on both streets, and a projecting sign shall be permitted for that establishment on both abutting streets.
- Projecting signs shall maintain a minimum distance of 10 feet above the sidewalk.
- Projecting signs shall not exceed 6 square feet in sign area.
- Projecting signs shall not project more than 3 feet from the wall to which they are attached.

#### ***WINDOW SIGNS***

- Window signs shall be permitted throughout the Redevelopment Area.
- Window signs shall not exceed 20% of the total glazed area of the windows for storefronts on the first floor. For separate business located on the upper stories of a building, one window sign shall be permitted which does not occupy more than 5% of the total window area.
- Window signs shall pertain only to the business occupying that portion of the premises in which the window sign is located.
- Window signs shall be applied to the interior of the window.

#### ***DIRECTORY SIGNS***

- One directory sign listing the tenants or occupants of a building or group of buildings shall be permitted where there are multiple tenants in a building.
- The directory sign shall not exceed 10 square feet and shall be designed to complement the architectural character of the building.

**AWNING SIGNS**

- Lettering and graphics on an awning shall not exceed an average height of 9 inches shall be restricted to the awning valance.
- A minimum distance of 1.5 inches shall be maintained between the edge of the lettering or graphics and the top and bottom of the valance.
- Backlit waterfall awnings shall be prohibited.

**MONUMENT SIGNS**

Monument signs shall only be permitted in the Route 31 Gateway District on properties that have lot frontage on Route 31.

- Monument signs shall be externally illuminated. Monument signs shall be required to utilize gooseneck or similar light fixtures, or utilize external illumination that is cast directly to the sign.
- Maximum sign area per side shall be 30 square feet. In no event shall a monument sign have more than two sides.
- Maximum height of a monument sign, measured from grade to the top of the sign shall not exceed 15 feet.
- The minimum setback of a monument sign from the property line adjacent to Route 31 shall be 10 feet.

**PROHIBITED SIGNS**

- Backlit and neon signs.
- Animated or moving signs.
- Billboards or roof-mounted signs.
- Signs for a product or business that does not occupy the premises.
- Illuminated signs which light source is directed towards the sidewalk or the street.

## Lighting

Adequate lighting shall be provided for off-street parking, vehicle circulation, and pedestrian areas. All lighting shall be designed and installed to provide a controlled lighting level that maximizes energy efficiency and minimizes off-site spillage and glare.

All site plan applications shall include comprehensive lighting plans that provide a method for illuminating external areas of the site. The following lighting principals shall be considered:

- Lighting shall be designed to minimize glare. All fixtures shall be shielded and/or cutoff to prevent light spillage and glare onto adjacent properties and into the street.
- All lighting fixtures shall utilize energy efficient bulbs and include dimmers, timers, and other methods to control the intensity of lighting, especially after business hours.
- Up-lighting on buildings may be utilized where appropriate to enhance building aesthetics; however, all up-lighting shall be angled to focus on the building façade and shall not extend beyond the roofline.
- Lighting plans shall avoid excessive “hot spots” and shall endeavor to create an even gradient throughout areas to be illuminated.
- Exterior areas on development sites should utilize bollards, pathway lighting, and other similar features to create a sense of security, while also limited glare and light-spillover onto adjacent properties.
- All lighting shall be downcast under a canopy or focused on the building façade. In no event shall lighting from a building be permitted to shine directly into the street or impact the ability to operate a motor vehicle.
- Illumination levels shall adhere to the following standards:
  - Illumination levels at the side or rear property line abutting a residential use or zone shall not exceed 0.1 footcandles.
  - Illumination levels at the ground level shall not exceed 1.0 footcandles.
- Where a use demands specialized lighting requirements that may be outside the standards contained in this plan (such as bank ATM, or other similar use), the applicant may demonstrate compliance with IESNA (Illuminating Engineering Society of North America) best practices, subject to review and approval by the Board.
- In no event shall lighting be permitted to be a yellow, red, green or blue beam, not be rotating, pulsating or of other intermittent frequency.

## Fences and Walls

Fences and walls located within the Redevelopment Area shall comply with the following:

- Solid fences shall be permitted only in the side and rear yards.
- Fences located in the side and rear yards shall be a maximum of six feet tall.
- Fences located in the front yard on residential sites shall be a maximum of three feet tall and 50% transparent. No fences shall be permitted in the front yard on commercial properties, unless used to fence in outdoor dining areas.
- Chain link fencing shall be prohibited.

## Landscaping, Screening and Buffering

- Street trees shall be installed on both sides of the street and shall be spaced between 25 and 35 feet on center. Street trees shall have a minimum diameter of 2.5 inches measured three feet above the ground. Native species shall be preferred.
- A landscaped buffer of at least 10 feet in width shall be provided when a commercial property or parking lot abuts a residential use or zone.
- Buffer areas shall be planted with a combination of deciduous and evergreen trees and shrubs which shall be of a density that can obscure the glare of automobile headlights or other sources of illumination emanating from the premises year-round.
- A minimum 5-foot-tall solid fence may be provided interior to the buffer area within the side or rear yard of a property at the discretion of the Land Use Board. In no event shall a solid fence be permitted within the front yard.
- The use of invasive species in landscape plans shall be prohibited. The use of native species is strongly encouraged.

## Utilities and Mechanical Equipment

Regulations for screening of mechanical equipment shall comply with the following additions:

- HVAC units should be energy efficient, appropriately sized models. Packaged Terminal Air Conditioners (PTAC) units and window air conditioning units are prohibited.
- Air conditioning units should not be placed into windows or any other openings visible from the street.
- Mechanical equipment and utilities shall not be located between the building and right-of-way.

- Mechanical equipment and utility meters shall be screened in a manner consistent with the architectural aesthetic of the building. Every effort shall be made to make utilities as visually unobtrusive as possible.
- To the extent permitted by public utilities, transformers and generators shall be located interior to the building, on the roof or vaulted underground within the pavement area of an adjacent street or sidewalk.

### Sustainability Requirements

To the extent feasible, redevelopment projects shall include green infrastructure components to enhance stormwater management, reduce discharge to the Borough's sewer systems and conserve water. Compliance with the recommendations below shall be addressed during the site plan approval phase of a project before the Land Use Board.

- Green infrastructure such as bioswales, rain gardens, cool roofs, green roofs, and similar best practices shall be utilized as part of comprehensive stormwater management design to reduce area-wide stormwater impacts.
- Greywater recycling is encouraged as part of all projects. Greywater recycling entails the capture and reuse of water from washing machines, bathroom sinks, and showers to be used for non-potable purposes such as toilet flushing and irrigation. Most of the water used by residential buildings is classified as Greywater, and thus could be reused as opposed to directed into the Borough's sewer system.
- Where feasible, rain barrels and cisterns can be installed to capture roof run-off and be redirected for on-site landscape irrigation.
- All new electrical or electronic appliances provided by the developer, owner or management company shall meet Energy Star compliant requirements, including but not limited to: clothes washers, dishwashers, refrigerators, ventilation fans (including kitchen and bathroom fans), light fixtures in halls and common areas, and exit signs.

### Parking, Circulation, and Loading

Parking, circulation, and loading design shall conform to the requirements in Borough Ordinance Section 94-53, except where noted below, which shall adhere to the requirements in this Plan.

- Off-street parking space dimensions shall be 9 feet wide and 18 feet in length.
- Bicycle racks are encouraged near the entrances to retail and other non-residential uses.
- Electric vehicle charging stations and make-ready parking spaces shall comply with the requirements of P.L. 2021, c. 171 and the DCA Model Municipal Electric Vehicle Ordinance.
- To the extent feasible, structured parking shall be wrapped with storefronts, building lobbies, and other active uses.
- Surface parking lots adjacent to any right-of-way shall be screened from public view. Appropriate screening techniques include evergreen buffers in sufficient width to screen parked vehicles year-round. Garden walls and sitting walls may also be incorporated into the buffer in order to create a separation between the parking lot and the pedestrian environment.
- One twenty-four-foot-wide two-way ingress and egress driveway shall be permitted to access the parking area.
- At least 5% of the parking lot shall be landscaped with tree and shrub plantings on landscaped islands reasonably distributed throughout the parking lot.

### Refuse Storage and Collection

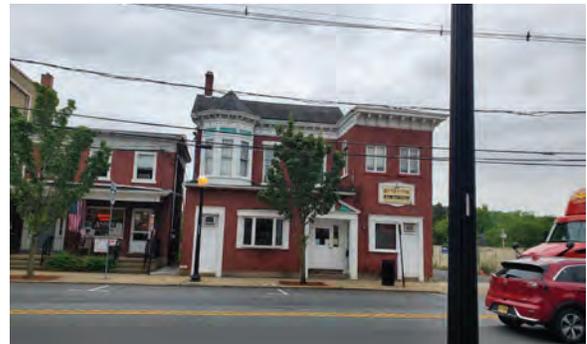
Any deviation from these standards will require design exception relief pursuant to the MLUL at N.J.S.A. 40:55D-51.

- All developments shall make provisions for the storage and collection of refuse and recyclables.
- Storage areas may either be indoors in an adequately sized location accessible to all building tenants, or in an exterior location with convenient access to building tenants and collection locations.
- Exterior refuse and recycling storage areas shall be screened with a durable enclosure consisting of block wall or solid fencing a minimum of six feet in height.
- It is strongly recommended that trash enclosures utilize a decorative gate.

### Accessory Buildings

Accessory buildings shall be permitted within the Redevelopment Area, provided the structure is incidental to a Principal Permitted Use. The following standards shall apply to accessory buildings:

- The minimum distance of an accessory building to a property line or to a building on the same lot shall be 5 feet.
- Accessory buildings shall not exceed 15 feet in height.
- Accessory buildings may not occupy an area totaling more than 25% of the required rear yard or a maximum of 900 square feet, whichever is less.
- Accessory buildings may be erected in the side or rear yard only. If erected on a corner lot, it shall be setback from the side street to comply with the setback line applying to the principal building.



## Streetscape Improvements

Development projects shall be required to provide streetscape improvements along the property's lot frontage. All streetscape improvements shall be coordinated with the Borough and the Business Improvement District. All improvements shall be consistent with existing streetscape improvements in downtown to create a cohesive environment. Recommended streetscape improvements shall include, but are not limited to: planters, benches, street trees, street lights, trash receptacles, and bike racks.

### ***STREET TREES***

Street trees contribute to the aesthetic environment of a downtown while also providing additional benefits. In addition to providing visual interest, softening building mass, and generally contributing to an attractive downtown, street trees help absorb water during rainfall, contribute to cleaner air, reduce energy costs by providing shade, and help combat noise. It is recommended that a variety of street trees are used to add visual interest to the downtown area. Native species should be utilized.

Street trees shall comply with the requirements in the Landscaping, Screening and Buffering section of this Plan.

### ***STREETLIGHTS***

There are existing pedestrian scale ornamental light fixtures along the Washington Avenue Streetscape, between Washington Avenue's intersections with South Lincoln Avenue and School Street. It is recommended that the use of the existing ornamental fixtures is carried out throughout the rest of the Redevelopment Area within the Washington Avenue Core District. Streetlights shall be spaced 35 feet apart.

### ***BENCHES***

Benches contribute to placemaking and provide a place for pedestrians to rest and/or watch activity on the street. There are existing benches located on Washington Avenue. It is recommended that benches are added throughout the Redevelopment Area, particularly in parks or plaza areas. New bench installations should be consistent with the existing benches used to ensure consistency throughout the Redevelopment Area.

### ***TRASH RECEPTACLES***

Trash receptacles are necessary to maintain a clean and orderly environment and can be used to contribute to placemaking. It is recommended that trash receptacles are placed throughout the downtown area and are a consistent design.

### ***BICYCLE RACKS***

It is recommended that bicycle racks be supplied throughout the Redevelopment Area. Bicycle racks will be especially important in the Downtown, given the proposed intensive mixed-use development.

***PUBLIC ART AND MURALS***

Public art can play a crucial role in communicating a municipality's heritage and create a sense of place where visitors instantly know they are in a vibrant downtown. Public art may include murals, mosaics, sculptures, decorative façades and other features associated with buildings and public spaces.

It is recommended that public art is strategically included throughout the redevelopment area, particularly on existing blank walls, or in public parks and plazas.

Murals are considered art and an integral part of placemaking within the Redevelopment Area. Murals shall be permitted in the Redevelopment Area and shall be exempt from the signage regulations and shall not contain commercial advertisements.

- Murals are strongly encouraged to be located on blank expanses of all walls facing alley ways and side streets. In no event shall a mural be permitted along a front façade of a building facing Washington Avenue or Route 31.
- Murals shall be designed in a manner compatible with the historic character of the Borough's downtown.
- In no event shall a billboard be considered a mural.
- Murals shall be subject to approval of the Borough's Redevelopment Agency and Land Use Board.
- No more than two square feet of the mural may contain the name of the artist, sponsor and/or product likeness
- Murals may not be mere extensions or enlargements of an existing sign.
- Murals shall become the property of the property owner following construction.
- Should an applicant propose a mural, the following shall be submitted for review and approval:
  - Site Plan showing the lot and building dimensions and indicating the proposed location of the mural
  - Pictures of the building elevations
  - A scaled drawing and color photo of the building elevation and placement of the mural

- A colored drawing of the proposed mural
- A description of the proposed maintenance schedule that includes the time frame for the life of the mural and method for removal, if applicable
- Written confirmation by the mural provider/installer that no damage or negative impact will occur to the wall surface that the mural is to be applied or affixed to.
- Written permission from the owner of the building to which the mural is intended to be applied, if the applicant is not the building owner
- An acknowledgement that the mural must be removed or covered if so ordered by the Zoning Officer for failure to maintain or for reaching a state of dilapidation.

#### ***GARDEN AND SITTING WALLS***

Garden walls and sitting walls shall be incorporated into the design whenever feasible. Garden walls and/or sitting walls can help to define the pedestrian environment and separate the sidewalk from private space and can be used to screen areas such as parking lots and utilities.

Garden walls and sitting walls shall be composed of durable materials that are complimentary to the overall aesthetics of a site and shall utilize durable materials such as stone or brick. Garden walls shall have a maximum height of 3 feet and sitting walls shall have a maximum height of 2.5 feet.

#### ***WAYFINDING SIGNAGE***

Wayfinding is a valuable tool that can be utilized to create a more efficient circulation system. All signage should be developed consistent with the architecture of the Downtown. Such signage should relate to the features of the Downtown in terms of location, color, lettering, materials, texture and depth. Signs should be proportionate and complement the buildings, existing signs, and surroundings.

The Borough may work with owners of corner buildings to affix community directional signs to buildings. Such signs should not obscure, conflict with, or cover any architectural element or window and must be aligned with major building elements such as windows, trim, and structure lines.

The Borough, working with the Washington Business Improvement District, may also consider installing stand-alone directional signs, indicating the location of businesses within the downtown area.

## Resiliency Standards

- Encourage green stormwater management in accordance with the Borough's stormwater management ordinance.
- New development and rehabilitation of existing structures adjacent to the Shabbecong Creek shall not be permitted to increase the current area of disturbance. It is strongly encouraged that properties abutting the Shabbecong Creek reduce disturbance and revegetate areas adjacent to the Creek when feasible.
- The Borough shall work with the New Jersey Department of Transportation to determine whether there is an opportunity to provide green infrastructure solutions along Route 57 to mitigate nuisance flooding events and potential flooding from the Shabbecong Creek.
- New structures, additions to buildings, substantial improvements to buildings, and repair of substantially damaged buildings shall be required to comply with the NJDEP's Flood Hazard Control Act (NJSA 58:16a-50 et seq.), Flood Hazard Control Act Rules (NJAC 7:13) and the Federal Emergency Management Agency (FEMA) Flood maps and regulations. This shall include relocating structures outside of the floodway and elevating the structure and utilities a minimum of 1-foot above the base flood elevation (BFE) for residential structures, or floodproofing the building if non-residential.

## Conformance with Municipal Objectives

The Borough of Washington adopted its current Master Plan Reexamination Report on April 8, 2022. The 2022 Master Plan Reexamination Report notes that in 2007, there was need to maintain a strong business center by improving the downtown area, and that the Borough's downtown should continue to remain a priority for the Borough. Affordable housing, the need to provide an adequate supply of recreation land and protection of environmentally sensitive lands in the Borough, and conformance with the Highlands Regional Master Plan were other concerns in 2007 that continue to remain valid.

The 2022 Master Plan Reexamination Report also include recommendations to update the Downtown Redevelopment Plan to incorporate changes that have occurred in the Borough since the Downtown Redevelopment Plan was adopted in 2009, and to incorporate sustainability, water conservation and resiliency standards.

## Relationship to Other Plans

### State Development and Redevelopment Plan (SDRP)

In 2001, the State Planning Commission adopted the State Development and Redevelopment Plan (SDRP). The SDRP is a document that, while not binding, guides State-level development and redevelopment policy as well as local and regional planning efforts. Eight statewide goals are articulated in the Plan, along with dozens of corresponding implantation policies. The goals are as follows:

- Revitalize the State’s cities and towns.
- Conserve the State’s natural resources and systems.
- Promote beneficial economic growth, development and renewal for all New Jersey residents.
- Protect the environment, prevent and clean up pollution.
- Provide adequate public facilities and services at a reasonable cost.
- Provide adequate housing at a reasonable cost.
- Preserve and enhance areas with historic, cultural, scenic, open space, and recreational value.
- Ensure sound and integrated planning and implementation statewide.

This Plan meets stated goals 1, 3, 6, and 8 of the SDRP.

- The intended purpose of this Plan is to build upon the commercial development that has occurred in the Borough over the last decade and continue to revitalize downtown Washington Borough.
- This Redevelopment Plan promotes beneficial economic growth for residents of Washington.
- The Redevelopment Plan encourages compact, center-based development along Washington Avenue and Route 31, that promotes synergy for the commercial storefronts and residential units.
- The Redevelopment Plan promotes the production of high-quality new housing and includes a requirement that new residential housing provide an affordable housing set-aside to meet the Borough’s affordable housing obligation.

The SDRP also includes a State Plan Policy Map, which divides the state into regions known as Planning Areas. The 2001 SDRP identifies the Borough as a Rural planning area. According to the SDRP, PA-1 Metropolitan and PA-2 Suburban are the focus areas for providing much of the States future development and redevelopment. Within areas like the Borough, development is encouraged through center-based development. The Borough was designated as a State designated center on May 26, 1999, which expired on January 11, 2022. However, the Borough has petitioned the Highlands Council for Plan Conformance with the Highlands Regional Master Plan as a Highlands Center. Therefore, this redevelopment plan is entirely consistent with the State Plan.

### State Strategic Plan

The final draft of the State Strategic Plan was released in 2012. While the State Strategic Plan has not been officially adopted, and the SDRP is still the official State Plan, it is still prudent to review the relationship between this Plan and the State Strategic Plan Draft. This Plan is consistent with the stated goals of the State Strategic Plan. This Plan exemplifies the guiding principle of “Spatial Efficiency”, where new development is encouraged to be located in areas where infrastructure is already in place to support growth.

### Warren County Strategic Plan

The Warren County Strategic Growth Plan was first adopted in December 2004 and revised in October 2005. This Plan meets the following goals in the Warren County Strategic Plan.

- Focus growth in existing centers and provide financial incentives to local government, school districts and developers to achieve this goal.
- Maintain and improve the existing transportation system to provide safe and efficient mobility and access.
- Encourage desirable development that provides local employment opportunities in existing centers.
- Increase educational and cultural opportunities.
- Provide a mix of housing types.

### Highlands Regional Master Plan

In 2008, the Highlands Commission adopted The Highlands Regional Master Plan (RMP). The 2008 RMP identified Washington Borough as a Highlands Center. The overarching goal of the regional master plan with respect to the entire Highlands Region is to protect and enhance the significant values of the resources thereof in a manner which is consistent with the purposes and provisions of this act. This Redevelopment Plan supports the following goals of the Highlands Regional Master Plan:

Goal 1D: Protection, restoration, and enhancement of the Highlands open waters and riparian areas

The Downtown Redevelopment Plan does not permit new disturbance on properties adjacent to the Shabbecong Creek and encourages properties and development adjacent to the creek to minimize disturbance and revegetate areas, when possible.

Goal 2J: All existing and future development in the Highlands Region that use public water supply systems are served by adequate and appropriate infrastructure.

Goal 2K: All existing and future development in the Highlands region that use public wastewater treatment systems are served by adequate and appropriate infrastructure.

The entirety of the Downtown Redevelopment Area is located within the Borough's Sewer Service Area and has access to public water supply systems.

Goal 4A: Protection and preservation of the historic, cultural, and archaeological resources of the Highlands Region

Goal 5A: Provision of safe and efficient mobility within the Highlands, and between the Highlands and destinations outside of the region

One of the goals of the Downtown Redevelopment Plan is to provide mid-block crosswalks for pedestrians along Washington Avenue (Route 57) and to implement traffic calming measures throughout the downtown.

Goal 6 F: Support of compact development, mixed use development and redevelopment and maximization of water, wastewater and transit infrastructure investments of future use of land and development within the existing community zone.

The entirety of Washington Borough is a Highlands Center, and the Downtown Redevelopment Area is located in an existing developed area of the Borough. The Downtown Redevelopment Plan envisions compact, mixed-use development within the Washington Core District, while also providing a separate Route 31 Gateway district which allows for both commercial and residential development.

Goal 6J: Accommodation of regional growth and development needs through the reuse and redevelopment of previously developed areas, including brownfields, grayfields, and underutilized sites.

The Downtown Redevelopment Plan highlights several key properties that provide an opportunity for the redevelopment and reuse of the downtown, which includes brownfields and underutilized sites.

Goal 6O: Market-rate and affordable housing sufficient to meet the needs of the Highlands region within the context of economic, social, and environmental considerations and constraints.

The Downtown Redevelopment Plan requires a 20% affordable housing set-aside within the Area for all new residential development.

Goal 9A: Reduction of Air Pollution through use of alternative and efficient modes of transportation and the use of renewable energy sources

The Downtown Redevelopment Plan requires electric vehicle and make ready parking spaces in accordance with applicable State Law.

## Adjacent Municipalities

The Redevelopment Area addressed by this Plan is entirely surrounded by properties in the Borough of Washington. However, the Borough is completely surrounded by Washington Township. The Plan is substantially consistent with the Master Plan of the adjacent municipality.

### ***WASHINGTON TOWNSHIP***

Washington Township adopted their last Master Plan in 1997 and subsequently prepared Master Plan Reexamination Reports, with the most recent occurring in 2017. Washington Township is in the process of conforming to the Preservation Area of the Highlands Act and the Highlands Regional Master Plan.

The Township's 2007 Master Plan Reexamination Report notes that "the areas which are in immediate proximity to Washington Borough bear discussion. The two municipalities developed an understanding with respect to density and protection. While the area in the Borough will be high density, Washington Township should retain its rural zoning." The 2007 Master Plan further states that Washington Township should not seek a joint Center with Washington Borough, but any Center designation in Washington Township should be located along corridors that offer state highway access, public water and public sewer and an existing condition of higher residential, recreational, and commercial density.

The Washington Borough Downtown Redevelopment Plan envisions higher density within an already developed portion of the Borough and is proposed to be located along Washington Avenue (Route 57) and Route 31. This Redevelopment Plan is substantially consistent with the Master Plan of the adjacent municipality.

## **Administrative and Procedural Requirements**

### **Duration of the Redevelopment Plan**

The Redevelopment Plan shall be in full force and effect for a period of thirty (30) years from the date of approval of this Plan by the Municipal Council.

### **Amending the Redevelopment Plan**

Upon compliance with the requirements of applicable law, the Municipal Council of the Borough of Washington may amend, revise or modify this Redevelopment Plan, as circumstances may make such changes appropriate.

### **Redevelopment Entity**

The Mayor and Borough Council of the Borough of Washington shall serve as the Redevelopment Entity to implement this Redevelopment Plan.

### **Designation of a Redeveloper**

The Redevelopment Entity shall designate a redeveloper to effectuate a program of redevelopment as outlined in the LRHL.

### **Redevelopment Agreement**

Any development or construction within the Redevelopment Area must be undertaken in accordance with a fully executed and binding Redevelopment Agreement with the designated Redevelopment Entity. The Redevelopment Entity shall enter into a Redevelopment Agreement with a designated Redeveloper prior to the commencement of a redevelopment project, including prior to the granting of preliminary and final site plan approval.

At a minimum, the Redeveloper shall be responsible for any necessary studies, connection fees, and installation costs associated with municipal infrastructure improvements, capacity enhancements, or upgrades required for the provision of water, sanitary sewer, and stormwater management for a development in the Area.

All sidewalks, curbing, street trees, streetscape improvements and traffic controls or road improvements required as part of a redevelopment project shall also be the responsibility of the Redeveloper.

### **Property Acquisition**

Pursuant to this Redevelopment Plan, the Mayor and Council may acquire any property in the Redevelopment Area not already subject to a redevelopment agreement pursuant to all relevant statutes and regulations.

### **Relocation Assistance**

If any property is to be acquired through the redevelopment process, the Redevelopment Entity shall be responsible for preparing a Workable Relocation Assistance Plan (WRAP) to ensure that relocation is accomplished in a manner consistent with the statutory requirements.

### **Affordable Housing Units**

No affordable housing units are identified to be removed as part of the implementation of the Redevelopment Plan. Therefore, replacement of existing units is not required.

### **Provision of New Affordable Housing Units**

Redevelopment Plans are permitted to require the provision of affordable housing units per the Local Redevelopment and Housing Law (N.J.S.A. 40A:12A-7.b).

Residential units shall be developed in conformance with the approved settlement agreement with Fair Share Housing Center, and all affordable housing units shall comply with the Uniform Housing Affordability Controls (UHAC), N.J.A.C. 5:80-26.1 et seq. or any successor legislation, with the exception that in lieu of 10% of affordable units in rental projects being required to be affordable to households earning at least or below 35% of the regional median household income, 13% of affordable units in such projects is required to be affordable to households earning at or below 30% of the regional median household income, consistent with and as required by the Fair Housing Act.

Deed restrictions shall be filed ensuring that the affordability controls remain in place for at least 30 years pursuant to UHAC.

**Appendix I**  
**Land Use Board Resolution**  
**Approving 2 West Washington Site Plan**

Application #: 2020-03

Approved: 9/12/22

**BOROUGH OF WASHINGTON  
LAND USE BOARD**

**FINDINGS OF FACT, CONCLUSIONS AND RESOLUTION  
REGARDING THE APPLICATION OF  
2 WEST WASHINGTON, LLC  
FOR MINOR SITE PLAN APPROVAL, WITH VARIANCE RELIEF FOR  
BLOCK 23, LOT 17-18; BLOCK 24, LOT 35**

The Land Use Board of the Borough of Washington, in the County of Warren and State of New Jersey, upon motion of McDonald, seconded by Ron, adopts the following findings of fact, conclusions and resolution:

**Findings of Fact:**

1. The applicant, 2 West Washington, LLC has submitted an application seeking minor site plan approval and variance relief for development of Block 23, Lot 17-18; Block 24, Lot 35. The project is located in the vicinity of the intersection of West Washington Avenue and Belvidere Avenue with lots at the northwestern corner of the intersection containing an existing 3 story building which is a financial institution on the first floor and the second and third floors are reserved for office space. The other lot is across the street along Belvidere Avenue and is currently occupied entirely by a surface parking lot. Both lots are located within the Washington Avenue Core District. Block 23, Lots 17-18 occupy an area of 14,947 SF and Block 24, Lot 35 occupies an area of 3,891 SF.

2. The Applicant is proposing to renovate the interior of the 3 story building on Block 23, Lots 17-18. The first floor financial institution is proposed to remain unchanged but the second and third floors are proposed to be converted to a total of 10 residential units of varying size. No external changes are proposed

3. The application as amended during the hearing process and through plan revisions sought the following relief:

A. Minor Site Plan Approval.

B. “C” variance relief pursuant to N.J.S.A. 40:55D-70(c) from the following standards:

	Required	Existing Lots 17 & 18	Existing Lot 35	Proposed	Variance
Minimum Lot Area	12,000 sq. ft.	14,947 sq. ft	3,910 sq. ft.	No change	ENC
Build-to-Line Distance from property line (all other streets)	5 to 15 feet	0 feet	N/A	No change	ENC
Parking	31 spaces	24 spaces total		24 spaces	ENC/V
Minimum Lot Width	60 feet		47 feet	No change	ENC
Building Façade- Where any building façade over 50’ wide fronting on Washington Avenue is required to be broken down into vertical elements and/or change in materials, where the existing building façade is not proposed to change. This is an existing nonconforming condition that is not proposed to change					

C. Design Waiver Relief

Parking- Where the applicant is required to provide 31 parking spaces, where 24 is existing and proposed.

Transparency of façade- Where the first-floor level of all facades shall maintain a transparency of no less than 60% of the wall area, where it is unclear whether the existing first floor meets this requirement. In either event, this is an existing condition that is not proposed to change.

Exterior Wall and Façade Design- Where the horizontal dimension of a wall opening shall not

exceed the vertical opening, and there are existing windows on the West Elevation and the North/Rear Elevation that have windows with a horizontal opening greater than vertical opening. This is an existing nonconforming condition that is not proposed to change.

§94-53.E – Off-street parking and loading: Dimensions

Applicant proposes parking with sizing and configurations that are non-conforming with this section. In addition, no loading spaces have been provided. This is an existing, non-conforming condition, therefore a waiver is required.

§94-53.I – Off-street parking and loading: Minimum parking requirements.

Applicant proposes a quantity of parking spaces that is non-conforming with this section. Applicant shall revise the plans to reflect requirements for apartments as-per N.J.A.C. 7:21 and this section or request a design waiver. This is an existing, nonconforming condition.

§94-53.J - Off-street parking and loading: Location of parking and loading areas.

Applicant proposes parking spaces in locations that do not conform to the requirements of this section. This is an existing, non-conforming condition, therefore a waiver is required.

4. On March 14, 2022, the matter was entertained for purposes of completeness. A motion was made by Valle, seconded by Conry to deem the application complete.

ROLL CALL: Ron, Valle, Conry, Turner, Frascella, Wright, VanDeursen

Ayes: 7; Nays: 0; Abstentions: 0)

Motion carried.

5. On May 9, 2022, it was noted that the applicant had submitted appropriate proof of service and publication of the notice of hearing and the Board was found to have jurisdiction to proceed with the hearing. The applicant was represented by Kara Kaczynski, Esq.

Throughout the hearing process, sworn testimony under oath was received from the following witnesses:

- A. Mark Mulligan, principal of the applicant
- B. Eric B. Rupnarain, P.E.
- C. Lucienne Di Biase Dooley, Architect

6. During the hearing process, the following exhibits were marked into evidence:

Exhibit B-1 Technical Review Correspondence of Board Engineer dated April 8, 2022

Exhibit B-2 Technical Review Correspondence of Board Planner dated April 10, 2022

Exhibit B-3 Technical Review Correspondence of Board Planner dated June 13, 2022

7. Ms. Kaczynski provided an overview of the application. The applicant is proposing 10 rental units. The site is located in the core district/B2. No exterior improvements are proposed. There will be interior changes to the second and third floors only. Parking requirements will be reduced.

8. Sworn testimony under oath was received from Mark Mulligan who is the operation manager for the applicant. The building was purchased in 2008. The initial proposal was to convert existing office space into more office space, however the applicant's model has changed since the Covid 19 pandemic. The existing bank lease is in effect for another 2 ½ years and despite the space being essentially vacant, the space at the present time will stay only as an ATM. There are no plans right now to replace existing bank until Wells Fargo changes its stance. The applicant agreed to a condition that they will return to the Board for site plan approval and any other additional relief upon change of use of the first floor. The proposed residential use is a good use and although the site will work differently, parking spaces were never fully utilized and the building construction is mostly complete.

9. There are two stairwells. 24 parking spaces. No employees. Mail boxes will be in the back lobby area. The applicant will be reusing the current HVAC system. Appliances will be in each unit: washer/dryer/refrigerator/stove/dishwasher. No laundry room is proposed on site. A trash/recycling dumpster will be provided on site. Possible storage cages in the basement. Parking will stay as is. Existing signage will stay. All units will be rental units of a

higher end with two of the units complying as Affordable Units. No bicycle storage was proposed but the applicant agreed to explore basement storage and work with the Board's professionals. No backup generators are proposed on site. The rear of the building on the second floor will be adding windows. There are no structures proposed and no increase of the building footprint. The location of the existing parking will remain with designation of parking spaces. No new signage is proposed. The existing sign will be utilized which is not backlit. The Wells Fargo backlit signs have been removed from the building. Ingress and Egress on site remains the same.

9. Sworn testimony under oath was received from Eric B. Rupnarain, P.E. whose credentials were reviewed by the Board and was accepted as an expert in his field. The proposal was for ten apartments in a mix of one, two and three bedroom units. A commercial use will remain on the first floor of the building with the residential uses to be located on the second and third floors. Mr. Rupnarain that the uses are complimentary as the peak commercial activity is during the day, where the peak residential activity is overnight. The applicant agreed to supply cross easement documents to the satisfaction of the Board's professionals for parking. Parking spaces shall be as follows:

10 spaces on Lot 25

14 spaces with one Handicapped Space on Lots 17 & 18.

Applicant also agreed to provide signage limiting parking to 2 West Washington and Title 59 enforcement authority to the satisfaction of the Board's professionals. The proposed signage plaque will be revised to the satisfaction of the Board's professionals. Utilities will be located on the roof. There is no detrimental impact with the project. No environmental impact. No change to lighting.

10. The matter was opened to the public for questions or comment. No public was in attendance or sought to participate. The hearing was continued to June 13, 2022 with no further notice of hearing being required.

11. On June 13, 2022, the hearing was continued. Board member, Scott McDonald certified that he listened to the May 9, 2022, meeting recording and was found to be eligible to participate and vote. Sworn testimony under oath was received from Mark Mulligan. Mr. Mulligan addressed the issues contained in the Board Planner, Elena Gable's letter dated June 13, 2022. The applicant agreed to comply with all of the Board's experts reports as a condition of approval. The applicant agreed to revise the plans to reflect five basement storage cages to the satisfaction of the Board's professionals.

12. Sworn testimony under oath was received from Lucienne Di Biase Dooley who reviewed the architectural plans for the Board and the limited changes that were proposed.

13. The matter was opened to the public for comment or questions. None was received.

14. A motion was moved, seconded and unanimously passed to close the public portion of the meeting.

15. A motion was moved by Turner, seconded by Ron to approve the application subject to conditions.

ROLL CALL: McDonald, Ron, Conry, Turner, Hendersen,

Frascella, Wright, VanDeursen, Bridyngham

Ayes: 9; Nays: 0;

Abstentions: 0

Motion carried.

**Conclusions:**

1. The applicant has established its entitlement to the variances as set forth above and as articulated in the plans and reports of the Board's professionals pursuant to N.J.S.A. 40:55D-70(c)(2) and to the extent required as preexisting. The applicant has established the necessary “positive” and “negative” criteria for the granting of the requested variance pursuant to N.J.S.A. 40:55D-70(c)(2). The applicant has provided a unique design which addresses the unique conditions on the site necessitated by the existing building. In sum, in weighing the benefits v. any detriments, the Board finds that the benefits of granting the various variance relief requested far outweigh any detriments that might result.

2. As to the negative criteria, the Board finds that the variances can be granted without a substantial detriment to the public good and will not substantially impair the intent and purpose of the zone plan and zoning ordinance. The development is in keeping with the neighborhood and serves to bring to utilization this unique building in a unique area with complimentary uses.

3. For the foregoing reasons, the Board likewise finds that the Design Waivers are appropriate under the circumstances.

4. The application otherwise being fully conforming to the Washington Borough ordinances, the applicant was found to be entitled to minor site plan approval subject to conditions.

**Resolution:**

**RESOLVED**, that the Applicant, 2 WEST WASHINGTON, LLC is granted the relief as set forth above, subject to the following conditions:

A. The terms of this approval are to be strictly in accordance with the plans, testimony, and representations presented at the public hearings, and the same are incorporated into this resolution by reference.

B. Compliance with the Board Engineer's Review correspondence marked Exhibit B-1 as clarified during the testimony.

C. Compliance with the Board Planner's Review correspondence marked Exhibit B-2 and B-3 as clarified during the testimony.

D. The plans shall be revised to reflect five basement storage cages to the satisfaction of the Board Engineer and Planner.

E. The plans shall be revised to include signage for parking and the plaque revisions to the satisfaction of the Board Engineer

F. Any change of use of the first floor shall require the applicant to return to the Board for site plan approval and any other necessary relief.

G. Applicant shall obtain any and all outside governmental agency approvals including but not limited to Warren County Planning Board, Warren County Soil Conservation District, Warren County Board of Health, NJ Highlands Approval to the extent required.

H. Applicant shall comply with any and all Affordable Housing Contributions or set asides including the provision of two Affordable Housing Units to the satisfaction of the Board's Professionals.

I. Applicant shall perform the work in accordance with the plans submitted in connection with the application and as to be revised subject to the Board's professionals' approval as set forth above and in the review correspondence.

J. Applicant shall provide cross access easement documents to the satisfaction of the Board's professionals.

K. Access to the roof of the building will be restricted from residential use.

L. Applicant shall maintain a positive balance in its escrow account to reimburse the Borough for its professional expenses in the review of this application and compliance with this approval.

BOROUGH OF WASHINGTON  
LAND USE BOARD  
APPLICATION #

SECRETARY: Patricia Titus

APPROVAL DATE: 9/12/22

**BLOCK 23, LOT 17-18; BLOCK 24, LOT 35**

VOTE:

Ayes: McDonald, Ron, Turner, Henderson, Frascella, Wright, VanDeursen

Nays: none

I certify that this is a true copy of a resolution adopted by the Land Use Board of the Borough of Washington, Warren County, on September 12, 2022, to memorialize the Board's action on June 13, 2022.

\_\_\_\_\_  
Patricia Titus, Secretary

Eligible to Vote: McDonald, Ron, Conry, Turner, Hendersen, Frascella, Wright, VanDeursen, Bridyngham

**Appendix J**  
**2 West Washington**  
**Redevelopment Agreement**

**REDEVELOPMENT AGREEMENT**

**by and between**

**BOROUGH OF WASHINGTON**

**And**

**2 WEST WASHINGTON, LLC**

**Dated: Nov, 2024**

THIS REDEVELOPMENT AGREEMENT, made on November 9<sup>th</sup>, 2024 (hereinafter referred to as the "Agreement") by and between the **BOROUGH OF WASHINGTON**, a municipality of the State of New Jersey with offices located at Municipal Building, 100 Belvidere Ave, Washington, New Jersey 07882, together with any successor public body hereinafter designated by or pursuant to law (hereinafter referred to as the "Borough"), and **2 WEST WASHINGTON, LLC.**, a Limited Liability Company formed and operated pursuant to the laws of the State of New Jersey with offices located ~~1150 Old Creton Road, Flemington, NJ 08822 OR~~ 509 Byram-Kingwood Road, Frenchtown, NJ 08825 (hereinafter referred to as the "Redeveloper") (the Borough and the Redeveloper are hereinafter collectively referred to as "Parties").

W

**WITNESSETH:**

**WHEREAS**, the Mayor and Council of the Borough of Washington, in its capacity as the redevelopment agency for the Borough (hereinafter referred to as the "Borough Council" or the "Agency"), is responsible for implementing redevelopment plans and carrying out redevelopment projects pursuant to the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq. (hereinafter referred to as the "Redevelopment Law"); and

**WHEREAS**, Redeveloper is the owner of certain property that is known and designated as Block 23, Lots 17 and 18 and Block 24, Lot 25 on the Tax Map of the Borough of Washington, Warren County, State of New Jersey, consisting of a total of approximately .67 acres (the "Property"); and **WHEREAS**, on or about April 7, 2009, the Borough Council adopted the Downtown Redevelopment Plan;

**WHEREAS**, the Borough has determined that the Property is an area in need of redevelopment according to the criteria set forth in N.J.S.A. 40A: 12A-5; and

**WHEREAS**, the Property is located in the Washington Avenue Core District pursuant to the Redevelopment Plan; and

**WHEREAS**, the Property contains a three-floor office building, with the first floor being occupied by Wells Fargo Bank; and

**WHEREAS**, Redeveloper proposes to change the use of the second and third floors to residential, consisting of eleven (11) rental apartments, and leave the first floor unchanged; and

**WHEREAS**, pursuant to the Redevelopment Plan, residential uses are permitted on the upper floors in the Washington Avenue Core District; and

**WHEREAS**, pursuant to Ordinance 2019-22 adopted on October 1, 2019, the Borough amended the Redevelopment Plan to require "[a]ny residential or mixed-use development producing 5 or more residential units...to provide 20% of the units as affordable to moderate, low, and very low income households..." and

**WHEREAS**, at least 3 (or 20%) of the residential units will be set aside for affordable housing rental units; and

**WHEREAS**, the Borough Council determined that the Concept Plan submitted to Borough Council by letter dated January 25, 2022 and attached hereto is substantially consistent with and meets the goals of the Redevelopment Plan and is in the best interest of the community and, therefore, adopted Resolution 2022-30 designating the Redeveloper as redeveloper for the Property and authorizing the execution of a Redeveloper's Agreement with Redeveloper on February 1, 2022; and

**WHEREAS**, applicable law and Borough ordinances require the posting of a construction inspection escrow, performance guarantee, and maintenance bond, which will be calculated by the Borough Engineer and will be subject to a Rider to this Agreement; and

**WHEREAS**, the Redevelopment Law authorizes the Borough to arrange or contract with a redeveloper for the planning, construction, or undertaking of any project or redevelopment work in a redevelopment area; and

**WHEREAS**, the Borough believes that the redevelopment of the Property in the manner proposed by the Redeveloper is in the vital and best interests of the community and promotes the health, safety, morals and welfare of the Borough's residents and is in accord with the public purpose and provisions of the Redevelopment Law; and

**WHEREAS**, the Borough has determined that it is in the best interests of the community for the Borough to enter into this Redevelopment Agreement with the Redeveloper for the purposes of specifying each Parties' respective rights and obligations for the effectuation of the goals and objectives of redevelopment within the Property; and

**WHEREAS**, the Borough and the Redeveloper desire to fully and thoroughly address the rights and obligations of the Parties hereto in connection with the redevelopment of the Property by way of this Agreement, and the Borough and the Redeveloper acknowledge that the mutual

promises contained in this Agreement are good and valuable consideration for the binding execution of this Agreement.

**NOW, THEREFORE**, for good and valuable consideration, it is agreed as of the date set forth above by and between the Borough and the Redeveloper, as follows:

**ARTICLE I**  
**DEFINITIONS**

**1.01. Defined Terms.** The Parties hereto agree that, unless the context otherwise specifies or requires, the following terms or phrases shall have the meanings specified below, such definitions shall be equally applicable to and shall include the corresponding masculine, feminine and neutral forms, and the singular and plural forms of such terms or phrases and the use of the upper or lower case initial letter of each word contained in such terms or phrases. Unless otherwise noted, the words "include", "includes" and "including" when used in this Agreement shall be deemed to be followed by the phrase "without limitation".

**Affiliate:** Shall mean, with respect to any Person, any other Person directly or indirectly controlling or controlled by, or under common Control with such Person.

**Agent:** Shall have the meaning specified in Section 14.17 of this Agreement.

**Agreement:** Shall mean this Redevelopment Agreement between the Borough and the Redeveloper for the redevelopment of the Property within the Redevelopment Area situated within the Borough of Washington, County of Warren, and State of New Jersey.

**Appeal Period:** Shall mean the period of time specified by statute or court rule within which an appeal may be taken by any party from the grant of any of the Governmental Approvals, and includes the period for filing an appeal to an appellate court after entry of a judgment or decision by a lower court or administrative agency.

**Applicable Law:** Shall mean any and all federal, state and local laws, rules, regulations, statutes, resolutions, orders and ordinances, including but not limited to the Municipal Land Use Law, applicable to the Project, the Property, or any aspect thereof.

**Borough:** Shall mean the Borough of Washington, a municipality of the State of New Jersey with offices located at 100 Belvidere Ave, Washington, New Jersey 08827 together with

any successor public body hereinafter designated by or pursuant to law. "Borough" may also include "Mayor and Council of the Borough."

**Borough's Redevelopment Costs:** Shall have the meaning specified in Section 2.09 of this Agreement.

**Certificate of Occupancy:** Shall mean the written certificate issued by the Borough in accordance with N.J.S.A. 52:27D-133 relative to a residential unit or unit of commercial/retail space constructed as a part of the Project indicating that the subject residential unit or unit of commercial/retail space has been completed in accordance with the construction permit, the Uniform Construction Code and the Applicable Law(s), and shall include a Temporary Certificate of Occupancy.

**Certificate of Substantial Completion:** Shall mean a written document issued by the Borough acknowledging that the Redeveloper has satisfactorily performed all of its duties and obligations pursuant to this Agreement relative to the Project, the issuance of said Certificate of Substantial Completion shall serve to release the Project and the Property from all terms, obligations and conditions contained in this Agreement.

**Commencement of Construction or Commence Construction:** Shall mean the undertaking by the Redeveloper of any physical construction of any new structure, Improvements and other infrastructure, including but not limited to, any activities related to the preparation of the site for such construction, or any activities related to the environmental remediation, mitigation or clean-up of same.

**Concept Plans:** Shall mean the concept plans and renderings annexed hereto as part of Exhibit A.

**Construction Plans:** Shall mean the architectural and engineering plans prepared by the Redeveloper in conformance with approved Final Site Plans, which plans have been prepared in accordance with Applicable Laws and are to be submitted to the Borough's Building and Construction Department for review and approval prior to the issuance of the necessary permits for Commencement of Construction.

**Control (also referred to as "Controlled by" and "under common Control with"):** With respect to any Person, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management policies of such Person, whether through the ownership of voting securities, by contract or otherwise.

**Days:** Shall mean calendar days when such term is used to denote time.

**Effective Date:** Shall mean the date this Agreement is last executed by either the authorized officer of the Borough or by the authorized representative of the Redeveloper.

**Equity Investor:** Shall mean the investor member of the Redeveloper, if any.

**Event of Default:** Shall mean, individually or collectively, a Borough Event of Default or a Redeveloper Event of Default, as defined in Sections 6.01a and b respectively.

**Final Site Plans:** Shall mean the plans submitted to and approved by the Land Use Board for Final Site Plan Approval for the Project in accordance with the Redevelopment Plan, Sections 3.04 hereof and Applicable Law.

**Financial Institution:** Shall mean a bank, savings bank, savings and loan association, mortgage lender or insurance company, pension fund, real estate investment trust, investment bank, mutual fund or similarly recognized reputable source of construction and permanent financing for the Project, chartered under the laws of the United States of America, or any State thereof.

**Force Majeure (also "Event of Force Majeure"):** As used throughout this Agreement this term applies to all time limitations and other obligations and shall mean any pandemic, state of emergency, public health emergency, acts of God, fire, volcano, earthquake, hurricane, blizzard, infectious disease, technological disaster, catastrophe, large scale infestation of any type, tremors, flood, explosion, release of nuclear radiation, release of biotoxic or of biochemical agents, the elements, war, blockade, riots, mob violence or civil disturbance, any act or acts of terrorism or terroristic threat, an inability to procure goods or services or a general shortage of labor, equipment, facilities, energy, materials or supplies in the open market, failure of transportation, strikes, walkouts, actions of labor unions, governmentally imposed moratoriums, court orders, laws, rules, regulations or other orders of governmental or public agencies, bodies and authorities or any other similar cause not within the reasonable control of the Party claiming the extension of time including legal inability to comply resulting from a change of law including municipal laws regulating land use and construction, or any legal requirements under any applicable environmental laws, as well as all known and unknown rules and regulations of the United States Environmental Protection Agency, Borough of Washington, and the NJDEP, clearances, approvals or permits typical of the development process, any legal proceedings, decisions or decrees that

adversely affect the ability of the Party claiming an extension of time to reasonably perform the obligations of and/or benefit from the terms of this Agreement, any economic conditions that may adversely affect the real estate market or may affect the Redevelopment Area, the Project as demonstrated by an independent market study prepared by a qualified financial consultant selected by the Party seeking the benefit of Force Majeure, or any delay in the Redeveloper's receipt of any necessary Governmental Approvals not within the Redeveloper's control. Notwithstanding anything to the contrary contained herein, the Borough shall not be entitled to seek the benefit of Force Majeure for its own actions or inactions including, without limitation, any act or failure to act by any municipal administrative agency, officer, employee, or consultant thereof, including the Land Use Board.

**Governmental Agency:** Shall mean any federal, state, county or municipal legislative, administrative, executive or Borough, office, agency, department, commission, authority, court, or tribunal and any successor thereto, exercising executive, legislative, judicial, advisory or administrative functions of or pertaining to government, including, without limitation, the Borough of Washington, the County of Warren, the State of New Jersey and/or the United States of America.

**Governmental Application:** Shall mean any and all submissions, plans, diagrams, supporting documents, reports or other proofs that are transmitted to any Governmental Agency, or any officer or agent thereof, for the purpose of obtaining a Governmental Approval of any aspect(s) of the Project.

**Governmental Approval:** Shall mean any approval, authorization, permit, including, but not limited to, building and construction permit, license, or Certificate of Substantial Completion issued by any Governmental Agency required in order to implement the Project or any aspect thereof in accordance with the Amended Redevelopment Plan and this Agreement. Any Governmental Approval shall not be deemed to have been obtained (a) until the Appeal Periods relating thereto have expired and no appeal has been taken, or (b) if an appeal is filed by a party challenging any Governmental Approval within the applicable Appeal Period, until such appeal shall have been finally resolved in a manner sustaining the challenged Governmental Approval.

**Improvements:** Shall mean all buildings, improvements, appurtenances and structures physically within or upon the Property comprising the Project, including but not limited to drainage

improvements, walkways, hook-ups and service laterals from a building to the curb for water, storm and sanitary sewers, and other utilities, parking, lighting, landscaping and fire hydrants.

**Institution**: Shall mean any savings and loan association, savings bank, commercial bank or trust company (whether acting individually or in any fiduciary capacity), an insurance company, a real estate investment trust, an educational institution or a state, municipal or similar public employee's welfare, pension or retirement system or any corporation subject to supervision and regulation by the insurance or banking departments of the state or of the United States Treasury, or any successor, department or departments hereafter exercising the same functions as said department.

**Land Use Board**: (also referred to as the **Borough Land Use Board**) shall mean the Borough of Washington Land Use Board together with any successor(s) in interest thereto exercising similar functions in accordance with the Applicable Law.

**Liability**: Shall have the meaning specified in Section 14.17 of this Agreement.

**Long Term Tax Exemption Law**: Shall mean the Long Term Tax Exemption Law, N.J.S.A. 40A:20-1 *et. seq.*

**Mortgage**: Shall mean any written instrument encumbering the Property or any portion thereof that secures the performance of obligations or the payment of debt, including, without limitation any grant of, pledge of, or security interest in, any collateral, or any grant, directly or indirectly, of any deed of trust, mortgage or similar instrument or any other security whatsoever.

