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July 14, 2020

**VIA ELECTRONIC FILING**

Honorable Gregg A. Padovano, J.S.C.  
Superior Court of New Jersey  
Bergen County Courthouse  
10 Main Street, 3<sup>rd</sup> Floor  
Hackensack, NJ 07601

**Re: In the Matter of the Application of the Borough of Edgewater  
Docket No. BER-L-6364-15 (“DJ Action”)**

Dear Judge Padovano:

This firm is counsel to Intervenor-Defendant 615 River Road Partners, LLC (“RRP”) in Edgewater’s DJ Action. In response to objector SJ 660’s letter brief and Report of Peter Steck dated July 8, 2020, please accept the following letter in lieu of a more formal brief on behalf of RRP, together with the Certification of Irina B. Elgart (“Elgart Cert.”).<sup>1</sup> This submission is being made in advance of the Fairness Hearing scheduled on July 23, 2020 where the Court will consider the fairness and reasonableness of: (1) the Settlement Agreement between the Borough

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<sup>1</sup> RRP will further rely on its prior letter brief of June 3, 2020 together with the Fairness Report of Art Bernard dated June 2020 (attached as Exh. A to the June 3, 2020 Certification of Irina B. Elgart).

A Pennsylvania Limited Liability Partnership

California Colorado Connecticut Delaware District of Columbia Florida  
Illinois Minnesota Nevada **New Jersey** New York Pennsylvania Texas

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of Edgewater (“Edgewater”) and Fair Share Housing Center (“FSHC”); and (2) the Settlement Agreement between Edgewater and RRP.

Here, SJ 660 raises objections that have nothing to do with the fairness of RRP’s Settlement Agreement. Instead, SJ 660 challenges the RRP’s settlement for the following reasons: (1) the Eastern Parcel is not approvable or suitable because the site, its road access, and abutting portions of River Road are entirely within a 100-year flood hazard area; and (2) the Eastern Parcel is not suitable for the magnitude of high-rise towers contemplated in the Settlement Agreement and amounts to “bad planning.” As addressed in greater detail herein, SJ 660’s objection however is based on its misstatements of fact and misinterpretations of the law concerning Mount Laurel settlements, COAH rules, and NJDEP regulations.

In accordance with In re N.J.A.C. 5:96 and 5:97, the New Jersey Supreme Court directed municipalities to file their declaratory judgment complaints to obtain a court declaration that their affordable housing plans are constitutionally compliant. 221 N.J. 1, 27 (2015) (“Mount Laurel IV”). The Court directed the trial courts “to secure, whenever possible, prompt voluntary compliance from municipalities in view of the lengthy delay in achieving satisfaction of towns’ Third Round obligations.” 221 N.J. at 3. In accordance with the procedure required under Mount Laurel IV, Edgewater filed its DJ Action in 2015. The Court thereafter granted intervention status to both RRP and FSHC. For five (5) years, RRP has been the only developer in this DJ Action to offer to build affordable housing. During this time, the parties had been litigating this matter, and now believe that they have reached settlements that create realistic opportunities for the actual development of affordable housing and that adequately protect the interests of low and moderate income households.

Mount Laurel proceedings that settle and result in a judgment of compliance or other preclusive order are to be subjected to a fairness hearing in accordance with Morris County Fair Housing Council v. Boonton Twp., 197 N.J. Super. 359, 368 (Law. Div. 1984), aff’d, 209 N.J. Super. 108 (App. Div. 1986), and East/West Venture v. Fort Lee, 286 N.J. Super. 311, 326-37



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(App. Div. 1996). At the time of the fairness hearing, the trial court's function is not to adjudicate the merits of the case. In East/West, the Appellate Division aptly explained:

“The hearing on the proposed settlement is not a plenary trial[.]” Rather, the court should determine, “based upon the relative strengths and weaknesses of the parties’ positions, whether the settlement is ‘fair and reasonable,’ that is, whether it adequately protects the interests of the persons on whose behalf the action was brought.”

286 N.J. Super. at 327-28 (internal citations omitted). Therefore, the trial court's role is to determine “whether the settlement is ‘fair and reasonable’” without adjudicating the merits or holding a plenary hearing. Morris County, 197 N.J. Super. at 370; East/West, 286 N.J. Super. at 326-27.

None of SJ 660’s objections touch upon the factors and criteria set forth in East/West, which courts rely upon to assess the reasonableness of affordable housing settlements. Instead, on pg. 2 of the July 8, 2020 Steck Report, the Objector’s expert, Peter Steck, relies upon a list of “stipulations” concerning the Settlement Agreement that are either irrelevant to the issue of fairness, and/or are based on incorrect facts, misconstruction of the law, or both. Below are some of the “stipulations” followed by RRP’s respective responses:

“2. Lots 1 and 5 in Block 76 on the east side of River Road are to be designated as an area in need of redevelopment after having been studied by the Planning Board. This 13.91 acre site includes property under the Hudson River which leaves approximately 5.86 acres as upland.” See July 8, 2020 Steck Report., at 2.

**RESPONSE to No. 2:** Mr. Steck incorrectly discounts the amount of uplands that exist on the Eastern Parcel even though the Settlement Agreement explicitly provides that 8.05 acres is upland, not 5.86 acres.

Even more importantly, the density calculation provided by Mr. Steck is incorrect because Edgewater utilizes the actual zoning lot area of 13.91 acres. See Elgart Cert., **Exh. A**, Letter dated April 28, 2014, and signed by John Candelmo on May 5, 2014. Under Edgewater’s zoning code, the entire lot area, inclusive of any land that may be under water, forms part of the zoning lot and may be used on an as of right basis in calculating density, floor area ratio, and other zoning requirements.



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Edgewater utilizes the entire lot area, inclusive of the upland and any land that may be under water, in calculating density and floor area ratio requirements.

“7. Of the total number of affordable housing units (15% or 20% of the total number of dwelling units), no more than 45% are allowed to be two-bedroom units and no more than 5% are allowed to be three-bedroom units.” See July 8, 2020 Steck Report., at 2.

**RESPONSE to No. 7:** With regard to the affordable housing units, the Settlement Agreement requires and RRP has agreed to provide the appropriate bedroom and income mix in accordance with UHAC. See June 3, 2020 Elgart Cert., Exh. A, Bernard Report, at 5-9. Moreover, Edgewater and RRP will be bound by the settlement agreement with FSHC, which specifically requires RRP to comply with all applicable regulations concerning affordable housing.

Mr. Steck’s statement is a gross misrepresentation of a provision contained in the Proposed Redevelopment Agreement, Section 2.03(a). See Elgart Cert., **Exh. B**, Relevant portion of Redevelopment Agreement. Section 2.03(a) is modified by the following language: “except that any affordable component shall comply with legal requirements, if any, as to unit mix for affordable units.” Id. (emphasis added). Mr. Steck’s reference in his report to this provision is disingenuous because the provision relates only to the market rate portion of the development, as follows: “the number of 2-bedroom units shall not exceed forty-five (45%) percent of the total number of units constructed, and the number of 3-bedroom units shall not exceed five (5%) percent of the total number of units constructed.”

“8. The Borough of Edgewater is obligated to apply and enforce the same affordable housing law requirements in the Settlement Agreement to all pending or future developments in the Borough.” See July 8, 2020 Steck Report., at 2.

**RESPONSE to No. 8:** This provision actually benefits low and moderate income households, and Mr. Steck cannot claim that it is unfair and/or unreasonable to those households.

“9. The Settlement Agreement is to be interpreted as if the Edgewater Planning Board and its attorney were its authors, having the same status as the Borough of Edgewater and 615 River Road Partners, LLC signatories.” See July 8, 2020 Steck Report., at 2.

**RESPONSE to No. 9:** Again, this is another gross misrepresentation by Mr. Steck because, among other provisions clearly set forth in the



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Settlement Agreement, the Planning Board is not a party to the Settlement Agreement, as already addressed in RRP's Letter Brief dated June 3, 2020.

In addition to these gross misstatements, Mr. Steck raises the following challenges to the RRP Settlement Agreement, each of which are directly contradicted by COAH and NJDEP regulations: (1) the RRP site is not approvable or suitable because the site, its road access, and abutting portions of River Road are within a 100-year flood hazard area; and (2) the RRP site is not suitable for the magnitude of high-rise towers contemplated in the Settlement Agreement and amounts to "bad planning."

However, the motivation of SJ 660 to challenge RRP's project is important for the Court to consider when weighing whether SJ 660's objection and the opinions of its expert, Peter Steck, P.P., are credible. SJ 660 now seeks to interject itself into this Fairness Hearing without any pretense or intent to offer affordable housing to satisfy Edgewater's Mount Laurel obligation. SJ 660's sole motivation is to protect a view of the Hudson River Waterfront from its property – to which it cannot claim a right<sup>2</sup> - by trying to remove RRP's project, and only RRP's project, from Edgewater's fair share plan even though RRP's site is available, suitable, approvable, and developable, and constitutes one of the largest sites (if not the largest) to be included in any affordable housing settlement in Bergen County.

**A. The 100 Year Flood Plain Does Not Prohibit Multi-Family Development**

Mr. Steck makes the outlandish assertion in his report that RRP cannot build on its property because the property and the abutting portions of River Road are within the 100-year

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<sup>2</sup> However, New Jersey regulations and case law are clear that no property owner and/or municipality, including SJ 660, have an unfettered right to a view of the Hudson Waterfront. See In re Riverview, 411 N.J. Super. 409, 435 (App. Div. 2010) (holding that NJDEP only protects scenic views of the waterfront "to the maximum extent practicable" in high-rise developments); Matter of Shipyard Associates LP Waterfront Dev. Permit, A-4873-13T4, 2017 WL 461300, at \*4 (N.J. Super. Ct. App. Div. Feb. 3, 2017) (holding that absent "an enforceable deed restriction or easement, property owners do not have a property interest in unobstructed scenic views"), cert. den. 230 N.J. 401 (2017).



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flood hazard area associated with the Hudson River pursuant to FEMA's mapping. See July 9, 2020 Steck Report, at 6-7. Mr. Steck ignores the fact that FEMA rules do not prohibit development; rather they set certain building code requirements for municipalities to follow in order to participate in the National Flood Insurance Program. See 44 C.F.R. Parts 59, and 60. The specific code requirements vary depending upon the FEMA zone designation, (i.e. V and VE Zones (high hazard area), and A and AE zone, etc.). The development plan proposed by RRP has all structures located in the AE zone, and not the more regulated V Zones.

The requirements for waterfront development in New Jersey are established by the NJDEP and implemented through municipal land use and building code ordinances. Pursuant to clear and unambiguous NJDEP regulations, the fact that RRP's property is in a flood hazard area does not negate that it is approvable and suitable. It only means that construction must proceed in accordance with NJDEP regulations, which the RRP development plan will achieve.

The absurdity of Mr. Steck's opinion is contradicted by the intensity of the development that currently exists on the eastern side of River Road in Edgewater and the adjoining municipalities to the south. If Mr. Steck were correct, then none of the many residential structures that exist on the eastern side of River Road could have been built because many of them are also located in flood hazard areas. Undeterred by obvious facts, Mr. Steck attempts to lend credulity to his opinion by relying upon the environmental policies contained in N.J.A.C. 5:93-4.2. Contrary to Mr. Steck's position, N.J.A.C. 5:93-4.2 does not require a site to be automatically eliminated from consideration for affordable housing even it has environmental constraints, which RRP does not.

Instead, N.J.A.C. 5:93-4.2(e)(2) requires that COAH adhere to the policies delineated by such statutory authority as, the Coastal Zone Management Rules, N.J.A.C. 7:7-1, and the New Jersey's Flood Hazard Area Control Act Rules, N.J.A.C. 7:13-1. As such, RRP's project will be governed by these rules, which provide that housing may be constructed in special urban



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areas and along certain rivers, including in the AE Zone and VE Zone along the Hudson River. See, e.g., Matter of Shipyard Associates LP Waterfront Dev. Permit, 2017 WL 461300, at \*6 (citing N.J.A.C. 7:7-15.2(b)(2)(i)).

Far from prohibiting residential and commercial construction in flood zones along the Hudson River, the NJDEP has mapped the Hudson River Waterfront as a special area where construction is encouraged. N.J.A.C. 7:7-9.46. N.J.A.C. 7:7-15.2(b)(2) explicitly provides that in special urban areas and along large rivers (including the Hudson River waterfront that extends from the George Washington Bridge to the end of Bayonne), new housing is permitted. Moreover, under N.J.A.C. 7:7-9.25, the construction of housing is specifically allowed in the Flood Hazard Area (AE Zone or Coastal A Zone) as long as the standards of the Flood Hazard Area Control Act are met.

Consistent with NJDEP and FEMA regulations, Edgewater's ordinances allow for construction along coastal high hazard areas (V or VE Zones) and coastal A Zones provided, for example, that all buildings or structures shall be located landward of the reach of the mean high tide and elevated above the applicable FEMA base flood elevation plus one foot of freeboard. See Elgart Cert., **Exh. C**, Borough Ord. § 210-20. The Ordinance, with which RRP will be able to comply, further provides, that a registered professional engineer or architect shall develop or review the structural design specifications and plans for the construction and shall certify that the design and methods of construction to be used are in accordance with acceptable standards of practice for compliance with the Ordinance. Id., Ord. § 210-20(B)(3).

Specifically referenced in Mr. Steck's report is N.J.A.C. 7:13-12.5(o), which according to Mr. Steck, requires that multifamily residence buildings have roadway access elevated at least one foot above the 100-year flood base. Mr. Steck further opines that the "standard appears to be violated with respect to the easterly site and renders it not realistically developable." July 8, 2020 Steck Report, at 6. Mr. Steck ignores the complete language of this rule which provides that the requirement for a roadway one foot above the 100 year flood



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elevation does not apply in a tidal flood zone where the applicant is able to demonstrate that the costs of meeting this requirement is prohibitively high, are disproportionate to the benefit obtained by compliance, would require too much fill or would have other adverse consequences. N.J.A.C. 7:13-12.6(e). In fact, NJDEP has used this provision routinely for developments along the Hudson River in the tidal flood area recognizing that raising all the roads is not feasible. Because River Road is in a tidal flood zone, and because strict compliance with the access requirement would necessitate raising River Road for its entire length negatively impacting all of the previously developed sites in the flood hazard area, the exception to the road elevation requirement clearly will apply to the RRP project.

As previously discussed, the role of the trial courts when assessing fairness in the context of an affordable housing settlement is not to proceed with a full-blown trial or hold a plenary hearing. See Morris County, 197 N.J. Super. at 370; East/West, 286 N.J. Super. at 326-27. Hence, SJ 660's objection is technically beyond the scope of the fairness hearing. Even so, RRP has demonstrated that SJ 660's broad-based assertion that RRP is precluded from building high-rise towers on the Eastern Parcel is wrong. RRP will be able to secure signed and sealed plans from a licensed professional architect and/or engineer certifying its compliance with all applicable flood hazard area regulations. These plans will also satisfy NJDEP requirements under the Flood Hazard Rules. Consequently, the fact that RRP's project is located in a flood hazard area only means that it will be required to comply with NJDEP regulations, which do not indicate that residential development is prohibited.

**B. RRP's Project Represents Good Planning**

COAH regulations provide that sites for affordable housing should be "suitable," which requires a site to be adjacent to compatible land uses, among other things. Whether an affordable housing project is reasonable raises substantive zoning and planning concerns for the municipality so that "[t]he specific location of "decent housing for lower income groups" continues "to depend on sound municipal land use planning considerations in this State."



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East/West, 286 N.J. Super. at 211. Therefore, questions of sound planning and the fairness of providing affordable housing are overlapping concepts, and an adjudication approving the settlement agreement has the effect of foreclosing subsequent prerogative writ actions challenges on substantive grounds. Id.

Mr. Steck opines as follows that the height of the buildings in RRP's project amount to bad planning:

By authorizing high rise buildings at an unprecedented scale along the Hudson River waterfront actually exceeding the height of the Palisades Cliffs, the Settlement Agreement promotes what should be recognized as "bad planning." It is "bad planning" for the Borough of Edgewater, and it is "bad planning" for the region. [June 8, 2020 Steck Report, at 10]

Once again, SJ 660 is blind to the scale of existing developments along River Road by arguing that the property is not suitable for affordable housing due to the magnitude of the proposed high rise towers at 25 stories or 300 feet, as well as incompatible land uses surrounding the property.

As set forth above, NJDEP regulations encourage development of housing along the Hudson River Waterfront and provide for regulations concerning high-rise buildings. This policy further comports with the State Development and Redevelopment Plan (SDRP). Edgewater is located in Planning Area 1 of the SDRP. The concept of high-density development is consistent with the goals of Planning Area 1, which are, among other things, to promote public transportation and compact forms of housing in appropriate settings. Here, the housing is concentrated entirely on the Eastern Parcel and is surrounded by other high density housing, a current school, a potential new school, and existing retail uses. The high density of RRP's project itself further promotes public transportation as it involves widening River Road to create an improved bus stop and potential ferry service.

RRP's project also is consistent with other projects that exist and are zoned R-5 in Edgewater. RRP's project was designed to comply with the height and building coverage requirements of the R-5 zoning. R-5 zoning exists in at least six (6) other areas of Edgewater



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and allows for 20 stories and 55% of building coverage. See Elgart Cert., **Exh. D**, Ord. 240, Schedule X-2 District Regulations. Mr. Steck states in his report that a building height of 300 feet will be 80 feet taller than the tallest buildings permitted by zoning in Edgewater. Once again, Mr. Steck fails to give the court the full language of the regulation.

Edgewater's R-5 zoning regulations specifically provide that for each 1% reduction of building lot coverage an additional story and a 10 foot height bonus are permitted. Because the lot coverage for RRP's development is significantly lower than the 55%, the 25-story/300' height limit for the structures are as of right under the R-5 zoning code.

In addition, across River Road from the Eastern Parcel and adjacent to SJ 660 is the Alexander, which is zoned for R-5 as is the vacant lot next to the Alexander. In addition, the Quanta site is being developed in accordance with the R-5 zoning. Moreover, there are at least three (3) other projects of similar height as RRP's project that exist in Edgewater: (1) Hudson Harbor is approximately 23 stories and located on the east side of River Road; (2) Windsor at Mariner's Cove is approximately 17 stories and located on the east side of River Road; and (3) the St. Moritz (n/k/a the Riello) is 25 stories high and is situated into the Palisades with most of the building protruding above the top Palisades.

In addition, far from bad planning, RRP's high-density inclusionary development further advances the purposes of various Edgewater's Master Plan objectives. The Borough's 2014 and 2017 Re-examination Reports recommended that the site be examined for redevelopment with the goals of allowing the highest and best use for the site. See June 2020 Report of Art Bernard, P.P., at p. 13. The 2017 Master Plan Re-examination also includes goals designed to preserve and enhance access to the waterfront by: ensuring visual linkages to the Hudson River; by providing a waterfront open space and walkway system along the water's edge; and by providing a perpendicular pedestrian access from River Road to that walkway system. Each of these purposes are advanced by RRP's project and are made possible by the high rise configuration, which requires less site coverage for the structures.



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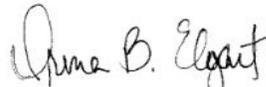
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Because RRP's project is consistent with the policies advanced by COAH regulations, the SDRP, the NJDEP regulations, Edgewater's Master Plans, and Edgewater's Zoning Ordinances, the location and intensity of RRP's project satisfies the analysis under East/West to ensure that the affordable housing is located in an appropriate location and adheres to sound planning considerations.

**CONCLUSION**

For the reasons set forth herein, RRP respectfully requests that the Court approve both Settlement Agreements as fair and reasonable to low and moderate income households because they create a realistic opportunity for the development of sufficient affordable housing to satisfy Edgewater's regional fair share obligation.

Respectfully,

  
Irina B. Elgart

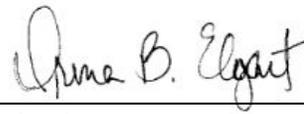
IBE  
cc: All Counsel of Record  
Frank Banish, P.P., Special Master



4. Attached hereto as **“Exhibit C”** is a true copy of Edgewater’s Ordinance § 210-20.

5. Attached hereto as **“Exhibit D”** is a true copy of Edgewater’s Ordinance 240, Schedule X-2 District Regulations.

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



Dated: July 14, 2020

\_\_\_\_\_  
Irina B. Elgart

**EXHIBIT A**

GITTLEMAN, MUHLSTOCK & CHEWCASKIE, L.L.P.

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MELVIN GITTLEMAN (1930-2013)  
STEVEN MUHLSTOCK  
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TELECOPIER  
(201) 944-1497

April 28, 2014

John Candelmo  
Borough of Edgewater  
916 River Road  
Edgewater, NJ 07020

Re: Edgewater B-3 Waterfront Commercial District

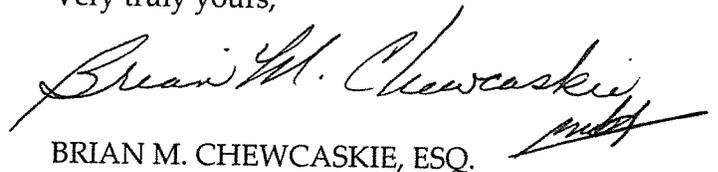
Dear Mr. Candelmo:

In furtherance of our telephone conversation of April 25, 2014, I advised you that I represent a property owner who currently owns land located within the Borough's B-3 Waterfront Commercial District. In accordance with our conversation, it is my understanding that the entire lot area, inclusive of any land that may be under water, is utilized by the Borough of Edgewater in calculating density and floor area ratio requirements.

I would appreciate if you would acknowledge a copy of this correspondence confirming that the entire lot area is utilized to determine the appropriate density and floor area ratio requirements.

Thank you in advance for your anticipated cooperation. Of course, if you have any questions or require any additional information, please do not hesitate to contact me.

Very truly yours,

  
BRIAN M. CHEWCASKIE, ESQ.

BMC:mkb

cc: Maxal Group

05/15/2014 10:39 2019417767  
04/28/2014 15:37 2019441437

BUILDING DEPT  
GMC LAW

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ACKNOWLEDGMENT

This will confirm that the Borough of Edgewater utilizes the entire lot area including land underwater for density and floor area ratio purposes in the B-3 Waterfront Commercial District.

DATED: 5/15/14

  
JOHN CANDELMO, ZONING OFFICER

**EXHIBIT B**

# **EXHIBIT E**

## REDEVELOPMENT AGREEMENT

**THIS REDEVELOPMENT AGREEMENT** (the "Redevelopment Agreement" or "Agreement"), dated as of \_\_\_\_\_, 2019 (the "Effective Date"), by and between the **BOROUGH OF EDGEWATER** (the "Borough"), a body corporate and politic of the State of New Jersey with offices at 55 River Road, Edgewater, New Jersey 07020, acting in the capacity of a Redevelopment Entity pursuant to the provisions of the "Local Redevelopment and Housing Law", N.J.S.A. 40A:12A-1 et seq. (the "Redevelopment Law" or "LHRL") and **615 RIVER ROAD PARTNERS, LLC** ("RRP"), c/o Greenberg Traurig, LLP, Attn. Steven D. Fleissig, Esq. and Cory Mitchell Gray, Esq., 500 Campus Drive, Site 400, Florham Park, New Jersey 09732 (singularly, a "Party", collectively referred to as the "Parties").

### W I T N E S S E T H:

#### Recitals

**WHEREAS**, pursuant to a resolution adopted on \_\_\_\_\_, the Borough, in accordance with the requirements of the Local Redevelopment and Housing Law, designated a certain assemblage of lots within the Borough of Edgewater, constituting approximately 13.91 acres, including underwater land, on River Road, designated as Block 76, Lots 1 and 5 on the Tax Map, as a non-condemnation area in need of redevelopment, known as "River Road Redevelopment Area"; and

**WHEREAS**, pursuant to an Ordinance No. \_\_\_\_\_ adopted by the Borough on \_\_\_\_\_, the Borough adopted the Redevelopment Plan for the River Road Redevelopment Area for the area recited above; and

**WHEREAS**, RRP is the owner of all the property located in the River Road Redevelopment Area; and

**WHEREAS**, RRP was designated as redeveloper for River Road Redevelopment Area pursuant to Resolution \_\_\_\_\_ adopted \_\_\_\_\_; and

**WHEREAS**, the Borough and RRP enter into this Agreement for the purpose of setting forth their respective undertakings, rights and obligations in connection with the construction of the multi-family residential development, all in accordance with the Redevelopment Plan, Applicable Law and the terms and conditions of this Agreement hereinafter set forth.

**NOW, THEREFORE**, for and in consideration of the mutual promises, covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each of the Parties, and for the

## **ARTICLE II**

### **IMPLEMENTATION OF REDEVELOPMENT PROJECT**

**Section 2.01**            **Purpose.** It is the intention of the parties, and the purpose of this Agreement, to set forth the rights, duties and obligations of the parties to provide for the implementation of the Redevelopment Plan which may be undertaken in Phases.

**Section 2.02**            **Designation of Redeveloper.** RRP has been or will be conditionally designated as Redeveloper for the Project, conditioned upon entry of this Agreement and compliance with the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq as amended, and shall have the exclusive right to redevelop and implement the Project in accordance with the terms and conditions of the Redevelopment Plan, the Settlement Agreement and this Agreement.

**Section 2.03**            **The Project.**

(a) The Project shall currently include the construction of three residential tower buildings and other associated improvements as set forth in the Redevelopment Plan, including up to one thousand two hundred (1,200) dwelling units to be constructed on the East Parcel in multiple structures, each of which may be up to 25 stories/300 feet. For each Phase, the Redeveloper shall have the right to determine in its sole and absolute discretion the unit mix (e.g., the number of studios, 1-bedroom, 2-bedroom and 3-bedroom units) except that any affordable component shall comply with legal requirements, if any, as to unit mix for affordable units and the number of 2-bedroom units shall not exceed forty-five (45%) percent of the total number of units constructed, and the number of 3-bedroom units shall not exceed five (5%) percent of the total number of units constructed. The Borough acknowledges and agrees the East Parcel may also include a retail component, a ferry stop and the other improvements described in the Redevelopment Plan. Upon request by the Redeveloper, the Redevelopment Plan and Redevelopment Agreement shall be modified to permit the construction of a fourth residential tower building, subject to the conditions set forth in the Redevelopment Plan and site plan approval.

(b) Redeveloper shall transfer the West Parcel to the Borough at such time and upon such terms and conditions as are set forth in the Settlement Agreement.

**Section 2.04**            **Infrastructure.**

(a) The Redeveloper will (at its sole cost and expense) construct the Infrastructure, as required by the terms of this Redevelopment Agreement and the Governmental Approvals. The Redeveloper shall carry out its obligations with respect to construction of the Infrastructure, in accordance with (i) all Applicable laws, including specifically and without limitation, the Governmental Approvals, and (ii) such other permits, licenses and approvals as may otherwise be received from any regulatory authority or agency.

**EXHIBIT C**

**§ 210-20. Coastal high hazard area and Coastal A Zone.**

Coastal high hazard areas (V or VE Zones) and Coastal A Zones are located within the areas of special flood hazard established in § 210-7. These areas have special flood hazards associated with high velocity waters from tidal surges and hurricane wave wash; therefore, the following provisions shall apply:

**A. Location of structures.**

- (1) All buildings or structures shall be located landward of the reach of the mean high tide.
- (2) The placement of manufactured homes shall be prohibited, except in an existing manufactured home park or subdivision.

**B. Construction methods.**

- (1) Elevation. All new construction and substantial improvements shall be elevated on piling or columns so that:
  - (a) The bottom of the lowest horizontal structural member of the lowest floor (excluding the piling or columns) is elevated at or above the more restrictive, base flood elevation (published FIS/FIRM) plus one foot, the best available flood hazard data elevation plus one foot, or as required by ASCE/SEI 24-14, Table 4-1;
  - (b) All electrical, heating, ventilating, air-conditioning, mechanical equipment and other equipment servicing the building is elevated at or above the more restrictive, base flood elevation (published FIS/FIRM) plus one foot, the best available flood hazard data elevation plus one foot, or as required by ASCE/SEI 24-14, Table 4-1;
  - (c) With all space below the lowest floor's supporting member open so as not to impede the flow of water, except for breakaway walls as provided or in § 210-20B(4).
- (2) Structural support.
  - (a) All new construction and substantial improvements shall be securely anchored on piling or columns.
  - (b) The pile or column foundation and structure attached thereto shall be anchored to resist flotation, collapse or lateral movement due to the effects of wind and water loading values each of which shall have a 1% chance of

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being equaled or exceeded in any given year (100-year mean recurrence interval).

- (c) Prohibit the use of fill for structural support of buildings within Zones VI-30, VE, V, and Coastal A on the community's FIRM.
- (3) Certification. A registered professional engineer or architect shall develop or review the structural design specifications and plans for the construction and shall certify that the design and methods of construction to be used are in accordance with accepted standards of practice for compliance with the provisions of § 210-20B(1) and B(2)(a) and (b).
- (4) Space below the lowest floor.
- (a) Any alteration, repair, reconstruction or improvement to a structure started after the enactment of this chapter shall not enclose the space below the lowest floor unless breakaway walls, open wood lattice-work or insect screening are used as provided for in this section.
  - (b) Breakaway walls, open wood lattice-work or insect screening shall be allowed below the base flood elevation provided that they are intended to collapse under wind and water loads without causing collapse, displacement or other structural damage to the elevated portion of the building or supporting foundation system. Breakaway walls shall be designed for a safe loading resistance of not less than 10 and no more than 20 pounds per square foot. Use of breakaway walls which exceed a design safe loading of 20 pounds per square foot (either by design or when so required by local or state codes) may be permitted only if a registered professional engineer or architect certifies that the designs proposed meet the following conditions.
    - [1] Breakaway wall collapse shall result from a water load less than that which would occur during the base flood; and
    - [2] The elevated portion of the building and supporting foundation system shall not be subject to collapse, displacement or other structural damage due to the effects of wind and water load acting simultaneously on all building components (structural and

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nonstructural). Water loading values used shall be those associated with the base flood. Wind loading values used shall be those required by applicable state or local building standards.

- (c) If breakaway walls are utilized, such enclosed space shall be used solely for parking of vehicles, building access, or storage and not for human habitation.
  - (d) Prior to construction, plans for any breakaway wall must be submitted to the Construction Code Official or Building Subcode Official for approval.
- C. Sand dunes. Prohibit man-made alteration of sand dunes within Coastal A Zones, VE and V Zones on the community's DFIRM which would increase potential flood damage.

**EXHIBIT D**

