

Signed in
Counterpart by
Weitz-Kahane

SETTLEMENT AGREEMENT

This Settlement Agreement (hereinafter, the "Agreement") is made by, between, and among the Township of Marlboro (hereinafter, the "Township"), the governing body of the Township (hereinafter, "Township Council"), The Planning Board of Marlboro (hereinafter, the "Planning Board") and Ashbel Associates, L.L.C (hereinafter "Ashbel"); Pallu Associates, L.L.C. (hereinafter "Pallu"); Elon Associates, LLC (hereinafter "Elon"); Great River Corp. (hereinafter "Great River"); Gihon Associates, L.L.C. (hereinafter "Gihon"); and Windridge Manor, LLC (hereinafter "Windridge Manor"), with their principal business addresses at 811 Amboy Avenue, Suite E, Edison, New Jersey 08837 (hereinafter, Ashbel, Pallu, Great River, Gihon, and Windridge Manor shall be known collectively as "Developer") (hereinafter, the Township, Township Council, the Planning Board, and Developer shall sometimes collectively be referred to as the "Parties"; and hereinafter the Township, Township Council and Planning Board shall sometimes be collectively referred to as the "Township Parties").

RECITALS

WHEREAS, the Township is a municipality in the State of New Jersey;

WHEREAS, Ashbel, Pallu, Gihon, Elon, and Windridge Manor are New Jersey limited liability companies and Great River is a New Jersey corporation;

WHEREAS, Pallu is the owner of properties located in the Township designated as Block 146, Lots 25 & 26, an area encompassing about thirty-six (36) acres of land (hereinafter, the "Pallu Site");

WHEREAS, Pallu is also the owner of properties located on Union Hill Road in the Township designated as Block 299, Lot 33, an area encompassing about twelve (12) acres of land (hereinafter, the "Union Hill Road Site" and historically identified as "Site 3"), and property

located on Tennent Road in the Township designated as Block 267, Lots 36 & 37, an area encompassing about nine (9) acres (hereinafter, the "Tennent Road Site" and historically identified as "Site 4");

WHEREAS, Elon is the former owner of the Union Hill Road Site and the Tennent Road Site, having transferred title to Pallu by Deed dated April 3, 2019;

WHEREAS, Great River is the owner of property located in the Township designated as Block 146, Lot 21 (the "Great River Site") which shall not be rezoned and shall be retained by Great River;

WHEREAS, Gihon is the owner of property located in the Township designated as Block 146, Lot 23 (the "Gihon Site") which shall not be rezoned and shall be retained by Gihon;

WHEREAS, the Pallu Site, the Great River Site and the Gihon Site have collectively been identified historically as "Site 9B";

WHEREAS, Ashbel is the owner of property located on Texas and Greenwood Road in the Township designated as Block 103, Lot 12 and Block 119, Lot 16, an area encompassing about sixty-five (65) acres of land (hereinafter, "the Ashbel Site");

WHEREAS, the Ashbel Site has been identified historically as "Site 9A";

WHEREAS, Windridge Manor is the owner of property located on Highway 79 in the Township designated as Block 207, Lot 5, an area encompassing about eighteen (18) acres (hereinafter "the Windridge Site" and historically identified as "Site 5") which shall not be rezoned and shall be retained by Windridge Manor;

WHEREAS, without the affordable housing obligation required by applicable law and imposed upon the Township by the Court, the Township would not consider the development of

the Pallu Site (formerly part of Site 9B) and the Ashbel Site (formerly Site 9A) as contemplated by this Agreement;

WHEREAS, the Township and Ashbel, Pallu, Great River, and Gihon had previously agreed in agreements dated December 7, 2000 and February 1, 2005 to re-zone certain properties located near Greenwood Road more specifically known and designated as Block 103, Lot 12 and Block 119, Lot 16 to permit the construction of a total of 147 senior housing units, consisting of 126 market value senior units and 21 on-site affordable housing senior units, as well as to re-zone certain properties located near Falson Lane, more specifically known and designated as Block 146, Lots 25 and 26 to permit the construction of a total of 199 housing units, consisting of 172 market value townhouse units/patio home and 27 on-site affordable multi-family condominiums;

WHEREAS, Developer filed a Builder's Remedy action against the Township regarding the Pallu Site, Ashbel Site, Great River Site, Gihon Site, Tennent Road Site, Union Hill Road Site and Windridge Site captioned, Ashbel Associates, LLC, et al. v. Township of Marlboro, et al., Docket No. MON-L-3069-15 (formerly Docket No. 004670-10) (hereinafter, the "Builder's Remedy Action") and also has claims in a declaratory judgment action captioned, In the Matter of the Application of the Township of Marlboro, Monmouth County, New Jersey For a Declaratory Judgment, Docket No. MON-L-2121-15 (hereinafter "Township Declaratory Judgment Action");

WHEREAS, pursuant to applicable law the Township intends to prepare a Housing Element and Fair Share Plan (hereinafter "Affordable Housing Plan"), that will be adopted by the Planning Board, endorsed by the Township Council, and submitted to the Superior Court of New Jersey (hereinafter, the "Court") for review and approval;

WHEREAS, the Township and the Fair Share Housing Center (hereinafter "FSHC") have agreed and executed a settlement agreement dated January 9, 2019, (hereinafter the "Township's FSHC Settlement") that confirms FSHC's agreement that the Township satisfies its obligations under the Mount Laurel doctrine and the 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), through the adoption of the Affordable Housing Plan and through the implementation of the Affordable Housing Plan and Township's FSHC Settlement;

WHEREAS, in consideration for the settlement of Developer's claims in the Builder's Remedy Action and the Township Declaratory Judgment Action, and as required by applicable affordable housing law, the Affordable Housing Plan will include the Ashbel Site and the Pallu Site as inclusionary developments with a density of not less than 507 total units with twenty (20%) percent of the total units being set aside as Affordable units and with at least thirteen (13%) percent of those Affordable units being very low income units;

WHEREAS, Developer intends to develop the Ashbel Site and the Pallu Site as inclusionary developments of 507 residential units, 20% of which are affordable rental apartments as shown on the plan entitled "Conceptual Site Plan A – Block 146, Lot 25 & 26", prepared by Dynamic Engineering Associates, PC and revised to 4/1/19 ("Concept Plan A – Pallu Site") attached and made a part hereof as **Exhibit A** and plan entitled "Conceptual Site Plan B – Block 116, Lot 16", prepared by Dynamic Engineering Associates, PC and revised to 4/1/19 ("Concept Plan B – Ashbel Site") attached and made a part hereof as **Exhibit B** (each an "Inclusionary Development" and collectively the "Inclusionary Developments");

WHEREAS, the Windridge Site is not proposed for an inclusionary development rezoning and will be retained by its current owners with its current zoning;

WHEREAS, the Union Hill Road Site shall be donated to the Township for the purposes of either open space or other municipal non-housing use upon the grant of unappealable final major site plan approval by the Planning Board and the expiration of the 45-day appeal period, and the ability to obtain building permits, for both the Pallu Site and the Ashbel Site;

WHEREAS, the Tennent Road Site shall be donated to the Township for the purposes of either open space or other municipal non-housing uses upon the grant of unappealable final major site plan approval by the Planning Board and the expiration of the 45-day appeal period, and the ability to obtain building permits, for both the Pallu Site and the Ashbel Site;

WHEREAS, as directed by the Court, the adoption of the Affordable Housing Plan and the settlement of Developer Builder's Remedy Action will be submitted to the Court Appointed Special Master and the Court for approval and, in consideration for the settlement of the Builder's Remedy action and as required by applicable affordable housing law;

WHEREAS, to ensure that the Inclusionary Development generates affordable housing credits to be applied to the Township's affordable housing obligations, the affordable units within the Inclusionary Development shall be developed in accordance with the Uniform Housing Affordability Controls, N.J.A.C. 5:80-26.1 et seq. ("UHAC") and shall be deed restricted for a period of at least 30 years;

WHEREAS, the Parties wish to enter into this Agreement, setting forth the terms, conditions, responsibilities and obligations of the Parties, and seek the Court's approval of this Agreement; and

NOW, THEREFORE, in consideration of the promises, the mutual obligations contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby

acknowledged by each of the Parties, the Parties hereto, each binding itself, its successors and assigns, do hereby covenant and agree, each with the other, as follows:

I. TERMS AND CONDITIONS.

A. The purpose of this Agreement is to settle the Developer's Builder's Remedy Action and to create a realistic opportunity for the construction of the Inclusionary Developments as required by applicable law and to generate affordable housing credits for the Township to apply to any Round 2 and/or Round 3 affordable housing obligations assigned to it. The Inclusionary Developments shall be substantially consistent with the Concept Plans, attached hereto and made a part hereof as Exhibit A and Exhibit B, which have been reviewed and approved by the Township Parties and the Township Parties' professionals. The Township Parties and the Developer acknowledge and agree that the Concept Plans are conceptual and are subject to reasonable modifications as a result of final engineering and Planning Board review.

B. The Township will seek Court approval by way of a "Fairness Hearing," of its Second and Third Round plans and will include in the plan a rezoning of the Ashbel Site and the Pallu Site to allow for the construction of the Inclusionary Developments collectively having a total of 507 units consistent with the attached Exhibit A (Concept Plan A – Pallu Site) and Exhibit B (Concept Plan B – Ashbel Site) and the "Rezoning Ordinance" as such term is defined below.

C. In the event of any legal challenges to the Court's approval of this Agreement, or the Rezoning Ordinance (as such term is herein defined), the Parties must diligently defend any such challenge and shall cooperate with each other regarding said defense. In addition, if any such challenge results in a judicially imposed reduction of the number of units or invalidates the Rezoning Ordinance that is the subject of this Agreement, the Parties must negotiate in good faith

with the intent to draft a mutually-acceptable amended agreement reasonably consistent with this Agreement and the Rezoning Ordinance that would pass judicial scrutiny.

II. DEVELOPER'S OBLIGATIONS. Developer shall have an obligation to deed-restrict twenty percent (20%) of the residential units in the Inclusionary Developments as very low, low, and moderate-income affordable units in accordance with the percentages required by UHAC (except that in lieu of 10% of affordable units being required to be at 35% of median income, 13% of affordable units in this project shall be required to be at 30% of median income), the applicable affordable housing regulations, any applicable order of the Court, and other applicable laws. The aforesaid twenty (20%) percent affordable housing set aside shall be the Developer's sole obligation with regard to affordable housing and Developer shall not be required to make any monetary contributions toward affordable housing.

A. In addition, the affordable units shall remain affordable rental units for a period of not less than thirty (30) years until released by the Township in accordance with UHAC guidelines ("Deed-Restriction Period") so that the Township may count the units against its obligations to provide rental housing in this or future rounds. This obligation includes, but is not limited to, the obligation to comply with the bedroom distribution requirements, very low/low/moderate income split requirements, pricing requirements, affirmative marketing requirements, candidate qualification and screening requirements and deed restriction requirements.

B. The phasing in accordance with N.J.A.C. 5:93-5.6(d) of the affordable housing units shall be in compliance with COAH's Round Two substantive regulations, N.J.A.C. 5:93, which the Parties believe will govern the issue, or as approved by the Special Master of the Court and the Court.

C. Developer shall have the option to self-administer the rental of the affordable units or shall contract with an experienced administrative agent ("Administrative Agent") for the rental administration of the affordable units. In either case, Developer shall have the obligation to pay all costs associated with properly deed restricting the affordable units in accordance with UHAC and other applicable laws for the Deed-Restriction Period.

D. The Parties agree that the affordable units are to be included in the Affordable Housing Plan to be approved and credited by the Court, and will be counted toward the Township's Round 2 and/or Round 3 affordable housing obligation.

E. Upon written notice, Developer shall provide detailed information requested by the Township, or the Township's Administrative Agent, specifically related to and concerning Developer's compliance with UHAC and other applicable laws.

F. **Obligation Not To Oppose Township's Application for Approval of its Affordable Housing Plan:** As it pertains to the Ashbel Site, Pallu Site, Great River Site, Gihon Site, Union Hill Road Site, Tennent Road Site, and Windridge Site, Developer shall not directly or indirectly oppose or undertake any action to interfere with the Court's approval and/or implementation of the Affordable Housing Plan or the Township FSHC Settlement, as it may be amended in any form, unless the Affordable Housing Plan impairs or deprives any of Developer's rights as granted hereunder or unless any other defendants herein or interested parties undertake any action to obstruct, impede, or challenge Developer's inclusion of the rezoning of Developer's property or otherwise oppose, challenge, or appeal any approvals needed to develop the Inclusionary Developments on the Ashbel Site and Pallu Site consistent with this Agreement.

G. **No Obligation to Continue to Participate in the Builder's Remedy Action:** Developer shall have no obligation to continue to participate in the Builder's Remedy Action,

Township's Declaratory Judgment Action, or Affordable Housing Trust Fund Action but may at its option participate as provided in Section II-F of this Agreement.

H. FSHC's Attorney's Fees: Developer shall pay two-sevenths (2/7) of the FSHC's attorney's fees (i.e. \$21,428.57) pursuant to the Township's FSHC Settlement due within thirty (30) days of the Court's approval of the Township's FSHC Settlement pursuant to a duly-noticed fairness hearing.

I. Delivery of Conveyance Documents: Developer shall deliver to the Township executed copies of all Deeds, Seller's Residency Affidavits, Affidavits of Consideration, Affidavits of Title, and any other documentation necessary for the conveyance of the Union Hill Road Site and the Tennent Road Site to the Township upon the adoption of the rezoning of the Ashbel Site and the Pallu Site, which documents shall be held in escrow by the Township Attorney until the grant of final major site plan approval by the Planning Board and the expiration of the 45-day appeal period, and the ability to obtain building permits, for both the Pallu Site and the Ashbel Site.

III. THE TOWNSHIP'S OBLIGATIONS.

A. The Rezoning Ordinance: Following the approval of the Townships 2nd and 3rd round plan by the Court at a Fairness Hearing on the Fair Share Housing Center Settlement Agreement (and without the need for a final judgment of compliance), the Township Council shall in conformance with the Court's order introduce an ordinance and refer said ordinance to the Planning Board (hereinafter the "Rezoning Ordinance"), consistent with the attached Concept Plan A - Pallu Site and Concept Plan B - Ashbel Site, which Rezoning Ordinance shall allow for the development of the Ashbel Site and the Pallu Site and the construction of 507 total units

between the Ashbel Site and the Pallu Site, of which twenty percent (20%) shall be set aside for affordable housing. Although it is the Developer's intent to construct the Inclusionary Developments in substantial conformance with the Concept Plans attached hereto as Exhibit A and Exhibit B, the Parties recognize that the Inclusionary Developments are not fully engineered. The Township recognizes that, after the Inclusionary Developments are fully engineered, Developer may need to move the location of certain buildings within each of the Pallu Site and the Ashbel Site or potentially between the Pallu Site and the Ashbel Site. The Rezoning Ordinance shall permit such relocation of buildings, if necessary, provided that any such relocation results in the construction of 507 total units between the Ashbel Site and the Pallu Site. The Rezoning Ordinance will indicate that the twenty percent (20%) set-aside will be constructed in accordance with all applicable UHAC and COAH regulations and the terms of this Agreement. Upon introduction of the Rezoning Ordinance, the Township Council shall refer the Rezoning Ordinance to the Planning Board for review and recommendation at the next Planning Board meeting as provided by the Municipal Land Use Law, N.J.S.A. 40:55D- 1, et, seq. In the event that the Township Parties fail to adopt the Rezoning Ordinance, Developer may seek the relief set forth in **Section V** herein or go back to the Court for further relief and resume its role as Intervenor in the Township's Declaratory Judgment Action and reinstate the Builder's Remedy Action in order to pursue the claims made therein.

B. Representation regarding Sufficiency of Water and Sewer: Developer will be required to coordinate with the Western Monmouth Utilities Authority ("WMUA") and/or the Bayshore Regional Sewerage Authority ("BRSA"), the County of Monmouth ("Monmouth County"), the State of New Jersey Department of Environmental Protection ("DEP") to obtain approvals for sewer capacity/connections and inclusion in the Monmouth County Sewer Service

Area and/or in any other requisite sewer service area for the entirety of the Ashbel Site and the Pallu Site. Developer may also be required to coordinate with the Gordon's Corner Water Company ("GCW") and/or other utility companies for water capacity and connections. The Township Parties represent that they will support Developer and cooperate with good faith efforts regarding Developer's applications to the WMUA, BRSA, Monmouth County, DEP, GCW, and any other entity or authority having jurisdiction for sewer and water capacity, conveyancing, treatment and/or connections, and for ensuring the inclusion of all of the Ashbel Site and the Pallu Site in the Monmouth County Sewer Service Area and/or any other sewer service areas as applicable. Upon execution of this Agreement, Developer and the Township shall notify all of the above entities of the execution of this Agreement and request the respective entities reserve capacity for the Inclusionary Developments contemplated by this Agreement. Within the time prescribed by the Court after a Fairness Hearing, the Township Council shall adopt a resolution endorsing and recommending the inclusion of all of the Ashbel Site and the Pallu Site in the Monmouth County Sewer Service Area and/or any other sewer service areas as applicable.

C. Obligation To Cooperate: The Township Parties acknowledge that in order for Developer to construct its Inclusionary Developments, the Township Parties will be required to cooperate with the Developer in connection with the Developer's efforts 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 Township, the Planning Board, the County of Monmouth, the Monmouth County Planning Board, the Freehold Soil Conservation District, the New Jersey Department of Environmental Protection, the New Jersey Department of Transportation.

IV. THE PLANNING BOARD'S OBLIGATIONS:

A. Obligation to Rezone the Property: After the introduction of the Rezoning Ordinance and at the next Planning Board meeting following the referral from the Township Council to the Planning Board referenced in **Sections I-B and III-A**, the Planning Board shall make its recommendation to the Township.

B. (a) Obligation to Process Developer's Development Applications with Reasonable Diligence. In accordance with N.J.A.C. 5:93-10(b), the Planning Board shall cooperate in granting all reasonable waivers, variances and/or de minimis exceptions that are necessary to develop the Ashbel Site and the Pallu Site as contemplated by this Agreement. In the event of any appeal of the Court approval of this Agreement, or, as applicable, the Rezoning Ordinance, the Board shall process and take action on any development application by Developer for the Ashbel Site and the Pallu Site, which decision may be conditioned upon the outcome of any pending appeal. Further, Developer shall have the right to request special meetings at Developer's sole cost and expense.

(b) Pallu Site and Ashbel Site.

1. The Township and the Planning Board agree to review and adjudicate the aforementioned applications notwithstanding that any other Federal, State, County, or other agency approvals or permits may be required for development of the Pallu Site and the Ashbel Site, and where appropriate will grant such municipal approvals subject to any such applicable agency approvals.

2. As set forth in the zoning table on the Concept Plans, the Rezoning Ordinance shall permit Developer to deviate five feet (5') from all Building Separation requirements.

C. **Obligation to Refrain From Imposing Cost-Generative Requirements:** The Planning Board recognizes that this Agreement, and, as applicable, the Rezoning Ordinance all contemplate the development of an "inclusionary development" within the meaning of the Mount Laurel doctrine, and Developer shall be entitled to any benefits, protections, and obligations afforded to developers of inclusionary developments, and as such shall refrain from imposing cost generative requirements. To the extent any Township Ordinance(s) imposes such cost generative requirements in connection with Developer's application for development, Developer shall seek a waiver of those requirements from the Township and/or Planning Board, which is obligated to act in accordance with paragraph IV(B)(a) of this agreement.

V. **DEFAULT.**

A. **Default with Respect to the Township:** Default with respect to the Township Parties shall be defined as the Township Parties' failure to: (i) adopt the Rezoning Ordinance without a successful appeal thereof; (ii) failure to approve Developer's application for development if said application conforms to the terms of this Agreement and the Rezoning Ordinance; (iii) grant an approval of the application for development with conditions that: (a) contradict the terms of this Agreement or the Rezoning Ordinance; or (b) are unacceptable to Developer in its sole discretion; and/or (iv) the failure to satisfy any obligation of the Township Parties set forth in this Agreement. The Township shall be considered in Default of this Agreement if, subject to the terms of this Agreement, after written Notice of Default delivered to counsel for the Township Parties, the Township Parties have not cured any default within ten (10) business days or at the next regularly scheduled meeting of the Township Council or the Planning Board, whichever is later. In the event the Township Parties are in default, Developer may apply to the

Superior Court of New Jersey, Monmouth Vicinage to the judge assigned to handle Mt. Laurel matters for the Monmouth Vicinage, by motion for an Order directing the Township to immediately take whatever action is necessary to comply with the terms of the Agreement, including but not limited to enacting the Rezoning Ordinance, or issue to Developer the Township Parties governmental approvals for the Ashbel Site and the Pallu Site consistent with the Rezoning Ordinance.

B. Default with Respect to Developer: If Developer should default on any of the agreed upon terms and conditions of this Agreement, the Township will have the right to apply to the Court to enforce whichever term or condition has been violated. Default shall include, but not be limited to, the submission of a plan for approval that exceeds the agreed upon unit count or reduces the number of affordable units (unless said reduction of the affordable units is proportionately consistent with a reduction on the market rate units such that a 20% set-aside is maintained) to be provided. Developer shall be considered in Default of this Agreement if, after written Notice of Default has been delivered to counsel for Developer, and Developer has not cured any default within forty-five (45) business days.

VI. RELEASES.

A. Developer's Release to the Township: Once the operative terms of this Agreement have been completed and the Township has granted all municipal approvals, and has cooperated fully in the pursuit of any other governmental approvals requiring the Township to be the applicant or requiring the Township's cooperation or consent as may be necessary to begin construction, and after all rights of appeals from any and all approvals has expired without an appeal having been taken, or if an appeal has been taken, any and all appeals have been resolved

finally to the satisfaction of Developer, Developer hereby fully and forever releases and discharges the Township and their respective past, present, and future council members, planning board members, and any and all other elected officials from any and all claims asserted and that could have been asserted, including, but not limited to violations of any municipal ordinances, whether known or unknown, suspected or unsuspected based on any legal or equitable theory of recovery, in any way arising out of, growing out of, or resulting from the Builder's Remedy Action and Township's Declaratory Judgment Action from the beginning of time in perpetuity. Upon ten (10) business days from the execution of this Agreement, Developer shall execute and deliver stipulations of dismissal with prejudice of the pending Developer Builder's Remedy Action and Developer's claims in the Township's Declaratory Judgment with such stipulations of dismissal with prejudice to be held in escrow by the Township Attorney and be filed upon the earlier of: (a) two (2) years from the adoption of the Rezoning Ordinance with no appeals or challenges being filed (provided however that the Township Parties are no in default of this Agreement and provided however the Ashbel Site and Pallu Site are both within the relevant sewer service areas; or (b) or the issuance of all applicable governmental approvals for the Inclusionary Development and the expiration of all applicable appeal periods with no appeals or challenges being filed. The aforementioned stipulations of dismissal with prejudice and waivers of rights to refile or relitigate the issues described above shall apply to all the properties owned by Developer subject to this Agreement (i.e. the Ashbel Site, Pallu Site, Gihon Site, Great River Site, Union Hill Road Site, Tennent Road Site and Windridge Site) and shall be incorporated into deed restrictions or covenants that will run with the land with respect to each property, except that any such deed restrictions or covenants for the Windridge Site, Gihon Site and Great River Site shall only apply

through the year 2025 or the expiration of the Township's 3rd round plan approval, whichever is later.

B. Release Does Not Extend to Obligations Under This Agreement:

The release set forth above in Section VI-A is not intended to, and shall not, extend to or otherwise release or discharge any rights, privileges, benefits, duties, or obligations of any of the Parties by reason of, or otherwise arising under this Agreement.

VII. PROVISIONS REGARDING THE UNION HILL ROAD SITE & THE TENNENT ROAD SITE

A. Property to be Donated: The real property to be donated as previously stated in this Agreement is known as Lot 33 in Block 299 (the Union Hill Road Site formerly known as Site 3) and Lots 36 and 37 in Block 267 (the Tennent Road Site formerly known as Site 4) (collectively, the "Donation Sites") as shown on the official tax map of the Township of Marlboro, State of New Jersey. The Union Hill Road Site and Tennent Road Site consist of all the land, buildings, and fixtures permanently attached to the land, as well as all of Developer's respective right, title, and interest relating to such lands, including but not limited to any easements, rights of way or use licenses, permits and rights to same belonging to or appurtenant to the Donation Sites; any strips or gores of land adjoining the Donation Sites, all mineral, oil, and gas rights and profits, water rights and subterranean rights; all sewer and utility rights allocated to the Donation Sites and the improvements thereon; all right, title, and interest of Developer pertaining to the Donation Sites and in and to any roads, streets and ways, public or private, serving the Donation Sites and appurtenances to the Donation Sites; all right title and interest of Developer in and to any land lying in the bed of any street, road, avenue, lane or right of way in front of, adjoining or adjacent

to the Donation Sites. The Donation Sites are more fully described on the metes and bounds descriptions attached hereto and made a part hereof referred to as Exhibit "D" and "E", respectively.

B. Developer's Representations regarding the Physical Condition of Site 3 & 4:

(a) Township shall have ninety (90) business days (the "Due Diligence Period") from the date of execution of this Agreement to conduct any and all inspections of the Donation Sites and to complete any due diligence in connection therewith, including, without limitation, title, flood, tidelands, zoning investigation, structural investigation, soil test, and Phase I environmental investigation. Developer hereby grants to the Township, its employees, agents, consultants and contractors, the right to enter onto the Donation Sites upon at least twenty-hour hours' prior notice to Developer, for the purpose of any and all inspections of the Donation Sites. If the Township enters onto the Donation Sites to conduct such inspections and/or due diligence activities, the Township agrees to leave the Donation Sites in the same condition as when the Township first entered onto the Donation Sites to conduct such activities. If, during the Due Diligence Period, Township discovers an environmental condition on the Donation Sites, then Township shall have the right to not take title to the Donation Sites by delivery to Developer of a notice of nonelection. If the results of the Phase I warrant further investigation and the Parties cannot agree to extend the Due Diligence Period, then Township shall have the right to not take title to the Donation Sites. If the Township elects to not take title to either or both of the Donation Sites, neither party shall have any further right or liability with respect to the Donation Sites and the Donation Site shall be retained by their current owner with its current zoning. If Township does not deliver a notice of nonelection to Developer, this Agreement shall be deemed effective except that Developer must convey good and marketable title to Township at the Closing.

Notwithstanding, the Township shall have the absolute right to not take title to either or both of the Donation Sites prior to expiration of the Due Diligence Period. If the Township elects not to take title to either or both of the Donation Sites, the remainder of this Agreement remains in full force and effect, including any and all provisions regarding the development of the Ashbel Site and Pallu Site for the Inclusionary Developments.

(i) Township shall indemnify and hold Developer harmless from and against any claims for injuries to persons or property or other liability arising out of or related to Township's activities on the Donation Sites including: (1) any claims for judgments against Developer; or (2) physical damages to the Donation Sites, caused by Township, its employees, agents, consultants and/or contractors acts or omissions while on the Donation Sites prior to closing unless such claims or liability results from the negligence or willful misconduct of Developer or its employees, agents, consultants and/or contractors.

(ii) To the extent same are within Developer's possession or control, Developer will provide Township the following documents including, but not limited to copies of all maps, surveys, metes and bounds descriptions, certificates of occupancy, title reports, environmental or structural reports, and notices from governmental agencies.

(b) To the best of Developer's knowledge, Developer hereby represents the following:

(i) During Developer's ownership of the Donation Sites, and to the best of its knowledge regarding any previous ownership of the Donation Sites, there has been no contamination discharge, spillage, controlled loss, seepage or filtration (an "Environmental Event") of any pollutants, contaminants, oil, petroleum, petroleum products, chemical liquids or solids, liquid or gaseous products or any hazardous waste or hazardous substance, ("Environmental

Substance") as those terms are used in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, New Jersey Underground Storage Tank Act, ISRA, the New Jersey Spill Compensation and Control Act, the Superfund Amendment and Reauthorization Act, the Resource Conservations and Recovery Act, the Federal Water Pollution Control Act, the Clean Water Act, the Clean Air Act, the New Jersey Solid Waste Management Act, the New Jersey Freshwater Wetlands Protection Act, the New Jersey Coastal Wetlands Protection Act, the New Jersey Coastal Areas Facilities Review Act, or in any other federal, state or local law governing hazardous substances, as such laws may be amended from time to time (collectively, the "Environmental Laws") at, upon, under or within the Donation Sites, or, to the best of Developer's knowledge, any contiguous real estate.

(ii) Developer has not caused or to their knowledge permitted to occur, and shall not permit to exist, any conditions on the Donation Sites which may cause a Hazardous Event at, upon, under or within the Donation Sites or on any contiguous real estate.

(iii) Developer, to the best of their knowledge, nor any other party has been, is or will be involved in operations at or adjacent to the Donation Sites which operations could lead to: (i) the imposition of liability on Developer, Township, or any other subsequent or former of the Donation Sites under the Environmental Laws or any other similar laws or regulations; or (ii) the creation of a lien on the Donation Sites under the Environmental Laws or under any similar laws or regulations.

(iv) Developer, to the best of their knowledge, has not knowingly permitted any person or entity to engage in any activity on the Donation Sites that could lead to the imposition of liability under the Environmental Laws on any such person or entity, or on Developer or Township.

(v) Developer, to the best of their knowledge, hereby represents to the best of Developer's knowledge and belief that there are no underground oil tanks on the premises.

(vi) Developer, to the best of their knowledge, hereby represents that there are no septic tanks on the Donation Sites.

(vii) Should either of the Donation Sites prove to be a contaminated property under the Environmental Laws, the Township shall have the option, in its sole discretion, to not take title to either or both of the Donation Sites.

C. Evidence of Title.

(a) Within ninety (90) business days from the date of execution of this Agreement, Township shall have the right to obtain a Survey (as hereinafter defined). Township shall also obtain a commitment ("Commitment") issued by a title insurance company (the "Title Company") of the Township's choice for the issuance of an owner's fee policy of title insurance, which Commitment shows title in Developer free and clear of all liens and encumbrances except: (i) those created by or expressly herein required to be assumed by Township; (ii) those specifically set forth in this Agreement; (iii) zoning ordinances; (iv) general and special real estate taxes and assessments that are a lien on the date of Closing, but are not yet due and payable; (v) a state of facts as shown on a Survey (as defined) of Site 3 and Site 4, provided such facts do not unreasonably or materially interfere with the intended reasonable use of Site 3 and Site 4; and (vi) the rights of utility companies to maintain pipes, poles, cables and wires over, on and under the street, the part of Site 3 and Site 4 next to the street or running to any building or improvement on Site 3 and Site 4.

As used herein, "Survey" means a plat or survey of Site 3 and Site 4 depicting the boundaries of Site 3 and Site 4 and any rights of way, improvements, easements or servitudes affecting Site 3 and Site 4 and shall be prepared by a reputable surveyor or surveying firm, licensed in the State of New Jersey.

If and to the extent Township's title commitment shows exceptions other than as permitted above, Township shall give written notice of said items to Developer within ten (10) business days of receipt of the title insurance binder and shall afford Developer a reasonable period within which to cure said items to satisfaction of Township's title insurance company. If Developer is unable to cure said items within thirty (30) business days, Developer or the Township shall have the right to not convey or to not take either or both of the Donation Sites by written notice to the other party. Except for such items as to which Township has objected in the aforesaid notice, Township shall be deemed to have approved the state of the Developer's title.

(b) Developer hereby covenants that on the Closing Date there shall have been no change in the condition of title as approved by Township on receipt of its title commitment. Developer agrees to deliver marketable title, insurable at regular rates by a Title Company licensed to conduct business in the State of New Jersey.

(c) If defects in title not previously waived in writing by Township appear at Closing for the first time, Township may adjourn the Closing Date.

D. Transfer of Ownership. Upon approval of the Township's Affordable Housing Settlement by the court as contemplated in **Section I-B** of this Agreement, the Developer shall provide to the Township (or to Township's legal representative) in recordable form to be held in escrow by the Township Attorney and recorded by the Township upon the Closing Date (as defined in **Section VII-G**) all documents necessary for the transfer of the Donation Sites to the Township

plus any additional closing documents as deemed necessary by the Township's title company including, but not limited to a properly executed Bargain and Sale Deed with Covenants as to Grantor's Acts, an Affidavit of Title, Affidavit of Consideration, Seller's Residency/Non-Residency Certification, FIRPTA Affidavit, Corporate formation documents and Resolutions, Certificates of Good Standing and Certificates of Incorporation Trust Documents, and a Covenant not to institute a Builder's Remedy lawsuit. Developer shall not have to provide any certificate of occupancy or other municipal permit at closing. In the event the Township elects not to take title of either or both of the Donation Sites, then the Township Attorney shall immediately upon such election return to the Developer all original Seller conveyancing documents for one or both of the Donation Sites, as applicable. In the event the Township takes title to either or both of the Donation Sites, at closing the Township shall execute a deed restriction, covenant or other recordable instrument limiting the use of the Donation Sites to either open space or other municipal non-housing uses and prohibiting any and all residential or commercial development, which restrictions shall run with the land in perpetuity.

E. Representations.

Developer represents to Township as follows:

(a) Developer has full capacity and authority to enter into this Agreement and to consummate the transactions contemplated hereby. This Agreement and all agreements, instruments and documents necessary or desirable to consummate the transactions contemplated hereby to be executed by Developer on or before the Closing Date will be duly authorized, executed and delivered by, and binding upon, Developer. Each of Developer's corporate parties represents and warrants that (i) it is duly organized and existing in good standing under the laws of the State of New Jersey, (ii) it has taken all necessary corporate and internal legal actions to

duly approve the making and performance of this Agreement and that no further corporate or internal approval is necessary, and (iii) the making and performance of this Agreement will not violate any provision of Developer's corporate parties' articles of incorporation, charter, or by-laws.

(b) Developer has obtained or will obtain all consents and permissions relating to the transactions contemplated hereby and required under any covenant, agreement, encumbrance, law, or regulation to transfer title as set forth in this Agreement and to perform its obligations hereunder. Developer will not have to obtain a certificate of occupancy or other municipal permit to close.

(c) The execution and delivery of this Agreement and performance of the obligations set forth in this Agreement: (i) shall not be a breach or violation of any agreement to which Developer is a party and Developer has obtained the necessary approvals for the execution and performance of same; and (ii) does not conflict with any agreement, indenture or other instrument, order, judgment, injunction, award or decree of any governmental body, administrative agency, court, law, rule or regulation affecting Developer or by which Developer or any of Developer's assets or properties is or are bound.

(d) There are no leases, tenancies, licenses or other rights of occupancy or use for any portion of the Donation Sites, except for a lease in connection with the existing single-family home on the Union Hill Road Site. Developer shall deliver the Donation Sites to the Township free and clear of all tenancies.

(e) Further Contracts. Up to the time of Closing, Developer will not enter into any further agreements, contracts, leases or otherwise without Township's prior written approval,

except Developer may enter into a lease for the single-family home located on the Union Hill Road Site for a term not to exceed one (1) year.

(f) Maintenance of Property. Up to the time of Closing, Developer shall maintain the Donation Sites in good operating repair and condition; however, since the Township will be demolishing any structures on the Donation Sites, Developer shall not be responsible for any structural damage on the Donation Sites.

(g) Change in Facts or Circumstances. If, prior to Closing, Developer becomes aware of any fact or circumstance which would make any Representation contained in this Agreement inaccurate, Developer shall promptly notify the Township in writing of such fact or circumstance.

(h) Developer has received no notice, and has no knowledge, that Site 3 and/or Site 4 is in violation of any Environmental Laws, and to Developer's knowledge there are no underground storage tanks on either of the Donation Sites. Developer further repeats and restates the representations set forth in Section VII-B (b) of this Agreement. To the Developer's knowledge, there are no septic tank(s) or above ground oil tank(s) on either of the Donation Sites.

(i) Developer has received no notices of assessments for public improvements levied against the Donation Sites which remain unpaid from any agency besides the municipality which affirms there are no pending assessments.

(j) Developer has no notice and no knowledge of any pending condemnation or eminent domain proceedings which would affect all or any portion of the Donation Sites by any agency.

(k) There is no action, suit, or proceeding pending, or, to Developer's knowledge, threatened against or affecting the Donation Sites or any portion thereof in any court

or before or by any Federal, State, County or Municipal department, commission, board, bureau or agency or other governmental instrumentality outside of the litigation referenced in this Agreement.

(l) Developer has no knowledge of any violations or other notices issued by any or all governmental and quasi-governmental authorities against themselves or either of the Donation Sites.

(m) There are no management, employment, service, equipment, supply, maintenance, water, sewer, or other agreements with respect to or affecting the Donation Sites which will burden the Donation Sites or the Township after closing in any manner whatsoever.

(n) There are no outstanding written or oral agreements of sale, options to purchase, rights of first refusal, leases, ground leases or other documents in effect that may affect Site 3 or Site 4.

(o) Developer not been served with notice of and, to the best of Seller's knowledge, there are no actions, suits, arbitrations or legal or administrative proceedings pending in any court, tribunal, agency or other forum, or threatened, against or affecting the Donation Sites or that would affect the ability of Developer to consummate the transactions by this Agreement or to convey title to the Donation Sites to the Township,

(p) No bankruptcy, insolvency, rearrangement or similar action or proceedings, whether voluntary or involuntary, is pending or threatened against Developer, or to the best of Developer's knowledge, against any partner, member, affiliate or other related entity and Developer has no intention of filing or commencing any such action or proceeding.

(q) Developer is not a foreign person (as such term is defined in Section 1445 of the Internal Revenue Code as by the Foreign Investment in Real Property Tax Act of 1980) and Developer shall provide the Township with a FIRPTA Affidavit.

(r) During the term of this Agreement, Developer shall not further sell, convey, assign or contract to sell, convey, assign, or pledge, all or any part of Donation Sites, nor restrict the use of all or any part of the Donation Sites, nor take or cause to be taken any action in conflict with this Agreement.

(s) Developer represents, to the best of Developer's knowledge, that all documents provided to Township, pursuant to the terms of this Agreement, are authentic copies.

(t) Developer represents that the current use of the Donation Sites does not violate any applicable municipal, county or state zoning law.

The representations contained in this Section VII of this Agreement shall not survive closing of title absent actual fraud and are made to the best of Developer's knowledge, information and belief. Except as may be expressly set forth in this Agreement, the Donation Sites are being sold "AS IS, WHERE IS," without any representation or warranty whatsoever by Developer. Developer does not make any claims or promises about the condition or value of any of the Donation Sites and any implied representation or warranty is hereby expressly disclaimed by Developer. Township acknowledges that its decision to accept the Donation Sites is made in exclusive reliance on its right to inspect the Donation Sites and relies on this inspection and any rights which may be provided for elsewhere in this Agreement.

Without limiting the generality of this, Developer does not make, has not made, and specifically disclaims, any representation or warranty, express or implied (except for the warranty of title as set out in the Deed), regarding: (i) the value, nature, quality or condition of the

Donation Sites, including, without limitation, the water, soil and geology; (ii) the income to be derived from the Property; (iii) the suitability of the Donation Sites for any and all activities and uses which Township may conduct thereon; (iv) any environmental condition (each an "Environmental Condition") at, on, under or about the Donation Sites or compliance or non-compliance of the Donation Sites or any such Environmental Condition relating to environmental laws; (v) zoning to which the Donation Sites or any portion thereof may be subject; or (vi) the potential for future development of the Donation Sites.

Township hereby acknowledges that, except as may be expressly set forth in this Agreement, Township has not relied upon, and will not rely upon, either directly or indirectly, any information, representation or warranty of Developer. Township shall rely solely on its own independent investigation and inspection of the Donation Sites, and shall conduct such inspections and investigations of the Donation Sites as Township deems necessary. Upon Closing, Township shall assume the risk that adverse matters, including, but not limited to, adverse physical and environmental conditions, may not have been revealed by Township's inspections and investigations.

Township represents to Developer as follows:

(a) Township has or will have full capacity and authority to enter into this Agreement and to consummate the transactions contemplated hereby. This Agreement and all agreements, and documents necessary or desirable to consummate the transactions contemplated hereby to be executed by Township are, and on the Closing Date will be, duly authorized, executed and delivered by, and binding upon, Township.

(b) Township has obtained all consent and permissions relating to the transactions contemplated hereby and required under any covenant, agreement, encumbrance, law or regulation to acquire title as set forth in this Agreement and to perform its obligations hereunder.

(c) Neither the execution of this Agreement nor the of the transactions contemplated hereby will constitute a default under any term or provision of any agreement to which Township is a party.

F. Conditions Precedent to Closing.

(a) Township's obligation to take either of the Donation Sites shall be subject to, without limitation, the satisfaction on or before the Closing Date of each of the following conditions precedent:

(i) The Seller delivering title to the Donation Sites in accordance with the provisions hereof and a final examination of title to the Donation Sites shall reveal that no title defects or exceptions exist, except for those set forth in **Section VII-C (a)** of this Agreement,

(ii) The Developer's Representations herein shall be true and correct in all material respects as of the date of Closing as if made on and as of that date and will not survive the date of Closing absent actual fraud.

(iii) At Closing, there shall be no administrative agency, litigation or governmental proceeding of any kind whatsoever, pending or threatened against Developer, that would materially and adversely affect the Donation Sites prior to or after Closing.

(iv) Developer will withdraw or cause to be withdrawn the litigation mentioned in this Agreement. As mentioned in this Agreement, Developer will execute a Deed Restriction or Restrictive Covenant to run with the land that will bind Developer, their heirs, successors and assigns as to Site 3 and Site 4 (Union Hill Road Site and Tennent Road Site) that

affirms that they will be prohibited from the filing of builders remedy litigation through the year 2025 pertaining to the provision of low and moderate income housing. The covenant shall not extend to the pursuit of litigation related to other zoning issues or development.

Township shall rely on all of its due diligence investigations in determining whether to accept the condition of the premises and the title. Satisfaction of the due diligence investigations and Township's acceptance of same shall be deemed conclusive as to Township's obligation to close title absent a subsequent material change in the premises or the title. If at the time of closing, the premises and title are in substantially the same condition as at the time of satisfaction of the due diligence investigations, title must close. If any defects or objections have arisen which Developer is unwilling to correct, Township's only remedy shall be to not take either or both of the Donation Sites with all of the parties then left in status quo ante.

(b) Developer's obligation to consummate transfer of title to the Donation Sites shall be subject to, without limitation, the satisfaction on or before the Closing Date of the following conditions precedent:

(i) Developer's Representations herein shall be true and correct in all material respects as of the date of Closing as if made on and as of that date.

G. Time and Place of Closing. The "Closing Date" as used herein shall occur with ten (10) days of the grant of unappealable final major site plan approval by the Planning Board and the expiration of the 45-day appeal period, and the ability to obtain building permits, for both the Pallu Site and the Ashbel Site. The closing will be held at the office of Rainone Coughlin Minchello, LLC, or the offices of the Business Administrator of the Township of Marlboro or such mutually convenient place as may be agreed between the Township and Developer.

H. Closing Costs. At Closing, Developer shall pay to the Township (i) all delinquent real estate taxes that are due and payable prior to the Closing Date including penalties and interest provided that such penalties and interest arose in connection with taxes and assessments that prior to the Closing Date; and (ii) any monetary liens and other monetary encumbrances, mortgages, leases, liens, and licenses. At Closing, the Township and Developer shall adjust all tax payments as of the Closing Date. Fees for recording the deed and any other instrument and conveyance fees shall be paid one hundred percent (100%) by the Township. Further, Developer assumes liability for all of the following expenses (to the extent applicable) up to the Closing Date: utility fees, municipal water charges, sewer charges, real estate taxes, and any and all other charges relating to or payable in connection with the use, occupancy, ownership, and operation of the Donation Properties.

I. Risk of Loss. Developer is responsible for any damage to the Donation Properties, except for normal wear and tear and except for damage to any existing structures on the Donation Properties, until closing. If there is damage, each of the Parties may choose to proceed with the closing of either or both of the Donation Properties as is after said loss or the Township may elect to not take the damaged property.

J. Default. If Township materially defaults under this Agreement with respect to the Donation Properties, Developer has the right to not donate the Donation Properties upon notice thereof to the Township, and if the Township shall fail to cure the default within five (5) business days thereafter, whereupon Developer shall be entitled to pursue all remedies available at law or in equity. In the event that Developer materially defaults under this Agreement with respect to Site 3 and/or Site 4, Township will have no obligation to rezone Site 9A and/or 9B and shall be entitled to pursue all remedies available at law or in equity.

VIII. COOPERATION AND COMPLIANCE

A. **Implementation And Enforcement Of Agreement:** The Parties agree to cooperate with each other, provide all reasonable and necessary documentation, and take all necessary actions to satisfy the terms and conditions hereof and assure compliance with the terms of this Agreement. The Township Parties' obligation to cooperate shall be further conditioned upon Developer paying and maintaining current real estate taxes.

IX. NOTICES

A. **Notices:** Any notice or transmittal of any document required, permitted or appropriate hereunder and/or any transmittal between the Parties relating to Site 9A, Site 9B, Site 3, Site 4, and Site 5 (herein "Notice[s]") shall be written and shall be served upon the respective Parties by facsimile or by certified mail, return receipt requested, or recognized overnight or personal carrier such as, for example, Federal Express, with certified proof of receipt, and, where feasible (for example, any transmittal of less than fifty (50) pages), and in addition thereto, a facsimile delivery shall be provided, or by email provided the recipient provides an electronic receipt confirmation. All Notices shall be deemed received upon the date of delivery set forth in such certified proof, and all times for performance based upon notice shall be from the date set forth therein. 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 DEVELOPER:

Ashbel Associates, L.L.C.,
Pallu Associates, L.L.C.,
Great River Corp., Gihon Associates, L.L.C.,
Elon Associates, LLC, and Windridge Manor,
LLC
Attention: Michael Weitz
5 Adams Street

Morganville, New Jersey 07751
Email: mw5708@gmail.com

AND

Attention: Jason Kahane
811 Amboy Avenue
Suite E
Edison, NJ 08837
Email: jason@springhillprop.com

WITH COPIES TO:

Law Offices of Hutt & Shimanowitz
Attention: Ronald L. Shimanowitz, Esq.
459 Amboy Avenue
Woodbridge, NJ 07095
Tel: (732) 634-6400
Fax: (732) 634-6400
Email: rshim@huttshim.com

TO THE TOWNSHIP OF MARLBORO:

Township of Marlboro
Attention: Jonathan Capp
Business Administrator
1979 Township Drive
Marlboro, NJ 07746
Tel: (732) 532-0200
Email: jcapp@marlboro-nj.gov

Office of the Township Clerk
1979 Township Drive
Marlboro, NJ 07746
Tel: (732) 536-0200
Email: amanco@marlboro-nj.gov

Louis N. Rainone, Esq.
Township Attorney
Rainone Coughlin Minchello
555 U.S. Highway One South Suite 440
Iselin, NJ 08830
Tel: 732-709-4182
Email: lrainone@njrcmlaw.com

In the event any of the individuals identified above has a successor, the individual identified shall name the successor and notify all others identified of their successor.

X. MEMORANDUM OF AGREEMENT. Upon execution of this Agreement, the Parties shall also execute a short form of Memorandum (the "Memorandum") as shown on **Exhibit C**, which Memorandum shall reference the Donation Sites only as well the Parties respective obligations regarding the Donation Sites and which Memorandum shall be recorded with the Monmouth County Clerk's Office. The execution and recording of the Memorandum shall not in any manner limit, increase, or affect any of the terms of this Agreement, or any rights, interests, or obligations of the Parties. Upon execution of this Agreement, the Parties shall also execute a Discharge of Memorandum of Agreement for each of the Donation Sites, true copies of which are attached hereto as **Exhibit D** (for the Union Hill Road Site) and **Exhibit E** (for the Tennent Road Site), which documents shall be held in escrow by counsel for the Developer. The Developer shall be permitted to record one or both of the discharges, as applicable, if either (a) the Township opts not to take title to one or both of the Donation Sites, pursuant to paragraph VII of this Agreement; or (b) any of the conditions precedent for the transfer of title for one or both of the Donation Sites, as set forth in paragraph VII of this Agreement, is not satisfied.

XI. MISCELLANEOUS PROVISIONS

A. Amendments: Neither this Agreement nor any term set forth herein may be changed, waived, discharged, or terminated except by a writing signed by the Parties.

B. Agreement Voluntarily Entered Into By Each of The Parties: This Agreement is executed voluntarily by each of the Parties without any duress or undue influence on the part, or

on behalf, of any of them. The Parties represent and warrant to each other that they have read and fully understand each of the provisions of this Agreement and have relied on the advice and representations of competent legal counsel of their own respective choosing.

C. Interpretation: This Agreement has been reviewed by experienced and knowledgeable legal counsel for each of the Parties. Accordingly, none of the Parties shall be presumptively entitled to have any provisions of this Agreement construed against any of the other Parties in accordance with any rule of law, legal decision, or doctrine.

D. No Admission of Liability/No Precedential Value: The Parties agree that this Agreement is the result of a compromise of disputed issues, that the execution and delivery of this Agreement by any of the Parties shall not constitute or be construed as an admission of any liability, a course of performance, or wrongdoing on the part of any of them and that the settlement reflected in this Agreement shall be without precedential value. Nothing in this release shall be construed nor shall the execution of the release be construed to represent an admission of wrongdoing or a breach of contract.

E. Attorneys' Fees, Costs, and Expenses: Each of the Parties shall bear its own costs, attorneys' fees, and expenses in connection with the negotiations for and preparation of this Agreement, the pending litigation, as well as costs involving Court approval of same except for those fees described in **Section II-H** of this Agreement.

F. Entire and Integrated Agreement: This Agreement is intended by the Parties as a final expression of their agreement and is intended to be a complete and exclusive statement of the agreement and understanding of the Parties with respect to the subject matters contained herein. This Agreement supersedes any and all prior promises, representations, warranties, agreements, understanding, and undertakings between or among the Parties with respect to such subject matters

and there are no promises, representations, warranties, agreements, understanding, or undertakings with respect to such subject matters other than those set forth or referred to herein.

G. No Third Party Beneficiaries: Nothing in this Agreement is intended or shall be construed to give any person or entity, other than the Parties and their respective successors and permitted assigns, any legal or equitable right, remedy, or claim under or in respect to this Agreement or any provisions contained herein; this Agreement and any conditions and provisions hereof being and intended to be for the sole and exclusive benefit of the Parties as well as each of their respective successors and permitted assigns, and for the benefit of no other person or entity.

H. Severability: If any provisions of this Agreement, or the application thereof, shall for any reason or to any extent be construed by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement, and application of such provisions to other circumstances, shall remain in effect and be interpreted so as best to reasonably effect the intent of the Parties.

I. Headings: The section titles, captions, and headings contained in this Agreement are inserted as a matter of convenience and for reference, and shall in no way be construed to define, limit, or extend the scope of this Agreement or the effect of any of its provisions.

J. Recitals: The recitals set forth at the beginning of this Agreement shall not be admissible to prove the truth of the matters asserted therein in any action or proceeding involving any of the Parties (other than an action or proceeding brought to enforce the terms of this Agreement), nor do any of the Parties intend such recitals to constitute admissions of fact by any of them.

K. Additional Necessary Documents: The Parties, and each of them, agree to execute such additional documents as may be reasonably required in order to carry out the purpose and intent of this Agreement, or to evidence anything contained herein.

L. Execution in Counterparts: This Agreement may be signed in multiple counterparts and the separate signature pages executed by the Parties may be combined to create a document binding on all of the Parties and together shall constitute one and the same instrument. This Agreement may be executed in facsimile or electronic counterparts. An original signature will be provided if requested by any Party. The "Effective Date" of this Agreement is the date this Agreement has been executed and delivered by and to all Parties hereto.

M. Enforceability of Agreement: The Superior Court of New Jersey, Monmouth Vicinage shall retain jurisdiction to enforce any and all terms of this Agreement.

N. Schedules: 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.

O. Assignability: This Agreement shall be binding on the Parties' successors and assigns.

IN WITNESS WHEREOF, THE parties have executed this Agreement as of the date set forth opposite the respective signatures set forth below.

Dated: April 10, 2019

The Township of Marlboro

By:

Name:

Title:

Dated: April 10, 2019

The Planning Board for the Township of Marlboro

By: 

Name: Michael W. Herbert

Title: Marlboro Planning Board Attorney

Dated: _____, 2019

Ashbel Associates, L.L.C.

By:

Name: _____

Title: _____

Dated: _____, 2019

Pallu Associates, L.L.C.,

By:

Name: _____

Title: _____

Dated: _____, 2019

Great River Corp.,

By:

Name: _____

Title: _____

Dated: _____, 2019

Gihon Associates, L.L.C.,

By:

Name: _____

Title: _____

Dated: _____, 2019

The Planning Board for the Township of Marlboro

By:

Name: _____

Title: _____

Dated: April 9th, 2019

Ashbel Associates, L.L.C.

By:

Name: _____

Jason Kahane

Title: _____

VP

Dated: April 9th, 2019

Pallu Associates, L.L.C.

By:

Name: _____

Jason Kahane

Title: _____

VP

Dated: April 9th, 2019

Great River Corp.,

By:

Name: _____

MICHAEL WEITZ

Title: _____

Pres.

Dated: April 9th, 2019

Gihon Associates, L.L.C.,

By:

Name: _____

MICHAEL WEITZ

Title: _____

Mgr.

Dated: April 9, 2019

Elon Associates, L.L.C.,

By: Michael Weitz

Name: MICHAEL WEITZ

Title: Mgr

Dated: April 9, 2019

Windridge Manor, L.L.C.,

By: Michael Weitz

Name: MICHAEL WEITZ

Title: Mgr.

EXHIBIT A
CONCEPT PLAN A - PALLU SITE

EXHIBIT B
CONCEPT PLAN B – ASHBEL SITE

EXHIBIT C

MEMORANDUM REGARDING DONATION SITES

Prepared by: _____
BRYAN D. PLOCKER, ESQ.

MEMORANDUM OF AGREEMENT

This Memorandum of that certain Settlement Agreement ("Agreement") between TOWNSHIP OF MARLBORO, a New Jersey municipal corporation having an address at 1979 Township Drive, Marlboro, New Jersey 07746 ("Transferee"), and PALLU ASSOCIATES, L.L.C., a New Jersey limited liability company having an address of 811 Amboy Avenue, Suite E, Edison, New Jersey ("Transferor"), and other parties to which this Memorandum of Agreement does not apply is made this _____ day of April, 2019.

WITNESSETH:

1. In consideration of the agreements, covenants and conditions more particularly set forth in the Agreement, Transferor has agreed to transfer to Transferee its interest in those certain parcels of real property known and designated as:

Block 267, Lots 36 & 37
Block 299, Lot 33

situated in the Township of Marlboro, County of Monmouth, State of New Jersey, together with the buildings and other improvements located thereon and all easements, tenements, appurtenances, and fixtures located on such property, and all rights and privileges belonging to Transferor respecting such property (the "Premises").

2. The Agreement provides that the closing of title is to occur at such time as the conditions contained within the Agreement have been satisfied (the "Closing Date").

3. All notices hereunder shall be sent either by personal delivery or nationally recognized overnight carrier or facsimile (with regular mail copy) or registered or certified mail, postage prepaid, return receipt requested, to the following addresses:

IF TO TRANSFEREE: At the address for Transferee set forth herein above.

WITH A COPY TO: Louis N. Rainone, Esq.
555 U.S. One South, Suite 440
Isell, NJ 08830

IF TO TRANSFEROR: At the address set forth herein above.

WITH A COPY TO: BRYAN D. PLOCKER, ESQ.
 Hutt & Shimanowitz, P.C.
 459 Amboy Avenue, PO Box 648
 Woodbridge, NJ 07095

4. This Memorandum is executed in simplified short form by the parties pursuant to Paragraph X of the Agreement for the convenience of the parties and for the purposes of recording the same in the Records of Monmouth County, and this Memorandum shall not in any way modify, supplement, or abridge the Agreement or any of its provisions as the same are now or may hereafter be in full force and effect.

5. The performance and interpretation of the Agreement and this Memorandum shall be controlled by and construed in accordance with the internal laws of the State of New Jersey.

IN WITNESS WHEREOF, the Parties have duly executed this Memorandum on the date first above written.

WITNESS:

TOWNSHIP OF MARLBORO

JONATHAN HORNIK, Mayor

WITNESS:

PALLU ASSOCIATES, L.L.C.

, Managing Member

STATE OF NEW JERSEY, COUNTY OF _____

SS.:

I CERTIFY that on April ____, 2019, JONATHAN HORNIK, Mayor personally came before me and this person acknowledged under oath, to my satisfaction, that:

- (a) this person signed, sealed and delivered the attached document as Mayor of the Township of Marlboro, the municipal corporation named in this document;
- (b) the proper corporate seal was affixed, and.
- (c) this document was signed and made by the municipality as its voluntary act and deed by virtue of authority from its governing body.

NOTARY PUBLIC OF NJ

STATE OF NEW JERSEY, COUNTY OF _____ SS.:

I CERTIFY that on April ____, 2019 _____ personally came before me and acknowledged under oath, to my satisfaction, that this person (or if more than one, each person):

- (a) is the Managing Member of Pallu Associates, L.L.C. which is named in and personally signed this document; and
- (b) signed, sealed and delivered this document as his or her act and deed.

NOTARY PUBLIC OF NEW JERSEY

EXHIBIT D

DISCHARGE OF MEMORANDUM FOR UNION HILL ROAD SITE

PARTIAL RELEASE OF MEMORANDUM OF AGREEMENT

A certain MEMORANDUM OF AGREEMENT dated April _____, 2019 was made by and between the TOWNSHIP OF MARLBORO, a New Jersey municipal corporation having an address at 1979 Township Drive, Marlboro, New Jersey 07746 ("Transferee"), and PALLU ASSOCIATES, L.L.C., a New Jersey limited liability company having an address of 811 Amboy Avenue, Suite E, Edison, New Jersey ("Transferor")

The Memorandum summarized the Terms of a Settlement Agreement between the parties in which Transferor agreed to transfer to Transferee its interest in Block 267, Lots 36 and 37 and Block 299, Lot 33 situated in the Township of Marlboro, County of Monmouth, State of New Jersey together with the buildings and other improvements located thereon and all easements, tenements, appurtenances, and fixtures located on such property.

The Memorandum was recorded on _____ with the office of the Monmouth County Clerk in Deed Book _____ at page _____.

Transferee has agreed to a partial release of the Memorandum of Agreement regarding property known as Block 299, Lot 33, Township of Marlboro, County of Monmouth, State of New Jersey

I sign and CERTIFY to this Instrument on _____, 20____.

Witnessed or Attested by:

TOWNSHIP OF MARLBORO

By: _____
JONATHAN HORNIK, Mayor

STATE OF NEW JERSEY, COUNTY OF

SS.:

I CERTIFY that on _____, 20____, JONATHAN HORNIK, Mayor personally came before me and this person acknowledged under oath, to my satisfaction, that:

- (a) this person signed, sealed and delivered the attached document as Mayor of the Township of Marlboro, the municipal corporation named in this document;
- (b) the proper corporate seal was affixed, and
- (c) this document was signed and made by the municipality as its voluntary act and deed by virtue of authority from its governing body.

NOTARY PUBLIC OF NEW JERSEY

EXHIBIT E

DISCHARGE OF MEMORANDUM FOR TENNENT ROAD SITE

PARTIAL RELEASE OF MEMORANDUM OF AGREEMENT

A certain MEMORANDUM OF AGREEMENT dated April ____, 2019 was made by and between the TOWNSHIP OF MARLBORO, a New Jersey municipal corporation having an address at 1979 Township Drive, Marlboro, New Jersey 07746 ("Transferee"), and PALLU ASSOCIATES, L.L.C., a New Jersey limited liability company having an address of 811 Amboy Avenue, Suite E, Edison, New Jersey ("Transferor")

The Memorandum summarized the Terms of a Settlement Agreement between the parties in which Transferor agreed to transfer to Transferee its interest in Block 267, Lots 36 and 37 and Block 299, Lot 33 situated in the Township of Marlboro, County of Monmouth, State of New Jersey together with the buildings and other improvements located thereon and all easements, tenements, appurtenances, and fixtures located on such property.

The Memorandum was recorded on _____ with the office of the Monmouth County Clerk in Deed Book _____ at page _____.

Transferee has agreed to a partial release of the Memorandum of Agreement regarding property known as Block 267, Lots 36 and 37, Township of Marlboro, County of Monmouth, State of New Jersey

I sign and CERTIFY to this Instrument on _____, 20__.

Witnessed or Attested by:

TOWNSHIP OF MARLBORO

By: _____
JONATHAN HORNIK, Mayor

STATE OF NEW JERSEY, COUNTY OF

SS.:

I CERTIFY that on _____, 20____, JONATHAN HORNIK, Mayor personally came before me and this person acknowledged under oath, to my satisfaction, that:

- (a) this person signed, sealed and delivered the attached document as Mayor of the Township of Marlboro, the municipal corporation named in this document;
- (b) the proper corporate seal was affixed, and
- (c) this document was signed and made by the municipality as its voluntary act and deed by virtue of authority from its governing body.

NOTARY PUBLIC OF NEW JERSEY

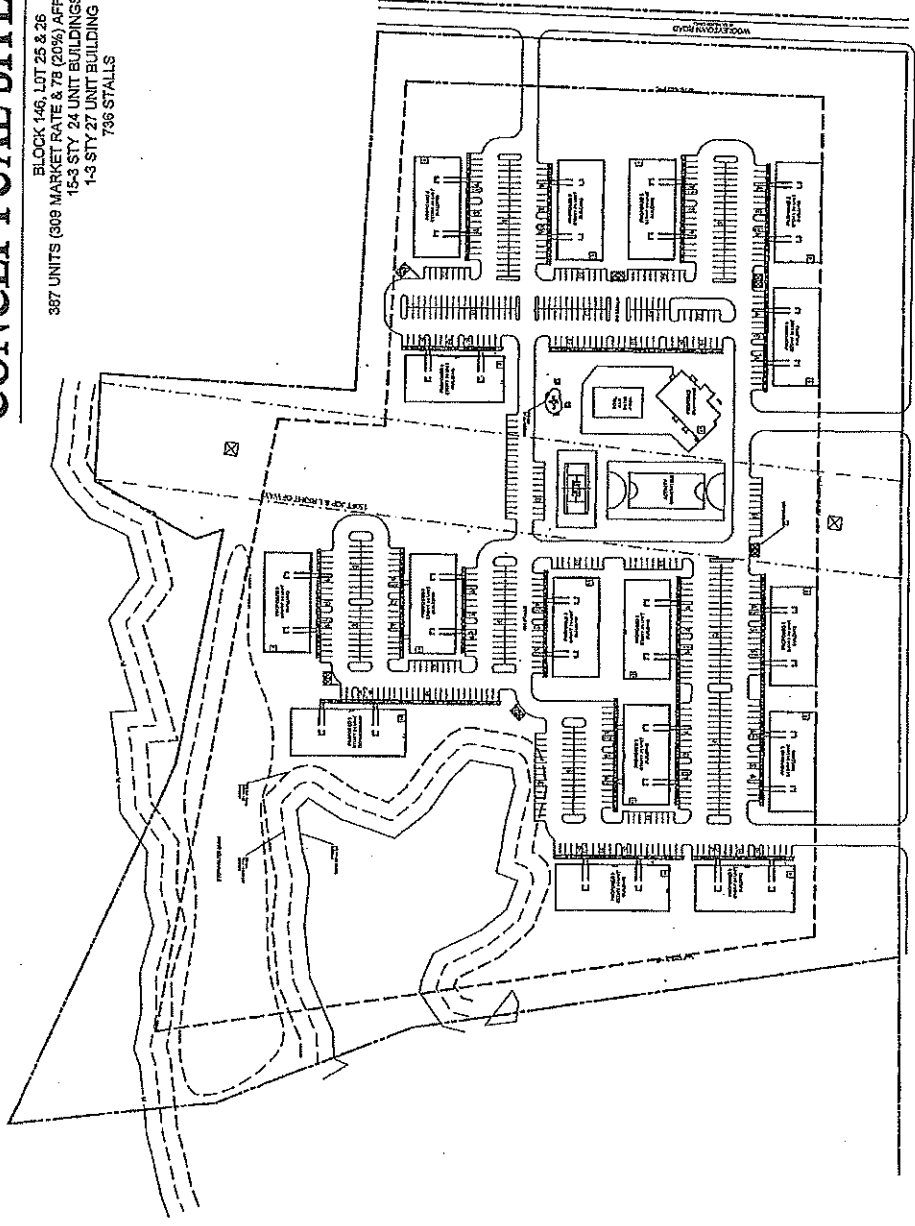
CONCEPTUAL SITE PLAN "A"

BLOCK 146, LOT 25 & 26
 387 UNITS (909 MARKET RATE & 78 (20%) AFFORDABLE UNITS)
 15-3 STY 24 UNIT BUILDINGS
 1-3 STY 27 UNIT BUILDING
 736 STALLS



CONCEPTUAL SITE PLAN "A"

Symbol	Description
[Symbol]	15-3 STY 24 UNIT BUILDING
[Symbol]	1-3 STY 27 UNIT BUILDING
[Symbol]	PARKING STALL
[Symbol]	STAIR
[Symbol]	ELEVATOR
[Symbol]	MECHANICAL ROOM
[Symbol]	UTILITY ROOM
[Symbol]	STREET LIGHT
[Symbol]	LANDSCAPE
[Symbol]	PERIMETER WALL
[Symbol]	ADDITIONAL SYMBOLS

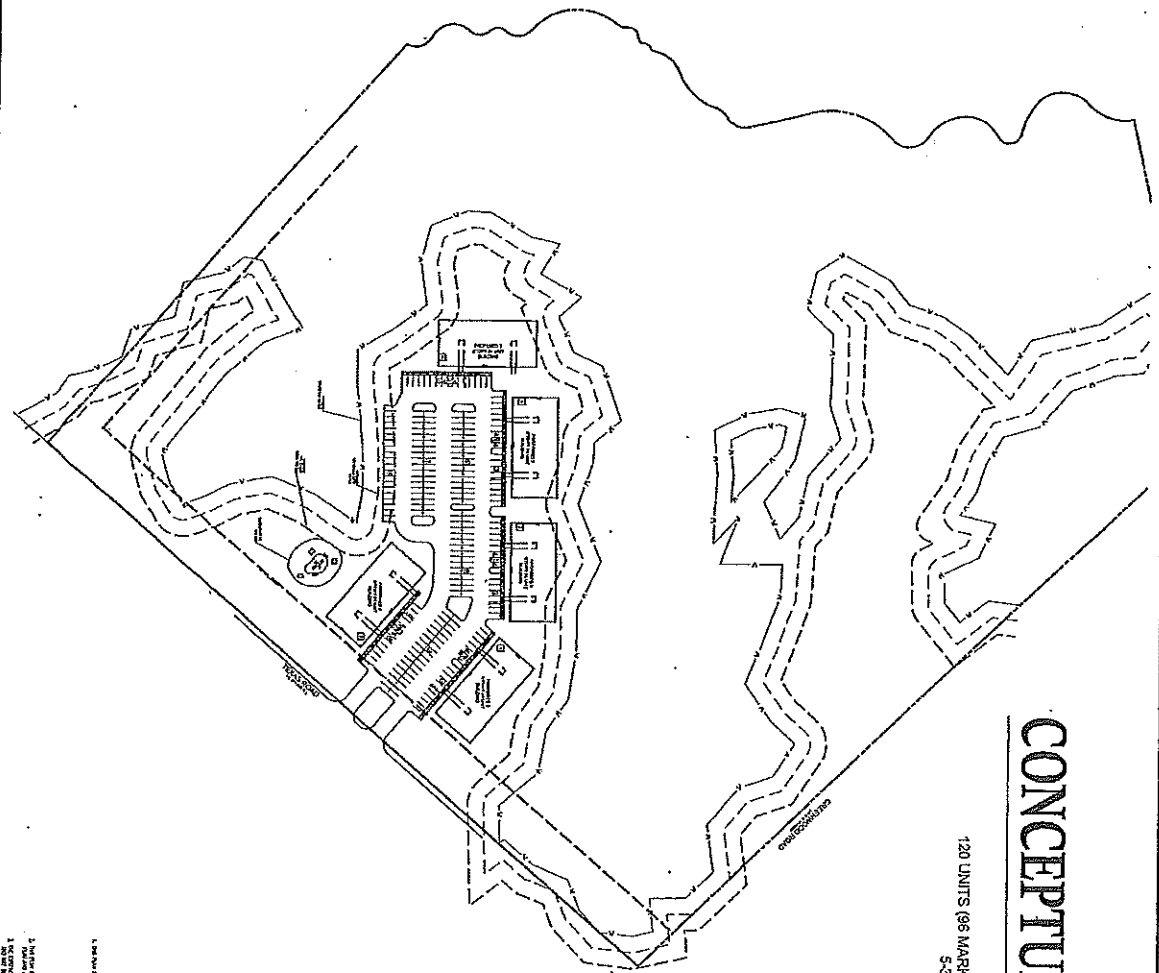


DYNAMIC ENGINEERING
 1000 W. 10TH AVENUE, SUITE 100
 DENVER, CO 80202
 (303) 733-1111
 WWW.DENVERENGINEERING.COM

CONCEPT "A" (REV 1)
 DATE: 01/15/2014

DESIGNED BY: J. [Name]
 CHECKED BY: K. [Name]
 IN CHARGE: M. [Name]

- 1. THIS PLAN HAS BEEN REVIEWED AND APPROVED FOR RECORDING PURPOSES. IT IS SUBJECT TO ALL APPLICABLE LOCAL, STATE, AND FEDERAL REGULATIONS AND ORDINANCES. THE CLIENT IS RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE APPROPRIATE AGENCIES.
- 2. THE CLIENT IS RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE APPROPRIATE AGENCIES.
- 3. THE CLIENT IS RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE APPROPRIATE AGENCIES.



CONCEPTUAL SITE PLAN "B"

BLOCK 119, LOT 19
 120 UNITS (96 MARKET RATE & 24 (20%) AFFORDABLE UNITS)
 5-3 STY 24 UNIT BUILDINGS
 294 STALLS

CONCEPTUAL SITE PLAN

NO.	DESCRIPTION	AREA (SQ. FT.)	REMARKS
1	Building Footprint	10,000	5-3 STY 24 UNIT BUILDINGS
2	Parking Stalls	294	294 STALLS
3	Site Area	100,000	TOTAL SITE AREA
4	Other	0	
5	Other	0	
6	Other	0	
7	Other	0	
8	Other	0	
9	Other	0	
10	Other	0	
11	Other	0	
12	Other	0	
13	Other	0	
14	Other	0	
15	Other	0	
16	Other	0	
17	Other	0	
18	Other	0	
19	Other	0	
20	Other	0	
21	Other	0	
22	Other	0	
23	Other	0	
24	Other	0	
25	Other	0	
26	Other	0	
27	Other	0	
28	Other	0	
29	Other	0	
30	Other	0	
31	Other	0	
32	Other	0	
33	Other	0	
34	Other	0	
35	Other	0	
36	Other	0	
37	Other	0	
38	Other	0	
39	Other	0	
40	Other	0	
41	Other	0	
42	Other	0	
43	Other	0	
44	Other	0	
45	Other	0	
46	Other	0	
47	Other	0	
48	Other	0	
49	Other	0	
50	Other	0	

1. This plan is intended to show the general layout of the proposed development and is not intended to be used for construction purposes.
2. This plan is intended to show the general layout of the proposed development and is not intended to be used for construction purposes.
3. This plan is intended to show the general layout of the proposed development and is not intended to be used for construction purposes.
4. This plan is intended to show the general layout of the proposed development and is not intended to be used for construction purposes.

THE ENGINEERING CENTER
 1100 EAST 17TH AVENUE
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 DENVER, CO 80202
 (303) 733-1111

ENGINEERING
 715 Madison Valley Road
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 (303) 733-1111

PROJECT # 2007-11

DATE: 08/14/07

SCALE: AS SHOWN

1100 EAST 17TH AVENUE, SUITE 100, DENVER, CO 80202
 (303) 733-1111
 11