**Mortgagee**: Shall mean the holder of any Mortgage.

**NJDEP**: Shall mean the State of New Jersey Department of Environmental Protection together with any successor(s) in interest thereto.

**Off-Tract Improvements**: Shall mean any improvements outside the Property, made necessary by the Project, that are to be constructed and maintained by the Borough and/or by the Redeveloper in order that the Redeveloper may satisfy the requirements of any applicable Governmental Approvals, including, without limitation, (a) all roadways, bridges and off-tract infrastructure improvements (b) grading, site drainage, drainage outfalls, walkways, subsurface excavation and other site preparatory work for the off-tract infrastructure improvements, lighting within off-site parking areas, landscaping, fire hydrants and roadways, in each case, (c) water and sewer service lines for the Project, including hook-ups and service laterals for water, storm and sanitary sewers, and other utilities, including electric, gas, telephone and cable services (which are

to be built underground), and (d) all other improvements which are or may be required to accommodate construction, occupancy and use of the Project. Except as otherwise provided in the Governmental Approvals and this Agreement, the cost of any Off-Tract Infrastructure Improvements shall be borne solely by the Redeveloper whether constructed or maintained by the Borough or the Redeveloper.

**Party/Parties:** Shall mean individually, the Borough or the Redeveloper and collectively, the Borough and Redeveloper.

**Permitted Transfer:** Shall mean any transfer permitted by Article 7 herein or consented to by the Borough pursuant to Article 7 herein.

**Person(s):** Shall mean any individual, sole proprietorship, corporation, partnership, joint venture, limited liability company, trust, unincorporated association, institution, public or governmental body, or any other entity.

**Preliminary Approval:** Shall mean Land Use Board approval of the Site Plans.

**Property:** Shall mean the property that is the subject matter of this Agreement and designated as Block 23, Lot 18 on the Tax Maps of the Borough of Washington, Warren County, State of New Jersey.

**Project:** Shall mean the Property and the Improvements and construction and installation thereof in accordance with the approved Construction Plans. The Project is more particularly described in Section 2.01 hereof.

**Redeveloper:** Shall mean 2 West Washington, LLC, a limited liability company formed and operated pursuant to the laws of the State of New Jersey, having corporate offices located at 1150 Old Croton Road, Flemington, NJ 08822 OR 509 Byram-Kingwood Road, Frenchtown, NJ 08825 \_\_\_\_\_, together with any Transferee(s) of its rights in accordance with the provisions of this Agreement.

**Redevelopment Area:** Shall mean the properties that are subject to the Redevelopment Plan.

**Redevelopment Law:** Shall mean the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1, *et seq.*, and as same may be amended from time to time.

**Redevelopment Plan:** Shall mean the Downtown Redevelopment Plan, as further defined in the Recitals of this Agreement, as adopted by the Borough, together with any amendments adopted in

accordance with the Applicable Law. **Site Plans:** Shall have the meaning specified in Section 3.01(a) of this Agreement.

**Site Plan Approval:** Shall mean, individually or collectively, approval by the Land Use Board of Final Site Plans for the Project.

**Tolling Event:** Shall mean: (i) an act or omission by one Party or a third party that has a material and adverse effect on the other Party's or either Party's ability to perform any obligation, requirement, commitment, or responsibility prescribed under this Agreement; or (ii) any extension granted by either Party to the other Party, to extend any proposed date to perform in this Agreement; or (iii) any reasonable request by one Party to the other to extend the time for performance of any obligation, requirement, commitment or responsibility arising pursuant to this Agreement; or (iv) during the period of any challenge or litigation related to an approval or denial of any Governmental Approval, whether brought by the Borough, the Redeveloper or a third party; or (v) an Event of Force Majeure.

**Transfer:** Shall mean any transaction, by which a Transferee obtains an interest in the Property, or any portion thereof and/or any or all of the Improvements, or in this Agreement by means or methods which include, but are not limited to, conveyance, transfer, lease, encumbrance, acquisition or assignment through sale, merger, consolidation, reorganization, foreclosure or otherwise, including the appointment of a trustee in bankruptcy or assignee for the benefit of creditors.

**Transferee:** Shall mean any third party to whom an interest in the Property, the Improvements or rights in or under this Agreement is conveyed, transferred, leased, encumbered, acquired or assigned, by sale, merger, consolidation, reorganization, foreclosure or otherwise, including through designation of a trustee in bankruptcy or assignee for the benefit of creditors.

## **ARTICLE II**

### **REDEVELOPER'S RESPONSIBILITIES**

**2.01 The Project Description.** As depicted in the Concept Plans submitted by the Redeveloper, a copy of which is attached as part of **Exhibit A**, the Redeveloper has proposed a development that is materially in conformance with the Redevelopment Plan. It is anticipated that the market rate residential units constructed as part of the Project will be made available to the general public as rental units. The affordable units will be made available as rental units pursuant

to Article XII below. The first floor office use will not change and no alterations are planned for the first floor.

Redeveloper has made the appropriate applications to the Borough Land Use Board for any required site plan, design waivers, or bulk variances. Nothing herein guarantees approval of any applications to the Borough Land Use Board.

**2.02 Phases of Project.** It is anticipated that the Project will be constructed in a single phase. The Parties agree that the Project may be phased by the Redeveloper and the Land Use Board as part of the site plan approval process.

**2.03 Certification of Completion.** Upon completion of the Project, the Redeveloper may request in writing a Certificate of Substantial Completion which shall be issued subject to the Borough's finding that the Project has been completed in conformity with the Final Site Plans and Construction Plans for the Project. Upon issuance of the Certificate of Substantial Completion, unless specifically stated otherwise herein, the Redeveloper shall be released from all obligations, responsibilities and liabilities set forth in this Agreement as same relates to the Project.

**2.04 Commencement of Construction and Redevelopment Project Schedules.** The Redeveloper shall commence construction of the Project within twelve (12) months after all Governmental Approvals become final and unappealable. Notwithstanding, the Redeveloper shall be permitted for good cause to request an extension and this Section shall be subject to any and all Event(s) of Force Majeure and Tolling Events.

**2.05 Planning, Design and Marketing of Project.** In accordance with, and subject to, the terms of this Agreement, including, without limitation Section 12.01 of this Agreement, the Redeveloper shall undertake, at its sole cost and expense, to plan, design, develop, market, and construct the Project. The Redeveloper shall, in its sole but reasonable discretion, develop and construct the Project in accordance with the Final Site Plans (as may be amended from time to time with the written approval of the Land Use Board, and subject to approval of the Borough Council as set forth herein (as well as any other Governmental Agency having jurisdiction)), and the Project shall not be deemed complete until approved as complete by the Borough in accordance with Section 4.08 hereof. Except as may be expressly set forth herein, the Borough shall not be responsible for any costs associated with any Improvements necessary for the development and construction of the Project. Except as may be specifically set forth herein, the costs of developing the Project and of constructing all Improvements thereon shall be borne entirely by the

Redeveloper. Additionally, the costs of marketing the Project, including the affirmative marketing of all affordable residential units as set forth in Section 12.01 herein, shall be borne solely by the Redeveloper.

**2.06 Intentionally left blank.**

**2.07. Exclusive Redeveloper.** Subject to the provisions hereof, the Redeveloper shall have the exclusive right to carry out the Project as long as this Agreement has not been terminated due to an Event of Default. For the term of this Agreement, the Borough shall not designate any person or entity, other than the Redeveloper (which the Redeveloper has been so designated), as redeveloper of the Project, nor enter into any form of understanding or agreement pursuant to any Applicable Law(s) with such persons or entities, unless the Redeveloper fails to cure a Redeveloper Event of Default and this Agreement is terminated.

**2.08. Covenant to Build.** In accordance with, and subject to, the terms of this Agreement, the Redeveloper covenants and agrees to perform the construction of the Project upon the Property together with any ancillary uses as indicated in and on the Governmental Approvals, the Final Site Plans, and the Construction Plans. The Project must be constructed in accordance with the Redevelopment Plan. All Improvements to be situated upon the Property (i.e.; sidewalks, utilities and site lighting, off street parking, roadways, pilings, foundations, footings, open space, walkways, landscaping, etc.) shall be installed by the Redeveloper at its sole cost and expense as the Project requires, subject to the terms of Section 3.06 of this Agreement.

**2.09. Payment of Borough's Professionals.**

The Redeveloper agrees to pay the Borough's actual, reasonable out of pocket professional costs, including, without limitation, all reasonable legal, planning and engineering fees, related to the Project (the "Borough's Redevelopment Costs"). Such costs shall include, but are not limited to the Borough's (1) legal fees incurred in drafting, reviewing, and revising this Redevelopment Agreement; (2) legal fees incurred in drafting, reviewing, revising, and recording any easements required for the Project; and (3) legal, planning, and engineering costs incurred by the Borough Land Use Board and its professionals in the review of any application submitted for the Project to the Land Use Board. This obligation shall continue until termination of this Agreement, an Event of Default, or such time as the final Certificate of Completion is issued by the Borough for the Project, at which time the Redeveloper shall no longer have the obligation to pay for the Borough's Redevelopment Costs.

The Borough shall establish and the Redeveloper shall fund an escrow account to pay for the Borough's redevelopment costs, which shall be administered in accordance with the Municipal Land Use Law, specifically N.J.S.A. 40:55D-53.2 (the "Escrow Account"). Within ten (10) days of execution of this Agreement, Redeveloper shall deposit with the Borough the amount of \$5,000.00, which shall be placed in the Escrow Account. Commencing upon the Effective Date, the Borough shall regularly provide the Redeveloper with monthly statements setting forth the actual, out-of-pocket costs incurred by the Borough during the prior month (and on a cumulative basis). The Parties acknowledge that additional escrowed funds may be required. The Borough shall have the right to request the additional escrowed funds in writing upon the escrow fund balance falling below \$2,500.00. The Redeveloper shall be required to pay such additional escrowed funds within ten (10) days of the Borough's written request.

Upon Redeveloper filing an application with the Land Use Board, all funds in the Escrow Account contemplated herein shall be transferred to the escrow account required by the Land Use Board applicant. The administration and minimum balance of the escrow account required for the Land Use Board application shall be governed by applicable Borough Ordinances. (The Application has already been filed so need to discuss whether this additional Escrow Account is even necessary.)

This obligation shall be in addition to the Redeveloper's obligation to pay for any of the Borough's professional costs incurred in reviewing and processing Redeveloper's application to the Land Use Board pursuant to Article III herein, including any application fees set forth in Borough Ordinances.

**2.10**            **Deposits as Preconditions.** Building/construction permits or certificates of occupancy shall not be issued unless the deposits mentioned in this Agreement, or other necessary deposits, have been made.

**2.11**            **Traffic.** The Redeveloper shall provide traffic analyses and information regarding traffic to the Land Use Board in connection with its application for site plan approvals, if requested by the Board, and shall comply with the conditions of said site plan approvals with regard to traffic both during construction and thereafter. Without limiting the foregoing, the Redeveloper agrees to work closely with the Borough and to comply with all Borough ordinances to mitigate the impact of construction vehicles, traffic around the Property during construction and

related concerns, and to use commercially reasonable efforts to minimize the traffic effects of the Project upon the surrounding neighborhoods.

2.12 **Illumination, Noise, and Pollution.** The Redeveloper is mindful of the size of the Project and the potential effects that the construction of such an undertaking may have on the surrounding communities. Therefore, the Redeveloper agrees that it will take commercially reasonable steps to minimize the passage of excessive or unwarranted illumination, noise, or pollution during construction into the surrounding communities.

2.13 **Security and Safety.** The Redeveloper further commits to be cognizant of and address reasonable traffic safety issues by complying with all applicable traffic safety provisions of Applicable Law both during and after construction of the Project.

2.14. **Parking During Construction.** The Redeveloper shall be responsible, at its own cost, for making on-site parking available to all construction workers during construction of the Project.

2.15. **Rodent, Insect and Animal Control.** The Redeveloper will take reasonable steps to minimize and control the migration of rodents, insects, or other animals (including feral cats) from the Property during the construction of the Project. The Redeveloper will undertake to provide controls in accordance with all Applicable Laws and other construction standards such that the issue of rodent, insect, and animal control is reasonably addressed prior to the commencement of construction. The Redeveloper agrees to coordinate this effort with the Borough's Police Department and Animal Control Officer.

2.16. **Intentionally Left Blank**

2.17. **Intentionally Left Blank**

### **ARTICLE III**

#### **GOVERNMENTAL APPROVAL PROCESS**

##### **3.01. Approval of Site Plan.**

(a) The Redeveloper has filed with the Land Use Board an application for Preliminary and Final Site Plan Approval for the Project (the "Site Plans"), which were prepared by a licensed architect, surveyor and/or engineer of the State of New Jersey in accordance with Applicable Laws and consistent with the Amended Redevelopment Plan.

(b) The Land Use Board shall hold a hearing regarding the Site Plans in compliance with the Municipal Land Use Law. If, after review and public hearing, the Land Use Board

approves the Site Plans, it shall adopt an appropriate Resolution evidencing such approval. The Land Use Board or other appropriate municipal official shall hold hearings on (if required) and review as required by Applicable Law all other applications filed by the Redeveloper, including applications for building permits in compliance with the Municipal Land Use Law, Borough Ordinances, or other applicable laws or regulations. The Borough shall support all applications made by the Redeveloper to the Land Use Board or other Borough official, insofar as such applications are in compliance with this Agreement and the Amended Redevelopment Plan.

**3.02. Concept Plans.** The Site Plans are the same as the Concept Plan attached hereto as part of **Exhibit A** (the "Concept Plan") and have been filed with the Land Use Board.. The Parties acknowledge that there may be modifications to the Site Plans as a result of the hearing before the Land Use Board and/or the conditions imposed on any approval of the Project.

The Borough acknowledges that bulk variance, design exception, and/or exception from Residential Site Improvement Standards relief may be required by the Redeveloper for the Project. Therefore, the Land Use Board may review such applications and grant such relief in accordance with the Municipal Land Use Law, with the exception of relief that must be granted pursuant to N.J.S.A. 40:55D-70(d)..

The Borough shall use commercially reasonable efforts to fully cooperate with Redeveloper to facilitate obtaining all Governmental Approvals, and a reasonable review by the Land Use Board of all applications submitted by the Redeveloper all in accordance with the time frames regarding processing applications as identified in the New Jersey Municipal Land Use Law N.J.S.A. 40:55D-1, et seq.

With the exception of the relief contemplated in this Section 3.02, all residential improvements shall comply with the Residential Site Improvement Standards ("RSIS") and municipal ordinances. Where the RSIS conflict with municipal ordinances, the RSIS will control. Notwithstanding the foregoing, the Project shall comply with the parking standard set forth in the Redevelopment Plan, which differs from the RSIS parking standard. The Parties agree to cooperate, and the Borough agrees to assist in processing before the New Jersey Department of Community Affairs (the "DCA") reasonable requests for de minimus relief or exception that may be required from RSIS standards in order to facilitate development of the Project.

**3.03. Other Governmental Approvals, Construction Plan Review and Commencement of Construction.**

(a) Upon receipt of all Governmental Approvals, except for building permits, the Redeveloper will prepare Construction Plans for the Project to be constructed, as well as materials, and an application for approval of the Construction Plans by the Borough's Building and Construction Department.

(b) The Borough, including its Land Use Board, and Engineering, Building and Construction Departments will review all plans for compliance with the Applicable Laws after submittal of same.

(c) The Redeveloper agrees to obtain all applicable Governmental Approvals for the Project within twelve (12) months of adoption of a resolution of approval of any site plan and/or subdivision application. If the Redeveloper is using diligent efforts, and is still unable to obtain all applicable Governmental Approvals for the Project within the twelve (12) month period, the Redeveloper may request an extension from the Land Use Board, which approval shall not be unreasonably withheld. This provision shall be incorporated into any resolution of approval issued for the Project by the Land Use Board.

**3.04. Final Site Plan Approval.** The Redeveloper is required to obtain Final Site Plan Approval prior to the Commencement of Construction of the Project.

**3.05. Reporting; Conditions of Approval.** As it relates to the Project, upon written request of the Borough, the Redeveloper shall submit to the Borough, a written report of the current status of any pending Governmental Approvals.

**3.06. Project Improvements.** In accordance with and subject to the terms of this Agreement, the Redeveloper shall install and maintain, at its own expense, all Improvements in the approved Site Plan.

The Redeveloper shall also be responsible for providing, at the Redeveloper's cost and expense, all sidewalks, curbs, street trees and street lighting on and along the frontage of the Property, and its pro rata share of on- and off-tract traffic controls and road improvements for the Project or required as a result of the impacts of the Project. Notwithstanding the foregoing, the Redeveloper shall not be responsible for sidewalks, curbs, street trees and street lighting that are not located on and along the frontage of the Property.

**3.07. Project Modifications.** The Redeveloper hereby acknowledges and agrees that the development and construction of the Project shall be in accordance with the Redevelopment Plan, as may be modified by the Governmental Approvals in accordance with this Agreement. The Redeveloper may not modify, alter or amend the approved Final Site Plans at any time without the express prior written approval of the Borough and the Land Use Board, which respective approvals shall not be unreasonably withheld, conditioned or delayed, subject to the provisions of Applicable Laws. However, the Redeveloper may make those modifications, alterations and amendments to the Final Site Plans and/or Construction Plans, as the case may be, that are "minor" in nature, with the approval of the Borough Planner and Borough Engineer and where field conditions and good engineering practices permit. The Borough reserves its rights to contest any material modifications that may potentially arise in the course of the construction of the Project.

**ARTICLE IV**  
**GENERAL DEVELOPMENT REQUIREMENTS AND**  
**CONSTRUCTION OF THE PROJECT**

**4.01. Standards of Construction.** Without limitation, all work on the Project shall be performed in a good and workmanlike manner, with such materials as are required by the Redevelopment Plan and Governmental Approvals (including any approvals from the Land Use Board) and as are appropriate for a Project of the character and quality of similarly situated projects in the County of Warren and State of New Jersey. All construction work shall be performed in accordance with the Applicable Laws.

**4.02.** Intentionally omitted.

**4.03. Construction of Project.** Subject to the advent of an Event of Force Majeure or other Tolling Event, the Redeveloper shall Commence Construction of the Project within twelve (12) months after all Governmental Approvals become final and unappealable. Subject to the advent of an Event of Force Majeure or other Tolling Event, the construction of the Project shall commence in accordance with the respective time frame references set forth in this Agreement.

**4.04. Completion of Construction.** Subject to Section 14.02 hereof, construction of all Improvements necessary for the Project shall be completed within two (2) years after

Commencement of Construction. Nothing herein shall extend or conflict with the time period for which any Land Use Board approval remains valid pursuant to the Municipal Land Use Law and Borough Ordinances.

**4.05. Report on Progress.** Upon written request of the Borough, the Redeveloper shall make, in such detail as may be reasonably required by the Borough, a report in writing concerning the actual progress of the Redeveloper with respect to the Project. The work and construction activities of the Redeveloper on the Property shall be subject to inspection by the Borough, upon a reasonable, advance written notice given to the Redeveloper in accordance with Section 11.01 hereof.

**4.06. Insurance.** At all times during the construction of the Project, the Redeveloper shall maintain or cause to be maintained at its own cost and expense, with responsible insurers, the following kinds and the following amounts of insurance with such variations as shall reasonably be required to conform to customary insurance practice:

(a) Builder's Risk Insurance for the benefit of the Redeveloper during the term of construction which will protect against loss or damage resulting from fire and lightning, the standard extended coverage perils, and vandalism and malicious mischief.

(b) Comprehensive General Liability Insurance (including coverage for any construction on or about each parcel of property contained within the Property) against claims for bodily injury, death or property damage occurring on, in or about the Project Property and the adjoining streets, sidewalks and passageways, in amounts not less than Two Million (\$2,000,000) Dollars for each claim with respect to any bodily injury or death, with respect to any one occurrence and Two Million (\$2,000,000) Dollars with respect to all claims for property damage relating to any One (1) occurrence;

(c) Worker's Compensation Insurance coverage in the amount of the full statutory liability of the Redeveloper;

(d) Such other insurance, in such amounts and against such risks, as is customarily maintained by the Redeveloper with respect to other similar properties owned or leased by it, including automobile insurance.

Prior to commencing work on the Property, the Redeveloper shall submit to the Borough proof of all applicable insurance(s). The policies of liability insurance required to be maintained by the Redeveloper and for which the Redeveloper shall be a named insured, pursuant to this

Section 4.06, shall name as additional insureds (except for Worker's Compensation insurance), the Borough, as its respective interest may appear.

**4.07. Indemnification and Defense.**

(a) The Redeveloper agrees to indemnify and hold harmless the Borough against, and the Redeveloper shall pay for, any and all liability, loss, cost, damage, claims, judgments or expenses, of any and all kinds or nature and however arising, imposed by law, which the Borough may sustain, be subject to or be caused to incur by reason of any claim, suit or action based upon personal injury, death, or damage to property, whether real, personal or mixed, resulting from the Redeveloper's activities in constructing the Project or the Redeveloper's actual breach of contracts entered into by the Redeveloper which directly relate to the construction of the Project, or resulting solely from the Redeveloper's ownership of portions of the Property, or resulting from the acquisition, construction or installation of the Project. Further, said indemnification shall include but not be limited to any and all claims by workmen, employees and agents of the Redeveloper and unrelated third parties, which claims result from the construction of the Project, the maintenance and functioning of the Improvements or Off-Tract Infrastructure Improvements, or any other activities of the Redeveloper within the Property during the construction of the Project. Notwithstanding the foregoing, the Redeveloper shall have no obligation to indemnify and hold the Borough harmless from and against any liability, loss, cost, damage, claims, judgments or expenses, of any kind or nature arising from the negligent, intentional or willful acts of the Borough, its commissioners, officers, agents, servants or employees. Neither the Borough, nor its commissioners, officers, agents, servants or employees shall be liable in any event for any action performed under this Agreement, except for any liability, loss, cost, damage, claims, judgments or expenses, of any kind or nature arising from the negligent, intentional or willful acts of the Borough, its commissioners, officers, agents, servants or employees.

(b) The Redeveloper, at its own cost and expense, shall defend any and all such claims, suits and actions, as described in and for which indemnification is required by this Section 4.07, which may be brought or asserted against the Borough, its officers, agents, servants, or employees; but this provision shall not be deemed to relieve any insurance company which has issued a policy of insurance as may be provided for in this Agreement from its obligation to defend the Redeveloper, the Borough and any other insured identified in such policy of insurance in connection with claims, suits or actions covered by such policy.

Any cost for reasonable attorneys' fees in situations where it is necessary for the Borough to engage its own attorneys as determined by a court of competent jurisdiction, reasonable experts' testimony costs and all reasonable costs to defend the Borough or any of its commissioners, officers, agents, servants, or employees shall be reimbursed to it by the Redeveloper in connection with such indemnification claim. The Borough shall give the Redeveloper notice of any such claim for which indemnification under this Agreement is sought (together with copies of any documents received) within Fifteen (15) Days of the Borough's receipt of same.

**4.08. Certificates of Occupancy and Certificate of Substantial Completion.** Upon the completion of the construction of the Project in accordance with the Governmental Approvals, the Redeveloper shall request from the Borough the issuance of a Certificate of Occupancy for the Project. When issued, the Certificate of Occupancy will constitute conclusive evidence that the Redeveloper has fully performed its obligations to construct the Project in accordance with all Applicable Laws, the Redevelopment Plan, Land Use Board Approvals, and this Agreement.

Upon the completion of the Project, the Borough shall issue a Certificate of Substantial Completion in proper form for recording, which shall acknowledge conclusively that with respect to the Project, the Redeveloper has performed all of its duties and obligations under this Agreement and has completed the development and construction of the Project, in accordance with the requirements of the Applicable Law, the Redevelopment Plan, Land Use Board Approvals, and this Agreement. The Certificate of Substantial Completion shall constitute an independent, recordable, conclusive determination of the satisfaction and termination of the obligations, the Applicable Laws and the Redevelopment Plan with respect to the Redeveloper's obligation to develop and construct the Project.

If the Borough shall fail or refuse to provide the Certificate of Substantial Completion within Forty-Five (45) Days after written request to do so is served by the Redeveloper, the Borough shall provide to the Redeveloper a written statement setting forth in detail the reasons why it believes that the Redeveloper has failed to complete the Project, in accordance with the provisions of this Agreement and what reasonable action(s) will be necessary to be taken by the Redeveloper in order for the Redeveloper to be entitled to the Certificate of Substantial Completion. Upon receipt of the Certificates of Substantial Completion, the Redeveloper may record it in the Warren County Clerk's Office.

To enable the Redeveloper to lease each residential or retail unit developed and constructed as a part of the Project prior to the issuance of the relevant Certificate of Occupancy, the Borough may issue a temporary certificate of occupancy for the subject residential or retail unit, including issuance of a temporary certificate of occupancy on a floor by floor basis.

**4.09 Governmental Approval Fees.** The Redeveloper shall pay all Borough permit and other non- Borough fees for Governmental Approvals, which include, but are not limited to, any application fees for Governmental Approvals payable by the Borough to all required Governmental Agencies in connection with the Project, or fees for Governmental Applications for which the Borough is required to reimburse other Governmental Agencies in connection with the Governmental Approvals required for the Project.

## **ARTICLE V**

### **BOROUGH RESPONSIBILITIES**

**5.01. Intentionally Left Blank**

**5.02. Governmental Approval Fees.** The Redeveloper shall pay all Borough permit and other non- Borough fees for Governmental Approvals, which include, but are not limited to, any application fees for Governmental Approvals payable by the Borough to all required Governmental Agencies in connection with the Project, or fees for Governmental Applications for which the Borough is required to reimburse other Governmental Agencies in connection with the Governmental Approvals required for the Project.

## **ARTICLE VI**

### **DEFAULT**

**ARTICLE I. 6.01a.** Borough Events of Default. Redeveloper shall have the right to declare the Borough in default of this Agreement in the event of the occurrence of any of the following (each a "Borough Event of Default"):

- (a) The Borough's failure to comply with the Redevelopment Law;
- (b) Any Borough representations set forth in Section 10.02 prove or are adjudicated through arbitration, mediation, settlement, Administrative Law Judge, Agency Order, Order of the Commissioner of the Department of Community Affairs, or any State or Federal Court of the State of New Jersey to be untrue or false;

(c) The Borough's failure to perform, or a defect in performance by the Borough, of any obligation of the Borough under this Redevelopment Agreement after Default Notice is provided in accordance with Section 6.02.

**6.01b. Redeveloper Events of Default.** Subject to an Event of Force Majeure or Tolling Event pursuant to Section 14.02 hereof, as it relates to the Project, prior to completion of the Project as evidenced by the issuance of the Certificate of Substantial Completion for same, each of the following actions shall constitute an event of default by the Redeveloper limited to the Project (and each shall hereinafter be referred to as a "Redeveloper Event of Default").

Events of Default. Prior to the Borough's issuance of a Certificate of Completion for the Project, the following shall constitute Events of Default:

(a) Redeveloper shall default in its obligations with respect to the construction of the Project in a material respect or shall abandon or substantially suspend construction work (unless such suspension arises out of a delay set forth herein), and any such default, violation, abandonment, or suspension shall not be cured, ended, or remedied within sixty (60) days after written demand by the Borough to do so or such longer period as may be reasonably required if incapable of cure within such sixty (60) day period, provided that Redeveloper has commenced and is diligently prosecuting such cure; or

(b) Redeveloper or its successor in interest shall fail to pay any real estate taxes, payments in lieu of taxes, or assessments on the Property or any part thereof when due, if any, or if any such unpaid real estate taxes, payments in lieu of taxes, or assessments on the Property or any part thereof shall result in any encumbrance or lien being made on the Property not and such real estate taxes or assessments shall not have been paid, or the encumbrance or lien removed or discharges or provision satisfactory to the Borough made for such payment, removal, or discharge, within thirty (30) days after written demand by the Borough to do so; or

(c) There is, in violation of this Agreement, any transfer of Redeveloper's interest in the Property, other than a transfer permitted under Article 7 hereof, and such violation shall not be cured within thirty (30) days after written demand served upon Redeveloper by the Borough, unless extended in writing.

**6.02 Default Notices; Remedies.**

Upon an occurrence of either a Redeveloper or Borough Event of Default, the defaulting party shall be notified in writing that it has been declared in default (hereinafter "Default Notice").

The Default Notice shall be given by the party giving such notice within thirty (30) days of determining that an Event of Default has occurred and shall state the basis for determining that an Event of Default has occurred. Upon receipt of the Default Notice, the defaulting party shall have sixty (60) days to correct such failure or defect or if such failure or defect is not capable of being cured within 60 days then commence actions to correct such failure or default within that period of time. In the event that the defaulting party does not cure the Default as set forth herein, the party giving the Default Notice shall have the right to exercise all remedies, as set forth below.

Upon the occurrence of any uncured material Event of Default, subject to the provisions of this Agreement hereof, the Borough shall have the right in its sole and absolute discretion, upon sixty (60) days' notice to Redeveloper and any Mortgagee to terminate this Agreement, subject, however, to the rights of any Mortgagee as set forth in this Agreement.

**6.03 Rights and Remedies; No Waiver.** The Parties shall have the right to institute such actions or proceedings as they may deem desirable for effectuating the purposes of this Article. However, prior to exercising any such action, the Party bringing the action agrees to notify the defaulting party of a breach under the agreement at the address set forth herein, and /or by email to allow the defaulting party to cure the default and/or to undertake curative action. The defaulting party shall have thirty days from the time of notification, which shall be effective upon mailing, to take such action. If no such action is taken, the Party bringing the action may proceed at its own discretion. Any delay in instituting or prosecuting any such actions, proceedings or otherwise asserting its rights under this Article shall not operate as a waiver of such rights or to deprive it of or limit its rights in any way, it being the intent of this provision that the Party should not be constrained to exercise such remedy at a time when it may still hope otherwise to resolve the problems caused by the default involved; nor shall any waiver in fact made by any Party with respect to a specific default under this Agreement be considered or treated as a waiver of rights of that Party with respect to any other defaults by that Party under this Section or with respect to the particular default except to the extent specifically waived in writing.

**6.04 Rights and Remedies Cumulative.** The rights and remedies of the Parties to this Agreement, whether provided by law or by the Agreement, shall be cumulative, and the exercise by either Party of any one or more of such remedies shall not preclude the exercise by it, at the same or different times, of any other such remedies for the same default or breach, or of any of its remedies for any other default or breach by the other Party. No waiver made by either such Party

with respect to the performance, or manner or time thereof, or any obligation of the other Party or any condition to its own obligation under the Agreement shall be considered a waiver of any rights of the Party making the waiver with respect to the particular obligation of the other Party or condition to its own obligation beyond those expressly waived in writing and to the extent thereof, or a waiver in any respect in regard to any other rights of the Party making the waiver or any other obligations of the other Party.

**6.05. No Waiver of Rights and Remedies by Delay.** Any delay by the aggrieved Party in instituting or prosecuting any actions or proceedings or otherwise asserting its rights under this Agreement shall not operate as a waiver of such rights and shall not deprive the aggrieved Party of or limit that Party's rights in any way. In addition, no waiver made by the aggrieved Party with respect to any specific Event of Default by the defaulting Party under this Agreement shall be considered or treated as a waiver of the rights of the aggrieved Party with respect to any other Event(s) of Default by the Party under this Agreement or with respect to the particular Event of Default except to the extent specifically waived in writing.

## **ARTICLE VII**

### **PROHIBITIONS AGAINST ASSIGNMENT AND TRANSFER**

**7.01 Prohibition Against Transfer of Interests in Redeveloper, The Agreement or The Properties.** Redeveloper recognizes the importance of the Project to the general welfare of the community and that the identity of the Redeveloper and its qualifications are critical to the Borough in entering into this Redevelopment Agreement. The Borough considers that a change of control in Redeveloper and the transfer of 10% or more of the ownership interest in Redeveloper to any Person other than an Institution or Equity Investor, is for practical purposes a Transfer or disposition of the Project. Redeveloper recognizes that it is because of such qualifications and identity that the Borough is entering into this Redevelopment Agreement with Redeveloper, and, in so doing, the Borough is relying on the obligations of Redeveloper and not some other person for the faithful performance of all undertakings and covenants to be performed by Redeveloper hereunder.

As a result, except for Permitted Transfers, prior to completion of the project as evidenced by the issuance of a Certificate of Completion, and without the prior written approval of the Borough, which shall not be unreasonably withheld, conditioned or delayed, Redeveloper agrees

for itself and all successors in interest that there shall be no change in Control of Redeveloper, nor shall there be any transfer of 10% or more of the ownership interest in Redeveloper to any Person other than an Institution or Equity Investor.

**7.02 Consent to Permitted Transfers.** The Borough hereby consents, without the necessity of further approvals from any entity, to the following Transfers (each, a "Permitted Transfer")

(a) A Mortgage or related security granted by Redeveloper to a Mortgagee for the purpose of obtaining the financing necessary to enable Redeveloper to perform its obligations under this Redevelopment Agreement, including any Mortgage or Mortgages and other liens and encumbrances granted by Redeveloper to a Mortgagee for the purpose of financing costs associated with the acquisition, development, construction, or marketing of the Project and not any transaction or project unrelated to the Project; provided, however, that Redeveloper shall give the Borough at least fifteen (15) days prior written notice of such Permitted Transfer, including a description of the name of such Transfer, and the name(s) and addressees of the Mortgagee; or

(b) Transfers of easements or dedications of portions or interests in the Property as may be required for utilities for the Project or otherwise as conditions of Governmental Approvals;

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

(d) a lease agreement to a tenant or end user of the Project;

(e) a Transfer to an Affiliate of the Redeveloper, to one of the Existing Members, to a relative of an Existing Member, or to an entity or trust controlled by one or more of the Existing Members.

(f) a Transfer pursuant to a Foreclosure, and any Transfer by any Mortgagee or any Mortgagee's successor and/or assigns after Foreclosure; and

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

**7.03 Automatic Denial of Transfer.** Notwithstanding anything to the contrary contained herein, with respect to any Transfer that requires the Borough's consent pursuant to the terms of this Section 7.01, the Borough shall not unreasonably withhold, condition or delay its consent to such Transfer. The Borough shall notify the Redeveloper in writing whether the Borough consents to a Transfer within thirty (30) days after Redeveloper's written request to the Borough for such consent. If the Borough does not deliver a written response to the Redeveloper's request within

said thirty (30) day period, then the Redeveloper may deliver a second written request to the Borough for consent to the Transfer. However, if the Borough does not deliver a written response to the Redeveloper within thirty (30) days after Redeveloper's second request to the Borough for such consent, the Borough shall be deemed to have approved such requested Transfer. The Borough shall not, however, unreasonably withhold, condition or delay its consent to any Transfer to a transferee that has the same or greater experience and technical capability to carry out the Project as Redeveloper, and has the same or greater wherewithal to obtain financing for the Project as Redeveloper.

## ARTICLE VIII PROJECT FINANCING

**8.01 Financing and Capital.** The Redeveloper represents that it shall use commercially reasonable efforts to obtain sufficient financing for all costs associated with the Project. The Redeveloper represents that its Affiliates have completed many projects larger than the Project and that it has the capacity to obtain financing to complete the Project.

## ARTICLE IX MORTGAGE FINANCING AND RIGHTS OF MORTGAGEE

**9.01. Notice to Borough.** Subject to the Permitted Transfers set forth in Article 7 hereof prior to the completion of the Project, as certified by the issuance of the Certificate of Substantial Completion by the Borough, the Redeveloper shall not engage in any financing or any other transaction creating any Mortgage, whether by express agreement or operation of law, except for the purpose of obtaining funds in connection with any aspect of the Project. Prior to the completion of the Project, as certified by the issuance of the Certificate of Substantial Completion by the Borough, the Redeveloper shall notify the Borough of any financing, secured by a Mortgage, which it has entered into with respect to the Property and, in any event, the Redeveloper shall promptly notify the Borough of any encumbrance or lien that has been created on or attached to the Property, whether by voluntary act of the Redeveloper or otherwise, upon obtaining knowledge or notice of same.

**9.02. Mortgagee/Equity Investor Not Bound.** Subject to the terms of this Article 9, any Mortgagee, Equity Investor or any Person who obtains title to the Property as a result of foreclosure proceedings, or action in lieu thereof, shall in no way be obligated by the provisions of this Agreement. If the Property shall be sold or conveyed to any Person upon the exercise of any remedy provided for in any Mortgage or by law or equity, such Person thereafter succeeding to its interest in the Property shall not be liable for any act or omission of Redeveloper under this Agreement occurring prior to such sale or conveyance.

**9.03 Completion of Project.** Notwithstanding anything to the contrary contained herein, any Mortgagee, or any Person who obtains title to the Property as a result of foreclosure proceedings, or action in lieu thereof, shall have the right to receive an assignment of all of Redeveloper's rights under this Agreement, with respect to Property, and undertake or continue the construction or completion of the Project, including the construction of the Improvements already begun. Any such Mortgagee or other Person who shall properly complete the Project shall be entitled, upon written request made to the Borough, to receive Certificate(s) of Occupancy and/or the individual Certificates of Occupancy or the Certificate(s) of Substantial Completion as set forth in Section 4.10 hereof.

**9.04. Notice to Mortgagee.** Whenever the Borough shall deliver any notice or demand to the Redeveloper with respect to any Event of Default on the part of the Redeveloper under this Agreement, the Borough shall at the same time forward a copy of such notice or demand to each Mortgagee at the last known address of such Mortgagee, provided that Redeveloper has delivered to the Borough a written notice of the name and address of such Mortgagee.

**9.05. Mortgagee's Right to Cure Default and Assume The Redeveloper's Obligations.** (a) After any Redeveloper Event of Default, each Mortgagee shall (insofar as the rights of the Borough are concerned) have the right within ninety (90) days after the receipt of the notice set forth in Section 9.04, to cure or remedy such Redeveloper Event(s) of Default and to add the cost thereof to the Mortgage. If the Redeveloper Event(s) of Default is/are with respect to the construction of the Project, nothing contained in this Section 9.05 or any other section of this Agreement shall be deemed to permit or authorize such Mortgagee, either before or after foreclosure or action in lieu thereof, to undertake or continue the construction or completion of the Project (beyond the extent necessary to conserve or protect the Mortgagee's security), including the construction of the Improvements already begun until it provides written notice to the Borough.

The Borough shall not seek to enforce any of its remedies under this Agreement during the aforementioned ninety (90) day period in which any such Mortgagee is proceeding diligently and in good faith to cure a Redeveloper Event of Default. Any Mortgagee who shall properly complete the Project shall be entitled, upon written request made to the Borough, to receive Certificate(s) of Occupancy and/or the individual Certificates of Occupancy or the Certificate(s) of Substantial Completion as set forth in Section 4.08 hereof.

**9.06. Borough Subordination.** In the event of a default under this Agreement, the Borough agrees that any remedies of the Borough under this Agreement shall be subordinated to the interests of any financial institution which holds the first mortgage on all or a portion of the Property. This Section 9.06 shall have no effect on the priority of liens for taxes or payments in lieu of taxes or utility charges or deed restrictions for affordable housing purposes.

## **ARTICLE X** **REPRESENTATIONS**

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

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

(b) The Redeveloper has the legal power, right and authority to enter into this Agreement inclusive of all attached and incorporated instruments to which the Redeveloper is a party.

(c) This Agreement has been duly authorized, executed and delivered by the Redeveloper; and is valid and legally binding upon the Redeveloper and enforceable against Redeveloper in accordance with its terms. The execution and delivery thereof 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 other Applicable Laws that are 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 Applicable Laws that are applicable to the Redeveloper has been filed.

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

(g) To the best of the Redeveloper's knowledge, there are no suits, other proceedings or investigations pending or threatened against the Redeveloper that would have a material adverse effect on the financial condition of the Redeveloper.

(h) To the best of Redeveloper's knowledge, 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 Agreement.

(i) The Redeveloper owns the Property and is financially and technically capable of developing, designing, financing and constructing the Project.

(j) To the best of Redeveloper's knowledge there is no pending, or to the best of the Redeveloper's knowledge, threatened litigation, action or proceeding that (i) would prevent or delay the Redeveloper from performing its duties and obligations hereunder and/or (ii) questions the validity of this Agreement or any essential element on which this Agreement depends.

**10.02. Representations of Borough.** The Borough hereby makes the following representations and covenants for the purpose of inducing the Redeveloper to enter into this Agreement and to consummate the transactions contemplated hereby, all of which shall be true as of the date hereof:

(a) The Borough is a municipality of the State of New Jersey and has the requisite power and authority to enter into this Agreement.

(b) This Agreement has been duly authorized by virtue of a certain Resolution, Resolution No. 2022-30 validly adopted by the Borough on March 15, 2022 and, on or after the Effective Date, shall constitute a legal, valid and binding obligation of the Borough enforceable in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, reorganization or other Applicable Law(s) affecting creditors' rights and subject to the availability of equitable remedies.

(c) The execution and delivery of this Agreement by the Borough and consummation of the transactions contemplated hereby do not violate, conflict with or constitute a default under the provisions of any agreement, understanding or arrangement to which the Borough is a Party or by which it is bound or of any force as of the Effective Date.

(d) There is no pending, or to the best of the Borough's knowledge, threatened litigation, action or proceeding that (i) would prevent or delay the Borough from performing its duties and obligations hereunder and/or (ii) questions the validity or enforceability of this Agreement or any essential element on which this Agreement depends or (iii) relates specifically to the Property or the title thereto.

(e) No official or employee of the Borough has any personal interest, direct or indirect, in this Agreement.

(f) The execution and delivery hereof and the performance by the Borough of its obligations hereunder will not violate or constitute an event of default under the terms or provisions of any Applicable Laws applicable to the Borough or the Property.

## ARTICLE XI

### NOTICES AND DEMANDS

**11.01. Manner of Notice.** A notice, demand, or other communication required under this Agreement by either Party to the other shall be considered given and delivered if it is dispatched by (a) registered or certified mail, postage prepaid, return receipt requested, or (b) delivered personally by a reputable messenger service or a nationally recognized priority delivery service such as Federal Express at the addresses listed below for each party:

**AS TO THE BOROUGH**

BOROUGH OF WASHINGTON  
Municipal Building  
Attn. Clerk  
100 Belvidere Ave  
Washington, New Jersey 08827

with a copy to:

Tara Ann St. Angelo, Esq.  
Gebhardt & Kiefer, P.C.  
1318 Route 31  
P.O. Box 4001  
Clinton, New Jersey 08809  
Email: [tstangelo@gklegal.com](mailto:tstangelo@gklegal.com)

**AS TO THE REDEVELOPER**

2 West Washington, LLC  
1150 Old Croton Road  
Flemington, NJ 08822  
OR  
509 Byram-Kingwood Road  
Frenchtown, NJ 08825

with a copy to:

Kara A. Kaczynski, Esq.  
McNally, Yaros, Kaczynski & Lime, LLC  
275 East Main Street  
Somerville, NJ 08876

The foregoing addresses may be changed or supplemented by written notice given as above provided. Any such notice sent by mail shall be deemed to have been received by the addressee on the third business day after posting in the United States mail, or, if transmitted by messenger or a priority delivery service, on the first business day after transmittal. Counsel for a Party may give notice to the other Party with the same effect as if given by a Party.

**ARTICLE XII**

**AFFORDABLE HOUSING OBLIGATIONS**

The Parties acknowledge that the areas encompassed by the Redevelopment Plan are included in the Borough's Housing Element and Fair Share Plan approved by the Court in the Borough's Declaratory Judgment Action, and that the credits will be applied against the Borough's Gap (1999-2015) and Prospective Need (2015-2025) obligations.

**12.01 Affordable Housing Set-Aside.** In compliance with the Redevelopment Plan (as amended by Ordinance 2019-22), Concept Plans, and any approvals received from the Borough

Land Use Board, Redeveloper shall have an obligation to deed-restrict three (3) of the residential units in the Project as very low, low, and moderate income affordable family rental units. Any such affordable rental units shall comply with UHAC, applicable COAH affordable housing regulations (N.J.A.C. 5:93-1), any applicable order of the Court, and other applicable laws, including one (1) very low income units, very low income being defined as 30% or less of the regional median income, embodied in the Fair Housing Act at N.J.S.A. 52:27D-329.1, et seq., in lieu of the UHAC requirement as to very low income of 10% at 35% or less of the regional median income.

(a) The affordable units shall remain affordable rental units for a period of at least thirty (30) years from the date of their initial occupancy ("Deed- Restriction Period") consistent with UHAC regulations (N.J.A.C. 5:80-26.1 1) or the then applicable regulation, so that the Borough may count the units against its obligations to provide family rental affordable housing. This obligation includes, but is not limited to, the Redeveloper's obligation to comply with: bedroom distribution requirements (1 three-bedroom unit and 2 two-bedroom units), income split requirements (1 very low income unit, 1 low income units and 1 moderate income units), pricing requirements pursuant to Court-approval of the income limits existing at the time of issuance of the certificate of occupancy for the affordable unit, affirmative marketing requirements, candidate qualification, and screening requirements, integrating the affordable units amongst the market rate units, and deed restriction and monitoring requirements.

**12.02. Administration.** Redeveloper shall be responsible for administering the affordable housing rental units. The Borough shall have no financial obligations under this provision to assure the creditworthiness of the units, and all associated expenses shall be solely borne by the Redeveloper, its successors, or assigns, which expenses include, but are not limited to providing an Administrative Agent at its exclusive expense to perform all administrative tasks. The Redeveloper or its affiliated entity shall be a permitted Administrative Agent. The administrative tasks include those responsibilities as set forth in N.J.A.C. 5:80-26.14 including, but not limited to, conducting an outreach process, conducting interviews with interested households, creating and maintaining a list of eligible households, determining income eligibility and all other activities to ensure that restricted units are rented to low- and moderate-income households. Redeveloper shall also be responsible for the costs of all funding applications including, but not limited to, low

income housing tax credits, special needs trust funds, County HOME funds, Federal Home Loan Bank financing, construction and permanent financing.

Redeveloper shall contract with a qualified affordable housing administrative agent ("Administrative Agent") for the administration of the affordable units and shall have the obligation to pay all costs associated with properly deed restricting and the long-term administration of the affordable units in accordance with UHAC, the Borough's affirmative marketing plan, and other applicable laws for the Deed-Restriction Period. The selection of the Administrative Agent shall be subject to the Borough's approval, which shall not be unreasonably withheld. Redeveloper shall provide the Borough in writing with the name, contact information, and resume of the selected Administrative Agent.

**12.03 Cooperation with Reporting.** The Parties acknowledge that the Borough may have the obligation from time to time to generate information necessary to demonstrate the creditworthiness of the units. Redeveloper will cooperate with the Borough and provide all monitoring and reporting requirements within fifteen (15) business days of the request. Redeveloper shall cooperate with the Borough regarding any affordable housing monitoring requirements imposed by COAH or the Court. Upon written notice, Redeveloper shall provide detailed information requested by the Borough within 30 days concerning Redeveloper's compliance with UHAC and other applicable laws, regulations, or ordinances.

### ARTICLE XIII

#### INTENTIONALLY OMITTED

### ARTICLE XIV

#### MISCELLANEOUS

**14.01 Performance Guarantee, Maintenance Bond, and Inspection Fee Escrow.**

(a) Performance Guarantee. Not less than seven (7) days prior to the date for the Commencement of Construction, the Redeveloper shall submit a performance bond, in a form acceptable to the Borough Attorney, issued by a duly authorized surety company authorized to do business in the State of New Jersey in an amount equal to 120% of project costs (as determined by the Borough Engineer) to secure the Redeveloper's faithful performance of all of the work required under the Governmental Approvals as permitted under the New Jersey Municipal Land Use Law, N.J.S.A. 40:55D-53a.(1)(a) and (b), and Borough Ordinances. The performance bond provided

shall not be released until final acceptance of all of the work covered under the required performance guarantees and then only if any liens or claims have been satisfied and any maintenance bonds required have been executed and approved by the Borough. Failure to timely deliver this bond shall be cause for declaring the Agreement null and void.

b. **Maintenance Bond.** After completion of construction of the Project, the Redeveloper shall post a maintenance bond as and if required and/or permitted pursuant to the New Jersey Municipal Land Use Law, N.J.S.A. 40:55D-53a.(2), and Borough Ordinances.

c. **Inspection Escrow.** The Redeveloper shall post an inspection escrow in accordance with the New Jersey Municipal Land Use Law, N.J.S.A. 40:55D-53h not less than seven (7) days prior to the date for the Commencement of Construction.

d. **Review Escrow and Application Fees.** Upon filing an application for site plan approval with the Land Use Board, Redeveloper shall post a review escrow and pay all application fees in accordance with Borough Ordinances.

**14.02. Events of Force Majeure, Tolling Events.** It is agreed that the terms, obligations and responsibilities set forth in this Agreement and the schedules and deadlines set forth throughout this Agreement shall be suspended or modified if the acquisition of the Property or any portion thereof, or the acquisition of the Governmental Approvals for the Project, Commencement of Construction, completion of construction of any aspect of the Project or other compliance with this Agreement is/are prevented by an Event of Force Majeure or Tolling Event, as these terms are respectively defined elsewhere in this Agreement. Where the acquisition of the necessary Governmental Approvals for or the completion of the construction of the Improvements or other compliance with this Agreement is prevented by an Event of Force Majeure or Tolling Event, the relevant terms of this Agreement and any schedules and deadlines shall be modified/extended for the period of delay caused thereby. The performance or non-performance by the Parties or either of them of any obligation, requirement, commitment or responsibility set forth in this Agreement shall not be deemed to be an Event of Default pursuant to this Agreement where such performance, failure of performance or delay in performance is/are the result of an Event of Force Majeure or Tolling Event; provided, however, that the Event of Force Majeure or Tolling Event was not the result of any unlawful action or non-action of the Party relying on such Event of Force Majeure or Tolling Event as justification for the non-performance, failure of performance or delay in performance of the subject obligation, requirement, commitment or responsibility.

**14.03. Equal Employment Opportunity.** The Redeveloper agrees that during the construction of the Improvements:

(a) To the extent required by Applicable Law, the Redeveloper will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. To the extent required by Applicable Law, the Redeveloper will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. To the extent required by Applicable Law, the Redeveloper agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause and any such notices provided by the Borough which are consistent therewith.

(b) To the extent required by Applicable Law, the Redeveloper will, in all solicitations or advertisements for employees placed by or on behalf of the Redeveloper, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.

(c) To the extent required by Applicable Law, the Redeveloper will comply with all provisions of N.J.S.A. 10:5-31, Mandatory Equal Employment Opportunity Act, and all rules, regulations, and relevant orders relating thereto, including but not limited to N.J.A.C. 17-27 et seq.

(d) To the extent required by Applicable Law, subcontractors and suppliers to the Project shall to the extent reasonably possible include qualified and certified minority enterprises.

