

## SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT ("Agreement") made this 19<sup>th</sup> day of March 2019, by and between:

**BOROUGH OF MANASQUAN**, a municipal corporation of the State of New Jersey, County of Monmouth, having an address at 201 East Main Street, Manasquan, New Jersey 08736 (hereinafter the "Borough" or "Manasquan");

And

**BROAD STREET 34 LLC**, a New Jersey limited liability company with a business address of 126 Main Street, Manasquan, New Jersey 08736.

And

**UNION AVENUE 33 LLC**, a New Jersey limited liability company with a business address of 126 Main Street, Manasquan, New Jersey 08736.

BROAD STREET 34 LLC and UNION AVENUE 33 LLC are hereinafter referred to as "Developer." Collectively, the Borough and Developer shall be referred to as the "Parties."

**WHEREAS**, in compliance with the New Jersey Supreme Court's decision in In re Adoption of N.J.A.C. 5:96 and 5:97 by N.J. Council on Affordable Housing, 221 N.J. 1 (2015), July of 2015, the Borough filed an action with the Superior Court of New Jersey ("Court"), entitled In the Matter of the Application of the Borough of Manasquan, County of Monmouth, Docket No. MON-L-2508-15 seeking a Judgment of Compliance and Repose approving its Housing Element and Fair Share Plan (hereinafter "Affordable Housing Plan"), in addition to related reliefs (the "Compliance Action") and simultaneously filed a motion for temporary immunity, which was subsequently granted by the Court and is still in full force and effect; and

**WHEREAS**, the members of Developer filed a motion to intervene in the Borough's Compliance Action, which was denied, but is still an "interested party" in the case; and

**WHEREAS**, the Developer attended several mediations with Borough representatives, Borough professionals, the Court appointed Special Master, and a Settlement Conference with the Honorable Dennis E. O'Brien on June 11, 2018; and

**WHEREAS**, the sole member of BROAD STREET 34 LLC owns or controls the entity owning property identified on the Borough's tax map as Block 64, Lots 25.01, 25.02, 26 and 27 (the "Broad Street Site");

**WHEREAS**, UNION AVENUE 33 LLC is the owner or controls the entity owning property identified on the Borough's tax map as Block 66.02, Lot 31.01 (the "Union Avenue Site"); and

**WHEREAS**, in evaluating properties appropriate for inclusionary developments, the Borough has determined that the Broad Street Site and the Union Avenue Site present an available, approvable, developable, and suitable opportunity for such development N.J.A.C. 5:93-1.3; and

**WHEREAS**, subject to the adoption of ordinances with terms specified herein and subject further to Court approval of this agreement, the Borough has determined to incorporate the Broad Street Site and the Union Avenue Site identified in this Agreement into its Affordable Housing Plan; and

**WHEREAS**, the Affordable Housing Plan will include the Broad Street Site, which will be developed with up to twenty-two (22) market rate units (hereinafter the "Broad Street Project"), and the Union Avenue Site, which will be developed with up to twenty-three (23) units, of which nine (9) will be affordable to very low, low and moderate income households (hereinafter the "Union Avenue Project"), which represents a twenty percent (20%) affordable housing set-aside across the two projects (the Broad Street Project and the Union Avenue Project collectively referred to as the "Inclusionary Development"); and

**WHEREAS**, to ensure that the Broad Street Project and the Union Avenue Project generate affordable housing credits to be applied to the Borough's affordable housing obligations, as per N.J.A.C. 5:93-5.6(d), the certificates of occupancy for the two projects will be phased together and issued as if they were one project; and

**WHEREAS**, the affordable units within the Union Avenue Project shall comply with the Round 2 regulations of the New Jersey Council on Affordable Housing ("COAH"), the Uniform Housing Affordability Controls, N.J.A.C. 5:80-26.1 et seq. ("UHAC"), and all other applicable law, including a requirement that thirteen percent (13%) of all affordable units are available to very low income households, and said Inclusionary Developments shall be deed restricted for a period of at least 30 years; and

**WHEREAS**, all of the affordable units will be family rental units entitling the Borough to rental bonus credits up to the applicable rental bonus caps; and

**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 at a Fairness Hearing; 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:

## ARTICLE I – PURPOSE

- 1.1 The purpose of this Agreement is (a) to create a realistic opportunity for up to nine (9) affordable family rental units and up to forty-five (45) total units on the Broad Street Site and the Union Avenue Site; (b) to control the development of the Broad Street Project for no more than twenty-two (22) total units with no affordable units on the site and the Union Avenue Project for no more than twenty-three (23) total units with a twenty percent (20%) affordable housing set-aside of nine (9) units on the site if the total number of units produced is forty-five (45) as set forth herein. Nothing in this Agreement shall be construed to limit Developer's right to construct all forty-five (45) units. In the event that less than twenty-two (22) total units are generated on the Broad Street Site and/or less than twenty-three (23) total units are generated on the Union Avenue Site, the Developer will maintain a twenty percent (20%) affordable housing set-aside on the total number of units created, and the Borough's Realistic Development Potential ("RDP") will be adjusted downwards accordingly. The market rate units in both the Broad Street and the Union Avenue Projects may be rental or for-sale units.
- 1.2 The Broad Street Project shall be substantially consistent with the concept site plan, and rendering attached hereto and made a part hereof as **Exhibit A**, which has been reviewed and approved by the Borough and the Borough's professionals.
- 1.3 The Union Avenue Project shall be substantially consistent with the concept site plan, and rendering attached hereto and made a part hereof as **Exhibit B**, which has been reviewed and approved by the Borough and the Borough's professionals.
- 1.4 The Borough will also introduce and consider for a hearing an ordinance rezoning the Broad Street Site, which is attached hereto as **Exhibit C**.
- 1.5 The Borough will also introduce and consider for a hearing an ordinance rezoning the Union Street Site, which is attached hereto as **Exhibit D**.
- 1.6 The Broad Street Project and Union Avenue Project shall utilize materials provided on the materials list, which is attached hereto and made part hereof as **Exhibit E**, which has been reviewed and approved by the Borough and the Borough's professionals.

## ARTICLE II - BASIC TERMS AND CONDITIONS

2.1 This Agreement is subject to Court approval following a duly noticed "Fairness Hearing".

2.2 In the event of any legal challenges to the Court's approval of this Agreement or the Required Approvals (defined in section 4.6), including a challenge by any third party, 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 modification of this Agreement or the Broad Street Project or the Union Avenue Project, the Parties must negotiate in good faith with

the intent to draft a mutually-acceptable amended Agreement, provided that no such modification requires an increase or decrease in density than that provided herein.

2.3 This Agreement does not purport to resolve all of the issues before the Court raised in the Compliance Action. In the event the Borough adopts the Ordinances rezoning the Broad Street Site and the Union Avenue Site and the Court approves this Settlement Agreement, but the Borough is unable to reach a settlement with Fair Share Housing Center ("FSHC") or any other person or entity, all of the Parties hereto are obligated to comply with their obligations under this Agreement including but not limited to the obligation to defend this Agreement.

### **ARTICLE III – DEVELOPER OBLIGATIONS**

3.1 **Obligation To File Development Applications In Accordance With Rezoning Ordinances, Concept Plans.** Developer shall file development applications in accordance with the Ordinances rezoning the Broad Street Site and the Union Avenue Site. All such applications shall be substantially consistent with the concept plans, and renderings, attached hereto as **Exhibits A and B**, and the Zoning Ordinances attached hereto as **Exhibits C and D**, and will also incorporate the materials list attached hereto as **Exhibit E**. The Borough shall ensure that development applications are timely processed and heard by the Planning Board.

3.2 **Obligation To Maintain 20 Percent Affordable Housing Set-Aside And To Comply With All Affordable Housing Laws.** Developer, its successors and/or assigns shall have an obligation to deed-restrict twenty percent (20%) of the combined total residential units produced in the Broad Street Project and the Union Avenue Project. If the projects deliver the agreed upon forty-five (45) total units, then nine (9) family rental units will be affordable to very low, low and moderate income families. Developer shall not be subject to any payment in-lieu, or an affordable housing development fee.

3.3 **Obligation To Phase The Affordable Units:** Certificates of occupancy for both projects shall be issued in accordance with the phasing schedule provided within N.J.A.C. 5:93-5.6(d) to ensure that the affordable units are constructed. Final certificates of occupancy shall not be issued for units in the Broad Street Project until overall affordable unit/market unit phasing requirements are complied with for the Broad Street Project and the Union Avenue Project. Construction permits may be issued and closed out at either site, independently, and this requirement shall not act as a limitation on the timing of construction at either site.

3.4 **Additional Affordable Housing Requirements:** All of the affordable units in the Union Avenue Project shall comply with UHAC, the Borough's Affordable Housing Plan, the Borough's Affordable Housing Ordinance, any applicable order of the Court (including the Borough's eventual Judgment of Compliance and Repose Order or "JOR Order"), and other applicable laws. The Developer will also comply with the following provisions regarding the affordable units in the Union Avenue Project, which provisions shall prevail in the case of conflict with UHAC:

3.4.1 **Deed Restriction Period:** The Developer shall have an obligation to deed restrict the affordable units in the proposed project as very low, low or moderate income affordable units for a period of at least thirty (30) years

from the date of the initial occupancy of each affordable unit (the "Deed-Restriction Period"), until the Borough takes action to release the controls on affordability, so that the Borough may count each affordable unit against its obligation to provide affordable housing. The Parties agree that the affordability controls shall not expire until such time, after thirty (30) years from the date of initial occupancy that the Borough takes action to release the controls on affordability, and that, thereafter, the affordability controls shall continue in effect until the date on which the individual affordable rental unit shall become vacant, provided that the occupant household continues to earn a gross annual income of less than 80 percent of the applicable median income. See N.J.A.C. 5:80-26.11(b). If, at any time after the release of the affordability controls by the Borough, a rental household's income is found to exceed 80 percent of the regional median income, the rental rate restriction shall expire at the later of either the next scheduled lease renewal or sixty (60) days. See *Ibid*.

- 3.4.2 Deed Restriction:** The Developer shall execute and record a Deed Restriction for the affordable units in a form acceptable to both Parties before the first Certificate of Occupancy is issued for the Inclusionary Development. The Deed Restriction will be recorded in the Monmouth County Clerk's office. The Borough shall take all actions necessary to release and discharge the Deed Restriction with respect to each affordable unit upon the expiration of the Deed Restriction Period with respect to such unit, subject to the terms of 3.4.1 hereof.
- 3.4.3 Income Distribution Requirements:** Thirteen percent (13%) of the total number of the affordable family rental units in the Union Avenue Project must be very low income units, thirty-seven (37%) of the total number of affordable rental units must be low income units, and the remaining fifty percent (50%) must be moderate income rental units. If the Union Avenue Project delivers 9 total affordable units, one (1) will be a very low income unit, four (4) will be low income units, and four (4) will be moderate income units.
- 3.4.4 Bedroom Mix:** At least twenty percent (20%) of the affordable units will be three bedroom units, and no more than twenty percent (20%) of the affordable units will be one bedroom units. The remainder of the affordable units will be two bedroom units. If the Union Avenue Project delivers nine (9) total affordable units, at least two (2) of the units will be three bedroom units, no more than one (1) of the units will be a one bedroom unit and the remaining six (6) units will be two bedroom units.
- 3.4.5 Other Affordable Housing Unit Requirements:** The Developer will also comply with all of the other requirements of UHAC and the Borough's Affordable Housing Ordinance, including, but not limited to, (1) affirmative marketing requirements, (2) candidate qualification and screening

requirements, (3) phasing requirements, and (4) integrating the affordable units amongst the market rate units in the Union Avenue Project.

**3.4.6 Administrative Agent:** The Developer shall contract with a qualified and experienced third party administrative agent, which may be the Borough's administrative agent (the "administrative agent") for the administration of the affordable units and shall have the obligation to pay all costs associated with properly deed restricting the affordable units in accordance with this Agreement for the Deed-Restriction Period. The Developer and its administrative agent shall work with the Borough and the Borough's administrative agent, should the Developer's and the Borough's administrative agent not be one and the same, regarding any affordable housing monitoring requirements imposed by COAH or the Court. The Developer shall provide, within thirty (30) days after written notice, detailed information reasonably requested by the Borough or the Borough's administrative agent, should the Developer's and the Borough's administrative agent not be one and the same, concerning the Developer's compliance with UHAC, the Borough's Affordable Housing Ordinance, the Borough's Amended Affordable Housing Plan, all applicable Court orders (including the Borough's JOR), and other applicable laws.

**3.4.7 Inclusion Of Affordable Units In The Borough's Affordable Housing Plan:** The Parties agree that all of the affordable units in the Union Avenue Project will be included in the Borough's Affordable Housing Plan, which will be approved by the Court at a Compliance Hearing, and will be memorialized in a JOR Order, and that the affordable housing credits generated by the Union Avenue Project will be applied against the Borough's Realistic Development Potential ("RDP").

**3.4.8 UHAC.** Notwithstanding anything to the contrary contained herein, to the extent there is any discrepancy between UHAC and the Borough's Affordable Housing Ordinance and/or UHAC and this Agreement, the terms of the Borough's Affordable Housing Ordinance and/or this Agreement, not UHAC, shall control.

**3.5 Obligation to post Escrows.** Developer shall post escrows to cover the costs of the Borough's and Planning Board's professionals in conjunction with their review of Developer's development applications, which costs shall include, by way of example, the cost to review submissions of the applicant and other relevant documents and to testify about the reports reviewed. All such escrows shall be governed by the requirements of the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq. ("MLUL").

**3.6 Obligation To Comply With Reasonable Conditions of Approval.** Developer acknowledges that as a condition of preliminary and/or final site plan and/or subdivision approval, Planning Board may require on-site and off-site improvements only as permitted by N.J.S.A. 40:55D-42. Developer shall comply with all such reasonable conditions and shall confine any challenge to any condition of approval to an attempt to rectify the contested condition.

**3.7** Developer shall perform, at its expense, any studies the Planning Board or other Borough Board, commission or other entity with jurisdiction may reasonably, and lawfully, require with respect to any infrastructure improvements necessitated by the Broad Street and Union Avenue projects.

**3.8** Developer accepts and will comply with the requirement that any development approval granted by Planning Board for the Broad Street Site or the Union Avenue Site, shall incorporate by reference this Agreement, shall be consistent with all terms and provisions of this Agreement, and shall include an express condition requiring compliance by the Parties with all obligations under this Agreement.

**3.9 Obligation Not To Oppose Borough's Application for Approval of its Affordable Housing Plan.** Developer will cooperate with and support the Borough's subsequent request for entry of a Judgment of Compliance and Repose provided that the Borough's Affordable Housing Plan includes the inclusion of the Broad Street Site and the Union Avenue Site consistent with this Agreement, and will support the settled upon fair share and will not otherwise challenge the validity of the Borough's Affordable Housing Plan.

**3.10 Obligation to Cooperate.** Developer and Borough shall each have the obligation to cooperate and advance the intent and purposes of this Agreement.

#### **ARTICLE IV - OBLIGATIONS OF THE BOROUGH**

**4.1 The Rezoning Ordinance.** Within sixty (60) days of the approval of this Agreement by Court Order after a properly noticed Fairness or Compliance Hearing is held, the Borough shall introduce the zoning ordinances attached hereto as **Exhibits C and D** (hereinafter the "Rezoning Ordinances") that will permit the development of the Broad Street Site and the Union Avenue Site consistent with the Rezoning Ordinances, and reasonably consistent with the attached concept site plans, and renderings (collectively attached as **Exhibits A and B**) that allows for the development of the Broad Street Site for the construction of 22 market rate residential units, and the Union Avenue Site for the construction of 23 residential units, of which nine (9) units will be set-aside as affordable family rental units. The Rezoning Ordinances will require a twenty percent (20%) set-aside across both of the proposed projects and will require all affordable units to be constructed in accordance with all applicable UHAC and COAH regulations, including all required phasing requirements.

**4.2** Upon introduction of the Rezoning Ordinances, the Borough shall refer the Rezoning Ordinances to the Planning Board for review and recommendation at the Planning Board's next regularly scheduled meeting.

**4.3** At the next regularly scheduled Borough Council meeting after a recommendation has been made by the Planning Board regarding the Rezoning Ordinances, the Borough will vote on the approval of the Rezoning Ordinances.

**4.4** In the event that the Rezoning Ordinances shall not be adopted as aforesaid, then the Parties to this Agreement shall be restored, *status quo ante*, to their respective positions prior to the execution of this Agreement, and no party shall be entitled to use this Agreement to the

disadvantage of the other in any future litigation.

**4.5 Obligation To Include Project Into Borough's Affordable Housing Plan.** The Borough shall incorporate this Inclusionary Development, this Agreement and the Rezoning Ordinances into the Affordable Housing Plan for which it seeks the Court's approval. The Borough agrees that, absent written consent of Developer, or its successors in title, the Rezoning Ordinances shall remain applicable to the Property until, at minimum, the conclusion of the Third Round compliance period (July 2, 2025), and may only be removed from the Affordable Housing Plan with the approval of the Court on Notice to Developer and its successors.

**4.6 Obligation To Cooperate.** The Borough acknowledges that in order for Developer to construct the Broad Street and Union Avenue Projects, the Developer will be required to obtain any and all approvals and permits from (1) entities, boards or agencies which are under the jurisdiction of the Parties to this Agreement, and from (2) all relevant public entities and utilities; such as, by way of example only, the Borough, the Planning Board, the County of Monmouth, the Monmouth County Planning Board, the New Jersey Department of Environmental Protection, and the New Jersey Department of Transportation (collectively, "Required Approvals"). The Borough agrees to use all reasonable efforts to assist Developer in its undertakings to obtain the Required Approvals on an expedited basis provided that the taxes on the subject property are current. The Developer shall be responsible for the Borough's costs incurred in conjunction with providing cooperation to the extent permitted by ordinance, New Jersey statute or regulation. The Borough further acknowledges that the Broad Street and Union Avenue Projects as depicted on the concept site plans and renderings attached hereto may require modification to comply with the Required Approvals and the conditions imposed by the Required Approvals, and that deviations and reasonable variances and waivers from the Ordinances may be required to comply with the Required Approvals and effectuate the intent and purpose of this Agreement. This Settlement Agreement in no way obligates the Planning Board to approve any relief requested.

**4.7 Obligation to Maintain Proposed Re-Zoning of Property.** The Borough agrees that if a decision of a court of competent jurisdiction in Monmouth 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 affordable housing obligation for the Borough for the period 1987-2025 that would lower the Borough's affordable housing obligation beyond that established by COAH for the period 1987-1999 and/or this Court for the period 1999-2025, the Borough shall nonetheless implement the Rezoning Ordinances contemplated by this Agreement, and take all steps necessary to support the development of the Broad Street Project and the Union Avenue Project as they are contemplated by this Agreement.

**4.8 Obligation to Provide Developer Relief from Cost-Generative Features and/or Requirements.** The Borough recognizes that as inclusionary developments, within the meaning of the Mount Laurel doctrine, the Broad Street Project and the Union Avenue Projects are entitled to certain relief from cost-generative features as defined by relevant law.

## **ARTICLE V – MUTUAL OBLIGATIONS**

**5.1 Obligations Regarding Costs.** Except as set forth herein, each Party shall be responsible for its own costs and expenses associated with seeking Court approval for and implementing this Agreement. The foregoing provision shall not be construed to preclude joint representation of Borough and Planning Board in any litigation or other proceeding.

**5.2 Obligation To Comply with State Regulations.** The Parties shall comply with any and all Federal, State, County and local laws, rules, regulations, statutes, ordinances, permits, resolutions, judgments, orders, decrees, directives, interpretations, standards, licenses, approvals, and similarly binding authority, applicable to the Inclusionary Development or the performance by the Parties of their respective obligations or the exercise by the Parties of their respective rights in connection with this Agreement.

**5.3 Mutual Good Faith, Cooperation and Assistance.** The Parties shall exercise good faith, cooperate, and assist each other in fulfilling the intent and purpose of this Agreement, including, but not limited to, the approval of this Agreement by the Court, the Approvals, the development of the Property consistent with the terms hereof, and the defense of any challenge with regard to any of the foregoing.

**5.4 Defense of Agreement.** Each Party exclusively shall be responsible for all costs which they may incur in obtaining Court approval of this Agreement and any appeal therefrom, or obtaining the Required Approvals or the approval of the Affordable Housing Plan or any part thereof. The Parties shall diligently defend any such challenge.

**5.5 Notices.** Any notice or transmittal of any document required, permitted or appropriate hereunder and/or any transmittal between the Parties relating to the Property (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. 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:**

**BROAD STREET 34 LLC**

Attention: William Sepe  
126 Main Street  
Manasquan, NJ 08736

**UNION AVENUE 33 LLC**

Attention: William Sepe  
126 Main Street  
Manasquan, NJ 08736

**WITH COPIES TO:**

**Giordano, Halleran & Ciesla**  
Attention: John A. Sarto, Esq.  
125 Half Mile Road, Suite 300  
Red Bank, NJ 07701-6777  
jsarto@ghclaw.com

**TO THE BOROUGH OF MANASQUAN:**

**Borough Of Manasquan**

Attention: Thomas Flarity, Borough Administrator  
201 East Main Street  
Manasquan, NJ 08736

**WITH COPIES TO:**

**King, Kitrick, Jackson and McWeeney, LLC**  
Attention: Mark G. Kitrick, Esq.  
2329 Highway 34, Suite 104.  
Manasquan, NJ 08736

**AND TO:**

**Jeffrey R. Surenian and Associates, LLC**  
Attention: Erik C. Nolan, Esq.  
707 Union Avenue, Suite 301  
Brielle, NJ 08730

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. Notice by counsel for a party shall be effective for all purposes.

**ARTICLE VI - MISCELLANEOUS**

**6.1 Severability.** Unless otherwise specified, it is intended that the provisions of this Agreement are to be severable. The validity of any article, section, clause or provisions 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.

**6.2 Successors Bound.** The provisions of this Agreement shall run with the land, and the obligations and benefits hereunder shall be binding upon and inure to the benefit of the Parties, their successors and assigns, including any person, corporation, partnership or other legal entity which at any particular time may have a fee title interest in the Property which is the subject of this Agreement. This Agreement may be enforced by any of the Parties, and their successors and assigns, as herein set forth.

**6.3 Governing Law.** This Agreement shall be governed by and construed by the laws of the State of New Jersey.

**6.4 No Modification.** This Agreement may not be modified, amended or altered in any way except by a writing signed by each of the Parties. A change to the concept site plans or

renderings to comply with the Required Approvals, as referenced in Section 4.6, shall not constitute a modification, amendment or alteration.

**6.5 Effect of Counterparts.** This Agreement may be executed simultaneously in one (1) or more facsimile or e-mail counterparts, each of which shall be deemed an original. Any facsimile or e-mail counterpart forthwith shall be supplemented by the delivery of an original counterpart pursuant to the terms for notice set forth herein.

**6.6 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.

**6.7 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.

**6.8 Necessity of Required Approvals.** The Parties recognize that the site plans required to implement the Inclusionary Development provided in this Agreement, and such other actions as may be required of the Planning Board or Borough under this Agreement, cannot be approved except on the basis of the independent reasonable judgment by the Planning Board and the Borough Council, as appropriate, and in accordance with the procedures established by law. Nothing in this Agreement is intended to constrain that judgment or to authorize any action not taken in accordance with procedures established by law, however, in accordance with procedures established by law, the Planning Board's judgment must not be arbitrary, capricious, or unreasonable in its consideration of the application. Similarly, nothing herein is intended to preclude Developer from appealing any denials of or conditions imposed by the Planning Board in accordance with the MLUL or taking any other action permitted by law.

**6.9 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.

**6.10 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.

**6.11 Conflict of Interest.** No member, official or employee of the Borough or the Planning Board 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.

**6.12 Effective Date.** Anything herein contained to the contrary notwithstanding, the effective date ("Effective Date") of this Agreement shall be the date upon which the last of the Parties to execute this Agreement has executed and delivered this Agreement.

**6.13 Waiver.** The Parties agree that this Agreement is enforceable. 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.

**6.14 Captions.** The captions and titles to this Agreement and the several sections and subsections are inserted for purposes of convenience of reference only and are in no way to be construed as limiting or modifying the scope and intent of the various provisions of this Agreement.

**6.15 Default.** 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 to take actions to cure the default in compliance with the laws of New Jersey, 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.

**6.16 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.

**6.17 Construction, Resolution of Disputes.** This Agreement has been entered into and shall be construed, governed and enforced in accordance with the laws of the State of New Jersey without giving effect to provisions relating to the conflicts of law. Jurisdiction of any litigation ensuing with regard to this Agreement exclusively shall be in the Superior Court of New Jersey, with venue in Monmouth County. Service of any complaint may be effected consistent with the terms hereof for the delivery of "Notices," hereinafter defined. The Parties waive formal service of process. The Parties expressly waive trial by jury in any such litigation.

**6.18 Conflicts.** The Parties acknowledge that this Agreement cannot be affected by the Compliance Action or any amendments to the Borough's Affordable Housing Plan or Land Use and Development Ordinances and this Agreement shall control with respect to those matters as applied to the Property. Upon the entry of a Judgment of Compliance and Repose in the Borough's Compliance Action, and after the Compliance Action is concluded, the Court shall retain jurisdiction to ensure compliance with the terms and conditions of this Agreement. As to any inconsistencies between the Approvals and this Agreement, the Approvals shall control. Any

expenses of the Court appointed Special Master to resolve conflicts that may arise subsequent to the entry of this Agreement shall be split evenly between the Borough and Developer.

**6.19 Recitals.** The recitals of this Agreement are incorporated herein and made a part hereof.

**THE REMAINDER OF THIS PAGE IS PURPOSEFULLY BLANK**

**IN WITNESS WHEREOF**, the Parties hereto have caused this Agreement to be properly executed, their corporate seals affixed and attested and this Agreement to be effective as of the Effective Date.

Attest:

**BROAD STREET 34 LLC**

Sally J Cavaller

Print Name: Sally J Cavaller

By: William Sepé

Print Name: William Sepé

Date: March 13, 2019

Attest:

**UNION AVENUE 33 LLC**

Sally J Cavaller

Print Name: Sally J Cavaller

By: William Sepé

Print Name: William Sepé

Date: March 13, 2019

Attest:

**BOROUGH OF MANASQUAN,**  
A Municipal Corporation of the  
State of New Jersey

B. Maria

Print Name: Barbara Ileria

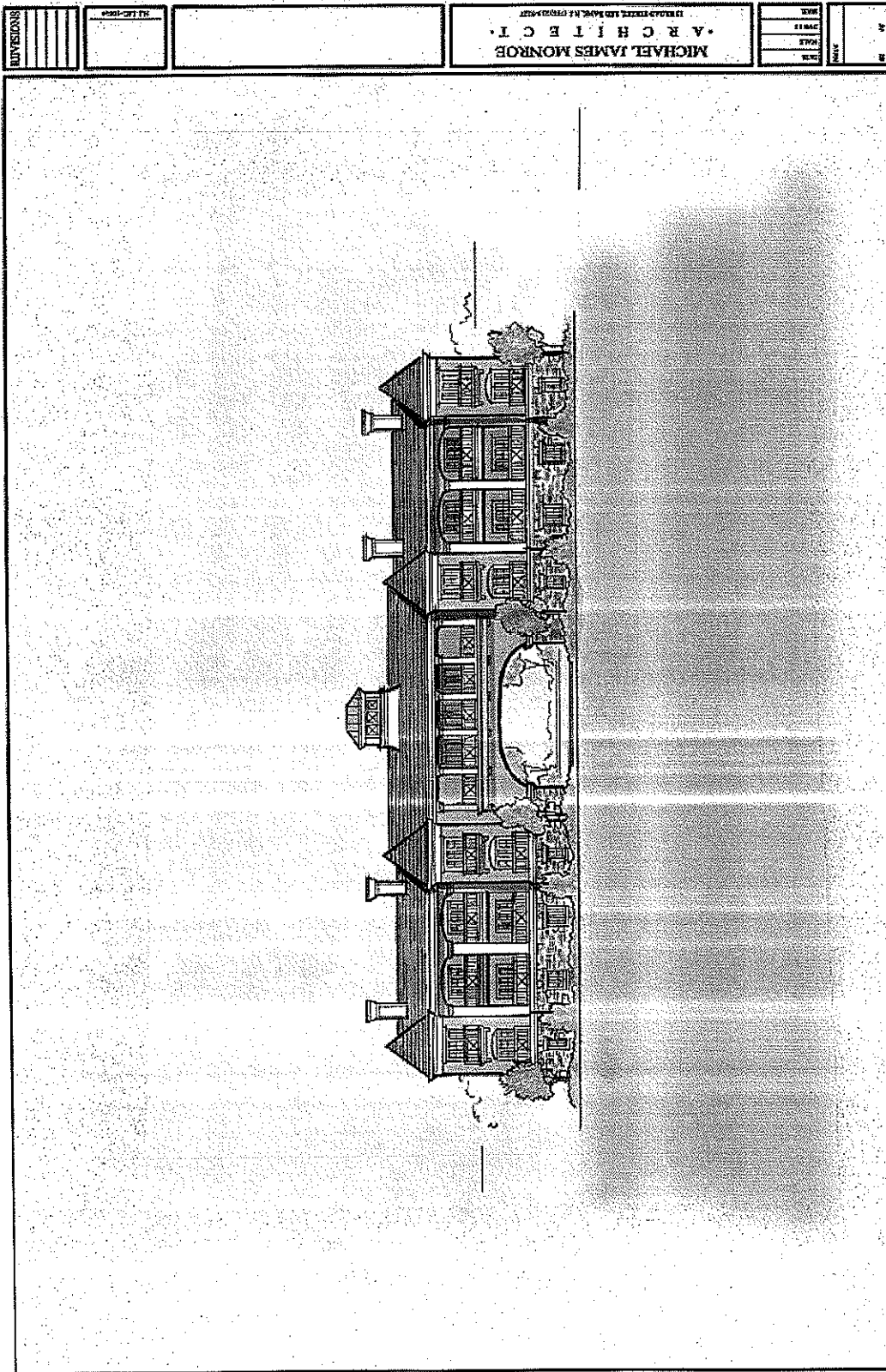
By: Edward G. Donovan

Print Name: Edward G. Donovan

Date: March 19, 2019

## CONCEPT SITE PLAN AND RENDERING FOR THE BROAD STREET PROJECT





MICHAEL JAMES MONROE  
ARCHITECT  
1200 E. 10TH AVE. SUITE 100  
DENVER, CO 80202

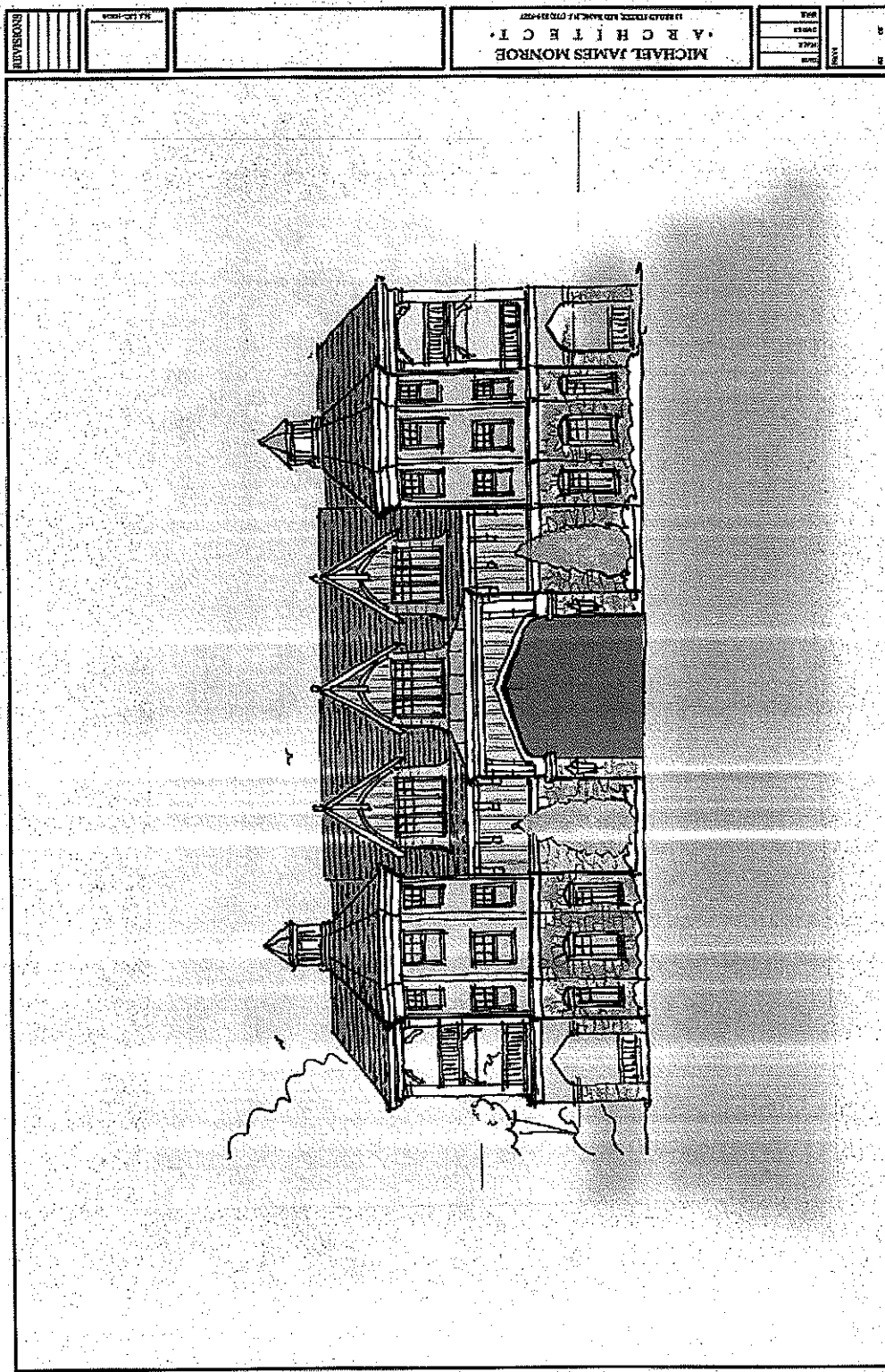
DATE  
PROJECT  
SCALE  
SHEET

ALL LINES  
BY MICHAEL JAMES MONROE

REVISIONS

## CONCEPT SITE PLAN AND RENDERING FOR THE UNION AVENUE PROJECT





NAME TITLE DATE SCALE	MICHAEL JAMES MONROE ARCHITECT 11 SOUTH STREET, NEW YORK, N.Y. 10038	SHEET NO. TOTAL SHEETS
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## EXHIBIT C

### ZONING ORDINANCE FOR THE BROAD STREET PROJECT

#### Affordable Housing AR-1 Zone

The purpose of the Affordable Housing AR-1 Zone ("AR-1 Zone") is to provide for the development of a multi-family inclusionary development designed to assist the Borough in satisfying its combined Prior Round and Round 3 (1999-2025) Realistic Development Potential ("RDP") affordable housing obligation through construction of affordable units set aside for low and moderate income households. The AR-1 Zone shall comprise the following tax lots: Lots 25.01, 25.02, 26 & 27, Block 64. This Ordinance is adopted in furtherance of the Settlement Agreement entered into between the Borough and Fair Share Housing Center ("FSHC") on July 2, 2018 (hereinafter the "FSHC Settlement Agreement"), the Settlement Agreement entered into between the Borough and Broad Street 44, LLC and Union Avenue 33, LLC (hereinafter the "Sepe Settlement Agreement"), and in connection with the Borough's Mount Laurel litigation captioned at MON-L-2508-15.

- (1) Permitted principal uses. Residential within a single multi-family building. A maximum of twenty-two (22) units are permitted, and all units shall be market rate. The affordable housing obligation generated by this development shall be provided off-site pursuant to the terms of the Sepe Settlement Agreement, which provides that COs shall not be issued for units in this zone until overall affordable unit/market unit phasing requirements are complied with for the Broad Street site and the Union Avenue site.
- (2) Permitted accessory uses.
  - (a) Off-street parking facilities.
  - (b) Other uses that are customarily incidental to a permitted principal use. No sheds are permitted on the property.
  - (c) Common facilities and amenities serving the residents of the multi-family developments including swimming pools and other on-site recreational areas and facilities, common walkways, sitting areas and gardens, and other similar uses.
  - (d) Fences and walls erected, maintained or planted no greater than six (6) feet above ground level within a side or rear yard, and no greater than four (4) feet within a front yard, and otherwise in accordance with the standards of Section 35-7.5.
  - (e) Bike racks.
  - (f) Solid waste and recycling area, setback at least five (5) feet from any rear yard or side yard. No setback from the parking area is required. The area shall be screened from view from a public right-of-way by a combination of block and chain link fence, and shall have gated access.
  - (g) Site lighting. The arrangement of exterior lighting shall adequately illuminate parking areas, and prevent glare to adjoining residential areas.
- (3) Prohibited uses.
  - (a) Parking or storage of boats, boat trailers, motor homes, taxi cabs, limousines, construction equipment, commercial vehicles and recreational vehicles.
- (4) Bulk, area and building requirements.
  - (a) Minimum lot size 36,000 square feet

(b) Minimum lot frontage	190 feet
(c) Minimum lot depth	180 feet
(d) Minimum front yard setback	5 feet
(e) Minimum one side yard setback	6 feet
(f) Minimum both side yard setback	20 feet
(g) Minimum rear yard setback	50 feet
(h) Maximum building height	40 feet / 3.5 stories <sup>1</sup>
(i) Maximum building coverage	50%
(j) Maximum floor area ratio	1.5
(k) Maximum lot coverage	80%
(l) Maximum Building Width	160 feet
(m) Minimum parking setback from side lot line	5 feet
(n) Minimum parking setback rear from lot line	15 feet
(o) Minimum drive aisle setback from a side lot line	4 feet

(5) Site access, off-street parking, and loading requirements.

- (a) One site access driveway shall be provided with a minimum width of 22 ft.
- (b) Number of spaces, and parking space dimensions, as required by New Jersey Residential Site Improvement Standards at N.J.A.C. 5:21-1.1 et seq. shall apply, notwithstanding any standards to the contrary in the zoning ordinance.
- (c) Parking shall be in the rear yard, and may also be provided beneath the principal building, without setback from a principal or accessory building.
- (d) No Loading space is required.
- (6) Landscape Buffer. Adjacent to a residential zone a fifteen (15) foot buffer, a 5 foot portion of which must be planted, landscaped and provides irrigation. Landscaping along the public right-of-way is not required.
- (7) Identification Sign. One (1) wall mounted, non-illuminated address sign is permitted with a maximum sign area of five (5) square feet
- (8) Design Standards. A multi-family building should have a unified theme, displayed through the application of common building materials consistent with the rendering attached to the Sepe Settlement Agreement as Exhibit A, and materials list as Exhibit E, or as may be modified as permitted by the Settlement Agreement. If the rendering conflicts with design standards or regulations within the zoning ordinance the rendering shall control.
- (9) Miscellaneous. The standards of Section 35-7.9 b and e shall not apply.

<sup>1</sup> Chimneys and cupolas are not counted towards building height.

## EXHIBIT D

### ZONING ORDINANCE FOR THE UNION AVENUE PROJECT

#### Affordable Housing AR-2 Zone

The purpose of the Affordable Housing AR-2 Zone ("AR-2 Zone") is to provide for the development of a multi-family inclusionary development designed to assist the Borough in satisfying its combined Prior Round and Round 3 (1999-2025) Realistic Development Potential ("RDP") affordable housing obligation through construction of affordable units set aside for low and moderate income households. The AR-2 Zone shall comprise the following tax lots: Lot 31.01, Block 66.02. This Ordinance is adopted in furtherance of the Settlement Agreement entered into between the Borough and Fair Share Housing Center ("FSHC") on July 2, 2018 (hereinafter "FSHC Settlement Agreement"), the Settlement Agreement entered into between the Borough and Broad Street 33, LLC and Union Avenue 33, LLC (hereinafter the "Sepe Settlement Agreement"), and in connection with the Borough's Mount Laurel litigation captioned at MON-L-2508-15.

- (1) Permitted principal uses. Market rate and affordable residential housing within a multi-family building. A maximum of twenty-three (23) units are permitted, with an on-site affordable housing set-aside provided. The required affordable housing set-aside shall be twenty percent (20%) of the total number of units developed at this site (Lot 31.01, Block 66.02), and the site known as Lots 25.01, 25.02, 26 & 27, Block 64 (the "Broad Street Site"). For example, it is anticipated that a total of 45 residential units will be developed at both sites, which will require a twenty percent (20%) affordable housing set-aside of nine (9) total affordable family rental housing units to be developed on the Union Avenue site. In addition, the affordable housing phasing requirement in the Sepe Settlement Agreement will apply to both the Broad Street Site and the Union Avenue Site.
- (2) Permitted accessory uses.
  - (a) Off-street parking facilities
  - (b) Other uses that are customarily incidental to a permitted principal use.
  - (c) Common facilities and amenities serving the residents of the multi-family developments including swimming pools and other on-site recreational areas and facilities, common walkways, sitting areas and gardens, and other similar uses.
  - (d) Fences and walls erected, maintained or planted no greater than six (6) feet above ground level within a side or rear yard, and no greater than four (4) feet within a front yard, and otherwise in accordance with the standards of Section 35-7.5.
  - (e) Bike racks.
  - (f) Solid waste and recycling area, setback at least five (5) ft. from any rear or side yard. No setback from the parking area is required. The area shall be screened from view from a public right-of-way by either an enclosed by a combination of block and chain link fence, and shall have gated access.
  - (g) Site lighting. The arrangement of exterior lighting shall adequately illuminate parking areas, and prevent glare to adjoining residential areas.
- (3) Prohibited uses.
  - (a) Parking or storage of boats, boat trailers, motor homes, taxi cabs, limousines, construction equipment, commercial vehicles and recreational vehicles.

(4) Bulk, area and building requirements.

(a) Minimum lot size	24,000 square feet
(b) Minimum lot frontage	130 feet
(c) Minimum lot depth	240 feet
(d) Minimum front yard setback	10 feet
(e) Minimum one side yard setback	4 feet
(f) Minimum both side yard setback	9feet
(g) Minimum rear yard setback	20 feet
(h) Maximum building height	40 feet/ 3.5 stories <sup>2</sup>
(i) Maximum building coverage	60%
(j) Maximum lot coverage	60%
(k) Maximum Building Width	100 feet
(l) Maximum Building Length	200 feet
(m) Minimum parking setback from side lot line	5 feet
(n) Minimum parking setback rear from lot line	20 feet

(5) Site access, off-street parking, and loading requirements.

- (a) One site access driveway shall be provided with a minimum width of 24 ft.
- (b) Number of parking spaces = .6/ unit<sup>3</sup>
- (c) Parking shall be in the rear yard, and may also be provided beneath the principal building, without setback from a principal or accessory building.
- (d) No Loading space is required.

(6) Identification Sign. One (1) wall mounted, non-illuminated address sign is permitted with a maximum sign area of five (5) square feet.

(7) Design Standards. A multi-family building should have a unified theme, displayed through the application of common building materials consistent with the rendering attached to the Sepe Settlement Agreement as Exhibit B, and the material list as Exhibit E, or as may be modified as permitted by the Settlement Agreement. If the rendering conflicts with design standards or regulations within the zoning ordinance the rendering shall control.

(8) Miscellaneous. The standards of Section 35-7.9 b and e shall not apply.

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<sup>1</sup> Chimneys and cupolas are not counted towards building height.

<sup>2</sup> The off-street parking requirement can be met through use of available on-street parking. Shared parking arrangements with properties within ½ mile of the site shall also be permitted.

## EXHIBIT E

### MATERIALS LIST

The Developer or its successor may utilize any combination of the materials listed.

#### *Cladding:*

- Wood-like synthetic material
- Fiber-cement
- Stucco
- Vinyl

#### *Roofing:*

- Asphalt shingle
- Slate and synthetic slate
- Metal

#### *Base of building:*

- Stone and cultured stone
- Brick and brick veneer

#### *Trim:*

- Cellular PVC, solid urethane, fiber-cement board, and vinyl.

#### *Windows:*

- Vinyl, fiberglass, aluminum clad.

#### *Soffits:*

- Solid urethane, wood composite, vinyl.

#### *Gutters and Downspouts:*

- Metal or aluminum.

#### *Exterior Columns:*

- Wood composite, fiberglass.

#### *Railings:*

- Wood composite, metal, and aluminum.

#### *Cupolas:*

- Cellular PVC, solid urethane, fiber-cement board, vinyl, asphalt shingle, slate, synthetic slate, and metal.

#### *Chimneys:*

- Brick, brick veneer, cultured stone, or cladding material.