

John

**ZONING BOARD OF ADJUSTMENT  
OF THE BOROUGH OF EDGEWATER**

**AMENDED  
RESOLUTION OF MEMORIALIZATION AS TO  
OFFICIAL ACTION APPROVING VARIANCES  
AND SITE PLAN**

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**In the Matter of the Application of 774  
River Road Associates, LLC for Variances  
and Site Plan Approval as to as to  
Block 71, Lot 2.02**

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**WHEREAS**, 774 River Road Associates, LLC, (“Applicant”) has made an application (“application”) to the Board of Adjustment of the Borough of Edgewater (“Board”) and submitted plans for site plan approval and such other variances and waivers deemed necessary to enable the Applicant to construct a multi-family dwelling on the Property identified as Block 71, Lot 2.02 as shown on the Tax Assessment Map of the Borough of Edgewater; and

During the course of the application, the Applicant revised its plans, reducing the number of proposed residential units to 21 units and eliminating a proposed second structure; and

**WHEREAS**, the Property is located in the “R-3 Multi-Family Residential District” land use area. The proposed use is permitted in the zone; and

**WHEREAS**, following a completeness hearing determination and determination that the applicant’s notice(s) were sufficient, public hearings were held on December 2, 2009, March 3, 2010, May 5, 2010 and June 2, 2010; and

**WHEREAS**, testimony was presented by:

Mr. Adolf Montana, a professional engineer, who was qualified as an expert in the field of engineering.

Mr. Gary Dean, a professional engineer, who was qualified as an expert in the field of traffic engineering.

Mr. David Spatz, a professional planner, who was qualified as an expert in the field of municipal planning.

Mr. Mark Virgona, a licensed architect in the State of New Jersey, who was qualified as an expert witness in the field of architecture.

Mr. Gordon Meth, a professional engineer, who was qualified as an expert in the field of traffic engineering; and

**WHEREAS**, the Applicant was represented by James Demetrakis, Esq.; and

**WHEREAS**, members of the public were given the opportunity to question applicant's witnesses and also to express their respective concerns and voice their respective objections to the application; and

**WHEREAS**, the following documents were submitted into evidence:

- A-1 Engineering Plans of Dynamic Engineering (11 Sheets)
- A-2 RSIS Calculations for the project
- A-3 Architectural Plans (3 Sheets)

**March 3, 2010**

- A-1\_ Revised Site Layout
- A-2\_ Depiction of Building Exterior and Elevation
- A-3\_ Blow-Up of Ground Plan and Floor Plan

A-4 Dolan and Dean Report (Dated February 22, 2010)

**May 5, 2010:**

A-5 Community Housing and Planning Associates Inc. Memorandum, Dated  
February 2, 2010

O-1 RBA Group Report dated March 2, 2010

**WHEREAS**, the Board is in receipt of memorandum report from its planner, Frank J. Rotunda, P.E., P.P. and its engineer Neglia Engineering Associates; said reports are incorporated by reference into this Resolution.

**NOW, THEREFORE, BE IT RESOLVED**, by the Board of Adjustment of the Borough of Edgewater that the following findings of fact and conclusions are made or reached, respectively by the Board:

- (5) That all of the "Whereas Recitals" set forth above are incorporated as if set forth at length herein, as part of the Board's findings.
- (6) That the application, plans and documents submitted to the Board accompanying same are made as part of the record.
- (7) The subject property is located on the western side of River Road, north of Russel Street and east of Undercliff Avenue. Access to the site is from Winterburn Place. The parcel currently contains a storage area for landscaping equipment. The irregularly shaped, 21,000 square foot site slopes from west to east along Winterburn Place and is at an elevation above River Road.
- (8) The application requires the following zoning variances:
  - a. 1. Lot area: An area of 40,000 square feet is required, where 21,000 square

feet is provided.

2. Lot width: A lot width of 150 feet is required. The irregularly shaped lot is 93 feet at its widest point.
  3. Front Yard: A front yard setback of 25 feet is required. The building is setback 10.6 feet from River Road.
  4. Rear Yard: A rear yard of 25 feet is required. The building provides a rear yard of 16.33.
  5. Side Yard: Side yards of 20 feet are required. A side yard of 10 feet is provided on the north. The southern side yard conforms.
  6. Building Height: A building height of 3 stories is allowed. The building will be 4 stories in height.
- b.
1. Density: A maximum density of 12 dwelling units per acre is permitted. The 21 units would provide a density of 43.75 units per acre on the 0.48 acre site.
  2. Building height: A maximum height of 35 feet is permitted. The building will have a height of 41 feet 4 inches.
- (5) Adolf Montana testified in detail as to the project to be built on the site based on the engineering plans prepared and submitted to the Board by Dynamic Engineering. Mr. Montana explained the methods of ingress and egress to the site, that there would be no vehicle access from River Road. That all access would be from Winterburn Place. Mr. Montana opined that the design for ingress and egress to the site would work without a burden to the area.

- (6) Mark Virgona explained the revised architectural plans prepared by his firm in detail. He testified that the height of the project would be 41' 4" which was necessary to include a parking deck on the ground floor. The height variance was also a function of the slope affecting the property, which increased the height variance at the high point of the slope. The building itself, if the slope and parking level were eliminated would only be 28' 8" which would conform with the Borough's height requirements. All questions by the Board pertaining to the architectural plans were properly addressed by Mr. Virgona.
- (7) Gary Dean, explained his traffic impact study, submitted and marked into evidence as A-4 in detail. Mr. Dean opined that the proposed site would have no substantial traffic impact as the proposed residential development is a low intensity use.
- (8) David Spatz, explained his planning memorandum submitted and marked into evidence as A-5 in detail. Mr. Spatz described the surrounding neighborhood as a mixture of uses, although primarily of a residential nature. Directly to the north of the site is the Crown Village Condominium development and directly to the south is the U.S. Post Office complex. The Van Gelder School is located directly to the west along Winterburn Place. The northern side of Winterburn Place contains two single family residences and the corner of Winterburn and Undercliff Avenue is developed with multi-family buildings, as is the western side of Undercliff Avenue. The Avalon multi-family development is located further to the south along River Road and the eastern side of River Road, in the vicinity of the subject

site, is developed with commercial uses. Mr. Spatz's opined that the requested variances for height and density should be granted for the following reasons:

- a. The density produced by the 21 units is 43.75 units per acre on the approximately ½ acre site. While the density exceeds the 12 units per acre permitted in the R-3, the site can accommodate the additional density. As previously indicated by the project engineer, all drainage can be handled on site and there are sufficient utilities to support the project. The existing and improved Winterburn Place provides adequate dimensions for the additional traffic and a conforming amount of parking is provided on site, both underneath the proposed building and in the improved narrow strip of land along Winterburn Place.
- b. The proposed density of 43.75 units per acre is not inconsistent with the density of the larger multi-family developments in the vicinity of the subject site. The Crown Village Condominiums provides a density of 21 units per acre and the Avalon Bay project provides a density of 33 units per acre.
- c. The Borough's Fair Share Plan, submitted December 2, 2008, indicated that Edgewater had a fair share obligation (1999-2018) of 331 units, of which 279 were considered a growth share obligation. The proposed 21 affordable units would provide a significant portion of that fair share obligation (a little over 6%). The benefit to the Borough is further supported in that as all units are affordable, there is no increase to

Edgewater's growth share obligation and full credit can be obtained.

- d. The proposed multi-family development is consistent with and supports the purposes of zoning. The project meets the following purposes of the Municipal Land Use Law: Purpose (e) for the establishment of appropriate population densities and concentrations that will contribute to the well-being of persons, neighborhoods, communities and regions and; Purpose (i) for the promotion of a desirable visual environment through creative development techniques and good civic design and arrangement. The multi-family use is permitted in the R-3 Zone. While the Court's Sica test applies to use variances, the density and height variances are also d variances and the fact that the proposed fully affordable housing development is an inherently beneficial use would support the grant of those variances as well.
- e. The 41 feet, 4 inch height of the proposed building exceeds the limitations of the R-3 Zone by approximately 6 feet. In an attempt to provide as much on site parking as possible, the project was designed with one level of parking with three residential floors above; the residential floors have a total height of 28 feet, 8 inches, which would conform. The project architect has provided testimony regarding the difficulties imposed by the slope of the property in terms of building height and the location of the parking level; it is not possible to lower the parking level further, which would have had the affect of reducing the overall height of the building.

f. The impact of the increased height on adjacent buildings is lessened by the distances between the proposed building and those buildings. Parking spaces and a driveway are located between the building and the nearest building in the Crown Village complex, approximately 60 feet away. The adjacent Van Gelder School is located at a higher elevation and exceeds the height of the proposed building.

(9) Spatz further testified that the requested "C" variances should be granted for the following reasons:

**Positive Criteria:**

- a. The nonconforming lot area and lot width are both pre-existing conditions that would affect any multi-family development of the site.
- b. The project architect provide extensive testimony regarding the irregular shape and topography of the parcel and how that affected the design and location of the building. The portion of the site along River Road narrows as it gets closer to the road and has a significant changed in grade from River Road to the flatter portion of the site.
- c. The change in grade affects the location of the parking and driveways for the building and causes these elements (and the building) to be closer to the lot lines. This portion of the site has frontage on two streets (River Road and Winterburn Place) however, due to the grade change and need to reduce traffic impacts on River Road, vehicular access to the site can only be taken from Winterburn Place.

- d. The site is currently occupied by a storage facility for a landscaper and is in a poor condition. The proposal will provide an enhanced condition for the adjacent uses.
- c. The proposal involves the widening and improvement of Winterburn Place for a length of 240 feet. Testimony was provided to indicate that if permitted by the Borough, the applicant would also widen and improve that portion of Winterburn Place from the upper portion of the site to the intersection with Undercliff Avenue.

**Negative Criteria:**

- a. The proposal is in character with the surrounding residential land uses and is compatible with the existing neighborhood development. The multi-family use is permitted in the R-3 Zone.
- b. The proposed density is compatible with existing, nearby residential development. The height of the proposed building is consistent with the adjacent buildings and there is enough of a separation from the nearest building in the Crown Village complex to reduce any impacts from the increased height.
- c. A conforming amount of parking is provided on the site to serve the affordable housing development.
- d. The site is in an underutilized condition and the proposed affordable housing project would provide much needed housing and would place a compatible use on the tax rolls of the City.

e. The proposed affordable housing project is consistent with the Borough's Master Plan and the purposes of the Municipal Land Use Law. While an affordable housing ordinance was not included in the submitted Fair Share Plan, density bonuses for the provision of affordable housing are typical. The design of the project was 100% affordable would allow Edgewater to better meet its Third Round COAH obligations.

(10) The Board accepts the testimony of the applicant's experts as set-forth herein and adopts same in their totality. Based on the testimony of said experts the Board finds that the requested variances will not impair the intent and purpose of the Borough's Zoning Plan and/or Master Plan. Additionally, the Board finds that the requested variances can be granted without substantial detriment to the public good and without impairing the intent and purpose of the Master Plan and Zoning Code.

(11) The Board further finds and concludes that the Site Plan meets the Borough's requirements for preliminary and final approval of Major Site Plan Application.

**NOW, THEREFORE, BE IT RESOLVED**, based on the foregoing findings and conclusions, that the Board memorializes its action of June 2, 2010, and grants the application for variance and site plan approval as contained in this Resolution, subject to the following conditions:

(A) Applicant shall be responsible for obtaining any and all other approvals and permits, as may be required by law, and shall comply with any and all other requirements or conditions of such approvals.

- (B) To the extent required, Applicant is to enter into a Developer's Agreement with the Borough in a form approved by the Attorney for the Board of Adjustment and the Borough Attorney.
- (C) To the extent applicable, the Applicant shall comply with the Affordable Housing Development Fee Ordinance of the Borough of Edgewater, and all State COAH requirements as promulgated.
- (D) The applicant shall pay all fees and escrows to the Borough of Edgewater.
- (E) The applicant will comply with all requirements of Neglia Engineering as it pertains to applicant's storm water plan.
- (F) The applicant will widen and improve Winterburn Place as set-forth in its application. Applicant will, if required by the Borough, also widen and improve Winterburn Place from the northern portion of its site to Undercliff Avenue.
- (G) The applicant will fence in its refuge area. The applicant will erect a fence in the area abutting the Van Gelder School property.

**BE IT FURTHER RESOLVED**, that notice of this decisions shall be published in the official newspaper of the Borough of Edgewater.

**BE IT FURTHER RESOLVED**, that members of the Board of Adjustment who voted in favor of said variances do hereby memorialize and confirm the foregoing finds of fact, determinations and conclusions set forth in this Resolution of Memorialization as the "official action" taken by the Board of Adjustment of said date, in accordance with the provisions of N.J.S.A. 40:55D-10(g)(2) of the New Jersey Municipal Land Use law this 6 date of November, 2013.

Vote for Motion

	Motion	Second	Yes	No	Absent	Abstain
Ford						
Kochis						
Robert Corcoran						
Stephen Stewart						
Holowacz						
Adam Tate						
Chairman Christiansen						

Vote in Memorialization

	Motion	Second	Yes	No	Absent	Abstain
Ford			✓			
Kochis			✓			
Robert Corcoran	✓		✓			
Stephen Stewart					✓	
Holowacz		✓	✓			
<del>Adam Tate</del> Kochis			✓			

Thomson  
meagher

✓  
✓

Chairman Christiansen						✓
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I hereby certify that the resolution of memorialization was duly adopted by a majority vote of the members of the Edgewater Zoning Board of Adjustment, who voted in favor of said decision, a quorum of the membership being present, at the official public meeting of said Board held on the 6 of November, 2013.

J. Henry

Robert Christiansen  
 Robert Christiansen, Chairperson  
 Colorado

THIS AGREEMENT, made this <sup>21<sup>st</sup></sup> day of October, 2016 Between:

KRAY PLAZA, LLC, 1000 Portside Drive, Edgewater, New Jersey (hereinafter called the "Developer");

- AND -

THE BOROUGH OF EDGEWATER, a municipal corporation of the State of New Jersey, having offices at 55 River Road, Edgewater, New Jersey, (hereinafter called the "Borough"); and

The ZONING BOARD OF ADJUSTMENT OF THE BOROUGH OF EDGEWATER, hereinafter called the "Board")

**WITNESSETH:**

**WHEREAS**, the Developer has made application to the Board of Adjustment of the Borough of Edgewater and submitted plans for site plan approval and such other variance and waivers deemed necessary to allow certain site improvements including the removal of the existing office structure and the construction of a multifamily structure with parking and ancillary facilities on Block 67, Lot 1.02 commonly known as 1000 Portside Drive, Edgewater; and

**WHEREAS**, the application was approved by the Board of Adjustment by formal resolution dated July 6, 2016 which is attached hereto; and

**WHEREAS**, the parties wish to express by this Agreement their acceptance of the conditions, safeguards and limitation under which the building and required site and offsite improvements for the Developer's project will proceed, including the installation of the required site and offsite improvements subject to inspection by the Borough together

with the Developer's low and moderate income housing obligations, and subject to the terms and provisions of this Agreement:

**NOW THEREFORE**, in consideration of the mutual covenants, promises, conditions and agreements contained herein, and in further consideration of the sum of ONE DOLLAR (\$1.00) and 00/100 and other valuable consideration, the receipt whereof is hereby acknowledged, it is hereby agreed by and between the parties as follows:

**IMPROVEMENTS**

1. Improvements to be Completed by Developer. The Developer will, at its sole cost and expense, make, install and perform all the improvements and work shown on the Site Plan including but not limited to those improvements;

(a) shown or made necessary by the schedule of improvements made a part hereof, as Schedule B and on the drawings made a part hereof as Schedule A.

(b) shown or made necessary by the Site Plan or Sub-division, if applicable, hereinabove mentioned;

(c) those improvements made necessary during the course of the work to correct, repair, remedy or otherwise deal with a condition that develops hereafter on the aforementioned property, adversely affecting the public health or safety, threatening to do so or any other physical condition on said property that has developed inimical to the general welfare;

(d) those improvements lawfully required by any governmental agency, board, department, or bureau, including the County of Bergen and Borough agencies and departments prior to the release of the performance guaranty or prior to the full completion

of the construction work set forth on the attached Site Improvement Schedule, (Schedule B), whichever is the later to occur, if applicable;

(e) those improvements required or approved by the Borough Engineer, who is hereby authorized to approve or require minor modification in the Site Plan and/or Subdivision which he deems appropriate due to construction conditions, provided, however, that no such modification shall require a variance from the zoning ordinance of the Borough of Edgewater.

2. Compliance with Law. All the improvements referred to in paragraph (1) hereof, shall be made, constructed or installed in accordance with such state and federal laws as pertain thereto and in accordance with such specifications, ordinances, rules and regulation which may be reasonably approved or adopted by the Borough or any Borough agencies, boards, officers, departments or bureaus having jurisdiction. All buildings and structures are subject to the inspection and approval by applicable subcode officials. All other site improvements, subdivision and site work not under the jurisdiction of the Construction Code Official shall be made subject to the inspection and approval of the Borough Engineer or someone designated in writing by the Borough Engineer for that purpose.