(e) To the extent required by the Applicable Law, the obligations in this Section 12.04 shall be binding on all contractors and subcontractors to the extent that any work is done by any contractor or subcontractor, and any contract entered into by the Redeveloper shall so provide.

**14.04. Entire Agreement.** This Agreement constitutes the entire agreement of the Parties on the subject matter hereof and supersedes any prior or contemporaneous writings, representations, discussions, or agreements between the Parties with respect to the subject matter hereof.

**14.05. Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of the permitted successors in interest, Transferees and assigns of the Parties hereto, and the respective heirs, executors, and administrators.

**14.06. Exhibits.** All Exhibits attached hereto and/or referred to in this Agreement are incorporated herein, as though set forth in full.

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

**14.08. Modification of Agreement.** No modification, waiver, amendment, discharge, or change of this Agreement shall be valid unless the same is in writing, duly authorized, and signed by the Party against which the enforcement of such modification, waiver, amendment, discharge, or change is or may be sought.

**14.09. Execution of Counterparts.** This Agreement may be executed in One (1) or more counterparts. This Agreement shall become binding on the Parties and such counterparts shall constitute One (1) and the same instrument, upon the Effective Date.

**14.10. Drafting Ambiguities; Interpretation.** In interpreting any provision of this Agreement, no weight shall be given to, nor shall any construction or interpretation be influenced by, the fact that counsel for one of the Parties drafted this Agreement, each Party acknowledging that it and its counsel have had an opportunity to review this Agreement and have contributed to the final form of same.

**14.11. Time Period for Notices.** All notices to be given hereunder shall be given in writing in conformance with Section 11.01 hereof, and, unless a certain number of Days is specified, within a reasonable time.

**14.12. Waivers and Amendments in Writing.** The waiver by either Party of an Event of Default on the part of the other Party shall not operate or be construed to be a waiver of any other or subsequent Event of Default as provided for in Article 6 hereof.

**14.13. Governing Law.** The Applicable Laws of the State of New Jersey govern this Agreement without regard to conflict of laws principles.

**14.14. Withholding of Approvals.** All approvals, consents and acceptances required to be given or made by any Person or Party, shall not be unreasonably withheld, conditioned or delayed, except for instances in which such approval is expressly allowed in a Party's sole discretion.

**14.15. Recitals Incorporated; Definitions Incorporated.** The Recitals to this Agreement and the Definitions contained in this Agreement are incorporated by reference into this Agreement, as if set forth at length.

**14.16. Titles of Articles and of Sections.** Any titles of the several Articles or Sections of this Agreement: are inserted for reference only and shall be disregarded in construing or interpreting any of its provisions; and are not intended to limit or define the contents of the Articles or Sections.

**14.17. Limitation on Liability.** Notwithstanding anything to the contrary in this Agreement, any liability(ies), commitments, obligations and/or responsibility or responsibilities of any type or kind whatsoever (whether actual, contingent, consequential or otherwise) (hereinafter referred to collectively as "Liability") of the Redeveloper in, resulting from, or relating in any way to this Agreement shall be those of the Redeveloper only. Nothing in this Agreement, arising out of, or related in any way to this Agreement or to the Project or any aspect thereof shall, in any way, give the Borough or any other Person recourse to, or be construed to impose, directly or indirectly, any Liability on any Person other than the Redeveloper.

The foregoing limitation on Liability shall apply to, but is not limited to, (i) any Affiliate of the Redeveloper or of the Redeveloper's members, (ii) any member, shareholder, manager, officer, director, partner, managing member, vendor, trustee, employee, agent, and/or other representative (hereinafter collectively referred to as the "Agent") of the Redeveloper or of the Redeveloper's members, (iii) any Agent of any Affiliate of the Redeveloper or of the Redeveloper's members, (iv) any Affiliate of any Agent of the Redeveloper or of the Redeveloper's members, (v) any Agent of any Agent of the Redeveloper or of the Redeveloper's members, (vi) any Person directly or indirectly holding, controlling and/or owning any interest in the Redeveloper or in the Redeveloper's members, in any Agent or Affiliate of the Redeveloper or of the Redeveloper's members, in any Agent of any Affiliate of the Redeveloper or of the Redeveloper's members, and/or in any Affiliate of any Agent of the Redeveloper or of the Redeveloper's members, and/or (vii) any successors and/or assigns of any of the Parties referenced

in subsections (i) through (vi), above unless the Parties have assumed an interest in the Project in accordance with a Permitted Transfer pursuant to Article VII and Article VIII hereof.

The Borough understands and acknowledges that their respective acceptance of the Limitation on Liability set forth in this Section 14.17 is a condition precedent to the Redeveloper's execution of this Agreement and constitutes specifically bargained-for consideration.

**14.18. Borough's Limitation on Liability.** Any liabilities, obligations or responsibilities of any type or kind (contingent or otherwise) herein are solely those of the Borough. No member, director, employee, officer, representative or agent of the Borough shall be liable to the Redeveloper or any other Person for any matter arising out of or related to the payment or performance of any such liabilities, obligations or responsibilities of the Borough in this Agreement.

**14.19 Limitation on Third Parties.** Nothing in this Agreement is intended to nor shall create any rights for or confer any benefits on any third party.

**14.20 Estoppel Certificate.** (a) Within Ten (10) Days following written request therefore by Redeveloper, or of any Mortgagee, purchaser, tenant or other party having an interest in the Property, the Borough shall issue a signed estoppel certificate either stating that (i) this Agreement is in full force and effect, (ii) no Borough Event of Default has occurred under this Agreement (nor any event which, with the passage of time and the giving of notice would result in the occurrence of a Borough Event of Default under this Agreement), or stating the nature of the Borough Event of Default, if any (iii) to the best of the Borough's knowledge, no Redeveloper Event of Default has occurred under this Agreement (nor any event which, with the passage of time and the giving of notice would result in the occurrence of a Redeveloper Event of Default) or stating the nature of the Redeveloper Event of Default, if any; and (iv) stating any such other reasonable information as may be requested. In the event the estoppel certificate discloses an Event of Default, it shall also state the manner in which such Event of Default may be cured.

(b) Within Ten (10) Days following written request therefore by the Borough, the Redeveloper shall issue a signed estoppel certificate either stating that (i) this Agreement is in full force and effect, (ii) to the best of the Redeveloper's knowledge, no Borough Event of Default has occurred under this Agreement (nor any event which, with the passage of time and the giving of notice would result in the occurrence of a Borough Event of Default under this Agreement), or stating the nature of the Borough Event of Default, if any (iii) no Redeveloper Event of Default

has occurred under this Agreement (nor any event which, with the passage of time and the giving of notice would result in the occurrence of a Redeveloper Event of Default) or stating the nature of the Redeveloper Event of Default, if any; and (iv) stating any such other reasonable information as may be requested. In the event the estoppel certificate discloses an Event of Default, it shall also state the manner in which such Event of Default may be cured.

**14.21. No Consideration for Redevelopment Agreement.** The Redeveloper warrants it has not paid or given, and shall not pay or give, any third person any money or other consideration in connection with obtaining this 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 Agreement.

**14.22 Maintenance.** The Redeveloper shall be responsible for the maintenance and security of each parcel of property contained within the Property subject to the terms of this Agreement subsequent to its acquisition of title to each such parcel of property and until such time as the Redeveloper no longer owns the Property or any portions thereof.

**14.23 Lender Changes.** If the Redeveloper's Financial Institution(s) requires modifications of the terms of this Agreement, the Borough shall reasonably cooperate with the Redeveloper in approving such modifications, so long as such modifications do not materially and substantially change the rights or obligations of the Borough as set forth in this Agreement and, in the opinion of the Borough, do not materially impair the objectives and interest of the Borough or the completion of the Project.

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

**14.25 Local Purchase of Services, Supplies, Materials and Equipment.** Whenever possible and practicable, and to the extent permitted by law, the Redeveloper, its contractors and/or subcontractors shall purchase services, supplies, materials and equipment from businesses located within the Borough or Warren County.

**14.26 Recordation.** A memorandum of this Agreement, and any modifications thereof or additions thereto may be duly recorded by Redeveloper or Borough in the office of the Warren County Clerk and the cost of such recordation shall be paid by the Redeveloper.

**14.27 Five-Year Tax Exemption and Abatement.** Redeveloper may apply for a tax exemption and abatement pursuant to Chapter 79, Art. I of the Borough Code. Such exemption and abatement will be subject to a separate application and agreement.

**IN WITNESS WHEREOF**, the Borough has caused this Agreement to be duly executed in its name of and by the Mayor of the Borough on behalf of the Borough, and its seal to be hereunto duly affixed and attested by the Borough Clerk, and the Redeveloper has caused this Agreement to be duly executed in its name and behalf by the managing member, on or as of the day first above written.

**[SIGNATURE PAGES FOLLOW]**

Attest:  
Borough of Washington

Laurie Barton  
Laurie Barton, Clerk

Date: 9/16/22

By: Luann Cox  
Luann Cox, Mayor  
LC

Attest:

Kelsey Ege

Date: 11/9/24

2 West Washington, LLC

By: Mark Sullivan  
Name: Mark Sullivan  
Title: Managing Member

**Appendix K**  
**Land Use Board Resolution**  
**Approving 1 West Washington Site Plan**

Application #:           #3-2022          

Approved:           11/14/22          

**BOROUGH OF WASHINGTON  
LAND USE BOARD**

**FINDINGS OF FACT, CONCLUSIONS AND RESOLUTION  
REGARDING THE APPLICATION OF  
1 WEST WASHINGTON AVENUE, LLC  
FOR PRELIMINARY AND FINAL MAJOR SITE PLAN APPROVAL,  
WITH VARIANCE RELIEF PURSUANT TO N.J.S.A. 40:55D-70(c) FOR  
BLOCK 95, LOTS 7 AND 10**

The Land Use Board of the Borough of Washington, in the County of Warren and State of New Jersey, upon motion of Valle \_\_\_\_\_, seconded by Ron \_\_\_\_\_, adopts the following findings of fact, conclusions and resolution:

**Findings of Fact:**

1. The applicant, 1 West Washington Avenue, LLC has submitted an application for preliminary and final major site plan and variance relief pursuant to N.J.S.A. 40:55D-70(c). The application as amended seeks to renovate an existing building located on Block 95, Lot 7 and demolish an existing building on Block 95, Lot 10 for use of the property as a parking lot to serve Block 95, Lot 7.

2. The subject property, 1 West Washington Avenue (Block 95 Lot 7), is located at the southwestern corner of the intersection of W Washington Avenue and Broad Street. The property is approximately 8,300 square feet and is currently developed with a 3-story building known as the Stover Building. The Stover Building is a significant landmark in the Borough's downtown. The first floor of the Stover Building currently consists of commercial space,

including Sal's Pizza and Juanito's Mexican Restaurant, and the upper floors consist of former office space. Block 95 Lot 10 is currently developed with a two-family residential structure, driveway, and detached garage. Both lots are located with the recently updated Downtown Redevelopment Plan.

3. The applicant is proposing interior and exterior improvements to the existing building on Lot 7. On the first floor, the applicant is proposing a total of four commercial tenant spaces- Tenants A and B are accessible from Washington Avenue, and Tenants C and D are accessible from Broad Street. An entrance is proposed to the residential apartments from Washington Avenue and from the western side yard. The second and third floors are proposed to be converted into residential apartments. The second floor is proposed to consist of nine 1-bedroom apartments and one 2-bedroom apartment. The third floor is proposed to consist of 9 apartments, with each unit having a loft space that is accessible by a spiral staircase. As part of the application resubmission, the applicant is also proposing to construct a private parking lot on Block 95 Lot 10 to be used by the residents of the building. A two-way access drive is proposed from Broad Street leading to 18 parking spaces.

4. The application as amended during the hearing process and through plan revisions sought the following relief:

A. Preliminary and Final Major Site Plan Approval

B. "C" variance relief pursuant to N.J.S.A. 40:55D-70(c) from the following standards:

**The following are Pre-Existing Non-conformities that are not Exacerbated by the Proposal**

**Block 95 Lot 7**

- i. Minimum Front Yard Setback (all other streets)- Where the minimum front yard setback from all other streets is 5 feet, where 0 feet is existing and proposed.
- ii. Maximum Building Coverage- Where the maximum building coverage in the Washington Avenue Core District is 80%, where approximately 100% is existing and proposed.
- iii. Maximum Lot Coverage- Where the maximum lot coverage in the Washington Avenue Core District is 90%, where approximately 100% is existing and proposed.
- iv. Maximum Building Height- Where the maximum building height in the Washington Avenue Core District is 45 feet, where 62 feet is existing and proposed.

**Block 95 Lot 10**

- i. Minimum Lot Width- Where the minimum lot width is 50 feet, where 44.57 feet is existing and proposed.

**The following are New Non-Conformities as a result of the proposed improvements and require variance relief pursuant to N.J.S.A. 40:55D-70(c):**

- i. Minimum Rear Yard Setback- Where the minimum rear yard setback is 15 feet, where the parking lot on Lot 10 is setback 0 feet from the lot line.
- ii. Maximum Lot Coverage- Where the maximum lot coverage is 90%, where 88.29% is existing, and 95.76% is proposed on Lot 10.
- iii. Minimum Parking Requirement- Where the proposed project has a parking requirement of at least 38 parking spaces, where 20 parking spaces are provided, of which 18 parking spaces are proposed on Lot 10 and 2 additional parking spaces are proposed via shared parking arrangement.

- D. Design waivers are requested as follows:
- i. Street Trees-Where Street trees are required to be spaced 25 feet to 35 feet on center, where the applicant is not proposing any street trees.
  - ii. Lighting- Where illumination levels at the ground level shall not exceed 1.0 footcandles, where the applicant is proposing a higher light intensity, with a maximum illumination level of 3.9 footcandles.
  - iii. Façade Transparency- Where the first-floor level of all façades shall maintain a transparency of no less than 60% of the wall area, where the façade facing Broad Street has less than 60% façade transparency on the first floor.
  - iv. Fences- Where chain link fences are prohibited, and the applicant is proposing a chain link fence.
4. On October 17, 2022, the matter was entertained for purposes of completeness.

The applicant's attorney, Luke Pontier, Esq. appeared and discussed the application and the completeness report prepared by Mr. O'Brien dated October 16, 2022. It was noted that a prior submission had been made by the applicant for minor site plan approval. Upon adoption of an amended redevelopment plan, the applicant amended that application to reflect the addition of an additional lot and sought Preliminary and Final Site Plan approval. A motion to grant the waivers and temporary waivers as identified by Mr. O'Brien in his October 16th, 2022, report and to deem the application complete was made by Valle, seconded by Turner. Members in favor: Ron, Valle, Cox, Turner, Henderson, Frascella, Wright and VanDeursen. Members opposed: none.

5. On October 17, 2022, it was noted that the applicant had submitted appropriate proof of service and publication of the notice of hearing and the Board was found to have jurisdiction to proceed with the hearing. Throughout the hearing process, sworn testimony under oath was received from the following witnesses:

- A. Wayne Ingram, P.E., P.P.
- B. Michael Hanrahan, AIA

9. During the hearing process, the following exhibits were marked into evidence:

- Exhibit A-1 Colorized Site Plan Sheet
- Exhibit A-2 Existing Condition Photographs Drawing EX3 67
- Exhibit A-3 Existing Condition Photographs, Drawing EX4 67
- Exhibit A-4 Floor Plans
- Exhibit A-5 Drawing Z3
- Exhibit A-6 Colored samples/Proposed Partial Elevations
- Exhibit B-1 Correspondence of Mr. O'Brien
- Exhibit B-2 Correspondence of Ms. Gable

10. Attorney for the applicant, Luke Pontier, appeared and provided an outline of the proposed project. Lot 7 which is One West Washington Avenue currently contains a three-story masonry building known as the Stover Building, with ground floor retail and office space on the upper levels. The Applicant proposes to convert the upper levels currently used as office space into 20 residential apartments with modifications to the exterior façade of the building, including to the existing retail storefronts, to freshen it up and preserve the historical integrity of the building, as well as modernize the building. Lot 10, which is 17 Broad Street currently contains a dwelling and detached garage. The Applicant proposes to demolish the existing improvements, mill and pave the lot, and stripe the lot for 18 parking spaces. The parking spaces on Lot 10 will be exclusively for the use of residents of the One West Washington Avenue building. Three of the 18 spaces will be make-ready parking spaces for electric vehicles and one will be reserved pursuant to the Americans With Disabilities Act. In addition to those 18 parking spaces, the Applicant does have an agreement with the owner of Block 95, Lot 6, which is the property immediately next to the One West Washington Avenue building, to use two additional parking spaces on that property to be dedicated for the use of residents of One West Washington.

11. Sworn testimony under oath was received from Wayne Ingram, P.E., P.P. of Engineering & Land Planning Associates, Inc. Mr. Ingram provided his credentials in the fields of Engineering and Planning which were reviewed by the Board and he was accepted as an expert accordingly.

Mr. Ingram provided an overview of the site using Exhibit A-1, a colorized version of the site plan. The proposal is to renovate the existing structure and the two upper floors and convert them from office to 20 apartment units with a proposed parking lot on Lot 7. That property currently contains a home located along Broad Street and a garage in the rear, and is primarily paved across the majority of the site. At the present time, that lot has approximately 88% impervious coverage. Approximately 100 to 150 feet separates the properties with two small lots in between. Lot 7 is proposed to have 18 parking stalls constructed and the lot immediately to the west, Lot 6, is the one with an agreement for an additional two parking stalls to provide the 20 parking spaces for each individual unit. The lots are located in the B2 district, but also within the Washington Avenue Core District of the Redevelopment Plan. There are no real improvements site wise to Lot 7 south. There is a proposal to install some bicycle rack along West Washington. A new driveway onto Broad Street is proposed. The handicapped accessible space is to be closest to the street with a small sidewalk extension to connect out to the main sidewalk. Minimal landscaping is proposed as the goal is to maximize parking for the residents. One stall is accommodated for each of the 20 units. Two trees are proposed, one in the front and rear. Three light posts along the northern side of the property, 15-foot-tall LED fixtures, full cutoff, downward facing and rear shields will be installed. A design waiver is requested as to foot candles is required. The applicant agreed to conducting a night light test to the satisfaction of the Board/Borough Engineer as a condition of the issuance of any certificate

of occupancy. The applicant has no objection to possibly removing the tree and replacing it with ground level landscaping in case there were any issues with sight triangles. The applicant proposed a chain-link-fence along the rear of the property but upon suggestion of the Board's professionals agreed to a vinyl type fence that still permitted connectivity between the lots.

There is a minimal increase in runoff which doesn't trigger any stormwater requirements and it will be directed in such a way that it won't be detrimental to the neighbor. The applicant agreed to the removal of chain link fence on the property and placement of vinyl fencing four feet high to block headlights from the parking area.

The Board's engineer recommended four lights at a lower height than the three proposed to which the applicant agreed. The Board Attorney raised an issue as to the status of the agreement for the two spaces for parking. The applicant agreed to provide a deed of easement to the satisfaction of the Board's professionals. The applicant agreed to provide a revised landscaping plan to the Board's professionals to address concerns by the Board's Planner of the need for additional green space.

12. The matter was opened to the public for questions of Mr. Ingram. None were received.

13. Sworn testimony under oath was next received from Michael Hanrahan, AIA of Clarke, Caton Hintz. Mr. Hanrahan provided his credentials to the Board and he was accepted as an expert Architect. Mr. Hanrahan described the Stover Building as a landmark within the Borough and believed the proposed renovation is consistent with the downtown redevelopment plan which will require the façades and structure to be renovated, highlighting its original character. The base of the building no longer has its original character or appearance. It is a stucco base with limited openings at the base. The upper two floor façades do retain their

historic character-defining features on two fronts. The other sides of the do not have any real character-defining features. The brick doesn't return on those two sides of the building. They are a rough rusticated stucco that has been painted, consistent with the base of the first floor of the building. The building includes an unsightly fire escape along Broad Street. Currently the first floor is partially occupied by two tenants. The remaining tenant spaces are vacant. The upper floors are vacant office space.

After the renovation, the ground floor will have four tenant spaces, the upper floors will consist of 20 units of housing. This will include 10 units on the second floor and 10 units on the third floor. There are a total of four affordable units, three of which are two-bedroom units, one is a three-bedroom unit. The first floor is approximately 7,750 gross square feet, inclusive of four tenants and limited public space for the residential units above. A new accessible main entrance and lobby will be created at the front of the building along Washington. Within that lobby will be access to a main stair and elevator with mailboxes and package delivery location for the residents. Deliveries for the commercial properties will remain as is. A new side entrance to the west is being added consisting of two doors. One is for a second means of egress, this is a new staircase that's being added to the building which will enable the removal of the unsightly fire escape. The second door is access directly to the trash room. Trash is anticipated to be private trash disposal. There are chutes coming down from the residents above to a trash room where a part time superintendent will consolidate. It is anticipated that the businesses will consolidate their trash with the residents as well, and pickups will occur between once and twice a week. There are no proposed changes to the current business operations hours. The part time superintendent will most likely live onsite.

The second floor has 7,750 gross square feet, of which 6,250 square feet is for the residential units. There are ten units, nine of which are one-bedroom or studio apartments, and one two-bedroom unit. The two bedroom unit, will be one of the affordable housing units. All units are handicapped adaptable. Typical unit amenities include kitchens with dishwashers, individual climate control for the units, washer/dryer hookup, and the owner is contemplating additional tenant storage in the basement. The basement in the building is currently being primarily used for mechanical space and space for the first floor tenants to have storage. There is excess capacity in the basement for possible tenant storage, including bicycle storage.

The third floor of the building has 7,750 gross square feet as the other floor but due to the increased height of the third floor, there is sufficient space to add lofts. Approximately 8,200 square feet approximately will be dedicated to residential units, which includes 2,000 square feet of loft space. There will be 10 units, nine of which will be two-bedrooms, one will be a three-bedroom unit. Consistent with the second floor, all units are adaptable. There's no additional amenities planned for the third floor that aren't contemplated on the second. The building will be fully sprinklered. Three of the units on the third floor will be affordable units: The three bedroom unit and two of the two bedroom units.

Colorized renderings of the building elevations were presented reflecting the intent of the project from façade changes. The first floor or the base of the building along Washington and Broad, has been reimagined with new period appropriate storefronts, capitalizing on the existing openings that exist today. The upper floors of the historic façades on Broad and on Washington, contain a lot of the historic defining features of the building. They're brick with some stone accents. The brick will be cleaned and spot repointed. There will be new wood windows along these two primary façades will match the historic profiles and character of windows that are

appropriate to the period. On the rear elevation there are new windows proposed as well. Due to the proximity being on the property line, those will be fire rated window and will have a slightly different look than the historic façades of the building. The building will have a new membrane roof. There is a designed space for signage to occur which has not yet been designed and is dependent upon the tenants. The signage will be illuminated from above with new gooseneck light fixtures.

With respect to colors, the intent is to have period appropriate colors. Board members made it clear that the applicant would need to provide samples of colors and materials prior to action on the application and the applicant would need to return to the Board with that information.

14. The matter was opened to the public for questions. None were received.

15. Mr. Ingram returned to the Board to provide planning testimony in support of the relief requested. He was noted to remain under oath. Mr. Ingram testified that the majority of the variances are really for existing nonconforming conditions. On Lot 7, the minimum front yard requirement is 5 feet and 0 feet is existing. Maximum building coverage is 80 percent and 100 percent is existing. Maximum Lot coverage is 90 percent and 100 percent is existing. Maximum building height is 50 feet and 62 feet is existing. None of those conditions are modified or exacerbated in any way. The existing conditions constitute a hardship that cannot be mitigated without a removal of the historic building. The architectural changes to the outside are going to further enhance and improve the building, will not change the historic character of the building.

On Lot 10, there is a lot width of 50 feet required, and 44.57 feet existing. The lot functions for the proposed parking use and the width is ideal for that type of use. The rear yard

is required to be 15 feet and it's being interpreted that the parking lot is the structure and therefore, it's at zero. The value of that deviation is that further connectivity to possible other future development is achieved and will allow this last vehicle to back out successfully with the additional bump-out. The variance relief also permits the ability to obtain an extra parking stall in order to maximize parking on site. As to lot coverage, Lot 10 is currently conforming at 88.3 percent. The proposal increases that percentage to 95.76 where 90 percent maximum is permitted. While the applicant can reduce that number slightly by narrowing the parking stalls, the 90 percent number will still be exceeded. Mr. Ingram testified that the deviation is warranted, the benefits will outweigh the detriments by getting that additional parking.

The residential component of parking is required to be 38 stalls. The additional demand for commercial space is provided by public parking within 100 feet per ordinance. The applicant proposed 20 stalls. . The provision of the three EV spaces results in reduces the parking demand requirement to 35 stalls for a deficit of 15 stalls. Currently the demand for upper floor office could be as high as 60 spaces. Converting to residential significantly reduces the parking demand from the site on the Borough. By securing those two additional spaces on the adjacent property, the applicant has demonstrated the ability to provide one space per unit. With the deviation actually being reduced through the project, Mr. Ingram opined that there was no detriment to allowing the deviation just through the conversion of the use. At the present time, the building has no ties to parking. The acquisition of a second site to construct and build 18 parking spaces results in a reduction of parking demand as the existing structures and uses shall be removed resulting in an improvement to the traffic and circulation in the area. The improvement and advancement of this historical structure provides a strong basis for the granting of the variance relief.

As to design waivers pertaining to street trees, lighting and façade transparency, those waivers are due to the existing features of both lots which cause the applicant practical difficulties in strictly conforming with the ordinances.

Mr. Ingram testified that there is no substantial detriment to the public good and there would be no substantial detriment to the zone plan and zoning ordinance should the variance relief be granted as most of the conditions are pre-existing and the project has been designed to minimize any detrimental impacts via screening, landscaping and fencing.

16. The matter was opened to the public for questions of Mr. Ingram. None were received.

17. The matter was continued to the Board's next meeting in order for the applicant to present additional information regarding colors and materials. The Board Attorney was directed to prepare a draft Resolution for possible consideration by the Board at that time.

18. On November 14, 2022, the hearing continued. Sworn testimony under oath was presented by Patrick Orem, AIA who provided his credentials to the Board and was accepted as an expert in his field. . The following additional exhibits were entered into evidence:

Exhibit A-6 Colored samples/Proposed Partial Elevations

Paint colors to be used will be as depicted on the plan and will be the following colors: Benjamin Moore Edgecomb Gray. Window treatment and trim throughout Benjamin Moore Essex Green. Facia and trim will Benjamin Moore Caldwell Green. Color number 2 for facia Benjamin Moore Montecello Rose. Benjamin Morre Sheraton Beige. Chimney will be natural brick.

19. The matter was opened to the public for questions. Marco Matteo, 7 Washington Avenue asked questions regarding the arch. Does not like stucco. Preferred it to be more uniform.

20. The matter was opened to the public for comment. Sworn testimony under oath was received from Marco Matteo. He argued that the building is one of the most historical buildings. There are things that he likes and doesn't like about the application. Building used to be an opera house. 1869 Fire consumed the building on the inside. Wishes that there was more working together when historical buildings are involved. Thinks it will be a great thing but concerned regarding losing the history of the building. Doesn't agree with razing a building or home for parking.

21. A motion was made by Valle, seconded by Cox to close the public hearing. The motion was unanimously passed.

22. A motion was made by Cox, seconded by Ron to grant the relief requested subject to conditions. Vote: Unanimous

### **Conclusions:**

23. The applicant has established its entitlement to the variances as set forth above and as articulated in the plans and reports of the Board's professionals pursuant to N.J.S.A. 40:55D-70(c)(1). The applicant has established the necessary "positive" and "negative" criteria for the granting of the requested variance pursuant to N.J.S.A. 40:55D-70(c)(1). Specifically, the Board finds persuasive the testimony of the applicant's Planner, Wayne Ingram which was uncontroverted. The Board finds that by reason of the unique existing size, height and location of the existing building and improvements on Lot 10, and width of Lot 7, strict application of the

ordinance standards would cause the applicant an undue hardship.

24. The applicant has also established its entitlement to the variances as set forth above and as articulated in the plans and reports of the Board's professionals pursuant to N.J.S.A. 40:55D-70(c)(2). The applicant has established the necessary “positive” and “negative” criteria for the granting of the requested variance pursuant to N.J.S.A. 40:55D-70(c)(2). Specifically, the Board finds persuasive the testimony of the applicant's Planner, Wayne Ingram which was uncontroverted that the following purposes of the Municipal Land Use Law would be advanced by granting the variance relief requested:

- a. To encourage municipal action to guide the appropriate use or development of all lands in this State, in a manner which will promote the public health, safety, morals, and general welfare;

The Board finds that the proposal is generally consistent with the Redevelopment Plan and serves to improve an existing underutilized site that actually reduces the parking demand from what presently exists. The improvement to the building façade and redevelopment of the property to provide housing, including affordable housing, promotes and advances the general welfare.

- i. To promote a desirable visual environment through creative development techniques and good civic design and arrangement;

The architectural and façade improvements to the Stover building improve an historic building located with the heart of Washington Borough thereby creating an attractive and creative redevelopment of an existing site.

- j. To promote the conservation of historic sites and districts, open space, energy resources and valuable natural resources in the State and to prevent urban sprawl and degradation of the environment through improper use of land;

The applicant has provided a unique design which vastly improves and utilizes this existing structure. The removal of the fire escape and façade changes ensure that this existing historic building will be conserved and used for many years into the future.

25. As to the negative criteria, the Board finds that the variances can be granted without a substantial detriment to the public good and will not substantially impair the intent and purpose of the zone plan and zoning ordinance. In fact, by granting the variances, the applicant brings to fruition a portion of the Redevelopment Plan that is specifically envisioned as a benefit to the community. The development is in keeping with the Redevelopment Plan specifically envisioned for the area and helps complete portions of that Redevelopment Plan in an appropriate manner, particularly the provision of Affordable Housing and conservation of an existing historic structure.

26. For the foregoing reasons, the Board likewise finds that the Design Waivers are appropriate under the circumstances.

27. The end product is a welcome improvement and is in keeping with the Borough's Redevelopment Plan which, while advisory, permits the Board to grant relief under appropriate circumstances. The Board finds that the proposed development will advance the purposes of the Redevelopment Plan and the purposes of the Municipal Land Use Law, can be granted without substantial detriment to the public good and will not substantially impair the intent and purpose of the Zone Plan and Zoning Ordinance

28. The application otherwise being fully conforming to the Washington Borough ordinances, the applicant was found to be entitled to preliminary and final site plan approval subject to conditions.

**Resolution:**

**RESOLVED**, that the Applicant, 1 WEST WASHINGTON AVENUE, LLC is granted the relief as set forth above, subject to the following conditions:

- A. The terms of this approval are to be strictly in accordance with the plans, testimony, and representations presented at the public hearings, and the same are incorporated into this resolution by reference.
- B. Compliance with the Board Engineer's Review correspondence marked Exhibit B-1 as clarified during the testimony.
- C. Compliance with the Board Planner's Review correspondence marked Exhibit B-2 as clarified during the testimony.
- D. A night light test to the satisfaction of the Board/Borough Engineer shall be performed as a condition for the issuance of any Certificate of Occupancy. The Board maintains jurisdiction of all lighting issues.
- E. Fencing and landscaping shall be reviewed and revised to the satisfaction of the Board's professionals.
- F. Parking spaces shall be for residential use per unit.
- G. Lighting shall be revised to the satisfaction of the Board's professionals to provide four outside lights at a lower height than the three proposed.
- H. Applicant shall provide a letter of certification as to stormwater compliance to the satisfaction of the Board Engineer.
- I. Applicant shall provide an easement document with respect to the two parking spaces on the adjoining lot to the satisfaction of the Board professionals.

- J. The landscaping plan shall be revised in terms of plantings and the reduction of impervious to add landscaping to the satisfaction of the Board Planner
- K. The bicycles racks shall be relocated to the satisfaction of the Board Planner.
- L. Applicant shall submit the plans to emergency services and obtain their comment.
- M. The approval is specifically conditioned upon the representations as to colors and materials as follows:

Exhibit A-6 Colored samples/Proposed Partial Elevations

Paint colors to be used will be as depicted on the plan and will be the following colors:

Benjamin Moore Edgecomb Gray. Window treatment and trim throughout Benjamin Moore Essex Green. Facia and trim will be Benjamin Moore Caldwell Green. Color number 2 for facia Benjamin Moore Montecello Rose. Benjamin Morre Sheraton Beige. Chimney will be natural brick.

N. Applicant shall obtain any and all outside governmental agency approvals including but not limited to Warren County Planning Board, Upper Delaware Conservation District, Warren County Board of Health, NJ Highlands Approval to the extent required.

O. Applicant shall maintain a positive balance in its escrow account to reimburse the Borough for its professional expenses in the review of this application and compliance with this approval.

BOROUGH OF WASHINGTON  
LAND USE BOARD  
APPLICATION #

SECRETARY: Patricia Titus

APPROVAL DATE: 11/14/22

**BLOCK 95, LOTS 7 AND 10**

VOTE: Ron, Valle, Cox, Henderson, Frascella, Wright, VanDeursen

Ayes: 7

Nays: 0

I certify that this is a true copy of a resolution adopted by the Land Use Board of the Borough of Washington, Warren County, on November 14, 2022, to memorialize the Board's action on November 14, 2022.



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Patricia Titus, Secretary

**Appendix L**  
**1 West Washington**  
**Redevelopment Agreement**

**REDEVELOPMENT AGREEMENT**

**by and between**

**BOROUGH OF WASHINGTON**

**And**

**1 WEST WASHINGTON AVE URBAN RENEWAL, LLC**

**Dated: \_\_\_\_, 2023**

**THIS REDEVELOPMENT AGREEMENT**, made on \_\_\_\_\_, 2023, (hereinafter referred to as the "Agreement") by and between the **BOROUGH OF WASHINGTON**, a municipality of the State of New Jersey with offices located at Municipal Building, 100 Belvidere Ave, Washington, New Jersey 07882, together with any successor public body hereinafter designated by or pursuant to law (hereinafter referred to as the "Borough"), and **1 WEST WASHINGTON AVE URBAN RENEWAL, LLC.**, a Limited Liability Company formed and operated pursuant to the laws of the State of New Jersey with offices located at 199 Lake Road, Far Hills, New Jersey 07931 (hereinafter referred to as the "Redeveloper") (the Borough and the Redeveloper are hereinafter collectively referred to as "Parties");

**WITNESSETH:**

**WHEREAS**, the Mayor and Council of the Borough of Washington, in its capacity as the redevelopment agency for the Borough (hereinafter referred to as the "Borough Council" or the "Redevelopment Agency"), is responsible for implementing redevelopment plans and carrying out redevelopment projects pursuant to the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq. (hereinafter referred to as the "Redevelopment Law"); and

**WHEREAS**, Redeveloper is the owner of certain property that is known and designated as Block 95, Lots 7 and 10 on the Tax Map of the Borough of Washington, Warren County, State of New Jersey, consisting of a total of approximately 0.381 acres (the "Property"); and **WHEREAS**, on or about September 20, 2022, the Borough Council adopted the Downtown Redevelopment Plan (the "Redevelopment Plan");

**WHEREAS**, the Borough has determined that the Property is an area in need of redevelopment according to the criteria set forth in N.J.S.A. 40A: 12A-5; and

**WHEREAS**, the Property is located in the Washington Avenue Core District pursuant to the Redevelopment Plan; and

**WHEREAS**, Lot 7 contains a 3-floor commercial building known as the "Stover Building," and Lot 10 contains a 2-family residential structure and appurtenances; and

**WHEREAS**, pursuant to Resolution No. 3-2022 adopted on November 14, 2022 (attached hereto as **Exhibit A**), the Borough Planning Board granted preliminary and final site plan approval to the Redeveloper to develop Lot 7 as a mixed-use commercial and residential building; and

**WHEREAS**, Redeveloper proposes to change the use of the second and third floors of the Stover Building to residential, consisting of twenty (20) rental apartments, and maintain the first floor as commercial space; and

**WHEREAS**, Redeveloper proposes to develop Lot 10 as a private parking lot to serve the residential apartments; and

**WHEREAS**, pursuant to the Redevelopment Plan, residential uses are permitted on the upper floors in the Washington Avenue Core District and the private parking lot is permitted on Lot 10; and

**WHEREAS**, the Redevelopment Plan requires “[a]ny residential or mixed-use development producing 5 or more residential units...to provide 20% of the units as affordable to moderate, low, and very low income households...” and

**WHEREAS**, at least 4 (or 20%) of the residential units will be set aside for affordable housing rental units; and

**WHEREAS**, the Borough Council determined that the plans approved by the Land Use Board (attached hereto as **Exhibit B**) are substantially consistent with and meet the goals of the Redevelopment Plan and are in the best interest of the community and, therefore, adopted Resolution 2023-\_\_\_\_ designating the Redeveloper as redeveloper for the Property and authorizing the execution of a Redeveloper’s Agreement with Redeveloper on \_\_\_\_\_ (attached hereto as **Exhibit C**); and

**WHEREAS**, applicable law and Borough ordinances require the posting of a construction inspection escrow, performance guarantee, and maintenance bond, which will be calculated by the Borough Engineer and will be subject to a Rider to this Agreement; and

**WHEREAS**, the Redevelopment Law authorizes the Borough to arrange or contract with a redeveloper for the planning, construction, or undertaking of any project or redevelopment work in a redevelopment area; and

**WHEREAS**, the Borough believes that the redevelopment of the Property in the manner proposed by the Redeveloper is in the vital and best interests of the community and promotes the health, safety, morals and welfare of the Borough’s residents and is in accord with the public purpose and provisions of the Redevelopment Law; and

**WHEREAS**, the Borough has determined that it is in the best interests of the community for the Borough to enter into this Redevelopment Agreement with the Redeveloper for the

purposes of specifying each Parties' respective rights and obligations for the effectuation of the goals and objectives of redevelopment within the Property; and

**WHEREAS**, the Borough and the Redeveloper desire to fully and thoroughly address the rights and obligations of the Parties hereto in connection with the redevelopment of the Property by way of this Agreement, and the Borough and the Redeveloper acknowledge that the mutual promises contained in this Agreement are good and valuable consideration for the binding execution of this Agreement.

**NOW, THEREFORE**, for good and valuable consideration, it is agreed as of the date set forth above by and between the Borough and the Redeveloper, as follows:

## ARTICLE I DEFINITIONS

**1.01. Defined Terms.** The Parties hereto agree that, unless the context otherwise specifies or requires, the following terms or phrases shall have the meanings specified below, such definitions shall be equally applicable to and shall include the corresponding masculine, feminine and neutral forms, and the singular and plural forms of such terms or phrases and the use of the upper or lower case initial letter of each word contained in such terms or phrases. Unless otherwise noted, the words "include", "includes" and "including" when used in this Agreement shall be deemed to be followed by the phrase "without limitation".

**Affiliate:** Shall mean, with respect to any Person, any other Person directly or indirectly controlling or controlled by, or under common Control with such Person.

**Agent:** Shall have the meaning specified in Section 14.17 of this Agreement.

**Agreement:** Shall mean this Redevelopment Agreement between the Borough and the Redeveloper for the redevelopment of the Property within the Redevelopment Area situated within the Borough of Washington, County of Warren, and State of New Jersey.

**Appeal Period:** Shall mean the period of time specified by statute or court rule within which an appeal may be taken by any party from the grant of any of the Governmental Approvals, and includes the period for filing an appeal to an appellate court after entry of a judgment or decision by a lower court or administrative agency.

**Applicable Law:** Shall mean any and all federal, state and local laws, rules, regulations, statutes, resolutions, orders and ordinances, including but not limited to the Municipal Land Use Law, applicable to the Project, the Property, or any aspect thereof.

**Borough**: Shall mean the Borough of Washington, a municipality of the State of New Jersey with offices located at 100 Belvidere Ave, Washington, New Jersey 08827 together with any successor public body hereinafter designated by or pursuant to law. "Borough" may also include "Mayor and Council of the Borough."

**Borough's Redevelopment Costs**: Shall have the meaning specified in Section 2.09 of this Agreement. **Certificate of Occupancy**: Shall mean the written certificate issued by the Borough in accordance with N.J.S.A. 52:27D-133 relative to a residential unit or unit of commercial/retail space constructed as a part of the Project, indicating that the subject residential unit or unit of commercial/retail space has been completed in accordance with the construction permit, the Uniform Construction Code and the Applicable Law(s), and shall include a Temporary Certificate of Occupancy.

**Certificate of Substantial Completion**: Shall mean a written document issued by the Borough acknowledging that the Redeveloper has satisfactorily performed all of its duties and obligations pursuant to this Agreement relative to the Project, the issuance of said Certificate of Substantial Completion shall serve to release the Project and the Property from all terms, obligations and conditions contained in this Agreement.

**Commencement of Construction or Commence Construction**: Shall mean the undertaking by the Redeveloper of any physical construction of any new structure, improvements and other infrastructure, including but not limited to, any activities related to the preparation of the site for such construction, or any activities related to the environmental remediation, mitigation or clean-up of same.

**Construction Plans**: Shall mean the architectural and engineering plans prepared by the Redeveloper in conformance with approved Final Site Plans, which plans have been prepared in accordance with Applicable Laws and are to be submitted to the Borough's Building and Construction Department for review and approval prior to the issuance of the necessary permits for Commencement of Construction.

**Control (also referred to as "Controlled by" and "under common Control with")**: With respect to any Person, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management policies of such Person, whether through the ownership of voting securities, by contract or otherwise.

**Days**: Shall mean calendar days when such term is used to denote time.

**Effective Date:** Shall mean the date this Agreement is last executed by either the authorized officer of the Borough or by the authorized representative of the Redeveloper.

**Equity Investor:** Shall mean the investor member of the Redeveloper, if any.

**Escrow Agreement:** Shall have the meaning specified in Section 2.09 of this Agreement.

**Event of Default:** Shall mean, individually or collectively, a Borough Event of Default or a Redeveloper Event of Default, as defined in Sections 6.01a and b respectively.

**Final Site Plans:** Shall mean the plans submitted to and approved by the Land Use Board for Final Site Plan Approval for the Project in accordance with the Redevelopment Plan, Sections 3.04 hereof and Applicable Law and attached hereto as **Exhibit B**.

**Financial Agreement(s):** Shall have the meaning specified in Section 5.01 hereof.

**Financial Institution:** Shall mean a bank, savings bank, savings and loan association, mortgage lender or insurance company, pension fund, real estate investment trust, investment bank, mutual fund or similarly recognized reputable source of construction and permanent financing for the Project, chartered under the laws of the United States of America, or any State thereof.

**Force Majeure (also "Event of Force Majeure"):** As used throughout this Agreement this term applies to all time limitations and other obligations and shall mean any pandemic, epidemic, state of emergency, public health emergency, acts of God, fire, volcano, earthquake, hurricane, blizzard, infectious disease, technological disaster, catastrophe, large scale infestation of any type, tremors, flood, explosion, release of nuclear radiation, release of biotoxic or of biochemical agents, the elements, war, blockade, riots, mob violence or civil disturbance, any act or acts of terrorism or terroristic threat, an inability to procure goods or services or a general shortage of labor, equipment, facilities, energy, materials or supplies in the open market, failure of transportation, strikes, walkouts, actions of labor unions, governmentally imposed moratoriums, court orders, laws, rules, regulations or other orders of governmental or public agencies, bodies and authorities or any other similar cause not within the reasonable control of the Party claiming the extension of time including legal inability to comply resulting from a change of law including municipal laws regulating land use and construction, or any legal requirements under any applicable environmental laws, as well as all known and unknown rules and regulations of the United States Environmental Protection Agency, Borough of Washington, and the NJDEP, clearances, approvals or permits typical of the development process, any legal proceedings, decisions or decrees that adversely affect the ability of the Party claiming an extension of time to

reasonably perform the obligations of and/or benefit from the terms of this Agreement, any economic conditions that may adversely affect the real estate market or may affect the Redevelopment Area, the Project as demonstrated by an independent market study prepared by a qualified financial consultant selected by the Party seeking the benefit of Force Majeure, or any delay in the Redeveloper's receipt of any necessary Governmental Approvals not within the Redeveloper's control. Notwithstanding anything to the contrary contained herein, the Borough shall not be entitled to seek the benefit of Force Majeure for its own actions or inactions including, without limitation, any act or failure to act by any municipal administrative agency, officer, employee, or consultant thereof, including the Land Use Board.

**Governmental Agency:** Shall mean any federal, state, county or municipal legislative, administrative, executive or Borough, office, agency, department, commission, authority, court, or tribunal and any successor thereto, exercising executive, legislative, judicial, advisory or administrative functions of or pertaining to government, including, without limitation, the Borough of Washington, the County of Warren, the State of New Jersey and/or the United States of America.

**Governmental Application:** Shall mean any and all submissions, plans, diagrams, supporting documents, reports or other records that are transmitted to any Governmental Agency, or any officer or agent thereof, for the purpose of obtaining a Governmental Approval of any aspect(s) of the Project.

**Governmental Approval:** Shall mean any approval, authorization, permit, including, but not limited to, building and construction permit, license, or Certificate of Substantial Completion issued by any Governmental Agency required in order to implement the Project or any aspect thereof in accordance with the Redevelopment Plan and this Agreement. Any Governmental Approval shall not be deemed to have been obtained (a) until the Appeal Periods relating thereto have expired and no appeal has been taken, or (b) if an appeal is filed by a party challenging any Governmental Approval within the applicable Appeal Period, until such appeal shall have been finally resolved in a manner sustaining the challenged Governmental Approval.

**Improvements:** Shall mean all buildings, improvements, appurtenances and structures physically within or upon the Property comprising the Project, including but not limited to drainage improvements, walkways, hook-ups and service laterals from a building to the curb for water, storm and sanitary sewers, and other utilities, parking, lighting, landscaping and fire hydrants.

**Institution**: Shall mean any savings and loan association, savings bank, commercial bank or trust company (whether acting individually or in any fiduciary capacity), an insurance company, a real estate investment trust, an educational institution or a state, municipal or similar public employee's welfare, pension or retirement system or any corporation subject to supervision and regulation by the insurance or banking departments of the state or of the United States Treasury, or any successor, department or departments hereafter exercising the same functions as said department.

**Land Use Board**: (also referred to as the Borough Land Use Board) shall mean the Borough of Washington Land Use Board together with any successor(s) in interest thereto exercising similar functions in accordance with the Applicable Law.

**Liability**: Shall have the meaning specified in Section 14.17 of this Agreement.

**Long Term Tax Exemption Law**: Shall mean the Long Term Tax Exemption Law, N.J.S.A. 40A:20-1 *et. seq.*

**Mortgage**: Shall mean any written instrument encumbering the Property or any portion thereof that secures the performance of obligations or the payment of debt, including, without limitation any grant of, pledge of, or security interest in, any collateral, or any grant, directly or indirectly, of any deed of trust, mortgage or similar instrument or any other security whatsoever.

**Mortgagee**: Shall mean the holder of any Mortgage.

**NJDEP**: Shall mean the State of New Jersey Department of Environmental Protection together with any successor(s) in interest thereto.

**Off-Tract Improvements**: Shall mean any improvements outside the Property, made necessary by the Project, that are to be constructed and maintained by the Borough and/or by the Redeveloper in connection with the requirements of any applicable Governmental Approvals, including, without limitation, (a) all roadways, bridges and off-tract infrastructure improvements, (b) grading, site drainage, drainage outfalls, walkways, subsurface excavation and other site preparatory work for the off-tract infrastructure improvements, lighting within off-site parking areas, landscaping, fire hydrants and roadways, in each case, (c) water and sewer service lines for the Project, including hook-ups and service laterals for water, storm and sanitary sewers, and other utilities, including electric, gas, telephone and cable services (which are to be built underground), and (d) all other improvements which are or may be required to accommodate construction, occupancy and use of the Project. Except as otherwise provided in the Governmental Approvals

and this Agreement, the cost of any Off-Tract Improvements shall be borne solely by the Redeveloper whether constructed or maintained by the Borough or the Redeveloper.

**Party/Parties:** Shall mean individually, the Borough or the Redeveloper and collectively, the Borough and Redeveloper.

**Permitted Transfer:** Shall mean any transfer permitted by Article 7 herein or consented to by the Borough pursuant to Article 7 herein.

**Person(s):** Shall mean any individual, sole proprietorship, corporation, partnership, joint venture, limited liability company, trust, unincorporated association, institution, public or governmental body, or any other entity.

**Preliminary Approval:** Shall mean preliminary Land Use Board approval of the Site Plans.

**Property:** Shall mean the property that is the subject matter of this Agreement and designated as Block 95, Lots 7 and 10 on the Tax Maps of the Borough of Washington, Warren County, State of New Jersey.

**Project:** Shall mean the Property and the Improvements and construction and installation thereof in accordance with the approved Construction Plans. The Project is more particularly described in Section 2.01 hereof.

**Redeveloper:** Shall mean 1 West Washington Ave Urban Renewal, LLC, a limited liability company formed and operated pursuant to the laws of the State of New Jersey, having corporate offices located at 199 Lake Road, Far Hills, New Jersey 07931, together with any Transferee(s) of its rights in accordance with the provisions of this Agreement.

**Redevelopment Area:** Shall mean the properties that are subject to the Redevelopment Plan.

**Redevelopment Law:** Shall mean the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1, et seq., and as same may be amended from time to time.

**Redevelopment Plan:** Shall mean the Downtown Redevelopment Plan, as further defined in the Recitals of this Agreement, as adopted by the Borough, together with any amendments adopted in accordance with the Applicable Law.

**Site Plans or Final Site Plans:** Shall have the meaning specified in Section 3.01(a) of this Agreement.

**Site Plan Approval:** Shall mean, individually or collectively, approval by the Land Use Board of Final Site Plans for the Project.

**Tolling Event:** Shall mean: (i) an act or omission by one Party or a third party that has a material and adverse effect on the other Party's or either Party's ability to perform any obligation, requirement, commitment, or responsibility prescribed under this Agreement; or (ii) any extension granted by either Party to the other Party, to extend any proposed date to perform in this Agreement; or (iii) any reasonable request by one Party to the other to extend the time for performance of any obligation, requirement, commitment or responsibility arising pursuant to this Agreement; or (iv) during the period of any challenge or litigation related to an approval or denial of any Governmental Approval, whether brought by the Borough, the Redeveloper or a third party; or (v) an Event of Force Majeure.

**Transfer:** Shall mean any transaction, by which a Transferee obtains an interest in the Property, or any portion thereof and/or any or all of the Improvements, or in this Agreement by means or methods which include, but are not limited to, conveyance, transfer, lease, encumbrance, acquisition or assignment through sale, merger, consolidation, reorganization, foreclosure or otherwise, including the appointment of a trustee in bankruptcy or assignee for the benefit of creditors.

**Transferee:** Shall mean any third party to whom an interest in the Property, the Improvements or rights in or under this Agreement is conveyed, transferred, leased, encumbered, acquired or assigned, by sale, merger, consolidation, reorganization, foreclosure or otherwise, including through designation of a trustee in bankruptcy or assignee for the benefit of creditors.

## **ARTICLE II**

### **REDEVELOPER'S RESPONSIBILITIES**

**2.01 The Project Description.** As depicted in the Final Site Plans submitted by the Redeveloper and approved by the Land Use Board, a copy of which is attached as part of **Exhibit B**, the Redeveloper has proposed a development that is materially in conformance with the Redevelopment Plan. It is anticipated that the market rate residential units constructed as part of the Project will be made available to the general public as rental units. The affordable units will be made available as rental units pursuant to Article XII below. The first floor shall be used for commercial purposes consistent with the Redevelopment Plan.

Redeveloper has received approval from the Borough Land Use Board. **Exhibit A.**

**2.02 Phases of Project.** It is anticipated that the Project will be constructed in a single phase.

**2.03 Intentionally left blank.**

**2.04 Commencement of Construction and Redevelopment Project Schedules.** The Redeveloper shall commence construction of the Project within twelve (12) months after all Governmental Approvals become final and unappealable. Notwithstanding, the Redeveloper shall be permitted for good cause to request an extension and this Section shall be subject to any and all Event(s) of Force Majeure and Tolling Events.

**2.05 Planning, Design and Marketing of Project.** In accordance with, and subject to, the terms of this Agreement, including, without limitation Section 12.01 of this Agreement, the Redeveloper shall undertake, at its sole cost and expense, to plan, design, develop, market, and construct the Project. The Redeveloper shall, in its sole but reasonable discretion, develop and construct the Project in accordance with the Final Site Plans (as may be amended from time to time with the written approval of the Land Use Board, and subject to approval of the Borough Council as set forth herein (as well as any other Governmental Agency having jurisdiction)), and the Project shall not be deemed complete until approved as complete by the Borough in accordance with Section 4.08 hereof. Except as may be expressly set forth herein, the Borough shall not be responsible for any costs associated with any Improvements necessary for the development and construction of the Project. Except as may be specifically set forth herein, the costs of developing the Project and of constructing all Improvements thereon shall be borne entirely by the Redeveloper (including by way of equity investment(s) or loan financing(s)). Additionally, the costs of marketing the Project, including the affirmative marketing of all affordable residential units as set forth in Section 12.01 herein, shall be borne solely by the Redeveloper (including by way of equity investment(s) or loan financing(s)).

**2.06 Costs of Enforcement.** If the Redeveloper neglects or fails to carry out any provision of this Agreement within the time periods prescribed herein (subject to extensions and any Tolling Event as provided for herein), the Borough shall have the authority to have the necessary work performed and to charge the Redeveloper or owner for the cost of work done.

**2.07. Exclusive Redeveloper.** Subject to the provisions hereof, the Redeveloper shall have the exclusive right to carry out the Project as long as this Agreement has not been terminated due to a Redeveloper Event of Default. For the term of this Agreement, the Borough shall not designate any person or entity, other than the Redeveloper (which the Redeveloper has been so designated), as redeveloper of the Project, nor enter into any form of understanding or agreement pursuant to any Applicable Law(s) with such persons or entities, unless the Redeveloper fails to cure a Redeveloper Event of Default and this Agreement is terminated.

**2.08. Covenant to Build.** In accordance with, and subject to, the terms of this Agreement, the Redeveloper covenants and agrees to perform the construction of the Project upon the Property together with any ancillary uses as indicated in and on the Governmental Approvals, the Final Site Plans, and the Construction Plans. The Project must be constructed in accordance with the Redevelopment Plan. All Improvements to be situated upon the Property (i.e.; sidewalks, utilities and site lighting, off street parking, roadways, pilings, foundations, footings, open space, walkways, landscaping, etc.) shall be installed by the Redeveloper at its sole cost and expense as the Project requires, subject to the terms of Section 3.06 of this Agreement.

**2.09. Payment of Borough's Redevelopment Costs; Escrow Agreement.**

The Redeveloper agrees to pay the Borough's actual, reasonable out of pocket professional costs, including, without limitation, all reasonable legal, planning and engineering fees, related to the Project (the "Borough's Redevelopment Costs"). Such costs shall include, but are not limited to the Borough's (1) legal fees incurred in drafting, reviewing, and revising this Redevelopment Agreement; (2) legal fees and costs incurred in drafting, reviewing, and revising the Financial Agreement and the associated ordinance; and (3) legal fees incurred in drafting, reviewing, revising, and recording any easements or deed restrictions required for the Project. This obligation shall continue until termination of this Agreement, an Event of Default, or such time as the final Certificate of Completion is issued by the Borough for the Project, at which time the Redeveloper shall no longer have the obligation to pay for the Borough's Redevelopment Costs. The Borough's Redevelopment Costs are separate from and in addition to any legal and professional fees incurred by the Borough in connection with the Borough Land Use Board's review of Redeveloper's development application. Notwithstanding the foregoing, the Borough's Redevelopment Costs shall not include the estimated or actual cost of time spent by Borough employees in connection with the Project, except the Borough Engineer.

The Borough shall establish and the Redeveloper shall fund an escrow account to pay for the Borough's Redevelopment Costs, which shall be administered in accordance with the Municipal Land Use Law, specifically N.J.S.A. 40:55D-53.2 (the "Escrow Account"). Such Escrow Account may, at the Borough's discretion be the same account established in connection with the Redeveloper's land use application filed with the Borough Land Use Board. Within ten (10) days of execution of this Agreement, Redeveloper shall deposit with the Borough the amount of \$5,000.00, which shall be placed in the Escrow Account. Commencing upon the Effective Date,

the Borough shall regularly provide the Redeveloper with monthly statements setting forth the actual, out-of-pocket costs incurred by the Borough during the prior month (and on a cumulative basis). The Parties acknowledge that additional escrowed funds may be required. The Borough shall have the right to request the additional escrowed funds in writing upon the escrow fund balance falling below \$2,500.00. The Redeveloper shall be required to pay such additional escrowed funds within ten (10) days of the Borough's written request

This obligation shall be in addition to the Redeveloper's obligation to pay for any of the Borough's professional costs incurred in reviewing and processing Redeveloper's application to the Land Use Board pursuant to Article III herein, including any application fees set forth in Borough Ordinances.

The Parties shall enter into an Escrow Agreement to effectuate the purposes of this Section 2.09 in substantially the same form as attached hereto as **Exhibit C** (the "Escrow Agreement").

**2.10 Deposits as Preconditions.** Building/construction permits or certificates of occupancy shall not be issued unless the deposits mentioned in this Agreement, or other necessary deposits, have been made.

**2.11 Improvements to the Completed by Redeveloper.** The Redeveloper will, at the Redeveloper's own cost and expense, in a good and workmanlike manner, install and complete all of the improvements: (1) shown on the Site Plans; (2) made necessary during the course of construction; (3) shown on the Borough Engineer's cost estimate for improvements (to be set forth as part of a Rider to this Agreement); (4) as required by the Land Use Board's Resolution of Approval (Exhibit A), the Redevelopment Plan, and this Agreement; and (5) as noted in any other reports or recommendations issued as part of the underlying approvals. All of the work will be done in accordance with the approved plans and specifications, and the applicable Borough ordinances, rules and regulations. The Borough Engineer will timely inspect and approve the work as installed in accordance with the Construction Plans and Applicable Laws.

a. The Redeveloper shall not commence any construction until all approvals are obtained and unless the Property has been made safe for the public by the installation of such fences, barricades, dust, soil erosion, and mud abatement devices, and construction lighting required by the manual on Uniform Traffic Control Devices or as may be necessary to prevent the possibility of personal injury, property damage or nuisance. If the Redeveloper fails to maintain such devices after commencement of such construction, the Construction Official or Borough Engineer may suspend work at any time with reasonable notice to the Redeveloper. It is the Redeveloper's sole responsibility

to install, monitor, and maintain all reasonable safety precautions.

b. The Borough Engineer and/or the Borough Engineer's designee is hereby authorized to approve and/or require minor modifications to the Site Plans, if those modifications are necessitated by conditions in the field which demonstrate that it would be impractical for the Redeveloper to complete the improvements in accordance with the approved Final Site Plans, or that any planned site improvement will not function for its intended purpose as a result of such a field condition, and, provided, further that any such modifications do not require a variance or exception from the requirements of the Borough Land Use Regulations. Major modifications, as determined by the Borough Engineer in his reasonable judgment, shall only be granted by the approving authority.

c. Signing of the Final Site Plan is specifically conditioned upon the Redeveloper's compliance with the requirements contained in the various reports prepared by the Borough's professionals.

d. All of the work and improvements set forth above under the terms of this Agreement shall be completed, as evidenced by the issuance of a Temporary Certificate of Completion, within two years of execution of this Agreement. If work shall cease on this project for a period of more than thirty (30) days, the Redeveloper shall install improvements within the discretion of the Borough Engineer in order to secure the site. If work shall cease on the project for a period greater than six (6) months, other than during a Tolling Event, following notice to the Redeveloper with a reasonable opportunity to cure, Redeveloper shall be declared in breach of this Agreement and the Borough shall be entitled to take any actions necessary pursuant to this Section. Should the Redeveloper fail, refuse or neglect to complete, to the satisfaction of the Borough Engineer and in accordance with this Agreement, all of said work and improvements within the above time limit, as may be extended or tolled, then the Borough shall be free to take whatever legal steps it desires, including (i) utilizing the cash deposit (and interest earned thereon), and (ii) an action on the performance guaranties, bond or drawing funds under the letter of credit, in order to secure the satisfactory completion of the work and improvements set forth on **Exhibit B**. In so doing, the Borough may contract for the completion of said improvements or may do the same with its own labor and materials, and the cost and expenses for the completion shall be chargeable against the Redeveloper's cash deposit and performance bond or letter of credit. Should the cash deposit and performance bond or letter of credit prove to be insufficient, then the Redeveloper shall be liable for the deficiencies. The Redeveloper shall have the right to petition the Land Use

Board for extensions of the completion date in accordance with the provisions of the Municipal Land Use Law.

**2.12**            **Illumination, Noise, and Pollution.** The Redeveloper is mindful of the size of the Project and the potential effects that the construction of such an undertaking may have on the surrounding communities. Therefore, the Redeveloper agrees that it will take commercially reasonable steps to minimize the passage of excessive or unwarranted illumination, noise, or pollution during construction into the surrounding communities.

**2.13**            **Security and Safety.** The Redeveloper further commits to be cognizant of and address reasonable traffic safety issues by complying with all applicable traffic safety provisions of Applicable Law both during and after construction of the Project.

**2.14.**            **Parking During Construction.** The Redeveloper shall not utilize Borough public parking lots for construction worker or construction vehicle parking.

During construction, there will be no parking or storage of materials on-site that would prevent the reasonable access to the site as may be necessary by emergency vehicles of the Fire Department, Police Department, Emergency Squad or such other agencies as circumstances may require.

**2.15.**            **Rodent, Insect and Animal Control.** The Redeveloper will take reasonable steps to minimize and control the migration of rodents, insects, or other animals (including feral cats) from the Property during the construction of the Project. The Redeveloper will undertake to provide controls in accordance with all Applicable Laws and other construction standards such that the issue of rodent, insect, and animal control is reasonably addressed prior to the commencement of construction. The Redeveloper agrees to coordinate this effort with the Borough's Police Department and Animal Control Officer.

**2.16.**            **Signage.** Unless heretofore approved as part of any site plan approvals, no signs shall be placed upon the construction site without approval by the agency having jurisdiction. No temporary signage shall be placed on the construction wrap or otherwise on the site unless said signage complies with applicable Borough Ordinances.

**2.17**    **Site Changes; Procedure.** Redeveloper agrees that any completed buildings, structures and/or all improvements shall comply in all material respects with submissions by the Redeveloper to the Land Use Board, including but not necessarily limited to the Site Plans, architectural submissions, if any, and such other development submissions made to the approving authority except as otherwise provided in this Agreement or except as the same may be modified by

resolution of the approving authority. The Borough Engineer shall have the authority to permit minor field adjustments and modification in the installation of the improvements of buildings and structures as contemplated in the site plan where field conditions and good engineering practices permit. The Construction Official shall have the authority to approve changes in the building plan that do not materially affect, vary or contradict the site plan or the terms of this Agreement.

**2.18. As Built Drawings.** Prior to issuance of a CO/TCO the Redeveloper will furnish to the Borough "as built" plans for all site improvements, and the Borough will, by Resolution of the governing body, upon request of the Redeveloper and recommendation of the Borough Engineer, in the manner provided in the Municipal Land Use Law, reduce or release the Performance Guarantee when portions of the improvements have been certified by the Borough Engineer to have been properly completed.

**2.19. Duty to Provide Details to Plans.** In the event that the Borough reasonably requires further details of the approved plan, or of any proposed public or site improvement to be submitted and approved, the Redeveloper shall furnish such details on written notice from the Borough Engineer within ten (10) working days.

**2.20. Field Requirements.** This Agreement is subject to additional in-the-field directions and requirements by the Borough Engineer, in accordance with applicable codes, or when reasonably required by the Borough Engineer and applicable sub-code officials, as to all structures and work. All such direction and requirements shall be given in reasonable and timely fashion prior to commencing operations, or during or after operation where such direction and requirements are necessary to adequately ensure that the improvements to be installed under this Agreement function properly and carry out all the purposes for which they are designed, in a good workmanlike manner consistent with sound engineering principles. The provisions of this paragraph will not be utilized to require unusual additional work or facilities beyond that which is necessary to adequately ensure that the facilities operate and function properly to carry out the purposes for which they were designed. Nothing herein shall be deemed to authorize by implication the disapproval of construction materials and methods that are permitted under law or the BOCA Code, except if expressly provided to the contrary herein or except if other and different standards are shown on the subdivision, including site grading plans, profiles, and details. Plans and specifications for the approved plan, shall in accordance with the standard road construction and other construction specifications of the Borough, a copy of each is on file and available for inspection by the Borough Engineer.

**ARTICLE III**  
**GOVERNMENTAL APPROVAL PROCESS**

**3.01. Final Site Plan Approval.**

The Land Use Board granted approval of the project contemplated herein pursuant to Resolution No. 3-2022, adopted on November 14, 2022 and attached hereto as **Exhibit A.** With the exception of relief granted by the Land Use Board, all residential improvements shall comply with the Residential Site Improvement Standards ("RSIS") and municipal ordinances. Where the RSIS conflict with municipal ordinances, the RSIS will control. Notwithstanding the foregoing, except for any deviations approved by the Land Use Board, as memorialized in the above-referenced Resolution, the Project shall comply with the parking standard set forth in the Redevelopment Plan, which differs from the RSIS parking standard. The Parties agree to cooperate, and the Borough agrees to assist in processing before the New Jersey Department of Community Affairs (the "DCA") reasonable requests for de minimus relief or exception that may be required from RSIS standards in order to facilitate development of the Project.

**3.02. Intentionally left blank.**

**3.03. Other Governmental Approvals, Construction Plan Review and Commencement of Construction.**

(a) Upon receipt of all Governmental Approvals, except for building permits, the Redeveloper will prepare Construction Plans for the Project to be constructed, as well as materials, and an application for approval of the Construction Plans by the Borough's Building and Construction Department.

(b) The Borough, including its Land Use Board, and Engineering, Building and Construction Departments will review all plans for compliance with the Applicable Laws after submittal of same.

(c) All of the work and improvements set forth above under the terms of this Agreement shall be completed, as evidenced by the issuance of a Temporary Certificate of Completion, within two years of execution of this Agreement.

**3.04. Intentionally Left Blank.**

**3.05. Reporting; Conditions of Approval.** As it relates to the Project, upon written request of the Borough, the Redeveloper shall submit to the Borough, a written report of the current status of any pending Governmental Approvals.

**3.06. Project Improvements.** In accordance with and subject to the terms of this Agreement, the Redeveloper shall install and maintain, at its own expense, all Improvements in the approved Site Plan.

The Redeveloper shall also be responsible for providing, at the Redeveloper's cost and expense, all sidewalks, curbs, street trees and street lighting on and along the frontage of the Property, to the extent shown on the Site Plans, and its pro rata share of on- and off-tract traffic controls and road improvements for the Project or required as a result of the impacts of the Project. Notwithstanding the foregoing, the Redeveloper shall not be responsible for sidewalks, curbs, street trees and street lighting that are not located on and along the frontage of the Property.

**3.07. Project Modifications.** The Redeveloper hereby acknowledges and agrees that the development and construction of the Project shall be in accordance with the Redevelopment Plan, as may be modified by the Governmental Approvals in accordance with this Agreement. The Redeveloper may not modify, alter or amend the approved Final Site Plans at any time without the express prior written approval of the Borough and the Land Use Board, which respective approvals shall not be unreasonably withheld, conditioned or delayed, subject to the provisions of Applicable Laws. However, the Redeveloper may make those modifications, alterations and amendments to the Final Site Plans and/or Construction Plans, as the case may be, that are "minor" in nature, with the approval of the Borough Planner and Borough Engineer and where field conditions and good engineering practices permit. The Borough reserves its rights to contest any material modifications that may potentially arise in the course of the construction of the Project.

**ARTICLE IV**

**GENERAL DEVELOPMENT REQUIREMENTS AND  
CONSTRUCTION OF THE PROJECT**

**4.01. Standards of Construction.** Without limitation, all work on the Project shall be performed in a good and workmanlike manner, with such materials as are required by the

Redevelopment Plan and Governmental Approvals (including any approvals from the Land Use Board) and as are appropriate for a Project of the character and quality of similarly situated projects in the County of Warren and State of New Jersey. All construction work shall be performed in accordance with the Applicable Laws.

**4.02. Intentionally left blank.**

**4.03. Construction of Project.** Subject to the advent of an Event of Force Majeure or other Tolling Event, the Redeveloper shall Commence Construction of the Project within twelve (12) months after all Governmental Approvals become final and unappealable. Subject to the advent of an Event of Force Majeure or other Tolling Event, the construction of the Project shall commence in accordance with the respective time frame references set forth in this Agreement.

**4.04. Time for Completion.** Subject to Section 14.02 hereof, construction of all Improvements necessary for the Project shall be completed within two (2) years after Commencement of Construction. Nothing herein shall extend or conflict with the time period for which any Land Use Board approval remains valid pursuant to the Municipal Land Use Law and Borough Ordinances. Construction of any and all buildings as approved by the Land Use Board shall be completed within any and all time periods set forth in this Agreement, or extensions of such time periods as provided for in any other law of the State of New Jersey as amended from time to time, with completion of construction to be evidenced by issuance of a temporary certificate of occupancy. The Redeveloper shall have the right to petition the Land Use Board for extensions of the completion date in accordance with the provisions of the Municipal Land Use Law or such other ordinances, statutes or other laws of the Borough of Washington, the State of New Jersey or the United States of America.

Landscaping shall be installed as soon as seasonally appropriate after the issuance of any Certificate of Occupancy.

**4.05. Report on Progress.** Upon written request of the Borough, the Redeveloper shall make, in such detail as may be reasonably required by the Borough, a report in writing concerning the actual progress of the Redeveloper with respect to the Project. The work and construction activities of the Redeveloper on the Property shall be subject to inspection by the Borough, upon a reasonable, advance written notice given to the Redeveloper in accordance with Section 11.01 hereof.

**4.06. Insurance.** At all times during the construction of the Project, the Redeveloper shall maintain or cause to be maintained at its own cost and expense, with responsible insurers, the

following kinds and the following amounts of insurance with such variations as shall reasonably be required to conform to customary insurance practice:

(a) Builder's Risk Insurance for the benefit of the Redeveloper during the term of construction which will protect against loss or damage resulting from fire and lightning, the standard extended coverage perils, and vandalism and malicious mischief.

(b) Comprehensive General Liability Insurance (including coverage for any construction on or about each parcel of property contained within the Property) against claims for bodily injury, death or property damage occurring on, in or about the Project Property and the adjoining streets, sidewalks and passageways, in amounts not less than Two Million (\$2,000,000) Dollars for each claim with respect to any bodily injury or death, with respect to any one occurrence and Two Million (\$2,000,000) Dollars with respect to all claims for property damage relating to any One (1) occurrence;

(c) Worker's Compensation Insurance coverage in the amount of the full statutory liability of the Redeveloper;

(d) Such other insurance, in such amounts and against such risks, as is customarily maintained by the Redeveloper with respect to other similar properties owned or leased by it, including automobile insurance.

Prior to commencing work on the Property, the Redeveloper shall submit to the Borough proof of all applicable insurance(s). The policies of liability insurance required to be maintained by the Redeveloper and for which the Redeveloper shall be a named insured, pursuant to this Section 4.06, shall name as additional insureds (except for Worker's Compensation insurance), the Borough, as its respective interest may appear.

**4.07. Intentionally Left Blank.**

**4.08. Certificates of Occupancy and Certificate of Substantial Completion.**

a. **Certification of Substantial Completion.** Upon completion of the Project, the Redeveloper may request in writing a Certificate of Substantial Completion which shall be issued subject to the Borough's finding that the Project has been completed in conformity with the Final Site Plans and Construction Plans for the Project. Upon issuance of the Certificate of Substantial Completion, unless specifically stated otherwise herein, the Redeveloper shall be released from all obligations, responsibilities and liabilities set forth in this Agreement, other than the Affordable Housing obligations set forth in Article XII below as same relates to the Project.

The Certificate of Substantial Completion shall constitute an independent, recordable, conclusive determination of the satisfaction and termination of the obligations, the Applicable Laws and the Redevelopment Plan with respect to the Redeveloper's obligation to develop and construct the Project.

If the Borough shall fail or refuse to provide the Certificate of Substantial Completion within Forty-Five (45) Days after written request to do so is served by the Redeveloper, the Borough shall provide to the Redeveloper a written statement setting forth in detail the reasons why it believes that the Redeveloper has failed to complete the Project, in accordance with the provisions of this Agreement and what reasonable action(s) will be necessary to be taken by the Redeveloper in order for the Redeveloper to be entitled to the Certificate of Substantial Completion. Upon receipt of the Certificates of Substantial Completion, the Redeveloper may record it and, if applicable, the Discharge referenced in Section 14.24 herein, in the Warren County Clerk's Office.

b. **Certificate of Occupancy.** Upon the completion of the construction of the Project in accordance with the Governmental Approvals, the Redeveloper shall request from the Borough the issuance of a Certificate of Occupancy for the Project. When issued, the Certificate of Occupancy will constitute conclusive evidence that the Redeveloper has fully performed its obligations to construct the Project in accordance with all Applicable Laws, the Redevelopment Plan, Land Use Board Approvals, and this Agreement.

To enable the Redeveloper to lease each residential or retail unit developed and constructed as a part of the Project prior to the issuance of the relevant Certificate of Occupancy, the Borough may issue a temporary certificate of occupancy for the subject residential or retail unit, including issuance of a temporary certificate of occupancy on a floor by floor basis.

**4.09 Governmental Approval Fees.** The Redeveloper shall pay all Borough permit and other non- Borough fees for Governmental Approvals, which include, but are not limited to, any application fees for Governmental Approvals payable by the Borough to all required Governmental Agencies in connection with the Project, or fees for Governmental Applications for which the Borough is required to reimburse other Governmental Agencies in connection with the Governmental Approvals required for the Project.

## **ARTICLE V**

### **BOROUGH RESPONSIBILITIES**

**5.01. Tax Abatements.** (a) The Borough acknowledges that the Redeveloper has submitted an Application to the Borough under the Long Term Tax Exemption Law for approval of an agreement for payment in lieu of taxes, (hereinafter referred to as a "Financial Agreement"). The Redeveloper and the Borough recognize that the Financial Agreement will benefit the Redeveloper, the Borough, and the potential residents and tenants of the Project. If proposed by the Redeveloper, the Borough may approve such application and adopt the required ordinance within sixty (60) days of the date the Redeveloper files the application with the Borough, or such other time as agreed upon by the Parties. The Financial Agreement shall be subject to the receipt of all Governmental Approvals required by the Applicable Laws and an issuance of Certificates of Occupancy for all of the affordable residential units. If Redeveloper defaults under this Agreement or fails to obtain all Governmental Approvals within the specified time period or Commence Construction within the specified time period, as may be extended by the mutual agreement of the parties, and beyond any applicable notice and cure periods, the Borough is not obligated to enter into the Financial Agreement or may void such Agreement if already executed.

The Borough further recognizes that in order to be eligible for a tax abatement pursuant to the New Jersey Long Term Tax Exemption Law, N.J.S.A. 40A:20-1 et seq., Redeveloper must be an urban renewal entity as defined in N.J.S.A. 40A:20-5. Redeveloper shall make all necessary applications and other arrangements to meet the requirements of the New Jersey Long Term Tax Exemption Law, N.J.S.A. 40A:20-1 et seq. In the event that Redeveloper cannot meet such requirements and upon request of the Redeveloper, this provision shall be amended by mutual agreement of the parties to allow for a five-year tax abatement pursuant to N.J.S.A. 40A:21-1 et seq. and Chapter 79, Article I of the Borough Code.

## **ARTICLE VI**

### **DEFAULT**

**6.01a. Borough Events of Default.** Redeveloper shall have the right to declare the Borough in default of this Agreement in the event of the occurrence of any of the following (each a "Borough Event of Default"):

- (a) The Borough's failure to comply with the Redevelopment Law;
- (b) Any Borough representations set forth in Section 10.02 prove or are adjudicated through arbitration, mediation, settlement, Administrative Law Judge, Agency Order,

Order of the Commissioner of the Department of Community Affairs, or any State or Federal Court of the State of New Jersey to be untrue or false;

(c) The Borough's failure to perform, or a defect in performance by the Borough, of any obligation of the Borough under this Redevelopment Agreement after Default Notice is provided in accordance with Section 6.02.

**6.01b. Redeveloper Events of Default.** Subject to an Event of Force Majeure or Tolling Event pursuant to Section 14.02 hereof, as it relates to the Project, prior to completion of the Project as evidenced by the issuance of the Certificate of Substantial Completion for same, each of the following actions shall constitute an event of default by the Redeveloper limited to the Project (and each shall hereinafter be referred to as a "Redeveloper Event of Default").

(a) Redeveloper shall default in its obligations with respect to the construction of the Project in a material respect or shall abandon or substantially suspend construction work (unless such suspension arises out of a delay set forth herein), and any such default, violation, abandonment, or suspension shall not be cured, ended, or remedied within one hundred twenty (120) days after written demand by the Borough to do so or such longer period as may be reasonably required if incapable of cure within such one hundred twenty (120) day period, provided that Redeveloper has commenced and is diligently prosecuting such cure; or

(b) Redeveloper or its successor in interest shall fail to pay any real estate taxes, payments in lieu of taxes, or assessments on the Property or any part thereof when due, if any, or if any such unpaid real estate taxes, payments in lieu of taxes, or assessments on the Property or any part thereof shall result in any encumbrance or lien being made on the Property not and such real estate taxes or assessments shall not have been paid, or the encumbrance or lien removed or discharges or provision satisfactory to the Borough made for such payment, removal, or discharge, within thirty (30) days after written demand by the Borough to do so; or

(c) There is, in violation of this Agreement, any transfer of Redeveloper's interest in the Property, other than a transfer permitted under Article 7 hereof, and such violation shall not be cured within thirty (30) days after written demand served upon Redeveloper by the Borough, unless extended in writing.

**6.02 Default Notices; Remedies.**

Upon an occurrence of either a Redeveloper or Borough Event of Default, the defaulting party shall be notified in writing that it has been declared in default (hereinafter "Default Notice").

The Default Notice shall be given by the party giving such notice within thirty (30) days of determining that an Event of Default has occurred and shall state the basis for determining that an Event of Default has occurred. Upon receipt of the Default Notice, the defaulting party shall have sixty (60) days to correct such failure or defect or if such failure or defect is not capable of being cured within 60 days then commence actions to correct such failure or default within that period of time. In the event that the defaulting party does not cure the Default as set forth herein, the party giving the Default Notice shall have the right to exercise all remedies, as set forth below.

Upon the occurrence of any uncured material Event of Default, subject to the provisions of this Agreement hereof, the Borough shall have the right in its sole and absolute discretion, upon sixty (60) days' notice to Redeveloper and any Mortgagee to terminate this Agreement, subject, however, to the rights of any Mortgagee as set forth in this Agreement.

**6.03 Rights and Remedies; No Waiver.** The Parties shall have the right to institute such actions or proceedings as they may deem desirable for effectuating the purposes of this Article. However, prior to exercising any such action, the Party bringing the action agrees to notify the defaulting party of a breach under the agreement at the address set forth herein, and /or by email to allow the defaulting party to cure the default and/or to undertake curative action. The defaulting party shall have thirty days from the time of notification, which shall be effective upon mailing, to take such action. If no such action is taken, the Party bringing the action may proceed at its own discretion. Any delay in instituting or prosecuting any such actions, proceedings or otherwise asserting its rights under this Article shall not operate as a waiver of such rights or to deprive it of or limit its rights in any way, it being the intent of this provision that the Party should not be constrained to exercise such remedy at a time when it may still hope otherwise to resolve the problems caused by the default involved; nor shall any waiver in fact made by any Party with respect to a specific default under this Agreement be considered or treated as a waiver of rights of that Party with respect to any other defaults by that Party under this Section or with respect to the particular default except to the extent specifically waived in writing.

**6.04 Rights and Remedies Cumulative.** The rights and remedies of the Parties to this Agreement, whether provided by law or by the Agreement, shall be cumulative, and the exercise by either Party of any one or more of such remedies shall not preclude the exercise by it, at the same or different times, of any other such remedies for the same default or breach, or of any of its remedies for any other default or breach by the other Party. No waiver made by either such Party with respect to the performance, or manner or time thereof, or any obligation of the other Party or

any condition to its own obligation under the Agreement shall be considered a waiver of any rights of the Party making the waiver with respect to the particular obligation of the other Party or condition to its own obligation beyond those expressly waived in writing and to the extent thereof, or a waiver in any respect in regard to any other rights of the Party making the waiver or any other obligations of the other Party.

**6.05. No Waiver of Rights and Remedies by Delay.** Any delay by the aggrieved Party in instituting or prosecuting any actions or proceedings or otherwise asserting its rights under this Agreement shall not operate as a waiver of such rights and shall not deprive the aggrieved Party of or limit that Party's rights in any way. In addition, no waiver made by the aggrieved Party with respect to any specific Event of Default by the defaulting Party under this Agreement shall be considered or treated as a waiver of the rights of the aggrieved Party with respect to any other Event(s) of Default by the Party under this Agreement or with respect to the particular Event of Default except to the extent specifically waived in writing.

## ARTICLE VII

### PROHIBITIONS AGAINST ASSIGNMENT AND TRANSFER

**7.01 Prohibition Against Transfer of Interests in Redeveloper, The Agreement or The Properties.** Redeveloper recognizes the importance of the Project to the general welfare of the community and that the identity of the Redeveloper and its qualifications are critical to the Borough in entering into this Agreement. The Borough considers that a change of control in Redeveloper and the transfer of 10% or more of the ownership interest in Redeveloper to any Person other than an Institution or Equity Investor, is for practical purposes a Transfer or disposition of the Project. Redeveloper recognizes that it is because of such qualifications and identity that the Borough is entering into this Agreement with Redeveloper, and, in so doing, the Borough is relying on the obligations of Redeveloper and not some other person for the faithful performance of all undertakings and covenants to be performed by Redeveloper hereunder.

As a result, except for Permitted Transfers, prior to completion of the Project as evidenced by the issuance of a Certificate of Completion, and without the prior written approval of the Borough, which shall not be unreasonably withheld, conditioned or delayed, Redeveloper agrees for itself and all successors in interest that there shall be no change in Control of Redeveloper, nor

shall there by any transfer of 10% or more of the ownership interest in Redeveloper to any Person other than an Institution or Equity Investor.

**7.02 Consent to Permitted Transfers.** The Borough hereby consents, without the necessity of further approvals from any entity, to the following Transfers (each, a "Permitted Transfer")

(a) A Mortgage or related security granted by Redeveloper to a Mortgagee for the purpose of obtaining the financing necessary to enable Redeveloper to perform its obligations under this Agreement, including any Mortgage or Mortgages and other liens and encumbrances granted by Redeveloper to a Mortgagee for the purpose of financing costs associated with the acquisition, development, construction, or marketing of the Project and not any transaction or project unrelated to the Project; provided, however, that Redeveloper shall give the Borough at least fifteen (15) days prior written notice of such Permitted Transfer, including a description of the name of such Transfer, and the name(s) and addressees of the Mortgagee; or

(b) Transfers of easements or dedications of portions or interests in the Property as may be required for utilities for the Project or otherwise as conditions of Governmental Approvals;

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

(d) a lease agreement to a tenant or end user of the Project;

(e) a Transfer to an Affiliate of the Redeveloper, to one of the Existing Members, to a relative of an Existing Member, or to an entity or trust controlled by one or more of the Existing Members.

(f) a Transfer pursuant to a Foreclosure, and any Transfer by any Mortgagee or any Mortgagee's successor and/or assigns after Foreclosure; and

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

**7.03 Automatic Denial of Transfer.** Notwithstanding anything to the contrary contained herein, with respect to any Transfer that requires the Borough's consent pursuant to the terms of Section 7.01, the Borough shall not unreasonably withhold, condition or delay its consent to such Transfer. The Borough shall notify the Redeveloper in writing whether the Borough consents to a Transfer within thirty (30) days after Redeveloper's written request to the Borough for such consent. If the Borough does not deliver a written response to the Redeveloper's request within said thirty (30) day period, then the Borough shall be deemed to have approved such requested Transfer. The Borough shall not, however, unreasonably withhold, condition or delay its consent

to any Transfer to a transferee that has the same or greater experience and technical capability to carry out the Project as Redeveloper, and has the same or greater wherewithal to obtain financing for the Project as Redeveloper.

**ARTICLE VIII**  
**PROJECT FINANCING**

**8.01 Financing and Capital.** The Redeveloper represents that it shall use commercially reasonable efforts to obtain sufficient financing for all costs associated with the Project. The Redeveloper represents that it has the capacity to obtain financing to complete the Project.

**ARTICLE IX**  
**MORTGAGE FINANCING AND RIGHTS OF MORTGAGEE**

**9.01. Notice to Borough.** Subject to the Permitted Transfers set forth in Article 7 hereof prior to the completion of the Project, as certified by the issuance of the Certificate of Substantial Completion by the Borough, the Redeveloper shall not engage in any financing or any other transaction creating any Mortgage, whether by express agreement or operation of law, except for the purpose of obtaining funds in connection with any aspect of the Project. Prior to the completion of the Project, as certified by the issuance of the Certificate of Substantial Completion by the Borough, the Redeveloper shall notify the Borough of any financing, secured by a Mortgage, which it has entered into with respect to the Property and, in any event, the Redeveloper shall promptly notify the Borough of any encumbrance or lien that has been created on or attached to the Property, whether by voluntary act of the Redeveloper or otherwise, upon obtaining knowledge or notice of same.

**9.02. Mortgagee/Equity Investor Not Bound.** Subject to the terms of this Article 9, any Mortgagee, Equity Investor or any Person who obtains title to the Property as a result of foreclosure proceedings, or action in lieu thereof, shall in no way be obligated by the provisions of this Agreement. If the Property shall be sold or conveyed to any Person upon the exercise of any remedy provided for in any Mortgage or by law or equity, such Person thereafter succeeding to its interest in the Property shall not be liable for any act or omission of Redeveloper under this Agreement occurring prior to such sale or conveyance.

**9.03 Completion of Project.** Notwithstanding anything to the contrary contained herein, any Mortgagee, or any Person who obtains title to the Property as a result of foreclosure proceedings, or action in lieu thereof, shall have the right to receive an assignment of all of Redeveloper's rights under this Agreement, with respect to Property, and undertake or continue the construction or completion of the Project, including the construction of the Improvements already begun. Any such Mortgagee or other Person who shall properly complete the Project shall be entitled, upon written request made to the Borough, to receive Certificate(s) of Occupancy and/or the individual Certificates of Occupancy or the Certificate(s) of Substantial Completion as set forth in Section 4.10 hereof.

**9.04. Notice to Mortgagee.** Whenever the Borough shall deliver any notice or demand to the Redeveloper with respect to any Event of Default on the part of the Redeveloper under this Agreement, the Borough shall at the same time forward a copy of such notice or demand to each Mortgagee at the last known address of such Mortgagee, provided that Redeveloper has delivered to the Borough a written notice of the name and address of such Mortgagee.

**9.05. Mortgagee's Right to Cure Default and Assume The Redeveloper's Obligations.** (a) After any Redeveloper Event of Default, each Mortgagee shall (insofar as the rights of the Borough are concerned) have the right within ninety (90) days after the receipt of the notice set forth in Section 9.04, to cure or remedy such Redeveloper Event(s) of Default and to add the cost thereof to the Mortgage. If the Redeveloper Event(s) of Default is/are with respect to the construction of the Project, nothing contained in this Section 9.05 or any other section of this Agreement shall be deemed to permit or authorize such Mortgagee, either before or after foreclosure or action in lieu thereof, to undertake or continue the construction or completion of the Project (beyond the extent necessary to conserve or protect the Mortgagee's security), including the construction of the Improvements already begun until it provides written notice to the Borough. The Borough shall not seek to enforce any of its remedies under this Agreement during the aforementioned ninety (90) day period in which any such Mortgagee is proceeding diligently and in good faith to cure a Redeveloper Event of Default. Any Mortgagee who shall properly complete the Project shall be entitled, upon written request made to the Borough, to receive Certificate(s) of Occupancy and/or the individual Certificates of Occupancy or the Certificate(s) of Substantial Completion as set forth in Section 4.08 hereof.

**9.06. Borough Subordination.** In the event of a default under this Agreement, the Borough agrees that any remedies of the Borough under this Agreement shall be subordinated to the interests of any financial institution which holds the first mortgage on all or a portion of the Property. This Section 9.06 shall have no effect on the priority of liens for taxes or payments in lieu of taxes or utility charges or deed restrictions for affordable housing purposes.

**ARTICLE X**  
**REPRESENTATIONS**

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

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

(b) The Redeveloper has the legal power, right and authority to enter into this Agreement inclusive of all attached and incorporated instruments to which the Redeveloper is a party.

(c) This Agreement has been duly authorized, executed and delivered by the Redeveloper; and is valid and legally binding upon the Redeveloper and enforceable against Redeveloper in accordance with its terms. The execution and delivery thereof 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 other Applicable Laws that are 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 Applicable Laws that are applicable to the Redeveloper has been filed.

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

(g) To the best of the Redeveloper's knowledge, there are no suits, other proceedings or investigations pending or threatened against the Redeveloper that would have a material adverse effect on the financial condition of the Redeveloper.

(h) To the best of Redeveloper's knowledge, 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 Agreement.

(i) The Redeveloper owns the Property and is financially and technically capable of developing, designing, financing and constructing the Project.

(j) To the best of Redeveloper's knowledge there is no pending, or to the best of the Redeveloper's knowledge, threatened litigation, action or proceeding that (i) would prevent or delay the Redeveloper from performing its duties and obligations hereunder and/or (ii) questions the validity of this Agreement or any essential element on which this Agreement depends.

**10.02. Representations of Borough.** The Borough hereby makes the following representations and covenants for the purpose of inducing the Redeveloper to enter into this Agreement and to consummate the transactions contemplated hereby, all of which shall be true as of the date hereof:

(a) The Borough is a municipality of the State of New Jersey and has the requisite power and authority to enter into this Agreement.

(b) This Agreement has been duly authorized by virtue of a certain Resolution, Resolution No. \_\_\_\_\_ validly adopted by the Borough on \_\_\_\_\_ and, on or after the Effective Date, shall constitute a legal, valid and binding obligation of the Borough enforceable in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency,

reorganization or other Applicable Law(s) affecting creditors' rights and subject to the availability of equitable remedies.

(c) The execution and delivery of this Agreement by the Borough and consummation of the transactions contemplated hereby do not violate, conflict with or constitute a default under the provisions of any agreement, understanding or arrangement to which the Borough is a Party or by which it is bound or of any in force as of the Effective Date.

(d) There is no pending, or to the best of the Borough's knowledge, threatened litigation, action or proceeding that (i) would prevent or delay the Borough from performing its duties and obligations hereunder and/or (ii) questions the validity or enforceability of this Agreement or any essential element on which this Agreement depends or (iii) relates specifically to the Property or the title thereto.

(e) No official or employee of the Borough has any personal interest, direct or indirect, in this Agreement.

(f) The execution and delivery hereof and the performance by the Borough of its obligations hereunder will not violate or constitute an event of default under the terms or provisions of any Applicable Laws applicable to the Borough or the Property.

#### **ARTICLE XI**

#### **NOTICES AND DEMANDS**

**11.01. Manner of Notice.** A notice, demand, or other communication required under this Agreement by either Party to the other shall be considered given and delivered if it is dispatched by (a) registered or certified mail, postage prepaid, return receipt requested, or (b) delivered personally by a reputable messenger service or a nationally recognized priority delivery service such as Federal Express at the addresses listed below for each party:

#### **AS TO THE BOROUGH**

BOROUGH OF WASHINGTON  
Municipal Building  
Attn. Clerk  
100 Belvidere Ave  
Washington, New Jersey 08827

with a copy to: Tara Ann St. Angelo, Esq.  
Gebhardt & Kiefer, P.C.  
1318 Route 31  
P.O. Box 4001

Clinton, New Jersey 08809  
Email: [tstangelo@gklegal.com](mailto:tstangelo@gklegal.com)

**AS TO THE REDEVELOPER**

1 W WASHINGTON AVE URBAN RENEWAL, LLC  
Attn: Tim Jebara  
199 Lake Road  
Far Hills, NJ 07931

with a copy to:

Day Pitney LLP  
Attn: Luke S. Pontier, Esq.  
One Jefferson Road  
Parsippany, NJ 07054  
Email: [lpontier@daypitney.com](mailto:lpontier@daypitney.com)

The foregoing addresses may be changed or supplemented by written notice given as above provided. Any such notice sent by mail shall be deemed to have been received by the addressee on the third business day after posting in the United States mail, or, if transmitted by messenger or a priority delivery service, on the first business day after transmittal. Counsel for a Party may give notice to the other Party with the same effect as if given by a Party.

**ARTICLE XII**

**AFFORDABLE HOUSING OBLIGATIONS**

The Parties acknowledge that the areas encompassed by the Redevelopment Plan are included in the Borough's Housing Element and Fair Share Plan approved by the Court in the Borough's Declaratory Judgment Action, and that the credits will be applied against the Borough's Gap (1999-2015) and Prospective Need (2015-2025) obligations.

**12.01 Affordable Housing Set-Aside.** In compliance with the Redevelopment Plan (as amended by Ordinance 2019-22), Concept Plans, and any approvals received from the Borough Land Use Board, Redeveloper shall have an obligation to deed-restrict four (4) of the residential units in the Project as very low, low, and moderate income affordable family rental units. Any such affordable rental units shall comply with UHAC, applicable COAH affordable housing regulations (N.J.A.C. 5:93-1), any applicable order of the Court, and other applicable laws, including one (1) very low income unit, very low income being defined as 30% or less of the regional median income, embodied in the Fair Housing Act at N.J.S.A. 52:27D-329.1, et seq., in

of the UHAC requirement as to very low income of 10% at 35% or less of the regional median income.

(a) The affordable units shall remain affordable rental units for a period of at least thirty (30) years from the date of their initial occupancy ("Deed- Restriction Period") consistent with UHAC regulations (N.J.A.C. 5:80-26.1 1) or the then applicable regulation, so that the Borough may count the units against its obligations to provide family rental affordable housing. This obligation includes, but is not limited to, the Redeveloper's obligation to comply with: bedroom distribution requirements (1 three-bedroom unit and 3 two-bedroom units), income split requirements (1 very low income unit, 2 low income units and 1 moderate income unit), pricing requirements pursuant to Court-approval of the income limits existing at the time of issuance of the certificate of occupancy for the affordable unit, affirmative marketing requirements, candidate qualification, and screening requirements, integrating the affordable units amongst the market rate units, and deed restriction and monitoring requirements.

**12.02. Administration.** Redeveloper shall be responsible for administering the affordable housing rental units. The Borough shall have no financial obligations under this provision to assure the creditworthiness of the units, and all associated expenses shall be solely borne by the Redeveloper, its successors, or assigns, which expenses include, but are not limited to providing an Administrative Agent at its exclusive expense to perform all administrative tasks. The Redeveloper or its affiliated entity shall be a permitted Administrative Agent. The administrative tasks include those responsibilities as set forth in N.J.A.C. 5:80-26.14 including, but not limited to, conducting an outreach process, conducting interviews with interested households, creating and maintaining a list of eligible households, determining income eligibility and all other activities to ensure that restricted units are rented to low- and moderate-income households. Redeveloper shall also be responsible for the costs of all funding applications including, but not limited to, low income housing tax credits, special needs trust funds, County HOME funds, Federal Home Loan Bank financing, construction and permanent financing.

Redeveloper shall contract with a qualified affordable housing administrative agent ("Administrative Agent") for the administration of the affordable units and shall have the obligation to pay all costs associated with properly deed restricting and the long-term administration of the affordable units in accordance with UHAC, the Borough's affirmative marketing plan, and other applicable laws for the Deed-Restriction Period. The selection of the Administrative Agent shall be subject to the Borough's approval, which shall not be unreasonably

withheld, conditioned or delayed. Redeveloper shall provide the Borough in writing with the name, contact information, and resume of the selected Administrative Agent.

**12.03 Cooperation with Reporting.** The Parties acknowledge that the Borough may have the obligation from time to time to generate information necessary to demonstrate the creditworthiness of the units. Redeveloper will cooperate with the Borough and provide all monitoring and reporting requirements within fifteen (15) business days of the request. Redeveloper shall cooperate with the Borough regarding any affordable housing monitoring requirements imposed by COAH or the Court. Upon written notice, Redeveloper shall provide detailed information requested by the Borough within 30 days concerning Redeveloper's compliance with UHAC and other applicable laws, regulations, or ordinances.

### ARTICLE XIII

#### LIMITATION ON LIABILITY; INDEMNIFICATION; DEFENSE

**13.01. Limitation on Liability.** Notwithstanding anything to the contrary in this Agreement, any liability(ies), commitments, obligations and/or responsibility or responsibilities of any type or kind whatsoever (whether actual, contingent, consequential or otherwise) (hereinafter referred to collectively as "Liability") of the Redeveloper in, resulting from, or relating in any way to this Agreement shall be those of the Redeveloper only and its property interest in the Project. Nothing in this Agreement, arising out of, or related in any way to this Agreement or to the Project or any aspect thereof shall, in any way, give the Borough or any other Person recourse to, or be construed to impose, directly or indirectly, any Liability on any Person (including an Agent) other than the Redeveloper.

The foregoing limitation on Liability shall apply to, but is not limited to, (i) any Affiliate of the Redeveloper or of the Redeveloper's members, (ii) any member, shareholder, manager, officer, director, partner, managing member, vendor, trustee, employee, agent, and/or other representative (hereinafter collectively referred to as the "Agent") of the Redeveloper or of the Redeveloper's members, (iii) any Agent of any Affiliate of the Redeveloper or of the Redeveloper's members, (iv) any Affiliate of any Agent of the Redeveloper or of the Redeveloper's members, (v) any Agent of any Agent of the Redeveloper or of the Redeveloper's members, (vi) any Person directly or indirectly holding, controlling and/or owning any interest in the Redeveloper or in the Redeveloper's members, in any Agent or Affiliate of the Redeveloper or of the Redeveloper's members, in any Agent of any Affiliate of the Redeveloper or of the Redeveloper's members, and/or in any Affiliate of any Agent of the Redeveloper or of the

Redeveloper's members, and/or (vii) any successors and/or assigns of any of the Parties referenced in subsections (i) through (vi), above unless the Parties have assumed an interest in the Project in accordance with a Permitted Transfer pursuant to Article VII and Article VIII hereof.

The Borough understands and acknowledges that their respective acceptance of the Limitation on Liability set forth in this Section 13.01 is a condition precedent to the Redeveloper's execution of this Agreement and constitutes specifically bargained-for consideration.

13.02 **Indemnification.** The Redeveloper agrees to indemnify and hold harmless the Borough against, and the Redeveloper shall pay for, any and all actual, out-of-pocket liability, loss, cost, damage, claims, judgments or expenses, of any and all kinds or nature and however arising, imposed by law, which the Borough may sustain, be subject to or be caused to incur by reason of any claim, suit or action based upon personal injury, death, or damage to property, whether real, personal or mixed, resulting from the Redeveloper's activities in constructing the Project or the Redeveloper's actual breach of contracts entered into by the Redeveloper which directly relate to the construction of the Project, or resulting solely from the Redeveloper's ownership of portions of the Property, or resulting from the acquisition, construction or installation of the Project, through the date that the Project is complete as evidenced by issuance of a Certificate of Completion. Further, said indemnification shall include but not be limited to any and all claims by workmen, employees and agents of the Redeveloper and unrelated third parties, which claims result from the construction of the Project, the maintenance and functioning of the Improvements or Off-Tract Improvements, or any other activities of the Redeveloper within the Property during the construction of the Project. Notwithstanding the foregoing, the Redeveloper shall have no obligation to indemnify and hold the Borough harmless from and against any liability, loss, cost, damage, claims, judgments or expenses, of any kind or nature arising from the negligent, intentional or willful acts or omissions of the Borough, its commissioners, officers, agents, servants or employees. Neither the Borough, nor its commissioners, officers, agents, servants or employees shall be liable in any event for any action performed under this Agreement, except for any liability, loss, cost, damage, claims, judgments or expenses, of any kind or nature arising from the negligent, intentional or willful acts or omissions of the Borough, its commissioners, officers, agents, servants or employees.

13.03. **Defense.** The Redeveloper, at its own cost and expense, shall defend any and all such claims, suits and actions, as described in and for which indemnification is required by Section 13.02, which may be brought or asserted against the Borough, its officers, agents, servants, or employees; but this provision shall not be deemed to relieve any insurance company which has

issued a policy of insurance as may be provided for in this Agreement from its obligation to defend the Redeveloper, the Borough and any other insured identified in such policy of insurance in connection with claims, suits or actions covered by such policy.

Any actual, out-of-pocket cost for reasonable attorneys' fees in situations where it is necessary for the Borough to engage its own attorneys as determined by a court of competent jurisdiction, reasonable experts' testimony costs and all reasonable costs to defend the Borough or any of its commissioners, officers, agents, servants, or employees shall be reimbursed to it by the Redeveloper in connection with such indemnification claim. The Borough shall give the Redeveloper notice of any such claim for which indemnification under this Agreement is sought (together with copies of any documents received) within Fifteen (15) Days of the Borough's receipt of same.

**13.04. Borough's Limitation on Liability.** Any liabilities, obligations or responsibilities of any type or kind (contingent or otherwise) herein are solely those of the Borough. No member, director, employee, officer, representative or agent of the Borough shall be liable to the Redeveloper or any other Person for any matter arising out of or related to the payment or performance of any such liabilities, obligations or responsibilities of the Borough in this Agreement.

## ARTICLE XIV

### MISCELLANEOUS

**14.01 Performance Guarantee, Maintenance Bond, and Inspection Fee Escrow.**

(a) **Performance Guarantee.** Not less than seven (7) days prior to the date for the Commencement of Construction, the Redeveloper shall submit a performance bond, in a form acceptable to the Borough Attorney, issued by a duly authorized surety company authorized to do business in the State of New Jersey in an amount equal to 120% of project costs (as determined by the Borough Engineer) to secure the Redeveloper's faithful performance of all of the work required under the Governmental Approvals as permitted under the New Jersey Municipal Land Use Law, N.J.S.A. 40:55D-53a.(1)(a) and (b), and Borough Ordinances. The performance bond provided shall not be released until final acceptance of all of the work covered under the required performance guarantees and then only if any liens or claims have been satisfied and any maintenance bonds required have been executed and approved by the Borough. Failure to timely deliver this bond shall be cause for declaring the Agreement null and void. The amount of such

performance guarantee shall be set pursuant to an estimate of applicable project costs and a rider to this Agreement.

b. **Maintenance Bond.** After completion of construction of the Project, the Redeveloper shall post a maintenance bond as and if required and/or permitted pursuant to the New Jersey Municipal Land Use Law, N.J.S.A. 40:55D-53(a)(2), and Borough Ordinances. The amount of said bond shall be set pursuant to an estimate of applicable project costs and a rider to this Agreement.

c. **Inspection Escrow.** The Redeveloper shall post an inspection escrow in accordance with the New Jersey Municipal Land Use Law, N.J.S.A. 40:55D-53h not less than seven (7) days prior to the date for the Commencement of Construction.

d. **Review Escrow and Application Fees.** The Redeveloper has posted a review escrow and paid all application fees in accordance with Borough Ordinances.

**14.02. Events of Force Majeure, Tolling Events.** It is agreed that the terms, obligations and responsibilities set forth in this Agreement and the schedules and deadlines set forth throughout this Agreement shall be suspended or modified if the acquisition of the Property or any portion thereof, or the acquisition of the Governmental Approvals for the Project, Commencement of Construction, completion of construction of any aspect of the Project or other compliance with this Agreement is/are prevented by an Event of Force Majeure or Tolling Event, as these terms are respectively defined elsewhere in this Agreement. Where the acquisition of the necessary Governmental Approvals for or the completion of the construction of the Improvements or other compliance with this Agreement is prevented by an Event of Force Majeure or Tolling Event, the relevant terms of this Agreement and any schedules and deadlines shall be modified/extended for the period of delay caused thereby. The performance or non-performance by the Parties or either of them of any obligation, requirement, commitment or responsibility set forth in this Agreement shall not be deemed to be an Event of Default pursuant to this Agreement where such performance, failure of performance or delay in performance is/are the result of an Event of Force Majeure or Tolling Event; provided, however, that the Event of Force Majeure or Tolling Event was not the result of any unlawful action or non-action of the Party relying on such Event of Force Majeure or Tolling Event as justification for the non-performance, failure of performance or delay in performance of the subject obligation, requirement, commitment or responsibility.

**14.03. Equal Employment Opportunity.** The Redeveloper agrees that during the construction of the Improvements:

(a) To the extent required by Applicable Law, the Redeveloper will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. To the extent required by Applicable Law, the Redeveloper will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. To the extent required by Applicable Law, the Redeveloper agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause and any such notices provided by the Borough which are consistent therewith.

(b) To the extent required by Applicable Law, the Redeveloper will, in all solicitations or advertisements for employees placed by or on behalf of the Redeveloper, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.

(c) To the extent required by Applicable Law, the Redeveloper will comply with all provisions of N.J.S.A. 10:5-31, Mandatory Equal Employment Opportunity Act, and all rules, regulations, and relevant orders relating thereto, including but not limited to N.J.A.C. 17-27 et seq.

(d) To the extent required by Applicable Law, subcontractors and suppliers to the Project shall to the extent reasonably possible include qualified and certified minority enterprises.

(e) To the extent required by the Applicable Law, the obligations in this Section 14.03 shall be binding on all contractors and subcontractors to the extent that any work is done by any contractor or subcontractor, and any contract entered into by the Redeveloper shall so provide.

**14.04. Entire Agreement.** This Agreement constitutes the entire agreement of the Parties on the subject matter hereof and supersedes any prior or contemporaneous writings, representations, discussions, or agreements between the Parties with respect to the subject matter hereof.

**14.05. Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of the permitted successors in interest, Transferees and assigns of the Parties hereto, and the respective heirs, executors, and administrators.

**14.06. Exhibits.** All Exhibits attached hereto and/or referred to in this Agreement are incorporated herein, as though set forth in full.

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

**14.08. Modification of Agreement.** No modification, waiver, amendment, discharge, or change of this Agreement shall be valid unless the same is in writing, duly authorized, and signed by the Party against which the enforcement of such modification, waiver, amendment, discharge, or change is or may be sought.

**14.09. Execution of Counterparts.** This Agreement may be executed in One (1) or more counterparts. This Agreement shall become binding on the Parties and such counterparts shall constitute One (1) and the same instrument, upon the Effective Date.

**14.10. Drafting Ambiguities; Interpretation.** In interpreting any provision of this Agreement, no weight shall be given to, nor shall any construction or interpretation be influenced by, the fact that counsel for one of the Parties drafted this Agreement, each Party acknowledging that it and its counsel have had an opportunity to review this Agreement and have contributed to the final form of same.

**14.11. Time Period for Notices.** All notices to be given hereunder shall be given in writing in conformance with Section 11.01 hereof, and, unless a certain number of Days is specified, within a reasonable time.

**14.12. Waivers and Amendments in Writing.** The waiver by either Party of an Event of Default on the part of the other Party shall not operate or be construed to be a waiver of any other or subsequent Event of Default as provided for in Article 6 hereof.

**14.13. Governing Law.** The Applicable Laws of the State of New Jersey govern this Agreement without regard to conflict of laws principles.

**14.14. Withholding of Approvals.** All approvals, consents and acceptances required to be given or made by any Person or Party, shall not be unreasonably withheld, conditioned or delayed, except for instances in which such approval is expressly allowed in a Party's sole discretion.

**14.15. Recitals Incorporated; Definitions Incorporated.** The Recitals to this Agreement and the Definitions contained in this Agreement are incorporated by reference into this Agreement, as if set forth at length.

**14.16. Titles of Articles and of Sections.** Any titles of the several Articles or Sections of this Agreement: are inserted for reference only and shall be disregarded in construing or interpreting any of its provisions; and are not intended to limit or define the contents of the Articles or Sections.

**14.17 Limitation on Third Parties.** Nothing in this Agreement is intended to nor shall create any rights for or confer any benefits on any third party.

**14.18 Estoppel Certificate.**

(a) Within Ten (10) Days following written request therefore by Redeveloper, or of any Mortgagee, purchaser, tenant or other party having an interest in the Property, the Borough shall issue a signed estoppel certificate either stating that (i) this Agreement is in full force and effect, (ii) no Borough Event of Default has occurred under this Agreement (nor any event which, with the passage of time and the giving of notice would result in the occurrence of a Borough Event of Default under this Agreement), or stating the nature of the Borough Event of Default, if any (iii) to the best of the Borough's knowledge, no Redeveloper Event of Default has occurred under this Agreement (nor any event which, with the passage of time and the giving of notice would result in the occurrence of a Redeveloper Event of Default) or stating the nature of the Redeveloper Event of Default, if any; and (iv) stating any such other reasonable information as may be requested. In the event the estoppel certificate discloses an Event of Default, it shall also state the manner in which such Event of Default may be cured.

(b) Within Ten (10) Days following written request therefore by the Borough, the Redeveloper shall issue a signed estoppel certificate either stating that (i) this Agreement is in full force and effect, (ii) to the best of the Redeveloper's knowledge, no Borough Event of Default has occurred under this Agreement (nor any event which, with the passage of time and the giving of notice would result in the occurrence of a Borough Event of Default under this Agreement), or stating the nature of the Borough Event of Default, if any (iii) no Redeveloper Event of Default has occurred under this Agreement (nor any event which, with the passage of time and the giving of notice would result in the occurrence of a Redeveloper Event of Default) or stating the nature of the Redeveloper Event of Default, if any; and (iv) stating any such other reasonable information

as may be requested. In the event the estoppel certificate discloses an Event of Default, it shall also state the manner in which such Event of Default may be cured.

**14.19. No Consideration for Redevelopment Agreement.** The Redeveloper warrants it has not paid or given, and shall not pay or give, any third person any money or other consideration in connection with obtaining this 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 Agreement.

**14.20 Maintenance.** The Redeveloper shall be responsible for the maintenance and security of each parcel of property contained within the Property subject to the terms of this Agreement subsequent to its acquisition of title to each such parcel of property and until such time as the Redeveloper no longer owns the Property or any portions thereof.

**14.21 Lender Changes.** If the Redeveloper's Financial Institution(s) requires modifications of the terms of this Agreement, the Borough shall reasonably cooperate with the Redeveloper in approving such modifications, so long as such modifications do not materially and substantially change the rights or obligations of the Borough as set forth in this Agreement and, in the opinion of the Borough, do not materially impair the objectives and interest of the Borough or the completion of the Project.

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

**14.23 Local Purchase of Services, Supplies, Materials and Equipment.** Whenever possible and practicable, and to the extent permitted by law, the Redeveloper, its contractors and/or subcontractors shall purchase services, supplies, materials and equipment from businesses located within the Borough or Warren County.

**14.24 Recordation.** This Agreement may be recorded in the discretion of the Borough; *provided, however*, the parties agree that if the Borough records this Agreement, the Redeveloper may record a Discharge, substantially in the form attached hereto as **Exhibit E**, following the issuance of a permanent or temporary Certificate of Occupancy for the project. It is understood and agreed that the continuing easements and obligations contained in this Agreement may also be included in a Declaration of Covenants and Restrictions filed by the Developer in the Warren

County Clerk's Office with such easements and obligations to run with the land.

**14.25 Approval of Documents.** All documents required to be prepared by the Redeveloper by virtue of the terms or provisions of this Agreement or of the Resolution, shall be approved by the Town Attorney and the Board Engineer, prior to execution.

**IN WITNESS WHEREOF**, the Borough has caused this Agreement to be duly executed in its name of and by the Mayor of the Borough on behalf of the Borough, and its seal to be hereunto duly affixed and attested by the Borough Clerk, and the Redeveloper has caused this Agreement to be duly executed in its name and behalf by the managing member, on or as of the day first above written.

**[SIGNATURE PAGES FOLLOW]**

Attest:  
**Borough of Washington**

Laurie Courter  
Laurie Courter, Clerk

Date: 2/2/23

Attest:

\_\_\_\_\_

Date: 3/17/2023

By: Ethel Conry  
Ethel Conry, Mayor

**1 West Washington Ave Urban Renewal, LLC**

By: [Signature]

Name:  
Title: Managing Member

## **Appendix M**

# **Westgate Deed Restrictions**

Founded 1884

**GEBHARDT  
& KIEFER**  
A PROFESSIONAL CORPORATION  
L A W O F F I C E S

RICHARD P. CUSHING  
MARK H. CHAZIN ■ ▼ ❖  
ROBERT C. WARD, JR.  
JOHN G. MANFREDA  
WILLIAM J. RUDNIK ■ ♦ ◊ •  
LESLIE A. PARIKH  
DIANA N. FREDERICKS ▼ ♦ ◊ •  
MATTHEW P. LYONS ■  
JACOB A. PAPAY, JR. ■  
JUDITH A. KOPEN  
LORI KOPF MACWILLIAM ■ ▼  
TRACY B. BUSSEL  
BRIAN G. FLANAGAN  
ARTHUR D. FIALK  
TARA A. ST. ANGELO ▼  
DANIEL S. MAKOSKI ▼ ❖  
KELLY A. LICHTENSTEIN  
SHARON M. FLYNN ■

PO Box 4001 • CLINTON, NJ 08809-4001

(UPS / FEDEX / COURIER DELIVERIES:  
1318 RT. 31, ANNANDALE, NJ 08801)

TELEPHONE (908) 735-5161  
FACSIMILE (908) 735-9351  
WWW.GKLEGAL.COM

WILLIAM C. GEBHARDT  
1884-1929  
W. READING GEBHARDT  
1919-1980  
PHILIP R. GEBHARDT  
1924-1986  
E. HERBERT KIEFER  
1933-1988

- ALSO MEMBER OF PA BAR
- ▼ ALSO MEMBER OF NY BAR
- ❖ ALSO MEMBER OF US TAX COURT
- ♦ CERTIFIED BY THE SUPREME COURT OF NJ AS A MATRIMONIAL LAW ATTORNEY
- ◊ TRAINED DIVORCE MEDIATOR
- TRAINED IN COLLABORATIVE DIVORCE

TARA A. ST. ANGELO  
tstangelo@gklegal.com

December 23, 2020

**Via Regular Mail**

Rural Housing Service  
New Jersey Office  
521 Fellowship Road, Suite 130  
Mt. Laurel, NJ 08054

RE: Westgate Apartments  
Borough of Washington, Warren County, New Jersey  
(Block No. 6, Lot No. 11.01 & 11.02)

Dear Sir / Madam:

I represent the Borough of Washington, Warren County. I am writing to request information regarding the above-referenced apartment complex that is subject to a mortgage with the Rural Housing Service. See attached.

Westgate Apartments, LLC currently owns and operates an apartment complex that is 100% affordable to low and moderate income households. The terms of said mortgage provide:

The borrower and any successors in interest agree to use the housing for the purpose of housing people eligible for occupancy as provided in Section 515 of Title V of the Housing Act of 1949, as amended, and FMHA/Rural Development regulations then extant during this 30 year period beginning (the date of the last loan on the project is obligated, or date the project was last made subject to the prepayment restrictive-use provisions as a result of servicing actions or incentive to no prepay the loan, authorized under this subpart or other subparts). Until June 18, 2043, no eligible person occupying the housing shall be required to vacate, or any eligible person wishing to occupy shall be denied occupancy without cause. The borrower will be released from these obligations before that date only when the Government determines that there is no longer a need for such housing, or that such other financial assistance provided the residents of such housing will no longer be provided due to no fault action or lack of action on the part of the borrower. A

December 23, 2020

Page 2

tenant or individual wishing to occupy the housing may seek enforcement of this provision as well as the Government.

As required under New Jersey law, the Borough must plan for and provide affordable housing. The Westgate Apartments continues to be an important part of the Borough's affordable housing plan. Therefore, the Borough requests the following in order to aid it in complying with its affordable housing obligations:

1. Information regarding how and when the borrower can be released from the above-referenced obligations to use the property for the express purpose of providing affordable housing; and
2. That the Borough be provided notice if the borrower is released from said obligations. Such notice can be provided to: Borough of Washington, 100 Belvidere Ave., Washington, New Jersey 07882.

Thank you for your attention to this matter. Please advise if you require more information regarding this matter.

Very truly yours,

*/s/ Tara Ann St. Angelo*

TARA A. ST. ANGELO

/tas

Enclosure

CC: Elena Gable, PP, (via email)



WARREN COUNTY – STATE OF NEW JERSEY  
PATRICIA J. KOLB – WARREN COUNTY CLERK  
413 SECOND STREET, BELVIDERE, NJ 07823

COUNTY CLERK'S RECORDING PAGE  
\*\*\*THIS PAGE IS PART OF THE DOCUMENT – DO NOT DETACH\*\*\*



BOOK/PAGE: 2500 / 139  
INSTRUMENT #: 2013-411631  
  
Receipt#: 2013369014  
Clerk: CC  
Rec Date: 07/22/2013 12:07:15 PM  
Doc Grp: D  
Descrip: DEED  
Num Pgs: 8  
  
Party1: UNITED STATES OF AMERICA  
Party2: WESTGATE APARTMENTS LLC  
Town: WASHINGTON BORO  
  
Consideration: 2005000.00

Recording:  
Recording Fee 37.00  
Recording Fee Differ 23.00  
Preservation Fee 40.00  
  
Sub Total: 100.00  
  
Transfer Tax  
County Treasurer Exempt 0.00  
State Treasurer Exempt 0.00  
N.J.A.H.T.F. Exempt 0.00  
P.H.P.F Exempt 0.00  
E.A.A. Exempt 0.00  
General Fund Exempt 0.00  
  
Sub Total: 0.00  
  
Total: 100.00  
\*\*\*\* NOTICE: THIS IS NOT A BILL \*\*\*\*

Record and Return To:

WEST JERSEY TITLE AGENCY  
15 SOUTH MAIN STREET  
WOODSTOWN NEW JERSEY 08098

PREPARED BY: Howard Henderson  
HOWARD HENDERSON,  
State Director, USDA  
Rural Development under the  
Direction of Julie E. Quirk,  
Esq., Office of the General  
Counsel, USDA

UNITED STATES DEPARTMENT OF AGRICULTURE  
RURAL DEVELOPMENT  
QUITCLAIM DEED

19424  
RECORD AND RETURN TO  
WEST JERSEY TITLE AGENCY  
15 South Main Street  
Woodstown, New Jersey 08098

June 18, 2013

GRANTOR: The UNITED STATES OF AMERICA, acting through the United States Department of Agriculture, Washington D.C., conveys and quitclaims to

Westgate Apartments, LLC - 407 Pennington-Titusville Road, Titusville, NJ 08560

Referred to as the Grantee.

The words "Grantor" and "Grantee" shall mean all Grantors and all Grantees listed above.

1. **Transfer of ownership.** The Grantor grants and conveys (transfers ownership of) the property (called the "Property") described below to the Grantee. This transfer is made for the sum of Two million five thousand dollars (\$2,005,000.00).

The grantor acknowledges receipt of this money.

2. **Tax Map Reference.** (N.J.S.A. 46:15-1.1) Municipality of Borough of Washington. Block No. 6, Lot No.11.01 & 11.02
3. **Property.** The Property consists of the land all the building and structures of the land in the Borough of Washington, County of Warren and State of New Jersey. The legal description is:

All that certain lot, piece or parcel of land, with the buildings and improvements thereon erected, situated, lying and being in the Borough of Washington, County of Warren, State of New Jersey:

**TRACT 1:**

BEGINNING at an iron pipe which marks the Southeasterly corner of lot now or formerly belonging to Katherine Fryer said iron pipe also being South 23 degrees 58 minutes East 458.80 feet from a railroad spike located in the public roadway known as Kinnaman Avenue, which railroad spikes marks the beginning point mentioned in a deed description of a 17.75 acre tract of land conveyed to Helen Tiger Grieshaber by deed which is recorded at the Warren County Clerk's Office in Book 280 of Deeds on Page 405 etc. and running; thence

(1) By a new line and by lands, now or formerly belonging to Pinewall Investment Corp., South 75 degrees 46 minutes East, 236.88 feet to a point; thence

(2) By another new line and along other lands, now or formerly belonging to Pinewall Investment Corp., South 25 degrees 02 minutes East, 184.00 feet to an iron pipe being in the Southerly right of the way line of the New Jersey power and Light Company easement and also marking a corner of lands to belonging to the Washington Borough Board of education; thence

(3) Still along land belonging to the Washington Borough Board of Education North 60 degrees 51 minutes East, 630.59 feet to an iron pipe; thence

(4) North 54 degrees 50 minutes West 307.64 feet to an iron pipe; thence

(5) North 45 degrees 58 minutes West 208.56 feet to an iron pipe to lands now or formerly of Helen Tiger; thence

Consideration \$2005000.00	Exempt Code:
County \$0.00	General \$0.00
Public \$0.00	N.J.A.H.T.F. \$0.00
State \$0.00	<b>Total \$0.00</b>
Extra \$0.00	

07/22/2013

- (6) South 58 degrees 35 minutes West, 192.36 feet along lands now or formerly of Helen Tiger to an iron pipe; thence
- (7) North 40 degrees 15 minutes West 145.86 feet along lands now or formerly of Helen Tiger to an iron pipe; thence
- (8) South 67 degrees 34 minutes West, 80.46 feet along lands now or formerly under contract to Walter Schaarschmidt, Jr. To an iron pipe; thence
- (9) North 21 degrees 47 minutes West, 136.85 feet along lands now or formerly under contract to Walter D. Schaarschmidt, Jr. To an iron pipe; thence
- (10) North 13 degrees 11 minutes West 60 feet along lands now or formerly of Helen Tiger to an iron pipe; thence
- (11) North 39 degrees 56 minutes West 80 feet along lands now or formerly of Helen Tiger through an iron pipe set on this line to a railroad spike located in the public roadway known as Kinnaman Avenue; thence
- (12) South 42 degrees 30 minutes West 288 feet in said Kinnaman Avenue To a railroad spike; thence
- (13) South 23 degrees 58 minutes East 458.80 feet to the point and place of BEGINNING.

Together with a storm drain easement described as follow:

BEGINNING at a point in the easterly sideline of N. Prospect Street (A 35 foot wide right of way), said point being in the southerly line of lands now or formerly of Covert Vander Voort and from thence runs

- (1) Along the southerly line of lands now or formerly of Covert Vander Voort, North 64 degrees 23 minutes East, 179.68 feet to a point; thence
- (2) Partially along the westerly line of the whole tract, North 29 degrees 39 minutes 40 seconds West, 179.34 feet to a point; thence
- (3) By a line through the entire tract North 16 degrees 04 minutes 30 seconds East, 441.39 feet to a point in the most northerly line of the whole tract, said point being distant on a course of South 75 degrees 46 minutes 30 seconds East, 134.73 feet from the northeasterly corner of lands now or formerly of Charles H. Kittaker; thence
- (4) Along the northerly line of the whole tract, South 75 degrees 46 minutes 30 seconds East, 20.01 feet to a point; thence
- (5) The next three courses paralleling the first three courses hereinabove described and distant 20 feet measured at right angles thereto, South 16 degrees, 04 minutes 30 seconds West, 433.60 feet to a point; thence
- (6) South 20 degrees 39 minutes 40 seconds East, 192.36 feet to a point; thence
- (7) South 64 degrees 23 minutes West, 199.81 feet to a point in the easterly sideline of North Prospect Street; thence
- (8) Along the easterly sideline of North Prospect Street, North 29 degrees 26 minutes West, 20.04 feet to the point and place of beginning.

**BEING Lot 11.01, Block 6 on the Borough of Washington Tax Map;**

TRACT 2:

BEGINNING at a point on the Southeasterly line of lands now or formerly of Walter and Gladys Schaarschmidt, said point being distant by the following four courses from the Southeasterly sideline of Kinnaman Avenue and from said sideline running; thence

- (A) Along lands now or formerly of Delmont P. and Betty C. Cole, South 39 degrees 56 minutes East 54.78 feet to a point; thence
- (B) The next three courses along lands now or formerly of Walter and Gladys Schaarschmidt, South 13 degrees, 11 minutes East 60.00 feet to a point; thence

(C) South 21 degrees 47 minutes East 136.85 feet to a point; thence

(D) North 67 degrees 34 minutes East 20.00 feet to the point and place of BEGINNING; thence

(1) Along lands of Walter and Gladys Schaarschmidt, North 67 degrees 34 minutes East 60.46 feet to a point; thence

(2) The next two courses along lands now or formerly of Delmont P. And Betty Cole, South 40 Degrees 15 minutes 00 seconds East 145.86 feet to a point; and thence

(3) North 58 degrees 35 minutes 00 seconds East 192.36 feet to a point; thence

(4) The next two courses along lands now or formerly of New Jersey Power and Light Co., South 45 degrees 58 minutes 00 seconds East, 208.56 feet to a point; thence

(5) South 54 degrees 50 minutes 00 seconds East, 307.64 feet to a point; thence

(6) Along lands now or formerly of Warren Hills Regional School District, South 60 degrees 51 minutes 00 seconds West 630.59 feet to a point; thence

(7) Along lands now or formerly of Dr. Abdullah S. Evke, North 25 degrees 02 minutes 00 seconds West 73.00 feet to a point; thence

(8) The next six courses by a new line through Lot 11A, Block 6, North 60 degrees 51 minutes East 163.84 feet to a point; thence

(9) North 31 degrees 25 minutes west 250.16 feet to a point; thence

(10) South 58 degrees 35 minutes West 75.00 feet to a point; thence

(11) North 31 degrees 25 minutes West 114.04 feet to a point; thence

(12) North 23 degrees 58 minutes West 68.75 feet to a point; thence

(13) North 1 degree 55 minutes 25 seconds East 136.88 feet to the point and place of beginning.

**BEING, Lot 11.02, Block 6 on the Borough of Washington Tax Map.**

This deed is executed and delivered pursuant to the provision of Form 1955-46, "Invitation Bid and Acceptance, Sale of Real Property by the United States" dated August 12, 2012 accepted on January 9, 2013.

Authority set forth in 7 C.F.R., part 1900, subpart A.

No member of Congress shall be admitted to any share or part of this deed or to any benefit that may arise therefrom. June 18, in the year 2013.

UNITED STATES OF AMERICA (Grantor)

BY: Howard Henderson  
HOWARD HENDERSON, STATE DIRECTOR  
Rural Development, formerly known as Farmers Home  
Administration, State of New Jersey, United States  
Department of Agriculture

In the presence of:

Jennie L. Powers

ACKNOWLEDGEMENT

STATE OF NEW JERSEY  
COUNTY OF BURLINGTON

BE IT REMEMBERED THAT ON June 13, 2013, before me, the subscriber, a Notary Public in and for the State and County, personally appeared Howard Henderson, the State Director for Rural Development of the United States of America, Department of Agriculture, who I am satisfied is the person named in and who executed the within instrument, and there upon have acknowledge that he signed, sealed, and delivered the same as his act and deed for the uses and purposes therein.

  
NOTARY PUBLIC

JENNIE L. POWERS  
NOTARY PUBLIC OF NEW JERSEY  
MY COMMISSION EXPIRES JULY 20, 2017  
58764

RECORDED  
Patricia J Kolb Warren Co Clerk  
BELVIDERE, NJ

Bk: 2500 Pg: 139  
07/22/2013 12:07:15 PM  
Pages 8

DEED

STATE OF NEW JERSEY  
AFFIDAVIT OF CONSIDERATION FOR USE BY SELLER  
(Chapter 49, P.L. 1968, as amended through Chapter 33, P.L. 2006) (N.J.S.A. 46:15-5 et seq.)  
BEFORE COMPLETING THIS AFFIDAVIT, PLEASE READ THE INSTRUCTIONS ON THE REVERSE SIDE OF THIS FORM.

STATE OF NEW JERSEY

COUNTY WARREN } SS. County Municipal Code 2121

FOR RECORDER'S USE ONLY  
Consideration \$ 2,005,000  
RTF paid by seller \$ 0  
Date 7/22/13 By PC

MUNICIPALITY OF PROPERTY LOCATION Washington Borough \*Use symbol "C" to indicate that fee is exclusively for county use

(1) PARTY OR LEGAL REPRESENTATIVE (See Instructions #3 and #4 on reverse side)

Deponent, Howard Henderson, being duly sworn according to law upon his/her oath,  
(Name)  
deposes and says that he/she is the State Director in a deed dated June 18, 2013 transferring  
(Grantor, Legal Representative, Corporate Officer, Officer of Title Company, Lending Institution, etc.)  
real property identified as Block number 6 Lot number 11.01 & 11.02 located at  
Kinnaman Avenue, Washington, NJ 07882 and annexed thereto.  
(Street Address, Town)

(2) CONSIDERATION \$ 2,005,000.00 (Instructions #1 and #5 on reverse side)  No prior mortgage to which property is subject.

(3) Property transferred is Class 4A 4B 4C (circle one). If property transferred is Class 4A, calculation in Section 3A below is required.

(3A) REQUIRED CALCULATION OF EQUALIZED VALUATION FOR ALL CLASS 4A (COMMERCIAL) PROPERTY TRANSACTIONS:

(See Instructions #5A and #7 on reverse side)

Total Assessed Valuation + Director's Ratio = Equalized Assessed Valuation

\$ \_\_\_\_\_ + \_\_\_\_\_ % = \$ \_\_\_\_\_

If Director's Ratio is less than 100%, the equalized valuation will be an amount greater than the assessed value. If Director's Ratio is equal to or in excess of 100%, the assessed value will be equal to the equalized valuation.

(4) FULL EXEMPTION FROM FEE (See Instruction #8 on reverse side)

Deponent states that this deed transaction is fully exempt from the Realty Transfer Fee imposed by C. 49, P.L. 1968, as amended through C. 66, P.L. 2004, for the following reason(s). Mere reference to exemption symbol is insufficient. Explain in detail.  
Seller is the United States of America, this State, or any instrumentally, agency or subdivision.

(5) PARTIAL EXEMPTION FROM FEE (Instruction #9 on reverse side)

NOTE: All boxes below apply to grantor(s) only. ALL BOXES IN APPROPRIATE CATEGORY MUST BE CHECKED. Failure to do so will void claim for partial exemption. Deponent claims that this deed transaction is exempt from State portions of the Basic, Supplemental, and General Purpose Fees, as applicable, imposed by C. 176, P.L. 1975, C. 113, P.L. 2004, and C. 66, P.L. 2004 for the following reason(s):

- A. SENIOR CITIZEN Grantor(s)  62 years of age or over. \* (Instruction #9 on reverse side for A or B)
- B. BLIND PERSON Grantor(s)  legally blind or;
- DISABLED PERSON Grantor(s)  permanently and totally disabled  receiving disability payments  not gainfully employed\*

Senior citizens, blind persons, or disabled persons must also meet all of the following criteria:

- Owned and occupied by grantor(s) at time of sale.  Resident of State of New Jersey.
- One or two-family residential premises.  Owners as joint tenants must all qualify.

\*IN CASE OF HUSBAND AND WIFE, PARTNERS IN A CIVIL UNION COUPLE, ONLY ONE GRANTOR NEED QUALIFY IF TENANTS BY THE ENTIRETY.

C. LOW AND MODERATE INCOME HOUSING (Instruction #9 on reverse side)

- Affordable according to H.U.D. standards.  Reserved for occupancy.
- Meets income requirements of region.  Subject to resale controls.

(6) NEW CONSTRUCTION (Instructions #2, #10 and #12 on reverse side)

- Entirely new improvement.  Not previously occupied.
- Not previously used for any purpose.  "NEW CONSTRUCTION" printed clearly at top of first page of the deed.

(7) RELATED LEGAL ENTITIES TO LEGAL ENTITIES (Instructions #5, #12, #14 on reverse side)

- No prior mortgage assumed or to which property is subject at time of sale.
- No contributions to capital by either grantor or grantee legal entity.
- No stock or money exchanged by or between grantor or grantee legal entities.

(8) Deponent makes this Affidavit to induce county clerk or register of deeds to record the deed and accept the fee submitted herewith in accordance with the provisions of Chapter 49, P.L. 1968, as amended through Chapter 33, P.L. 2006.

Subscribed and sworn to before me  
this 13<sup>th</sup> day of July, 2013

Jennie L. Powers  
JENNIE L. POWERS  
NOTARY PUBLIC OF NEW JERSEY  
MY COMMISSION EXPIRES JULY 26, 2017  
58784

Howard Henderson State Director  
Signature of Deponent Grantor Name

Howard Henderson  
8000 Midatlantic Dr  
Stc 500  
Mt. Laurel, NJ 08054  
Grantor Address at Time of Sale

08054  
Last three digits in Grantor's Social Security Number Name/Company of Settlement Officer

2013 - FOR OFFICIAL USE ONLY  
Instrument Number 4114631 County WARREN  
Deed Number \_\_\_\_\_ Book 8500 Page 137  
Deed Date 7/22/13 Date Recorded 7/22/13

County recording officers shall forward one copy of each RTF-1 form when Section 3A is completed to: STATE OF NEW JERSEY

PO BOX 251  
TRENTON, NJ 08695-0251  
ATTENTION: REALTY TRANSFER FEE UNIT

The Director of the Division of Taxation in the Department of the Treasury has prescribed this form as required by law, and may not be altered or amended without prior approval of the Director. For information on the Realty Transfer Fee or to print a copy of this Affidavit, visit the Division of Taxation website at:

[www.state.nj.us/treasury/taxation/tp1/localtax.htm](http://www.state.nj.us/treasury/taxation/tp1/localtax.htm)

STATE OF NEW JERSEY  
**AFFIDAVIT OF CONSIDERATION FOR USE BY BUYER**

(Chapter 49, P.L. 1968, as amended through Chapter 33, P.L. 2006) (N.J.S.A. 46:15-5 et seq.)

PLEASE READ THE INSTRUCTIONS ON THE REVERSE SIDE OF THIS FORM BEFORE COMPLETING THIS AFFIDAVIT

STATE OF NEW JERSEY } County Municipal Code  
 COUNTY **WARREN** } SS. **2121**  
 Municipality of Property Location: **Washington Boro**

FOR RECORDER'S USE ONLY	
Consideration \$	<u>2,005,000</u>
RTF paid by buyer \$	<u>0</u>
Date	<u>7/22/13</u> By <u>OC</u>

(1) **PARTY OR LEGAL REPRESENTATIVE** (See instructions 3 and 4 on the reverse side.) **XXX-XX-X 9 4 4**  
 (Last 5 digits in grantee's Social Security No.)  
 Deponent, **John D. Burke**, being duly sworn according to law upon his/her oath, deposes and says that he/she is the **Officer of Title Co.** in a deed dated **08/18/13**  
 (State whether Grantee, Legal Representative, Corporate Officer, Officer of Title Co., Lending Institution, etc.)  
 transferring real property identified as Block No. **8**, Lot No. **11.01 & 11.02**  
 located at **Kinnaman Avenue Washington, NJ 07882** and annexed thereto.  
 (Street Address, Town)

(2) **CONSIDERATION \$ 2,005,000.00** (See instructions 1, 5 and 11 on the reverse side.)  
 Entire consideration is in excess of \$1,000,000:  
 PROPERTY CLASSIFICATION CHECKED OR CIRCLED BELOW IS TAKEN FROM OFFICIAL ASSESSMENT LIST (A PUBLIC RECORD) OF MUNICIPALITY WHERE THE REAL PROPERTY IS LOCATED IN THE YEAR OF TRANSFER. Refer To N.J.A.C. 18:12-2.2 et seq.  
 (A) Grantee required to remit the 1% fee, complete (A) by checking off appropriate box or boxes below.  
 Class 2 - Residential  
 Class 3A - Farm property (Regular) and any other real property transferred to same grantee in conjunction with transfer of Class 3A property  
 Class 4A - Commercial Properties (if checked, calculation on (E) required below)  
 Cooperative Unit (four families or less) (See C. 46:3D-3.) Cooperative Units are Class 4C.

(B) Grantee is not required to remit the 1% fee (one or more of following classes being conveyed), complete (B) by checking off appropriate box or boxes below:  
 Property class. Circle applicable class or classes: **1 3B 4B 4C 15**  
 Property classes: 1 - Vacant Land; 3B - Farm Property (Qualified); 4B - Industrial Properties; 4C - Apartments; 15 - Public Property, etc. (N.J.A.C. 18:12-2.2 et seq.)  
 Exempt organization determined by federal Internal Revenue Service/Internal Revenue Code of 1986, 26 U.S.C. s. 501.  
 Incidental to corporate merger or acquisition; equalized assessed valuation less than 20% of total value of all assets exchanged in merger or acquisition. If checked, calculation in (E) required and **MUST ATTACH COMPLETED RTF-1**

(C) When Grantee transfers properties involving block(s) and lot(s) of two or more classes in one deed, one or more subject to the 1% fee (A), with one or more than one not subject to the 1% fee (B), pursuant to N.J.S.A. 46:15-7.2, complete (C) by checking off appropriate box or boxes and (D).  
 Property class. Circle applicable class or classes: **1 2 3B 4A 4B 4C 15**

(D) **EQUALIZED VALUE CALCULATION** for all properties conveyed, whether the 1% fee applies or does not apply

Property Class	Total Assessed Valuation	+	Director's Ratio	=	Equalized Valuation
Property Class	\$	+	%	=	\$
Property Class	\$	+	%	=	\$
Property Class	\$	+	%	=	\$
Property Class	\$	+	%	=	\$

(E) **REQUIRED EQUALIZED VALUE CALCULATION** for all Class 4A (commercial) property transactions:  
 (See instructions 6 and 7 on the reverse side.)  

Total Assessed Valuation	+	Director's Ratio	=	Equalized Value
\$	+	%	=	\$

If Director's Ratio is less than 100%, the equalized valuation will be an amount greater than the assessed valuation. If Director's Ratio is equal to or exceeds 100%, the assessed valuation will be equal to the equalized value.

(3) **TOTAL EXEMPTION FROM FEE** (See instruction 8 on the reverse side.)  
 Deponent states that this deed transaction is fully exempt from the Realty Transfer Fee imposed by C. 49, P.L. 1968, as amended through Chapter 33, P.L. 2006, for the following reason(s). Mere reference to the exemption symbol is insufficient. Explain in detail. **8 (b) Seller is The United States of America**

(4) Deponent makes this Affidavit of Consideration for Use by Buyer to induce the county clerk or register of deeds to record the deed and accept the fee submitted herewith pursuant to the provisions of Chapter 49, P.L. 1968, as amended through Chapter 33, P.L. 2006.

Subscribed and sworn to before me this **Twenty-Fifth** day of **June, 2013**

*[Signature]*  
 Signature of Deponent  
**John D. Burke**  
 15 S Main St  
 Woodstown, NJ 08098  
 Deponent Address

**Westgate Apartments, LLC**  
 Grantee Name  
**407 Pennington-Titusville Rd**  
**Titusville, NJ 08560**  
 Grantee Address at Time of Sale  
**West Jersey Title Agency**  
 Name/Company of Settlement Officer



County Recording Officers: forward one copy of each Affidavit of Consideration for Use by Buyer to:  
 State of NJ - Division of Taxation  
 P.O. Box 251  
 Trenton, NJ 08646-0251  
 Attention: Realty Transfer Fee Unit

FOR OFFICIAL USE ONLY	
Instrument Number	<u>411631</u> County <u>WARREN</u>
Deed Number	Book <u>2512</u> Page <u>139</u>
Deed Dated	<u>6/18/13</u> Date Recorded <u>7/22/13</u>



State of New Jersey

# Seller's Residency Certification/Exemption

(C.55, P.L. 2004)

(Please Print or Type)

**SELLER(S) INFORMATION (see Instructions, page 2):**

Name(s) United States Department of Agriculture Rural Development

Current Resident Address 800 Midlantic Dr Ste 500

City, Town, Post Office Marlton State NJ Zip Code 08054

**PROPERTY INFORMATION (Brief Property Description):**

Block(s) 6 Lot(s) 11.01 & 11.02 Qualifier \_\_\_\_\_

Street Address Kinnaman Ave

City, Town, Post Office Washington State NJ Zip Code 07882

Seller's Percentage of Ownership 100% Consideration \$2,005,000.00 Closing Date 6/18/2013

**SELLER'S ASSURANCES (Check the Appropriate Box) (Boxes 2 through 10 apply to Residents and NON-residents):**

1.  I am a resident taxpayer (individual, estate or trust) of the State of New Jersey pursuant to N.J.S.A. 54A:1-1 et seq. and will file a resident gross income tax return and pay any applicable taxes on any gain or income from the disposition of this property.
2.  The real property being sold or transferred is used exclusively as my principal residence within the meaning of section 121 of the federal Internal Revenue Code of 1986, 26 U.S.C. s. 121.
3.  I am a mortgagor conveying the mortgaged property to a mortgagee in foreclosure or in a transfer in lieu of foreclosure with no additional consideration.
4.  Seller, transferor or transferee is an agency or authority of the United States of America, an agency or authority of the State of New Jersey, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Government National Mortgage Association, or a private mortgage insurance company.
5.  Seller is not an individual, estate or trust and as such not required to make an estimated payment pursuant to N.J.S.A. 54A:1-1 et seq.
6.  The total consideration for the property is \$1,000 or less and as such, the seller is not required to make an estimated payment pursuant to N.J.S.A. 54A:5-1-1 et seq.
7.  The gain from the sale will not be recognized for Federal income tax purposes under I.R.C. Section 721, 1081, 1033 or is a cemetery plot. (CIRCLE THE APPLICABLE SECTION.) If such section does not ultimately apply to this transaction, the seller acknowledges the obligation to file a New Jersey income tax return for the year of the sale (see instructions).  
 No non-like kind property received.
8.  Transfer by an executor or administrator of a decedent to a devisee or heir to effect distribution of the decedent's estate in accordance with the provisions of the decedent's will or the intestate laws of this state.
9.  The property being sold is subject to a short sale instituted by the mortgagee, whereby the seller has agreed not to receive any proceeds from the sale and the mortgagee will receive all proceeds paying off an agreed amount of the mortgage.
10.  The deed being recorded is a deed dated prior to the effective date of P.L. 2004, c. 55 (August 1, 2004), and was previously unrecorded.

**SELLER(S) DECLARATION:**

The undersigned understands that this declaration and its contents may be disclosed or provided to the New Jersey Division of Taxation and that any false statement contained herein could be punished by fine, imprisonment, or both. I furthermore declare that I have examined this declaration and, to the best of my knowledge and belief, it is true, correct and complete. By checking this box , I certify that the Power of Attorney to represent the seller(s) has been previously recorded or is being recorded simultaneously with the deed to which this form is attached.

7/17/2013  
Date

Howard Henderson  
Signature (Seller) Please indicate if Power of Attorney or Attorney in Fact  
**Howard Henderson, State Director**

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature (Seller) Please indicate if Power of Attorney or Attorney in Fact



WARREN COUNTY – STATE OF NEW JERSEY  
PATRICIA J. KOLB – WARREN COUNTY CLERK  
413 SECOND STREET, BELVIDERE, NJ 07823

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COUNTY CLERK'S RECORDING PAGE

\*\*\*THIS PAGE IS PART OF THE DOCUMENT – DO NOT DETACH\*\*\*

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Recording:

Recording Fee	40.00
Recording Fee Differ	30.00
Preservation Fee	50.00

Total: 120.00  
\*\*\*\* NOTICE: THIS IS NOT A BILL \*\*\*\*

BOOK/PAGE: 5907 / 283  
INSTRUMENT #: 2013-411632

Receipt#: 2013369014  
Clerk: CC  
Rec Date: 07/22/2013 12:07:15 PM  
Doc Grp: M  
Descrip: MORTGAGE  
Num Pgs: 11

Party1: WESTGATE APARTMENTS LLC  
Party2: UNITED STATES OF AMERICA  
Town: WASHINGTON BORO

Record and Return To:

WEST JERSEY TITLE AGENCY  
15 SOUTH MAIN STREET  
WOODSTOWN NEW JERSEY 08098

19424  
RECORD AND RETURN TO  
WEST JERSEY TITLE AGENCY  
15 South Main Street  
Woodstown, New Jersey 08098

RECORDED  
Patricia J Kolb Warren Co Clerk  
BELVIDERE, NJ

Bk: 5907 Pg: 283  
07/22/2013 12:07:15 PM  
Pages 11

MORTGAGE

## REAL ESTATE MORTGAGE FOR NEW JERSEY

THIS MORTGAGE is made this day, June 18, 2013, by Westgate Apartments, LLC, a New Jersey Limited Liability Company, organized and existing under the laws of the State of New Jersey, whose mailing address is (the Borrower) 407 Pennington-Titusville Road, Titusville, NJ 08560.

The United States of America (the Government), acting through the Rural Housing Service (RHS), successor in interest to the Farmers Home Administration, United States Department of Agriculture, having an office or place of business at 5<sup>th</sup> Floor, Suite 500, 8000 Midlantic Drive, Mount Laurel, NJ 08054, has loaned the Borrower money as evidenced by Promissory Notes. The Promissory Notes have been executed by the Borrower, is payable to the order of the Government in installments as specified therein, may provide for the deferral and capitalization of interest plus principal (described below as "Maximum Amount Financed"), authorizes acceleration of the entire indebtedness at the option of the Government upon any default by the Borrower, and is further described as follows:

Date of Instrument	Principal Amount	Annual Rate Of Interest	Maximum Amt. Financed	Due Date of Final Installment
June 18, 2013	\$2,000,000 \$1,472,635	3.125% 3.125%	\$2,002,083.22 \$1,472,635.00	June 18, 2043

The Government may assign the Promissory Notes at any time. The Government may also insure the payment of the Promissory Notes pursuant to the Consolidated Farm and Rural Development Act, or Title V of the Housing Act of 1949 or any other statute administered by the Rural Housing Service (RHS), successor in interest to the Farmers Home Administration.

This instrument shall secure payment of the Promissory Notes whenever the Promissory Notes are held either by the Government or by an uninsured holder. Whenever the Promissory Notes are held by an insured holder, however, this instrument shall not secure payment of the Promissory Notes or attach to the underlying debt. In that event, this instrument shall constitute an indemnity mortgage to secure any payments to an insured holder of the Promissory Notes or other advances which the Government may be required to make upon default by the Borrower. The insured holder shall have no right, title or interest in or to the lien of this instrument or its benefits. This instrument also secures the Borrower's obligations and covenants under other instruments delivered in connection with the loan evidenced by the Promissory Note, including the Borrower's Loan Agreement hereby incorporated by reference. The Promissory

Notes, Loan Agreement, Security Agreement, and this instrument together with any supplements, attachments, modifications and additions are collectively referred to as the "Loan Instruments".

NOW THEREFORE, in consideration of the loan(s) the Borrower hereby mortgages, (as construed in 46: 9-1, N.J.S.A.), assigns, grants and conveys to the Government, the following property in Warren County, Kinnaman Avenue , Washington, New Jersey:

All that certain lot, piece or parcel of land, with the buildings and improvements thereon erected, situated, lying and being in the Borough of Washington, County of Warren, State of New Jersey:

Track 1:

BEGINNING at an iron pipe which marks the Southeasterly corner of lot now or formerly belonging to Katherine Fryer said iron pipe also being South 23 degrees 58 minutes East 458.80 feet from a railroad spike located in the public roadway known as Kinnaman Avenue, which railroad spikes marks the beginning point mentioned in a deed description of a 17.75 acre tract of land conveyed to Helen Tiger Grieshaber by deed which is recorded at the Warren County Clerk's Office in Book 280 of Deeds on Page 405 etc. and running; thence

(1) By a new line and by lands, now or formerly belonging to Pinewall Investment Corp., South 75 degrees 46 minutes East, 236.88 feet to a point; thence

(2) By another new line and along other lands, now or formerly belonging to Pinewall Investment Corp., South 25 degrees 02 minutes East, 184.00 feet to an iron pipe being in the Southerly right of the way line of the New Jersey power and Light Company easement and also marking a corner of lands to belonging to the Washington Borough Board of education; thence

(3) Still along land belonging to the Washington Borough Board of Education North 60 degrees 51 minutes East, 630.59 feet to an iron pipe; thence

(4) North 54 degrees 50 minutes West 307.64 feet to an iron pipe; thence

(5) North 45 degrees 58 minutes West 208.56 feet to an iron pipe to lands now or formerly of Helen Tiger; thence

(6) South 58 degrees 35 minutes West, 192.36 feet along lands now or formerly of Helen Tiger to an iron pipe; thence

(7) North 40 degrees 15 minutes West 145.86 feet along lands now or formerly of Helen Tiger to an iron pipe; thence

(8) South 67 degrees 34 minutes West, 80.46 feet along lands now or formerly under contract to Walter Schaarschmidt, Jr. To an iron pipe; thence

(9) North 21 degrees 47 minutes West, 136.85 feet along lands now or formerly under contract to Walter D. Schaarschmidt, Jr. To an iron pipe; thence

(10) North 13 degrees 11 minutes West 60 feet along lands now or formerly of Helen Tiger to an iron pipe; thence

(11) North 39 degrees 56 minutes West 80 feet along lands now or formerly of Helen Tiger through an iron pipe set on this line to a railroad spike located in the public roadway known as Kinnaman Avenue; thence

(12) South 42 degrees 30 minutes West 288 feet in said Kinnaman Avenue To a railroad spike; thence

(13) South 23 degrees 58 minutes East 458.80 feet to the point and place of BEGINNING.

Together with a storm drain easement described as follow:

BEGINNING at a point in the easterly sideline of N. Prospect Street (A 35 foot wide right of way), said point being in the southerly line of lands now or formerly of Covert Vander Voort and from thence runs

(1) Along the southerly line of lands now or formerly of Covert Vander Voort, North 64 degrees 23 minutes East, 179.68 feet to a point; thence

(2) Partially along the westerly line of the whole tract, North 29 degrees 39 minutes 40 seconds West, 179.34 feet to a point; thence

(3) By a line through the entire tract North 16 degrees 04 minutes 30 seconds East, 441.39 feet to a point in the most northerly line of the whole tract, said point being distant on a course of South 75 degrees 46 minutes 30 seconds East, 134.73 feet from the northeasterly corner of lands now or formerly of Charles H. Kittaker; thence

(4) Along the northerly line of the whole tract, South 75 degrees 46 minutes 30 seconds East, 20.01 feet to a point; thence

(5) The next three courses paralleling the first three courses hereinabove described and distant 20 feet measured at right angles thereto, South 16 degrees, 04 minutes 30 seconds West, 433.60 feet to a point; thence

(6) South 20 degrees 39 minutes 40 seconds East, 192.36 feet to a point; thence

(7) South 64 degrees 23 minutes West, 199.81 feet to a point in the easterly sideline of North Prospect Street; thence

(8) Along the easterly sideline of North Prospect Street, North 29 degrees 26 minutes West, 20.04 feet to the point and place of beginning.

**BEING Lot 11.01, Block 6 on the Borough of Washington Tax Map;**

Track 2:

BEGINNING at a point on the Southeasterly line of lands now or formerly of Walter and Gladys Schaarschmidt, said point being distant by the following four courses from the Southeasterly sideline of Kinnaman Avenue and from said sideline running; thence

(A) Along lands now or formerly of Delmont P. and Betty C. Cole, South 39 degrees 56 minutes East 54.78 feet to a point; thence

(B) The next three courses along lands now or formerly of Walter and Gladys Schaarschmidt, South 13 degrees, 11 minutes East 60.00 feet to a point; thence

(C) South 21 degrees 47 minutes East 136.85 feet to a point; thence

(D) North 67 degrees 34 minutes East 20.00 feet to the point and place of BEGINNING; thence

(1) Along lands of Walter and Gladys Schaarschmidt, North 67 degrees 34 minutes East 60.46 feet to a point; thence

(2) The next two courses along lands now or formerly of Delmont P. And Betty Cole, South 40 Degrees 15 minutes 00 seconds East 145.86 feet to a point; and thence

(3) North 58 degrees 35 minutes 00 seconds East 192.36 feet to a point; thence

(4) The next two courses along lands now or formerly of New Jersey Power and Light Co., South 45 degrees 58 minutes 00 seconds East, 208.56 feet to a point; thence

(5) South 54 degrees 50 minutes 00 seconds East, 307.64 feet to a point; thence

(6) Along lands now or formerly of Warren Hills Regional School District, South 60 degrees 51 minutes 00 seconds West 630.59 feet to a point; thence

(7) Along lands now or formerly of Dr. Adbullah S. Evke, North 25 degrees 02 minutes 00 seconds West 73.00 feet to a point; thence

(8) The next six courses by a new line through Lot 11A, Block 6, North 60 degrees 51 minutes East 163.84 feet to a point; thence

(9) North 31 degrees 25 minutes west 250.16 feet to a point; thence

(10) South 58 degrees 35 minutes West 75.00 feet to a point; thence

(11) North 31 degrees 25 minutes West 114.04 feet to a point; thence

(12) North 23 degrees 58 minutes West 68.75 feet to a point; thence

(13) North 1 degree 55 minutes 25 seconds East 136.88 feet to the point and place of beginning.

**BEING, Lot 11.02, Block 6 on the Borough of Washington Tax Map.**

The borrower and any successors in interest agree to use the housing for the purpose of housing people eligible for occupancy as provided in Section 515 of Title V of the Housing Act of 1949, as amended, and FmHA/Rural Development regulations then extant during this 30 year period beginning (the date of the last loan on the project is obligated, or date the project was last made subject to the prepayment restrictive-use provisions as a result of servicing actions or incentive to no prepay the loan, authorized under this subpart or other subparts). Until June 18, 2043, no eligible person occupying the housing shall be required to vacate, or any eligible person wishing to occupy shall be denied occupancy without cause. The borrower will be released from these obligations before that date only when the Government determines that there is no longer a need for such housing, or that such other financial assistance provided the residents of such housing will no longer be provided due to no fault action or lack of action on the part of the borrower. A tenant or individual wishing to occupy the housing may seek enforcement of this provision as well as the Government.

TOGETHER with all the improvements, tenements and appurtenances now or hereafter erected on the property, and all easements, rents, royalties, mineral, oil and gas rights and profits, water, water rights, and water stock, all leasehold rights of any kind, and all fixtures now or hereafter attached to or used in connection with the property, including, but not limited to, those for the purposes of supplying or distributing heating, cooling, electricity, natural gas, water, air and light; and including, but not limited to, all plumbing, bath tubs, water heaters, water closets, sinks, ranges, stoves, refrigerators, dishwashers, washers, dryers, awnings, screens, blinds, shades, storm windows, storm doors, antennas, attached floor covering, trees and plants; all of which including replacements and additions thereto, shall be deemed to be and remain a part of the property covered by this instrument; and all payments at any time owing to the Borrower by virtue of any sale, lease, transfer, conveyance or condemnation of any part thereof or interest therein--all of which are herein collectively referred to as the "Property".

THIS MORTGAGE is also intended as a Financing Statement covering fixtures which are affixed or which may become affixed to the above-described property. The types of collateral covered hereby are described in the preceding paragraph.

TO HAVE AND TO HOLD the property unto the Government and its assigns forever in fee simple.

The Borrower covenants that Borrower is lawfully seized of the estate hereby conveyed and has the right to mortgage, grant, and convey the Property, and that the Borrower will warrant and defend generally the title to the Property against all claims and demands, subject to easements and restrictions of record.

THIS MORTGAGE SHALL SECURE (a) payment of the Promissory Notes in accordance with its terms, including any extensions, reschedulings, reamortizations or renewals thereof, whenever the note is held by either the Government or by an uninsured holder; (b) repayment, with interest, of any payments, advances and expenditures made by the Government pursuant to the terms of this or any other Loan Instrument; and (c) performance of every covenant and agreement of the Borrowers contained in this or any other Loan Instrument.

The Borrower, for itself, its successors and assigns, WARRANTS the title to Property (as construed in 46:9-2, N.J.S.A.) to the Government against the lawful claims of all persons

whose claims are not based upon liens, encumbrances, easements or reservation specified above.

The Borrower, for itself, its successors and assigns, COVENANTS AND AGREES as follows:

1. Borrower will promptly pay any indebtedness secured by this instrument when due.
2. Borrower will indemnify the Government against any loss which the Government may incur as a result of making payments to an insured holder of the Promissory Note after the Borrower's default.
3. Borrower will pay the Government any fees or other charges required under regulations of the Rural Housing Service (RHS), successor in interest to the Farmers Home Administration.
4. Borrower will pay when due all taxes, liens, judgments, encumbrances and assessments lawfully attaching to or assessed against the property, and, without demand, will also provide the Government with proof of those payments.
5. Borrower will pay the Government for any expenses necessary or incidental to (a) the protection of the lien or priority of any Loan Instrument and to (b) the enforcement of or compliance with the provisions of any Loan Instrument. "Expenses" includes (without limitation) costs of evidence of title, surveys, recording fees, attorneys' fees and trustees' fees, as well as court costs and expenses of advertising, selling and conveying the Property or any portion of it.
6. Borrower will use the loan evidenced by the Promissory Notes solely for the purposes authorized by the Government.
7. Borrower will keep the Property insured as required by the Government and will deliver the originals of all insurance policies to the Government for safekeeping.
8. Borrower will comply with all laws, ordinances and regulations affecting the Property and the conduct of Borrower's business operations.
9. Borrower will maintain the property in good repair and make any repairs the Government may require.
10. Borrower will operate the Property in a good and efficient manner and will comply with Management Plans and practices which the Government may prescribe from time to time.
11. Borrower will not abandon the Property; effect waste, leasing or impairment of the Property; or cut, remove or lease any timber, gravel, oil, gas, coal or other minerals.
12. Borrower will not (except in the ordinary course of business) lease, assign, sell, transfer or encumber the Property or any nonexpendable part thereof, voluntarily or otherwise, either in whole or in part, without the prior written consent of the Government.
13. The property described herein was obtained or improved through Federal financial assistance. This property is subject to the provisions of Title VI of the Civil Rights Act of 1964 and the Rehabilitation Act of 1973 and the regulations issued pursuant thereto for so long as

the property continues to be used for the same or similar purpose for which financial assistance was extended or for so long as the purchaser owns it, whichever is longer.

14. If at any time it shall appear to the Government that the Borrower may be able to obtain a loan from a production credit association, a federal land bank, or other responsible cooperative or private credit source, at reasonable rates and terms for loans for similar purposes and periods of time, the Borrower will, upon the Government's request, apply for and accept a loan in sufficient amount to pay the Promissory Notes and any other indebtedness secured by this instrument and to pay for any stock necessary to be purchased in a cooperative lending agency in connection with such a loan.

15. The Government may require the Borrower to make additional monthly payments equal to one-twelfth of the estimated taxes, assessments, insurance premiums and other charges upon the Property.

16. The Government and its agents may inspect the Property at reasonable times to ascertain whether the Borrower is fulfilling its obligations under this or any other Loan Instrument.

17. The Government may at any time pay as advances for the Borrower's account any amounts which the Borrower is obligated to pay under any Loan Instrument. The Government may exercise this right regardless of whether the Note is insured and regardless of whether advances exceed the face amount of the Note.

18. All advances by the Government pursuant to the terms of this or any other Loan Instrument shall bear interest at the rate borne by the Promissory Notes which bears the highest interest rate. Advances, together with interest accruing on them, shall be immediately due and payable by the Borrower at the place designated in the latest Promissory Notes. Advances by the Government shall neither relieve the Borrower of its obligation to pay nor cure any default under any Loan Instrument.

19. Except to the extent specified by the Government in writing, the Government in its sole discretion may grant an extension of the time for payment or modification of amortization of the indebtedness secured by any Loan Instrument, release any party from liability to the Government, release portions of the Property from the lien of any Loan Instrument, and waive any other Government right under any Loan Instrument, or the liability of the Borrower or any other party for payment of the indebtedness secured by any Loan Instrument.

20. The Government will not be bound by any present or future state laws (a) providing for valuation, appraisal, homestead or exemption of the Property; (b) prohibiting or restricting an action for deficiency judgment or limiting the judgment amount which may be awarded; (c) prescribing any statute of limitations; (d) allowing any right of redemption or possession following any foreclosure sale, or (e) limiting the conditions the Government may impose by regulation as a condition of approving a transfer of the Property to a new borrower. **THE BORROWER WAIVES THE BENEFIT OF ANY SUCH STATE LAWS.**

21. Should the Borrower **DEFAULT** on any of its obligations under any Loan Instrument, merge, dissolve, be declared bankrupt or insolvent, or make an assignment for the benefit of creditors, without Notice, the Government may (a) accelerate the entire indebtedness secured by this instrument by declaring it immediately due and payable; (b) charge the Borrower's account for any reasonable expenses which the Government may pay or incur to maintain and repair the Property; (c) process, operate and rent the Property; (d) have a receiver appointed

for the Property who may exercise the usual powers of receivers in similar cases; (e) foreclose this and any other Loan Instrument and sell the Property; (f) enforce any and all other rights and remedies provided in the Loan Instruments or by future or present laws.

22. Upon default by Borrower as aforesaid, the Government may foreclose this instrument as authorized or permitted by the laws then existing of the jurisdiction where the property is situated and of the United States of America, on terms and conditions satisfactory to the Government, including but not limited to foreclosure by (a) statutory power of sale, or (b) advertisement and sale of the property at public auction to the highest bidder in one or more parcels at the Government's option and at the time and place and in the manner and after such notice and on terms required by statute or determined by the Government if not contrary to statute, or (c) written agreement hereafter made between Borrower and the Government.

23. Proceeds of a foreclosure sale pursuant to any loan Instrument shall be applied in the following order to the payment of: (a) costs and expenses incident to enforcing or complying with the provisions of any Loan Instrument; (b) any prior liens required by law or a competent court to be paid; (c) all indebtedness to the Government secured by this instrument; (d) inferior liens of record required by law or a competent court to be paid; (e) at the Government's option, any other indebtedness of the Borrower owing to or insured by the Government, and (f) any balance to Borrower.

At foreclosure or other sale of all or any part of the Property, the Government and its agents may bid and purchase as a stranger and may pay the Government's share of the purchase price by crediting such amount on any debts of Borrower owing to or insured by the Government, in the order prescribed above.

24. If the Government is the successful bidder at a foreclosure sale under any Loan Instrument, any portion of the purchase price not owed to a third party may be paid by crediting that amount on any debts of the Borrower which are owed to or insured by the Government.

25. The rights and remedies provided in this instrument are cumulative and shall be in addition to every other remedy now or hereafter existing at law, in equity, by statute or by regulation.

26. A waiver, amendment, release or modification of this instrument may be affected only by a writing which has been duly executed by the Government and shall not be established by conduct, custom or course of dealing.

27. This instrument shall be governed by federal law, and shall be subject to the present regulations of the Rural Housing Service (RHS), successor in interest to the Farmers Home Administration, and to its future regulations not inconsistent with the express provisions of this instrument.

28. Default under this instrument shall constitute a default under any other security instruments of the Borrower held or insured by the Government and default under any other security instrument constitutes default under this instrument.

29. If any provision of this instrument or application thereof to any person or circumstances is held invalid, such invalidity will not affect other provisions or applications of the instrument which can be given effect without the invalid provision of application, and to that end the provisions hereof are declared to be severable.

30. Notices to the Borrower shall be sent to its address as shown on the first page of this instrument. Notices to the Government shall be addressed to the Rural Housing Service (RHS) successor in interest to the Farmers Home Administration, United States Department of Agriculture, 5<sup>th</sup> Floor, Suite 500, 8000 Midlantic Drive, Mount Laurel, NJ 08054. Notices shall be sent by certified mail (postage prepaid) unless otherwise required by law. The Government and the Borrower may designate any further or different addresses to which subsequent notices shall be sent.

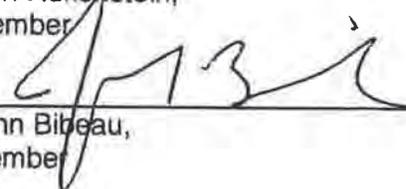
31. This instrument, together with the other loan instruments, mortgages and encumbers only the assets of the borrowing Partnership named herein and offers to the Government no recourse for repayment of the indebtedness from the personal assets of any present or future member of the Partnership, whether individual or corporate.

32. This instrument also secures the obligations and covenants of Borrower set forth in Borrower's Loan Agreement of May 31, 2013, which is hereby incorporated herein by reference.

IN WITNESS WHEREOF, the Borrower has caused this Mortgage to be executed by its Partner(s) who hereunto set(s) his/their hand(s) and seal(s) as of the date first written above.

Westgate Apartments, LLC

BY:   
\_\_\_\_\_  
Ron Rukenstein,  
Member

BY:   
\_\_\_\_\_  
John Bibeau,  
Member

Signed, sealed and delivered  
In the presence of:



ACKNOWLEDGMENT

STATE OF NEW JERSEY, COUNTY OF WARREN

TOWN OF WASHINGTON BOROUGH

I CERTIFY that on June 18, 2013, Ron Rukenstein, Member of Westgate Apartments, LLC and John Bibeau, Member of Westgate Apartments, LLC, a New Jersey Limited Liability Company, personally came before me and stated to my satisfaction that they

- 1) Were the makers of the within instrument;
- 2) Were authorized to and did execute this instrument as Members of Westgate Apartments LLC, the entity named in this instrument ; and
- 3) Executed this instrument as the act of the entity named in this instrument.

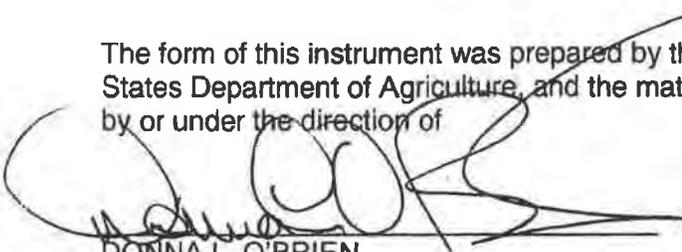


NOTARY PUBLIC



My commission expires: \_\_\_\_\_

The form of this instrument was prepared by the Office of the General Counsel of the United States Department of Agriculture, and the material in the blank spaces in the form was inserted by or under the direction of



DONNA L. O'BRIEN  
Senior Area Specialist

**Appendix N**  
**Washington Borough Petition for**  
**Conformance as Highlands Center**

**ORDINANCE 2021-06**  
**BOROUGH OF WASHINGTON**  
**ORDINANCE TO PETITION THE HIGHLANDS COUNCIL FOR PLAN**  
**CONFORMANCE FOR THE PLANNING AREA**

**Section 1 Purpose**

The Borough of Washington is located fully within that portion of the New Jersey Highlands Region defined by the Highlands Act, as the “Planning Area” (see definitions, below). This Ordinance is enacted pursuant to Section 15.a. of the Highlands Water Protection and Planning Act (Highlands Act, N.J.S.A. 13:20-1 et seq.), which provides that a municipality may choose to conform its master plan, development regulations, and other regulations to the provisions of the Highlands Regional Master Plan, with respect to lands located within the Planning Area, and by Ordinance, petition the New Jersey Highlands Water Protection and Planning Council (Highlands Council) for Plan Conformance approval of such planning and regulatory documents.

By adoption of this Ordinance, the Governing Body of the Borough of Washington establishes that the municipality shall conform its master plan, development regulations, and all other regulations applicable to the use and development of land within the Planning Area of the municipality, to achieve consistency with the goals, requirements, and provisions of the Highlands Regional Master Plan. Said conformance shall be in accordance with the provisions of Highlands Council approval of the municipality’s Petition for Plan Conformance, which was previously submitted to the Highlands Council by Resolution 2019-44 adopted by the Governing Body on February 5, 2019, and which the Highlands Council approved with certain conditions by Highlands Council Resolution No. 2021-07, adopted on February 18, 2021. Further, this Ordinance specifically reserves the rights of the municipality as specified by the Highlands Act, with respect to the voluntary nature of Plan Conformance for the Planning Area.

**Section 2 Basis and Background**

The Highlands Act finds and declares that protection of the Highlands Region is an issue of State level importance because of its vital link to the future of the State’s drinking water supplies and other significant natural resources. The Highlands Act creates a coordinated land use planning system requiring the Highlands Council to prepare and adopt a Regional Master Plan that serves to protect, restore and enhance the significant resources the Highlands Region. The Highlands Act sets forth a bifurcated system for municipal conformance with the goals, requirements and provisions of the Regional Master Plan. Pursuant to Section 14.a. of the Highlands Act, a municipality located wholly or partially in the Preservation Area was required to submit by December 8, 2009 a revised municipal master plan, development regulations and other regulations, as applicable to the development and use of land in the Preservation Area, to conform them with the Regional Master Plan.

Pursuant to Section 15.a. of the Highlands Act, for a municipality located wholly in the Planning Area or for any portion of a municipality lying within the Planning Area, the municipality may submit at any time a revised master plan, development regulations and other regulations, as applicable to the development and use of land in the Planning Area, that conforms with the

Regional Master Plan. Plan Conformance by a municipality is strictly voluntary for lands in the Planning Area.

Consequently, Borough of Washington, having lands in the Planning Area of the Highlands Region, did submit as part of a Petition for Plan Conformance to the Highlands Council on October 26, 2020, proposed revisions to the master plan, development regulations and other regulations that relate to the development and use of land in the Planning Area. On February 21, 2021, the Highlands Council adopted Resolution No. 2021-07 approving Washington Borough's Petition for Plan Conformance. The approval was conditioned upon the Borough of Washington's adoption of an ordinance pursuant to Section 15a of the Highlands Act, formally petitioning the Highlands Council for Plan Conformance for lands within the Planning Area.

### **Section 3 Applicability**

This Ordinance applies to the development and use of land located in the Planning Area of Washington Borough, as defined by Section 7 of the Highlands Act.

### **Section 4 Definitions**

For the purpose of this Ordinance, the following terms, phrases, words, and their derivations shall have the meanings stated herein unless their use in the text of this Ordinance clearly demonstrates a different meaning. When not inconsistent with the context, words used in the present tense include the future, words used in the plural number include the singular number, and words used in the singular number include the plural number. The word "shall" is always mandatory and not merely directory.

**Highlands Council** – means the New Jersey Highlands Water Protection and Planning Council.

**Highlands Act** – means the Highlands Water Protection and Planning Act, P.L. 2004, c.120, as amended, codified in part at N.J.S.A. 13:20-1 *et seq.*

**Highlands Region** means all that area within the boundaries of the municipalities listed in subsection a. of section 7 of the Highlands Act.

**Planning Area** - means lands within the Highlands Region not within the Preservation Area (N.J.S.A. 13:20-7).

**Plan Conformance** – means the process by which a municipality revises the master plan, development regulations and other regulations related to the development and use of land to conform them with the goals, requirements, and provisions of the Regional Master Plan in accordance with the Highlands Plan Conformance Guidelines.

**Preservation Area** – means that portion of the Highlands Region so designated by subsection b. of section 7 of the Highlands Act.

**Regional Master Plan**– means the Highlands regional master plan or any revision thereof adopted by the Highlands Council pursuant to N.J.S.A. 13:20-8.

### **Section 5 Petition for Plan Conformance**

The Borough of Washington hereby formalizes its Petition for Plan Conformance to the Highlands Council, declaring it fully effective for lands in the Planning Area of the municipality, said Petition having been approved by the Highlands Council subject to the conditions as set forth in Highlands Council Resolution No. 2021-07, adopted on February 18, 2021.

## Section 6 Reserved Right of Withdrawal for Planning Area

At any time, the Borough of Washington may withdraw its Petition for Plan Conformance for the Planning Area. In such event, any approvals, rejections or conditions of the revised municipal master plan, development regulations or other regulations that pertain to the Planning Area, as set forth by the Highlands Council in approving Resolution No. 2021-07, will not be binding upon the Borough of Washington. Any such withdrawal, should it occur, shall require repeal of this Ordinance, and shall be followed by formal notification to the Highlands Council, sent within ten (10) days of adoption by certified mail and including a certified copy of such repealing ordinance.

## Section 7 Planning Grants and Technical Assistance

Upon application of Washington Borough, the Highlands Council has made, or will make, grant funding and other financial and technical assistance available to Washington Borough for the reasonable costs associated with the revision of the master plan, development regulations or other regulations, which revisions are designed to bring those plans and regulations into conformance with the Regional Master Plan. The Highlands Council shall provide grant funds for all mandatory aspects of Plan Conformance in accordance with the Plan Conformance Grant Program, and may also provide grant funds for the discretionary aspects of Plan Conformance as determined by the Highlands Council. As Plan Conformance for lands in the Planning Area is strictly voluntary, Washington Borough retains the right to withdraw the Petition relating to lands lying in the Planning Area from the Plan Conformance process at any time.

## Section 8 Effective Date

This ordinance shall take effect immediately upon final passage, approval, and publication as required by law.

Introduced: October 19, 2021

Adopted: November 9, 2021

 Recoverable Signature

**X** Laurie A. Barton

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Laurie A. Barton, RMC

Borough Clerk

Signed by: d7836b06-7f43-46ee-a3c8-f31b7f1786a3

**Appendix O**  
**Washington Borough Resolution #2024-27**  
**Highlands Conformance Ordinance**

**WASHINGTON BOROUGH, WARREN COUNTY, NEW JERSEY  
ORDINANCE FOR HIGHLANDS COUNCIL REGIONAL MASTER PLAN  
CONFORMANCE  
ORDINANCE 2024-27**

WHEREAS, the Highlands Water Protection and Planning Act (“Highlands Act,” N.J.S.A. 13:20-1 et seq.) was enacted by the State Legislature on August 10, 2004 for the purpose of protecting, enhancing, and restoring the natural resources of the New Jersey Highlands Region, in particular the water resources, which provide drinking water to over 5 million New Jersey residents; and

WHEREAS, the Highlands Act created the Highlands Water Protection and Planning Council (the “Highlands Council”) and charged it with crafting a comprehensive master plan for the New Jersey Highlands Region; and

WHEREAS, the Highlands Regional Master Plan was adopted by the Highlands Council through the adoption of Resolution 2008-27 on July 17, 2008, and became effective on September 8, 2008 as the product of a long-term, participatory, and region-wide planning effort; and

WHEREAS, Section 15 of the Highlands Act provides for voluntary Plan Conformance where any municipality located wholly or partially in the Planning Area may at any time voluntarily revise and conform its local master plan and development regulations, as related to the development and use of land in the Planning Area, with the goals, requirements and provisions of the Regional Master Plan; and

WHEREAS, the Borough of Washington is located in the Highlands Region with lands lying within the Planning Area, as defined by section 7 of the Highlands Act; and

WHEREAS, the Governing Body of the Borough of Washington has, on behalf of the municipality, petitioned the Highlands Council for Plan Conformance with respect to Borough of Washington lands located within the Planning Area portion of the Highlands Region; and

WHEREAS, the Petition filed with the Highlands Council contains proposed amendments to the municipal planning program, including amendments to the Environmental Resource Inventory, Master Plan, and Land Use Ordinance, which together are intended to achieve conformance with the Regional Master Plan and provide immediate protections to vital Highlands Resources located within the Borough of Washington; and

WHEREAS, the Governing Body finds that the proposed changes to the municipal planning program are of broad and significant effect, are vital to the protection of the Highlands resources of the municipal Highlands Area, and are compelling to the interests and general welfare of the community;

NOW THEREFORE, BE IT ORDAINED by the Governing Body of the Borough of Washington that the following is hereby adopted as an amendment to the Borough of Washington land use ordinances:

## Section 1 - Petition for Plan Conformance

The Borough of Washington is located fully within that portion of the New Jersey Highlands Region defined by the Highlands Act, as the “Planning Area” (see definitions). This Ordinance is enacted pursuant to Section 15.a. of the Highlands Water Protection and Planning Act (Highlands Act, N.J.S.A. 13:20-1 et seq.), which provides that a municipality may choose to conform its master plan, development regulations, and other regulations to the provisions of the Highlands Regional Master Plan, with respect to lands located within the Planning Area, and by Ordinance, petition the New Jersey Highlands Water Protection and Planning Council (Highlands Council) for Plan Conformance approval of such planning and regulatory documents.

By adoption of this Ordinance, the Governing Body of the Borough of Washington establishes that the municipality shall conform its master plan, development regulations, and all other regulations applicable to the use and development of land within the Planning Area of the municipality, to achieve consistency with the goals, requirements, and provisions of the Highlands Regional Master Plan. Said conformance shall be in accordance with the provisions of Highlands Council approval of the municipality’s Petition for Plan Conformance, which was approved by Highlands Council Resolution No. 2021-06, adopted on November 9, 2021. Further, this Ordinance specifically reserves the rights of the municipality as specified by the Highlands Act, with respect to the voluntary nature of Plan Conformance for the Planning Area.

## Section 2 - Highlands Council Review of Land Development Ordinance Amendments

Any amendment to the Borough of Washington Land Development Regulations shall not be effective until deemed consistent with the Regional Master Plan or deemed not subject to review by the Highlands Council.

## Section 3 - Amendment to Land Development Regulations

### I. Establishment of Highlands Districts

#### 1. Highlands Planning Area

1. In accordance with the delineation as set forth in the Highlands Act (C.13:30-7) the Borough of Washington hereby establishes the Planning Area of the Highlands Region.
  2. For purposes of this Ordinance, this Area shall henceforth be known and designated as the Borough of Washington Highlands Area.
- #### 2. Highlands Land Use Capability Zones:
- In accordance with the Highlands RMP there are hereby established three primary Land Use Capability Zones (LUCZ) (the Protection Zone, Conservation Zone and Existing Community Zone) and four LUCZ sub-zones (Wildlife Management Sub-Zone, Conservation Zone–Environmentally Constrained Sub-Zone, Existing Community Zone–Environmentally Constrained Sub-Zone and Lake Community Sub-Zone).
- #### 3. Exhibits:
- The following exhibits are hereby adopted.
1. Exhibit 1 entitled “Washington Borough Highlands Area and Highlands Land Use Capability Zones,” depicting the municipality along with delineation of the Highlands Area and Highlands Land Use Capability Zones,
  2. Exhibit 2 entitled “Washington Borough Forest Resources,”

3. Exhibit 3 entitled “Washington Borough Highlands Open Water Buffers and Riparian Areas,”
4. Exhibit 4 entitled “Washington Borough Net Water Availability,”
5. Exhibit 5 entitled “Washington Borough Wellhead Protection Areas,” and
6. Exhibit 6 entitled “Washington Borough Prime Groundwater Recharge Areas.”

## **II. Applicability**

The following Applications for Development involving lands located within (or partially within) the Borough of Washington Highlands Area (as illustrated in Exhibit 1a, “Washington Borough Highlands Area”) shall comply with the provisions of this ordinance:

- A. In the Planning Area:
  1. For residential development, creates three (3) or more new dwelling units.
  2. For non-residential development:
    - a) Results in the ultimate disturbance of one (1) acre or more of land; or
    - b) Produces a cumulative impervious surface area of one-quarter (1/4) acre, or more.
  3. Introduces or expands on any of the following land uses/facilities:
    - a) Landfills;
    - b) Permanent storage or disposal of hazardous wastes, industrial or municipal sludge or radioactive materials, including solid waste landfills;
    - c) Collection and transfer facilities for hazardous wastes, solid wastes that contain hazardous materials, and radioactive materials;
    - d) Industrial treatment facility lagoons; or
    - e) Any Major or Minor Potential Contaminant Source (as identified in Appendix A and Appendix B of this Ordinance, respectively) on lands located within 200 feet of the wellhead of any public community well or public non-community well, as these are defined herein.

All thresholds in A. above, shall be interpreted to apply cumulatively over time, beginning as of the effective date of this Ordinance. If or when any one of the thresholds is reached, the Ordinance shall apply to any and all development in excess of that threshold. Where an application proposes a mixed use, the thresholds for non-residential development shall apply to the whole of the project. For purposes of this Ordinance, the phrases “Application for Development,” “Highlands Area,” “residential development,” “ultimate disturbance,” and “cumulative impervious surface area” shall be defined as provided herein.

## **III. HIGHLANDS COUNCIL CALL-UP**

The municipality shall, within fifteen (15) calendar days of issuance of any decision under this ordinance, provide a copy of the decision to the Highlands Council. The Highlands Council call-up review period shall expire 15 calendar days following the Highlands Council’s receipt of same. Any decision issued under this ordinance shall not be effective until the expiration of the call-up period, or upon notification that the Highlands Council is exercising its review authority and an approval issued by the Highlands Council. Absent any notification from the Highlands Council within the 15-day timeframe, the decision shall be considered effective.

#### IV. EXCLUSIONS AND EXEMPTIONS

The following applications shall not be subject to the standards of this ordinance:

- A. Exclusions: Any application for development as follows below shall not be subject to any provisions of this ordinance.
  1. The reconstruction, within the same footprint, of any building or other structure lawfully existing as of the effective date of this Ordinance, in the event of its destruction or partial destruction by fire, storm, natural disaster, or any other unintended circumstance.
  2. Any improvement or alteration to a building or other structure lawfully existing as of the effective date of this Ordinance, where such improvement or alteration is necessary for compliance with the provisions of the Americans with Disabilities Act, or to otherwise provide accessibility to the disabled.
  3. Any Agricultural or Horticultural Use or Development that would not result in either:
    - a) An increase, since the date of enactment of the Highlands Act (August 10, 2004), either individually or cumulatively, of new agricultural impervious cover of greater than three percent (3%) to the total land area of a Farm Management Unit. Solar panels shall not be included in any calculation of agricultural impervious cover (all terms as defined in Section 4, below); or
    - b) Construction of three (3) or more residential dwelling units (including accessory dwelling units) served by individual on-site septic system(s).
- B. Highlands Act Exemptions: Any application for development exempt from the provision of the Highlands Act (C.13:20-28) shall be exempt from all provisions of this ordinance (with the exception of Section XVI Affordable Housing). Demonstration of a Highlands Act exemption for an Application for Development involving lands located (or partially located) in the Highlands Area shall consist of one of the following:
  1. State Agency Determination. State Agency Determinations shall include a Highlands Exemption Determination issued by the Highlands Council for a Planning Area proposal, indicating that the proposal qualifies as a Highlands Act Exemption.
  2. Municipal Determination. Pursuant to Borough of Washington Ordinance #[x], entitled “Highlands Area Exemption Ordinance,” effective as of [date], for any application involving Highlands Act Exemptions #4, #6, #7, or #8 indicating that the proposal qualifies as a Highlands Act Exemption.

#### V. Prohibited Uses

Any of the following uses are prohibited uses within the Highlands Area unless a prior consistency determination is received from the Highlands Council:

- A. Landfills;
- B. Facilities for the permanent storage or disposal of hazardous wastes, industrial or municipal sludge or radioactive materials, including solid waste landfills;
- C. Collection and transfer facilities for hazardous wastes, solid wastes that contain hazardous materials, and radioactive materials; and
- D. Industrial treatment facility lagoons.
- E. Any principal or accessory use, or structure related or devoted to such use, which is designated by the Highlands Council as a Major or Minor Potential Contaminant Source (PCS) (see

Appendix A and Appendix B is expressly prohibited from that portion of any Tier 1 Wellhead Protection Area lying within 200 feet of the wellhead as shown on Exhibit 2.

## **VI: Highlands Open Waters**

- A. Highlands Open Waters and Buffers: All Highlands Open Waters shall include a minimum 300-foot-wide protection buffer, as measured from the edge of the Highlands Open Waters feature indicated in Exhibit 3.
1. No disturbances of Highlands Open Waters are permitted except where previously approved by the Highlands Council.
  2. Highlands Open Waters buffers shall be maintained in their undisturbed or pre-existing condition, unless a disturbance is approved in accordance with following:
    - a) Where a NJDEP a Letter of Interpretation (LOI) or Highlands Resource Area Determination (HRAD) has been issued delineating the location a wetland, the boundaries of said wetland as identified shall govern. However, the buffer shall be 300 feet irrespective of the buffer identified in the LOI.
    - b) With respect to any wetlands and other Highlands Open Waters features not mapped in Exhibit 3, each shall include a 300-foot wide protection buffer measured from a delineated wetlands line described in a LOI, from a field-delineated boundary line for other features, or as indicated by a Highlands Resource Areas Determination (HRAD) issued by the NJDEP.
    - c) Any lawful pre-existing structure or improvement located within a Highlands Open Waters protection buffer area may remain and be maintained or rehabilitated, provided that the existing area of disturbance attributed to or associated with such structure or improvement shall not be increased.
    - d) Disturbances of Highlands Open Waters buffers located in the Existing Community Zone are permitted in previously disturbed areas as follows.
      - (i) Agricultural & Horticultural Land Uses. For purposes of Highlands Open Water buffer disturbances in the Existing Community Zone, existing agricultural and horticultural uses, whether or not under active management or operation, shall not be considered “previously disturbed” buffer areas with regard to uses for non-agricultural development.
      - (ii) Any disturbance in a previously disturbed buffer must be accompanied by the finding that there will be no net loss of functional value of the buffer. This may include the use of mitigation and restoration of the Highlands Open Water Buffer.
        - (a) If existing land uses create a natural or developed barrier to the buffer, then the buffer may be considered to be developable.
    - e) Protection and Conservation Zone Standards: Disturbances of Highlands Open Waters buffers located in the Protection and Conservation Zone are permitted in previously disturbed areas but in no case shall the remaining buffer be reduced to less than 150 feet from the edge of Highlands Open Waters.
      - (i) Agricultural & Horticultural Land Uses. For purposes of Highlands Open Water buffer disturbances in the Protection and Conservation Zone, existing agricultural and horticultural uses, whether or not under active management or operation, shall not be considered “previously disturbed” buffer areas with regard to uses for non-agricultural development.

- (ii) Any proposed disturbances must demonstrate full utilization of the following performance standards in the listed order, to demonstrate the necessity of an encroachment into Highlands Open Waters buffers:
    - (a) avoid the disturbance of Highlands Open Waters buffers;
    - (b) minimize impacts to Highlands Open Waters buffers; and
    - (c) mitigate all adverse impacts to Highlands Open Waters buffers so that there is no net loss of the functional value of the buffer.
- B. Riparian Area Standards: Disturbance of any portion of a Highlands Riparian Area, as shown in Exhibit 4, in the Protection Zone is prohibited except for linear development, which shall be permitted only where it has been shown that there is no feasible alternative for the linear development outside of the Riparian Area.
  - 1. To address the “no feasible alternative for linear development” standard, the applicant shall demonstrate that there is no other location, design or configuration for the proposed linear development that would reduce or eliminate the disturbance of Riparian Area
  - 2. For proposed linear development that would provide access to an otherwise developable lot, the applicant shall in addition, show that:
    - a) The proposed linear development is the only point of access for roadways or utilities to an otherwise developable lot; and
    - b) Shared driveways are used to the maximum extent possible to access multiple lots.
    - c) An alternative shall not be excluded from consideration under this subsection merely because it includes or requires an area not owned by the applicant that could reasonably be obtained, utilized, expanded, or managed in order to fulfill the basic purpose of the proposed linear development.

## VII: Critical Habitat

- A. The location, extent and type of Critical Wildlife Habitat and Certified Vernal Pools are those areas defined in Section VXII and identified by the NJDEP. Details on the areas may be found on the Highlands Council’s interactive map or through the NJDEP.
- B. Critical Wildlife Habitat
  - 1. No disturbance is permitted in any Critical Wildlife Habitat as defined in Section XVII accept in accordance with the following:
  - 2. A Critical Wildlife Habitat area may be disturbed where a Habitat Suitability Analysis conducted by a qualified professional has been submitted to the Land Use Board, which shall review and confirm findings that:
    - a) The nature of the site is such that it does not provide habitat for species of concern;
    - b) The species of concern are not present on the site during any critical part of their life cycle, do not depend upon the site for food, shelter or breeding, and the habitat or the site is either unsuitable or not critical to species’ recovery in the Region; or
    - c) Existing land uses present a human, natural or development barrier to the use of the site by species of concern.
    - d) Avoidance of disturbance to species of concern can be achieved through adherence to commonly accepted, species-specific timing restrictions including but not limited limitations on the timing of tree clearing, site disturbance and project development.
  - 3. Where disturbance of any Critical Wildlife Habitat has not been confirmed to be in accordance with the above standards, no disturbance shall be authorized without prior written approval of the Highlands Council.

### C. Certified Vernal Pools

1. No disturbance is permitted in any 300-meter buffer of a certified vernal pool.
2. A Critical Wildlife Habitat area may be disturbed where a Habitat Suitability Analysis conducted by a qualified professional has been submitted to the Land Use Board, which shall review and confirm findings that:
  - a) The nature of the buffer is such that it does not provide habitat for species of concern;
  - b) The species of concern are not present within the buffer during any critical part of their life cycle, do not depend upon the site for food, shelter or breeding, and the habitat or the site is either unsuitable or not critical to species' recovery in the Region; or
  - c) Existing land uses create a natural or developed barrier to the use of the buffer by species of concern.
  - d) Avoidance of disturbance to species of concern can be achieved through adherence to commonly accepted, species-specific timing restrictions including but not limited limitations on the timing of tree clearing, site disturbance and project development.

## VIII: Steep Slopes

- A. Severely Constrained and Moderately Constrained Slopes as defined herein shall be calculated at the time of application submission and are hereby made a mandatory submission item for any application that falls under the applicability thresholds of this ordinance.
- B. Disturbance of Severely Constrained and Moderately Constrained Slopes is prohibited, with the exception of that required in connection with a linear development. Such linear development, however, shall be permitted only in the event that there is no feasible alternative for such development outside of the Severely Constrained or Moderately Constrained Slopes.
- C. To address the “no feasible alternative for linear development” standard, the applicant shall demonstrate that there is no other location, design or configuration for the proposed linear development that would reduce or eliminate the disturbance of Severely Constrained or Moderately Constrained Slopes. For proposed linear development that would provide access to an otherwise developable lot, the applicant shall in addition, show that:
  1. The proposed linear development is the only point of access for roadways or utilities to an otherwise developable lot; and
  2. Shared driveways are used to the maximum extent possible to access multiple lots.
  3. An alternative shall not be excluded from consideration under this subsection merely because it includes or requires an area not owned by the applicant that could reasonably be obtained, utilized, expanded, or managed in order to fulfill the basic purpose of the proposed linear development.
- D. The reviewing municipal authority shall not approve any application pursuant to this subsection if, after review of the information submitted to support an approval, it finds that there is a reasonable alternative to the proposed linear development.

## IX: Prime Groundwater Recharge Areas

- A. Disturbance of Prime Ground Water Recharge Area (PGWRA), as shown in Exhibit 7, by any regulated development is prohibited and shall be permitted only upon a finding by the reviewing board that the proposal complies with the provisions of this subsection.

- B. Development shall not occur in PGWRA unless either, the entirety of the subject property is located within a Prime Ground Water Recharge Area and thus cannot be avoided, or the disturbance represents the only viable alternate means to avoid Critical Habitat, Highlands Open Waters buffers, Vernal Pool Buffers, Moderately Constrained Steep Slopes, or Severely Constrained Steep Slopes, to the extent that these resources are also present upon the subject property.
- C. Where total avoidance is not feasible, total recharge area disruption (i.e., alteration of natural recharge patterns or volumes) shall not exceed 15% of the PGWRA located within the affected parcels, placed where feasible on those parts of the PGWRA having the lowest relative recharge rates and the least potential for aquifer recharge based upon site analysis.
- D. Low Impact Development practices shall be used in the design of the development proposal to reduce total recharge disruption to the minimum feasible, within the 15% cap.
- E. Any development application involving disturbance of a PGWRA shall be accompanied by a mitigation plan, providing for an equivalent of 125% of pre-construction recharge volumes for that portion of the PGWRA that will be disturbed. The recharge mitigation shall occur within the following areas, in order of priority: (1) the same development site to the maximum extent feasible; (2) the same HUC14 subwatershed; or (3) where no feasible option exists in the same HUC14 subwatershed, an interrelated HUC14 subwatershed approved by the Highlands Council.

## **X: Septic Density**

- A. Nothing herein shall be deemed to apply to the replacement or repair of an existing septic system.
- B. Planning Area. All development proposing new or increased demand for septic system capacity in the Planning Area shall be regulated in accordance with this subsection. The following are gross septic density requirements and shall not modify any minimum lot size requirements contained in the Borough of Washington land development ordinance. Every development shall provide for a minimum acreage for each dwelling unit (or equivalent) as noted below.
  - 1. Septic System Density Allowances. Septic system density (gross acres per septic system) shall not exceed the following allowances, for each Highlands Zone:
    - a) Existing Community Zone: 10 acres/septic system
    - b) Conservation Zone: 11 acres/septic system
    - c) Protection Zone: 29 acres/septic system
  - 2. These allowances indicate the minimum acreage required per septic system, where that system is designed for a one-family household generating a maximum flow of 300 gallons of wastewater per day. The resulting acreage shall be applied as the minimum average acreage necessary to support every 300 gallons of daily wastewater flow generated by any proposed use where the unit/square footage figures below shall be applied as 300 gallon-per-day equivalents.
  - 3. Equivalent Yields. The following unit/square footage figures shall be applied as 300 gallon-per-day equivalents:
    - a) Residential Uses (All Types, except as provided below) – 1 dwelling unit
    - b) Deed-Restricted Senior Citizen Residential Units, or Mobile Home Parks with dwelling units less than 500 square feet in size – 1.5 dwelling units
    - c) Office and Commercial Uses – 2,400 square feet of floor area
    - d) Industrial (Including Warehousing/Distribution) Uses – 18,182 square feet of floor area (Excluding Process Wastewater Flow)

- e) Specific Non-Residential Uses by Facility Type – In lieu of iii., or iv., above, 300 gallon-per-day equivalents may be computed based on the average sewage volumes provided in N.J.A.C. 7:9A-7.4.]

## **XI: New or Extended Water and Wastewater Infrastructure**

- A. ***Planning Area – Protection Zone, Conservation Zone, and Environmentally-Constrained Sub-Zones.*** New, expanded or extended public water supply systems, public wastewater collection and treatment systems, and community on-site wastewater treatment facilities are prohibited unless approved through a waiver to address a documented threat to public health and safety, for a Highlands Redevelopment Area or Takings Waiver (RMP Policies 7G1 and 7G2) or to serve a cluster development that meets the requirements of RMP Objective 2J4b.
- B. ***Planning Area – Existing Community Zone (excluding Environmentally-Constrained Sub-Zone).*** Expansion or creation of public water supply systems, public wastewater collection and treatment systems, and community on-site wastewater treatment facilities are permitted: to serve lands which are appropriate for designated TDR Receiving Zones, infill development, or redevelopment; to address public health and safety; or to serve new areas for development.

## **XII: Net Water Availability**

- A. Water Conservation Requirements. All development proposals shall incorporate, as applicable, the following water conservation measures to promote sound resource use, reduce supply deficits, and reduce the need for additional utility infrastructure:
  1. No irrigation systems should be utilized. Where required, they must provide automatic controls based on rain sensors (or soil moisture) for all new and replacement lawn irrigation systems, as required by the electrical subcode at N.J.A.C. 5:23-3.16;
  2. Design all non-potable irrigation water uses to ensure that only the necessary amounts of water are used to achieve optimum plant growth, to the maximum extent practicable;
  3. Provide for internal recycling or beneficial reuse of reclaimed water in new commercial development projects, to the maximum extent practicable;
  4. Rely on stormwater for irrigation purposes to the maximum extent practicable, including but not limited to methods recommended by the U.S. Green Building Council through its Leadership in Energy and Environmental Design (LEED) program;
  5. Reduce water losses to the maximum extent practicable, in the rehabilitation of on-site water supply utility infrastructure, through such means as application of American Water Works Association/International Water Association water loss analysis methods (AWWA Manual M-36 or most recent version).
- B. The following shall apply for any development application proposing a new or increased use of potable or non-potable water averaging 6,000 gallons per day or more, derived from: a) any groundwater source in a Highlands Area HUC14 subwatershed, whether through a public community or non-community water supply system well, a non-public well, or an individual private well; or b) any surface water source in a Highlands Area HUC14 subwatershed that is not associated with a safe yield determined by the NJDEP through a water allocation permit.
  1. Where a Highlands Council-approved Water Use and Conservation Management Plan has been adopted, any development application involving the use of water derived from a subwatershed(s) with a deficit net water availability as shown in the Exhibit 4 shall be regulated fully in accordance with the requirements of such Plan.

2. Absence of Water Use and Conservation Management Plan: No application shall be deemed complete or considered for review by the applicable Board until or unless the Highlands Council has determined that the proposed water use will not exceed the remaining Net Water Availability for the source HUC14 subwatershed(s).

#### **XIV. Affordable Housing**

- A. In accordance with the requirements of the Fair Housing Act, any development consisting of newly constructed residential units shall reserve for occupancy at least 20 percent (20%) of the residential units constructed for low- or moderate-income households.
- B. Development exempt from the Highlands Act is not exempt from the 20% reservation requirement.
- C. A minimum of 13% of the total units residential units reserved for low- or moderate-income households should be designated for very low-income households pursuant to section 7 of P.L.2008, c.46 (C.52:27D-329.1).
- D. No density bonus or presumptive density increase over existing zoning shall be required to be granted by the municipality for the construction of the affordable housing units on site. Density bonuses or presumptive density increases may be provided through Fair Share Plans and associated implementing ordinances to address affordable housing needs of the municipality where inclusionary housing projects are selected as a compliance mechanism by the municipality.
- E. Municipalities shall provide for the local review of any proposed affordable units provided by requiring the submission of an Affordable Housing Production Plan in accordance with the following:
  1. An Affordable Housing Production Plan detailing all issues related to the affordable units shall be submitted to the municipality's Development Review Board at the time application is made for any development requiring affordable housing pursuant to this ordinance.
  2. The Affordable Housing Production Plan shall be a condition of the completeness determination and is hereby added to the submission requirements checklist for any new residential development or major residential subdivision.
  3. The Affordable Housing Production Plan shall include at a minimum the anticipated bedroom distribution, income split, anticipated administrative entity, tenure, estimated rent or sales prices, maintenance obligations and any other information pertinent to the creation and long-term support of the affordable housing units.
  4. The Affordable Housing Production Plan shall include a phasing plan detailing the proposed time frames for the construction and occupation of the affordable housing units.
  5. All Affordable Housing Production Plans shall be the subject of review by the municipality's Planning or Land Use Board for consistency with these guidelines, the RMP, and the municipalities certified Housing Element and Fair Share Plan.
  6. Compliance with the RMP, the Fair Housing Act and the Affordable Housing Production Plan shall be a condition of any local approval.
- F. Any approval shall be accompanied by a development agreement between the applicant, the municipality, and any other party principal to the provision and/or the administration of the affordable housing units.
  1. The development agreement shall detail the responsibilities of all parties and shall include the phasing plan for the construction and occupancy of the affordable housing units.

2. The cost of the construction of the units may be required to be covered by appropriate performance and/or maintenance guarantees to ensure the construction of the units.

## **XVI. Waivers and Exceptions**

In addition to any variance relief required under the Municipal Land Use Law, relief from sections V. (Prohibited Uses), XI. (Septic Density) and XII. (New or Extended Water and Wastewater Infrastructure) of this Ordinance shall require issuance of a Highlands Act waiver. Highlands Act waivers may be issued only by the NJDEP or the Highlands Council in accordance with the respective rules and criteria established by each agency in accordance with the provisions of the NJDEP Highlands Area Rules, the Highlands Act and the Highlands Regional Master Plan. The issuance of a Highlands Act Waiver shall in no case be construed to alter or obviate the requirements of any other applicable State or local laws, rules, regulations, development regulations, or ordinances.

## **XVII. Definitions**

For the purpose of this Ordinance, the following terms, phrases, words, and their derivations shall have the meanings stated herein unless their use in the text of this Ordinance clearly demonstrates a different meaning. When not inconsistent with the context, words used in the present tense include the future, words used in the plural number include the singular number, and words used in the singular number include the plural number. The word “shall” is always mandatory and not merely directory.

**Application for Development** – means the application form and all accompanying documents required by ordinance for approval of a subdivision plat, site plan, planned development, conditional use, zoning variance, or direction of the issuance of a permit pursuant to section 25 or section 27 of P.L.1975, c.291 (C.40:55D-34 or C.40:55D-36).

**Critical Wildlife Habitat** - means within the Planning Area, Critical Wildlife Habitat consists of those areas within NJDEP’s Landscape Project Version 3.3 (or more recent version as amended) that are Landscape Rank 3 through 5. In addition, it includes areas that are designated Landscape Rank 2 and have a Highlands Conservation Rank of Critically Significant or Significant. Parcel level mapping may be found on the Highlands Council’s interactive map available through the Highlands Council website.

**Development** – means the division of a parcel of land into two or more parcels, the construction, reconstruction, conversion, structural alteration, relocation, or enlargement of any building or other structure, or of any mining excavation or landfill, and any use or change in the use of any building or other structure, or land or extension of use of land, for which permission may be required pursuant to the MLUL.

**Disturbance** – means the placement of impervious surface, the exposure or movement of soil or bedrock, or the clearing, cutting, or removing of vegetation.

**Disturbance, Ultimate** – means the total existing or proposed area of disturbance of a lot, parcel, or other legally designated (or otherwise legally recognized) tract or subdivision of land, for the purpose of, and in connection with, any human activity, property improvement, or development, including the surface area of all buildings and structures, all impervious surfaces, and all associated

land disturbances such as excavated, filled, and graded areas, and all lawn and landscape areas. Ultimate disturbance shall not include areas of prior land disturbance which at the time of evaluation: a) contain no known man-made structures (whether above or below the surface of the ground) other than such features as old stone rows or farm field fencing; and b) consist of exposed rock outcroppings, or areas which, through exposure to natural processes (such as weathering, erosion, siltation, deposition, fire, flood, growth of trees or other vegetation) are no longer impervious or visually obvious, or ecologically restored areas which will henceforth be preserved as natural areas under conservation restrictions.

**Forest** – means a biological community as determined by the method set forth under the NJDEP Highlands Rules, at N.J.A.C. 7:38-3.9.

**Highlands Council** – means the New Jersey Highlands Water Protection and Planning Council.

**Highlands Act** – means the Highlands Water Protection and Planning Act, P.L. 2004, c.120, as amended, codified in part at N.J.S.A. 13:20-1 *et seq.*

**Highlands Area** – means that portion of the municipality for which the land use planning and regulation are, or are intended or proposed to be, in conformance with the Highlands Regional Master Plan.

**Highlands Open Waters** – means all springs, streams including intermittent streams, wetlands, and bodies of surface water, whether natural or artificial, located wholly or partially within the boundaries of the Highlands Region, but not including swimming pools. Highlands Open Waters include seeps, lakes, ponds, and vernal pools; all categories (including springs, streams, and wetlands) as described and identified in Exhibit 3, entitled “Washington Borough Open Water Buffers,” or subsequently identified or modified by a Letter of Interpretation issued by the New Jersey Department of Environmental Protection.

**Highlands Region** – means all that area within the boundaries of the municipalities listed in subsection a. of section 7 of the Highlands Act.

**Highlands Resource Area Determination (HRAD)** – means a formal determination issued by the NJDEP that confirms the presence or absence of a Highlands Resource Area on a site, and if present, its location and applicable boundary lines. A person may apply for an HRAD only, or in connection with an application for an HPAA.

**Impervious Surface** – means any structure, surface, or improvement that reduces or prevents absorption of stormwater into land, including, but not limited to, porous paving, paver blocks, gravel, crushed stone, decks, patios, elevated structures, and other similar structures, surfaces, or improvements.

**Impervious Surfaces, Cumulative** – means the total area of all existing or proposed impervious surfaces situated or proposed to be situated within the boundary lines of a lot, parcel, or other legally recognized subdivision of land, expressed either as a measure of land area such as acreage, or square feet, or as a percentage of the total lot or parcel area.

**Major Potential Contaminant Sources (PCS)** – means land uses and activities determined by the Highlands Council to pose a major risk of ground water contamination (see Appendix A).

**Minor Potential Contaminant Sources (PCS)** – means land uses and activities determined by the Highlands Council to pose a minor risk of ground water contamination (see APPENDIX B).

**Municipal Land Use Law (MLUL)** – means the New Jersey Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq.

**NJDEP** – means the New Jersey Department of Environmental Protection

**NJDEP Highlands Area Rules** – means the regulations established by the NJDEP to implement requirements of the Highlands Act, titled “Highlands Water Protection and Planning Act Rules,” and codified at N.J.A.C. 7:38-1 et seq.

**Planning Area** – means lands within the Highlands Region not within the Preservation Area (N.J.S.A. 13:20-7).

**Plan Conformance** – means the process by which a municipality revises the master plan, development regulations and other regulations related to the development and use of land to conform them with the goals, requirements, and provisions of the Regional Master Plan in accordance with the Highlands Plan Conformance Procedures.

**Prime Ground Water Recharge** - means those lands designated in the Regional Master Plan as being within a HUC14 subwatershed that most efficiently provide, in the aggregate, 40 percent of total drought recharge volume for the HUC14 subwatershed.

**Qualified Environmental Professional** - means someone who possesses sufficient specific education, training, and experience necessary to exercise professional judgment to develop opinions and conclusions.

**Regional Master Plan (RMP)** – means the Highlands Regional Master Plan or any revision thereof adopted by the Highlands Council pursuant to N.J.S.A. 13:20-8.

**Residential Development** – means development dedicated to the creation of new dwelling units or the improvement or expansion of existing dwelling units, whether by new construction or conversion of existing building areas or portions thereof, to dwelling use, including any type of residential structure whether a single-family home (including group home), duplex, townhouse, apartment or any other form of multi-family housing construction. For purposes of this ordinance, residential development shall include property improvements associated with and either, required in support of or customarily accessory to, the residential use, including but not limited to porches, patios, decks, driveways, garages, storage sheds, swimming pools, tennis courts, drywells, utility facilities, septic systems, yard grading and retaining walls.

**Riparian Area** - means areas adjacent to and hydrologically interconnected with Highlands Open Waters rivers and streams consisting of flood prone areas, wetlands, soils that are hydric, alluvial, or have a shallow depth to ground water, and including wildlife passage corridors within 300 feet of surface Highlands Open Waters features.

**Slopes, Moderately Constrained** – means all forested non-Riparian Area lands having a slope of 15% to less than 20%.

**Slopes, Severely Constrained** – means all lands having slopes of 20% or greater and all lands within Riparian Areas having slopes of 10% and greater.

**Structure** – means a combination of materials to form a construction for occupancy, use or ornamentation whether installed on, above, or below the surface of a parcel of land.

**Vernal Pool** - means a NJDEP-certified vernal pool plus a 300-meter-wide protection buffer surrounding the perimeter of each such pool. Vernal Pools consist of confined, ephemeral wet

depressions that support distinctive, and often endangered, species that are specially adapted to periodic extremes in water pool levels.

**Appendix A: MAJOR POTENTIAL CONTAMINANT SOURCES**

Land uses and activities determined by the Highlands Council (based on New Jersey Safe Drinking Water Act regulations at N.J.A.C. 7:10 and NJDEP regulations) to be Major Potential Contaminant Sources include those listed below.

1. Underground fuel and chemical storage and oil tanks regulated by NJDEP under provisions of the Underground Storage of Hazardous Substances Act (N.J.S.A. 58:10A-21 et seq.).
2. Above-ground storage facility for a hazardous substance or waste with a cumulative capacity greater than 2,000 gallons.
3. Automotive service center (repair & maintenance).
4. Dry cleaning processing facility.
5. Road salt storage facility.
6. Cemetery.
7. Highway maintenance yard.
8. Truck, bus, locomotive maintenance yard.
9. Site for storage and maintenance of heavy construction equipment and materials.
10. Site for storage and maintenance of equipment and materials for landscaping, excluding household storage and maintenance of such equipment.
11. Livestock operation containing 300 or more Animal Units (AU) [1 AU= 1000 pounds of live animal weight] as defined by the NJ Department of Agriculture in its Criteria and Standards for Animal Waste Management, at NJAC 2:91.
12. Quarrying and/or mining facility.
13. Asphalt and/or concrete manufacturing facility.
14. Junkyard/auto recycling and scrap metal facility.
15. Residential or agricultural motor fuel in NJDEP exempted underground storage tanks (i.e., under 1,000 gallons).

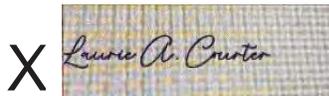
**Appendix B: MINOR POTENTIAL CONTAMINANT SOURCES**

Land uses and activities determined by the Highlands Council (based on New Jersey Safe Drinking Water Act regulations at N.J.A.C. 7:10 and NJDEP regulations) to be Minor Potential Contaminant Sources include the following:

1. Underground storage of hazardous substances or waste of less than 50 gallons.
2. Underground heating oil storage tank with a capacity of less than 2,000 gallons.
3. Sewage treatment facility regulated by a NJPDES permit granted under NJAC 7:14A.
4. Industrial waste line.
5. Septic system disposal field.
6. Facility requiring a ground water discharge permit issued by the NJDEP pursuant to N.J.A.C 7:14A et seq.
7. Stormwater retention-recharge basin on an industrial property receiving runoff from surfaces other than roof areas.
8. Dry well on an industrial property receiving runoff from surfaces other than roof areas.
9. Waste oil collection, storage and recycling facility.
10. Agricultural chemical bulk storage and mixing or loading facility including crop dusting facilities.
11. Above-ground storage of hazardous substances or waste in quantities of less than 2,000 gallons.
12. Livestock operation containing 8 or more Animal Units (AU) [1 AU= 1000 pounds of live animal weight] or those receiving 142 or more tons of animal waste per year as defined by the NJ Department of Agriculture pursuant to its Criteria and Standards for Animal Waste Management, at NJAC 2:91.

Adopted: December 17, 2024

 Recoverable Signature



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Laurie A. Courter  
Borough Clerk  
Signed by: e6b8ace5-a628-410e-a933-111f1ec968b9

Distribution:  
Land Use Board  
Planner

**Appendix P**

**Highlands Council Letter Deeming**

**Conformance Ordinance Consistent and Complete**



PHILIP D. MURPHY  
Governor

TAHESHA L. WAY  
Lieutenant Governor

# State of New Jersey

## HIGHLANDS WATER PROTECTION AND PLANNING COUNCIL

100 North Road (Route 513)  
Chester, New Jersey 07930-2322  
(908) 879-6737  
(908) 879-4205 (fax)  
[www.nj.gov/njhighlands](http://www.nj.gov/njhighlands)



CARL J. RICHKO  
Chairman

BENJAMIN L. SPINELLI, ESQ.  
Executive Director

March 20, 2025

### VIA EMAIL ONLY:

The Honorable Louann Cox  
Washington Borough  
100 Belvidere Avenue  
Washington, NJ 07882-1426

Subject: Task 6: Highlands Municipal Ordinance Adoption  
Amended Plan Conformance Grant #21-033-011-2121

Dear Mayor Cox:

On behalf of the Highlands Water Protection and Planning Council (Highlands Council), I am pleased to advise you that the Borough of Washington has provided all deliverables required under the Plan Conformance Grant for the completion and adoption of Highlands Municipal Ordinance Adoption (Task 6). The submitted deliverables have been deemed technically complete and consistent with the Highlands Regional Master Plan. As such, the Highlands Council would like to invite the Borough to submit all corresponding invoices at this time. The available balance for the completion of the study is \$10,000.

For questions regarding grant funding or reimbursement of expenditures, please contact Herbert August, Manager of Grants Administration ([herbert.august@highlands.nj.gov](mailto:herbert.august@highlands.nj.gov)). For all other issues related to plan conformance, please contact your Highlands liaison, Corey Piasecki ([corey.piasecki@highlands.nj.gov](mailto:corey.piasecki@highlands.nj.gov)). Should you or other Borough officials wish to discuss any other Highlands-related matter, I remain available to you as well and can be reached by e-mail at [ben.spinelli@highlands.nj.gov](mailto:ben.spinelli@highlands.nj.gov). We look forward to continued collaboration with you in the important efforts to protect and preserve the Highlands Region.

Sincerely,

Benjamin L. Spinelli, Esq.  
Executive Director

c: Brian Bond, Borough Manager  
Natasha Turchan, Borough CFO



*New Jersey Is an Equal Opportunity Employer*

**Appendix Q1**  
**Washington Borough Council**  
**Resolution Appointing Administrative Agent**

**RESOLUTION 2021-27  
OF THE COUNCIL OF THE  
BOROUGH OF WASHINGTON, COUNTY OF WARREN  
STATE OF NEW JERSEY  
APPOINTING HEYER, GRUEL AND ASSOCIATES AS THE ADMINISTRATIVE  
AGENT FOR THE BOROUGH OF WASHINGTON**

**WHEREAS**, under authorization of the New Jersey Fair Housing Act (N.J.S.A. 52:27D-301, et seq., the Borough of Washington is implementing a program to provide affordable housing units to very low, low- and moderate-income households within the Borough; and

**WHEREAS**, the Borough's Affordable Housing Ordinance sets forth the duties of the administrative agent pursuant to N.J.A.C. 5:80-26.14 et seq. that requires the affordability controls of affordable housing units be administered by an administrative agent acting on behalf of a municipality; and

**WHEREAS**, the Borough of Washington has selected Heyer, Gruel & Associates to be the administrative agent for the purposes of providing affordability control services for all affordable housing within the Borough.

**NOW THEREFORE BE IT RESOLVED**, by the Mayor and Council of the Borough of Washington in the County of Warren, and the State of New Jersey that Heyer, Gruel & Associates is hereby appointed by the Borough Council of Washington as the Administrative Agent for the administration of the affordability controls of the Borough's housing program.

**Certification**

*I, Laurie A. Barton, Clerk of the Borough of Washington, County of Warren, State of New Jersey, do hereby certify that the foregoing Resolution is a true and exact copy of a Resolution adopted by the Borough Council of The Borough of Washington on January 19, 2021*

 Recoverable Signature



Laurie A. Barton, RMC  
Borough Clerk

Signed by: 8c4b9517-0c3e-44f0-bd31-3e56b3cad3f3

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal of the Borough this

19<sup>th</sup> day of \_\_\_\_\_ January \_\_\_\_\_, 2021.

**Appendix Q2**  
**Washington Borough Council**  
**Resolution Appointing Municipal Housing Liaison**

**Appendix Q3**

**Washington Borough Council Resolution**

**Adopting Affirmative Marketing Plan +**

**Affirmative Marketing Plan**

**RESOLUTION 2020-99**  
**BOROUGH COUNCIL – BOROUGH OF WASHINGTON**  
**WARREN COUNTY, NEW JERSEY**

**RESOLUTION ADOPTING THE ‘AFFIRMATIVE MARKETING PLAN’**  
**FOR THE BOROUGH OF WASHINGTON**

**WHEREAS**, in accordance with the New Jersey Uniform Housing Affordability Controls pursuant to N.J.A.C. 5:80-26-1, *et seq.*, the Borough of Washington is required to adopt an Affirmative Marketing Plan to ensure that all affordable housing units created, including those created by the rehabilitation of rental housing units within the Borough of Washington, are affirmatively marketed to low- and moderate-income households within Housing Region 2, the COAH Housing Region encompassing the Borough of Washington.

**BE IT RESOLVED**, that the Borough Council of the Borough of Washington in the County of Warren, and the State of New Jersey does hereby adopt the following Affirmative Marketing Plan:

**Affirmative Marketing Plan**

- A. All affordable housing units in the Borough of Washington shall be marketed in accordance with the provisions herein.
- B. This Affirmative Marketing Plan shall apply to all developments that contain or will contain very low-, low- and moderate-income units, including those that are part of the Borough’s prior round Fair Share Plan and its current Fair Share Plan and those that may be constructed in future developments not yet anticipated by the Fair Share Plan. This Affirmative Marketing Plan shall also apply to any rehabilitated rental units that are vacated and re-rented during the applicable period of controls for rehabilitated rental units.
- C. The Affirmative Marketing Plan shall be implemented by one or more Administrative Agent(s) designated by and/or under contract to the Borough of Washington. All of the costs of advertising and affirmatively marketing affordable housing units shall be borne by the developers/sellers/owners of affordable unit(s), and all such advertising and affirmative marketing shall be subject to approval and oversight by the designated Administrative Agent.
- D. In implementing the Affirmative Marketing Plan, the Administrative Agent, acting on behalf of the Borough of Washington, shall undertake, at the minimum, all of the following strategies:

1. Publication of an advertisement in one or more newspapers of general circulation within the housing region.
  2. Posting of an advertisement on the Borough of Washington's official municipal website.
  3. At least one additional regional marketing strategy using one of the other sources listed below.
- E. The Affirmative Marketing Plan is a regional marketing strategy designed to attract buyers and/or renters of all majority and minority groups, regardless of race, creed, color, national origin, ancestry, marital or familial status, gender, affectional or sexual orientation, disability, age or number of children to housing units which are being marketed by a developer or sponsor of affordable housing. Pursuant to N.J.S.A. 40:37A-114.1, preference for affordable housing within a housing project may be provided to homeless veterans, disabled veterans, and family members who are the primary residential caregivers to disabled veterans residing with them. The Affirmative Marketing Plan is also intended to target those potentially eligible persons who are least likely to apply for affordable units in that region. It is a continuing program that directs all marketing activities toward the COAH Housing Region in which the municipality is located and covers the entire period of the deed restriction for each restricted housing unit. The Borough of Washington is located in COAH Housing Region 2, consisting of Essex, Morris, Union, and Warren Counties.
- F. The Affirmative Marketing Plan is a continuing program intended to be followed throughout the entire period of restrictions and shall meet the following requirements:
1. All newspaper articles, announcements and requests for applications for very low, low- and moderate-income units shall appear in the *Star Ledger*, *Star Gazette*, and *Express Times*.
  2. The primary marketing shall take the form of at least one press release and a paid display advertisement in the above newspapers once a week for four consecutive weeks. Additional advertising and publicity shall be on an "as needed" basis. The developer/owner shall disseminate all public service announcements and pay for display advertisements. The developer/owner shall provide proof of all publications to the Administrative Agent. All press releases and advertisements shall be approved in advance by the Administrative Agent.
  3. The advertisement shall include a description of the:
    - a. Location of the units;
    - b. Directions to the units;
    - c. Range of prices for the units;

- d. Size, as measured in bedrooms, of units;
  - e. Maximum income permitted to qualify for the units;
  - f. Location of applications;
  - g. Business hours when interested households may obtain an application; and
  - h. Application fees.
4. The developer must provide satisfactory proof of public dissemination. See “Attachment A” COAH’s *Affirmative Fair Housing Marketing Plan for Affordable Housing in Region 2* (attached to and hereby made part of this Resolution).
- G. Applications, brochure(s), sign(s) and/or poster(s) used as part of the affirmative marketing program shall be available/posted in the following locations:
1. Borough Hall of Washington Borough
  2. Washington Borough Web Site
  3. Morris County Administration Building
  4. Essex County Administration Building
  5. Union County Administration Building
  6. Warren County Administration Building
  7. Morris County Library.
  8. Essex County Library
  9. Union County Library
  10. Warren County Library

Applications shall be mailed by the Administrative Agent and Municipal Housing Liaison to prospective applicants upon request. Also, applications shall be available at the developer’s sales/rental office and multiple copies of application forms shall be mailed to Fair Share Housing Center (510 Park Boulevard, Cherry Hill, NJ 08002), the New Jersey State Conference of the NAACP, the New Brunswick, Plainfield Area, Perth Amboy,

Warren/Sussex, and Metuchen/Edison branches of the NAACP, the Latino Action Network (P.O. Box 943, Freehold, NJ 07728), NORWESCAP, the Supportive Housing Association, and the Central Jersey Housing Resource Center for dissemination to their respective constituents.

H. The Administrative Agent shall develop, maintain and update a list of community contact person(s) and/or organizations(s) in Morris, Essex, Union, and Warren Counties that will aid in the affirmative marketing program with particular emphasis on contacts that will reach out to groups that are least likely to apply for housing within the region, including major regional employers identified in Attachment A, Part III, Marketing, Section 3d of COAH's *Affirmative Fair Housing Marketing Plan for Affordable Housing in Region 2* (attached to and hereby made part of this Resolution) as well as the following entities: Fair Share Housing Center, the New Jersey State Conference of the NAACP, the New Brunswick, Plainfield Area, Perth Amboy, Warren/Sussex, and Metuchen/Edison branches of the NAACP, the Latino Action Network, NORWESCAP, the Supportive Housing Association, and the Central Jersey Housing Resource Center.

1. Quarterly informational flyers and applications shall be sent to each of the following agencies for publication in their journals and for circulation among their members:

Morris County Board of Realtors  
Essex County Board of Realtors  
Union County Board of Realtors  
Warren County Board of Realtors

2. Quarterly informational circulars and applications shall be sent to the administrators of each of the following agencies within the counties of Morris, Essex, Union, and Warren:

Warren County Division of Temporary Assistance and Social Services  
New Jersey Rental Assistance Program  
New Jersey Division of Aging Services  
Warren County Division of Aging and Disability Services  
Warren Housing Authority

3. Quarterly informational circulars and applications shall be sent to the chief personnel administrators of all of the major employers within the region, as listed on Attachment A, Part III, Marketing, Section 3e.

4. In addition, specific notification of the availability of affordable housing units in Washington (along with copies of the application form) shall be provided to the following entities: Fair Share Housing Center (510 Park Boulevard, Cherry Hill, NJ 08002), the New Jersey State Conference of the NAACP, the New Brunswick, Plainfield Area, Perth Amboy, Warren/Sussex, and Metuchen/Edison branches of

the NAACP, the Latino Action Network (P.O. Box 943, Freehold, NJ 07728), NORWESCAP, the Supportive Housing Association, and the Central Jersey Housing Resource Center (600 First Avenue, Suite 3, Raritan, NJ 08869).

- I. A random selection method to select occupants of very low, low- and moderate-income housing will be used by the Administrative Agent, in conformance with N.J.A.C. 5:80-26.16 (l). The Affirmative Marketing Plan shall provide a regional preference for very low, low- and moderate-income households that live and/or work in COAH Housing Region 2, comprised of Morris, Essex, Union and Warren Counties. Pursuant to the New Jersey Fair Housing Act (N.J.S.A.52:27D-311), a preference for very low, low- and moderate-income veterans duly qualified under N.J.A.C. 54:4-8.10 may also be exercised, provided an agreement to this effect has been executed between the developer or landlord and the Borough prior to the affirmative marketing of the units.
- J. The Administrative Agent shall administer the Affirmative Marketing Plan. The Administrative Agent has the responsibility to income qualify very low, low and moderate income households; to place income eligible households in very low, low and moderate income units upon initial occupancy; to provide for the initial occupancy of very low, low and moderate income units with income qualified households; to continue to qualify households for re-occupancy of units as they become vacant during the period of affordability controls; to assist with outreach to very low, low and moderate income households; and to enforce the terms of the deed restriction and mortgage loan as per N.J.A.C 5:80-26-1, *et seq.*
- K. The Administrative Agent shall provide or direct qualified very low, low- and moderate-income applicants to counseling services on subjects such as budgeting, credit issues, mortgage qualifications, rental lease requirements and landlord/tenant law and shall develop, maintain and update a list of entities and lenders willing and able to perform such services.
- L. All developers/owners of very low, low- and moderate-income housing units shall be required to undertake and pay the costs of the marketing of the affordable units in their respective developments, subject to the direction and supervision of the Administrative Agent.
- M. The implementation of the Affirmative Marketing Plan for a development that includes affordable housing shall commence at least 120 days before the issuance of either a temporary or permanent certificate of occupancy. The implementation of the Affirmative Marketing Plan shall continue until all very low, low- and moderate-income housing units are initially occupied and for as long as the affordable units remain deed restricted such that qualifying new tenants and/or purchasers continues to be necessary.
- N. The Administrative Agent shall provide the Affordable Housing Liaison with the information required to comply with monitoring and reporting requirements pursuant to N.J.A.C.5:80-26-1, *et seq.*

**CERTIFICATION**

*I Laurie A. Barton, Borough Clerk for the Borough of Washington hereby certified the foregoing resolution was duly adopted at the regular meeting of the Borough Council on June 16, 2020.*

 Recoverable Signature

X *Laurie A Barton*

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Laurie A. Barton, RMC

Borough Clerk

Signed by: 8c4b9517-0c3e-44f0-bd31-3e56b3cad3f3



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### III. MARKETING

3a. Direction of Marketing Activity: (indicate which group(s) in the housing region are least likely to apply for the housing without special outreach efforts because of its location and other factors)

White (non-Hispanic)   
  Black (non-Hispanic)   
  Hispanic   
  American Indian or Alaskan Native  
 Asian or Pacific Islander   
  Other group:

3b. **HOUSING RESOURCE CENTER** ([www.njhousing.gov](http://www.njhousing.gov)) A free, online listing of affordable housing

3c. Commercial Media (required) (Check all that applies)

	DURATION & FREQUENCY OF OUTREACH	NAMES OF REGIONAL NEWSPAPER(S)	CIRCULATION AREA
<b>TARGETS ENTIRE HOUSING REGION 2</b>			
Daily Newspaper			
<input checked="" type="checkbox"/>		Star-Ledger	
<input type="checkbox"/>		New York Times	
<b>TARGETS PARTIAL HOUSING REGION 2</b>			
Daily Newspaper			
<input type="checkbox"/>		Daily Record	Morris
<input checked="" type="checkbox"/>		Express Times	Warren
Weekly Newspaper			
<input type="checkbox"/>		Belleville Post	Essex
<input type="checkbox"/>		Belleville Times	Essex
<input type="checkbox"/>		Bloomfield Life	Essex
<input type="checkbox"/>		East Orange Record	Essex
<input type="checkbox"/>		Glen Ridge Paper	Essex
<input type="checkbox"/>		Glen Ridge Voice	Essex
<input type="checkbox"/>		Independent Press	Essex
<input type="checkbox"/>		Irvington Herald	Essex
<input type="checkbox"/>		Item of Millburn and Short Hills	Essex
<input type="checkbox"/>		Montclair Times	Essex
<input type="checkbox"/>		News-Record	Essex
<input type="checkbox"/>		Nutley Journal	Essex

<input type="checkbox"/>		Nutley Sun	Essex
<input type="checkbox"/>		Observer	Essex
<input type="checkbox"/>		Orange Transcript	Essex
<input type="checkbox"/>		Progress	Essex
<input type="checkbox"/>		Vailsburg Leader	Essex
<input type="checkbox"/>		Verona-Cedar Grove Times	Essex
<input type="checkbox"/>		West Essex Tribune	Essex
<input type="checkbox"/>		West Orange Chronicle	Essex
<input type="checkbox"/>		Atom Tabloid & Citizen Gazette	Middlesex, Union
<input type="checkbox"/>		Chatham Courier	Morris
<input type="checkbox"/>		Chatham Independent Press	Morris
<input type="checkbox"/>		Citizen of Morris County	Morris
<input type="checkbox"/>		Florham Park Eagle	Morris
<input type="checkbox"/>		Hanover Eagle	Morris
<input type="checkbox"/>		Madison Eagle	Morris
<input type="checkbox"/>		Morris News Bee	Morris
<input type="checkbox"/>		Mt. Olive Chronicle	Morris
<input type="checkbox"/>		Neighbor News	Morris
<input type="checkbox"/>		Randolph Reporter	Morris
<input type="checkbox"/>		Roxbury Register	Morris
<input type="checkbox"/>		Parsippany Life	Morris
<input type="checkbox"/>		Clark Patriot	Union
<input type="checkbox"/>		Cranford Chronicle	Union
<input type="checkbox"/>		Echo Leader	Union
<input type="checkbox"/>		Elizabeth Reporter	Union
<input type="checkbox"/>		Hillside Leader	Union
<input type="checkbox"/>		Leader of Kenilworth & Roselle Park	Union
<input type="checkbox"/>		Madison Independent Press, The	Union
<input type="checkbox"/>		Millburn and Short Hills Independent Press	Union
<input type="checkbox"/>		News Record	Union

<input type="checkbox"/>		Record-Press	Union
<input type="checkbox"/>		Scotch Plains Times (Fanwood Times)	Union
<input type="checkbox"/>		Spectator Leader	Union
<input checked="" type="checkbox"/>		Star Gazette	Warren
<input type="checkbox"/>		Union Leader	Union
<input type="checkbox"/>		Warren Reporter	Warren

	DURATION & FREQUENCY OF OUTREACH	NAMES OF REGIONAL TV STATION(S)	CIRCULATION AREA AND/OR RACIAL/ETHNIC IDENTIFICATION OF READERS/AUDIENCE
<b>TARGETS ENTIRE HOUSING REGION 2</b>			
<input type="checkbox"/>		2 WCBS-TV Cbs Broadcasting Inc.	
		3 KYW-TV Cbs Broadcasting Inc.	
<input type="checkbox"/>		4 WNBC NBC Telemundo License Co. (General Electric)	
<input type="checkbox"/>		5 WNYW Fox Television Stations, Inc. (News Corp.)	
<input type="checkbox"/>		7 WABC-TV American Broadcasting Companies, Inc (Walt Disney)	
<input type="checkbox"/>		9 WWOR-TV Fox Television Stations, Inc. (News Corp.)	
<input type="checkbox"/>		11 WPIX Wpix, Inc. (Tribune)	
<input type="checkbox"/>		13 WNET Educational Broadcasting Corporation	
<input type="checkbox"/>		25 WNYE-TV New York City Dept. Of Info Technology & Telecommunications	
<input type="checkbox"/>		31 WPXN-TV Paxson Communications License Company, Llc	
<input type="checkbox"/>		41 WXTV Wxtv License Partnership, G.p. (Univision Communications Inc.)	
<input type="checkbox"/>		47 WNJU NBC Telemundo License Co. (General Electric)	
<input type="checkbox"/>		50 WNJN New Jersey Public Broadcasting Authority	
<input type="checkbox"/>		52 WNJT New Jersey Public Broadcasting Authority	
<input type="checkbox"/>		54 WTBV-TV Trinity Broadcasting Of New York, Inc.	

<input type="checkbox"/>		58 WNJB New Jersey Public Broadcasting Authority	
<input type="checkbox"/>		62 WRNN-TV Wrnn License Company, Llc	
<input type="checkbox"/>		63 WMBC-TV Mountain Broadcating Corporation	
<input type="checkbox"/>		68 WFUT-TV Univision New York Llc	Spanish
<b>TARGETS PARTIAL HOUSING REGION 2</b>			
<input type="checkbox"/>		42 WKOB-LP Nave Communications, Llc	Essex
<input type="checkbox"/>		22 WMBQ-CA Renard Communications Corp.	Essex, Morris, Union
<input type="checkbox"/>		66 WFME-TV Family Stations Of New Jersey, Inc.	Essex, Morris, Union
<input type="checkbox"/>		21 WLIW Educational Broadcasting Corporation	Essex, Union
<input type="checkbox"/>		60 W60AI Ventana Television, Inc	Essex, Union
<input type="checkbox"/>		36 W36AZ New Jersey Public Broadcasting Authority	Morris
<input type="checkbox"/>		6 WPVI-TV American Broadcasting Companies, Inc (Walt Disney)	Morris, Union, Warren
<input type="checkbox"/>		65 WUVP-TV Univision Communications, Inc.	Morris, Union, Warren
<input type="checkbox"/>		23 W23AZ Centenary College	Morris, Warren
<input type="checkbox"/>		28 WBRE-TV Nexstar Broadcasting, Inc.	Morris, Warren
<input type="checkbox"/>		35 WYBE Independence Public Media Of Philadelphia, Inc.	Morris, Warren
<input type="checkbox"/>		39 WLVT-TV Lehigh Valley Public Telecommunications Corp.	Morris, Warren
<input type="checkbox"/>		44 WVIA-TV Ne Pa Ed Tv Association	Morris, Warren
<input type="checkbox"/>		56 WOLF-TV Wolf License Corp	Morris, Warren
<input type="checkbox"/>		60 WBPH-TV Sonshine Family Television Corp	Morris, Warren
<input type="checkbox"/>		69 WFMZ-TV Maranatha Broadcasting Company, Inc.	Morris, Warren
<input type="checkbox"/>		10 WCAU NBC Telemundo License Co. (General Electric)	Warren
<input type="checkbox"/>		16 WNEP-TV New York Times Co.	Warren
<input type="checkbox"/>		17 WPHL-TV Tribune Company	Warren
<input type="checkbox"/>		22 WYOU Nexstar Broadcasting, Inc.	Warren

<input type="checkbox"/>		29 WTXF-TV Fox Television Stations, Inc. (News Corp.)	Warren
<input type="checkbox"/>		38 WSWB Mystic Television of Scranton Llc	Warren
<input type="checkbox"/>		48 WGTW-TV Trinity Broadcasting Network	Warren
<input type="checkbox"/>		49 W49BE New Jersey Public Broadcasting Authority	Warren
<input type="checkbox"/>		55 W55BS New Jersey Public Broadcasting Authority	Warren
<input type="checkbox"/>		57 WPSG Cbs Broadcasting Inc.	Warren
<input type="checkbox"/>		61 WPPX Paxson Communications License Company, Llc	Warren

	DURATION & FREQUENCY OF OUTREACH	NAMES OF CABLE PROVIDER(S)	BROADCAST AREA
<b>TARGETS PARTIAL HOUSING REGION 2</b>			
<input type="checkbox"/>		Cablevision of Newark	Partial Essex
<input type="checkbox"/>		Comcast of NJ (Union System)	Partial Essex, Union
<input type="checkbox"/>		Cablevision of Oakland	Partial Essex, Morris
<input type="checkbox"/>		Cable Vision of Morris	Partial Morris
<input type="checkbox"/>		Comcast of Northwest NJ	Partial Morris, Warren
<input type="checkbox"/>		Patriot Media & Communications	Partial Morris
<input type="checkbox"/>		Service Electric Broadband Cable	Partial Morris, Warren
<input type="checkbox"/>		Cablevision of Elizabeth	Partial Union
<input type="checkbox"/>		Comcast of Plainfield	Partial Union
<input type="checkbox"/>		Cable Vision of Morris	Partial Warren
<input type="checkbox"/>		Service Electric Cable TV of Hunterdon	Partial Warren

	DURATION & FREQUENCY OF OUTREACH	NAMES OF REGIONAL RADIO STATION(S)	BROADCAST AREA AND/OR RACIAL/ETHNIC IDENTIFICATION OF READERS/AUDIENCE
<b>TARGETS ENTIRE HOUSING REGION 2</b>			
AM			
<input type="checkbox"/>		WFAN 660	
<input type="checkbox"/>		WOR 710	
<input type="checkbox"/>		WABC 770	
FM			

<input type="checkbox"/>		WFNY-FM 92.3	
<input type="checkbox"/>		WPAT-FM 93.1	Spanish
<input type="checkbox"/>		WNYC-FM 93.9	
<input type="checkbox"/>		WFME 94.7	Christian
<input type="checkbox"/>		WPLJ 95.5	
<input type="checkbox"/>		WQXR-FM 96.3	
<input type="checkbox"/>		WQHT 97.1	
<input type="checkbox"/>		WRKS 98.7	
<input type="checkbox"/>		WAWZ 99.1	Christian
<input type="checkbox"/>		WHTZ 100.3	
<input type="checkbox"/>		WCBS-FM 101.1	
<input type="checkbox"/>		WKXW-FM 101.5	
<input type="checkbox"/>		WQCD 101.9	
<input type="checkbox"/>		WNEW 102.7	
<input type="checkbox"/>		WKTU 103.5	
<input type="checkbox"/>		WAXQ 104.3	
<input type="checkbox"/>		WWPR-FM 105.1	
<input type="checkbox"/>		WLTW 106.7	
<b>TARGETS PARTIAL HOUSING REGION 2</b>			
AM			
<input type="checkbox"/>		WWRL 1600	Essex
<input type="checkbox"/>		WXMC 1310	Essex, Morris
<input type="checkbox"/>		WWRV 1330	Essex, Morris (Spanish)
<input type="checkbox"/>		WZRC 1480	Essex, Morris (Chinese/Cantonese)
<input type="checkbox"/>		WMCA 570	Essex, Morris, Union (Christian)
<input type="checkbox"/>		WNYC 820	Essex, Morris, Union
<input type="checkbox"/>		WCBS 880	Essex, Morris, Union
<input type="checkbox"/>		WPAT 930	Essex, Morris, Union (Caribbean, Mexican, Mandarin)
<input type="checkbox"/>		WWDJ 970	Essex, Morris, Union (Christian)
<input type="checkbox"/>		WINS 1010	Essex, Morris, Union

<input type="checkbox"/>		WEPN 1050	Essex, Morris, Union
<input type="checkbox"/>		WKMB 1070	Essex, Morris, Union (Christian)
<input type="checkbox"/>		WBBR 1130	Essex, Morris, Union
<input type="checkbox"/>		WLIB 1190	Essex, Morris, Union (Christian)
<input type="checkbox"/>		WMTR 1250	Essex, Morris, Union
<input type="checkbox"/>		WADO 1280	Essex, Morris, Union (Spanish)
<input type="checkbox"/>		WNSW 1430	Essex, Morris, Union (Portuguese)
<input type="checkbox"/>		WJDM 1530	Essex, Morris, Union (Spanish)
<input type="checkbox"/>		WQEW 1560	Essex, Morris, Union
<input type="checkbox"/>		WWRU 1660	Essex, Morris, Union (Korean)
<input type="checkbox"/>		WCTC 1450	Union
		WCHR 1040	Warren
		WEEX 1230	Warren
		WNNJ 1360	Warren
		WRNJ 1510	Warren
FM			
<input type="checkbox"/>		WMSC 90.3	Essex
<input type="checkbox"/>		WFUV 90.7	Essex
<input type="checkbox"/>		WBGO 88.3	Essex, Morris, Union
<input type="checkbox"/>		WSOU 89.5	Essex, Morris, Union
<input type="checkbox"/>		WKCR-FM 89.9	Essex, Morris, Union
<input type="checkbox"/>		WFMU 91.1	Essex, Morris, Union
<input type="checkbox"/>		WNYE 91.5	Essex, Morris, Union
<input type="checkbox"/>		WSKQ-FM 97.9	Essex, Morris, Union (Spanish)
<input type="checkbox"/>		WBAI 99.5	Essex, Morris, Union
<input type="checkbox"/>		WDHA -FM 105.5	Essex, Morris, Union
<input type="checkbox"/>		WCAA 105.9	Essex, Morris, Union (Latino)
<input type="checkbox"/>		WBLS 107.5	Essex, Morris, Union
<input type="checkbox"/>		WHUD 100.7	Essex, Morris, Warren
<input type="checkbox"/>		WPRB 103.3	Essex, Union, Warren

<input type="checkbox"/>		WMNJ 88.9	Morris
<input type="checkbox"/>		WJSV 90.5	Morris
<input type="checkbox"/>		WNNJ-FM 103.7	Morris, Warren
<input type="checkbox"/>		WMGQ 98.3	Union
<input type="checkbox"/>		WCTO 96.1	Union, Warren
<input type="checkbox"/>		WNTI 91.9	Warren
<input type="checkbox"/>		WSBG 93.5	Warren
<input type="checkbox"/>		WZZO 95.1	Warren
<input type="checkbox"/>		WAEB-FM 104.1	Warren
<input type="checkbox"/>		WHCY 106.3	Warren

3d. Other Publications (such as neighborhood newspapers, religious publications, and organizational newsletters)  
(Check all that applies)

	NAME OF PUBLICATIONS	OUTREACH AREA	RACIAL/ETHNIC IDENTIFICATION OF READERS/AUDIENCE
<b>TARGETS ENTIRE HOUSING REGION 2</b>			
Monthly			
<input type="checkbox"/>	Sino Monthly	North Jersey/NYC area	Chinese-American
<b>TARGETS PARTIAL HOUSING REGION 2</b>			
Daily			
<input type="checkbox"/>	24 Horas	Bergen, Essex, Hudson, Middlesex, Passaic, Union Counties	Portuguese-Language
Weekly			
<input type="checkbox"/>	Arab Voice Newspaper	North Jersey/NYC area	Arab-American
<input type="checkbox"/>	Brazilian Voice, The	Newark	Brazilian-American
<input type="checkbox"/>	Catholic Advocate, The	Essex County area	Catholic
<input type="checkbox"/>	La Voz	Hudson, Union, Middlesex Counties	Cuban community
<input type="checkbox"/>	Italian Tribune	North Jersey/NYC area	Italian community
<input type="checkbox"/>	New Jersey Jewish News	Northern and Central New Jersey	Jewish
<input type="checkbox"/>	El Nuevo Coqui	Newark	Puerto Rican community
<input type="checkbox"/>	Banda Oriental Latinoamérica	North Jersey/NYC area	South American community
<input type="checkbox"/>	El Especialito	Union City	Spanish-Language
<input type="checkbox"/>	La Tribuna Hispana	Basking Ridge, Bound Brook, Clifton, East	Spanish-Language

			Rutherford, Elizabeth, Fort Lee, Greebrook, Linden, Lyndenhurst, Newark, North Plainfield, Orange, Passaic, Paterson, Plainfield, Roselle, Scotch Plains, Union, Union City, West NY	
<input type="checkbox"/>		Ukrainian Weekly	New Jersey	Ukrainian community

3e. Employer Outreach (names of employers throughout the housing region that can be contacted to post advertisements and distribute flyers regarding available affordable housing) (Check all that applies)

DURATION & FREQUENCY OF OUTREACH	NAME OF EMPLOYER/COMPANY	LOCATION
<b>Essex County</b>		
<input type="checkbox"/>	Newark Liberty International Airport	Newark Airport, Newark, NJ
<input type="checkbox"/>	Verizon Communications	540 Broad St Newark, NJ 07102
<input type="checkbox"/>	Prudential Financial, Inc.	751 Broad St Newark, NJ 07102
<input type="checkbox"/>	United Airlines	1 Newark Airport, Newark, NJ
<input type="checkbox"/>	University of Medicine/Dentistry	Office of Marketing & Media Relations 150 Bergen Street Room D347 Newark, NJ 07103
<input type="checkbox"/>	Public Service Enterprise Group	80 Park Plz Newark, NJ 07102
<input type="checkbox"/>	Prudential Insurance	751 Broad Street, Newark, NJ 07102-3777
<input type="checkbox"/>	Horizon Blue Cross & Blue Shield of NJ	3 Raymond Plz W Newark, NJ 07102
<input type="checkbox"/>	Horizon Blue Cross & Blue Shield of NJ	540 Broad St Newark, NJ 07102

<b>Morris County</b>		
<input type="checkbox"/>	Atlantic Health System-Morristown Memorial Hospital	100 Madison Avenue Morristown, NJ 07962
<input type="checkbox"/>	AT&T	295 N Maple Ave, Basking Ridge, NJ and 180 Park Ave, Florham Park, NJ
<input type="checkbox"/>	US Army Armament R&D	21 Picatinny Arsenal, Picatinny Arsnl, NJ
<input type="checkbox"/>	Lucent Technologies	67 Whippany Rd, Whippany, NJ and 475 South St, Morristown, NJ and 5 Wood Hollow Rd, Parsippany, NJ and 24 Mountain Ave, Mendham, NJ
<input type="checkbox"/>	Novartis Pharmaceutical	59 State Route 10, East Hanover, NJ
<input type="checkbox"/>	Kraft foods	200 Deforest Ave, East Hanover, NJ and 7 Campus Dr, Parsippany, NJ
<input type="checkbox"/>	Mennen Sports Arena	161 E Hanover Ave, Morristown, NJ

<input type="checkbox"/>		Honeywell	101 Columbia Rd Morristown, NJ 07960
<input type="checkbox"/>		Pfizer	5 Woodhollow Rd, Parsippany and 175 Tabor Rd, Morris Plains
<input type="checkbox"/>		St. Clare's Hospital	130 Powerville Road Boonton Township, NJ 07005 and 25 Pocono Road Denville, NJ 07834 and 400 West Blackwell Street Dover, NJ 07801 and 3219 Route 46 East, Suite 110 Parsippany, NJ 07054
<b>Union County</b>			
<input type="checkbox"/>		A&M Industrial Supply Co	1414 Campbell St Rahway
<input type="checkbox"/>		A.J. Seabra inc,	574 Ferry St Newark
<input type="checkbox"/>		Bristol-myers Products Research & Dev	1350 Liverty Ave Hillside
<input type="checkbox"/>		Cede Candy Inc	1091 Lousons Road PO Box 271 Union, NJ
<input type="checkbox"/>		Comcast Network	800 Rahway Ave Union, NJ
<input type="checkbox"/>		HoneyWell Inc.	1515 West Blancke Street Bldgs 1501 and 1525 Linden, NJ
<input type="checkbox"/>		IBM Corporation	27 Commerce Drive Cranford, nj
<input type="checkbox"/>		Howard Press	450 West First Ave Roselle,nj
<input type="checkbox"/>		Lucent Technologies	600 Mountain Ave Murray Hill,NJ
<input type="checkbox"/>		Merck & Co. Inc	1 Merck Drive PO Box 2000 (RY60-200E) Rahway, NJ
<input type="checkbox"/>		Rahway Hospital	865 Stone Street Rahway, NJ
<input type="checkbox"/>		Rotuba Extruders, Inc	1401 Park Ave South Linden
<input type="checkbox"/>		Union County College	1033 Springfield Ave Cranford,NJ
<b>Warren County</b>			
<input type="checkbox"/>		Masterfoods USA	800 High Street Hackettstown, NJ
<input type="checkbox"/>		Warren Hospital	185 Roseberry St Phillipsburg, NJ
<input type="checkbox"/>		Roche Vitamins	206 Roche Drive Belvidere, NJ
<input type="checkbox"/>		Hackettstown Hospital	651 Willow Grove St. Hackettstown, NJ
<input type="checkbox"/>		Pechiney	191 Route 31 North Washington, NJ
<input type="checkbox"/>		Lopatcong Care Center	390 Red School Lane Phillipsburg, NJ
<input type="checkbox"/>		Mallinckrodt/Baker, Inc	222 Red School Lane Phillipsburg, NJ

3f. Community Contacts (names of community groups/organizations throughout the housing region that can be contacted to post advertisements and distribute flyers regarding available affordable housing)			
Name of Group/Organization	Outreach Area	Racial/Ethnic Identification of Readers/Audience	Duration & Frequency of Outreach

#### IV. APPLICATIONS

Applications for affordable housing for the above units will be available at the following locations:		
4a. County Administration Buildings and/or Libraries for all counties in the housing region (list county building, address, contact person) (Check all that applies)		
	<b>BUILDING</b>	<b>LOCATION</b>
<input type="checkbox"/>	Morris County Library	30 East Hanover Avenue, Whippany, NJ 07981
<input type="checkbox"/>	Warren County Library Headquarters	199 Hardwick Street, Belvidere, NJ 07823
<input type="checkbox"/>	Essex County/Hall of Records	465 Dr. Martin Luther King, Jr. Blvd, Newark, NJ 07102 (973)621-4400
<input type="checkbox"/>	Union County/Administration Building	Elizabethtown Plaza, Elizabeth, NJ 07207 (908)527-4100
4b. Municipality in which the units are located (list municipal building and municipal library, address, contact person)		
4c. Sales/Rental Office for units (if applicable)		

#### V. CERTIFICATIONS AND ENDORSEMENTS

I hereby certify that the above information is true and correct to the best of my knowledge. I understand that knowingly falsifying the information contained herein may affect the (select one: Municipality's substantive certification or DCA Balanced Housing Program funding or HMFA UHORP/MONI/CHOICE funding).	
_____	
Name (Type or Print)	
_____	
Title/Municipality	
_____	_____
Signature	Date

**Appendix Q4**  
**Washington Borough Council Resolution Adopting**  
**For-Sale and Rental Operating Manuals +**  
**Operating Manuals**

**RESOLUTION 2021-22**

**A RESOLUTION OF THE BOROUGH COUNCIL OF THE BOROUGH OF WASHINGTON, IN THE COUNTY OF WARREN, STATE OF NEW JERSEY AUTHORIZING AND ADOPTING THE 'FOR-SALE OPERATING MANUAL'; 'RENTAL OPERATING MANUAL', 'MARKET TO AFFORDABLE PROGRAM OPERATING MANUAL', AND 'REHABILITATION PROGRAM OPERATING MANUAL' FOR THE BOROUGH OF WASHINGTON**

**WHEREAS**, in accordance with the Fair Housing Act and the New Jersey Uniform Housing Affordability Controls (N.J.A.C. 5:80-26-1, et seq.), the Borough of Washington is required to adopt all program operating manuals, which set forth the procedures for administering the programs and their associated affordability controls for affordable housing units created within the Borough of Washington; and

**WHEREAS**, the Borough of Washington Planner and the Borough of Washington Mayor and Council reviewed and supports the four (4) proposed manuals, For-Sale Operating Manual; Rental Operating Manual; Market to Affordable Program Manual; and Rehabilitation Program Manual, a copy of each of which is incorporated herein as if set forth at length.

**NOW, THEREFORE, BE IT RESOLVED**, by the Borough of Washington Mayor and Council, County of Warren, State of New Jersey, that the Borough does hereby authorize and adopt the following four (4) operating manuals, subject to final approval as to form by the Borough Planner and Attorney:

1. For-Sale Operating Manual
2. Rental Operating Manual
3. Market to Affordable Program Manual
4. Rehabilitation Program Manual

**BE IT FURTHER RESOLVED**, that this Resolution shall take effect immediately.

**Certification**

*I, Laurie A. Barton, Clerk of the Borough of Washington, County of Warren, State of New Jersey, do hereby certify that the foregoing Resolution is a true and exact copy of a Resolution adopted by the Borough Council of The Borough of Washington on January 19, 2021*

 Recoverable Signature

X 

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Laurie A. Barton, RMC  
Borough Clerk

Signed by: 8c4b9517-0c3e-44f0-bd31-3e56b3cad3f3

---

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal of the Borough this

19<sup>th</sup> day of \_\_\_\_\_ January \_\_\_\_\_, 2021.

# OPERATING MANUAL

## FOR THE ADMINISTRATION OF FOR-SALE UNITS

### In Accordance with the Uniform Housing Affordability Controls

Borough of Washington  
Warren County, New Jersey

July 2020

Prepared By:



**Heyer, Gruel & Associates**  
Community Planning Consultants  
236 Broad Street, Red Bank, NJ 07701  
(732) 741-2900

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- B.** 2020 AHPNJ Affordable Housing Regional Income Limits Chart
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- D.** Certificate for Applicants Certified to Ownership Unit
- E.** Release (Quitclaim Deed) for Restricted Units

## **INTRODUCTION**

The purpose of this Operating Manual is to describe the policies and procedures of the Borough of Washington's Affordable Housing For-Sale Program. It will serve as a guide to the program staff and the public alike. This manual describes the basic content and operation of the various affordability assistance program components. This manual may be periodically revised to reflect changes in local, state, and federal policies and regulations relative to implementation of the affordable housing programs described herein.

Implementation of any procedure, even if it is not included in this Operating Manual, shall be in accordance with the Federal Fair Housing Act and Equal Opportunities laws<sup>1</sup>, the Uniform Housing Affordability Controls (UHAC) N.J.A.C. 5:80-26.1 et seq.<sup>2</sup>, the substantive rules of the Council on Affordable Housing N.J.A.C. 5:93 as revised and the affordable housing regulations of the Borough of Washington (hereafter referred to as the "Regulations"). The responsibilities of the administrative agent are outlined in Ordinance Section §94-87.18. In accordance with the Federal Fair Housing Act and Equal Opportunities laws it is unlawful to discriminate against any person making application to buy or rent a home with regard to age, race, religion, national origin, sex, handicapped or familial status.

## **AFFIRMATIVE MARKETING**

### **OVERVIEW OF THE REQUIREMENTS OF AN AFFIRMATIVE MARKETING PLAN**

All affordable units are required to be affirmatively marketed using the Borough of Washington's Affirmative Marketing Plan. An Affirmative Marketing Plan is a regional marketing strategy designed to attract households of all majority and minority groups, regardless of race, creed, color, national origin, ancestry, marital or familial status, gender, affectional or sexual orientation, disability, age, or number of children to housing units which are being marketed by an administrative agent or a developer, sponsor, owner or property manager of affordable housing. The primary objectives of an Affirmative Marketing Plan are to target households who are least likely to apply for affordable housing, and to target households throughout the entire housing region in

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<sup>1</sup> <http://www.hud.gov/offices/fheo/FHLaws/index.cfm>

<sup>2</sup> <http://www.nj.gov/dca/affiliates/coah/regulations/uhac.html>

which the units are located. The Borough of Washington's Affirmative Marketing Plan can be found in Appendix A.

Before any sale or re-sale of an affordable unit, the unit shall be affirmatively marketed by the Borough's Affordable Housing Administrative Agent to households throughout Affordable Housing Region 2 (consisting of Essex, Union and Warren Counties) in a manner consistent with the affirmative marketing requirements of the Uniform Housing Affordability Controls (UHAC) N.J.A.C. 5:80-26.1 et seq. The Borough has determined that households that live or work in Affordable Housing Region 2 shall be selected for an affordable housing unit before households from outside this region. Units that remain unoccupied after households who live or work in the region are exhausted, may be offered to households outside the region.

Advertisements must contain the following information for each affordable housing opportunity:

- The location of and directions to the units
- A range of prices for the housing units
- The bedroom size(s) of the units
- The maximum income permitted to qualify for the housing units
- The locations of applications for the housing units
- The business hours when interested households may obtain an application for a housing unit
- Application fees, if any

#### **IMPLEMENTATION OF THE AFFIRMATIVE MARKETING PLAN**

The affirmative marketing process for affordable units shall begin at least four (4) months prior to expected occupancy. In implementing the marketing program, the administrative agent shall undertake all of the strategies outlined in the Washington Borough Affirmative Marketing Plan. Advertising and outreach shall take place during the first week of the marketing program and each month thereafter until all the units have been sold. Applications for affordable housing shall be available in several locations in accordance with the Affirmative Marketing Plan. The time period when applications will be accepted will be posted with the applications. Applications shall be mailed to prospective applicants upon request.

An applicant pool will be maintained by the administrative agent for re-sales. When a re-sale affordable unit becomes available, the administrative agent will select applicants

from the applicant pool and, if necessary, the unit will be affirmatively marketed as described above. The selection of applicants from the applicant pool is described in more detail in this manual under Random Selection & Applicant Pools.

### **DEVELOPER, AFFORDABLE HOUSING SPONSOR, LANDLORD, PROPERTY MANAGER**

If permitted by the Borough, the developer, affordable housing sponsor, landlord or property manager may be responsible for advertising the affordable housing in accordance with the Borough's adopted Affirmative Marketing Plan. Prior to publication or broadcast, draft copies of the marketing material must be submitted to the municipal housing liaison for approval. Proof of publication must be submitted, including a copy of the final advertisements with a copy of the paid bill. Public Service Announcements shall be submitted by the Borough.

### **RANDOM SELECTION & APPLICANT POOLS**

Ordinance §94-87.1 defines the "random selection process" as a process by which currently income-eligible households are selected for placement in affordable housing units such that no preference is given to one applicant over another except for purposes of matching household income and size with an appropriately priced and sized affordable unit (e.g., by lottery). The Borough will employ the *randomization after certification* process.

Applicants will be required to file a pre-application and specify the number of bedrooms needed. After preliminary income-eligibility is determined, the applicants will submit all documentation required for income verification. Once applicants are notified of income-eligibility, households will be categorized based on the number of bedrooms needed and placed into applicant pools. When a unit becomes available, the applicant pool of that bedroom category will be randomized using a random number generator. Applicant pools will be re-randomized each time a unit becomes available.

### **RANDOMIZATION AFTER CERTIFICATION**

Random selection is conducted when a unit is available, and only certified households seeking the type and bedroom size of the available unit are placed in the lottery. The process is as follows:

- After advertising is implemented, applications are accepted for 90 days.
- All applications are reviewed, and households are either certified or informed of non-eligibility. The certification is valid for 180 days and may be renewed by updating income-verification information. Eligible households are placed in applicant pools based upon the number of bedrooms needed (and any other

special requirements, such as regional preference or the need for an accessible unit).

- When a unit is available, only the certified households in need of that type of unit are selected for a lottery.
- Households are informed of the date, time, and location of the lottery and invited to attend. A municipal representative will also be in attendance for the lottery.
- After the lottery is conducted, the first household selected is given 60 days to express interest or disinterest in the unit. If the first household is not interested in the unit, this process continues until a certified household selects the unit.
- Applications are accepted on an ongoing basis, certified households are added to the pool for the appropriate household income and size categories, and advertising and outreach is ongoing, according to the Affirmative Marketing Plan.

#### **MATCHING HOUSEHOLDS TO AVAILABLE UNITS**

In referring certified households to specific restricted units, to the extent feasible, and without causing an undue delay in occupying the unit, the administrative agent shall strive to implement the following policies:

- Provide an occupant for each unit bedroom;
- Provide children of different sex with separate bedrooms;
- Prevent more than two persons from occupying a single bedroom;
- Require that all the bedrooms be used as bedrooms; and
- Require that a couple requesting a two-bedroom unit provide a doctor's note justifying such request.

The administrative agent cannot require an applicant household to take an affordable unit with a greater number of bedrooms, as long as overcrowding is not a factor. A household can be eligible for more than one (1) unit category and should be placed in the applicant pool for all categories for which it is eligible.

#### **HOUSEHOLD ELIGIBILITY & CERTIFICATION**

Before any household can purchase a restricted unit, the administrative agent must certify the household as income-eligible. Certification of a household involves the verification of two critical pieces of data: 1) household size and composition, including gender; and 2) the total income and assets for all household members over 18 years of age. The certification process begins with the applicant completing an application in its entirety and providing the required backup documentation. Once eligibility documents

and data have been collected, the administrative agent can begin the process of calculating the household's income for verification. Please note that preliminary eligibility is based solely on self-reported information by the applicant and is in no way a guarantee of eligibility. The current income limits are attached as Appendix B of this manual.

#### **PROCEDURE FOR INCOME-ELIGIBILITY CERTIFICATION**

The administrative agent shall require each member of an applicant household who is 18 years of age or older to provide documentation to verify their income. Income verification documentation should include, but is not limited to the following for each and every member of a household who is 18 years of age or older:

- Four (4) current consecutive pay stubs (including both the check and the stub), including bonuses, overtime or tips, or a letter from the employer stating the present annual income figure or if self-employed, a current Certified Profit & Loss Statement and Balance Sheet.
- Copies of Federal and State income tax returns for each of the preceding three tax years - a Form 1040 Tax Summary for the past three (3) tax years can be requested from the local Internal Revenue Service Center or by calling 1-800-829-1040.
- A letter or appropriate reporting form verifying monthly benefits such as
  - Social Security or SSI – Current award letter or computer printout letter
  - Unemployment – verification of Unemployment Benefits
  - Welfare -TANF<sup>3</sup> current award letter
  - Disability - Worker's compensation letter or
  - Pension income (monthly or annually) – a pension letter
- A letter or appropriate reporting form verifying any other sources of income claimed by the applicant, such as alimony or child support – copy of court order or recent original letters from the court or education scholarship/stipends – current award letter.
- Current reports of savings and checking accounts (bank statements and passbooks) and income reports from banks or other financial institutions holding or managing trust funds, money market accounts, certificates of deposit, stocks

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<sup>3</sup> TANF – Temporary Assistance for Needy Families

- or bonds (in brokerage accounts – most recent statements and/or in certificate form – photocopy of certificates).
- Evidence or reports of income from directly held assets, such as real estate or businesses.
  - Interest in a corporation or partnership – Federal tax returns for each of the preceding three tax years.
  - Current reports of assets – Market value appraisal or realtor comparative market analysis and bank/mortgage company statement indicating current mortgage balance. For rental property, attach copies of all leases.

Administrative agents must notify applicant households of their eligibility within 20 days of the administrative agent's determination.

Households with a verified total household income that exceeds 80 percent of the regional income limit for the appropriate family size are ineligible for purchase or rental of restricted units. A letter rejecting the household's application shall be mailed to the household.

Similarly, households with a verified total household income that is within the income limits, but too low to afford any of the units administered by the administrative agent shall be sent a letter rejecting the household's application, and/or referring them to housing counseling or the Affordability Assistance Program, if applicable.

Households with a verified total household income of less than 80 percent shall be issued a letter certifying eligibility. This certification is valid for 180 days. If the administrative agent is unable to place the household in a restricted unit at the conclusion of 180 days, an extension may be granted once the household's eligibility is verified. Pursuant to N.J.A.C. 5:80-26.16(b), certifications may be renewed in writing at the request of a certified household for an additional period of 180 days at the discretion of the administrative agent.

Once the applicant is certified and matched to an available unit, the administrative agent must secure from the applicant a signed and notarized acknowledgement of their requirements and responsibilities in owning a restricted unit. UHAC's Disclosure Statement (Appendix J of UHAC and Appendix D of this manual) shall be forwarded to the applicants.

In addition to non-eligibility based on income, the administrative agent may deny a certification because of the household's failure or inability to document household

composition, income, assets, sufficient funds for down payment, or any other required facts and information. A household may also be denied certification if the administrative agent determines that there was a willful or material misstatement of fact made by the applicant.

### **DISMISSAL OF APPLICATIONS**

Applications can be dismissed for the following reasons:

1. The application is not signed or submitted on time.
2. The applicant commits fraud, or the application is not truthful or complete.
3. The applicant cannot or does not provide documentation to verify their income or other required information when due.
4. The household income does not meet the minimum or maximum income requirements for a particular property.
5. The applicant owns assets that exceed the Asset Limit.
6. The applicant fails to respond to any inquiry in a timely manner.
7. The applicant is non-cooperative or abusive with the staff, property manager, landlords or the Sellers of affordable units.
8. The applicant changes address or other contact information without informing the administrative agent in writing.
9. The applicant is unable to obtain suitable and legitimate financing for a sale unit or fails to verify attendance in a homebuyer credit counseling program when required to do so by the program rules.
10. The applicant does not respond to periodic update inquiry in a timely fashion.
11. The applicant fails to sign the Compliance Certification, Certificate for Applicant, Contract for Sale, Deed Restriction as may be required.
12. The applicant, once approved, fails to close on a sale in a timely manner.

Applicants will also be removed from all lists held by the administrative agent once they have been approved for an affordable unit. However, these applicants may re-apply for other opportunities in that municipality once they have occupied their unit.

Applicants who are dismissed may re-apply. A minimum time period of six (6) months applies in most situations where the applicant has been withdrawn for fraud, poor credit, uncooperative behavior or other serious matters.

Applicants are not automatically removed from sales lists if they do not respond to a Notice of Availability.

Applications may be held in abeyance for a period not to exceed 60 days if there is an error on the credit report, so that the applicant can correct the error and re-apply. Units will not be held open for that applicant. However, once the credit report is corrected, the applicant will be given a priority for the next opportunity at that property.

### **APPEALS**

Appeals from all decisions of an administrative agent shall be filed in writing with the Court.

### **DETERMINING AFFORDABLE SALES PRICES**

To determine the affordable sales prices, the administrative agent uses the most recently updated calculators provided by the Affordable Housing Professionals of New Jersey (AHPNJ), located at: <https://ahpnj.org/resources/2019-coah-calculators>.

### **DEVELOPMENT CONSIDERATIONS AND COMPLIANCE ISSUES**

There are several regulations that must be considered from the development perspective before the sales prices of individual units can be calculated. These requirements should be discussed at the first meeting between the Municipal Housing Liaison/Administrative Agent and developer or affordable housing sponsor. The following is a summary of the requirements for ownership projects.

**Bedroom Distribution.** The standards on the distribution of unit sizes for affordable developments require that:

- The combined number of efficiency and one-bedroom units may be no greater than 20 percent of the total low- and moderate-income units;
- At least 30 percent of all low- and moderate-income units must be two-bedroom units;
- At least 20 percent of all low- and moderate-income units are three-bedroom units; and
- The remainder, if any, may be allocated at the discretion of the developer.

**Age-restricted Units.** In determining the initial sales prices and rents for compliance with the affordability average requirements for restricted units in assisted living facilities and age-restricted developments, the following standards shall be used:

- A studio shall be affordable to a one-person household;
- A one-bedroom unit shall be affordable to a one- and one-half-person household; and

- A two-bedroom unit shall be affordable to a two-person household or to two one-person households.
- The initial purchase price for all restricted ownership units shall be calculated so that the monthly carrying cost of the unit, including principal and interest (based on a mortgage loan equal to 95 percent of the purchase price and the Federal Reserve H.15 rate of interest), taxes, homeowner and private mortgage insurance and condominium or homeowner association fees do not exceed 28 percent of the eligible monthly income of the appropriate size household as determined under N.J.A.C. 5:80-26.4, as may be amended and supplemented; provided, however, that the price shall be subject to the affordability average requirement of N.J.A.C. 5:80-26.3, as may be amended and supplemented.

**Pricing by Household Size.** Initial sales prices are based on targeted “model” household sizes for each size home as determined by the number of bedrooms. Initial sales prices and rents must adhere to the following rules. These maximum sales prices are based on the Affordable Housing Regional Income Limits at the time of occupancy:

- A studio shall be affordable to a one-person household;
- A one-bedroom unit shall be affordable to a one- and one-half person household;
- A two-bedroom unit shall be affordable to a three-person household;
- A three-bedroom unit shall be affordable to a four- and one-half person household; and
- A four-bedroom unit shall be affordable to a six-person household.

Size of Unit	Household Size Used to Determined Max Sales Price
Studio/Efficiency	1
1 Bedroom	1.5
2 Bedrooms	3
3 Bedrooms	4.5
4 Bedrooms	6

The above rules are only to be used for setting initial sales prices. They are not guidelines for matching household sizes with unit sizes. The pricing of age-restricted units may not exceed affordability based on a two-person household.

**DETERMINING MAXIMUM INITIAL SALES PRICES**

The maximum sales price for an ownership unit is determined by first calculating the amount that an appropriately sized household can afford for housing expenses at various income ranges. Several related expenses (homeowner insurance, private mortgage insurance (PMI), association fees and taxes) must then be subtracted from the household’s maximum monthly contribution toward housing expenses to arrive at the

maximum monthly mortgage payment. The calculated mortgage amount, a five (5%) percent down payment, and the current lending rate must be used to arrive at the maximum sales price.

#### **ADDITIONAL REGULATIONS FOR AN OWNERSHIP DEVELOPMENT**

In addition to the regulations in the previous Section entitled Development Considerations and Compliance Issues, ownership developments must also comply with the following regulations:

**Division of Units: Low- and Moderate-income.** In each affordable ownership development, at least 50 percent of all affordable units must be affordable to low-income households. The remaining affordable units must be affordable to moderate-income households.

**Affordability Average.** Each affordable development must achieve an affordability average of no more than 55 percent of the regional median income for restricted ownership units. In achieving this affordability average, moderate-income ownership units must be available for at least three (3) different prices for each bedroom type, and low-income ownership units must be available for at least two different prices for each bedroom type.

**Maximum Initial Sales Price.** The maximum initial sales price of restricted ownership units within each affordable development shall be affordable to households earning no more than 70 percent of the regional median income.

**Condominium/Homeowner Association Fees.** Owners of affordable units and owners of market-rate units must be charged identical condominium or homeowner fees and/or special assessments.

#### **DETERMINING RESALE PRICES**

Calculating the maximum resale price (MRP) for an ownership unit involves applying the annual percentage increase corresponding with each calendar year since the Seller bought the house. No increase is permitted during the balance of the calendar year immediately after the sale. A Resale Price Calculator is available on AHPNJ's website. By selecting the proper county and inputting the year the home was purchased, along with the price the current owner paid for the home, the calculator will determine the MRP for the home. The spreadsheet also includes a calculation to determine the maximum amount a homeowner may refinance, which requires the approval of the administrative agent.

### **REQUESTS FOR INCREASES IN MAXIMUM SALES PRICE**

Pursuant to Ordinance Sections §94-87.9 and §94-87.12 of the Borough code, an owner of a restricted unit may ask the administrative agent to increase the sales price of their home beyond the maximum sales price on the basis of approved capital improvements. Only those improvements that render the unit suitable for a larger household or that add an additional bathroom can increase the calculated maximum sales price. In no event shall the maximum sales price of an improved housing unit exceed the limits of affordability for the larger households.

Additionally, the purchase of a central air conditioning system installed subsequent to the initial sale and not included in the initial sales price may be made a condition of the resale provided the price, subject to a 10-year straight-line depreciation, for example, a 10 percent reduction in value each year since installation, may be approved by the administrative agent. In this instance, the approved value of the central air conditioning does not increase the resale price but is listed as a separate item on the HUD 1 form. Options or upgrades purchased at the time of the initial sale are not considered part of the initial sales price and therefore do not affect the value or sales price at the time of resale. Unless otherwise approved by the administrative agent, the purchase of any property other than central air conditioning shall not be made a condition of the unit resale.

### **DETERMINING THE RECAPTURE MORTGAGE AMOUNT**

The amount that the Mortgage Note recaptures is the difference between the fair market value and the restricted maximum sales price. Fair market value is based on either an appraisal of its unrestricted price or the unit's equalized assessed value of its unrestricted price, at the time of each purchase. For example, if the restricted sales price of the unit is \$110,000 and the appraised unrestricted market value of the unit is \$200,000, the Recapture Mortgage Note would be for \$90,000. The Borough has determined to use the *equalized assessed value* to establish the amount of the Recapture Mortgage.

### **PROCEDURES FOR MAINTAINING LONG-TERM CONTROLS**

Pursuant to N.J.A.C. 5:80-26.14(a)8, N.J.A.C. 5:80-26.15(c) and N.J.A.C. 5:80-26.17 current records must be maintained by the administrative agent and outdated records must be given to the Borough for safe-keeping. A file must be created and maintained on each restricted unit for its control period. The administrative agent maintains detailed records on all marketing initiatives. A comprehensive list of the administrative agent duties is provided in Ordinance Section §94-87.18.

### **FILES TO BE MAINTAINED ON EVERY APPLICANT**

The administrative agent will maintain files on every applicant. All files will contain a preliminary application. If an applicant's preliminary application is approved, and the applicant files a formal application, the file will contain at a minimum:

- Application Form
- Income Verification
- Letter of Certification of Eligibility or Letter of Determination of Ineligibility.

Individual files will be maintained throughout the process and submitted to the Borough upon termination of the program.

### **FILES TO BE MAINTAINED ON EVERY UNIT**

The administrative agent will maintain files on every unit for the length of the affordability controls. The unit file will contain at a minimum:

- Base sales prices
- Identification as low- or moderate-income
- Description of number of bedrooms and physical layout
- Floor plan
- Original deed restriction
- Affordability control documents, including Declarations of Covenants, Conditions and Restrictions, Mandatory Deed Restrictions for Ownership Units (Appendix C), Deeds, Recapture Mortgages, Recapture Mortgage Notes, Disclosure Statement (Appendix D)
- Application materials, verifications and certifications of all present owners, pertinent correspondence, any documentation of home improvement, hardship or income waivers or other approvals granted by an administrative agent, certificate of exemption

### **FILES TO BE MAINTAINED ON EVERY PROJECT**

The administrative agent will maintain files on every project for the length of the affordability controls. The project file will contain at a minimum:

- Condominium Master Deed
- Condominium Public Offering
- Crediting Information

### **FILES TO BE MAINTAINED ON THE APPLICANT POOL**

- Any changes to the applicant pool
- Any action taken with regard to the applicant pool

- Any activity that occurs that affects a particular applicant
- Current applications for all applicants whose status is active in the applicant pool
- The application, the initial rejection notice, the applicant's reply to the notice, a copy of the administrative agent's final response to the applicant, and all documentation of the reason the applicant's name was removed from the applicant pool.

## **ENFORCEMENT**

Ordinance Section §94-87.20 outlines the requirements pertaining to the enforcement of affordable housing regulations.

### **WAIVERS AND EXEMPTIONS**

#### Hardship and Income Waivers

An owner may not rent out their unit to any other person, not even to members of the owner's family. The administrative agent may grant a Hardship Waiver for the following extenuating circumstances:

- The owner's employer is temporarily sending the owner to a work place a great distance from the owner's home
- The owner is called up for military service

An owner of a low-income unit may request that the unit be sold to a household whose income exceeds the established income eligibility criteria for a low-income household by submitting a written request for an Income Waiver to the administrative agent. The owner must demonstrate that this request is consistent with the following reasons for an Income Waiver:

- The owner has made a good faith effort to sell the unit to a certified household for 180 days in accordance with procedures required by the administrative agent and no certified household has made a "reasonable" offer during the 180-day period. A "reasonable" offer is any offer at or above the maximum sale price for a new unit at the original range of affordability at the time of the current sale.
- The owner has demonstrated a willingness to consider price offers lower than the maximum allowable resale price, taking into account current market conditions and the marketability of the unit.
- The owner has advertised the unit's availability in newspapers and other locations likely to be noticed by potential purchasers.

The administrative agent may grant an Income Waiver upon demonstration that the owner has made a good faith effort to sell the unit and subject to DCA determining that there is an insufficient number of low-income purchasers in the market to permit prompt occupancy of the unit.

Upon receipt of a request for an Income Waiver, the Borough shall have first option to purchase the unit at the approved resale price and holding, renting or conveying it to a certified household. The Borough shall have 30 days in which to exercise this option.

The administrative agent shall approve or deny a Hardship Waiver in writing within 30 days of receipt all requested verification.

The administrative agent shall approve or deny an Income Waiver in writing within 10 days of receipt of all requested verification from the owner and a determination by DCA that there are an insufficient number of low-income purchasers in the market to permit prompt occupancy of the units. The Income Waiver shall be provided to the owner with a copy to the Buyer at the time of closing. The original shall be filed with the Deed. The Income Waiver is only valid for the designated resale transaction. All future resales will be in accordance with the deed restrictions and sold to income eligible households for no more than the approved indexed resale price.

The approval of an Income Waiver for a particular resale does not guarantee receipt of the maximum resale price to the owner.

If the administrative agent denies a Hardship Waiver or Income Waiver, the owner may appeal the decision of the administrative agent within 30 days from the date of notification of the decision of the administrative agent (see Appeals). If a written request has not been received within 30 days following the household's receipt of notification, the denial will be final. Owners shall be required to produce documentation to support their claim.

#### **EXEMPT TRANSACTIONS**

The following title transactions shall be deemed "non-sales" and the administrative agent shall provide the owner receiving title with written confirmation of the exemption to those restrictions that determine occupancy of the unit.

- Transfer of ownership between former spouses ordered as a result of a judicial decrees of divorce or judicial decree of separation (but not including sales to third parties);
- Transfer of ownership between family members by will or intestate succession;

- Transfer of ownership through an Executor's Deed to a Class A beneficiary; and
- Transfer of ownership by Court Order.

An exempt transfer of ownership does not terminate the resale restrictions or existing liens on the property. All liens must be satisfied in full prior to subsequent resale and all subsequent resale prices must be calculated using the resale price index in compliance with the term of the affordable housing regulations.

The exempt transaction shall not be considered as a recorded transaction in calculating subsequent resale prices.

The owner shall notify the administrative agent in writing of any proposed transaction that requires approval as an exempt transaction. The owner shall supply the administrative agent with all necessary documentation to demonstrate that the transaction qualifies as an exemption as defined above. The administrative agent shall approve or deny in writing a request for a Certificate of Exemption within 15 days of the receipt of the request.

If the administrative agent denies the exemption, the owner may appeal the decision of the administrative agent within 30 days from the date of notification of the decision of the administrative agent (see Appeals). If a written request has not been received within 30 days following the household's receipt of notification, the denial will be final. Owners shall be required to produce documentation to support their claim.

A Certificate of Exemption shall be filed with the Deed at the time of transfer of title.

#### **VIOLATIONS, DEFAULTS AND REMEDIES**

In the event of a threatened breach of any of the regulations governing the affordable unit by an owner, the administrative agent shall have all the remedies provided at law or equity, including the right to seek injunctive relief or specific performance, it being recognized by both parties that it will cause irreparable harm to the Borough, in light of the public policies set forth in the Fair Housing Act and the obligation for the provision of low- and moderate-income housing.

Upon the occurrence of a breach of any of the regulations governing the affordable unit by an owner, the Borough shall have all remedies provided at law or equity, including but not limited to foreclosure, acceleration of all sums due under a mortgage, recoupment of any funds from a sale in the violation of the regulations, injunctive relief to prevent further violation of the regulations, entry on the premises, and specific performance.

## **PROCEDURES FOR MAINTAINING LONG-TERM CONTROLS**

Pursuant to N.J.A.C. 5:80-26.14(a)8, N.J.A.C. 5:80-26.15(c) and N.J.A.C. 5:80-26.17 current records must be maintained by the administrative agent and outdated records must be given to the Borough for safe-keeping. A file must be created and maintained on each restricted unit for its control period. Administrative agents maintain detailed records on all marketing initiatives.

### **MONITORING**

The current annual monitoring information required to be maintained and reported annually to the municipal housing liaison can be found on the DCA website at:

<https://www.nj.gov/dca/affiliates/coah/upcoming/ctmproject.html>

The information required for each unit includes but is not limited to:

- Street Address
- Block/Lot/Qualifier/Unit Number
- Housing Type
- Income: Very Low/Low/Moderate
- Initial Rental Price
- % of affordability
- Bedroom Type
- Age-restricted
- Handicap accessible/adaptable
- CO #, date
- Effective date of affordability controls
- Length of affordability controls (years)
- Date Affordability controls removed

### **RELEASING UNITS**

The procedure for releasing restricted units is outlined in Ordinance Section §94-87.8. The Release (Quitclaim Deed) for Restricted Units can be found in Appendix E.

<b>FOR-SALE HOUSING PROGRAM AUDIT CHECKLIST</b>
<b>UP-TO-DATE OPERATING MANUAL</b>
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Copies of PSA Requests
Copies of Marketing Requests
<b>RANDOM SELECTION</b>
Log of Applications Received
Log of Random Selection Results
Database of Referrals
<b>MAINTENANCE OF RECORDS</b>
<b>Files to Be Maintained on Every Applicant</b>
Preliminary Application
Application Form
Income Verification, including spreadsheet to calculate applicant's income
Letter of Certification of Eligibility or Letter of Determination of Ineligibility
<b>Files to Be Maintained on Every Unit</b>
Base sales prices
Identification as low- or moderate-income
Description of number of bedrooms and physical layout
Floor plan
Original deed restriction
Affordability control documents, including Declarations of Covenants, Conditions and Restrictions, Deed Restrictions, Deeds, Recapture Mortgages, Recapture Mortgage Notes, Disclosure Statement
Application materials, verifications and certifications of all present owners, pertinent correspondence, any documentation of home improvement, hardship or income waivers or other approvals granted by an AA, certificate of exemption
<b>Files to Be Maintained on Every Project</b>
Condominium Master Deed
Condominium Public Offering
Crediting Information
<b>MONITORING INFORMATION</b>
Complete Monitoring Reporting Forms

# **OPERATING MANUAL**

## **FOR THE ADMINISTRATION OF RENTAL UNITS**

### **In Accordance with the Uniform Housing Affordability Controls**

Washington Borough  
Warren County, New Jersey

July 2020

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## **INTRODUCTION**

The purpose of this Operating Manual is to describe the policies and procedures of the Borough of Washington's Affordable Housing Rental Program. It will serve as a guide to the program staff and the public alike. This manual describes the basic content and operation of the various affordability assistance program components. This manual may be periodically revised to reflect changes in local, state, and federal policies and regulations relative to implementation of the affordable housing programs described herein.

Implementation of any procedure, even if it is not included in this Operating Manual, shall be in accordance with the Federal Fair Housing Act and Equal Opportunities laws<sup>1</sup>, the Uniform Housing Affordability Controls (UHAC) N.J.A.C. 5:80-26.1 et seq.<sup>2</sup>, the substantive rules of the Council on Affordable Housing N.J.A.C. 5:93 as revised and the affordable housing regulations of the Borough of Washington (hereafter referred to as the "Regulations"). The responsibilities of the administrative agent are outlined in Ordinance Section §97-84.17. In accordance with the Federal Fair Housing Act and Equal Opportunities laws, it is unlawful to discriminate against any person making application to buy or rent a home with regard to age, race, religion, national origin, sex, handicapped or familial status.

## **AFFIRMATIVE MARKETING**

### **OVERVIEW OF THE REQUIREMENTS OF AN AFFIRMATIVE MARKETING PLAN**

All affordable units shall be affirmatively marketed in accordance with the Borough of Washington's Affirmative Marketing Plan. An Affirmative Marketing Plan is a regional marketing strategy designed to attract households of all majority and minority groups, regardless of race, creed, color, national origin, ancestry, marital or familial status, gender, affectional or sexual orientation, disability, age, or number of children to housing units which are being marketed by an administrative agent or a developer, sponsor, owner or property manager of affordable housing. The primary objectives of an Affirmative Marketing Plan are to target households who are least likely to apply for affordable housing, and to target households throughout the entire housing region in

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<sup>1</sup> <http://www.hud.gov/offices/fheo/FHLaws/index.cfm>

<sup>2</sup> <http://www.nj.gov/dca/affiliates/coah/regulations/uhac.html>

which the units are located. The Borough's Affirmative Marketing Plan is attached as Appendix A to this document.

Before any rental or re-rental of an affordable unit, the unit shall be affirmatively marketed by the Borough's Affordable Housing Administrative Agent to households throughout Affordable Housing Region 2 (consisting of Warren, Camden and Gloucester Counties) in a manner consistent with the affirmative marketing requirements of the Uniform Housing Affordability Controls (UHAC) N.J.A.C. 5:80-26.1 et seq. The Borough has determined that households that live or work in Affordable Housing Region 2 shall be selected for an affordable housing unit before households from outside this region. Units that remain unoccupied after households who live or work in the region are exhausted, may be offered to households outside the region.

Advertisements must contain the following information for each affordable housing opportunity:

- The location of and directions to the units
- A range of prices for the housing units
- The bedroom size(s) of the units
- The maximum income permitted to qualify for the housing units
- The locations of applications for the housing units
- The business hours when interested households may obtain an application for a housing unit
- Application fees, if any

#### **IMPLEMENTATION OF THE AFFIRMATIVE MARKETING PLAN**

The affirmative marketing process for affordable units shall begin at least four (4) months prior to expected occupancy. In implementing the marketing program, the administrative agent shall undertake all of the strategies outlined in the Borough's Affirmative Marketing Plan. Advertising and outreach shall take place during the first week of the marketing program and each month thereafter until all the units have been sold. Applications for affordable housing shall be available in several locations in accordance with the Affirmative Marketing Plan. The time period when applications will be accepted will be posted with the applications. Applications shall be mailed to prospective applicants upon request.

An applicant pool will be maintained by the administrative agent for re-rentals. When a re-rental affordable unit becomes available, the administrative agent will select

applicants from the applicant pool and, if necessary, the unit will be affirmatively marketed as described above. The selection of applicants from the applicant pool is described in more detail in this manual under Random Selection & Applicant Pools.

## **RANDOM SELECTION & APPLICANT POOLS**

Ordinance §94-87.1 defines the “random selection process” as a process by which currently income-eligible households are selected for placement in affordable housing units such that no preference is given to one applicant over another except for purposes of matching household income and size with an appropriately priced and sized affordable unit (e.g., by lottery). The Borough will employ the *randomization after certification* process.

Applicants will be required to file a pre-application and specify the household composition and number of bedrooms needed. After preliminary income-eligibility is determined, the applicants will submit all documentation required for income verification. Once applicants are notified of certified, households will be categorized based on the number of bedrooms needed and placed into applicant pools. When a unit becomes available, the applicant pool of that bedroom category will be randomized using a random number generator. Applicant pools will be re-randomized each time a unit becomes available.

### **RANDOMIZATION AFTER CERTIFICATION**

Random selection is conducted when a unit is available, and only certified households seeking the type and bedroom size of the available unit are placed in the lottery. The process is as follows:

- After advertising is implemented, applications are accepted for 90 days.
- All applications are reviewed, and households are either certified or informed of non-eligibility. The certification is valid for 180 days and may be renewed by updating income-verification information. Eligible households are placed in applicant pools based upon the number of bedrooms needed (and any other special requirements, such as regional preference or the need for an accessible unit).
- When a unit is available, only the certified households in need of that type of unit are selected for a lottery.
- Households are informed of the date, time, and location of the lottery and invited to attend. A municipal representative will also be in attendance for the lottery.

- After the lottery is conducted, the first household selected is given 60 days to express interest or disinterest in the unit. If the first household is not interested in the unit, this process continues until a certified household selects the unit.
- Applications are accepted on an ongoing basis, certified households are added to the pool for the appropriate household income and size categories, and advertising and outreach is ongoing, according to the Affirmative Marketing Plan.

### **MATCHING HOUSEHOLDS TO AVAILABLE UNITS**

In referring certified households to specific restricted units, to the extent feasible, and without causing an undue delay in occupying the unit, the administrative agent shall strive to implement the following policies:

- Provide an occupant for each unit bedroom;
- Provide children of different sex with separate bedrooms;
- Prevent more than two persons from occupying a single bedroom;
- Require that all the bedrooms be used as bedrooms; and
- Require that a couple requesting a two-bedroom unit provide a doctor's note justifying such request.

The administrative agent cannot require an applicant household to take an affordable unit with a greater number of bedrooms, as long as overcrowding is not a factor. A household can be eligible for more than one (1) unit category and should be placed in the applicant pool for all categories for which it is eligible.

### **HOUSEHOLD ELIGIBILITY & CERTIFICATION**

Before any household can rent a restricted unit, the administrative agent must certify the household as eligible. Certification of a household involves the verification of two critical pieces of data: 1) Household size and composition, including gender; and 2) The total income and assets for all household members over 18 years of age. The certification process begins with the applicant completing an application in its entirety and providing the required backup documentation. Once eligibility documents and data have been collected, the administrative agent can begin the process of calculating the household's income for verification. Please note that preliminary eligibility is based solely on self-reported information by the applicant and is in no way a guarantee of eligibility. The current income limits are attached as Appendix B of this manual.

## **PROCEDURE FOR INCOME-ELIGIBILITY CERTIFICATION**

The administrative agent shall require each member of an applicant household who is 18 years of age or older to provide documentation to verify their income. Income verification documentation should include, but is not limited to the following for each and every member of a household who is 18 years of age or older:

- Four (4) current consecutive pay stubs (including both the check and the stub), including bonuses, overtime or tips, or a letter from the employer stating the present annual income figure or if self-employed, a current Certified Profit & Loss Statement and Balance Sheet.
- Copies of Federal and State income tax returns for each of the preceding three (3) tax years – a Form 1040 Tax Summary for the past three tax years can be requested from the local Internal Revenue Service Center or by calling 1-800-829-1040.
- A letter or appropriate reporting form verifying monthly benefits such as
  - Social Security or SSI – Current award letter or computer printout letter
  - Unemployment – verification of Unemployment Benefits
  - Welfare -TANF<sup>3</sup> current award letter
  - Disability - Worker’s compensation letter or
  - Pension income (monthly or annually) – a pension letter
- A letter or appropriate reporting form verifying any other sources of income claimed by the applicant, such as alimony or child support – copy of court order, recent original letters from the court or education scholarship/stipends or current award letter.
- Current reports of savings and checking accounts (bank statements and passbooks) and income reports from banks or other financial institutions holding or managing trust funds, money market accounts, certificates of deposit, stocks or bonds.
- Evidence or reports of income from directly held assets, such as real estate or businesses.
- Interest in a corporation or partnership – Federal tax returns for each of the preceding three tax years.

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<sup>3</sup> TANF – Temporary Assistance for Needy Families

- Current reports of assets – Market value appraisal or realtor comparative market analysis and bank/mortgage company statement indicating current mortgage balance. For rental property, attach copies of all leases.

Administrative agents must notify applicant households of their eligibility within 20 days the administrative agent's determination.

Households with a verified total household income that exceeds 80 percent of the regional income limit for the appropriate family size are ineligible for purchase or rental of restricted units. A letter rejecting the household's application shall be mailed to the household.

Similarly, households with a verified total household income that is within the income limits, but too low to afford any of the units administered by the administrative agent shall be sent a letter rejecting the household's application, and/or referring them to housing counseling or the Affordability Assistance Program, if applicable.

Households with a verified total household income of less than 80 percent shall be issued a letter certifying eligibility. This certification is valid for 180 days. If the administrative agent is unable to place the household in a restricted unit at the conclusion of 180 days, an extension may be granted once the household's eligibility is verified. Pursuant to N.J.A.C. 5:80-26.16(b), certifications may be renewed in writing at the request of a certified household for an additional period of 180 days at the discretion of the administrative agent.

Once the applicant is certified and matched to an available unit, the administrative agent must secure from the applicant a signed and notarized acknowledgement of their requirements and responsibilities in renting a restricted unit. UHAC's Disclosure Statement (Appendix K of UHAC and Appendix C of this manual) shall be forwarded to the applicants.

In addition to non-eligibility based on income, the administrative agent may deny a certification because of the household's failure or inability to document household composition, income, assets, sufficient funds for down payment, or any other required facts and information. A household may also be denied certification if the administrative agent determines that there was a willful or material misstatement of fact made by the applicant.

## **DISMISSAL OF APPLICATIONS**

Applications can be dismissed for the following reasons:

1. The application is not signed or submitted on time.
2. The applicant commits fraud, or the application is not truthful or complete.
3. The applicant cannot or does not provide documentation to verify their income or other required information when due.
4. The household income does not meet the minimum or maximum income requirements for a particular property.
5. The applicant owns assets that exceed the Asset Limit.
6. The applicant fails to respond to any inquiry in a timely manner.
7. The applicant is non-cooperative or abusive with the staff, property manager or landlord.
8. The applicant changes address or other contact information without informing the administrative agent in writing.
9. The applicant does not meet the credit standard or other requirement set forth by managers of rental properties.
10. The applicant fails to verify attendance in a credit counseling program when required to do so by the program rules.
11. The applicant does not respond to periodic update inquiry in a timely fashion.
12. The applicant fails to sign the Compliance Certification, Certificate for Applicant, Lease Document, as may be required.
13. The applicant, once approved, fails to sign the lease in a timely manner.
14. Applicants will also be removed from all lists held by the administrative agent once they have been approved for an affordable unit. However, these applicants may re-apply for other opportunities in that municipality once they have occupied their unit.

Applicants who are dismissed may re-apply. A minimum time period of six (6) months applies in most situations where the applicant has been withdrawn for fraud, poor credit, uncooperative behavior or other serious matters. Applicants are not automatically removed from rental lists if they do not respond to a Notice of Availability. Applications may be held in abeyance for a period not to exceed 60 days if there is an error on the credit report, so that the applicant can correct the error and re-apply. Units will not be held open for that applicant. However, once the credit report is corrected, the applicant will be given a priority for the next opportunity at that property.

## **APPEALS**

Appeals from all decisions of an administrative agent shall be filed in writing with the Court.

## **DETERMINING AFFORDABLE RENTS**

To determine the affordable rents, the administrative agent uses the most recently updated calculators provided by AHPNJ, located at:

<https://ahpnj.org/resources/2019-coah-calculators>.

## **DEVELOPMENT CONSIDERATIONS AND COMPLIANCE ISSUES**

There are several regulations that must be considered from the development perspective before the rents of individual units can be calculated. These requirements should be discussed at the first meeting between the Municipal Housing Liaison/ Administrative Agent and homeowner.

**Bedroom Distribution.** The standards on the distribution of unit sizes for affordable developments require that:

- The combined number of efficiency and one-bedroom units may be no greater than 20 percent of the total low- and moderate-income units;
- At least 30 percent of all low- and moderate-income units must be two-bedroom units;
- At least 20 percent of all low- and moderate-income units are three-bedroom units; and
- The remainder, if any, may be allocated at the discretion of the developer.

**Age-restricted Units.** In determining the initial sales prices and rents for compliance with the affordability average requirements for restricted units in assisted living facilities and age-restricted developments, the following standards shall be used:

- A studio shall be affordable to a one-person household;
- A one-bedroom unit shall be affordable to a one- and one-half-person household; and
- A two-bedroom unit shall be affordable to a two-person household or to two one-person households.

**Pricing by Household Size.** Initial rents are based on targeted "model" household sizes for each size home as determined by the number of bedrooms. Initial rents must adhere to the following rules. These maximum rents are based on the Affordable Housing Regional Income Limits at the time of occupancy:

- A studio shall be affordable to a one-person household;
- A one-bedroom unit shall be affordable to a one- and one-half person household;
- A two-bedroom unit shall be affordable to a three-person household;
- A three-bedroom unit shall be affordable to a four- and one-half person household; and
- A four-bedroom unit shall be affordable to a six-person household.

Size of Unit	Household Size Used to Determined Max Rent
Studio/Efficiency	1
1 Bedroom	1.5
2 Bedrooms	3
3 Bedrooms	4.5
4 Bedrooms	6

The above rules are only to be used for setting initial rents. They are not guidelines for matching household sizes with unit sizes. The pricing of age-restricted units may not exceed affordability based on a two-person household.

#### **DETERMINING INITIAL RENTS**

To determine the initial rents the administrative agent uses the HUD, Region 2 Rent and Income levels.

**Affordability Average.** The average rent for all affordable units cannot exceed 52 percent of the regional median income. At least one rent for each bedroom type must be offered for both low-income and moderate-income units.

**Maximum Rent.** When including percentages in the rental calculator, the maximum rent for a moderate-income unit shall be affordable to households earning no more than 60 percent of median income and the maximum rent for a low-income unit shall be affordable to households earning no more than 52 percent of median income. The maximum rent for a very low-income units shall be affordable to households earning no more than 30 percent of median income.

#### **DETERMINING RENT INCREASES**

Annual rent increases are permitted in affordable units. Rent increases are permitted at the anniversary of tenancy according to AHPNJ's Annual Affordable Housing Regional Income Limits Chart, available on AHPNJ's website. These increases must be filed with and approved by the administrative agent. Property managers or landlords who have charged less than the permissible increase may use the maximum allowable rent with the next tenant with permission of the administrative agent.

The maximum allowable rent would be calculated by starting with the rent schedule approved as part of initial lease-up of the development and calculating the annual increase from the initial lease-up year to the present. Rents may not be increased more than once a year, may not be increased by more than one court-approved increment at a time, and may not be increased at the time of new occupancy if this occurs less than one year from the last rental. No additional fees may be added to the approved rent without the express written approval of the administrative agent.

The requirements pertaining to maximum increases in rents are established within §94-87.5(D)(1)(e) of the Borough Code.

### **PROCEDURES FOR MAINTAINING LONG-TERM CONTROLS**

Pursuant to N.J.A.C. 5:80-26.14(a)8, N.J.A.C. 5:80-26.15(c) and N.J.A.C. 5:80-26.17 current records must be maintained by the administrative agent and outdated records must be given to the Borough for safe-keeping. A file must be created and maintained on each restricted unit for its control period. The administrative agent maintains detailed records on all marketing initiatives. A comprehensive list of the administrative agent duties is provided in Ordinance Section §94-87.18.

### **FILES TO BE MAINTAINED ON EVERY APPLICANT**

The administrative agent will maintain files on every applicant. All files will contain a preliminary application. If an applicant's preliminary application is approved, and the applicant files a formal application, the file will contain at a minimum:

- Application Form
- Tenant Information Form
- Income Verification
- Letter of Certification of Eligibility or Letter of Determination of Ineligibility

Individual files will be maintained throughout the process and submitted to the Borough upon termination of the program.

### **FILES TO BE MAINTAINED ON EVERY UNIT**

The administrative agent will maintain files on every unit for the length of the affordability controls. The unit file will contain at a minimum:

- Base rent
- Identification as low- or moderate-income
- Description of number of bedrooms and physical layout
- Floor plan

- Application materials, verifications and certifications of all present owners, pertinent correspondence
- Copy of lease
- Disclosure Statement (Appendix K of UHAC and Appendix C of this manual)

#### **FILES TO BE MAINTAINED ON EVERY PROJECT**

The administrative agent will maintain files on every project for the length of the affordability controls. The project file will contain at a minimum:

- Condominium Master Deed
- Condominium Public Offering
- Crediting Information
- Original deed restriction
- Affordability control documents, including Declarations of Covenants, Conditions and Restrictions, Deed Restrictions (Appendix E-2 of UHAC and Appendix D of this manual), Deeds, Recapture Mortgages, Recapture Mortgage Notes, Disclosure Statement (Appendix K of UHAC and Appendix C of this manual)

#### **FILES TO BE MAINTAINED ON THE APPLICANT POOL**

- Any changes to the applicant pool
- Any action taken with regard to the applicant pool
- Any activity that occurs that affects a particular applicant
- Current applications for all applicants whose status is active in the applicant pool
- The application, the initial rejection notice, the applicant's reply to the notice, a copy of the administrative agent's final response to the applicant, and all documentation of the reason the applicant's name was removed from the applicant pool.

#### **ENFORCEMENT**

Ordinance Section §94-87.20 outlines the requirements pertaining to the enforcement of affordable housing regulations.

#### **MONITORING**

The current annual monitoring information required to be maintained and reported annually to the municipal housing liaison can be found on the DCA website at:

<https://www.nj.gov/dca/affiliates/coah/upcoming/ctmproject.html>

The information required for each unit includes but is not limited to:

- Street Address

- Block/Lot/Qualifier/Unit Number
- Housing Type
- Income: Very Low/Low/Moderate
- Initial Rental Price
- % of affordability
- Bedroom Type
- Age-restricted
- Handicap accessible/adaptable
- CO #, date
- Effective date of affordability controls
- Length of affordability controls (years)
- Date Affordability controls removed

#### **VIOLATIONS, DEFAULTS AND REMEDIES**

In the event of a threatened breach of any of the regulations governing the affordable unit by an owner of a rental development, the administrative agent shall have all the remedies provided at law or equity, including the right to seek injunctive relief or specific performance, it being recognized by both parties that it will cause irreparable harm to the Borough, in light of the public policies set forth in the Fair Housing Act and the obligation for the provision of low- and moderate-income housing.

Upon the occurrence of a breach of any of the regulations governing the affordable units by an owner of a rental development, the Borough shall have all remedies provided at law or equity, including but not limited to foreclosure, acceleration of all sums due under a mortgage, recoupment of any funds from a sale in the violation of the regulations, injunctive relief to prevent further violation of the regulations, entry on the premises, and specific performance.

<b>RENTAL HOUSING PROGRAM AUDIT CHECKLIST</b>
<b>UP-TO-DATE OPERATING MANUAL</b>
Income Limits
Sample Forms and Letters
<b>AFFIRMATIVE MARKETING</b>
Copies of Display Ads
Copies of PSA Requests
Copies of Marketing Requests
<b>RANDOM SELECTION</b>
Log of Applications Received
Log of Random Selection Results
Database of Referrals
<b>MAINTENANCE OF RECORDS</b>
<b>Files to Be Maintained on Every Applicant</b>
Preliminary Application
Application Form
Tenant Information Form
Income Verification
Letter of Certification of Eligibility or Letter of Determination of Ineligibility
<b>Files to Be Maintained on Every Unit</b>
Base rent
Identification as low- or moderate-income
Description of number of bedrooms and physical layout
Floor plan
Application materials, verifications and certifications of all present tenants, pertinent correspondence
Copy of lease
Disclosure Statement
Original deed restriction with length of controls
<b>Files to Be Maintained on Every Project</b>
Condominium Master Deed
Condominium Public Offering
Crediting Information
Original deed restriction
Affordability control documents, including Declarations of Covenants, Conditions and Restrictions, Deed Restrictions, Deeds, Recapture Mortgages, Recapture Mortgage Notes, Disclosure Statement
<b>MONITORING INFORMATION</b>
Complete Monitoring Reporting Forms

**Appendix Q5**  
**Washington Borough**  
**Highlands Affordable Housing Ordinance Draft**

**ORDINANCE NO. \_\_\_\_**  
**BOROUGH OF WASHINGTON**  
**WARREN COUNTY, NEW JERSEY**  
**HIGHLANDS AFFORDABLE HOUSING ORDINANCE**

**WHEREAS**, the Borough of Washington is located in the Highlands Region with lands lying within the Planning Area, as defined by section 7 of the Highlands Act; and

**WHEREAS**, the Governing Body of the Borough of Washington has, on behalf of the municipality, petitioned the Highlands Council for Plan Conformance with respect to Borough of Washington lands located within the Planning Area portion of the Highlands Region; and

**WHEREAS**, the Petition filed with the Highlands Council contains proposed amendments to the municipal planning program, including amendments to the Environmental Resource Inventory, Master Plan, and Land Use Ordinance, which together are intended to achieve conformance with the Regional Master Plan and provide immediate protections to vital Highlands Resources located within the Borough of Washington; and

**WHEREAS**, the Borough Council of the Borough of Washington adopted the Highlands Conformance Ordinance to become a fully conforming municipality under the Highlands Council; and

**WHEREAS**, the Highlands Council requires that all conforming municipalities within the Highlands Region adopt the Highlands Affordable Housing Ordinance to implement the standards of the Fair Housing Act (C.52:27D-329.9);

**NOW, THEREFORE, BE IT ORDAINED** by the Borough Council of the Borough of Washington, County of Warren that the following is hereby adopted as an amendment to the Borough of Washington land use ordinances:

**SECTION 1.** Highlands Affordable Housing Ordinance

1. Any development consisting of five or more newly constructed residential units shall reserve for occupancy at least 20 percent (20%) of the residential units constructed for low- or moderate-income households.
2. Development exempt from the Highlands Act is not exempt from the 20% reservation requirement.

3. A minimum of 13% of the affordable units shall be reserved for very low-income households pursuant to section 7 of P.L.2008, c.46 (C.52:27D-329.1).
4. No density bonus or presumptive density increase over existing zoning shall be required to be granted by the municipality for the construction of the affordable housing units on site. Density bonuses or presumptive density increases may be provided through Fair Share Plans and implementing ordinances to address affordable housing needs of the municipality where inclusionary housing projects are selected as a compliance mechanism by the municipality.
5. Municipalities shall provide for the local review of the required 20% set aside of affordable units to be provided by requiring the submission of an Affordable Housing Production Plan in accordance with the following:
  - a. An Affordable Housing Production Plan shall detail all issues related to affordable units and must be submitted to the municipality's Development Review Board at the time application is made for any development requiring affordable housing pursuant to this ordinance.
  - b. The Affordable Housing Production Plan shall be a condition of the completeness determination and is hereby added to the submission requirements checklist for any new residential development or major residential subdivision proposing five or more new units.
  - c. The Affordable Housing Production Plan shall include at a minimum the anticipated bedroom distribution, income split, anticipated administrative entity, tenure, maintenance obligations and any other information pertinent to the creation and long-term support of the affordable housing units.
  - d. All Affordable Housing Production Plans shall be the subject of review by the municipality's Planning, Zoning, or Land Use Board for consistency with these guidelines, the RMP, and the municipality's certified Housing Element and Fair Share Plan.
  - e. Compliance with the RMP, the Fair Housing Act and the Affordable Housing Production Plan shall be a condition of any local approval.
  - f. Any approval shall be accompanied by a requirement for a development agreement between the applicant and the municipality.
  - g. The development agreement shall detail the responsibilities of all parties and shall include the phasing plan for the construction and occupancy of the affordable housing units.

**SECTION 2.** At least three copies of said full Ordinance are on file in the Office of the Municipal Clerk for public examination and acquisition. Copies are available for inspection or acquisition during regular weekday working hours and arrangements have been made for the publication of said proposed

Ordinance in pamphlet or other similar form which will be available for purchase from the Borough Clerk.

**SECTION 3.** This ordinance shall take effect upon final passage and publication according to law.

**SECTION 4.** The Borough Clerk is hereby directed to give notice at least ten days prior to the hearing on the adoption of this Ordinance to the County Planning Board, and to all others entitled thereto pursuant to the provisions of N.J.S.A. 40:550-15. Upon adoption of this Ordinance, after public hearing thereon, the Borough Clerk is further directed to publish notice of passage thereof and file a copy of this Ordinance as finally adopted with the County Planning Board as required by N.J.S.A. 40:550-16, the Highlands Council, and the Borough Tax Assessor.

**SECTION 5.** All ordinances or parts of ordinances inconsistent herewith are hereby repealed.

**SECTION 6.** If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional by a court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions.

ATTEST

BOROUGH OF WASHINGTON

\_\_\_\_\_  
Borough Clerk

\_\_\_\_\_  
Mayor

INTRODUCED:

ADVERTISED:

PUBLIC HEARING:

ADOPTED:

ADVERTISED: