

## REDEVELOPMENT AGREEMENT

**THIS REDEVELOPMENT AGREEMENT** (this “Agreement”) is entered this \_\_\_ day of June, 2020 by and between the **BOROUGH OF FRENCHTOWN** (the “Borough”), a municipal corporation and body politic of the State of New Jersey, having its principal office at 29 Second Street, Frenchtown, New Jersey 08822, and **COUNTRY CLASSICS AT FRENCHTOWN, LLC** (“Redeveloper”), a New Jersey limited liability company established, operated and authorized to do business within the State of New Jersey, having a business office located at 36 Brower Lane, Hillsborough, NJ 08844-1270(hereinafter collectively referred to as the “Parties”, with each a “Party”).

### **RECITALS**

**WHEREAS**, the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1, et seq., as amended and supplemented (“LRHL”), provides a process for municipalities to participate in the redevelopment and improvement of areas in need of redevelopment; and

**WHEREAS**, the Borough acts as redevelopment entity for the purpose of implementing redevelopment plans and carrying out redevelopment projects within the Borough pursuant to the LRHL; and

**WHEREAS**, N.J.S.A. 40A:12A-8 authorizes the Borough to enter into contracts or agreements for the planning, construction or undertaking of any development project or redevelopment work in an area in need of redevelopment; and

**WHEREAS**, on July 2, 2014, the Borough Council adopted Resolution No. 2014-75, authorizing the Planning Board to undertake a non-condemnation area in need of redevelopment preliminary investigation to determine if the properties known as Block 3, Lots 1 and 2 and Block 10, Lot 1 and a portion of the Eighth Street right-of-way (the “Property”) would qualify as an Area in Need of Redevelopment pursuant to the LRHL; and

**WHEREAS**, on September 24, 2014, the Planning Board held a properly noticed public hearing at which the Borough planner presented findings resulting in a determination to recommend to the Council that the Property be designated as a non-condemnation area in need of redevelopment, memorialized by Resolution No. 2014-23, adopted on October 22, 2014; and

**WHEREAS**, on September 24, 2014, pursuant to Resolution No. 2014-96, attached hereto as **Exhibit A**, the Council designated the Property as an Area in Need of Non-condemnation Redevelopment (the “Redevelopment Area”); and

**WHEREAS**, on September 12, 2017 via Ordinance No. 797, the Council adopted a redevelopment plan providing for the redevelopment of the Redevelopment Area; and

**WHEREAS**, on August 9, 2018 the Council retained Maser Consulting P.A. to prepare a new Redevelopment Plan (the “2019 Redevelopment Plan”), which Redevelopment Plan was approved by Council on August 7, 2019 via Ordinance No. 833, attached hereto and incorporated herein as **Exhibit B**; and

**WHEREAS**, Redeveloper is the owner of Block 3, Lots 1 and Block 10, Lot 1 and the contract purchaser of Block 3, Lots 1 and 2 all located in the Borough (collectively the “Property”) and has diligently made various efforts towards development of an inclusionary residential project, including property acquisition, retention of a team of consultants in law, engineering, environmental consulting, architecture, design, finance, and real estate development, who have collaborated with the Borough and its professionals in order to pursue an inclusionary residential project; and

**WHEREAS**, the Planning Board held a properly noticed public hearing, which opened on October 23, 2019 and granted approval of Redeveloper’s proposed development of the Property in accordance with the 2019 Redevelopment Plan attached on **Exhibit B** and the Preliminary Plat and Site Plan for Block 3, Lots 1 & 2, and Block 10, Lot 1 situated in Borough of Frenchtown, Hunterdon County, New Jersey prepared by Van Cleef Engineering Associates, LLC dated June 19, 2019 (the “Preliminary Plat”) attached hereto as **Exhibit C**, which includes a total of 111 residential units consisting of 92 apartments within two buildings and 19 duplex/triplex units, to be developed (the “Project”), which approval is memorialized by Resolution No. 2020-09, signed on January 22, 2020, which resolution is attached on **Exhibit D** (“Planning Board Resolution”); and.

**WHEREAS**, the Project shall provide 17 affordable housing units and 94 market rate units.

**WHEREAS**, the Project and the Property, will be subject to the 2019 Redevelopment Plan, and the Preliminary Plat is intended to comply with the requirements of the 2019 Redevelopment Plan; and

**WHEREAS**, the Borough recognizes the credentials, experience and financial capability of Redeveloper to design and construct the Project; and

**WHEREAS**, the Borough and Redeveloper desire to enter into this Agreement.

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

**ARTICLE 1**  
**DEFINITIONS**

**1.1. Defined Terms.**

The Parties agree that, unless the context otherwise specifies or requires, in addition to the terms defined above, the following terms shall have the respective meanings specified below and such definitions shall be applicable equally to the singular and plural forms of such terms.

“**Applicable Law**” means any and all federal, state, county and local laws, rules, regulations, statutes, ordinances, permits, resolutions, judgments, orders, decrees, directives, interpretations, standards, licenses, approvals, and similarly binding authority, applicable to the

Project or the performance by the Parties of their respective obligations or the exercise by the Parties of their respective rights in connection with this Agreement.

**“Business Day”** means any day other than a Saturday, a Sunday, or a day on which banks generally and public offices are not open under the laws of the State of New Jersey.

**“Certificate of Completion”** means a written certificate, in recordable form, in a form substantially as set forth in **Exhibit E**, issued by the Borough in accordance with Section 4.2 of this Agreement, which shall acknowledge that Redeveloper has performed all of its duties and obligations pursuant to this Agreement relative to the Project, or a certain unit, aspect or portion of the Project, if applicable, whose issuance shall serve to release the Project, or relevant unit, aspect or portion of the Project, and Redeveloper from all terms, obligations and conditions contained in this Agreement and in the Applicable Law.

**“Certificate of Occupancy”** means a Certificate of Occupancy, as defined in the Uniform Construction Code at N.J.A.C. 5:23-1.4, and as may be issued by the Borough relative to the Project, or a particular unit, aspect or portion of the Project, if applicable, indicating that the Project, or such unit, aspect or portion of the Project, has been completed in accordance with the construction permit, the Uniform Construction Code and any Applicable Law.

**“Commence Construction,” “Commencement of Construction,” or “Commencement Date”** shall mean the date, after this Agreement, on which any work to be performed in connection with Redeveloper’s Project is commenced including, without limitation, demolition, clearing, grading, or on- or off-site or on-tract or off-tract work.

**“Completion,” “Complete” or “Completed”** means: (i) that all work related to the Project in its entirety has been completed, acquired and installed in accordance with the terms of this Agreement, the 2019 Redevelopment Plan, the Government Approvals, and in compliance with all Applicable Laws so that the developed Property may be used and operated under the applicable provisions of this Agreement, and (ii) that all permits, licenses and approvals required for the Project are in full force and effect. Completion shall be evidenced by the issuance of a Certificate of Completion. Subject to the Borough’s reasonable discretion, the Project may be deemed “Complete” notwithstanding that certain immaterial portions of the work remain to be completed, as long as (a) Redeveloper has prepared and delivered to the Borough a list of items requiring completion or correction (“punch list”) by Redeveloper in order for Redeveloper to fully comply with the terms of this Agreement, (b) such “punch list” items have been reasonably agreed to by the Borough, and (c) such “punch list” items are reasonably capable of being completed within ninety (90) days of the date of Completion. Punch List items shall not prohibit the issuance of a temporary Certificate of Occupancy.

**“Construction Phase”** means the sequence in the Project from the issuance of a building permit for the construction of the Project until the issuance of a Certificate of Occupancy.

**“Construction Schedule”** means the construction schedule attached as **Exhibit J**.

**“Effective Date”** means the date upon which this Agreement has been executed by Redeveloper or the Borough, whichever is last.

**“Event of Default”** shall have the meaning ascribed to such term in Article 6 herein.

**“Final Approvals”** shall have the meaning set forth in N.J.S.A. 40:55D-4 and shall mean un-appealable and any and all appeals filed shall have been denied.

**“Governing Body”** means the Borough Common Council of the Borough of Frenchtown.

**“Governmental Approvals”** means all Final Approvals of any kind necessary to construct the Project, including any reviews, consents, authorizations, permits, licenses, leases, easements, grants, other approvals of any kind or certificates required and issued or granted by any Governmental Authority having jurisdiction necessary to implement and Complete the Project in accordance with the 2019 Redevelopment Plan, Applicable Law and this Agreement.

**“Governmental Authorities” (or individually, a “Governmental Authority”)** means any federal, state, county or local agency, board, department, commission, authority, court, or tribunal and any successor thereto, exercising executive, legislative, judicial, or administrative functions of or pertaining to government, and any public utility, including, without limitation, the Borough and the State of New Jersey or any other quasi-governmental agency having jurisdiction of the subject matter. Governmental Approvals shall include issuance of a building permit(s) authorizing physical construction of new development upon the Property.

**“Impositions”** means all taxes, payments in lieu of taxes, assessments (including, without limitation, all assessments for public improvements or benefits), water, sewer or other rents, rates and charges, connection fees, license fees, permit fees, inspection fees and other authorization fees and charges, in each case, whether general or special, which are levied upon any portion of the Property or on any of the Improvements constructed thereon.

**“Improvements”** means all buildings, structures and appurtenances including, without limitation, facilities and amenities, telecommunications equipment, surface parking infrastructures, roads, fill, utilities, catch basins, curbs, site lighting, traffic striping, signage and demarcations, fire hydrants, retaining walls, sidewalks, walkways, landscaping, open space treatments and other improvements constructed on or installed upon or within, or to be constructed on or installed upon or within, the Property and the streets immediately abutting the Property, pursuant to the Preliminary Plat, as may be modified during the approval process. The Borough, the Planning Board and/or the Governing Body shall not require Redeveloper to provide any improvements beyond those set forth in the site plan as specifically approved as part of the Final Approvals.

**“Infrastructure Improvements”** shall mean the preparation and installation on, in, under and to the Property of site work and the building foundations, on-site and off-site roads and improvements required in connection with permits and approvals for such improvements, all consistent with the requirements of the Governmental Approvals and Applicable Laws.

**“Off-tract”** means all Improvements not on the Property, and any incidental work associated therewith, necessary for the construction of the Project or Project Improvements, and/or as may be required in connection with Governmental Approvals, including, but not limited to, environmental remediation, roadways, storm drainage, sewers and utilities, wetlands mitigation, filling land, material storage and other similar ancillary off-site functions.

**“Performance or Maintenance Guarantees”** means the performance or maintenance guarantees required for the Project as defined by the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq., and all amendments thereto including specifically and without limitation the 2018 amendments to N.J.S.A. 40:55D-53 (“MLUL”)

**“Planning Board”** means the Planning Board of the Borough of Frenchtown.

**“Project”** shall be as defined in the Recitals of this Agreement and shall generally conform to the Preliminary Plat.

**“Property”** shall have the meaning ascribed to such term in the Recitals hereto.

**“Public Improvements”** means any Infrastructure Improvements and upgrades such as streets, grading, pavement, gutters, curbs, sidewalks, street lighting, surveyors’ monuments, water mains, culverts, storm and sanitary sewers, drainage structures, erosion control and sedimentation devices, open space, and landscaping required under Final Approvals memorialized by the Planning Board that will be dedicated to the Borough pursuant to Applicable Law.

**1.2 Interpretation and Construction.** In this Agreement, unless the context otherwise requires:

(a) The terms “hereby”, “hereof”, “hereto”, “herein”, “hereunder” and any similar terms, as used in this Agreement, refer to this Agreement.

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

(c) Unless otherwise noted, the terms “include,” “includes” and “including” when used in this Agreement shall be deemed to be followed by the phrase “without limitation.”

(d) Any headings preceding the texts of the several Articles and Sections of this Agreement, and any table of contents or marginal notes appended to copies hereof, shall be solely for convenience of reference and shall not constitute a part of this Agreement, nor shall they affect its meaning, construction or effect. Any references to Articles and Sections in this Agreement shall be deemed to be references to the Articles and Sections in this Agreement except or unless the context or express terms of this Agreement may otherwise provide, specify or dictate.

(e) Counting of Days; Saturday, Sunday or Holiday. The word “days” as used in this Agreement shall mean calendar days unless a contrary intention is stated, provided that if the final date of any period provided in this Agreement for the performance of an obligation or for the taking of any action falls on a day other than a Business Day, then the time of such period shall be deemed extended to the next Business Day.

(f) Any reference to Applicable Laws or any Applicable Law shall be read to mean the Applicable Law as amended from time to time except where Redeveloper’s obligation to comply was satisfied prior to any such amendment, in which case such amendment shall be inapplicable.

(g) The Recitals contain statements of fact and/or expressions of intention and are incorporated into and made part of the substance of this Agreement.

## **ARTICLE 2 DESCRIPTION OF THE PROJECT**

**2.1. Purpose; Designation as Redeveloper.** The purpose of this Redevelopment Agreement is to set forth the respective rights, obligations, conditions and agreements of the Borough and Redeveloper in connection with the development of the Project at the Property by Redeveloper. The Borough hereby affirms and agrees that Redeveloper is designated and appointed as the exclusive redeveloper of the Property. In connection with such designation and appointment, Redeveloper has the exclusive right to perform and to have others perform any and all redevelopment activities on and about the Property as authorized by the 2019 Redevelopment Plan and all Governmental Approvals. Each of the Parties agrees that all redevelopment on and about the Property will only be authorized and may only be undertaken by Redeveloper under the framework and in accordance with the terms of this Agreement and the 2019 Redevelopment Plan. Further, the Borough agrees that, absent an Event of Default by Redeveloper, it will not negotiate or entertain for the provision of another redeveloper or developer for the Property or any portion thereof.

**2.2. The Project.** The Project may only include those uses permitted under the 2019 Redevelopment Plan, as approved by the Governmental Approvals. The Project shall be constructed as provided by the Construction Schedule.

### **2.3. Qualified Entities.**

**A.** The Project will, at Redeveloper's option, be developed, in whole or in part, by (i) Redeveloper, (ii) any partnership, corporation, limited liability company or other legal entity to which Redeveloper and/or any affiliate of Redeveloper possesses a controlling interest; or (iii) other "Qualified Entity" (defined below) as determined by the Borough, in its reasonable discretion, pursuant to this section.

**B.** A "Qualified Entity" is a partnership, corporation, limited liability company or other legal entity which has demonstrated to the satisfaction of the Borough that:

- (i) It has the financial capacity to undertake the development, construction and operation of the Property in question, including, without limitation, the capacity to obtain financing, to provide appropriate security (such as performance and completion bonds as required by law) and to otherwise satisfy its obligations with respect to the development of the Property;
- (ii) It is able to comply with and conform to all of the provisions of this Agreement as they relate to the development of the Property in the Redevelopment Area and expressly assumes all such obligations;
- (iii) No petition under federal bankruptcy laws or any state insolvency law has been filed by or against, nor has a receiver, fiscal agent or similar officer been appointed by a court for the business or property of such entity, or any

partnership in which such entity was or is a general partner or any entity in which such entity was or is an officer or principal manager and the holder, directly or indirectly of an ownership interest in excess of ten (10%) percent (unless, in the case of an involuntary proceeding, such proceeding was terminated within sixty (60) days of its commencement) within the ten (10) full calendar years preceding the date of submission of such entity's application for consideration as a Qualified Entity;

- (iv) Such entity and its principals, directors, officers, partners, shareholders, and members, individually, have not been convicted in a criminal proceeding, and none of them are a named subject in a pending criminal proceeding, (excluding traffic violations or other similar minor offenses), and, to the best of the knowledge and belief of the principals, directors, officers, partners, shareholders, and members of such entity, is not a target of or a potential witness in a criminal investigation;
- (v) Such entity and its principals, directors, officers, partners, shareholders, and members, individually, have not been, directly or beneficially, a party to or beneficiary of any contract or agreement with the Borough or Redeveloper which has been terminated due to a default by such individual, partnership or entity or which is currently the subject of a dispute in which the Borough or Redeveloper alleges such default, nor is such individual, partnership or entity an adverse party in any currently pending litigation involving the Borough or Redeveloper;
- (vi) Such entity and its principals, directors, officers, partners, shareholders, and members, individually, have not been found in any civil or criminal action in or by a court or agency of competent jurisdiction to have violated any Federal or State law or regulation relating to the sale of securities or commodities or been enjoined from engaging in any trade or business for any reason;
- (vii) Such entity and its principals, directors, officers, partners, shareholders, and members, individually, have not violated any Borough, State, or Federal ethics law and entering into the proposed transaction with Redeveloper and the Borough will not cause any such violation or result in a conflict of interest; and
- (viii) It shall comply with any other conditions that the Borough may find reasonably necessary in order to achieve and safeguard the purposes of the 2019 Redevelopment Plan.

**C. Redeveloper as Qualified Entity.** Redeveloper has presented evidence of its credentials as a Qualified Entity and further represents and warrants herein that it meets the above criteria for a Qualified Entity and, based upon such evidence and representation, Redeveloper is hereby deemed by the Borough as a Qualified Entity.

**D. Qualified Entity Approval.** Redeveloper designates to the Borough two entities, CC at Frenchtown FS Urban Renewal LLC (“For Sale Redeveloper”), to own and redevelop nineteen (19) duplex and triplex units located in Block 3 on Lots 1.02, 1.03, 1.04, 1.05, 1.06, 1.07, 1.08, 1.09, 1.10, 1.11, 1.12, 1.13, 1.14, 1.15, 1.16, 1.17, 1.18, 1.19, and 1.20 of the Preliminary Plat (the “For Sale Lots”) and CC at Frenchtown Apt Urban Renewal LLC (“Apartment Redeveloper”) to own and redevelop ninety two (92) apartments in two buildings located on Block 3, Lot 1.01 on the Preliminary Plat (the “Apartment Lot”). The For Sale Redeveloper, collectively with the Apartment Redeveloper are referred to herein as the “Qualified Entities”. Redeveloper desires the Qualified Entities be approved by the Borough as a Qualified Entity. Redeveloper is the sole owner of the Qualified Entities. The Borough hereby approves each of the Qualified Entities. as a Qualified Entity. This approval by the Borough of each of the Qualified Entities as a Qualified Entity shall authorize such entity to be considered a Redeveloper.

### ARTICLE 3

#### ENVIRONMENTAL STANDARDS AND ADDITIONAL APPROVALS

**3.1. Remediation to Residential Standards.** Any remediation of the Property will meet applicable residential standards and allow for residential use. The Property shall be remediated to the restricted use standard for soil, groundwater or surface water applicable to residential use to the maximum extent permitted pursuant to N.J.S.A. 58:10B-12 and the regulations promulgated thereunder. Remediation shall be performed with the use of such Engineering Controls and Institutional Controls (as those terms are defined at N.J.S.A. 58:10B-1 and N.J.A.C. 7:26E-1.8) that incorporate the improvements already contemplated under the 2019 Redevelopment Plan, allow for the construction, development, and use of the Property as residential units, and meet applicable requirements for a Presumptive Remedy or an Alternative Remedy under NJDEP’s Technical Requirements for Site Remediation, N.J.A.C. 7:26E.

**3.2 Evaluation Regardless of No Further Action Letter.** Areas of the Property that are the subject of a prior No Further Action Letter will not be excluded from further reasonable evaluation by the Redeveloper and, if necessary and required by applicable law without taking into consideration any shield of responsibility that may otherwise be afforded by the No Further Action Letter, remediation. Any such remediation shall be implemented consistent with the Remediation Action Work Plan for the Property and the terms and provisions hereof.

**3.3 Financial Security with Department of Environmental Protection.** Before the release of the maintenance bond required in the Developers Agreement attached as **Exhibit L**, Redeveloper will establish, or cause to be established, financial assurance as may be required by the NJDEP and if applicable to secure a remedial action permit from the New Jersey Department of Environmental Protection in connection with implementation of a restricted use remediation with the use of engineering and institutional controls, in accordance with the requirements of NJDEP’s Administrative Requirements for the Remediation of Contaminated Sites, N.J.A.C. 7:26C-7.10.

**3.4 Notice.** Attached as **Exhibit F** is a draft form of notice that Redeveloper will include in all leases of the Property. Attached as **Exhibit G** is the NJDEP Model Deed Notice (“Model Form”). The Redeveloper and the LSRP will tailor the Model Form to each Lot based



on the actual conditions on the Lot once the remedial action work plan is submitted to the NJDEP. The Redeveloper will record against each Lot the applicable tailored Deed Notice prior to the delivery of a Deed from the Redeveloper conveying ownership in a Lot in the Property.

**3.5 Other Environmental Conditions.** In addition to complying with all Applicable Law and permits issued for the Project, the Redeveloper shall comply with the following:

A. Within seven (7) days of the Redeveloper making any environmental or remediation filing with the applicable federal or state agency, submit a true and complete copy of that filing to the Clerk of the Borough of Frenchtown.

B. Authorize the Licensed Site Remediation Professional (“LSPP”) to perform inspections of the Property if any material changes or environmental findings occur during construction of the Project as may be required by Applicable Law, to ensure appropriate measures, including any corrective action if necessary, are being taken to protect the health, safety and welfare of the public, including minimizing the migration of contaminated soil from the Property, in accordance with Applicable Law.

C. Authorize the LSPP to provide remediation progress reports to the Borough of Frenchtown Common Council of all material changes in environmental activity.

D. Provide a notice to all tenants of the Apartment Lot and, to the extent the cap is located on a portion of the tri-plex lots being Block 3, Lots 1.02, 1.03 and 1.04 (“Tri-Plex Lots”), the Tri-Plex Lots, of the capped areas in the Project to inform residents not to disturb the cap on the Apartment Lot and Tri-Plex Lots, if applicable, to the extent and in the manner required by Applicable Law.

E. Construct, maintain, repair or replace the cap to be constructed at the Property in accordance with Applicable Law, including posting or maintaining any financial assurance required by the applicable regulatory agency.

F. Tenants of the Apartment Lot will be provided the notice attached as **Exhibit F** in their lease, and initial purchasers of the For Sale Lots will be provided with the notices attached as **Exhibits G**, which will remain in the chain of title. All notices will be signed by the party receiving it, retained in the Redeveloper’s records, and made available to the Borough upon request.

G. Submit to the Frenchtown Public Safety Director, Borough Council, and the Frenchtown Elementary School Principal on the first of each month a summary of anticipated construction and environmental activity at the Project during the month, and timely respond to their inquiries.

H. In addition, to encourage and maintain a productive dialog with the Borough during construction, prior to the start of construction of the Project, submit to the Borough of Frenchtown Public Safety Director all emergency contact information for the Redeveloper, and during construction inform the Public Safety Director of any conditions or incidents on the Project that

arises, in order to mitigate risks to the health, safety and welfare, and continue to correspond as necessary.

**3.6 Other Governmental Approvals.** It is acknowledged by the Parties that it may be necessary for Redeveloper to obtain Governmental Approvals or permits from other governmental agencies in order to undertake development of the Project. Redeveloper agrees that it will take all necessary steps to prepare and apply for and proceed diligently to obtain any needed permits and Governmental Approvals for the Project in a timely fashion and utilizing commercially reasonable efforts. The Borough agrees to provide any pertinent information in its possession and to provide any reasonable assistance, without cost or expense to the Borough, which may be required of it to enable Redeveloper to properly apply for and obtain such permits or Governmental Approvals in a timely fashion, including making applications in the name of the Borough if requested by Redeveloper or if required by law to do so. The Borough agrees to support and endorse any applications for any Governmental Approvals required for the Project. Redeveloper shall, upon written request from the Borough, report to the Borough on the status of such applications and Governmental Approvals, but in no event shall Redeveloper be required to report to the Borough more often than once every calendar quarter.

**3.7 Uniform Housing Affordable Control.** The 17 affordable housing units in the Project will comply with the Uniform Housing Affordable Control Regulations N.J.A.C. 5-80-26.1, et seq (“UHAC”), including all marketing provisions. The apartment buildings will be subject to a deed restriction in the form of **Exhibit H**. The Borough and the Redeveloper will enter into an agreement to administer the affordable housing units pursuant to a Professional Services Agreement in the form of **Exhibit I** and the Redeveloper will be solely responsible for the Administrative Agent’s fees and costs.

**3.8 Planning Board Approval.** The Redeveloper will comply with all of the conditions in Planning Board Resolution No. 2020-09 attached as Exhibit C (“PCR No.2020-09”), and all documents and agreements entered into in satisfaction of such conditions. PCR No. 2020-09 generally provides: Paragraph 2 requiring a deed restriction prohibiting the duplex or triplex garages from being converted to other uses and prohibiting the loft on the third floors to be used as a sleeping area; Paragraph 3C providing for certain improvements to Eighth and Harrison Streets; Paragraph 4 providing for the phasing of the construction of market to affordable units, including bedroom and income distribution, all of the foregoing in accordance with the Planning Board Resolution.

## **ARTICLE 4 CONSTRUCTION OF PROJECT**

**4.1. Suspension of Construction.** Redeveloper intends to develop the Property pursuant to the Construction Schedule attached as **Exhibit J**. If Redeveloper shall abandon or substantially suspend construction activities on the Project for a period in excess of ninety (90) consecutive days for reasons other than an event of Force Majeure, and the suspension or abandonment is not cured, remedied or explained in writing within thirty (30) calendar days after written demand by the Borough to do so, or such a period of time as reasonably necessary and appropriate, then such shall constitute an Event of Default by Redeveloper under this Agreement and the Borough shall have the right to terminate this Agreement and Redeveloper’s designation as the exclusive

redeveloper of the Property and seek any remedies pursuant to this Agreement and all other remedies available to the Borough at law or in equity, including the right to seek damages and specific performance to have the Property restored.

#### **4.2. Certificates of Occupancy and Certificate of Completion.**

**A.** Upon Completion of the construction of the Improvements on a portion of the Project and/or each unit, as may be applicable, in accordance with the Governmental Approvals, Redeveloper may apply to the Borough for a Certificate of Occupancy for the Project, portion of the Project or completed unit(s).

**B.** Upon Completion of the overall Project, or duplex or triplex unit (a “unit”), for purposes of releasing the restrictions referenced in this Agreement, and under the Applicable Law(s), the Borough shall promptly issue a Certificate of Completion in proper form for recording, which shall acknowledge that Redeveloper has performed all of its duties and obligations under this Agreement and has completed construction of the Project, or the applicable phase or unit, in accordance with the requirements of the Applicable Law(s), the 2019 Redevelopment Plan and this Agreement. Receipt of Certificates of Occupancy for the entirety of the Project, or a phase or unit, shall evidence that the Project, or phase, or unit is Complete and a Certificate of Occupancy shall be issued promptly thereafter. The Certificate of Completion shall constitute a recordable conclusive determination of the satisfaction and termination of the restrictions, obligations and covenants contained in this Agreement and in the 2019 Redevelopment Plan with respect to Redeveloper’s construction of the Project. Upon issuance of a Certificate of Completion: (a) the agreements, restrictions, and covenants set forth in Article 5 hereof shall cease and terminate, except for those covenants and restrictions set forth in Article 5 hereof which shall survive in accordance with the terms of Article 5, and (b) the conditions determined to exist at the time the Property was determined to be in need of redevelopment shall be deemed to no longer exist. If the Borough shall fail or refuse to provide the Certificate of Completion within thirty (30) days after written request by Redeveloper, the Borough shall provide to Redeveloper a written statement setting forth in detail the respects in which it reasonably believes that Redeveloper has failed to complete the Project, or portion thereof, in accordance with the provisions of this Agreement or is otherwise in default under this or any other applicable agreement and what reasonable measures or acts shall be necessary in order for Redeveloper to be entitled to a Certificate of Completion. Upon receipt of the Certificate of Completion, Redeveloper may record it in the Office of the Hunterdon County Clerk. Upon Completion of the entire Project, or the last phase or last unit (if applicable), for purposes of releasing the restrictions referenced in this Agreement, and under the Applicable Law(s), the Borough shall promptly issue a Certificate of Final Completion in proper form for recording, which shall acknowledge that Redeveloper has performed all of its duties and obligations under this Agreement and has completed construction of the Project in accordance with the requirements of the Applicable Law(s), the 2019 Redevelopment Plan and this Agreement. Other than evidencing the final completion of the Project, the Certificate of Final Completion shall be treated as a Certificate of Completion with respect to the procedures outlined in this Section 4.2.

**4.3. Design Elements.** The Project shall comply with the requirements in the 2019 Redevelopment Plan and the Government Approvals, including but not limited to the building lot

and yard requirements, parking and design standards, subject to the variances granted in the Planning Board Resolution.

#### **4.4. Contribution to Costs and Financial Obligations.**

**A. Escrow Fees.** It is acknowledged that Redeveloper posted an escrow in the initial amount of Twelve Thousand Five Hundred and 00/100 Dollars (\$12,500.00) held by the Borough to cover the Borough's professional fees associated with the Project that are not addressed by provisions of the MLUL pursuant to an Escrow Agreement between the Borough and Redeveloper dated August 8, 2018 (the "**Escrow Agreement**"). The escrow shall be held by the Borough in accordance with the terms and conditions of the Escrow Agreement, a copy of which is attached as **Exhibit K**.

**B. Planning Board Costs.** Redeveloper shall post with the Planning Board such escrow fees as necessary to reimburse the Planning Board for its professional, expert, engineering and legal costs incurred in the application review and determination process in accordance with the provisions of the MLUL.

**C. Sewer Connection Fees.** All sewer connection fees to serve a building on a For Sale Lot or a building on the Apartment Lot are due prior to the issuance of the first Building Permit for such building.

**D. Performance and Maintenance Guarantees.** Redeveloper shall enter into a Developers Agreement with the Borough in the form of **Exhibit L** providing for Redeveloper's completion of the public improvements for the Project and posting of related Performance and Maintenance Guarantees.

**4.5. Financial Agreement.** The Parties are concurrently with this Agreement entering into two Financial Agreements under N.J.S.A 40A:20-1 et seq. (the "**Long Term Tax Exemption Law**") (the "Financing Agreements"); one between the Borough and the For Sale Redeveloper regarding the For Sale Lots; the second between the Borough and the Apartment Redeveloper regarding the Apartment Lot. The Financing Agreements are set forth on **Exhibit M**. Subject to applicable notice and cure periods, an Event of Default under a Financial Agreement shall constitute an Event of Default under this Agreement, and an Event of Default under this Agreement shall constitute an Event of Default under the Financial Agreements.

**4.6. Maintenance of the Redevelopment Area.** Following the Commencement Date, Redeveloper will maintain all areas of the Property, including the buildings, parking areas, landscaping, and all such issues identified in the property maintenance code of the Borough until such time as Redeveloper no longer owns or leases the Property or part thereof.

**4.7. Access to the Property.** During the course of construction of the Project Improvements, the Borough and its authorized representatives, upon reasonable notice, shall have the right to enter the Redevelopment Area during regular business hours to inspect the Project Improvements and any and all work in progress for the purpose of furthering its interest in this Agreement. In no event shall the Borough's inspection of the Project Improvements (or any construction activities related thereto) be deemed acceptance of the work or be deemed to waive

any right the Borough has under this Agreement, nor shall it create any hardship upon Redeveloper and/or interfere with or cause delay to construction.

**4.8. Court Consent.** The Borough agrees to incorporate and approve inclusion of the Project into its Fair Share Plan and Housing Element and its Affordable Housing Plan to be approved by the court having jurisdiction over its Fair Share Plan and Housing Element and Affordable Housing Spending Plan.

## **ARTICLE 5 REPRESENTATIONS AND WARRANTIES**

**5.1. Redeveloper's Representations and Warranties.** Redeveloper hereby represents, warrants to and covenants with the Borough that:

**A. Organization.** Redeveloper is a limited liability company duly formed, validly existing and in good standing under the laws of the State of New Jersey with all requisite power and authority to enter into this Agreement

**B. Authorization; No Violation.** The execution, delivery and performance by Redeveloper of this Agreement has been duly authorized by all necessary action and will not violate the certificate of formation, operating agreement or any other formation or operating document of Redeveloper or result in the breach of or constitute a default under any loan or credit agreement, or other material agreement to which Redeveloper is a party or by which Redeveloper may be bound or affected.

**C. Valid and Binding Obligations.** The person executing this Agreement on behalf of Redeveloper has been duly authorized and empowered and this Agreement has been duly executed and delivered by Redeveloper and constitutes the valid and binding obligation of Redeveloper.

**D. Litigation.** No suit is pending against Redeveloper which could have a material adverse effect upon Redeveloper's performance under this Agreement or the financial condition or business of Redeveloper. There are no outstanding judgments against Redeveloper that would have a material adverse effect upon Redeveloper or which would materially impair or limit the ability of Redeveloper to enter into or carry out the transactions contemplated by this Agreement.

**E. No Conflicts.** This Agreement is not prohibited by and does not conflict with any other agreements, instruments, judgments or decrees to which Redeveloper is a party or is otherwise subject.

**F. No Violation of Laws.** As of the Effective Date, Redeveloper has not received any notices asserting any noncompliance in any material respect by Redeveloper with applicable statutes, rules and regulations of the United States, the State of New Jersey or of any agency having jurisdiction over and with respect to the transactions contemplated in and by this Agreement, which would have a material adverse effect on Redeveloper's ability to perform its obligations under this Agreement. Redeveloper is not in default with respect to any judgment, order, injunction or decree of any court, administrative agency, or other Governmental Authority, which is in any respect material to the transactions contemplated hereby.

**G. Qualifications of Redeveloper.** Redeveloper is fully experienced and properly qualified to undertake the responsibilities and perform the work provided for in, or contemplated under, this Agreement and it is properly equipped, organized and in good financial standing so as to perform all such work and undertake all such responsibilities hereunder.

**H. No Speculation.** Redeveloper covenants that consistent with its prior business practices its undertakings pursuant to this Agreement are intended to be for the purpose of redevelopment of the Property and not for speculation in land holding.

**I. Removal of Wells.** Redeveloper covenants that the wells it installed at Old Frenchtown Field have been removed and the area restored.

**5.2. Borough's Representations and Warranties.** The Borough hereby represents and warrants to, and covenants with, Redeveloper that:

**A. Organization.** The Borough is a public body corporate and politic and a political subdivision of the State of New Jersey. The Borough has all requisite power and authority to enter into this Agreement and the instruments and documents referenced herein to which the Borough is a party, to consummate the transactions contemplated hereby, and to perform their obligations hereunder.

**B. Authorization; No Violation.** The execution, delivery and performance by the Borough of this Agreement are within the authority of the Borough under, and will not violate, the statutes, rules and regulations establishing the Borough and governing its activities, have been duly authorized by all necessary resolution(s) and/or ordinances and will not result in the breach of any material agreement to which the Borough is a party or, to the best of its knowledge and belief, any other material agreement by which the Borough or its material assets may be bound or affected.

**C. Valid and Binding Obligations.** The person executing this Agreement on behalf of the Borough has been duly authorized by Resolution to execute this Agreement, has been duly executed and delivered by the Borough and constitutes the valid and binding obligation of the Borough.

**D. Litigation.** No suit is pending against or affects the Borough which could have a material adverse effect upon the Borough's performance under this Agreement or the financial condition or business of the Borough or with respect to the designation of the Project Site or the adoption of the 2019 Redevelopment Plan. There are no outstanding judgments against the Borough that would have a materially adverse effect upon the Borough or which would materially impair or limit the ability of the Borough to enter into or carry out the transactions contemplated by this Agreement.

**E. No Conflicts.** This Agreement is not prohibited by and does not conflict with any other agreements, instruments, judgments or decrees to which the Borough is a party or is otherwise subject.

**F. No Violation of Laws.** As of the Effective Date, the Borough has not received any notices asserting any noncompliance in any material respect by the Borough with applicable statutes, rules and regulations of the United States of America, the State of New Jersey or any

agency having jurisdiction over and with respect to the transactions contemplated in and by this Agreement which would have a material adverse effect on the Borough's ability to perform its obligations under this Agreement. The Borough is not in default with respect to any judgment, order, injunction or decree of any court, administrative agency, or other governmental authority, which is in any respect material to the transactions contemplated hereby.

### **5.3. Redeveloper Declaration of Covenants.**

**A.** In accordance with N.J.S.A. 40A:12A-9, the agreements, covenants and restrictions set forth in this Section 5.3 shall run with the land. Upon the issuance of a Certification of Completion, the covenants and restrictions imposed upon the Redeveloper, its successors and assigns, pursuant to this Agreement and N.J.S.A. 12A-1 *et seq.*, shall be deemed satisfied and/or of no further effect and this Agreement shall terminate as to that portion of the Property for which the Certificate of Completion is issued. Except as otherwise provided in this Agreement, upon the issuance of a Final Certificate of Completion, the covenants and restrictions imposed upon the Redeveloper, its successors and assigns, pursuant to this Agreement and N.J.S.A. 12A-1 *et seq.*, shall be deemed satisfied as to the entire Property.

**B. Description of Covenants and Restrictions.** The Covenants and Restrictions to be imposed upon Redeveloper, its successors and assigns, herein and recorded in the Declaration, shall set forth that Redeveloper and its successors, transferees and assigns shall:

- (i) Devote the Property only to the uses specified in the 2019 Redevelopment Plan, and as agreed herein, and shall not devote the Property to any other uses;
- (ii) Commence Construction of the Improvements not later than six (6) months from Redeveloper's receipt of all Governmental Approvals subject to potential adjustment pursuant to Article 6 hereof; and
- (iii) Not sell, lease or otherwise transfer the Property, or any part thereof, without the written consent of the Borough, except for permitted transfers to a Qualified Entity as set forth in Section 2.4(B) and permitted transfers authorized by Section 4.5 and Section 10.2 hereof.

**C. Effect and Term of the Covenants and Restrictions.** Subject to the provisions of Section 5.3 hereof, it is intended and agreed, that the Covenants and Restrictions set forth in Section 5.3 hereof shall be covenants running with the land and that they shall, in any event, and without regard to technical classification or designation, legal or otherwise, and except only as otherwise specifically provided in this Agreement, be binding, to the fullest extent permitted by law and equity, for the benefit and in favor of, and enforceable by, the Borough, its successors and assigns, and any successor in interest to the Property, or any part thereof, against Redeveloper, its successors and assigns and every successor in interest therein, and any party in possession or occupancy of the Property or any part thereof. It is further intended and agreed that the Covenants and Restrictions set forth in Section 5.3 hereof shall remain in effect until the issuance by the Borough of a Certificate of Completion, as provided in Section 4.2, hereof, at which time all agreements, obligations, Covenants and Restrictions shall cease and terminate.

**D. Enforcement by Borough.** In amplification, and not in restriction of the provisions of this Article 5, it is intended and agreed that the Borough and its successors and assigns shall be deemed beneficiaries of the Covenants and Restrictions set forth in Section 5.3 hereof both for and in their own right but also for the purposes of protecting the interests of the community and other parties, public or private, in whose favor or for whose benefit such agreements and covenants shall run in favor of the Borough for the entire period during which such Covenants and Restrictions shall be in force and effect, without regard to whether the Borough has at any time been, remains, or is an owner of any land or interest therein to or in favor of which such Covenants and Restrictions relate. The Borough shall have the right, in the event of any breach of any such Covenants and Restrictions, to exercise all the rights and remedies and to maintain any actions or suits at law or in equity or other proper proceedings to enforce the curing of such breach of such Covenants and Restrictions, to which they or any other beneficiaries of such Covenants and Restrictions may be entitled.

## **ARTICLE 6 DEFAULT**

**6.1. Events of Default.** Each of the following shall constitute an event of default (hereinafter referred to as an “**Event of Default**”) by the applicable party, respectively:

**A.** Any Party fails to make payment of any sum payable to the other party under this Agreement, as the same shall become due and payable, or fails to fulfill any obligation under this Agreement within the time prescribed, and such failure shall have continued for a period of sixty (60) days after receipt of written notice specifying such failure, and demanding that same be remedied;

**B.** Any Party or its successor in interest shall violate any of its covenants, representations, declarations, or obligations to perform under the terms of this Agreement and failure shall have continued for a period of sixty (60) days after receipt of written notice specifying such default (or such longer or shorter time as may be specified herein), and demanding that same be remedied, to the extent not otherwise provided for herein, up to the issuance of a Certificate of Completion. However, if the default cannot be cured within sixty (60) days using reasonable diligence, the non-defaulting party will extend the time to cure, provided the corrective action is instituted within sixty (60) days and diligently pursued to completion;

**C.** Redeveloper shall fail to construct the Project pursuant to the 2019 Redevelopment Plan or substantially suspends or abandons construction of the Project for a continuous period in excess of ninety (90) days, subject to an extension due to an event of Force Majeure and/or as otherwise authorized by the provisions of this Agreement, and any such default, violation, abandonment, or suspension shall not be cured within thirty (30) days after written demand by the Borough to do so, or such longer period if not reasonably capable of cure within such thirty (30) day period and Borough agrees to extend such time to cure, which agreement shall not be unreasonably denied or conditioned, provided that Redeveloper has commenced and is diligently prosecuting such cure or arrangements therefor; or

**D.** There is, in violation of this Agreement, any transfer of the fee title to the Property or a portion thereof, except for transfers permitted herein, including but not limited to as provided in



Section 2.4, 4.5, or 10.2 hereof, and such violation shall not be cured within thirty (30) days after written demand served upon Redeveloper by the Borough; or

**E.** Redeveloper is dissolved, or files a voluntary petition in bankruptcy or for reorganization or for an arrangement pursuant to the Bankruptcy Act or any similar law, federal or state, now or hereafter in effect, or makes an assignment for the benefit of creditors, or admits in writing its inability to pay its debts as they become due, or suspends payment of its obligations, or takes any action in furtherance of the foregoing; or Redeveloper consents to the appointment of a receiver, or an answer proposing the adjudication of Redeveloper as bankrupt or its reorganization pursuant to the Bankruptcy Act or any similar law, federal or state, now or hereafter in effect, is filed in and approved by a court of competent jurisdiction and the order approving the same shall not be vacated or set aside or stayed within thirty (30) days from entry thereof, or Redeveloper consents to the filing of such petition or answer.

**F. Cross-Default.** Subject to applicable notice and cure periods, an Event of Default under a Financial Agreement shall constitute an Event of Default under this Agreement, and an Event of Default under this Agreement shall constitute an Event of Default under the Financial Agreements.

**6.2. Right to Cure Upon Event of Default.** Except as otherwise provided in this Agreement, in the event of any Event of Default or breach of this Agreement or any of its terms or conditions by any party hereto or any successor to such party, such party (or successor) shall, within forty-five (45) days (or such longer, or shorter, period to the extent expressly provided above) of receiving written notice from another, proceed to cure or remedy such Event of Default or breach. In case such action is not taken or diligently pursued, or the Event of Default or breach shall not be cured or remedied within such proscribed time, or any extension of such time granted at the discretion of the non-breaching party, the non-breaching party may pursue its remedies in accordance with this Agreement.

### **6.3 Borough's Remedies.**

If Redeveloper shall fail to timely cure any Event of Default by Redeveloper as set forth in Section 6.1, the Borough shall be entitled, in its sole and absolute discretion, to:

- A. Terminate this Agreement; and/or
- B. Terminate the Financial Agreements; and or
- C. Exercise any other remedies available at law or equity, including the right to seek damages, and specific performance to have the Property restored.

**6.4. Redeveloper's Remedies.** If the Borough shall fail to timely cure any Event of Default by Borough as set forth in Section 6.1, Redeveloper shall be entitled, in its sole and absolute discretion, to all rights and remedies available at law or in equity.

**6.5. Limitation of Liability.** The Parties agree that upon the occurrence of an Event of Default, beyond any applicable cure periods set forth herein, or breach hereunder of this Agreement, the Parties shall look solely to the Parties hereto and their respective interest in the Project for the recovery of any judgment or damages, and agree that no member, manager, officer,

principal, employee, representative or other person affiliated with such Party shall be personally liable for any such judgment or damages.

**6.6. No Waiver of Rights and Remedies by Delay.** Any delay by the aggrieved party in instituting or prosecuting any actions or proceedings or otherwise asserting its rights under this Agreement shall not operate as a waiver of such rights and shall not deprive the aggrieved party of or limit the aggrieved party's rights in any way (it being the intent of this provision that the aggrieved party should not be constrained so as to avoid the risk of being deprived or limited in the exercise of the remedies provided herein by those concepts of waiver, laches, or otherwise) to exercise such rights at a time when the aggrieved party may still resolve the problems by the Event of Default involved; nor shall any waiver in fact made by the aggrieved party with respect to any specific Event of Default by the other party under this Agreement be considered or treated as a waiver of the rights of the aggrieved party with respect to any other Event of Default by the other party under this Agreement or with respect to the particular default except to the extent specifically waived in writing.

**6.7. Rights and Remedies Cumulative.** The rights and remedies of the Parties to the Agreement, whether provided by law or by the Agreement, shall be cumulative and, except as otherwise specifically provided by this Agreement, the exercise by either Party of any one or more of such remedies shall not preclude the exercise by it, at the same or different times, of any other such remedies for the same Event of Default or breach or of any of its remedies for any other Event of Default or breach by the other party. No waiver made by either such party with respect to the performance, or manner or time thereof, or any obligation of the other party or any condition to its own obligation under the Agreement shall be considered a waiver of any rights of the party making the waiver with respect to the particular obligation of the other party or condition to its own obligation beyond those expressly waived in writing and to the extent thereof, or a waiver in any respect in regard to any other rights of the party making the waiver or any other obligations of the other party.

**6.8. Force Majeure.** For purposes of this Article and as otherwise used in this Agreement, "event of Force Majeure" shall mean any of the events or conditions set forth below, or any combination thereof, that has had or may reasonably be expected to have a material and adverse effect on the ability of a party to perform its obligations (an "**Affected Party**") under this Agreement:

- A. An act of God including severe natural conditions such as landslide, lightning, earthquake, fire, flood, hurricane, blizzard, tornado or other severe weather conditions, severe sea conditions affecting delivery of materials or similar cataclysmic occurrence, nuclear catastrophe, unanticipated environmental condition, an act of public enemy, terrorism, war, blockade, insurrection, riot, general arrest or general restraint of government and people, pandemic, including outcomes as a result of the Covid19 pandemic from this date forward, an inability of the Redeveloper to: a) secure and retain construction and development financing, b) purchase and deliver required equipment and supplies to the Project, or c) have laborers perform work on the Project, in each case due to conditions that materially and adversely affects the ability of developers, in general, in the real estate market where the Project is located, or any other similar act or event outside

the control of the Affected Party; provided however, that any question as to whether any such conditions should be deemed to constitute an event of Force Majeure shall be considered in light of good engineering or business practice and industry standards to protect against reasonably foreseeable severe natural weather conditions, or business conditions taking into account the geographic location and topographic and geotechnical conditions of the Project;

- B.** The condemnation, taking, seizure, involuntary conversion or acquisition of title to or use of the Property, or any material portion or part thereof, by the action of any federal, state or local government or Governmental Authority;
- C.** Delays incurred in obtaining Governmental Approvals caused solely by the approving agency after the Affected Party has taken all required action in obtaining such Approval and the continued delay is outside and beyond the control of the Affected Party;
- D.** Delays resulting from legal challenges brought to challenge any permit and/or Approval related to this Project by third-parties over whom the Affected Party has no control that have a material and adverse effect upon the Affected Party's ability to perform its obligations under this Agreement;
- E.** Labor union strikes or similar labor union action by equipment manufacturers, suppliers of materials, employees or transporters of same, to the extent that such labor union strikes relate to general labor disputes that are non-specific to the Project of Redeveloper and have a material and adverse effect upon the Affected Party's ability to perform its obligations under this Agreement;
- F.** The unavailability of suitable fill or materials required for performance of the work related to the Project due to shortages of fill or material in the market place and/or the inability to obtain transportation services for transporting fill or materials to the Property or the Project area as a result of a public or private labor dispute;

**6.9. Effect of Force Majeure.** In the event of an event of Force Majeure, the applicable deadline, obligation or term affected by such event of Force Majeure shall be extended for a period of time equal to the delay caused by the event of Force Majeure, provided that timely notice was provided by the Affected Party.

**6.10. Defense of Approvals.** Notwithstanding any of the above, Redeveloper may assume the defense to any challenge to any permit and/or approval it requires to proceed with the Project without cost to the Borough so as to continue to move forward with the Project. Any such litigation shall be deemed to be an event of Force Majeure as to delays caused by the same.

**6.11 Defense by Borough.** Notwithstanding the foregoing, the Borough may, in its sole discretion, defend any challenges to the Governmental Approvals. If the Borough assumes the defense, the Redeveloper shall reimburse the Borough for all costs and expenses including reasonable professional fees actually incurred. Whether the Redeveloper or the Borough provides the defense, the Borough shall support its actions in granting the Governmental Approval.

## **ARTICLE 7 INDEMNITY**

**7.1. Obligation to Indemnify.** Redeveloper agrees to indemnify and hold the Borough and its officials, agents, servants, employees and consultants (collectively, the “**Indemnified Parties**”) harmless from and against any and all claims, demands, suits, actions, recoveries, judgments, and costs and expenses in connection therewith of any kind or nature, however arising, imposed by law or otherwise (including reasonable attorneys’ fees and expenses and experts’ fees and expenses) (collectively, “**Claims**”) which the Indemnified Parties may sustain, be subjected to or be caused to incur, by reason of personal injury, death or damage to property, arising from or in connection with the environmental testing and remediation, implementation, construction or maintenance, or any other activities of or on behalf of Redeveloper within the Property, except to the extent that any such claim or suit arises from the intentional or willful wrongful acts or omissions, or grossly negligent acts or omissions, of the Indemnified Parties. In addition to the foregoing, Redeveloper shall indemnify and hold the Indemnified Parties harmless from and against any Claims in connection with any alleged violation by the Borough of the Green Trust Project Agreement, as may have been amended or supplemented (the “Trust”) between the State of New Jersey by the Department of Environmental Protection and the Borough of Frenchtown, Hunterdon County dated February 3, 1998 and recorded in the Hunterdon County Recorder’s Office at Deed Book 1186 page 0108 arising from the use by the Project of Access Easement #3 recorded at Deed Book 913 page 840 and reserved in the Deed to the Borough at Deed Book 1186 page 0161. The Borough shall provide notice to Redeveloper of the subject Claims as soon as reasonably possible after their occurrence but in any case within ten (10) days of the Borough receiving actual or constructive notice of the subject Claims, provided, however, that in the event such notice is not timely received, Redeveloper shall only be excused of its obligations hereunder to the extent it is prejudiced by the failure to timely receive said notice. The obligation to indemnify the Indemnified Parties shall survive the termination or expiration of this Agreement with respect to any Claims arising from any activities occurring prior to the issuance of a Certificate of Completion

## **ARTICLE 8 NOTICES AND DEMANDS**

**8.1.** A notice, demand or other communication under this Agreement by any party to the other shall be sufficiently given or delivered if dispatched by United States Registered or Certified Mail, postage prepaid and return receipt requested, or delivered by national overnight courier with delivery confirmation or delivered personally (with written acknowledgment of receipt) to the Parties at the following respective addresses:

**If to the Borough, to:**  
Borough of Frenchtown  
29 Second Street  
Frenchtown, NJ 08825  
Attn: Mayor

**With a copy to:**

Borough of Frenchtown  
29 Second Street  
Frenchtown, NJ 08825  
Attn: Borough Clerk

**and if to Redeveloper, to:**

Country Classics at Frenchtown, LLC  
36 Brower Lane  
Hillsborough, NJ 08844-1270  
Attn: C. Scott Van Cleef

**with a copy to:**

Krista P. Harper, Esq.  
Harper Business Law, PC  
87 N. Broad Street  
Doylestown, PA 18901

Either party may from time to time by written notice given to the other pursuant to the terms of this Section 8.1 change the street address or persons to which notices shall be sent.

**ARTICLE 9  
CONSTRUCTION AND PROJECT FINANCING**

**9.1. Redeveloper's Commitment to Finance Project.** Redeveloper has requested, and the Borough agrees that Redeveloper shall receive, tax abatement(s) subject to approval of the Financial Agreement(s) by the Governing Body to be adopted pursuant to the Long-Term Tax Exemption Law, on terms and conditions mutually acceptable to the Parties in accordance with Section 4.5 (above). Redeveloper agrees now in perpetuity that it shall not seek tax credits from the Project. Redeveloper may seek to terminate this Agreement should no mutually acceptable Financial Agreement(s) be approved by the Governing Body.

**9.2. Rights of Institutional Mortgagee.** Any financial institution lending money on the security of the real Property and/or the Project shall be entitled to the protection of N.J.S.A. 55:17 providing for notification, right to cure, right to possession, right to assume control of mortgagor, right to enter into possession of and operate Property, right to the entry of a judgment of strict foreclosure, right to recover on the underlying loan obligation without first proceeding with foreclosure, right to proceed to foreclosure, separately from or together with suit on the underlying obligation, and such other rights all as specifically provided in N.J.S.A. 55:17-8.

**A.** This Agreement is a financial arrangement made by a governmental body or agency of the State of New Jersey pursuant to statutes in connection with a project for redevelopment, renewal or rehabilitation, shall continue in full force and effect beyond any default in or foreclosure of any mortgage loan made to finance the project, as though such default or foreclosure had not occurred, subject to the provisions of N.J.S.A. 55:17.

**B.** The Borough agrees that its rights under this Agreement are and shall be subordinate to the rights of any institutional lender, whether identified on the date hereof or subsequently identified, on the security of the real Property and/or the Project and agrees to promptly execute any further subordination and attornment documents that may reasonably be required by an institutional lender and further to make any technical, non-substantive, modifications to this Agreement that may be required by an institutional lender.

**C. Estoppel Certificate.** Within thirty (30) days following written request therefore by Redeveloper, or of any lender, purchaser, tenant or other party having an interest in the Project, the Borough shall issue a signed estoppel certificate either stating this Agreement is in full force and effect and that there is no default or breach under this Agreement, or stating the nature of the default or breach or event, if any. In the event the estoppel certificate discloses such a default, breach or event, it shall also state the manner in which such default, breach and/or event may be cured. No more than a reasonable number of estoppel certificates may be requested per year.

**9.3. Rights of Mortgagees.** Notwithstanding any other provision of this Agreement, the holder of any mortgage (including any such holder who obtains title to the Property or any part thereof), or any other party who thereafter obtains title to the Property or such part from or through such holder or any purchaser at foreclosure sale or through other court proceedings or action in lieu thereof shall in no way be obligated by the provisions of this Agreement to construct or complete the Project, or to guarantee such construction or completion; nor shall any covenant or any other provision in this Agreement or any deeds conveying the Property to Redeveloper be construed to so obligate such holder, provided that nothing in this Agreement shall be deemed or construed to permit or authorize any such holder to devote the Property or any part thereof to any uses, or to construct any improvements thereon, other than those uses or improvements provided, or permitted under the 2019 Redevelopment Plan or otherwise approved by the Borough.

**9.4. Notice to Mortgagee.** Whenever the Borough shall deliver any notice or demand to Redeveloper with respect to any breach or default by Redeveloper of its obligations or covenants under this Agreement, the Borough may at the same time forward a copy of such notice or demand to each holder of any mortgage at the last known address of such holder, in which case notice that such breach or default subsequently has been cured shall also be provided by the Borough to each such holder of any mortgage.

**9.5. Mortgagee's Right to Cure Redeveloper's Default.** After any breach or Event of Default referred to in Article 6, each holder shall have the right, at its option and to the extent permitted by the loan/mortgage documents, to cure or remedy such breach or Event of Default (if the holder shall opt to cure or remedy the breach or Event of Default, the times to cure provided herein shall be extended for such a period of time equal to the time otherwise applicable to Redeveloper for cure) and to add the cost thereof to its mortgage. If the breach or Event of Default is with respect to construction of the Project, nothing contained in this Agreement shall be deemed to require the holder to obtain the Borough's approval, either before or after foreclosure or action in lieu thereof, to undertake or continue the construction or Completion of the Project. Any such holder who shall properly Complete the Project or applicable part thereof shall be entitled, upon written request made to the Borough, to receive the Certificate of Occupancy for the units or buildings within the Project and the Certificates of Completion as set forth in Section 4.2 hereof, and such Certificate of Completion shall mean and provide that any remedies or rights that

Borough shall have or to be entitled to due to the failure of Redeveloper or any successor in interest to the Property, or any part thereof, to cure or remedy any Event of Default with regard to construction of the Project or applicable part thereof, or due to any other Event of Default in or breach of this Agreement by Redeveloper or such successor, shall not apply to the part or unit of the Property to which such Certificate of Completion relates.

**9.6 Redeveloper's Commitment to Financing.** The obligation of the Redeveloper to proceed with the Project is contingent upon Redeveloper securing one or more loan commitments for construction financing in amounts sufficient, together with Redeveloper's equity, to finance the construction of the Project. Redeveloper shall seek to secure such financing within 90 days of obtaining Governmental Approvals on a final, non-appealable basis; said period may be extended at the request of Redeveloper but in the discretion of the Borough for a duration to be determined by the Borough, provided that Redeveloper has made and will continue to make commercially reasonable efforts to secure such financing.

**9.7 Site Controls.** The Redeveloper and subcontractors shall comply with the following:

A. All applicable federal and state regulations, rules and guidelines during the federal and state States of Emergency, including but not limited to the New Jersey Governor's Executive Order No. 122, as amended, as applicable and enforced by such governing body.

B. The main entrance to the Project entering Harrison Street will not be used until the first certificate of occupancy is issued. All construction deliveries to the Property will be made at the Eight Street entrance.

C. Dust control measures, as required and enforced by the Hunterdon County Soil & Conservation District ("HCS&CD"), for the duration of the construction of the Project.

D. Truck wheel washing station will be required if any contaminated material will be trucked off the Property. Truck wheel washing station, as required and enforced by the HCS&CD, to eliminate debris, dirt, mud and stones from migrating off the Property during construction.

E. At the time of commencement of construction, commencement of improvements to Eighth Street and Harrison Street ("Road Improvements"), and at the time that any material change occur in the construction of the Road Improvements thereafter, meet or speak with the Frenchtown Elementary School Principal to inform them of matters impacting the School. The Redeveloper shall fence the entire Project during construction until the first certificate of occupancy is issued at the Project. After the first certificate of occupancy is issued the Redeveloper shall fence the area around Building 2 during the construction of Building 2.

F. At the time construction commences at the Project and at the time that any material changes occur thereafter, meet or speak with the Borough of Frenchtown Public Safety Director to inform them of matters relevant to protecting the health, safety and welfare of the public.

G. All vehicles entering and departing the Property during construction of the Project will comply with applicable laws regarding weight restrictions for truck route, and will follow the agreed truck traffic route attached hereto as **Exhibit N**.

H. Comply with any applicable environmental laws, as required and enforced by the NJDEP, and any soil conservation laws, as required by the HCSCD, regarding covering and monitor piles of contaminated soil to prevent wind and rain from blowing or washing the contaminated soil away.

I. Comply with the Frenchtown Elementary School no idling zone requirements on public roads.

Failure to comply with paragraphs B, E, F, G or I above may result in a Notice of Violation being issued by the Borough of Frenchtown Public Safety Director. The Notice of Violation may include a penalty of \$100.00 for the first violation, with subsequent violations resulting in incremental penalties of \$100.00 each. In the event the penalty is not paid within ten business (10) days of receipt by the Redeveloper, the Borough of Frenchtown Construction Department is hereby authorized to issue a Stop Work Order. Any violation of A, C, D, H, above may result in all enforcement procedures and remedies of the applicable regulatory agency.

## **ARTICLE 10 RESTRICTIONS ON TRANSFERS**

**10.1. Restrictions on Transfer.** Unless otherwise permitted herein, prior to the issuance of a Certificate of Completion for the Project or any part thereof, pursuant to N.J.S.A. 40A:12A-9(a), except as otherwise permitted by this Agreement, Redeveloper shall be without power to sell, lease or otherwise transfer a controlling interest in the Project or any such part, without the written consent of the Borough, which consent shall not be unreasonably withheld, delayed or conditioned, except that Redeveloper may sell or lease individual units, if any, to third parties. The foregoing shall not apply, however, to a change of form of Redeveloper entity, provided that there is no change in the controlling interest of Redeveloper. The restrictions in this Section 10.1 shall not apply to conveyances set forth in Section 10.2 or otherwise permitted hereunder and these restrictions shall no longer apply to any individual unit for which a Certificate of Occupancy or Certificate of Completion has been issued.

**10.2 Permitted Transfers.** Notwithstanding the foregoing, the Borough hereby consents, without the necessity of any further approval, but subject to prior notice to the Borough (except as to conveyances in Sections (a) and (b)), to the following conveyances:

- A. A conveyance of driveways, roads, infrastructure, open space and other common property to a condominium, property owners' association, or similar entity.
- B. A master deed of a condominium, or deeds to purchasers of individual condominium units, single family unit, or other units, if any, leases to tenants of individual units, or mortgage by any unit or property owner.
- C. Utility, access, and other necessary easements.



- D. A mortgage or mortgages or leases or leasehold or other financing and other liens and encumbrances solely for the purposes of financing costs associated with the acquisition, development, construction and marketing of the Project.
- E. A conveyance of the Property or any portion thereof to the holder of any mortgage authorized under this Agreement, whether through foreclosure, deed-in-lieu of foreclosure, or otherwise.
- F. A transfer of any interest in the Property or the Redeveloper to any partner or family member of any of the members of Redeveloper or to any entity owned or controlled by Redeveloper.
- G. Any transfer of the ownership interest in Redeveloper permitted by N.J.S.A. 40A:20-5e.
- H. Any transfer of all or a portion of the Project to an Urban Renewal Entity controlled by Redeveloper.
- I. Environmental covenants and restrictions imposed by a regulatory agency as a condition of any permit or approval.
- J. Any other transfer for which Redeveloper obtains the Borough's consent.

**10.3. Conveyance to a Qualified Entity.** Upon a conveyance of all rights and obligations hereunder to a Qualified Entity, pursuant to Section 2.4, which shall not be unreasonably delayed, conditioned or denied, Redeveloper shall be relieved of its right and obligations hereunder.

**10.4. Subsequent Conveyance by Redeveloper.** Upon issuance of a Certificate of Completion for any portion of the Project, Redeveloper shall have the right to sell, lease or otherwise transfer, convey or encumber any such portion of the Project without the consent of the Borough and free of any restrictions imposed by this Agreement, except the Declarations or other provisions that are expressly stated to survive such transfer, conveyance and Certificate of Completion. Upon the issuance of a Certificate of Final Completion for the Project, Redeveloper shall have the right to sell, lease, or otherwise transfer, convey or encumber the entire Project without the consent of the Borough and free of any restrictions imposed by this Agreement, except the Declarations or other provisions that are expressly stated to survive such transfer, conveyance, and Certificate of Final Completion.

## ARTICLE 11 MISCELLANEOUS

**11.1. Term.** Except for those provisions expressly surviving termination of this Agreement, this Agreement shall terminate upon issuance of a Certificate of Final Completion for the Project.

**11.2. No Third-Party Beneficiaries.** The provisions of this Agreement are for the exclusive benefit of the Parties hereto and not for the benefit of any third person, nor shall this Agreement be deemed to have conferred any rights, express or implied, upon any third person.

**11.3. Amendment; Waiver.** No alteration, amendment or modification of this Agreement shall be valid unless executed by an instrument in writing by the Parties hereto with the same formality as this Agreement. The failure of the Borough or Redeveloper to insist in any one or more instances upon the strict performance of any of the covenants, agreements, terms, provisions or conditions of this Agreement or to exercise any election contained in this Agreement shall not be construed as a waiver or relinquishment for the future of such covenant, agreement, term, provision, condition, election or option, but the same shall continue and remain in full force and effect. No waiver by the Borough or Redeveloper of any covenant, agreement, term, provision or condition of this Agreement shall be deemed to have been made unless expressed in writing and signed by an appropriate official on behalf of the Borough or Redeveloper.

**11.4. Consents.** Unless otherwise specifically provided herein, no consent or approval by the Borough or Redeveloper permitted or required under the terms of this Agreement shall be valid or be of any force whatsoever unless the same shall be in writing, signed by an authorized representative of the party by or on whose behalf such consent is given. Whenever this Agreement requires the consent or approval of the Borough or Redeveloper, or any officers, agents or employees of either Party, such approval or consent shall not be unreasonably withheld, delayed or conditioned and shall be given within a reasonable time if said time is not specifically set forth herein.

**11.5. Captions.** The captions of the sections and subsections and the table of contents hereof, schedule of exhibits and index of definitions of this Agreement are for convenient reference only and shall not be deemed to limit, construe, affect, modify or alter the meaning of the articles, sections, exhibits, definitions, or other provisions hereof.

**11.6. Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of New Jersey, without giving effect to any principle of choice of or conflicts of laws. Any lawsuit filed by either Party to this Agreement shall be filed in the Superior Court of New Jersey, Hunterdon County.

**11.7. Severability.** If any article, section, subsection, term or provision of this Agreement or the application thereof to any party or circumstance shall, to any extent, be invalid or unenforceable, the remainder of the section, subsection, term or provision of this Agreement or the application of same to Parties or circumstances other than those to which it is held invalid or unenforceable shall not be affected thereby and each remaining article, section, subsection, term or provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law, provided that no such severance shall serve to deprive either party of the enjoyment of its substantial benefits under this Agreement.

**11.8. Binding Effect.** Except as may otherwise be provided in this Agreement to the contrary, this Agreement and each of the provisions hereof shall be binding upon and inure to the benefit of Redeveloper, the Borough and their respective successors and assigns.

**11.9. Relationship of Parties.** Nothing contained in this Agreement shall be deemed or construed by the Parties hereto or by any third party to create the relationship of principal and agent, partnership, joint venture or any association between Redeveloper and the Borough, their relationship being solely as contracting Parties under this Agreement.

**11.10. Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute, in connection with each of such agreements, one and the same instrument.

**11.11. Exhibits.** All Exhibits referred to herein shall be considered a part of this Agreement as fully and with the same force and effect as if such Exhibits had been included within the text of this Agreement in full.

**11.12. Borough Support.** The Borough agrees to provide non-monetary support for any applications for Governmental Approvals that are consistent with the terms of the 2019 Redevelopment Plan and this Agreement, and to execute any documents required to obtain such approvals and otherwise to cooperate with Redeveloper with respect to the Governmental Approvals, provided that nothing contained in this this Agreement shall be deemed: (i) to constitute an approval of all or any portion of the Project for which Governmental Applications have been submitted or are required, or (ii) a waiver of the ability of the Planning Board, or any other governmental or administrative entity, from exercising its statutorily authorized responsibilities with respect to the applications relating to the Project or Governmental Approvals.

**11.13. Non-Discrimination.** Redeveloper shall not discriminate against or segregate any person, a group of persons, on account of race, color, religion, creed, national origin, ancestry, physical handicap, age, marital status, sex, affectional or sexual orientation of the sale, lease, sublease, rental, transfer, use, occupancy, tenure or enjoyment of the Project Site; nor shall Redeveloper itself, or any person claiming under or through Redeveloper, establish or permit any such practice or practices of discrimination or segregation, with reference to the selection, location, number, use of occupancy of tenants, lessees, subtenants, sub lessees or vendees on the Property.

**11.14. Municipal Services Act.** Redeveloper and is successors and assigns will not seek reimbursement from the Borough under the Municipal Services Act. This paragraph of the Agreement shall survive the Certificate of Completion. The Borough shall specifically not be responsible for snow removal within the Project, or garbage or recycling, Christmas tree removal, lighting, or leaf collection for the Apartment Lot (the "Private Services"). No one shall be entitled to seek reimbursement from the Borough for the cost of the Private Services. Notwithstanding the foregoing the Borough shall provide garbage and recycling services, Christmas tree removal, street lighting, and leaf collection to the For Sale Lots.

**11.15 Construction.** Both of the Parties acknowledge that this Agreement has been extensively negotiated with the assistance of competent counsel for each party and agree that no provision of this Agreement shall be construed in favor of or against either party by virtue of the fact that such party or its counsel have provided an initial or any subsequent draft of this Agreement or of any portion of this Agreement.

**IN WITNESS WHEREOF**, the Parties have executed this Agreement to be effective on the Effective Date.

**WITNESS:**

**COUNTRY CLASSICS AT FRENCHTOWN, LLC**

\_\_\_\_\_

\_\_\_\_\_  
C. Scott Van Cleef, Manager

\_\_\_\_\_  
J. Todd Van Cleef, Manager

**WITNESS:**

**BOROUGH OF FRENCHTOWN**

\_\_\_\_\_  
Brenda S. Shepherd, Municipal Clerk

\_\_\_\_\_  
Brad Myhre, Mayor

**ACKNOWLEDGMENT**

STATE OF \_\_\_\_\_ )  
 ) SS:  
COUNTY OF \_\_\_\_\_ )

I CERTIFY that on the \_\_\_\_ day of \_\_\_\_\_, 2020, before me, the subscriber, personally appeared C. Scott Van Cleef and J. Todd Van Cleef, who, being by me duly sworn on his oath, deposes and makes proof to my satisfaction, that they are the Managers of Country Classics at Frenchtown, LLC, the entity named in the within Agreement; that this Agreement was signed and delivered by the entity as its voluntary act; and that this person signed this proof to attest to the truth of these facts.

\_\_\_\_\_  
Name:  
Notary Public

STATE OF \_\_\_\_\_ )  
 ) SS:  
COUNTY OF \_\_\_\_\_ )

I CERTIFY that on the \_\_\_\_ day of \_\_\_\_\_, 2020, before me, the subscriber, personally appeared Brad Myhre, who, being by me duly sworn on his oath, deposes and makes proof to my satisfaction, that he is the Mayor of THE BOROUGH OF FRENCHTOWN, the entity named in the within Agreement; that this Agreement was signed and delivered by the entity as its voluntary act; and that this person signed this proof to attest to the truth of these facts.

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



**Exhibit A**  
**Resolution Designating Area in Need of Redevelopment**

**Exhibit B**  
**2019 Redevelopment Plan**



**Exhibit C**  
**Preliminary Plat**

**Exhibit D**  
**Planning Board Resolution**

**Exhibit E**  
**Certificate of Completion**

Record and Return to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**CERTIFICATE OF COMPLETION AND COMPLIANCE**

Pursuant to [\_\_\_\_\_] of the Redevelopment Agreement by and between the Borough of Frenchtown (the "Borough") and Country Classics at Frenchtown, LLC (the "Redeveloper"), dated as of [\_\_\_\_\_] (the "Redevelopment Agreement"), the undersigned certifies, as of the date hereof, that (all undefined terms used herein shall have the same meaning ascribed to them in the Redevelopment Agreement):

(i) The Project located on that certain property known as Block 3, Lots 1 and 2 and Block 10, Lot 1 and a portion of the Eighth Street right-of-way in the Borough of Frenchtown, State of New Jersey more particularly depicted on **Schedule A** has been completed in its entirety as of \_\_\_\_\_ in accordance with the Redevelopment Agreement, the 2019 Redevelopment Plan and in compliance with all Governmental Approvals;

(ii) all Governmental Approvals that are required in order for the Redeveloper to complete the Project, to the extent so required, are in full force and effect;

(iii) such completion has been further evidenced by a written certificate of the Redeveloper and certificates of the Redeveloper's engineer and architect evidencing completion of the Project, which certificates are attached hereto as **Schedule B**; and

(iv) a copy of the Certificates of Occupancy for the Project Improvements issued with respect to the Project and Project Improvements are attached hereto as **Schedule C**.

The conditions determined to exist at the time the Redevelopment Area was determined to be an area in need of rehabilitation no longer exist.

Any declaration or similar instrument stating that the Property is in need of redevelopment is now void, shall hereafter be of no further force or effect, and is hereby discharged.

This certificate is given without prejudice to any rights against third parties which exist on the date hereof or which may subsequently come into being.

**IN WITNESS WHEREOF**, the undersigned has caused this Certificate of Completion and Compliance to be executed as of the \_\_\_ day of \_\_\_\_\_202\_\_.

Attested By:

**BOROUGH OF FRENCHTOWN,**  
a municipal corporation of the State of New Jersey

\_\_\_\_\_  
, Clerk

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

**ACKNOWLEDGEMENT**

**STATE OF NEW JERSEY )**

**) SS:**

**COUNTY OF HUDSON )**

BE IT REMEMBERED, that on this \_\_ day of \_\_\_\_\_, 202\_\_ before me, the subscriber, personally appeared \_\_\_\_\_, who, being by me duly sworn on his oath, deposes and makes proof to my satisfaction that he is the Mayor of the **Borough of Frenchtown**, the Borough named in the within Instrument; that the execution, as well as the making of this Instrument, have been duly authorized by the Borough, that deponent well knows the seal of said Borough; and that the seal affixed to said Instrument is the proper seal and was hereto affixed by \_\_\_\_\_, Borough Clerk, and said Instrument was signed and delivered by said Mayor as and for the voluntary act and deed of said Borough.

\_\_\_\_\_

REDEVELOPER'S CERTIFICATE

Pursuant to [\_\_\_\_\_] of the Redevelopment Agreement by and between the Borough of Frenchtown (the "Borough") and [\_\_\_\_\_] (the "Redeveloper"), dated as of [\_\_\_\_\_] (the "Redevelopment Agreement"), the undersigned certifies, as of the date hereof, to its best knowledge, information and belief, as follows (all undefined terms used herein shall have the same meaning ascribed to them in the Redevelopment Agreement):

- (i) the Project been completed in its entirety as of \_\_\_\_\_ in accordance with the Redevelopment Agreement, the 2019 Redevelopment Plan and in compliance with Governmental Approvals;
- (ii) all Governmental Approvals that are required in order for Redeveloper to complete the Project, to the extent so required, are in full force and effect;
- (iii) Redeveloper has performed or has caused to be performed all of its duties and obligations under the Redevelopment Agreement with respect to the Project; and
- (iv) attached hereto as **Schedule 1** is a certificate of \_\_\_\_\_, the Redeveloper's engineer, and/or a certificate of \_\_\_\_\_, Redeveloper's architect, evidencing completion and certification of the Project.

[\_\_\_\_\_]

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

Name:

Title:

## Exhibit F

### Example Lease Notice Disclosure Language

This property upon which the \_\_\_\_\_ Apartments was constructed is the subject of environmental remediation activities to address previously identified soil and groundwater contamination relating to the former Frenchtown Ceramics manufacturing operations. Remediation of soils involved excavation and off-site disposal of some of the contamination. Any residual soil contamination remaining onsite above applicable remediation standards has been capped by the recently constructed building and related surface improvements (i.e. building floor and foundation, paved surfaces, and landscaped areas, etc.), in accordance with the current requirements of the New Jersey Department of Environmental Protection (NJDEP). Any residual contamination affecting groundwater is the subject of continuing remediation to consist of on-going monitoring pursuant to a groundwater classification exception area (CEA) and remedial action permit approved by NJDEP. A Deed Notice identifying the location and concentration of soil contamination left at the property above applicable remediation standards was recorded on \_\_\_\_\_, in the Office of the Clerk of Hunterdon County, Book \_\_\_\_\_, Page \_\_\_\_\_ *et seq.* Tenant hereby agrees to take the Property subject to the groundwater CEA and the restrictions contained in the Deed Notice, and to comply with all and not to violate any of the conditions of the Deed Notice. Tenant further agrees to allow NJDEP, its agents and representatives access to the Property to inspect and evaluate the continued protectiveness of the remedial action that includes the CEA and Deed Notice and to conduct additional remediation to ensure the protection of the public health and safety and of the environment if the subsequent owners, lessees and operators, during their ownership, tenancy, or operation, and the Owner fail to conduct such remediation as required by law.

**Exhibit G  
Deed Notice**

Return Address: ABC Company 1 Main St Town, NJ 00000
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**MODEL DEED NOTICE**

\_\_\_\_\_  
Instrument Number

DEED NOTICE

This shell document contains blanks and matter in brackets [ ]. These blanks shall be replaced with the required site information prior to recording.

Matter bracketed [ ] is not intended for deletion, but rather is intended to be descriptive of the variable information that may be contained in the final document.

IN ACCORDANCE WITH N.J.S.A. 58:10B-13, THIS DOCUMENT IS TO BE RECORDED IN THE SAME MANNER AS ARE DEEDS AND OTHER INTERESTS IN REAL PROPERTY.

Prepared by: \_\_\_\_\_  
[Signature]

\_\_\_\_\_  
[Print name below signature]

Recorded by: \_\_\_\_\_  
[Signature, Officer of County Recording Office]

\_\_\_\_\_  
[Print name below signature]

DEED NOTICE

*This Deed Notice is made as of the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by [Insert the full legal*



*name and address of each current property owner] (together with his/her/its/their successors and assigns, collectively "Owner").*

*1. THE PROPERTY. [Insert the full legal name and address of each current property owner] [Insert as appropriate: "is", or "are"] the owner in fee simple of certain real property designated as Block(s) \_\_\_\_\_ Lot(s) \_\_\_\_\_, on the tax map of the [Insert, as appropriate: City/Borough/Township/Town] of [Insert the name of municipality], [Insert the name of county] County; the New Jersey Department of Environmental Protection Program Interest Number (Preferred ID) for the contaminated site which includes this property is [Insert the Program Interest Number (Preferred ID)]; and the property is more particularly described in Exhibit A, which is attached hereto and made a part hereof (the "Property").*

## *2. REMEDIATION.*

*i. [Insert name of the Licensed Site Remediation Professional and LSRP License No. of the LSRP that approved this Deed Notice] has approved this Deed Notice as an institutional control for the Property, which is part of the remediation of the Property.*

*ii. N.J.A.C. 7:26C-7 requires the Owner, among other persons, to obtain a soil remedial action permit for the soil remedial action at the Property. That permit will contain the monitoring, maintenance and biennial certification requirements that apply to the Property.*

*3. SOIL CONTAMINATION. [Insert the full legal name of the person that was responsible for conducting the remediation] has remediated contaminated soil at the Property, such that soil contamination remains at certain areas of the Property that contains contaminants in concentrations that do not allow for the unrestricted use of the Property. Such soil contamination is described, including the type, concentration and specific location of such contamination, and the existing engineering controls on the site are described, in Exhibit B, which is attached hereto and made a part hereof. As a result, there is a statutory requirement for this Deed Notice [include if appropriate: and engineering controls] in accordance with N.J.S.A. 58:10B-13.*

*4. CONSIDERATION. In accordance with the remedial action for the site which included the Property, and in consideration of the terms and conditions of that remedial action, and other good and valuable consideration, Owner has agreed to subject the Property to certain statutory and regulatory requirements that impose restrictions upon the use of the Property, to restrict certain uses of the Property, and to provide notice to subsequent owners, lessors, lessees and operators of the Property of the restrictions and the monitoring, maintenance, and biennial certification requirements outlined in this Deed Notice and required by law, as set forth herein.*

*5A. RESTRICTED AREAS. Due to the presence of contamination remaining at concentrations that do not allow for unrestricted use, the Owner has agreed, as part of the remedial action for the Property, to restrict the use of certain parts of the Property (the "Restricted Areas"); a narrative description of these restrictions is provided in Exhibit C, which is attached hereto and made a part hereof. The Owner has also agreed to maintain a list of these restrictions*

*on site for inspection by governmental officials.*

**5B. RESTRICTED LAND USES.** *The following statutory land use restrictions apply to the Restricted Areas:*

*i. The Brownfield and Contaminated Site Remediation Act, N.J.S.A. 58:10B-12.g(10), prohibits the conversion of a contaminated site, remediated to non-residential soil remediation standards that require the maintenance of engineering or institutional controls, to a child care facility, or public, private, or charter school without the Department's prior written approval, unless a presumptive remedy is implemented; and*

*ii. The Brownfield and Contaminated Site Remediation Act, N.J.S.A. 58:10B-12. g (12), prohibits the conversion of a landfill, with gas venting systems and or leachate collection systems, to a single-family residence or a child care facility.*

*[Insert the following paragraph when engineering controls are also implemented at the site:*

**5C. ENGINEERING CONTROLS.** *Due to the presence and concentration of these contaminants, the Owner has also agreed, as part of the remedial action for the Property, to the placement of certain engineering controls on the Property; a narrative description of these engineering controls is provided in Exhibit C.]*

**6A. CHANGE IN OWNERSHIP AND REZONING.**

*i. The Owner and the subsequent owners, lessors, and lessees, shall cause all leases, grants, and other written transfers of an interest in the Restricted Areas to contain a provision expressly requiring all holders thereof to take the Property subject to the restrictions contained herein and to comply with all, and not to violate any of the conditions of this Deed Notice. Nothing contained in this Paragraph shall be construed as limiting any obligation of any person to provide any notice required by any law, regulation, or order of any governmental authority.*

*ii. The Owner and the subsequent owners shall provide written notice to the Department of Environmental Protection on a form provided by the Department and available at [www.nj.gov/srp/forms](http://www.nj.gov/srp/forms) within 30 calendar days after the effective date of any conveyance, grant, gift, or other transfer, in whole or in part, of the Owner's or subsequent owner's interest in the Restricted Area.*

*iii. The Owner and the subsequent owners shall provide written notice to the Department, on a form available from the Department at [www.nj.gov/srp/forms](http://www.nj.gov/srp/forms), within thirty (30) calendar days after the owner's petition for or filing of any document initiating a rezoning of the Property to residential.*

**6B. SUCCESSORS AND ASSIGNS.** *This Deed Notice shall be binding upon Owner and upon Owner's successors and assigns, and subsequent owners, lessors, lessees and operators*

*while each is an owner, lessor, lessee, or operator of the Property.*

**7A. ALTERATIONS, IMPROVEMENTS, AND DISTURBANCES.**

*i. The Owner and all subsequent owners, lessors, and lessees shall notify any person, including, without limitation, tenants, employees of tenants, and contractors, intending to conduct invasive work or excavate within the Restricted Areas, of the nature and location of contamination in the Restricted Areas, and, of the precautions necessary to minimize potential human exposure to contaminants.*

*ii. Except as provided in Paragraph 7B, below, no person shall make, or allow to be made, any alteration, improvement, or disturbance in, to, or about the Property which disturbs any engineering control at the Property without first retaining a licensed site remediation professional. Nothing herein shall constitute a waiver of the obligation of any person to comply with all applicable laws and regulations including, without limitation, the applicable rules of the Occupational Safety and Health Administration.*

*iii. A soil remedial action permit modification is required for any permanent alteration, improvement, or disturbance and the owner, lessor, lessee or operator shall submit the following within 30 days after the occurrence of the permanent alteration, improvement, or disturbance:*

*(A) A Remedial Action Workplan or Linear Construction Project notification and Final Report Form, whichever is applicable;*

*(B) A Remedial Action Report and Termination of Deed Notice Form; and*

*(C) A revised recorded Deed Notice with revised Exhibits, and Remedial Action Permit Modification or Remedial Action Permit Termination form and Remedial Action Report.*

*iv. No owner, lessor, lessee or operator shall be required to obtain a Remedial Action Permit Modification for any temporary alteration, improvement, or disturbance, provided that the site is restored to the condition described in the Exhibits to this Deed Notice, and the owner, lessee, or operator complies with the following:*

*(A) Restores any disturbance of an engineering control to pre-disturbance conditions within 60 calendar days after the initiation of the alteration, improvement or disturbance;*

*(B) Ensures that all applicable worker health and safety laws and regulations are followed during the alteration, improvement, or disturbance, and during the restoration;*

*(C) Ensures that human exposure to contamination in excess of the remediation standards does not occur; and*

(D) *Describes, in the next biennial certification the nature of the temporary alteration, improvement, or disturbance, the dates and duration of the temporary alteration, improvement, or disturbance, the name of key individuals and their affiliations conducting the temporary alteration, improvement, or disturbance, the notice the Owner gave to those persons prior to the disturbance.*

**7B. EMERGENCIES.** *In the event of an emergency which presents, or may present, an unacceptable risk to the public health and safety, or to the environment, or an immediate environmental concern, see N.J.S.A. 58:10C-2, any person may temporarily breach an engineering control provided that that person complies with each of the following:*

i. *Immediately notifies the Department of Environmental Protection of the emergency, by calling the DEP Hotline at 1-877-WARNDEP or 1-877-927-6337;*

ii. *Hires a Licensed Site Remediation Professional (unless the Restricted Areas includes an unregulated heating oil tank) to respond to the emergency;*

iii. *Limits both the actual disturbance and the time needed for the disturbance to the minimum reasonably necessary to adequately respond to the emergency;*

iv. *Implements all measures necessary to limit actual or potential, present or future risk of exposure to humans or the environment to the contamination;*

v. *Notifies the Department of Environmental Protection when the emergency or immediate environmental concern has ended by calling the DEP Hotline at 1-877-WARNDEP or 1-877-927-6337; and*

vi. *Restores the engineering control to the pre-emergency conditions as soon as possible; and*

vii. *Submits to the Department of Environmental Protection within 60 calendar days after completion of the restoration of the engineering control, a report including: (a) the nature and likely cause of the emergency; (b) the measures that have been taken to mitigate the effects of the emergency on human health and the environment; (c) the measures completed or implemented to restore the engineering control; and (d) any changes to the engineering control or site operation and maintenance plan to prevent reoccurrence of such conditions in the future.*

#### **8. TERMINATION OF DEED NOTICE.**

i. *This Deed Notice may be terminated only upon recording a Department-approved Termination of Deed Notice, available at N.J.A.C. 7:26C Appendix C, with the office of the [Insert as appropriate the County Clerk/Register of Deeds and Mortgages] of [Insert the name of the County] County, New Jersey, expressly terminating this Deed Notice.*

ii. *Within 30 calendar days after recording a Department-approved Termination of*

*Deed Notice, the owner of the property should apply to the Department for termination of the soil remedial action permit pursuant to N.J.A.C. 7:26C-7.*

*9. ACCESS. The Owner, and the subsequent owners, lessors, lessees, and operators agree to allow the Department, its agents and representatives access to the Property to inspect and evaluate the continued protectiveness of the remedial action that includes this Deed Notice and to conduct additional remediation to ensure the protection of the public health and safety and of the environment if the subsequent owners, lessors, lessees, and operators, during their ownership, tenancy, or operation, and the Owner fail to conduct such remediation pursuant to this Deed Notice as required by law. The Owner, and the subsequent owners, lessors, and lessees, shall also cause all leases, subleases, grants, and other written transfers of an interest in the Restricted Areas to contain a provision expressly requiring that all holders thereof provide such access to the Department.*

#### **10. ENFORCEMENT OF VIOLATIONS.**

*i. This Deed Notice itself is not intended to create any interest in real estate in favor of the Department of Environmental Protection, nor to create a lien against the Property, but merely is intended to provide notice of certain conditions and restrictions on the Property and to reflect the regulatory and statutory obligations imposed as a conditional remedial action for this site.*

*ii. The restrictions provided herein may be enforceable solely by the Department against any person who violates this Deed Notice. To enforce violations of this Deed Notice, the Department may initiate one or more enforcement actions pursuant to N.J.S.A. 58:10-23.11, and N.J.S.A. 58:10C, and require additional remediation and assess damages pursuant to N.J.S.A. 58:10-23.11, and N.J.S.A. 58:10C.*

*11. SEVERABILITY. If any court of competent jurisdiction determines that any provision of this Deed Notice requires modification, such provision shall be deemed to have been modified automatically to conform to such requirements. If a court of competent jurisdiction determines that any provision of this Deed Notice is invalid or unenforceable and the provision is of such a nature that it cannot be modified, the provision shall be deemed deleted from this instrument as though the provision had never been included herein. In either case, the remaining provisions of this Deed Notice shall remain in full force and effect.*

*12A. EXHIBIT A. Exhibit A includes the following maps of the Property and the vicinity:*

*i. Exhibit A-1: Vicinity Map - A map that identifies by name the roads, and other important geographical features in the vicinity of the Property (for example, USGS Quad map, Hunterdon County Maps);*

*ii. Exhibit A-2: Metes and Bounds Description - A tax map of lots and blocks as wells as metes and bounds description of the Property, including reference to tax lot and block numbers for the Property;*

iii. *Exhibit A-3: Property Map* - A scaled map of the Property, scaled at one inch to 200 feet or less, and if more than one map is submitted, the maps shall be presented as overlays, keyed to a base map; and the Property Map shall include diagrams of major surface topographical features such as buildings, roads, and parking lots.

12B. *EXHIBIT B. Exhibit B includes the following descriptions of the Restricted Areas:*

i. *Exhibit B-1: Restricted Area Map* -- A separate map for each restricted area that includes:

(A) *As-built diagrams of each engineering control, including caps, fences, slurry walls, (and, if any) ground water monitoring wells, extent of the ground water classification exception area, pumping and treatment systems that may be required as part of a ground water engineering control in addition to the deed notice;*

(B) *As-built diagrams of any buildings, roads, parking lots and other structures that function as engineering controls; and*

(C) *Designation of all soil and all upland sediment sample locations within the restricted areas that exceed any soil standard that are keyed into one of the tables described in the following paragraph.*

ii. *Exhibit B-2: Restricted Area Data Table* - A separate table for each restricted area that includes either (A) or (B) through (F):

(A) *Only for historic fill extending over the entire site or a portion of the site and for which analytical data are limited or do not exist, a narrative that states that historic fill is present at the site, a description of the fill material (e.g., ash, cinders, brick, dredge material), and a statement that such material may include, but is not limited to, contaminants such as PAHs and metals;*

(B) *Sample location designation from Restricted Area map (Exhibit B-1);*

(C) *Sample elevation based upon mean sea level;*

(D) *Name and chemical abstract service registry number of each contaminant with a concentration that exceeds the unrestricted use standard;*

(E) *The restricted and unrestricted use standards for each contaminant in the table;*  
*and*

(F) *The remaining concentration of each contaminant at each sample location at each elevation.*

12C. *EXHIBIT C. Exhibit C includes narrative descriptions of the institutional controls*

*[Insert as appropriate: and engineering controls] as follows:*

*i. Exhibit C-1: Deed Notice as Institutional Control: Exhibit C-1 includes a narrative description of the restriction and obligations of this Deed Notice that are in addition to those described above, as follows:*

*(A) Description and estimated size [Identify units of measure] of the Restricted Areas as described above;*

*(B) Description of the restrictions on the Property by operation of this Deed Notice; and*

*(C) The objective of the restrictions.*

*[Insert the following if engineering controls are part of the remedial action for the site:*

*ii. Exhibit C-2: [Insert the name of the first engineering control]: Exhibit C-2 includes a narrative description of [Insert the name of the first engineering control] as follows:*

*(A) Description of the engineering control;*

*(B) The objective of the engineering control; and*

*(C) How the engineering control is intended to function.*

*[Repeat the contents of Exhibit C-2, renumbering accordingly, for each separate engineering control that is part of the remedial action for the site.]*

13. SIGNATURES. IN WITNESS WHEREOF, Owner has executed this Deed Notice as of the date first written above.

**[If Owner is an individual]**

WITNESS: \_\_\_\_\_  
[Signature]

\_\_\_\_\_  
[Print name below signature]

STATE OF [State where document is executed] SS.:  
COUNTY OF [County where document is executed]

I certify that on \_\_\_\_\_, 20\_\_, [Name of Owner] personally came before me, and this person acknowledged under oath, to my satisfaction, that this person [or if more than one person, each person]

- (a) is named in and personally signed this document; and
- (b) signed, sealed and delivered this document as his or her act and deed.

\_\_\_\_\_  
\_\_\_\_\_, Notary Public  
[Print Name and Title]



13. SIGNATURES. IN WITNESS WHEREOF, Owner has executed this Deed Notice as of the date first written above.

***[If Owner is a general or limited partnership]***

WITNESS: [Name of partnership]

\_\_\_\_\_  
[Signature]

By: \_\_\_\_\_, General Partner  
[Signature]

\_\_\_\_\_  
[Print name and title]

\_\_\_\_\_  
[Print name]

STATE OF [State where document is executed]    SS.:  
COUNTY OF [County where document is executed]

I certify that on \_\_\_\_\_, 20\_\_\_\_, [Name of person executing document on behalf of owner partnership] personally came before me, and this person acknowledged under oath, to my satisfaction, that this person:

(a) Is a general partner of [Owner], the partnership named in this document;

(b) Signed, sealed and delivered this document as his or her act and deed in his capacity as a general partner of [Owner]; and

(c) This document was signed and delivered by such partnership as its voluntary act, duly authorized.

\_\_\_\_\_, Notary Public  
[Signature]

\_\_\_\_\_  
[Print name]

13. SIGNATURES. IN WITNESS WHEREOF, Owner has executed this Deed Notice as of the date first written above.

**[If Owner is a corporation]**

ATTEST: [Name of corporation]

\_\_\_\_\_ By \_\_\_\_\_

\_\_\_\_\_ [Print name and title]

\_\_\_\_\_ [Signature]

STATE OF [State where document is executed] SS.:  
COUNTY OF [County where document is executed]

I certify that on \_\_\_\_\_, 20\_\_, [Name of person executing document on behalf of Owner] personally came before me, and this person acknowledged under oath, to my satisfaction, that:

(a) this person is the [secretary/assistant secretary] of [Owner], the corporation named in this document;

(b) this person is the attesting witness to the signing of this document by the proper corporate officer who is the [president/vice president] of the corporation;

(c) this document was signed and delivered by the corporation as its voluntary act and was duly authorized;

(d) this person knows the proper seal of the corporation which was affixed to this document; and

(e) this person signed this proof to attest to the truth of these facts.

\_\_\_\_\_ [Signature]

\_\_\_\_\_ [Print name and title of attesting witness]

Signed and sworn before me on \_\_\_\_\_, 20\_\_

\_\_\_\_\_, Notary Public

\_\_\_\_\_ [Print name and title]



**Exhibit H**

**Affordable Housing Deed Restriction Applicable to Designated  
Apartment Units in Block 3, Lot 1**

**THIS DEED RESTRICTION**, entered into as of this the \_\_\_\_ day of June, 2020,

**BY AND BETWEEN:** Country Classics at Frenchtown, LLC a limited liability company of the State of New Jersey and its successors, whose address is 36 Brower Lane, Hillsborough, New Jersey 08844, hereinafter the “Grantor”

**AND**

**THE** Borough of Frenchtown, whose address is 29 Second Street, Frenchtown, New Jersey 08825 hereinafter the “Grantee” or “Municipality”.

**WHEREAS**, the Grantor is the owner of real property identified as Block 3, Lot 1 on the Municipal Tax Map of the Borough of Frenchtown (the “Property”), which Property along with all of Block 3, Lots 1 and 2, and Block 10, Lot 1 (the “Entire Property”) was the subject of an application for preliminary and final subdivision and site plan approval with variances adopted on December 11, 2019 and approvals memorialized pursuant to the Planning Board Resolution No. 2020-09, granting to the Grantor preliminary and final subdivision and preliminary and final site plan approval with variances (the “Planning Board Resolution”); and

**WHEREAS**, the Planning Board approval included condition 4.a. 4) of the Planning Board Resolution requiring the Grantor to subject the Property to the affordable housing deed restriction described herein.

**WHEREAS**, the Grantor and Grantee have entered into a Redevelopment Agreement dated June \_\_\_\_, 2020 in accordance with said approval (the “Redevelopment Agreement”); and

**WITNESSETH**

**Article 1. Consideration**

In consideration of benefits and/or right to develop received by the Grantor from the Municipality regarding the Entire Property, the Grantor hereby agrees to abide by the covenants, terms and conditions set forth in this Deed Restriction, with respect to the Property.

**Article 2. Description of Property**

The Property consists of all of the land, and improvements thereon, that is located in the municipality of Frenchtown Borough, County of Hunterdon, State of New Jersey, which shall be improved to include one (1) fifty two (52) unit midrise residential building and one (1) forty (40) unit

midrise residential building that collectively contain seventeen (17) affordable housing units as required by condition 4.1.4) of Planning Board Resolution and Section 3.7 of the Redevelopment Agreement.

The affordable housing units (the “Affordable Units”) are and shall remain rental units and are more specifically designated as:

Building #1

Unit #1115 – 1 Bed - Very Low – 817 Harrison Street, Unit #1115, Frenchtown, NJ 08825

Unit #1110 – 2 Bed - Very Low - 817 Harrison Street, Unit #1110, Frenchtown, NJ 08825

Unit #1101 – 3 Bed - Low – 817 Harrison Street, Unit #1101, Frenchtown, NJ 08825

Unit #1215 – 2 Bed - Low – 817 Harrison Street, Unit #1215, Frenchtown, NJ 08825

Unit #1217 – 1 Bed - Moderate – 817 Harrison Street, Unit #1217, Frenchtown, NJ 08825

Unit #1201 – 3 Bed - Moderate – 817 Harrison Street, Unit #1201, Frenchtown, NJ 08825

Unit #1315 – 2 Bed - Low – 817 Harrison Street, Unit #1315, Frenchtown, NJ 08825

Unit #1303 – 2 Bed - Moderate – 817 Harrison Street, Unit #1303, Frenchtown, NJ 08825

Unit #1305 – 2 Bed - Moderate – 817 Harrison Street, Unit #1305, Frenchtown, NJ 08825

Building #2

Unit #2109 – 2 Bed - Low – 817 Harrison Street, Unit #2109, Frenchtown, NJ 08825

Unit #2111 – 1 Bed - Low – 817 Harrison Street, Unit #2111, Frenchtown, NJ 08825

Unit #2101 – 3 Bed - Very Low – 817 Harrison Street, Unit #2101, Frenchtown, NJ 08825

Unit #2103 – 2 Bed - Moderate – 817 Harrison Street, Unit #2103, Frenchtown, NJ 08825

Unit #2211 – 2 Bed - Low – 817 Harrison Street, Unit #2211, Frenchtown, NJ 08825

Unit #2201 – 3 Bed - Moderate – 817 Harrison Street, Unit #2201, Frenchtown, NJ 08825

Unit #2203 – 2 Bed - Moderate – 817 Harrison Street, Unit #2203, Frenchtown, NJ 08825

Unit #2311 – 2 Bed - Moderate – 817 Harrison Street, Unit #2311, Frenchtown, NJ 08825

**Article 3. Affordable Housing Covenants**

A. The following covenants (the “Covenants”) shall run with the land for the period of time (the “Control Period”) set forth in paragraph B, below.

B. In accordance with N.J.A.C. 5:80-26.11, the Property shall remain subject to the requirements of this subchapter, the “Control Period,” unless or until the municipality in which the unit is located elects to release the unit from such requirements. Prior to such a municipal election, a restricted unit must remain subject to the requirements of this subchapter for a period of at least 30 years; provided, however, that:

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

2. The Affordable Units shall be used solely for the purpose of providing rental dwelling units for very low, low- or moderate-income households, and no commitment for any such dwelling unit shall be given or implied, without exception, to any person who has not been certified for that unit in writing by the Frenchtown Borough Administrative Agent. So long as any dwelling unit remains within its Control Period, sale of the Property must be expressly subject to these Deed Restrictions, deeds of conveyance must have these Deed Restrictions appended thereto, and no sale of the Property shall be lawful, unless approved in advance and in writing by

the Municipality pursuant to the terms and conditions of the Redevelopment Agreement or applicable law.

C. Any improvements to the Affordable Units that affect the bedroom configuration must be approved in advance and in writing by the Municipality, which approval shall not be unreasonably withheld.

D. The Grantor shall notify the Frenchtown Borough Administrative Agent of any foreclosure actions filed with respect to the Property within five (5) business days of service upon Grantor.

E. The Grantor shall notify the Frenchtown Borough Administrative Agent, within three (3) business days of the filing of any petition for protection from creditors or reorganization filed by or on behalf of the Grantor.

#### **Article 4. Remedies for Breach of Affordable Housing Covenants**

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

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

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

#### **Article 5. Recording**

The Grantor must record this Deed Restriction within ten (10) days of full execution.

**IN WITNESS WHEREOF**, the Municipality and the Grantor have executed this Deed Restriction as of the date first above written.

ATTEST:

THE BOROUGH OF FRENCHTOWN

\_\_\_\_\_  
Brenda S. Sheperd, Borough Clerk

By: \_\_\_\_\_  
Brad Myhre, Mayor

ATTEST:

COUNTRY CLASSICS AT  
FRENCHTOWN, LLC

\_\_\_\_\_  
, Secretary

By: \_\_\_\_\_  
Scott VanCleaf, Manager

**ACKNOWLEDGEMENTS**

STATE OF NEW JERSEY:

ss.

COUNTY OF HUNTERDON:

I CERTIFY that on this \_\_\_\_\_ day of \_\_\_\_\_, 2020, Scott VanCleaf, personally came before me and this person acknowledged, under oath, to my satisfaction, that:

- (a) this person is the President of COUNTRY CLASSICS AT FRENCHTOWN, LLC, the limited liability company named in the attached document;
- (b) this document was signed and delivered by the Company as its voluntary act duly authorized by a proper consent of its members;
- (c) this person knows the proper seal of the Company which was affixed to this document;
- (d) this person signed this proof to attest to the truth of these facts; and
- (e) the person who signed this document is the President of the Company and is duly authorized to sign this document on behalf of the Company.

\_\_\_\_\_  
Secretary

Sworn to and signed before me  
this \_\_\_\_\_ day of \_\_\_\_\_, 2020

\_\_\_\_\_  
Notary Public of NJ

(Seal)



STATE OF \_\_\_\_\_

)

) SS:

COUNTY OF \_\_\_\_\_

)

I CERTIFY that on the \_\_\_\_ day of \_\_\_\_\_, 2020, before me, the subscriber, personally appeared Brad Myhre, who, being by me duly sworn on his oath, deposes and makes proof to my satisfaction, that he is the Mayor of THE BOROUGH OF FRENCHTOWN, the entity named in the within Agreement; that this Agreement was signed and delivered by the entity as its voluntary act; and that this person signed this proof to attest to the truth of these facts.

Sworn to and signed before me  
this \_\_\_\_ day of \_\_\_\_\_, 2020

\_\_\_\_\_  
Notary Public of NJ

(Seal)

**EXHIBIT I**  
**PROFESSIONAL SERVICES AGREEMENT**  
**Affordable Housing Services**

**THIS AGREEMENT** by and between \_\_\_\_\_, with an address of \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_ (hereinafter referred to as “Developer”) and CGP&H, LLC, 101 Interchange Plaza, Cranbury, New Jersey 08512 (hereinafter referred to as “CGP&H”); and

**WITNESSETH**

**WHEREAS** CGP&H will provide Developer with Administrative Agent services for up to \_\_\_ affordable units in \_\_\_\_\_, New Jersey during this contract. The primary mission of the Administrative Agent is to ensure that restricted homes are rented or sold to eligible low and moderate-income households and that the restrictions are enforced throughout the term of affordability. CGP&H will assume all the duties of the Administrative Agent as defined by the Uniform Housing Affordability Controls (N.J.A.C. 5:80-26).

**NOW THEREFORE**, CGP&H and Developer hereby agree to the following terms and conditions:

**Section 1. Term and Renewal**

This Agreement shall become effective as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ and shall have a term of twelve (12) months, terminating at the close of business on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, subject to the termination and renewal provisions set forth in Section 3, below. This contract renews annually at the same terms as herein, unless either party requests revisions to same at least 30 days before contract expiration.

**Section 2. Applicability and Supersession**

This Agreement shall define and govern all terms between the parties with respect to housing units and shall supersede all prior agreements or documents related thereto.

**Section 3. Termination**

The Agreement may be terminated by either party, by giving one (1) month advanced written notice to the other, to the address and in the form as set forth in Section 5, below. Prior to the effective date of the termination of this Agreement, the Developer must enter into an agreement with the substitute administrative agent.

#### **Section 4. Responsibilities of CGP&H**

CGP&H shall perform all of the duties and responsibilities of an administrative agent as are set forth in the Rules, including those set forth in Sections 5:80-26.14, 16 and 18 thereof, as such Rules may from time to time be amended. CGP&H shall furnish all equipment and materials and shall perform the services set forth in Schedule A.

#### **Section 5. Notices**

All notices and other written communications between Developer and CGP&H shall be to the addresses and personnel specified below:

If to CGP&H

If to Developer

#### **Section 6. Non-Waiver of Conditions**

The failure of either party to insist upon strict performance of any provision of this Agreement in any one or more instances shall not constitute a consent to waiver of or excuse for any other different or subsequent breach of the same or other provision, nor as a result shall either part relinquish any rights which it may have under this Agreement. No terms or provisions hereof shall be deemed waived and no breach excused unless such waiver or consent is in writing and signed by the waiving party.

#### **Section 7. Merger and Amendment**

This written agreement, together with its Exhibits, constitutes the sole agreement between the parties with respect to the matters covered therein, and no other written or oral communication exists which shall bind the parties with respect thereto, provided however, that this Agreement may be modified by written amendments clearly identified as such and signed by both Developer and CGP&H.

**Section 8. Partial Invalidation of Agreement**

Should any provision of this Agreement be deemed or held to be invalid, ineffective or unenforceable, under present or future laws, the remainder of the provisions shall remain in full force and effect.

**IN WITNESS WHEREOF**, CGP&H and Developer have executed this Agreement.

**WITNESS:**

BY: \_\_\_\_\_

BY: \_\_\_\_\_

NAME: \_\_\_\_\_

NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_

**WITNESS:**

**CGP&H, LLC**

\_\_\_\_\_

\_\_\_\_\_

NAME: \_\_\_\_\_

NAME: Randall Gottesman, PP

TITLE: \_\_\_\_\_

TITLE: President

**SCHEDULE A  
SCOPE OF SERVICES  
ADMINISTRATIVE AGENT SERVICES**

CGP&H will provide Developer with Administrative Agent services for up to \_\_\_ affordable units in \_\_\_\_\_, New Jersey. The primary mission of the Administrative Agent is to ensure that restricted homes are rented to eligible low and moderate-income households and that the restrictions are enforced throughout their term of affordability. CGP&H will assume all the duties of the Administrative Agent as defined by the Uniform Housing Affordability Controls (N.J.A.C. 5:80-26).

<b>ADMINISTRATIVE AGENT SERVICES</b>	
<b>1. Project Setup</b>	Flat fee payable upon execution of this Agreement based on the number of units covered under this Agreement: For projects with five units or fewer the fee is \$500. For projects with more than five units, the fee is \$1,000.
<b>2. Income Certification</b>	Flat fee of \$800 per income certification CGP&H will not bill for applicants found ineligible.
<b>3. Waiting List Management</b>	\$30 per deed restricted unit annual fee payable upon commencement of affirmative marketing. Minimum fee of \$300 annually.
<b>4. Lease Renewal</b>	\$30 per deed restricted unit. Fee not applicable in the first year.
<b>5. Reimbursement of Expenses</b>	Up to \$300 per year.

- 1. Project Setup:** This includes, but is not limited to, drafting the initial deed restriction, preparing the affirmative marketing plan, answering questions from applicants during the initial affirmative marketing period and conducting the lottery. Affirmative marketing includes setting up a dedicated website on AffordableHomesNewJersey.com as well as postings on NJHRC.gov, Twitter, Instagram and Facebook where we have 3,000 followers. We also send out mailings quarterly to our distribution list of over 200 community groups, major employers, and social service providers to the housing region where the affordable units are located.
- 2. Income Certification:** CGP&H will contact the next applicant on the waiting list to prescreen them for eligibility, refer them to the Developer, and invite them to submit a full application. CGP&H will collect and review documentation from the applicant households to determine their eligibility. Eligibility determination fees do not include credit or

background checks, which are done by the Developer. There is no charge to prescreen applicants and referring multiple, screened applicants to Developer until a proper match is made.

- 3. Waiting List Management:** The waiting list management fee will allow us to maintain the waiting list on our web-based Affordable Homes New Jersey Profile ([affordablehomesnewjersey.com](http://affordablehomesnewjersey.com)). This unique online system provides around-the-clock, user-friendly and robust online tools for applicants, while also increasing our turnaround times. First launched in early 2016, it has become a game changer for both Developers and applicants alike. To join the waiting list, applicants submit a short online form and every applicant who meets the income requirements has access their own Affordable Homes New Jersey Profile page. On that page, they can see the information that we have on file for them such as annual income and household size and update it directly from their profile if needed without calling CGP&H. The personalized profile enables applicants to verify that we always have their most current information on file and to quickly update their information themselves. After initial lease-up, all applicants will be required to update their information annually. As a result, the waiting list is always current, allowing CGP&H to quickly find interested tenants when there are vacancies in the future. CGP&H currently has over 20,000 households on its waiting lists, with dozens more joining every day.
- 4. Lease Renewal:** CGP&H will advise the Developer of the maximum rental amount before each new lease is executed and we will review all executed leases and maintain copies in our files, as required by UHAC.
- 5. Reimbursement of Expenses:** The Developer will be responsible for the cost of newspaper advertising, showing homes to interested renters. CGP&H affirmative marketing activities will ensure that this project meets all state marketing requirements of the Uniform Housing Affordability Controls. The Developer may choose to conduct additional marketing in order to rent all affordable units in the shortest amount of time.

CGP&H will advise and approve of paid advertising for compliance with state rules. Developer will be responsible for placing all advisements and the cost of paid advertising. CGP&H's affirmative marketing activities (non-newspaper related) will ensure that this project meets state marketing requirements of the Uniform Housing Affordability Controls.

CGP&H will monitor and administer the affordable homes covered under this contract utilizing HomeKeeper, a powerful database designed by industry experts to manage affordable housing programs. No personal or confidential information will be disclosed by CGP&H outside of HomeKeeper, and only CGP&H will have access to any such information within HomeKeeper. In addition, data CGP&H inputs into HomeKeeper about the affordable homes will be aggregated and analyzed at the national level as a tool for policy makers to evaluate the impact

of affordable housing. Only non-personal information relating to performance measurements (such as the number of vacancies annually, demographic data and rents) will be aggregated into reports and disclosed to the public.

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**Exhibit J**  
**Construction Schedule**

	<b>Commencement Date</b>	<b>Completion Date/CO</b>
<b>Site Work and Offsite Improvements</b>	July 2020	August 2021
<b>Building 1</b>	August 2020	October 2021
<b>Building 2</b>	March 2022	May 2023
<b>Duplex/Triplex</b>	August 2020	July 2023

The Construction Schedule assumes that all Final Approvals required by the Borough and the Planning Board, including signature on this Agreement and the Financial Agreements, signature on the associated vacations and easements, recording of the Final Plat, and issuance of the associated Building Permits, are issued on or before June 30, 2020.

The Commencement Date and Estimated Completion Dates for Building 2 are conditioned on a 75% occupancy rate on Building 1 on or before March 2022. The Commencement Date and Completion Date of Building 2 will be extended to the extent a 75% occupancy rate on Building 1 is received after March 2022.

Except to the extent that construction is delayed as a result of an event of Force Majeure as described in paragraph 6.7, all construction shall be completed on or before December 31, 2024.



**Exhibit K**

**Escrow Agreement**

**Exhibit L**  
**Developers Agreement**

Prepared by:  _____ <p style="text-align:right">, Esq.</p>
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**DEVELOPER’S AGREEMENT**

**THIS AGREEMENT**, made on \_\_\_\_\_, \_\_\_\_\_ between

**THE BOROUGH OF FRENCHTOWN**, a Municipal Corporation of the County of Hunterdon, State of New Jersey, having its principal offices at 29 Second Street, Frenchtown, New Jersey 08822, hereinafter called the “Borough”,

and

**COUNTRY CLASSICS AT FRENCHTOWN, LLC** residing or having its offices at 36 Brower Lane, Hillsborough, New Jersey 08844-127, hereinafter called the “Developer”.

**WHEREAS**, the Developer received Preliminary and Final Major Subdivision Approval and Preliminary and Final Site Plan Approval, with two variances from the Frenchtown Borough Planning Board on December 11, 2019 pursuant to Resolution 2020-09, for Block 3, Lot 1 and 2, and Block 10, Lot 1, located on Harrison Street and Eighth Street in Frenchtown, NJ; and

**WHEREAS**, the approved plans are designated as 15 sheets, prepared by Van Cleef Engineering Associates, LLC dated June 19, 2019 with a latest revision date of April 29, 2019 (the “Final Plans”); and

**WHEREAS**, the approval was granted subject to, among other things, the execution of this Agreement between the Borough and the Developer and the posting of certain guarantees as hereinafter set forth and other conditions as more fully set forth in the resolution of said Planning Board;

**NOW, THEREFORE**, in consideration of the foregoing and the sum of One (\$1.00) Dollar lawful money of the United States of America, each to the other in hand paid, at or before the signing of this Agreement, the receipt whereof is hereby acknowledged by each party, and

in consideration of the mutual covenants, agreements, conditions, understandings and undertakings hereinafter contained and set forth, the parties hereto hereby agree as follows:

1. That the Developer shall at the time of final approval and prior to the signing of the final map or plans, provide the Approved Bond Amounts for Proposed Off-Site Improvements described in Exhibit A, as following:

(a) Performance bond secured by appropriate surety in the sum of \$215,737 as a guaranty for ninety percent (90%) of the total bond required for the installation of the off-tract improvements or improvements in the public right-of-way; and

(b) Cash escrow equal to \$23,970 representing ten (10%) percent of the total bond required as an additional performance guarantee.

(c) The Developer shall further post with the Borough inspection fees in the sum of \$9,400 (Initial Deposit of \$2,350). These fees may be paid in installments in accordance with N.J.S.A. 40:55D-53.

Any improvements undertaken by the Developer on the tract prior to the receipt of final approval are undertaken at the Developer's risk.

2. That the improvements to be made in any streets or sidewalks shall be performed as specified in the Final Plans and the resolution of the Planning Board and all ordinances, resolutions, rules and regulations of the Borough, the Board of Health, the Sewer Authority, and any State or County Department or Agency respecting the opening and improvement of streets and construction of utilities and further subject to issuance of a road opening permit by the Superintendent of Public Works. All of the said work shall be performed subject to the inspection and approval of the Borough Engineer. All catch basins shall be initially set at subgrade and shall be raised to finished height at time of installation of top course.

3. That after the completion of the public improvements, the Developer shall post with the Borough a maintenance bond of fifteen percent of the initial bond for an amount equal to \$35,956.05 in form satisfactory to the Borough, conditioned on the Developer maintaining all of such improvements described on Exhibit A for a period of two (2) years therefrom. Upon posting and acceptance of said maintenance bond, the performance bond shall be released.

4. That the Developer further agrees to convey to the Borough for street and highway purposes all of the lands lying in the beds of all of the streets set forth on said map or plans. The Developer shall convey in writing by deed or easement as may be specified by the approval all drainage, storm and sanitary sewers, sidewalk easements, conservation or trail easements, sight easements and other public areas to the Borough or to the County of Hunterdon, when requested by the Borough, all as shown on said maps or plans.

5. That the Developer further covenants and agrees that all buildings erected by it on the said tract, to which this Agreement applies by reference, shall be constructed and equipped strictly in accordance with all conditions of approval by the Planning Board and the provisions of all ordinances, resolutions, rules and regulations of the Borough, the Planning Board, the Board of Health, and any State, Borough or County Department or agency, relating to the construction and equipment of buildings.

6. That the Planning Board and Borough Council agree to approve, when requested to do so, any necessary maps or deeds for the purpose of filing in the Hunterdon County Clerk's Office, provided that the Developer is then in compliance with all the requirements and provisions of this Agreement and applicable ordinances and statutes and the conditions of any approvals by the Planning Board then applicable.

7. That the Developer shall provide, for the use of all persons employed in the construction of all of the aforesaid improvements, easily accessible water closets and portable toilets. Such toilet facilities shall be installed within twenty-four (24) hours of the time work has been commenced, and their use shall be terminated upon approval of the Board of Health within twenty-four (24) hours of the time work has been completed.

8. That the Borough agrees to authorize and direct the Construction Official of the Borough of Frenchtown to issue building permits for the erection of dwelling units or other structures on lots or the site shown on the applicable portion of said maps or plans upon the compliance by the Developer with all the terms and conditions herein contained and contained in the terms of the Final Plans, including applicable ordinances, rules and regulations. The Developer shall provide and file with the Borough Engineer two (2) complete sets of as-built improvement plans and profiles, one (1) set of translucent prints and one (1) set of black-on-white paper prints, showing actual construction, as approved, prior to release of performance guarantees.

9. That it is further agreed between the parties hereto that the final approval by the Borough of storm and sanitary sewers and connections and drainage easements, roadways and other public improvements shall constitute a dedication thereof to public use unless otherwise provided in the resolution of the Planning Board and that the ownership and title thereto is thereafter vested in the Borough, and shall be confirmed by deed or other recorded instrument to the Borough or to the County as appropriate.

10. As described in paragraph 1(c), before commencing construction, the Developer shall deposit with the Borough Clerk the sum of \$9,400 (Initial deposit of \$2,350) for services to be rendered by the Borough Engineer or his authorized representatives or other approving authority in connection with inspection of the improvement of the Developer's tract, at charges consistent with the professional service agreement. Upon completion of all improvements and release of any maintenance bonds or escrows, the Borough shall return to the Developer the unused portion of any previously deposited inspection costs and fees. In the event the inspection costs and fees exceed the amount deposited by the Developer, the Developer shall be required to submit payment to the Borough for said additional inspection costs and fees prior to the release of any maintenance bonds and escrows. Inspection services of the Borough whether by the Borough Engineer, and/or Board of Health shall comprise, but in no way be limited to:

- a. Inspections of road and drainage construction and other inspections as may be required by the Borough in the enforcement of its standards.
- b. As to sanitary sewer construction in said development:
  - (1) Review and approval of plans and specifications;
  - (2) Inspection services during said construction;
  - (3) Costs of laboratory, pipe, leakage, and infiltration tests, following construction to enforce compliance with the Borough sanitary sewer standards.

11. That the Developer is hereby given the right and privilege to transfer title to said tract to the name of any individual or corporation in accordance with the Redevelopment Agreement between the parties, and said new owner shall have the rights and obligation afforded by this Agreement, and the right to transfer title to all or part of the lands, subject to the rights and obligations imposed on the Developer by this Agreement and the terms of the Final Plans.

It is understood and agreed that, as part of the transfer of title, the grantee must agree to be bound by all of the terms and conditions of this Agreement. Upon request the Borough shall be provided with an assumption of obligation as signed by such grantee. In the event that the Developer hereunder transfers, sells, or assigns title to less than the entire project, the grantee(s) of any portion thereof shall each be liable in full to complete the obligations of the Developer herein whether such obligations relate to the portion transferred, sold, or assigned or to any other portion of the project unless such grantee secures a release from the Borough for the obligations relating to the portion not transferred, sold or assigned to grantee prior to the transfer, sale, or assignment.

12. That it is further understood and agreed between the parties hereto as follows:

a. The Developer will comply with the Revised General Ordinances, Borough of Frenchtown and all other applicable ordinances;

b. Developer agrees to place all utilities underground.

c. Road excavation and grading operations shall be under the direct supervision of a licensed professional engineer so that rainfall run-off will not create serious problems of erosion, flooding or the deposition of mud and debris on abutting properties. Said engineer shall advise the Borough Engineer of the measures to be taken which will afford this protection.

d. Connections to existing sanitary sewers shall be plugged at the start of construction and shall not be opened until the line has passed a leakage test and has been inspected and approved by the Sewerage Authority Engineer or his authorized agent.

e. No construction vehicle or equipment shall park on or utilize, except in coming to or going from the site, any existing Borough street unless required to do so by the approved plans or unless otherwise provided in the Resolution of Approval.

13. That the Borough Engineer shall direct the Developer when to install the final wearing surface of the final pavement and will determine the approximate date when the same shall be laid. Said work to be completed by the Developer within thirty (30) days of the date

Borough Engineer directs the Developer to install said surface, weather permitting. Such direction shall not constitute acceptance of the improvements by the Borough.

14. That drainage and grading shall be as follows:

a. All springs or water emanating therefrom shall be piped to the nearest available storm sewer or as otherwise set forth in the approved plans in a manner approved in writing by the Borough Engineer.

b. For the two Apartments on the Property, water from pumps shall be piped to the nearest existing storm drains, and where such drains do not exist, new drains shall be constructed at such points and in such manner as may be directed by the Borough Engineer.

c. The Developer will insure that all lots and other areas in said development will be properly graded and properly drained and will in this regard obey all reasonable instructions of the Borough Engineer relating thereto.

d. The Developer shall also see to it that no stumps, dead trees or debris are deposited upon or be permitted to remain upon any portions of said development nor upon the undeveloped portion, nor shall any stumps, dead trees or debris be deposited below the surface of the earth.

e. In the event that any drainage problem shall be created on adjoining properties by development of this subdivision or site, corrective measures shall be provided within the area limits of the subdivision or site, at such places and in such manner as the Borough Engineer may approve.

f. The Developer will remove silt deposited in the Borough's storm sewers, brooks and catch basins or other drainage areas, resulting from the wash down of soil or debris in the course of the construction. Any reasonable instructions given by the Borough Engineer to prevent such wash down shall be promptly carried out.

15. That within the Completion Date for Off-Site Improvements described in Exhibit J of the Redevelopment Agreement between the parties Developer shall complete to the satisfaction of the Borough Engineer and the Borough Council all improvements as required by

the Planning Board, the Borough Engineer and as imposed by this Agreement unless such time limit is extended by the Borough Council.

16. That the Developer shall appoint a job superintendent, whose name, home address and phone number shall be furnished to the Borough Engineer; and no work, other than sales, shall be performed in the subdivision or on the site by the Developer, his agents, employees, servants or sub-contractors between the hours of 6:00 p.m. and 7:00 a.m. Monday through Saturday and all day Sunday.

17. That this Agreement contains the entire agreement between the parties hereto and no statement, promise or endorsement made by any party hereto, or agent of any party hereto, which is not contained in this written contract or the instruments incorporated herein by reference, shall be valid or binding; and this Agreement may not be enlarged, modified or altered except in writing, signed by the parties and endorsed thereon. Nothing herein shall be deemed a waiver of other existing municipal construction requirements or any conditions contained in the Resolution of Approval.

18. That this Agreement shall inure to the benefit of and be binding upon the successors and assigns of the respective parties hereto.

19. It is understood and agreed that the obligations imposed upon the Developer under the within agreement shall not constitute an estoppel against the Borough of Frenchtown Planning Board or the Borough Council nor relieve the Developer from complying with all other federal, state, county, and local requirements.

20. Prior to the commencement of site work, the Developer shall meet with the Borough Engineer for a pre-construction conference to discuss the anticipated construction schedule, procedures of construction, and any particular requirements of the Engineer.

21. The Borough, its consultants, employees and agents shall be given free access to observe construction of roads, sanitary sewers, water mains, storm sewers, landscaping for buffer areas and appurtenances associated with the approved plat. The purpose of such observations shall be limited to providing the Borough with an opportunity to determine that such improvements will be constructed in accordance with the Developer's approved submittals. The Borough or its representatives, consultants, employees or agents shall not supervise, direct or have control over the Developer's work during such observations or as a result thereof, nor shall they have authority over or responsibility for the means, methods, techniques, sequences or



procedures of construction selected by the Developer, for safety precautions and programs incident to the work of the Developer or for any failure of the Developer to comply with applicable laws, rules, regulations, ordinances, codes or orders.

The Developer shall hold harmless, indemnify and defend the Borough, its representatives, consultants, employees and agents from any and all liabilities, claims, losses or damage arising or alleged to arise from the construction of the improvements included in the relevant approval but not including such liabilities, claims, losses or damage arising from the sole negligence of the Borough, its representatives, consultants, employees and agents.

The Developer shall purchase and maintain during construction of said improvements a Comprehensive General Liability Insurance Policy with minimum limits of One Million (\$1,000,000.00) Dollars per occurrence and One Million (\$1,000,000.00) Dollars aggregate. The coverage shall include endorsements for Broad Form Property Damage; explosion, collapse, and underground hazards; completed operations; and contractual liability. The contractual liability coverage shall specifically apply to the above indemnification clause. All liability coverages shall be on an occurrence basis.

Certificates of Insurance evidencing the above-referenced coverage shall be provided to the Borough before work on the improvements begins.

22. This Agreement is intended to govern approved development within the Borough whether such approval was in the form of preliminary and/or final major subdivision and/or preliminary and/or final site plan, and such terms are to be freely substituted for each other where the context and the nature of the approvals require.

**IN WITNESS WHEREOF**, the Borough and Developer have caused these presents to be signed and attested by their respective corporate officers and their respective corporate seals to be affixed hereto the day and year first above written.

ATTEST:

BOROUGH OF FRENCHTOWN

\_\_\_\_\_  
Brenda S. Shepherd, Borough Clerk

BY: \_\_\_\_\_  
Brad Myhre, Mayor

ATTEST:

Country Classics at Frenchtown, LLC

\_\_\_\_\_

BY: \_\_\_\_\_  
J. Todd Van Cleef, Manager

STATE OF NEW JERSEY )  
 ) ss.:  
COUNTY OF HUNTERDON)

I certify that on \_\_\_\_\_, \_\_\_\_\_, Brenda S. Shepherd personally came before me and she acknowledged under oath to my satisfaction that:

- (a) she is the Borough Clerk of the Borough of Frenchtown, a municipal corporation of the State of New Jersey and is the attesting witness to the signing of this Document by Brad Myhre, who is the Mayor of the Borough;
- (b) the signing of this Document was authorized by a proper resolution of the Borough;
- (c) the seal of the Borough is affixed to this Document; and
- (d) she signed this Acknowledgment to attest to the truth of these facts.

\_\_\_\_\_  
Brenda S. Shepherd, Clerk

Sworn and subscribed to before me on  
this \_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Notary Public

STATE OF NEW JERSEY )  
 ) ss:  
COUNTY OF )

I CERTIFY that on \_\_\_\_\_, 20\_\_\_\_, \_\_\_\_\_  
personally came before me, and this person acknowledged under oath, to my satisfaction, that:

- (a) this person is the Secretary of \_\_\_\_\_, the Corporation named in this document;
- (b) this person is the attesting witness to the signing of this document by the proper corporate officer who is \_\_\_\_\_, the President of the corporation;
- (c) this document was signed and delivered by the corporation as its voluntary act duly authorized by a proper resolution of its Board of Directors;
- (d) this person knows the proper seal of the corporation which was affixed to this document;
- (e) this person signed this proof to attest to the truth of these facts; and
- (f) the full and actual consideration paid or to be paid for the transfer of title to reality evidenced by the within deed, as such consideration is defined in P.L. 1968, c. 49, sec. a(c), is One Dollar (\$1.00).

\_\_\_\_\_

Signed and sworn to before me on  
this \_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_

**Exhibit M**  
**Financing Agreements**

**Exhibit N**  
**Agreed Truck Traffic Route**