3. Drainage Facilities. Storm and surface waters shall be piped to drainage facilities in accordance with the drainage system shown on the Site Plan or Subdivision and said installation shall be done in such a manner as shall meet with the approval of the Borough Engineer.

4. Fire Prevention Facilities and Hydrants. If fire prevention facilities and hydrants are to be installed on subject premises, they shall be located and installed, at

developer's expense, in accordance with the Site Plan or Subdivision and as approved by the Division of Fire Protection of the Borough of Edgewater.

5. Signs. No signs shall be placed on the premises without the Developer first securing a sign permit when required by law or without prior Board approval.

6. Underground Utilities. All permanent utilities shall be installed underground as and where shown on the Site Plan or Subdivision.

7. Surfacing and Pavement Standards. All roadways, parking areas and driveways to be constructed by the Developer shall be constructed and installed in accordance with the specifications shown on the details submitted with the approved Site Plan or Subdivision.

8. Grading. Before the grading of any roadway, driveway or parking area, the area shall be cleared of all debris, branches, matted leaves, mud and mire, any other materials that, under sound construction practices, would be regarded as unsuitable.

9. Duty to Provide Details to Plans. In the event that the Borough Engineer reasonably requires any further details of the Site Plan or Subdivision, or of any proposed public or site improvement to be submitted and approved, the Developer shall, within 10 working days after receipt of written notice by the Borough Engineer specifying the full nature of all details, furnish such details. Developer may require that the full nature of all details required by the Borough Engineer be specified in writing.

10. As-built Drawings. Developer shall provide the Borough Engineer with as-built drawings indicating the location and size of all sanitary sewer and storm drainage lines and structures, including all inverts, top of manholes, top of grates, location and

elevation of all retaining walls, grades throughout the site including the final location and grades of curbs, sidewalks, roadways, parking areas and waterways.

11. Inspection. The Borough of Edgewater contemplates the inspection by the Borough Engineer of all facilities on the Site Improvement Schedule. In the event of temporary suspension of construction, the Borough Engineer shall be notified of the renewed starting date of construction. The Borough Engineer shall use his best efforts to have inspections completed in a timely manner so as to permit the Developer to proceed with construction in an orderly, safe, and expeditious manner. No backfilling after the installation of any curbing, drainage, sanitary sewers, utilities, water lines or other improvements shall be done without the approval of the Borough Engineer or his duly authorized representative.

12. Inspection Fees. An escrow account shall be established to facilitate payment of engineering fees and legal fees. This account shall be initially funded by the Developer in the amount shown on Schedule B. Inspection by the Borough Engineering Department shall be charged against this account at the rate prescribed by the appropriate ordinance. A minimum balance of \$5,000.00 shall be maintained by the Developer. On a quarterly basis the account shall be brought back to the initial level.

13. T.V. Inspection. Upon their completion, sanitary lines installed or improved by the Developer will be "T.V. Inspected", together with storm lines, if requested by the Borough Engineer, at Developer's expense to ensure conformance to specification and to determine if breaks, settlement or misalignment have appeared since the backfilling of trenches.

14. Building and Engineering Permits. The Building Department shall not issue building permits to the Developer until the Developer has obtained from the Engineering Department all necessary permits, including but not limited to:

1. soil erosion and sediment control
2. street opening
3. sanitary sewer
4. storm sewer
5. curb and sidewalk
6. construction permits
7. sewer cut-off

Additionally, prior to the issuance of a building permit, the developer shall submit proof of all required permits and approvals from all applicable governing agencies including but not limited to:

1. Bergen County Utilities Authority
2. Bergen County Planning Board
3. DEP Stream Encroachment
4. DEP Sanitary Sewer Extension
5. Bergen County Road Opening
6. Environmental Protection Agency.

15. Engineer's and Construction Code Official 's Field Requirements. This Agreement is subject to additional In-the-field directions and requirements, in accordance

with applicable codes, or when reasonably required by the Construction Code Officer and applicable Sub-code Officers and Health Officer, as to all structures and work that these officials have powers conferred by law to inspect. All such directions and requirements shall be given in reasonable and timely fashion prior to commencing operations, or during or after operation where such direction and requirements are necessary to adequately insure that the improvements to be installed under this Agreement function properly and carry out all the purposes for which they are designed in a good work-man-like manner consistent with sound engineering principles. The Borough Engineer shall have the same powers with respect to work and installations to be installed that are not within the jurisdiction of the Construction Code officer and Sub-code Officers and Health Officer. The provisions of this paragraph will not be utilized to require unusual additional work or facilities beyond that which is necessary to adequately insure that the facilities operate and function properly to carry out the purpose for which they were designed.

Nothing herein shall be deemed to authorize by implication the disapproval of construction materials and methods that are permitted under law or the BOCA Code, except if expressly provided to the contrary herein or except if other and different standards for specification are shown on the Site Plan or Subdivision (including site grading plans, profiles and detailed plans submitted with the Site Plan or Subdivision) . Specification shown on the approved Site Plan or Subdivision submissions thereto shall be in accordance with the standard road construction and sewer construction specification of the Borough, a copy of each is on file and available for inspection in the Borough Construction Office, and shall govern and control.

16. Time for Completion. Unless extended by resolution of the Board and Borough Council, the improvements and work referred to in paragraph one hereof, shall be completed within the time specified in Schedule B commencing with the date of the Agreement.

17. Performance Bond. (a) Prior to receipt of a building permit, the Developer agrees to submit to Engineering for filing with the Borough Clerk a surety bond, or an irrevocable letter of credit or such other performance guaranty satisfactory to the Borough, and approved by the Borough Attorney in the amount specified in Schedule B for the installation, as specified, of the improvements required hereunder and conditioned upon the performance of the terms and conditions of this Agreement.

(b) Upon the completion or installation of a portion of the bonded improvements by the Developer, and upon the approval and certification by the Borough Engineer, the Developer may apply for a proportional reduction in the original amount of such performance guaranty. A reduction or release of the performance or maintenance guaranty shall be in accordance with this Agreement, and in accordance with the procedure established by the Municipal Land Use Law (N.J.S.A. 40:55D-53).

(c) Interior sanitary and storm drain facilities necessary to properly serve the development shall be installed and all CP-1 requirements completed prior to the issuance of any Certificate of Occupancy. Any provision hereof notwithstanding, all sanitary sewer facilities necessary to properly serve the development shall be fully installed and operable prior to the issuance of a Certificate of Occupancy .

18. Maintenance Bond. Developer agrees to provide the Borough with a maintenance bond or irrevocable letter of credit to run for a period of one (1) year from the date of completion and official approval for all improvements required by this

Agreement and those improvements enumerated on the Site Improvement Schedule. Said bond or letter of credit will be in the amount of fifteen (15%) percent of the costs of the improvements listed on the Schedule B and will be provided in form satisfactory to the Borough Attorney. Said bond or irrevocable letter of credit shall assure the maintenance of said improvements and facilities by the Developer and provide for the reimbursement of all expenditures incurred by the Borough for their repair and maintenance and/or such other expenses as may be necessary to keep the same in good working order during the one (1) year period. The Borough shall provide the Developer with 30 days written notice prior to incurring such expenses except for emergency repairs. No provisions in this paragraph or in this Agreement, however, shall be construed to impose any duty or liability of maintenance, inspection or repair on the part of the Borough with respect to any private facilities or improvements, whether bonded hereunder or otherwise.

### **BUILDINGS and STRUCTURES**

19. **Building and Structure Designs.** The design of any building or structure on the aforementioned property of the Developer shall be substantially in accordance with the said Site Plan and the evidence submitted to the Board.

20. **Building Plan Changes; Procedure.** Developer agrees that the building and structure on the aforementioned property shall comply in all respects with the approved plans and maps filed with the Board and architectural submissions to the Board, except as otherwise provided in this Agreement or except as the same may be modified by resolution of the Board. The Borough Engineer shall have the authority to permit minor field adjustments and modification in the installation of the improvements of buildings and structures as contemplated in the Site Plan where field conditions and good engineering

practices permit. The Construction Official shall have the authority to approve changes in the building plan that do not affect, vary or contradict the Site Plan or the terms of this Agreement.

21. Certificate of Occupancy; Breach of Agreement. Application will be made for a Certificate of Occupancy for the buildings or structures to be built. In no case shall a Certificate of Occupancy be issued unless the provisions of this Agreement have been complied with. Without limitation upon any other remedy provided herein or by law, the Borough or the Board may order that no Certificate of Occupancy shall be issued until or unless any breach or default of this Agreement is cured, or that no further permit or Certificate shall be issued until such breach or default is cured. Such order shall be made in writing and shall be sent promptly to the Developer and shall specify the alleged breach or default complained of so that the Developer will be apprised of what it is that is alleged to require curing.

### GENERAL REGULATIONS

22. Engineering and Legal Charges. The engineering review, planning and legal costs incurred by the Borough and Board to the date of this Agreement or incurred under the performance of this Agreement, including but not limited to any enforcement proceedings, shall be reimbursed by the Developer at the hourly rates established.

23. Title to Land. Upon execution and delivery of this Agreement, Developer will file with the Board a certificate issued by an Attorney at Law of New Jersey or title insurance policy certifying to the Borough and to the Board that title to all lands shown on the Site Plan required for all site improvements on the Developer's property is or will be validly vested in Developer on or before commencement of construction. Within ten (10)

days after any transfer of title taking place thereafter, a further certificate of title of New Jersey counsel will be filed certifying as to the condition of the title and showing all ownership interests.

24. Compliance with Resolutions and Supplemental Conditions. Developer agrees to make provision for, implement and perform each of the conditions contained in the Boards Resolutions attached as Schedule "C", or in the Resolutions of the Board granting the Developer's application for final subdivision and/or "Site Plan" approval and in the Supplemental Conditions, if any, contained in Schedule "D," attached hereto.

25. County Planning Law. Developer agrees that prior to commencement of any clearing or construction operation, if applicable, it will have obtained final County Site Plan and Subdivision approval and post with the County of Bergen all the bonds and other performance guarantees required by the County of Bergen and its Board, if any. Before issuance of any building permit, Developer will submit evidence to the Construction Official and the Borough Engineer of the final approval by the County authorities having jurisdiction over the Site Plan and the drainage facilities, together with evidence of having satisfied the requirements of all County agencies concerning the posting of a bond or other security.

26. The Developer and the Owner agree that they, their successors, assigns or designees, shall fully comply and be responsible for compliance with any law, ordinance, regulation, obligation or financial payments, past, now or in the future, applicable to any of them, the Borough and/or the subject development in respect to the Fair Share Housing obligation for affordable housing now existing or to be imposed by the New Jersey Council on Affordable Housing (COAH) or their successor in the present, anticipated Third Round

municipal obligations, or future municipal obligations, including but not limited to any effect, mandates or impositions their construction, development, use of the premises and structures or business operations may create, engender or require the Borough of supply, pay for, construct, develop or provide housing units, an obligation to build housing units, financial contributions to meet any new quotas or mandated needs, mitigation or assessment, including but not limited to the Ordinances of the Borough of Edgewater. This obligation, contribution or assessment is an integral and non-severable part of this approval, and the Developer and Owner and for their successors, assigns, or designees, acknowledge their undertakings and agreements and will provide and make such disclosure in any lease, transfer, pledge, mortgage, hypothecation, sale or otherwise. Any default or failure in complying, supplying, paying or otherwise meeting such obligations, contributions, assessments, or otherwise shall be enforceable by the Borough in a summary proceeding, together with attorney and other fees as set forth herein and/or imposition of a lien or municipal assessment against the real property and improvements thereon.

27. COAH Obligations. The Developer and Owner agree that two-one bedroom affordable units shall be constructed within the development. It further agrees to convert two-three bedroom market units and one-two bedroom market units at 341 Undercliff Avenue property controlled by the Developer and Owner, into two-three bedroom and one-two bedroom affordable units. In addition, Developer and Owner agrees that it shall convert five-three bedroom market units and one-two bedroom market unit at 345 Undercliff Avenue into affordable units. The construction and/or conversion of the market

rate units to lower and moderate income housing units shall be made in accordance with the law prior to the issuance of Certificate of Occupancy for the Development.

.28. Transfer Not in Ordinary Course. It is agreed that any assignment hereof or transfer or sale of real property shown on the Site Plan, or any part thereof, by the Developer shall not operate to relieve the Developer from its obligations hereunder to complete the construction of all the improvements required hereunder and to maintain the same for the one (1) year period of the maintenance bond without the express written consent of the Board and the Borough Council of the Borough of Edgewater, nor will the same, without such consents, relieve the Developer from performing during said period all the obligations of this Agreement required to be performed during such period.

29. Action by Other Governmental Bodies. It is agreed and understood that the Developer shall be responsible for securing at its own cost and expense, any and all approvals required by state, county, federal, municipal, or other agencies having jurisdiction, prior to commencement of construction or issuance of a Certificate of Occupancy.

30. Compliance with Board of Health Requirements. The lawful requirements of the Board of Health of the Borough of Edgewater will be complied with as to all matters within its jurisdiction .

31 Effect of Subdivision or Site Plan Approval. It is agreed that the granting of approval by the Board of the Site Plan and/or subdivision shall not be deemed as approval of the applicant's building plans or as requiring issuance of a building permit. Rather, site plan and/or subdivision approval shall be deemed to be a favorable recommendation and

report by the Board to the Construction Official; the same shall not be regarded as conclusive upon him in respect of matters within his jurisdiction.

32. Parking. There will be no parking at such locations within the site as the Fire Department, Police Department, or Borough Council shall lawfully determine as "no parking" or "fire zones." Signs to such effect, meeting the approval of the Police Department and the Fire Department, will be provided and maintained at all times. During construction there shall be no parking or storage of materials that will prevent access to emergency vehicles.

#### **MUNICIPAL LIABILITY**

33. Municipal Parties Assume No Liability to Third Persons. The covenants, undertakings, agreements or other obligations mentioned in this Agreement shall not be construed as representations by the Borough or Board, or by any Borough officer, Board or employee to have or to assume any contractual or other liability to or with any persons, firms, or corporations dealing with the Developer or otherwise using or having an interest in the aforementioned property, nor shall this Agreement be construed to impose any liability on the Borough or Board to third persons .

32. Municipal Parties Not Liable to Contractors or Suppliers. Nothing herein contained shall be construed to render the Borough or any of its officers, boards, or employees liable for any charges, costs or debts or material, labor or other expenses incurred in the making of the improvements.

34. Indemnification. Developer shall be and remain liable for any and all damage or money loss occasioned to the Borough or the Board or their officers or agents

by any neglect, wrong-doing, omission or commission of or by the Developer or by any person, firm or corporation acting for the Developer arising from the making of the site improvements, from the performance of the terms hereof, from the granting of the site plan/subdivision, or from or out of this Agreement, and shall save, indemnify and hold harmless the Borough, its officers, agents, board, and employees; and the Board and its members, officers, agents and employees from any and all actions at law or in equity, charges, debts, liens, encumbrances, costs and counsel fees which may arise from any such damage or loss, from the making of the site improvements, from the performance of the terms hereof from the granting of the site plan/subdivision or from or out of this Agreement except where the Borough or the Board or its agents or officers have been judicially determined to have acted contrary to law and in bad faith. This indemnification shall not affect the Developer's right to proceed against any third parties.

### OPERATIONS

35. Operations Without Nuisance. Developer agrees not to commit a public or private nuisance and further agrees to abate any such nuisance within two ( 2 ) days of written notice from the Board or the Borough Engineer. The Developer shall comply with the Borough of Edgewater Noise Control Ordinance and any applicable ordinance regulation construction within the Borough of Edgewater. Notwithstanding anything to the contrary herein, no provision of this Agreement shall be deemed a waiver of any rights or powers of the Board or any agency of the municipality under any statute, ordinance or other law.

36. Abatement of Unsafe Conditions. Developer will be responsible to correct and make safe any dangerous or unsafe condition created by the Developer or those

acting for it affecting public safety or general welfare, or affecting the safety or welfare of other occupants of the project if any such conditions develop.

37. Insurance. Developer shall maintain insurance covering its operations and those of its agents, subcontractors and employees, both on the site and off the site, in a form and amount at least equal to that specified below:

Comprehensive  
General Liability

Minimum Coverage

Bodily injury and property Damage include Blanket Contractual Liability for the assumption of all liability pertaining to suits not caused by the direct negligence of the Borough.

\$500,000.00

Comprehensive Automobile Liability

Bodily Injury

Provide \$500,000.00  
for each occurrence

Property Damage

Provide \$250,000.00 for  
property damage for each  
occurrence with no limitation on  
aggregate.

Umbrella Excess  
Liability

Provide \$1,000,000.00 for each  
occurrence not to exceed  
\$1,000,000 .00 in the aggregate.

Workman's compensation and  
Employer's Liability to cover all  
contractor's employees in accordance  
with statutory requirements.

"The insurance coverage required shall also include specifically that the Developer hereby assumes entire responsibility and liability for any and all damage or injury of any kind or nature to person whether employees or otherwise, and to property real or personal including adjoining property caused by or resulting from the execution of the work occurring in connection therewith and agrees to indemnify, defend, and hold harmless the Borough, the Board, the Engineer, and or their agents and/or employees from and against any and all claims, suits, liability, loss, expense damage or injury to

persons or to property caused or occasioned directly or indirectly by the Developer, his agents, employees, or subcontractors, or any materials, tools implements, appliances, scaffolding ways, works or machinery or other property of the Developer. In the event of loss, damage or injury, which may cause a claim to be filed, Developer shall submit to the Borough and the Board in writing, all particulars and details relating to the incidence, including all subsequent related effects of such loss, damage or injury, Each incident shall be listed separately. The Certificate of Insurance must be referenced to this project. The insurance coverage required shall include a provision whereby there shall be no cancellation of any such insurance coverage unless and until fifteen (15) days written notice is provided to the Borough of Edgewater and the Board.

### **MAINTENANCE/USE OF PREMISES**

38. Maintenance and Repair After Construction. (a) All buildings, structures, improvements (including pavements, sidewalks, street lighting, curbs, landscaping, utilities and other site improvements), and all other facilities shall be periodically inspected, kept, maintained and repaired, in such a manner that such buildings, structures, improvements and facilities will, at all times, be in good condition, good repair, good working order and appearance, and shall be maintained and repaired in such manner as shall be consistent with the safety and welfare of the occupants of the development and of the public generally.

(b) In the event of a transfer, the Developer agrees to include provisions requiring compliance with the terms hereof in the deed of transfer. The Developer's obligations for such maintenance and repairs shall constitute covenants which run with the land and shall bind the Developer, its successors and assigns. The covenants shall be enforceable by, in addition to all parties entitled to enforce the same, by the Borough or the Board and should it become necessary or advisable for the Borough or the Board to institute legal proceedings to enforce the pay the Borough's or the Board's costs in bringing any such

action including reasonable counsel fees at the rate set forth in this Agreement which is in force at the time of any such proceedings.

(c) The Borough will have the right, but not an obligation, of maintenance and inspection of (1) storm drainage facilities, (2) sanitary sewer mains, and (3) roadways, which constitute a part of the "Improvements" to be completed by the Developer as defined in paragraph 1 of this Agreement. If the Developer or owner neglect to make repairs within a reasonable time period, the Borough shall have the authority to have the necessary work performed and to charge the Developer or owner for the cost or work done.

39. Additional Maintenance Repair; Snow and Ice Removal. In addition to assuming liability for the maintenance and repair responsibility set forth in paragraph 37, the Developer and any successor will be required permanently to maintain and keep in good condition all on-site sidewalks, curbs, landscaping, recreational areas, walkways, private roadways and interior driveways and parking areas and facilities and improvements used and enjoyed in common by the occupants. The reasonable decision and determination of the Borough Engineer and/or Construction Official as to compliance with the foregoing standards shall be final and conclusive on all parties. In addition thereto, all snow and ice removal and sanding operations on all private roadways, driveways and parking areas shall be conducted by the Developer and owner during construction and thereafter, at no cost or expense to the Borough and in keeping with the ordinances of the municipality.

40. Provisions Relating to Condominium Associations. Where applicable, Developer agrees that it will form a Condominium Association (herein Condominium

Association) if applicable and at the Developer's option it desires to form a condominium association, under New Jersey state law and that the obligations of maintenance and repair after construction and the obligations and agreements contained herein relating to the Condominium Association, shall be deemed to run with the land, and to that end, Developer agrees to submit the Condominium Association by-laws or other documents to the Board attorney and the Borough Attorney for review and approval as incorporating and complying with the continuing responsibilities referred to in this Agreement.

Developer further agrees to include in the Condominium documents a requirement that the Condominium Association undertake to maintain in good working order and repair all outdoor lighting facilities, fixtures and equipment after installation and to pay the electric bills generated by said utilities.

41. Regulations. The Developer and owner shall have a responsibility for enforcing parking regulations on the site; however, nothing in this paragraph is intended to usurp the legal authority of the Police Department and the Fire Department to monitor fire lanes or otherwise protect the public interest.

42. Refuse Pickup. The removal of refuse, including bagged leaves from the property shall/shall not be the responsibility and expense of Developer and/or Homeowners Association. Nothing contained herein shall hereafter preclude the Borough from discontinuing municipal sanitation service or requiring, by ordinance, that the Developers, owners and/or associations owning or having control of the premises from assuming the obligation for the proper collection and disposal of garbage, trash or refuse.

43. Interior Roadways, Legal Jurisdiction. The parties further agree that the Developer, and its successors and assigns, including without limitation the Condominium Association formed to assume certain liabilities hereunder, will be bound to file annually the "written request" referred to in N.J.S.A. 39:5A-1, to the end that the private roads, streets, driveways, trails, parkways, parking areas, or other roadways within the site, will become subject to the provision of Title 39 of the Revised Statutes.

It is further agreed that such written request will not be rescinded, in the manner set forth in N.J.S.A. 39:5A-2, or otherwise, without the written approval by resolution of the Borough Council. Law enforcement jurisdiction would be implemented as with any other property in the Borough.

#### EASEMENTS

44. Easement for Emergency Access, if applicable. Developer shall grant the Borough an easement for emergency access over all interior private roads for the Borough's ambulance, police, fire and sanitation, health and safety services.

45. Drainage Easement. If shown on the Site Plan the Developer shall grant to the Borough of Edgewater such drainage easements as depicted and containing such terms and provisions and in such form as shall meet with the approval, respectively, of the Borough Engineer and Borough Attorney. The owner shall be responsible for the maintenance of these easements .

#### INTERPRETATION

46. Severability of Provisions. If any paragraph, section, clause, sentence, provision or other part of this Agreement, or the application thereof to any person, firm or

corporation, or its application to any facts or circumstances, shall for any reason be adjudged by a court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remaining paragraphs, sections, clauses, sentences, provisions, or other parts of this Agreement. The provisions of this contract are intended to be severable.

47. Successors Bound. This Agreement shall be binding upon the successors and assigns of the parties signing it.

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

49. Provisions Enforceable as Conditions. Each of the provision of this Agreement shall have the same force and effect as if set forth at length as conditions of the grant of site plan or subdivision approval.

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

51. This Agreement is subject to and conditional upon final subdivision or site plan approval. No sale of individual lots in fee shall be permitted without prior subdivision approval.

52. Recording. This Agreement may be recorded in the discretion of the Borough or Board. It is understood and agreed that the continuing easements and obligations contained in this Agreement may also be included in a Declaration of

Covenants and Restrictions filed by the Developer in the Bergen County Clerk's office with such easements and obligations to run with the land.

53. Deposits. Building permits or certificates of occupancy shall not be issued unless the deposits mentioned in paragraph 12 or other necessary deposits have been made.

**IN WITNESS WHEREOF**, the parties have hereunto caused this Agreement to be signed by their proper officers and their corporate seals to be affixed, the day and year first above written.

ATTEST:

**BOROUGH OF EDGEWATER**

\_\_\_\_\_  
ANNAMARIE CONNORS, Borough Clerk

\_\_\_\_\_  
By: MICHAEL MCPARTLAND, Mayor

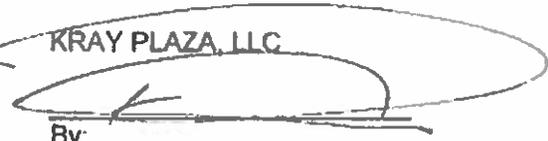
ATTEST:

\_\_\_\_\_  
ZONING BOARD OF ADJUSTMENT

ATTEST:

\_\_\_\_\_  


\_\_\_\_\_  
KRAY PLAZA, LLC

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

APPROVED AS TO FORM:

\_\_\_\_\_  
BOROUGH ATTORNEY

\_\_\_\_\_  
BOROUGH ENGINEER

\_\_\_\_\_  
BOROUGH PLANNER

## SCHEDULE B



**ZONING BOARD OF ADJUSTMENT  
OF THE BOROUGH OF EDGEWATER**

**RESOLUTION OF MEMORIALIZATION AS TO OFFICIAL ACTION**

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**In the Matter of the Application of  
Kray Plaza, LLC for Variance and Site Plan  
Approvals for 1000 Portside Drive,  
Block 67, Lot 1.02  
Application No. BADV 16/003**

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**WHEREAS, Kray Plaza, LLC ("Applicant") is the owner of the property located at 1000 Portside Drive, identified as Block 67, Lot 1.02, as shown on the current Tax Assessment Map of the Borough of Edgewater (the "Property"); and**

**WHEREAS, Applicant has filed an application with the Zoning Board of Adjustment of the Borough of Edgewater (the "Zoning Board") for site plan and variance approvals to allow for certain site improvements including the removal of the existing office structure and the construction of a multifamily structure with parking and ancillary facilities; and**

**WHEREAS, following a determination that the Applicant's notices were sufficient, the public hearing was held on June 15, 2016; and**

**WHEREAS, the Applicant presented testimony by:**

**1. Mr. Vijay Kale, R.A., a licensed architect in the State of New Jersey, who was qualified in the field of architecture.**

**2. Mr. Hal Simoff, P.E., a licensed engineer and planner in the State of New Jersey, who was qualified as an expert in the field of civil engineering, traffic and planning, and**

**3. Mr. Kevin Ochab, P.P., a licensed planner in the State of New Jersey, who was qualified as an expert in the field of planning, and**

**WHEREAS, the Applicant was represented by James Demetrakis, Esq., and**

**WHEREAS, there were no members of the public that appeared to question Applicant's witnesses and express any objections or comments; and**

**WHEREAS, the following documents were submitted into evidence:**

- The list of plans as set forth in the letter of transmittal to the Board dated February 4, 2016 a copy is attached and made part of this resolution**
- Vijay Kale architectural site plan dated January 18, 2015**
- Photographs and site lines study and aerials**

**WHEREAS, the Board is in receipt of reports from its planner, Kathryn M. Gregory, and engineer, CME and said reports are incorporated into this Resolution by reference.**

**WHEREAS, The Board considered and accepted the Physical Impact Analysis prepared by Ken Ochab, dated March 15, 2016, the Traffic Impact Study prepared by Hal Simoff,, P.E. dated April 12, 2016 a copy of these reports are made part of this resolution. The opinions and findings in these reports were accepted by the Board and considered along with testimony in reaching its decision to approve this application and grant the variances requested.**

**NOW, THEREFORE, BE IT RESOLVED, by the Board of Adjustment of the Borough of Edgewater that the following findings of fact and conclusions are made or reached, respectively by the Board:**

1. That all of the "Whereas Recitals" and exhibits attached set forth above are incorporated as if set forth at length herein, as part of the Board's findings. In addition, a copy of the transcript of the proceedings is attached and made part of this resolution.

2. That the Application, plans, reports and documents submitted to the Board accompanying same are made as part of the record and form the basis of the granting of final site plan approval and variance relief.

3. The Applicant appeared at the special meeting of June 15, 2016.

4. The Applicant is seeking both D variances and C Variances as set forth in the Application, the Ochab reports, and the reports of Kathryn Gregory, dated April 2016.

5. A D-5 density variance is required for building density. When considering a D-5 density variance, the Applicant must show that the site will accommodate problems associated with a proposed use with greater density and height than is permitted.

6. A D-6 height variance is required for building height. When considering a D-6 variance the Coventry Square v. Westwood and Grasso v. Spring Lake Heights cases are used which require that the site accommodate the potential problems associated with a height greater than the ordinance and that a taller structure than permitted with the ordinance would be consistent with the neighborhood. In addition the proposed applicant must demonstrate that the proposed variance can be granted without substantial detriment to the public good and will not substantially impair the intent and purpose of the master plan and zoning ordinance.

7. The Board is satisfied that the height and density as proposed are consistent with the neighborhood, the site can accommodate such height, and such variance can be granted without detriment to the public good. The Board also took notice that the position and height of the proposed structure increased the visibility by the public to the Hudson River and New York City skyline and reduced the impact to the neighboring and surrounding residential structures.

**8. With respect to the C variances requested, the board finds that the Applicant's proposed changes to the property will have no negative impact on the adjoining properties and will continue to provide continuity in the look of the neighborhood and there is no substantial impact on the zoning plan or the neighborhood.**

**9. The variances and site plan approvals that were requested were discussed by the Board together with the special reasons and other factors set forth in the Ken Ochab Reports, and testimony from Ken Ochab and Hal Simoff. The discussions by the Board and The Applicant's consultants are set forth in the transcripts of the proceedings attached and made part of this resolution.**

**10. The Board hereby determines all statutory requirements including without limitation, "special reasons", and were fully met and satisfied to grant final site plan approval and variance relief.**

**11. The Board was also aware that the application is consistent with the Master Plan of the Borough of Edgewater. The Board also considered that the existing and temporary office structure was maintained while development along River Road was ongoing.**

**12. These developments now being completed the office structure in the midst of the residential development is no longer needed and an inconsistent use in the area and abutting developments.**

**13. The Board was also aware and supported the change of use from office use to residential use to bring this property's (Application) use into compatibility with the abutting and surrounding residential uses.**

**14. The Applicant will enter into a Developer's Agreement in connection with the final site plan approval. Further, the Applicant shall comply with all building codes and Ordinances of the Borough of Edgewater in connection with the final site plan approval. The Applicant shall obtain all necessary governmental approvals from any other agencies in connection with the final site plan approval.**

**NOW, THEREFORE, BASED ON THE FOREGOING FINDINGS AND CONCLUSIONS, BE IT RESOLVED by the Edgewater Board of Adjustment as follows:**

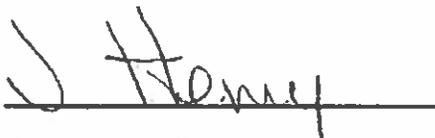
**The variance relief and site final approval requested from the Board in this matter is approved.**

**BE IT FURTHER RESOLVED, that notice of this decision shall be published in the official newspaper of the Borough of Edgewater.**

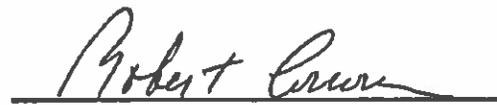
**BE IT FURTHER RESOLVED, that the members of the Board of Adjustment who voted in favor of such variances do hereby memorialize and confirm the foregoing findings of fact, determinations and conclusions set forth in this Resolution of Memorialization as the "official action" taken by the Board of Adjustment of said date, in accordance with the provisions of N.J.S.A. 40:55D-10(g)(2) of the New Jersey Municipal Land Use Law this 6 day of July, 2016.**

**ATTEST:**

**SO APPROVED:**



**JENNIFER HENRY, Secretary**



**Robert Corcoran, acting Chairperson**

Ford -  
Meagher -  
Holowacz -  
Thomson -  
Corcoran -

Neighborhood

BOROUGH OF EDGEWATER

RESOLUTION

Councilperson	Yes	No	Absent	Abstained
Bardinas	✓			
Morse	✓			
Rosa	✓			
Hogan	✓			
Desatnik	✓			
Corcoran	✓			

Date: June 18, 2001

Resolution No. 01-187

Introduced by:  
R. Corcoran

Seconded by:  
N. Morse

WHEREAS, application has been made to the Mayor and Council by Neighborhood Affordable Housing Friends, Inc., a not for profit corporation (hereinafter "the non-profit") for disbursal by the Borough to the non-profit of \$520,000 in development fees collected by the Borough pursuant to the rules of the New Jersey Council On Affordable Housing (hereinafter "COAH") as authorized by Borough Ordinance; and

WHEREAS, the non-profit intends to use such development fee funds in connection with the acquisition by the non-profit of properties known as 75, 79 and 85 Edgewater Place and 377 Undercliff Avenue; and

WHEREAS, the Governing Body desires to assist the non-profit in this venture, which will permit the maintaining of affordable housing within the community.

NOW THEREFORE, BE IT RESOLVED by the Mayor and Council of the Borough of Edgewater that it does hereby authorize disbursal of the sum of \$520,000 in development fees to the non-profit, subject to the following terms and conditions:

1. Approval by COAH in connection with the payment of development fees and confirmation by COAH that the units and the buildings sought to be acquired by the non-profit will apply to the Borough's Affordable Housing Fair Share obligation under COAH rules and the Mt. Laurel II decision.
2. Modification of the bylaws of the non-profit or such other documentation to incorporate such changes as requested by the Governing Body, including that all trustees are residents of the Borough, that one trustee be a member of the Governing Body and that the non-profit be restricted from acquiring any additional properties.

## SETTLEMENT AGREEMENT

This Settlement Agreement (this “**Agreement**”) is entered into by (i) 615 River Road Partners, LLC (together with its successors, assigns, transferees and any person or entity to which RRP has conveyed a fee interest or ground leasehold interest in or to the 615 Site (as defined below) or any part thereof (“**RRP**”)) and (ii) the Borough of Edgewater, New Jersey (“**Edgewater**”), as of the Effective Date set forth below.

Hereinafter, RRP and Edgewater may be referred to individually as a “**Party**” or collectively as the “**Parties**”.

### RECITALS

**WHEREAS**, RRP is the owner of two parcels of real property located in Edgewater which are divided by River Road: the western parcel (Block 77, Lot 1) (the “**Western Parcel**”) is approximately 4.83 acres and is currently zoned OR-1; and the eastern parcel (Block 76, Lots 1 and 5) is approximately 13.91 acres (approximately 5.86 acres of which are within the Hudson River but which, unless otherwise specifically set forth in this Agreement or the Exhibits annexed hereto, shall be considered as upland zoning lot area for all land use purposes including without limitation for the calculation of density, floor area ratio, and lot coverage) (the “**Eastern Parcel**”) and is currently zoned B-3. The Western Parcel and the Eastern Parcel are referred to collectively as the “**615 Site**”; and

**WHEREAS**, RRP submitted an application to the Edgewater Zoning Board of Adjustment (“**ZBA**”) for a use variance for the 615 Site to permit it to be used for residential purposes; and

**WHEREAS**, RRP commenced an action against Edgewater captioned 615 River Road Partners, LLC v. Borough of Edgewater Zoning Board of Adjustment, Docket No. BER-L-

002040-16 (the “**ZBA Action**”), in which RRP sought “default approval” of the application it filed before the ZBA; and

**WHEREAS**, the court in the ZBA Action denied the relief requested by RRP and awarded Edgewater Summary Judgment dismissing RRP’s claims and remanding RRP’s application to the ZBA; and

**WHEREAS**, after the Court in the ZBA Action denied the relief requested by RRP and remanded RRP’s application to the ZBA, RRP filed two applications, one for the Eastern Parcel and one for the Western Parcel, for variances allowing the 615 Site to be used for residential purposes, both applications were timely deemed complete by the ZBA, and the ZBA dismissed both of those applications without prejudice without determining the facts or merits thereof; and

**WHEREAS**, RRP timely filed an appeal from the Court’s Judgment and remand in the ZBA action, which appeal remains pending; and

**WHEREAS**, Edgewater commenced a Declaratory Action in the Superior Court of New Jersey, pursuant to “Mt. Laurel IV,” entitled In the Matter of The Application of The Borough of Edgewater, County of Bergen, which is proceeding under docket number BER-L-6364-15, to obtain Court approval of Edgewater’s housing element and fair share plan to comply with Edgewater’s affordable housing obligations, in which RRP has been an intervenor (the “**Affordable Housing Action**”); and

**WHEREAS**, RRP commenced an action against Edgewater and other parties captioned 615 River Road Partners, LLC v. Borough of Edgewater; iPark Edgewater, LLC; iPark Edgewater Holdings, LLC; iPark Edgewater Investments, Inc.; National Resources Acquisitions, LLC; North Building Edgewater, LLC; One Main Street Edgewater, LLC; Four Main Street Edgewater, LLC; Edgewater Lofts, LLC; Edgewater Glass House, LLC; Daibes Enterprises, LLC; Daibes Brothers,

Inc.; DDD & Associates, LLC; 2 Pembroke Way Associates, LLC; 4 Pembroke Way Associates, LLC; 45 River Road Associates, LLC and XYZ Corporations 1-10, which is proceeding under docket number BER-L-3638-17 (the “iPark Action”); and

**WHEREAS**, Fair Share Housing Corporation (“FSHC”) commenced an action against Edgewater and other parties captioned Fair Share Housing Center v. The Borough of Edgewater, County of Bergen, State of New Jersey; The Zoning Board of Adjustment of the Borough of Edgewater; MB Edgewater, LLC, which is proceeding under docket number BER-L-7687-16 (the “MBE Action”), relating to Edgewater’s affordable housing obligation to which RRP is not a party; and

**WHEREAS**, FSHC commenced an action against Edgewater a, and other parties captioned Fair Share Housing Center v. The Borough of Edgewater, County of Bergen, State of New Jersey; The Zoning Board of Adjustment of the Borough of Edgewater; Kray Plaza, LLC, which is proceeding under docket number BER-L-6431-16 (the “Kray Plaza Action”), relating to Edgewater’s affordable housing obligation to which RRP is not a party; and

**WHEREAS**, in July 2017, the Council of the Borough of Edgewater passed a condemnation Resolution and Bond Ordinances to authorize the exercise of eminent domain to acquire the 615 Site from RRP (the “**Condemnation Resolution and Ordinances**”); and,

**WHEREAS**, in December 2017, RRP filed an action in the United States District Court for the District of New Jersey captioned 615 River Road Partners, LLP v. Borough of Edgewater, which is proceeding under Civil Action No. 2:17-12659(JMV)(CLW) (the “**Federal Action**”), in which RRP asserted claims under 42 U.S.C. Sec. 1983 for alleged deprivations of its Constitutional rights;

**WHEREAS**, the appeal in the ZBA Action, the Affordable Housing Action, the iPark Action, and the Federal Action all remain pending; and,

**WHEREAS**, Edgewater opposes RRP's claims asserted in the ZBA Action, the Affordable Housing Action, the iPark Action, and the Federal Action; and,

**WHEREAS**, Edgewater vehemently denies any wrongdoing or improper conduct of any kind as asserted in those Actions or otherwise; and Edgewater vehemently contends, without limitation, that Edgewater always and fully complied with land use and other laws as well as the United States Constitution; and that Edgewater vehemently insists that Edgewater always acted in the best interests of Edgewater, its taxpayers and the general public in Edgewater; and,

**WHEREAS**, the Parties hereto wish to resolve their differences and to put an end to costly litigation in a manner that appropriately benefits both the Parties and the public, including but not limited to, Edgewater, its taxpayers, and the general public in Edgewater; and,

**WHEREAS**, the existing school facilities and of Edgewater are at or over student body capacity and may not be efficiently expanded to accommodate significant increases in the number of school age children in Edgewater; and,

**WHEREAS**, the development of the Eastern Parcel contemplated by this Agreement will increase the number of school age children who reside in Edgewater beyond the educationally efficient and desirable capacity of the schools and recreational facilities in Edgewater; and,

**WHEREAS**, as a result of the size and unique geography of Edgewater, there exists the absence of a tract or tracts of land suitable for the construction of additional schools and recreational facilities necessary and desirable to accommodate the amount of school age children reasonably anticipated to be generated by the 1200 unit development contemplated by this Agreement, including 180 or more units of Affordable Housing; and,

**WHEREAS**, there is a causal nexus between, on the one hand, the development of the Eastern Parcel contemplated by this Agreement, and on the other hand, an increase in the number of school age children who will reside in Edgewater and a resulting need for an additional school and recreational facility; and,

**WHEREAS**, the accommodations to be provided by RRP hereunder and under the Redevelopment Plan (as defined herein) will address and ameliorate the impacts of the development of the Eastern Parcel with respect to the school system, public safety, traffic, roads and open spaces and provide those accommodations to the general public, in addition to future potential residents of the Eastern Parcel; and,

**WHEREAS**, the settlement herein will, in part, provide RRP with an opportunity to develop the Eastern Parcel in accordance with this Agreement, conditioned on RRP's compliance with the criteria and procedure provided in the Municipal Land Use Law, N.J.S.A. 40:55D-1, et seq. ("MLUL"), New Jersey Local Redevelopment And Housing Law, N.J.S.A. 40A:12A-1, et seq. ("LRHL"), Affordable Housing Law, and other law and regulation where applicable.

**WHEREAS**, the Parties acknowledge that this Agreement does not constitute an admission by any Party, or its respective agents or representatives, of liability, negligence, wrongdoing, fault or a violation of any law or of any ethical requirement or ethical standard;

**NOW, THEREFORE**, in consideration of the terms, conditions, promises, and covenants set forth in this Agreement, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. **EFFECTIVE DATE.** This Agreement will become effective on the last date on which each of the Parties, having obtained all requisite authority and necessary approvals, has

executed it (the “**Effective Date**”), it being agreed that in no event shall the Effective Date be later than November 20, 2019.

**2. OBLIGATIONS REGARDING CONDEMNATION OF THE 615 SITE:**

Edgewater Ordinances 2017-1547 and 2017-1548, and Resolution 2017-214, and any and all other ordinances or resolutions, if any, relating to that Condemnation of the 615 Site, shall, as expeditiously as is practicable but in no event later than the last regularly scheduled meeting in December 2019, be revoked and rescinded in their entirety and shall have no further force or effect whatsoever and, to the extent allowed by law, Edgewater shall not exercise eminent domain or any rights of condemnation with respect to the 615 Site for a period of fifteen (15) years from the Effective Date hereof. Notwithstanding the foregoing, however Edgewater reserves, continues to have and does not waive any and all rights to acquire easements on the 615 Site for necessary public health or public safety improvements such as (but not limited to) road widening, sidewalks, drainage and items of a similar nature, it being provided that (a) such public improvements shall be limited to easements adjacent to River Road (County Road No. 509) and infrastructure easements necessitated by the Project, and (b) no exercise of eminent domain pursuant to Paragraph 2(a) shall have a materially adverse impact on the suitability or use of the 615 Site for the purposes set forth in the Agreement nor have a material and adverse impact on the value of the 615 Site.

**3. CONVEYANCE OF WESTERN PARCEL:**

(a) RRP agrees to convey marketable title to the Western Parcel (the metes and bounds description of which is set forth on **Exhibit A** to this Agreement) to Edgewater, or, at Edgewater’s sole election to the Edgewater Board of Education, in exchange for \$1.00 and other good and valuable consideration, such conveyance to be subject to the Western Construction

Easement as defined in Para. 3(b)(i) and in the form annexed hereto as Exhibit B, the Western Use Easement (or "Permanent Use Easement") as defined in Para. 3(b)(ii) and in the form annexed hereto as Exhibit C and the restrictions contained in the Bargain and Sale Deed with Covenants Against Grantor's Acts and Deed Restrictions as defined in Paragraph 3(c) hereof and in the form annexed hereto as Exhibit D (the "Western Parcel Deed" or "Deed"). In the event of any inconsistency between the definitions of Western Construction Easement, Western Use Easement and/or Western Parcel Deed and Exhibits B, C and D herof, the terms of the Exhibits shall prevail and be enforced.

Upon Execution of this Agreement, RRP shall deliver the Western Parcel Deed to the First American Title Insurance Company (the "Escrow Agent"), who shall hold the Deed in escrow, and shall release the Deed from escrow to Edgewater only upon a written request by Edgewater, with a copy to RRP upon not less than seven (7) days prior to the date of the requested release of the Western Parcel Deed from escrow, certifying that (a) Edgewater has entered into the Redevelopment Agreement and (b) in the event a Contesting Action has been filed, that Edgewater has filed a contesting answer in the Contesting Action and Edgewater has complied with any written request by RRP for the rezoning of the Eastern Parcel (provided such request was made within one (1) year of the date of execution of the Redevelopment Agreement) ((a) and (b) are collectively, the "Release Event"). The request for the release of the Western Parcel Deed from escrow shall not, under any circumstances, be submitted prior to: the later to occur of (i) sixty (60) days from the date of the execution of the Redevelopment Agreement or, (ii) in the event a Contesting Action is filed, after Edgewater files a contesting answer therein. In the event RRP provides written objection to the release of the Deed, Escrow Agent shall hold the deed in escrow

until either (a) a written direction from RRP and Edgewater to release the Deed or (b) a final, non-appealable court order directing the Escrow Agent to release the Deed from escrow.

Not later than thirty (30) days following the Effective Date hereof, RRP will deliver to Edgewater all material non-confidential environmental reports, filings and data prepared by RRP's LSRP and submitted to any applicable governmental entity including, but not limited to the New Jersey Department of Environmental Protection with respect to the Western Parcel (the "Environmental Information") through the date of this Settlement Agreement, and shall thereafter provide updated Environmental Information to Edgewater every ninety (90) days through the delivery to Edgewater of a Restricted Remedial Action Outcome ("RAO") issued by a New Jersey Licensed Site Remediation Professional ("LSRP") pursuant to Paragraph 3(c) of this Agreement.

The deed shall be released from Escrow not more than one (1) year from Edgewater's execution of the Redevelopment Agreement (**Exhibit E** hereto), provided the Release Event has occurred. Upon receipt of the Western Parcel Deed, Edgewater shall assume and thereafter be solely responsible for, any and all obligations with respect to, arising from, or related to the Western Parcel incurred after Edgewater's receipt of the Western Parcel Deed, including by way of example and not limitation, any and all financial obligations, environmental conditions, mitigation and remediation (other than as set forth below in Para. 3(b)), removal and/or repair any existing structures, maintenance, and liability for injuries to persons or property. As set forth in Paragraph 4(l) hereof, the execution of the Redevelopment Agreement is a condition antecedent to the enforceability of this Agreement, and the execution of the Redevelopment Agreement or the rezoning of the Eastern Parcel at RRP's request, are conditions precedent to RRP's obligation to convey the Western Parcel to Edgewater.

(b) From and after Edgewater's receipt of the Western Parcel Deed, RRP shall retain the obligation (at its sole expense) to obtain and deliver to Edgewater a Restricted RAO issued by a New Jersey Licensed Site Remediation Professional demonstrating that Western Parcel is compliant with NJDEP regulations so as to permit the siting of all permitted uses.

(c) From and after the conveyance of the Western Parcel to Edgewater (i) RRP shall have a non-exclusive easement over the Western Parcel comprised of an area as shown on the attached survey on **Exhibit B** hereto (hereinafter referred to as the "**Western Construction Easement**") sufficient in scope and duration to allow for the construction by RRP, at RRP's expense, of the public transit, roadway and pedestrian access improvements (the "**Western Easement Improvements**") set forth on **Exhibit G** attached hereto which Western Construction Easement shall terminate upon completion of the Western Easement Improvements as evidenced by the approval of the Western Easement Improvements after final inspection(s) of the Western Easement Improvements and the closing of applicable construction permits (subject to Paragraph 4 hereof). The scope and terms of Western Construction Easement are set forth in **Exhibit B** hereto. The Western Construction Easement shall not have a material adverse impact on the development or use of the Western Parcel pursuant to the Western Parcel Deed (**Ex. D**).

(ii) From and after the termination of Western Construction Easement, RRP shall have a continuing easement to, at its sole discretion and without assuming any obligation therefore, use, maintain and/or repair the Western Easement Improvements and the area formerly designated as the Western Construction Easement, including the non-exclusive right to operate and/or permit to operate private buses/shuttles utilizing the Western Use Easement and the bus stops to be located on and adjacent to River Road (County Road No. 505) on both the Western Parcel and the Eastern

Parcel. The specific scope and terms of Western Use Easement are set forth in **Exhibit C** hereto; and,

(iii) The Western Use Easement be retained by RRP in its conveyance of the Western Parcel to Edgewater (**Exhibit D** hereto).

**4. ZONING, REDEVELOPMENT AND DEVELOPMENT OF EASTERN PARCEL.**

(a) Edgewater shall (i) in accordance with its April 2017 Master Plan Re-Examination Report, designate the Eastern Parcel as an Area in Need of Redevelopment as provided by New Jersey Local Redevelopment and Housing Law, N.J.S.A. 40A: 12A-1, *et seq.*, upon receipt of a recommendation to that effect from the Edgewater Planning Board, (ii) adopt a Redevelopment Plan for the Eastern Parcel substantially in the form annexed hereto as **Exhibit H**, (iii) designate RRP as the Redeveloper of the Eastern Parcel and (iv) enter into a Redevelopment Agreement with RRP for the Eastern Parcel substantially in the form annexed hereto as **Exhibit E**. In connection with the foregoing, RRP's affordable housing obligation for the Eastern Parcel shall be equal to fifteen (15%) percent of the newly constructed residential dwelling units to the extent that the affordable units are for-rent and twenty (20%) percent of the newly constructed residential dwelling units to the extent that the affordable units are for sale, with respect to which RRP shall materially comply with all requirements and mandatory phasing schedules for the construction of affordable housing under all affordable housing laws and regulations (collectively, "Affordable Housing Laws"). Edgewater shall apply and enforce the same requirements and mandatory phasing schedules under all Affordable Housing Laws to all pending or future developments in Edgewater which are, or which become, subject to Affordable Housing Laws, subject to any change in Affordable Housing Law by statute, regulation or judicial precedent.

(b) The Redevelopment Agreement shall require RRP to create the Eastern Public Improvements as identified and defined on **Exhibit I** hereto (with the exception of a pedestrian bridge over River Road (County Road No. 505) as to which the conditions set forth in **Exhibit H** shall apply) and shall allow for a non-exclusive bus stop for use by New Jersey Transit and other school-related transportation uses, as well as for the pick-up and drop off of teachers and students who may work at or attend any school facility constructed on the Western Parcel;

(c) The site standards applicable to the Eastern Parcel shall consist of only those site standards set forth in the Redevelopment Agreement (**Exhibit E** hereto);

(d) Edgewater shall: (i) timely and fully cooperate, if required, with RRP's designated Licensed Site Remediation Professional to acquire final environmental certification from all applicable governmental agencies, including but not limited to the New Jersey Department of Environmental Protection, as to the Eastern Parcel; (ii) support RRP's application or request for the installation of a traffic light on River Road to permit and facilitate a turn from the Eastern Parcel onto River Road in a southbound direction at the location shown on **Exhibit J** hereto, and (iii) support RRP in all proceedings before the Borough of Edgewater Planning Board and recommend, to the extent legally permissible, that the Borough of Edgewater Planning Board schedule and conduct special meetings, in a timely manner, to (a) promptly consider and act to designate the 615 Site as An Area in Need of Redevelopment and (b) promptly consider and adjudicate the site plan to be submitted by RRP. The parties hereto agree that this Agreement is not in conflict with the MLUL, the LRHL and/or the municipal ordinances of the Borough of Edgewater, and that nothing herein is or shall be deemed by the Parties to be in derogation thereof or of Edgewater's and the Planning Board's obligations and duties thereunder.

(e) A complete Final Site Plan application shall consist of only those documents identified on **Exhibit K** hereto;

(f) During construction of the Western Easement Improvements, the improvements on the Eastern Parcel as provided by the Redevelopment Plan and Redevelopment Agreement, and the Eastern Public Improvements, Edgewater shall use its best efforts to ensure that all reviews of applications and permits and all inspections are conducted as expeditiously as practicable and in accordance with the time-periods and standards applicable building and/or construction codes and that no criteria, other than those set forth in the applicable building and/or construction codes, will be applied to RRP, the Western Easement Improvements, the Eastern Public Improvements or the 615 Site, and support as requested any applications submitted by RRP to any other governmental agencies with respect to the 615 Site. Any reasonable delay shall not be considered a breach of this Agreement so long as Edgewater and its officials act in good faith with respect to Edgewater's obligations under this Agreement.

(g) In the event of any dispute as to whether Edgewater is complying with Paragraphs (g) above, the parties hereby jointly designate Gary Montroy (the "Referee") to decide all such issues and any determination by the Referee shall be conclusive and binding upon the parties and shall not be appealable. The Referee shall decide any such dispute within fourteen (14) days of submission of such dispute to the Referee and the Referee's fees shall be paid by the non-prevailing party to the prevailing party with respect to each such request for determination. Each request for determination shall be initiated by RRP by letter to the Referee and Edgewater identifying the issue to be determined and Edgewater shall respond, if at all, to such request within seven (7) days thereof. The Referee shall make his or her determination on the third day from initiation of the request for determination by RRP and from and after such determination, the parties shall abide

by, and act in accordance with, such determination. In the event Gary Montroy cannot, will not or ceases to serve as the Referee pursuant to this paragraph, the Parties agree that the successor Referee shall be Dan Hagberg. In the event both Gary Montroy and Dan Hagberg cannot, will not or ceases to serve as Referee hereunder, then in such instance, each Party shall designate a fully licensed code official from a New Jersey county other than Bergen County or Hudson County to jointly select a third fully licensed code official to serve as the Referee hereunder.

(h) The Parties hereto acknowledge that a third party may contest some or all of the actions to be taken hereunder, any such actions to be considered a “Contesting Action”. A Contesting Action shall be the filing of any legal action contesting, disputing or challenging in any way, in whole or in part: (i) the approval of this Settlement Agreement, (ii) the designation of the 615 Site as An Area in Need of Redevelopment, (iii) the designation of RRP as the Redeveloper for the Eastern Parcel, (iv) the adoption of the Redevelopment Plan in substantial and material conformity with the plan set forth on **Exhibit E** hereto, (v) the execution and approval of the Redevelopment Agreement (as defined below), (vi) any zoning or re-zoning of the Eastern Parcel, including, but not limited to, pursuant to Para. 4(j) below, (vii) the residential use or construction of the Eastern Parcel as provided for by this Settlement Agreement (any such action (i) through (vii) being a “Contesting Action” the identification of any type of Contesting Action in this Agreement shall be considered a non-exclusive list and is without limitation of any type, kind or manner, and is not intended to exclude any other type of Contesting Action and the term “Contesting Action” shall be interpreted as broadly and expansively as law and equity shall permit.

(i) In the event of the filing of a Contesting Action, Edgewater shall vigorously defend this Agreement and all actions taken pursuant to the terms of this Agreement, including (i) filing an Answer in any such Contesting Action, (ii) coordinating with RRP Edgewater’s defense therein,

(iii) entering into a joint defense agreement or common interest agreement to facilitate the defense of such action if appropriate. In the event of the entry of a Judgment or Order that is materially adverse to RRP in any such Contesting Action, Edgewater shall, in coordination with RRP, timely file and diligently prosecute an appeal therefrom.

(j) Edgewater further agrees that in or with respect to any Contesting Action, Edgewater shall not (i) support any plaintiff, petitioner or adverse intervenor in a Contesting Action, or settle any Contesting Action without the consent of RRP, which consent shall not be unreasonably withheld or unduly delayed by RRP.

(k) Upon the filing by Edgewater of an Answer in all such Contesting Actions, Edgewater shall, within sixty (60) days of the date of RRP's demand for same, rezone the Eastern Parcel with site and use criteria and standards that are functionally and substantially similar to the site and use criteria and standards in the Redevelopment Agreement such that RRP can develop the Eastern Parcel as of right with all improvements set forth herein and in the Redevelopment Agreement.

(l) In the event the Redevelopment Agreement is not entered into and executed by Edgewater then this Agreement shall be null and void and of no force or effect, including but not limited to, Paragraph 3 hereof, with the exception of Paragraphs 6 and 7 which shall survive and be enforceable without regard to the enforceability of the remainder of this Agreement.

## **5. THE WESTERN EASEMENT IMPROVEMENTS AND THE EASTERN PUBLIC IMPROVEMENTS.**

The construction of the Western Easement Improvements and the Eastern Public Improvements shall, if required by state or County of Bergen law, ordinances or and regulations, be bonded by RRP, in which instance, Edgewater shall be named as a beneficiary of such bond(s). From and after completion of the Western Easement Improvements and the Eastern Public Improvements (with such completion being conclusively determined by the final municipal

inspection and closing of applicable permits for the Western Easement Improvements, and the Eastern Public Improvements), all obligations for maintenance, upkeep, repair and improvements of the Western Easement, the Western Easement Improvements, and the Eastern Public Improvements shall be the sole responsibility of Edgewater and, notwithstanding any statutes of limitations, statutes of repose, implied or expressed warranties, or any other law, act or ordinance that would impose any continuing liability upon RRP with respect to the Western Easement, the Western Easement Improvements or the Eastern Public Improvements, Edgewater shall be solely responsible for any and all physical conditions and maintenance of and at the Western Easement, the Western Easement Improvements and the Eastern Public Improvements. Further, Edgewater shall be deemed to have (i) released RRP from all liability for, or in any way relating to, the Western Easement, the Western Easement Improvements, the Additional Western Easement Improvements and the Eastern Public Improvements, including any and all construction defect claims and/or warranties. Notwithstanding the foregoing, in the event Edgewater fails to adequately maintain and keep in good repair and working order the Western Easement Improvement and the Eastern Public Improvements (including but not limited to any elevators or escalators), RRP shall have the right but not the obligation to cause such maintenance, upkeep and/or repair to be done at Edgewater's sole cost and expense.

**6. DISMISSAL OF FEDERAL ACTION, ZBA APPEAL  
AND TERMINATION OF PARTICIPATION IN  
AFFORDABLE HOUSING ACTION.**

(a) Upon due execution of this Agreement, the Parties shall jointly request that the Court enter an Order in the Federal Action 'so-ordering' the parties' settlement as set forth in this Agreement as an Order of the Court and dismissing the Federal Action without prejudice with each

party to bear its own costs, fees and expenses but retaining jurisdiction for purposes of enforcing this settlement (the form of stipulation without prejudice is annexed hereto as **Exhibit L**).

(b) Upon execution of this Agreement, the Parties and their respective counsel shall cause to be filed a joint Motion requesting approval, after a Mount Laurel Fairness Hearing, of RRP's agreement to provide an affordable housing component set forth in Paragraph 4 hereof pursuant to this settlement, such Motion to be in a form directed and approved by Edgewater, which Edgewater shall not unreasonably direct or disapprove, which would include the irrevocable withdrawal of RRP as a Plaintiff or Intervenor in the Affordable Housing Action. From and after the approval of such Motion, RRP further agrees not to voluntarily participate further in the Affordable Housing Action in a manner adverse to Edgewater. Additionally, upon execution of this Agreement, the parties and their counsel shall execute and cause to be filed a Stipulation of Dismissal with prejudice in the iPark Action, in the form attached hereto as **Exhibit M**.

(c) Upon (i) due execution of this Agreement, and (ii) Edgewater's execution of the Redevelopment Agreement, the Parties' respective counsel shall execute and cause to be filed a Stipulation withdrawing without prejudice the Appeal filed by RRP in the ZBA Action in the form annexed here as **Exhibit N**, with such dismissals to be without prejudice. Upon the expiration of sixty days following execution of the Redevelopment Agreement provided no Contesting Action has then been filed or, in the event a Contesting Action is filed, following the final, non-appealable disposition of such Contesting Action permitting RRP to develop the Eastern Parcel as set forth herein and in the Redevelopment Agreement or rezoning hereunder (if applicable), RRP and Edgewater shall execute and cause to be promptly filed in the applicable court a Stipulation of Dismissal with prejudice of all of RRP's claims in the ZBA Action and the Federal Action, in the forms attached hereto as **Exhibits O and P**.

7. **MAINTENANCE OF STATUS QUO ANTE:** To ensure that the Parties' respective rights, claims and defenses are fully preserved, the parties agree that:

(a) Edgewater hereby tolls and extends any otherwise applicable statute of limitations or statutes of repose relating in any way to the 615 Site, the ZBA Action, the iPark Action, the Federal Action and/or the acts and actions of Edgewater relating to the foregoing, until the date one (1) year following the later of (i) the failure of Edgewater to rezone the Eastern Parcel following a demand by RRP for Edgewater to rezone the Eastern Parcel as set forth in Paragraph 4 hereof, (ii) the disposition of any Contesting Action, including a Contesting Action related to such rezoning (including any rezoning subsequent to such demand by RRP of the Eastern Parcel) that prevents RRP from developing the Eastern Parcel with site and use criteria and standards that are functionally and substantially similar to the site and use criteria and standards set forth in the Redevelopment Agreement, inclusive of any and all site and use criteria so as to permit and enable RRP to develop as of right the Eastern Parcel as such development is set forth in herein and in the Redevelopment Agreement or (iii) any failure of Edgewater or its boards and agencies to approve the Redevelopment Plan and/or execute the Redevelopment Agreement (the "Tolled Date").

(b) Edgewater and RRP shall (i) retain, maintain and preserve all documents and information (whether hard copy or ESI) related to the 615 Site, the Federal Action, the Affordable Housing Action, the iPark Action, and the ZBA Action through the Tolled Date, in the form such documents and information currently exist (including but not limited to, documents subject to either Party's request for production of documents in those actions), and (ii) be bound by all prior proceedings in those actions, including court orders (other than with respect to scheduling) and all discovery conducted in those actions, all of which shall continue to apply in any action that is timely resumed or revived pursuant to this Agreement.

**8. ATTORNEYS' FEES.** Each Party shall bear its own attorneys' fees and costs, including expert fees, if any, incurred about the Actions, this Agreement, and the Mediation leading up to this Agreement. RRP will reimburse FSHC for the legal fees and costs incurred by FSHC in the Affordable Housing Action up to a maximum of seventy-five thousand dollars (\$75,000.00) to be paid at such time as the Affordable Housing Action is finally resolved by settlement or by a judgment holding Edgewater responsible for FSHC's attorney's fees and in accordance with the execution of the Redevelopment Agreement

**9. REPRESENTATIONS AND WARRANTIES.** (a) Each Party represents and warrants to the other, as applicable, that (i) it has the requisite authority to enter into this Agreement and that it is validly existing and in good standing in its respective jurisdiction of organization, (ii) this Agreement does not conflict with any other agreement, instrument or understanding, oral or written, to which it is a party or by which it may be bound, nor violate any law or regulation of any court, governmental body or administrative or other agency having authority over it, (iii) to the extent that any approval or authorization is necessary for its valid and lawful execution, delivery and performance of this Agreement, such approval or authorization has been obtained, and (iv) this Agreement is a binding obligation of it enforceable in accordance with its terms.

(b) Edgewater further represents and warrants that (i) it will impose on all residential housing developments in Edgewater which are subject to Affordable Housing, a legal and binding obligation to build on the real property on which such housing development is to be constructed, not less than fifteen (15%) percent affordable housing units with respect to rental apartments and not less than twenty (20%) percent affordable housing units with respect to 'for sale' units and (ii) with respect to the application and enforcement of applicable laws, rules,

regulations, codes, zoning and construction requirements, it will treat RRP consistent with any and all other parties developing residential properties in Edgewater and will neither favor any other such developers nor disfavor nor discriminate in any way against RRP with respect to Affordable Housing, subject to any change by statute, regulation or judicial precedent in the Affordable Housing law.

**10. NOTICE.** Any notice, demand, waiver, consent, approval or other communication that is required or permitted to be given to any Party under this Agreement will be in writing, will specifically refer to this Agreement, and will be effective on receipt, as evidenced in writing, when given by registered mail or certified mail, postage prepaid, or overnight courier, and addressed, unless specified in writing as provided herein, to the addresses of the Parties below, and effective upon sending if sent by facsimile confirmed by a transmission report:

a. If to RRP:

Steven D. Fleissig and  
Cory Mitchell Gray  
GREENBERG TRAURIG LLP  
500 Campus Drive, Suite 400  
P.O. Box 677  
Florham Park, NJ 07932

And

Justin P. Walder  
Joseph A. Hayden, Jr.  
David N. Cinotti  
PASHMAN STEIN WALDER HAYDEN  
Court Plaza South  
21 Main Street  
Hackensack, New Jersey 07201

And

Brian M. Chewcaskie  
CLEARY GIACCOBE ALFIERI JACOBS LLC  
169 Ramapo Valley Road, Upper Level 105  
Oakland, New Jersey 07436

And

Bruce Sturman  
Thomas O'Gara  
The Maxal Group  
c/o GREENBERG TRAURIG LLP  
Attn: Steven D. Fleissig and  
Cory Mitchell Gray  
500 Campus Drive, Suite 400  
P.O. Box 677  
Florham Park, NJ 07932

And

Edward K. Elanjian  
Andrew Derickson  
EnviroFinance Group, LLC  
4601 DTC Boulevard, Suite 120  
Denver, Colorado 80237

b. If to Edgewater or to the Edgewater Planning Board:

Borough of Edgewater Borough Clerk  
55 River Road  
Edgewater, NJ 07020

Joseph R. Mariniello, Jr., Esq.  
Mariniello & Mariniello, PC  
265 Columbia Avenue  
Fort Lee, NJ 07024

Alfred C. DeCotiis, Esq.  
John A. Stone, Esq.  
DeCotiis, FitzPatrick, Cole & Giblin, LLP  
Glenpointe Centre West  
500 Frank W. Burr Boulevard, Suite 31  
Teaneck, NJ 07666

The address for notice may be changed by any Party as to itself through written notice in accordance with this paragraph. Following such notice, any and all notices to be provided hereunder shall, with respect to the Party providing the new address, be effective only if sent to the address contained in that Party's notice of change of address.

**11. NON-ADMISSION OF LIABILITY:** The Parties acknowledge that they each expressly understand that this Agreement and the settlement it represents is entered into solely for the purpose of avoiding any possible future expenses, burden or distractions of litigation and to be in the best interests of Edgewater, the taxpayers and the public; and in no way constitutes an admission by any Party hereto of any liability of any kind to any other Party or of any wrongdoing, violation of any Constitutional or legal right, professional fault, malfeasance, breach of contract, violation of any ethical requirement or standard, breach of fiduciary duty, fraud or liability, on the part of any of the Parties, which alleged wrongdoing or liability is hereby expressly denied by all Parties hereto.

**12. NON-DISPARAGEMENT.** The Parties hereby represent and warrant that they will not knowingly and voluntarily make any statements, verbal or written, which disparage any other Party, any of its affiliates, or its respective officers, officials, directors, shareholders, partners or employees, it being acknowledged that this Paragraph shall not in any way prohibit each of the Parties from providing truthful information or testimony and/or documents or as may be compelled by law, or as deemed necessary to pursue their respective rights and remedies. The Parties recognize that such information, testimony or documents may contain both facts and opinions. Whether or not such facts and opinions could be viewed as "disparaging", the providing of such truthful information or testimony and/or documents shall not be a violation of this Agreement or of this Paragraph. RRP shall fully cooperate with and not unreasonably object to public statements

by Edgewater, or the Planning Board regarding the reasons for and desirability of this settlement from Edgewater's perspective, provided such stated reasons do not violate this Paragraph

**13. REMEDY.**

(a) The Parties acknowledge that any uncured, material breach of this Agreement could cause irreparable harm for which damages may be an inadequate remedy, and that injunctive relief or specific enforcement of the Agreement might be appropriate, subject to the limitations in subpart (c) of this section.

(b) The Parties shall be entitled to specific enforcement of the terms and conditions set forth in this Agreement without the requirement of posting bond or the requirement of proving actual damages. This Paragraph is without waiver or release of any other rights or remedies, including the right to seek monetary damages, which the Parties may possess.

(c) RRP may, prior to the delivery of the Western Parcel Deed ~~to~~ Edgewater in accordance with ~~the~~ the terms and conditions of this Agreement, seek to prevent the delivery of the Western Parcel Deed; however, from and after the occurrence of the Release Event, RRP shall not have the right to seek or to cause the Western parcel to be reconveyed to RRP or to attain specific performance, a preliminary injunction or any related equitable relief.

(d) RRP's right to enforce the restrictions contained in the Deed shall not be limited and shall not expire upon the due delivery of the Deed to Edgewater hereunder.

(e) A written demand for rezoning RRP to Edgewater shall be a condition precedent to Edgewater's obligation to rezone the Eastern Parcel; absent such a written demand by RRP, it shall not be a default of this Agreement for Edgewater to fail to rezone the Eastern Parcel.

**14. ASSIGNMENT.** It is expressly understood and agreed that RRP may sell transfer or assign the Eastern Parcel in accordance with this Agreement), in whole or in part(s),

at one time or from time to time, without the consent or agreement of Edgewater, provided only that such assignee is qualified to fully and promptly assume RRP's obligations as the Redeveloper pursuant to the LRHL and the Redevelopment Plan and that in the event of such sale, transfer or assignment, all approvals provided for hereunder shall thereafter be held and be enforceable by any such successor, assignee or transferee.

**15. GOVERNING LAW, VENUE AND ENFORCEMENT.** This Agreement shall be governed by and construed in accordance with the laws of the State of New Jersey and the United States of America, without regard to New Jersey's conflicts of law provisions. Any dispute, whether legal or equitable, arising out of or relating to the terms of this Agreement, including the validity thereof, shall be resolved in and by the United States District Court for the District of New Jersey ("**DNJ**") which shall retain jurisdiction to enforce the settlement and this Agreement, it being agreed that in the event the DNJ declines to exercise jurisdiction with respect to such dispute, any action arising out of or relating to the terms of this Agreement, including the validity thereof, shall be resolved in and by the Superior Court of the State of New Jersey, County of Bergen.

**16. FORCE AND EFFECT OF AGREEMENT.** All the terms and provisions contained herein shall inure to the benefit of and shall be binding upon each of the Parties hereto, and their respective successors, heirs and permitted assigns.

**17. KNOWING AND VOLUNTARY EXECUTION OF AGREEMENT.** This Agreement is executed knowingly, voluntarily and without any duress or undue influence on the part or on behalf of the Parties hereto, with the full intent of releasing all claims arising out of or relating to the dispute that is the subject of the pending litigation. The Parties acknowledge that (a) they have read this Agreement; (b) they are represented by and have the advice of counsel

of their own choosing during the preparation, negotiation and execution of this Agreement; (c) they understand the terms and consequences of this Agreement and the releases it contains; (d) they have been given a reasonable period of time to consider this Agreement; (e) each provision of this Agreement shall be deemed to have been drafted by all Parties; (f) in the interpretation of this Agreement, no weight shall be given to the drafting of this, or any provision of this, Agreement by any Party; (g) no provision of this Agreement shall be construed against any Party by reason of such provision having been drafted by such Party; and (h) they are fully aware of the legal and binding effect of this Agreement. This Agreement was negotiated by the Parties on an arm's-length basis, and nothing in this Agreement shall be construed as establishing a special relationship of trust and confidence, fiduciary, partnership or joint venture relationship between the Parties.

**16. BINDING EFFECT.** Upon the full execution of this Agreement by each of the Parties, this Agreement shall be legal, valid and binding obligations of each of the Parties, and enforceable against each Party and their respective successors and permitted assigns in accordance with its terms.

**17. ENTIRE AGREEMENT AND WAIVER.** This Agreement constitutes the entire agreement of the Parties, and supersedes all prior and contemporaneous agreements, understandings, or representations, whether written or oral, with respect to the subject matter hereof. This Agreement may be amended only by a written instrument executed by each of the Parties. No waiver of any provision of this Agreement shall be effective unless made in writing and signed by an authorized representative of the waiving Party. No waiver of any provision or this Agreement shall constitute a waiver of any prior, concurrent or subsequent breach of the same or of any other provision hereof. The headings in this Agreement are for convenience

only and shall not in any way affect the meaning or construction of any provision of this Agreement.

**18. SEVERABILITY.** To the fullest extent permitted by applicable law, the Parties waive any provision of law that would render any provision in this Agreement invalid, illegal or unenforceable in any respect. The invalidity or unenforceability of any paragraph or provision of this Agreement shall not affect the validity or enforceability of the remainder of this Agreement, or the remainder of any paragraph or provision, unless otherwise set forth herein. To the fullest extent permitted by applicable law, the Parties will use their best efforts to negotiate a provision in replacement of any provision held invalid, illegal or unenforceable, provided such replacement provision achieves, as nearly as possible, the original intent of the Parties as embodied herein. This Agreement shall otherwise be construed in all respects as if any invalid or unenforceable paragraph or provision were omitted.

**19. SIGNATURES.** This Agreement may be executed in counterparts, all of which, when taken together, shall constitute one agreement with the same force and effect as if all signatures had been entered on one document. For the purposes of this Agreement, facsimile, scanned, or PDF signatures shall be deemed original signatures and shall be valid and legally effective for all purposes.

**20. INTERPRETATION.** This Settlement Agreement is to be interpreted as if Edgewater, RRP and the Planning Board and their respective counsel were equally authors of this document and no maxim of contractual intent, including but not limited to any “presumption against the drafter” shall apply. In the event any inconsistency between this Settlement Agreement and any Exhibit hereto exists, the terms of the Exhibit shall prevail and shall be enforceable. The words “including”, “inclusive”, “any”, “all” and the phrase “any and

all” are to be interpreted as broadly and expansively as possible; wherever ‘examples’ of certain events or conduct are provided herein, such example are not, under any circumstances, to be interpreted as limiting in any way the type or kind of conduct or events to those specifically identified herein.

**21. REVIEW AND APPROVAL BY EDGEWATER OF EXHIBITS:** Edgewater, having been advised by counsel and its professionals with respect to the Exhibits hereto, and in the discharge of its public duties and obligations, hereby agrees and warrants that the Redevelopment Plan and the Redevelopment Agreement are in conformity and compliance with the legal requisites thereof, and further that this settlement, including the Redevelopment Plan and Redevelopment Agreement are in the best interests of Edgewater and its residents.

**IN WITNESS WHEREOF,** the Parties hereto have executed this Agreement by separate signature pages as of the Effective Date.

**SIGNATURE PAGE TO SETTLEMENT AGREEMENT**

**BOROUGH OF EDGEWATER**

A Municipal Corporation

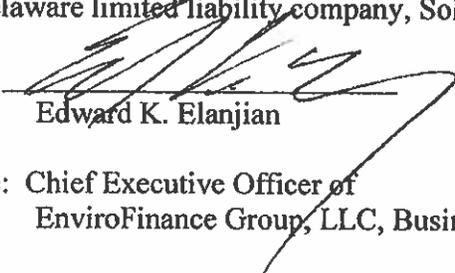
By: \_\_\_\_\_

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

**615 RIVER ROAD PARTNERS, LLC**

a Delaware limited liability company

By: 615 RRP Member, LLC  
a Delaware limited liability company, Sole Member

By:   
Edward K. Elanjian

Title: Chief Executive Officer of  
EnviroFinance Group, LLC, Business Manager

# EXHIBIT A

# STONEFIELD

## Description of Parcel to be Conveyed to Edgewater

METES & BOUNDS DEED DESCRIPTION, TAX BLOCK 77 LOT 1

BOROUGH OF EDGEWATER  
BERGEN COUNTY, NEW JERSEY

Beginning at a concrete monument with brass disk at the intersection of the westerly line of River Road (various widths) and the southerly line of Vreeland Terrace (25 foot width) and running; thence,

- 1) Along the westerly line of River Road, South 37° 12' 05" West, a distance of 180.01 feet to a point; thence,
- 2) Still along the westerly line of River Road, South 37° 20' 55" West, a distance of 205.02 feet to a point; thence,
- 3) Still along the westerly line of River Road, South 35° 50' 35" West, a distance of 170.51 feet to a point; thence,
- 4) North 53° 28' 25" West, a distance of 196.01 feet to a point; thence,
- 5) North 36° 24' 35" East, a distance of 50.0 feet to a point; thence,
- 6) North 53° 28' 25" West, a distance of 141.93 feet to a concrete monument on the easterly line of Undercliff Avenue (50 foot width); thence,
- 7) Along the easterly line of Undercliff Avenue, North 23° 37' 35" East, a distance of 518.58 feet to a point of intersection of the said easterly line of Undercliff Avenue and the aforementioned southerly sideline of Vreeland Terrace; thence,
- 8) Along the southerly line of Vreeland Terrace, South 53° 28' 25" East, a distance of 456.84 feet to the point and place of beginning.

Containing 210,003 square feet or 4.821 acres of land.

This description has been prepared in accordance with a survey of Block 76 Lots 1 & 5, Block 77, Lot 1, Borough of Edgewater, Bergen County, New Jersey, prepared by Langan, dated July 1, 2014.

Conveyance of title to this parcel shall be subject to such state of facts and conditions as an accurate survey and title search may identify or disclose.

Phil McEntee, Jr., PLS  
New Jersey License No. 43227

[stonefieldeng.com](http://stonefieldeng.com)

---

92 Park Avenue, Rutherford, NJ 07070 201.340.4468 t. 201.340.4472 f.

# **EXHIBIT B**

Prepared by:

Cory Mitchell Gray, Esq.  
Greenberg Traurig, LLC  
500 Campus Drive, Suite 400  
Florham Park, New Jersey 09732

## CONSTRUCTION EASEMENT AGREEMENT

This Construction Easement Agreement is made as of \_\_\_\_\_, 2019, between the BOROUGH OF EDGEWATER, whose address is 55 River Road, Edgewater, New Jersey 07020, Attn. Borough Clerk (the "Grantor") and 615 RIVER ROAD PARTNERS, LLC, whose address is The Maxal Group, c/o Greenberg Traurig, LLC, 500 Campus Drive, Suite 400 Florham Park, New Jersey 09732, Attention: Steven D. Fleissig, Esq. and Cory Mitchell Gray, Esq. (the "Grantee").

### RECITALS:

**WHEREAS**, Grantor shall, following the delivery of a Bargain and Sale Deed With Covenants Against Grantor's Act (Containing Deed Restrictions and Reservations of Rights) dated [REDACTED], 2019 (the "Deed") be the fee simple owner of that certain parcel of land located in Edgewater, New Jersey more particularly described in Exhibit A attached hereto (the "Grantor Parcel"); and

**WHEREAS**, Grantee (i) was the fee simple owner of the Grantor Parcel prior to the delivery of the Deed and (ii) is the fee simple owner of that certain parcel of land located in Edgewater, New Jersey, more particularly described in Exhibit B attached hereto (the "Grantee Parcel"), with the Grantee Parcel being located directly opposite the Grantor Parcel on River Road (County Rd. No. 505); and

**WHEREAS**, pursuant to that certain Settlement Agreement dated November [REDACTED], 2019 between Grantor and Grantee, Grantee is to construct within and/or adjacent to the Easement Area (as defined below) certain improvements as more specifically set forth in the Settlement Agreement as the "Western Easement Improvements"; and

**WHEREAS**, in order to construct the said Western Easement Improvements, Grantee requires access to a portion of the Grantor Parcel; and

**WHEREAS**, the access to the Easement Area provided hereunder will enable Grantee sufficient access to the Grantor Parcel to construct the said Western Easement Improvements; and

**WHEREAS**, the grant of the easement runs with, and is an appurtenance to the Grantor Parcel, and burdens and runs with the Grantee Parcel; and

WHEREAS, the easement, and the Western Easement Improvements to be constructed on and within the Easement Area, will provide a significant benefit to the Grantor and to the citizens thereof;

WHEREAS, Grantee desires to obtain and Grantor desires to grant and create, on the terms and conditions hereinafter set forth, the said Construction Easement, over, across and upon the Easement Area for the access purposes all as more particularly described in this Agreement and in the Settlement Agreement; and

NOW, THEREFORE, for good and valuable consideration, the mutual covenants and agreements contained herein, the receipt and sufficiency of which are hereby acknowledged, Grantor and Grantee hereby agree that the foregoing recitals are true and correct and incorporated into this Agreement, and further agree as follows:

1. **Grantor's Grant of Construction Easement.** Until the expiration of the Term (as defined below), Grantor hereby grants to Grantee and Grantee's duly authorized agents, consultants, contractors, subcontractors, employees and successors and assigns (collectively, "Grantee's Representatives"), for the benefit of the Grantor Parcel and the Grantee Parcel, an easement on, in, under, over, across, above and through the Easement Area of the Grantor Parcel permitting the entry upon and use of the Easement Area for all necessary activities (including, without limitation, the use of heavy machinery, storage of vehicles, materials, machinery and equipment, installation of utilities and earthmoving and excavation activities) to enable Grantee, if permitted to do so by all necessary governmental authorities, to construct the Western Easement Improvements, as identified in the Settlement Agreement dated November \_\_, 2019 (the "**Construction Easement**"). Grantee accepts the Construction Easement within the Easement Area and the Grantor Parcel in their respective "as-is" conditions, in all respects. Except as provided for in this Construction Easement Agreement, the Settlement Agreement and/or as may otherwise be required by applicable law, Grantor shall have no obligation to maintain or to repair the Easement Area, the Western Easement Improvements or the Grantor Parcel in connection with these Construction Easements or otherwise.

2. **Easement Area:** The Easement Area hereunder is and shall be the area shown on the survey attached hereto as **Exhibit C**.

3. **Term.** The term of this Agreement (the "**Term**") shall begin on the Effective Date and shall terminate upon (i) the final inspection of the Western Easement Improvements demonstrating compliance with applicable construction and building codes and (ii) the closing of the construction permits related to the Western Easement Improvements. At such time as 3 (i) and (ii) have occurred, Grantee shall record a termination of Construction Easement with the Register of Deeds for Bergen County, New Jersey.

4. **Insurance.** Grantee shall during the term of this Agreement, maintain general public liability insurance to afford protection against claims for bodily injury or property damage arising directly or indirectly out of the exercise of the rights and privileges granted herein. Said insurance shall have a limit of not less than \$500,000.00 per occurrence and \$1,000,000.00 in the aggregate with respect to bodily injury and property damage. All insurance required under this

Agreement shall be issued by solvent, reputable insurance companies authorized to do business in the State of New Jersey.

5. Miscellaneous.

(a) Enforcement. The provisions of this Agreement may be enforced by all appropriate actions at law and in equity by Grantor and Grantee and their respective successors and assigns, with the prevailing party in any such action entitled to reimbursement of reasonable attorneys' fees and costs incurred at trial and all appellate levels.

(b) Covenant Running with the Land. The easements hereby granted and the requirements herein contained shall burden title to the Grantor Parcel for the benefit of the Grantee during the term of this Agreement. This Agreement shall be binding upon, and inure to the benefit of, the fee owners from time to time of the Grantee Parcel and the Grantor Parcel.

(c) Notice. All notices which may be permitted or required hereunder shall be in writing and shall be deemed to have been duly given as of the date and time the same are personally delivered, deposited with the United States Postal Service, postage prepaid by registered or certified mail, return receipt requested, or deposited with Federal Express or other overnight delivery service from which a receipt may be obtained, and addressed as follows:

(d) If to Grantee:

Steven D. Fleissig and  
Cory Mitchell Gray  
GREENBERG TRAUIG LLP  
500 Campus Drive, Suite 400  
P.O. Box 677  
Florham Park, NJ 07932

And

Brian M. Chewcaskie  
CLEARY GIACCOBE ALFIERI JACOBS LLC  
169 Ramapo Valley Road, Upper Level 105  
Oakland, New Jersey 07436

And

Bruce Sturman  
Thomas O'Gara  
The Maxal Group  
c/o GREENBERG TRAUIG LLP  
Attn: Steven D. Fleissig and  
Cory Mitchell Gray  
500 Campus Drive, Suite 400  
P.O. Box 677

Florham Park, NJ 07932

And

Edward K. Elanjian  
Andrew Derickson  
EnviroFinance Group, LLC  
4601 DTC Boulevard, Suite 120  
Denver, Colorado 80237

b. If to Grantor:

Borough of Edgewater Borough Clerk  
55 River Road  
Edgewater, NJ 07020

Joseph R. Mariniello, Jr., Esq.  
Mariniello & Mariniello, PC  
265 Columbia Avenue  
Fort Lee, NJ 07024

Alfred C. DeCotiis, Esq.  
John A. Stone, Esq.  
DeCotiis, FitzPatrick, Cole & Giblin, LLP  
Glenpointe Centre West  
500 Frank W. Burr Boulevard, Suite 31  
Teaneck, NJ 07666

(e) Counterparts. This Agreement may be executed in any number of counterparts and by the separate parties hereto in separate counterparts, each of which when taken together shall be deemed to be one and the same instrument.

(f) Construction. The paragraph headings contained in this Agreement are for reference purposes only and shall not affect the meaning or interpretation hereof. All the parties to this Agreement have participated fully in the negotiation of this Agreement and accordingly, this Agreement shall not be more strictly construed against any one of the parties hereto. In construing this Agreement, the singular shall be held to include the plural, the plural shall be held to include the singular, and reference to any particular gender shall be held to include every other and all genders.

(g) Severability. If any part of this Agreement or the application thereof to any person or circumstance shall to any extent be held void or invalid or unenforceable, then the remainder of this Agreement or the application of such provision to persons or circumstances other than those as to which it is held void, invalid or unenforceable shall not be affected

thereby, and each and every other provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

(h) Exhibits. All the Exhibits attached to this Agreement are incorporated in, and made a part of, this Agreement.

(i) Authority. By their execution hereof each person executing this Agreement hereby warrants that he or she has full power and authority to bind any corporation, partnership, trust, limited liability company, or other entity for which he or she purports to act hereunder.

(j) Amendment. Subject to the other provisions hereof, this Agreement may not be amended or modified except by written agreement of Grantor and Grantee. Further, no modification or amendment shall be effective unless in writing and recorded in the Public Records of Bergen County, New Jersey.

(k) Governing Law. The laws of the State of New Jersey shall govern the interpretation, validity, performance and enforcement of this Agreement. Venue for any action brought hereunder shall be proper exclusively in Bergen County, New Jersey.

(l) Waiver of Jury Trial. THE PARTIES HEREBY EACH KNOWINGLY, IRREVOCABLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHT SUCH PARTY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY ACTION, PROCEEDING OR COUNTERCLAIM BASED ON THIS AGREEMENT, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ANY AMENDMENT OR MODIFICATION OF THIS AGREEMENT, OR ANY OTHER AGREEMENT EXECUTED BY AND BETWEEN THE PARTIES IN CONNECTION WITH THIS AGREEMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY HERETO. THIS WAIVER OF JURY TRIAL PROVISION IS A MATERIAL INDUCEMENT TO THE PARTIES TO ENTER INTO THIS AGREEMENT.

(m) Not A Partnership. Nothing in this Agreement creates any relationship of trust or fiduciary relationship between Grantee and Grantor. This Agreement does not create any obligation or relationship such as a partnership, joint venture or other similar legal relationship.

(n) No Merger. Notwithstanding that fee simple title to any portion of the Grantor Parcel or Grantee Parcel may now or hereafter be owned by the same individual or entity, the easements and other terms of this Agreement shall not be deemed to be extinguished by merger or otherwise.

{Signatures appear on the following pages}

IN WITNESS WHEREOF, the Grantor and Grantee have caused this Agreement to be executed as of the day and year first above written.

Signed, sealed and delivered  
in the presence of:

GRANTOR:

**BOROUGH OF EDGEWATER**  
A Municipal Corporation

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

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

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

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

STATE OF NEW JERSEY:  
COUNTY OF BERGEN :

On this \_\_\_\_ day of \_\_\_\_\_, 2019, before me, the undersigned notary public, personally appeared the above-named \_\_\_\_\_, the duly authorized signatory on behalf Grantor, proved to me through satisfactory evidence of identification, which was his \_\_\_\_\_, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he was authorized to execute the preceding on behalf of \_\_\_\_\_ and that he signed it as his free act and deed, and as the free act and deed of Grantor for its stated purpose.

\_\_\_\_\_  
NAME:  
Notary Public  
My Commission Expires:

Signed, sealed and delivered  
in the presence of:

**GRANTEE:**

**615 RIVER ROAD PARTNERS, LLC**  
a Delaware limited liability company

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

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

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

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

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

STATE OF NEW JERSEY:  
COUNTY OF BERGEN :

On this \_\_\_\_ day of \_\_\_\_\_, 2019, before me, the undersigned notary public, personally appeared the above-named \_\_\_\_\_, the duly authorized Member of Grantee, proved to me through satisfactory evidence of identification, which was his \_\_\_\_\_, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he was authorized to execute the preceding on behalf of \_\_\_\_\_ and that he signed it as his/her free act and deed, and as the free act and deed of Grantee for its stated purpose.

\_\_\_\_\_  
NAME:  
Notary Public  
My Commission Expires:

# ***EXHIBIT A***

# STONEFIELD

## Description of Parcel to be Conveyed to Edgewater

METES & BOUNDS DEED DESCRIPTION, TAX BLOCK 77 LOT 1

BOROUGH OF EDGEWATER

BERGEN COUNTY, NEW JERSEY

Beginning at a concrete monument with brass disk at the intersection of the westerly line of River Road (various widths) and the southerly line of Vreeland Terrace (25 foot width) and running; thence,

- 1) Along the westerly line of River Road, South 37° 12' 05" West, a distance of 180.01 feet to a point; thence,
- 2) Still along the westerly line of River Road, South 37° 20' 55" West, a distance of 205.02 feet to a point; thence,
- 3) Still along the westerly line of River Road, South 35° 50' 35" West, a distance of 170.51 feet to a point; thence,
- 4) North 53° 28' 25" West, a distance of 196.01 feet to a point; thence,
- 5) North 36° 24' 35" East, a distance of 50.0 feet to a point; thence,
- 6) North 53° 28' 25" West, a distance of 141.93 feet to a concrete monument on the easterly line of Undercliff Avenue (50 foot width); thence,
- 7) Along the easterly line of Undercliff Avenue, North 23° 37' 35" East, a distance of 518.58 feet to a point of intersection of the said easterly line of Undercliff Avenue and the aforementioned southerly sideline of Vreeland Terrace; thence,
- 8) Along the southerly line of Vreeland Terrace, South 53° 28' 25" East, a distance of 456.84 feet to the point and place of beginning.

Containing 210,003 square feet or 4.821 acres of land.

This description has been prepared in accordance with a survey of Block 76 Lots 1 & 5, Block 77, Lot 1, Borough of Edgewater, Bergen County, New Jersey, prepared by Langan, dated July 1, 2014.

Conveyance of title to this parcel shall be subject to such state of facts and conditions as an accurate survey and title search may identify or disclose.

Phil McEntee, Jr., PLS  
New Jersey License No. 43227

[stonefieldeng.com](http://stonefieldeng.com)

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92 Park Avenue, Rutherford, NJ 07070 201.340.4468 t. 201.340.4472 f.

# ***EXHIBIT B***

# STONEFIELD

## Grantor Parcel Metes and Bounds Description

TAX BLOCK 76 LOT 1 and 5 (combined), BOROUGH OF EDGEWATER, BERGEN COUNTY, NEW JERSEY

Beginning at a point being in the southwesterly corner of the herein described premises, said point being at the intersection of the easterly line of River Road (various Widths) as depicted on a certain map entitled "Right of Way Map River Road Re-alignment, South Section" Filed in the Bergen County Clerk's Office on January 7, 2000 as Map No. 9154, and the northerly line of Lands of Yaohan International USA Corp. and running; thence,

- 1) Along the Easterly line of River Road, North  $35^{\circ} 54' 38''$  East, a distance of 49.89 feet to a point of curvature; thence,
- 2) Still along the same, northeasterly along a curve to the right, having an arc distance of 178.43 feet, a radius of 7,920.0 feet and a central angle of  $1^{\circ} 17' 27''$  and being subtended by a chord which bears North  $36^{\circ} 33' 21''$  East; a distance of 178.43 feet to a point of tangency; thence,
- 3) Still along the same, North  $37^{\circ} 12' 05''$  East, a distance of 418.97 feet to a point on the southerly line of Lands of The State of New Jersey; thence,
- 4) Along the same, South  $63^{\circ} 23' 24''$  East, a distance of 483.81 feet to a point; thence,
- 5) South  $25^{\circ} 25' 12''$  West, a distance of 90.02 feet to a point; thence,
- 6) South  $63^{\circ} 23' 25''$  East, a distance of 465.77 feet to a point at the Pierhead line as approved January 15, 1914; thence,
- 7) Along the said Pierhead Line, South  $26^{\circ} 27' 52''$  West, a distance of 35.85 feet to a point; thence,
- 8) Along the Pierhead line approved on January 12, 1931, South  $24^{\circ} 45' 19''$  West, a distance of 511.23 feet to a point on the aforementioned northerly line of Lands of Yaohan International USA Corp; thence,
- 9) Along the same, North  $63^{\circ} 23' 25''$  West, a distance of 1,083.98 feet to the point and place of beginning.

Containing 605,832 square feet or 13.908 acres of land.

This description has been prepared in accordance with a survey of Block 76 Lots 1 & 5, Block 77, Lot 1, Borough of Edgewater, Bergen County, New Jersey, prepared by Langan, dated July 1, 2014.

Phil McEntee, Jr., PLS  
New Jersey License No. 43227

stonefieldeng.com

92 Park Avenue, Rutherford, NJ 07070 201.340.4468 t. 201.340.4472 f.

# ***EXHIBIT C***

# STONEFIELD

## Metes and Bounds Description of Use Easement Area TAX BLOCK 77 LOT 1, BOROUGH OF EDGEWATER, BERGEN COUNTY, NEW JERSEY

Beginning at a concrete monument with brass disk at the intersection of the westerly line of River Road (various widths) and the southerly line of Vreeland Terrace (25 foot width) and running; thence,

- 1) Along the westerly line of River Road, South 37° 12' 05" West, a distance of 180.01 feet to a point; thence,
  - 2) Still along the westerly line of River Road, South 37° 20' 55" West, a distance of 205.02 feet to a point; thence,
  - 3) Still along the westerly line of River Road, South 35° 50' 35" West, a distance of 170.51 feet to a point; thence,
  - 4) North 53° 28' 25" West, a distance of 40.00 feet to a point; thence,
  - 5) North 35° 50' 35" East, a distance of 170.56 feet to a point; thence,
  - 6) North 37° 20' 55" East, a distance of 204.49 feet to a point; thence,
  - 7) North 37° 12' 05" East, a distance of 179.49 feet to a point in the aforementioned southerly line of Vreeland Terrace; thence,
- 1) Along the said southerly line of Vreeland Terrace, South 53° 28' 25" East, a distance of 40.00 feet to the point and place of beginning.

Containing 22,222 square feet or 0.510 acres of land.

This description has been prepared in accordance with a survey of Block 76 Lots 1 & 5, Block 77, Lot 1, Borough of Edgewater, Bergen County, New Jersey, prepared by Langan, dated July 1, 2014.

The easement area described herein shall be subject to such state of facts and conditions as an accurate survey and title search may identify or disclose.

Phil McEntee, Jr., PLS  
New Jersey License No. 43227

[stonefieldeng.com](http://stonefieldeng.com)

92 Park Avenue, Rutherford, NJ 07070 201.340.4468 t. 201.340.4472 f.

# EXHIBIT C

Prepared by:

Cory Mitchell Gray, Esq.  
Greenberg Traurig, LLC  
500 Campus Drive, Suite 400  
Florham Park, New Jersey 09732

## PERMANENT EASEMENT AGREEMENT

This Permanent Easement Agreement is made as of \_\_\_\_\_, 2019, between the BOROUGH OF EDGEWATER, whose address is 55 River Road, Edgewater, New Jersey 07020, Attn. Borough Clerk (the "Grantor") and 615 RIVER ROAD PARTNERS, LLC, whose address is The Maxal Group, c/o Greenberg Traurig, LLC, 500 Campus Drive, Suite 400 Florham Park, New Jersey 09732, Attention: Steven D. Fleissig, Esq. and Cory Mitchell Gray, Esq. (the "Grantee").

### RECITALS:

**WHEREAS**, Grantor shall, following the delivery of a Bargain and Sale Deed With Covenants Against Grantor's Acts (Containing Deed Restrictions and Reservations of Rights) dated \_\_\_\_\_, 2019 (the "Deed") be the fee simple owner of that certain parcel of land located in Edgewater, New Jersey more particularly described in Exhibit A attached hereto (the "**Grantor Parcel**"); and

**WHEREAS**, Grantee (i) was the fee simple owner of the Grantor Parcel prior to the delivery of the Deed and (ii) is the fee simple owner of that certain parcel of land located in Edgewater, New Jersey, more particularly described in Exhibit B attached hereto (the "**Grantee Parcel**"), with the Grantee Parcel being located directly opposite the Grantor Parcel on River Road (County Rd. No. 505); and

**WHEREAS**, pursuant to that certain Settlement Agreement dated \_\_\_\_\_, 2019 between Grantor and Grantee, Grantee is to construct within and/or adjacent to the Easement Area (as defined below) certain improvements as more specifically set forth in the Settlement Agreement ("**Western Easement Improvements**"); and

**WHEREAS**, Grantee and Grantor agree that Grantee shall have the right to, inter alia, enter onto and upon the Easement Area and the Western Easement Improvements (once constructed) for the purposes set forth herein; and

**WHEREAS**, the grant of the easement runs with, and is an appurtenance to the Grantor Parcel, and burdens and runs with the Grantee Parcel.

**NOW, THEREFORE**, for good and valuable consideration, the mutual covenants and agreements contained herein, the receipt and sufficiency of which are hereby acknowledged,

Grantor and Grantee hereby agree that the foregoing recitals are true and correct and incorporated into this Agreement, and further agree as follows:

1. **Easement Area:** The Easement Area hereunder is and shall be the area shown and described on the survey attached hereto as **Exhibit C.**

2. **Grantor's Grant of Easement.** Grantor hereby grants to Grantee and Grantee's duly authorized agents, consultants, contractors, subcontractors, employees and successors and assigns (collectively, "**Grantee's Representatives**"), for the benefit of the Grantor Parcel and the Grantee Parcel, a permanent easement on, in, under, over, across, above and through the Easement Area of the Grantor Parcel permitting the entry upon, access to and use of the Easement Area and the Western Easement Improvements for (a) maintenance and repair of the Western Easement Improvements set forth on **Exhibit D** hereto and/or the Easement Area set forth on **Exhibit C** hereto, with such activities, if any, to be conducted at Grantee's sole discretion and without hereby creating any obligation upon Grantee to perform such maintenance and/or repair activities or any other activities of similar type or kind, (b) the operation of shuttle vans or buses to and through the bus stop that is to be a part of the Western Easement Improvements, and (c) the use and enjoyment of the Easement Area and Western Easement Improvements by Grantee and its residents, guests and visitors in *pari passu* with the general public (2(a) and 2(b), collectively, are the "**Permanent Easement**"). For clarity, Grantee shall have no obligation to maintain or to repair the Easement Area, the Western Easement Improvements or the Grantor Parcel in connection herewith or otherwise.

3. **Term.** There is no temporal termination, limitation or restriction on this Permanent Easement, it being specifically agreed that in the event the mandatory Public Improvements (as identified in **Exhibit D** hereto) are not constructed within fifteen (15) years of the Effective Date of the Settlement Agreement dated \_\_\_\_\_ between Grantor and Grantee, then in such event only, this Easement shall expire.

4. **Miscellaneous.**

(a) **Enforcement.** The provisions of this Agreement may be enforced by all appropriate actions at law and in equity by Grantor and Grantee and their respective successors and assigns, with the prevailing party in any such action entitled to reimbursement of reasonable attorneys' fees and costs incurred at trial and all appellate levels.

(b) **Covenant Running with the Land.** The Permanent Easement hereby granted and the requirements herein contained shall burden title to the Grantor Parcel for the benefit of the Grantee during the term of this Agreement. This Agreement shall be binding upon, and inure to the benefit of, the fee owners from time to time of the Grantee Parcel and the Grantor Parcel.

(c) **Notice.** All notices which may be permitted or required hereunder shall be in writing and shall be deemed to have been duly given as of the date and time the same are personally delivered, deposited with the United States Postal Service, postage prepaid by

registered or certified mail, return receipt requested, or deposited with Federal Express or other overnight delivery service from which a receipt may be obtained, and addressed as follows:

(d) If to Grantee:

Steven D. Fleissig and  
Cory Mitchell Gray  
GREENBERG TRAUIG LLP  
500 Campus Drive, Suite 400  
P.O. Box 677  
Florham Park, NJ 07932

And

Brian M. Chewcaskie  
CLEARY GIACCOBE ALFIERI JACOBS LLC  
169 Ramapo Valley Road, Upper Level 105  
Oakland, New Jersey 07436

And

Bruce Sturman  
Thomas O'Gara  
The Maxal Group  
c/o GREENBERG TRAUIG LLP  
Attn: Steven D. Fleissig and  
Cory Mitchell Gray  
500 Campus Drive, Suite 400  
P.O. Box 677  
Florham Park, NJ 07932

And

Edward K. Elanjian  
Andrew Derickson  
EnviroFinance Group, LLC  
4601 DTC Boulevard, Suite 120  
Denver, Colorado 80237

b. If to Grantor:

Borough of Edgewater Borough Clerk

55 River Road  
Edgewater, NJ 07020

Joseph R. Mariniello, Jr., Esq.  
Mariniello & Mariniello, PC  
265 Columbia Avenue  
Fort Lee, NJ 07024

Alfred C. DeCotiis, Esq.  
John A. Stone, Esq.  
DeCotiis, FitzPatrick, Cole & Giblin, LLP  
Glenpointe Centre West  
500 Frank W. Burr Boulevard, Suite 31  
Teaneck, NJ 07666

(e) Counterparts. This Agreement may be executed in any number of counterparts and by the separate parties hereto in separate counterparts, each of which when taken together shall be deemed to be one and the same instrument.

(f) Construction. The paragraph headings contained in this Agreement are for reference purposes only and shall not affect the meaning or interpretation hereof. All of the parties to this Agreement have participated fully in the negotiation of this Agreement and accordingly, this Agreement shall not be more strictly construed against any one of the parties hereto. In construing this Agreement, the singular shall be held to include the plural, the plural shall be held to include the singular, and reference to any particular gender shall be held to include every other and all genders.

(g) Severability. If any part of this Agreement or the application thereof to any person or circumstance shall to any extent be held void or invalid or unenforceable, then the remainder of this Agreement or the application of such provision to persons or circumstances other than those as to which it is held void, invalid or unenforceable shall not be affected thereby, and each and every other provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

(h) Exhibits. All the Exhibits attached to this Agreement are incorporated in, and made a part of, this Agreement.

(i) Authority. By their execution hereof each person executing this Agreement hereby warrants that he or she has full power and authority to bind any corporation, partnership, trust, limited liability company, or other entity for which he or she purports to act hereunder.

(j) Amendment. Subject to the other provisions hereof, this Agreement may not be amended or modified except by written agreement of Grantor and Grantee. Further, no modification or amendment shall be effective unless in writing and recorded in the Public Records of Bergen County, New Jersey.

(k) Governing Law. The laws of the State of New Jersey shall govern the interpretation, validity, performance and enforcement of this Agreement. Venue for any action brought hereunder shall be proper exclusively in Bergen County, New Jersey.

(l) Waiver of Jury Trial. THE PARTIES HEREBY EACH KNOWINGLY, IRREVOCABLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHT SUCH PARTY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY ACTION, PROCEEDING OR COUNTERCLAIM BASED ON THIS AGREEMENT, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ANY AMENDMENT OR MODIFICATION OF THIS AGREEMENT, OR ANY OTHER AGREEMENT EXECUTED BY AND BETWEEN THE PARTIES IN CONNECTION WITH THIS AGREEMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY HERETO. THIS WAIVER OF JURY TRIAL PROVISION IS A MATERIAL INDUCEMENT TO THE PARTIES TO ENTER INTO THIS AGREEMENT.

(m) Not A Partnership. Nothing in this Agreement creates any relationship of trust or fiduciary relationship between Grantee and Grantor. This Agreement does not create any obligation or relationship such as a partnership, joint venture or other similar legal relationship.

(n) No Merger. Notwithstanding that fee simple title to any portion of the Grantor Parcel or Grantee Parcel may now or hereafter be owned by the same individual or entity, the easements and other terms of this Agreement shall not be deemed to be extinguished by merger or otherwise.

[Signatures appear on the following pages]

**IN WITNESS WHEREOF**, the Grantor and Grantee have caused this Agreement to be executed as of the day and year first above written.

Signed, sealed and delivered  
in the presence of:

**GRANTOR:**

**BOROUGH OF EDGEWATER**  
A Municipal Corporation

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

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

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

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

STATE OF NEW JERSEY:  
COUNTY OF BERGEN :

On this \_\_\_\_ day of \_\_\_\_\_, 2019, before me, the undersigned notary public, personally appeared the above-named \_\_\_\_\_, the duly authorized signatory on behalf Grantor, proved to me through satisfactory evidence of identification, which was his \_\_\_\_\_, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he was authorized to execute the preceding on behalf of \_\_\_\_\_ and that he signed it as his free act and deed, and as the free act and deed of Grantor for its stated purpose.

\_\_\_\_\_  
NAME:  
Notary Public  
My Commission Expires:

Signed, sealed and delivered  
in the presence of:

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

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

**GRANTEE:**

**615 RIVER ROAD PARTNERS, LLC**  
a Delaware limited liability company

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

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

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

STATE OF NEW JERSEY:  
COUNTY OF BERGEN :

On this \_\_\_\_ day of \_\_\_\_\_, 2019, before me, the undersigned notary public, personally appeared the above-named \_\_\_\_\_, the duly authorized Member of Grantee, proved to me through satisfactory evidence of identification, which was his \_\_\_\_\_, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he was authorized to execute the preceding on behalf of \_\_\_\_\_ and that he signed it as his/her free act and deed, and as the free act and deed of Grantee for its stated purpose.

\_\_\_\_\_  
NAME:  
Notary Public  
My Commission Expires:

# ***EXHIBIT A***

# STONEFIELD

## Description of Parcel to be Conveyed to Edgewater

METES & BOUNDS DEED DESCRIPTION, TAX BLOCK 77 LOT 1  
BOROUGH OF EDGEWATER  
BERGEN COUNTY, NEW JERSEY

Beginning at a concrete monument with brass disk at the intersection of the westerly line of River Road (various widths) and the southerly line of Vreeland Terrace (25 foot width) and running; thence,

- 1) Along the westerly line of River Road, South 37° 12' 05" West, a distance of 180.01 feet to a point; thence,
- 2) Still along the westerly line of River Road, South 37° 20' 55" West, a distance of 205.02 feet to a point; thence,
- 3) Still along the westerly line of River Road, South 35° 50' 35" West, a distance of 170.51 feet to a point; thence,
- 4) North 53° 28' 25" West, a distance of 196.01 feet to a point; thence,
- 5) North 36° 24' 35" East, a distance of 50.0 feet to a point; thence,
- 6) North 53° 28' 25" West, a distance of 141.93 feet to a concrete monument on the easterly line of Undercliff Avenue (50 foot width); thence,
- 7) Along the easterly line of Undercliff Avenue, North 23° 37' 35" East, a distance of 518.58 feet to a point of intersection of the said easterly line of Undercliff Avenue and the aforementioned southerly sideline of Vreeland Terrace; thence,
- 8) Along the southerly line of Vreeland Terrace, South 53° 28' 25" East, a distance of 456.84 feet to the point and place of beginning.

Containing 210,003 square feet or 4.821 acres of land.

This description has been prepared in accordance with a survey of Block 76 Lots 1 & 5, Block 77, Lot 1, Borough of Edgewater, Bergen County, New Jersey, prepared by Langan, dated July 1, 2014.

Conveyance of title to this parcel shall be subject to such state of facts and conditions as an accurate survey and title search may identify or disclose.

Phil McEntee, Jr., PLS  
New Jersey License No. 43227

[stonefieldeng.com](http://stonefieldeng.com)

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92 Park Avenue, Rutherford, NJ 07070 201.340.4468 t. 201.340.4472 f.

# ***EXHIBIT B***

# STONEFIELD

## Grantor Parcel Metes and Bounds Description

TAX BLOCK 76 LOT 1 and 5 (combined), BOROUGH OF EDGEWATER, BERGEN COUNTY, NEW JERSEY

Beginning at a point being in the southwesterly corner of the herein described premises, said point being at the intersection of the easterly line of River Road (various Widths) as depicted on a certain map entitled "Right of Way Map River Road Re-alignment, South Section" Filed in the Bergen County Clerk's Office on January 7, 2000 as Map No. 9154, and the northerly line of Lands of Yaohan International USA Corp. and running; thence,

- 1) Along the Easterly line of River Road, North  $35^{\circ} 54' 38''$  East, a distance of 49.89 feet to a point of curvature; thence,
- 2) Still along the same, northeasterly along a curve to the right, having an arc distance of 178.43 feet, a radius of 7,920.0 feet and a central angle of  $1^{\circ} 17' 27''$  and being subtended by a chord which bears North  $36^{\circ} 33' 21''$  East; a distance of 178.43 feet to a point of tangency; thence,
- 3) Still along the same, North  $37^{\circ} 12' 05''$  East, a distance of 418.97 feet to a point on the southerly line of Lands of The State of New Jersey; thence,
- 4) Along the same, South  $63^{\circ} 23' 24''$  East, a distance of 483.81 feet to a point; thence,
- 5) South  $25^{\circ} 25' 12''$  West, a distance of 90.02 feet to a point; thence,
- 6) South  $63^{\circ} 23' 25''$  East, a distance of 465.77 feet to a point at the Pierhead line as approved January 15, 1914; thence,
- 7) Along the said Pierhead Line, South  $26^{\circ} 27' 52''$  West, a distance of 35.85 feet to a point; thence,
- 8) Along the Pierhead line approved on January 12, 1931, South  $24^{\circ} 45' 19''$  West, a distance of 511.23 feet to a point on the aforementioned northerly line of Lands of Yaohan International USA Corp; thence,
- 9) Along the same, North  $63^{\circ} 23' 25''$  West, a distance of 1,083.98 feet to the point and place of beginning.

Containing 605,832 square feet or 13.908 acres of land.

This description has been prepared in accordance with a survey of Block 76 Lots 1 & 5, Block 77, Lot 1, Borough of Edgewater, Bergen County, New Jersey, prepared by Langan, dated July 1, 2014.

Phil McEntee, Jr., PLS  
New Jersey License No. 43227

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# ***EXHIBIT C***

# STONEFIELD

## Metes and Bounds Description of Use Easement Area TAX BLOCK 77 LOT 1, BOROUGH OF EDGEWATER, BERGEN COUNTY, NEW JERSEY

Beginning at a concrete monument with brass disk at the intersection of the westerly line of River Road (various widths) and the southerly line of Vreeland Terrace (25 foot width) and running; thence,

- 1) Along the westerly line of River Road, South 37° 12' 05" West, a distance of 180.01 feet to a point; thence,
  - 2) Still along the westerly line of River Road, South 37° 20' 55" West, a distance of 205.02 feet to a point; thence,
  - 3) Still along the westerly line of River Road, South 35° 50' 35" West, a distance of 170.51 feet to a point; thence,
  - 4) North 53° 28' 25" West, a distance of 40.00 feet to a point; thence,
  - 5) North 35° 50' 35" East, a distance of 170.56 feet to a point; thence,
  - 6) North 37° 20' 55" East, a distance of 204.49 feet to a point; thence,
  - 7) North 37° 12' 05" East, a distance of 179.49 feet to a point in the aforementioned southerly line of Vreeland Terrace; thence,
- 1) Along the said southerly line of Vreeland Terrace, South 53° 28' 25" East, a distance of 40.00 feet to the point and place of beginning.

Containing 22,222 square feet or 0.510 acres of land.

This description has been prepared in accordance with a survey of Block 76 Lots 1 & 5, Block 77, Lot 1, Borough of Edgewater, Bergen County, New Jersey, prepared by Langan, dated July 1, 2014.

The easement area described herein shall be subject to such state of facts and conditions as an accurate survey and title search may identify or disclose.

Phil McEntee, Jr., PLS  
New Jersey License No. 43227

[stonefieldeng.com](http://stonefieldeng.com)

92 Park Avenue, Rutherford, NJ 07070 201.340.4468 t. 201.340.4472 f.

# ***EXHIBIT D***

## **Western Parcel Easement Improvements**

- The Redeveloper shall have the right but not the obligation to widen River Road to provide additional lane(s) for use as signalized turning lane(s) in River Road into and from the Eastern and Western Parcels.
- In addition to any turning lane on River Road, the Redeveloper shall create an additional lane of up to 15' wide for use by NJ Transit buses and other transit vehicles including without limitation ferry buses for loading and unloading of passengers so that traffic on River Road is not impeded.
- Bus shelters and/or such other passenger improvements that the Redeveloper may elect, but shall not be obligated, to construct.
- The Redeveloper shall have the right but not the obligation to create a pedestrian bridge over River Road by redeveloping the existing pipe bridge and creating connections to the bridge from the grade level via escalators, stairways and/or elevators to facilitate, among other public purposes, the linking of the bus stops on the Western and Eastern Parcels.
- Any other similar public uses for transportation and/or pedestrian use that the Redeveloper may reasonably request.
- The Borough agrees to reasonably cooperate with the Redeveloper to secure any permit applications with other governmental agencies that may reasonably be required to construct the improvements set forth on this Exhibit G.

# **EXHIBIT D**

Prepared by:

\_\_\_\_\_  
Cory Mitchell Gray

**BARGAIN AND SALE DEED  
WITH COVENANTS AGAINST GRANTOR'S ACTS  
(Containing Deed Restrictions and Reservations of Rights)**

This Deed is made as of \_\_\_\_\_, 2019, between 615 RIVER ROAD PARTNERS, LLC, whose address is The Maxal Group, c/o Greenberg Traurig, LLC, 500 Campus Drive, Suite 400 Florham Park, New Jersey 09732, Attention: Steven D. Fleissig, Esq. and Cory Mitchell Gray, Esq. (the "Grantor") and The Borough of Edgewater, whose address is 55 River Road, Edgewater, New Jersey 07020, Attn. Borough Clerk (the "Grantee").

**Transfer of Ownership.** The Grantor grants and conveys (transfers ownership of) the property described below to the Grantee. This transfer is made in exchange for \$1.00 and other good and valuable consideration.

**Tax Map Reference.** (N.J.S.A. 46:15-1.1) Borough of Edgewater, Block Number 77, Lot 1 (being a portion of street address 615 River Road, Edgewater, New Jersey 07020).

**Property.** The property consists of the land and all the buildings and structures on the land located on the real property identified and described on Exhibit A hereto which is incorporated herein by reference hercin.

**Promises by Grantor.** The Grantor promises that the Grantor has done no act to encumber the Property. This promise is called a "covenant as to grantor's acts" (N.J.S.A. 46:4-6). This promise means that the Grantor has not allowed anyone else to obtain any legal rights which affect the Property (such as making a mortgage or allowing a judgment to be entered against the Grantor).

**DEED RESTRICTIONS: This Deed and the Property are subject to the following deed restrictions which run with and burden the Property:** For a period of fifteen (15) years from the date hereof the Property may be used only for public purposes including, but not limited to public education, and the Property shall not be used for a Department of Public Works or equivalent sanitation or public health operation, a sewer authority, a drug or alcohol treatment facility, a drug distribution or needle exchange facility, any loud or noxious public use, bars, liquor stores, cannabis uses and/or dispensaries, and/or sexually-oriented uses.

**RESERVATION OF RIGHTS AND GRANT OF EASEMENTS:** This Deed and the Property are subject to, without limitation, the following reservations of rights and easements in favor of Grantor, which rights and easements run with and burden the Property:

A. That certain Construction Easement Agreement dated [REDACTED] 2019 between 615 River Road Partners, LLC and the Borough of Edgewater, New Jersey, a true and correct copy of which is annexed hereto as Exhibit B and which is to be recorded with the Bergen County Register of Deeds.

B. That certain Permanent Easement Agreement dated [REDACTED] 2019 between 615 River Road Partners, LLC and the Borough of Edgewater, New Jersey, a true and correct copy of which is annexed hereto as Exhibit C and which is to be recorded with the Bergen County Register of Deeds.

The Easements set forth in Exhibit B and Exhibit C hereto are in full force and effect upon delivery of this Deed to the Borough, without regard to whether the said easements are independently executed and/or recorded with the Bergen County Register of Deeds.

This Deed and conveyance are subject to and with the benefit and burden of all rights, easements, agreements and restrictions of record, insofar as the same are now in force and applicable.

This Deed is signed and attested to by the Grantor's authorized member as of the date on the top of the first page.

**IN WITNESS WHEREOF**, Grantor has duly executed this deed the day and year first above written.

**GRANTOR:**

**615 RIVER ROAD PARTNERS, LLC**

By:

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

Title:

STATE OF NEW JERSEY:  
COUNTY OF BERGEN :

On this \_\_\_\_ day of \_\_\_\_\_, 2019, before me, the undersigned notary public, personally appeared the above-named \_\_\_\_\_, the duly authorized Member of Grantor, proved to me through satisfactory evidence of identification, which was his \_\_\_\_\_, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he was authorized to execute the preceding on behalf of \_\_\_\_\_, that he signed, sealed and delivered this Deed as his voluntary act and deed on behalf of Grantor; and, that he made this Deed for other good and valuable consideration as the full and actual consideration paid or to be paid for the transfer of title (consideration is defined in N.J.S.A. 46:15-5).

\_\_\_\_\_  
NAME:  
Notary Public  
My Commission Expires: