

AFFORDABLE HOUSING AGREEMENT

THIS Affordable Housing Agreement (“Agreement”), made this 18th day of June, 2026, by and between:

The **TOWNSHIP OF WEST ORANGE**, a municipal corporation of the State of New Jersey, County of Essex, having an address at 66 Main Street, West Orange, New Jersey 07052, (hereinafter the “Township” or “West Orange”).

And

The **TOWNSHIP OF WEST ORANGE PLANNING BOARD**, a duly authorized Planning Board of the Township, having an address at 66 Main Street West Orange, NJ 07052 (hereinafter the “Board” or “Planning Board”);

410 MAIN STREET HOLDINGS, LLC an entity formed under the laws of the State of New Jersey, with offices located at 6 Emma Lane, Jackson, New Jersey 08527, together with any current owner(s) of the Property defined below, and its/their permitted successors and assigns (collectively, “Developer” or “410 Main” and, with the Township, collectively referred to herein as the “Parties”).

RECITALS

WHEREAS, the Township of West Orange is a municipal corporation of the State of New Jersey located in Essex County; and

WHEREAS, the Township filed a declaratory judgment action in the Superior Court of New Jersey, Law Division, Essex County, bearing Docket No. ESX-L-886-25, seeking a court-managed path to compliance with its Fourth Round affordable housing obligations pursuant to the New Jersey Fair Housing Act, N.J.S.A. 52:27D-301, *et seq.*, as amended by P.L. 2024, c. 2, Administrative Directive #14-24, and N.J.S.A. 52:27D-313 (the “DJ Action”); and

WHEREAS, the Court fixed the Township’s Fourth Round affordable housing obligations at a rehabilitation/present need obligation of 409 units and a prospective need obligation of 660 units, and the Township’s Fourth Round Housing Element and Fair Share Plan (“Fourth Round HEFSP” or “Housing Plan”) identifies an RDP of 0 and an unmet need of 660 units; and

WHEREAS, the Township failed to file its Fourth Round Housing Element and Fair Share Plan by the statutory June 30, 2025 deadline; and

WHEREAS, 410 Main is the owner of certain real property located at 410 Main Street, West Orange, New Jersey, also known as Block 113, Lots 262, 264, and 308 on the Township's tax map (hereinafter the "Property"); and

WHEREAS, the Property consists of approximately 11,936 square feet, or approximately 0.274 acres, and is located at or near the southwest corner of Main Street and Park Drive North in the Township's B-2 Zone; and

WHEREAS, the Property is presently vacant, the prior structures on the Property having been demolished; and

WHEREAS, 410 Main previously filed an application with the Township of West Orange Planning Board under PB 24-06 seeking conditional use approval, preliminary and final major site plan approval, and variance approvals to permit a three story mixed use development on the Property, which application included approximately 900 square feet of ground floor commercial space, 14 parking spaces (where 25 parking spaces were required), and twelve (12) residential units on the upper floors, together with related site improvements (the "Prior Application"); and

WHEREAS, the Prior Application proposed twelve (12) residential dwelling units, including two (2) units to be set aside as affordable housing units for low- and moderate-income households; and

WHEREAS, after public hearings conducted on June 5, 2024, August 7, 2024, September 4, 2024, October 9, 2024, November 6, 2024, December 4, 2024, and December 11, 2024, the Planning Board denied the Prior Application, which denial was memorialized by resolution dated January 8, 2025; and

WHEREAS, 410 Main filed an action in lieu of prerogative writs challenging the Planning Board's denial of the Prior Application, bearing Docket No. ESX-L-1637-25 (the "PW Action"); and

WHEREAS, 410 Main thereafter filed a builder's remedy / exclusionary zoning action against the Township and Planning Board, bearing Docket No. ESX-L-1824-26 (the "Builder's Remedy Action" and, together with the PW Action, the "410 Main Actions"); and

WHEREAS, by Order entered on April 10, 2026, Docket Nos. ESX-L-1824-26 and ESX-L-1637-25 were consolidated with the Township's declaratory judgment action, Docket No. ESX-L-886-25, for purposes of mediation and discovery, without prejudice to any party making an application to have all issues tried at the same time, and Elizabeth McManus, P.P. was designated to continue as Special Adjudicator; and

WHEREAS, following discussions among the Township, the Board and 410 Main, the Parties reached an agreement to which 410 Main agreed to withdraw its opposition to the Township's pending Motion for Temporary Immunity / Interim Restraints, and the Parties agreed, subject to finalization of this written settlement agreement within forty-five days of the Court's June 24, 2026 Order and required implementing municipal action, that the Property would be included in the Township's Fourth Round HEFSP and related implementing measures for the provision of two (2) affordable housing units; and

WHEREAS, the Parties desire to resolve the 410 Main Actions, avoid further litigation, provide certainty regarding the development of the Property, and provide the Township with affordable housing credits that may be applied toward the Township's Fourth Round affordable housing obligation; and

WHEREAS, Developer seeks to develop the Property with a rental inclusionary residential project consisting of twelve (12) total residential apartment units, no commercial component, structured/underground parking, and related improvements, intended to be consistent with the concept plan **attached hereto as Exhibit A** and the zoning ordinance **attached hereto as Exhibit B**, of which two (2) residential units shall be affordable units set aside for occupancy by very low, low, and/or moderate income households in accordance with the Uniform Housing Affordability Controls, N.J.A.C. 5:80-26.1 et seq. ("UHAC"), the Fair Housing Act, applicable Court orders, and the Township's Court approved affordable housing plan (the "Inclusionary Project" or "Project"); and

WHEREAS, at twelve (12) total residential units, the Parties acknowledge that the twenty percent (20%) affordable housing set aside equals 2.4 affordable units, and Developer shall provide two (2) on-site Affordable Units and satisfy the remaining 0.4 fractional affordable housing obligation by making a payment in lieu to the Township's Affordable Housing Trust Fund in the amount of Seventy-Two Thousand Dollars (\$72,000.00), calculated as forty percent (40%) of One Hundred Eighty Thousand Dollars (\$180,000.00), subject to approval by the Court or other reviewing authority to the extent required; and

WHEREAS, the Project shall include no fewer than nineteen (19) on-site parking spaces, and the area formerly proposed as ground floor commercial space in the Prior Application shall be converted to structured/under building parking, subject to final site plan approval and the zoning ordinance attached as Exhibit B; and

WHEREAS, Developer shall annually purchase five (5) municipal parking permits at the standard municipal rate, for the municipal parking location at George Quigley Parking Lot (northeast intersection of Mississippi Avenue and Harrison Avenue) for the duration of this Project's use; and

WHEREAS, Developer shall install a pedestrian warning device for vehicles exiting the

parking garage, and the Project shall maintain the 5.14-foot setback from Park Drive North as shown on Developer's concept plan; and

WHEREAS, the Parties wish to enter into this Affordable Housing Agreement which sets forth the terms, conditions, responsibilities and obligations of the Parties relative to the Inclusionary Project and the affordable housing units to be provided on the Property.

NOW, THEREFORE, in consideration of the promises and the mutual obligations contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each of the Parties, the Parties hereto agree to the terms set forth as follows:

ARTICLE I – BASIC TERMS AND CONDITIONS

1.1 Purpose

The purpose of this Agreement is to resolve the disputes between the Parties, including the 410 Main Actions, and to create and maintain a rental Inclusionary Project on the Property in which, if the Project contains more than ten (10) residential units, twenty percent (20%) of the actual residential units constructed shall be affordable to very low, low and moderate income households in accordance with UHAC standards, the Fair Housing Act, the Mount Laurel doctrine, and the Township's Court approved Fourth Round HEFSP.

The development will be substantially in accordance with the proposed concept plan **attached hereto as Exhibit A** ("Concept Plan"), and the zoning ordinance **attached hereto as Exhibit B** (the "Ordinance"), with the understanding that, at twelve (12) total residential units, two (2) units shall be affordable units and the remaining fractional affordable housing obligation shall be satisfied as set forth in Section 2.3 below.

The Parties intend that the Affordable Units to be constructed as part of the Inclusionary Project, and any payment in lieu made with respect to a fractional affordable housing obligation, shall be included in the Township's Fourth Round HEFSP (subject to appropriate governmental approvals and related implementing measures) and shall be applied toward the Township's Fourth Round affordable housing obligation, subject to approval by the Court, Special Adjudicator, Affordable Housing Dispute Resolution Program, or other reviewing authority, as applicable.

1.2 Affordability Controls to Run with the Land

As a critical and non-severable component of this Agreement, the affordability controls applicable to the Affordable Units in the Inclusionary Project, including without limitation

recorded deed restriction(s), restrictive covenants, and any other recorded affordability instruments required by UHAC, the Fair Housing Act, the Township's affordable housing ordinances, or any Court approved compliance plan, shall run with the land. The obligations and benefits hereunder shall be binding upon and inure to the benefit of the Parties, their successors and assigns, including any person, corporation, partnership, limited liability company, or other legal entity which at any particular time may have a fee title interest in the Property which is the subject of this Agreement.

Developer's obligations with respect to the Affordable Units shall continue during Developer's ownership and control of the Property and shall be assumed by any successor owner for the full affordability control period.

1.3 Project Description

The Inclusionary Project shall consist of the following, subject to final site plan approval, outside agency approvals, and consistency with the Ordinance:

- a. twelve (12) residential apartment units;
- b. no commercial component;
- c. two (2) Affordable Units at a twelve (12) unit project, together with satisfaction of any applicable fractional obligation as set forth in Section 2.3;
- d. no fewer than nineteen (19) on-site parking spaces, with the area formerly proposed as commercial space in the Prior Application to be converted to structured/underground parking;
- e. purchase and annual repurchase by Developer of five (5) municipal parking permits at the standard municipal rate for the duration of this Project's use, for the municipal parking location at or near George Quigley Parking Lot (northeast intersection of Mississippi Avenue and Harrison Avenue), subject to all generally applicable municipal parking rules. If sufficient parking spaces are not available at the aforementioned lot, the balance shall be arranged for at the Bethany Church parking lot located at 30 Ashwood Terrace, West Orange, subject to all generally applicable municipal parking rules.
- f. installation by Developer of a pedestrian warning device for vehicles exiting the parking garage;
- g. maintenance of the 5.14-foot setback from Park Drive North as shown on Developer's concept plan;

h. stormwater management shall comply with all applicable NJDEP and municipal code regulations and landscaping, lighting, trash/recycling, façade, and other improvements shall be substantially consistent with the concept plan and/or as may be approved by the planning board; and

i. such other improvements as are reasonably necessary to construct and operate the Inclusionary Project in accordance with applicable law; and

j. It is understood that the site has been previously disturbed and the proposed building will mitigate any potential disturbance along with the retaining walls and as such, slope disturbance shall be in accordance with the aforementioned proposed AH-1 Rezoning Ordinance (Exhibit B), the attached concept plan (Exhibit A) and all engineering industry standards.

1.4 Exhibits

The following exhibits are incorporated into and made part of this Agreement:

- a. Exhibit A – Concept Plan / Site Plan for Inclusionary Project, dated [insert], last revised [insert].
- b. Exhibit B – Ordinance _____.

ARTICLE II – DEVELOPER’S OBLIGATIONS

2.1 Obligation to Resolve Pending Litigation and Withdraw Opposition

Upon execution of this Agreement and adoption and effectiveness of the Ordinance attached as Exhibit B, Developer shall file a voluntary stipulation of dismissal with prejudice of the Builder's Remedy Action bearing Docket No. ESX-L-1824-26. Such stipulation shall be filed within five (5) business days after the later of execution of this Agreement and adoption and effectiveness of the Ordinance, unless another date is agreed to in writing by the Parties or ordered by the Court.

Upon Board approval of an application submitted by Developer in accordance with the requirements of the MLUL and pursuant to the Ordinance, Developer shall file a voluntary stipulation of dismissal with prejudice of the PW Action bearing Docket No. ESX-L-1637-25. Such stipulation shall be filed within five (5) business days after the expiration of the appeal period of Board approval of the application. Pending final dismissal of the PW Action, Developer shall consent to a stay of the PW Action. Nothing herein shall be construed as an approval of the Developer’s Application for development by the Planning Board or a waiver of any formal public hearing on the merits of the Application. The Developer’s proofs for approval

of said Application shall comply with all provisions of the MLUL.

Developer shall execute and file, or consent to the filing of, any stipulation, consent order, withdrawal, dismissal, or other document reasonably required by the Township, the Planning Board, the Special Adjudicator, or the Court to effectuate the stay, withdrawal, and dismissal of the 410 Main Actions in accordance with this Agreement.

Developer shall withdraw, and shall not refile, renew, support, fund, or otherwise pursue, any objection to the Township's Motion for Temporary Immunity / Interim Restraints, the Township's Fourth Round declaratory judgment action, the Township's request for compliance certification, the Township's request for repose, or the Township's Fourth Round Housing Element and Fair Share Plan, except solely to enforce the express terms of this Agreement.

The Parties shall exercise good faith, cooperate, and assist each other in preparing and filing the stipulations of dismissal and any related documents required to implement this Section, and approval of the form of such documents shall not be unreasonably withheld, conditioned, or delayed. Nothing herein shall be construed to require the Township, the Planning Board, the Governing Body, or any Township official to approve any application, ordinance, variance, waiver, permit, or other governmental approval except in accordance with applicable law.

2.2 Obligation to Provide and Maintain Creditworthy Affordable Units

Developer shall ensure that the Project maintains the affordability controls such that all Affordable Units are creditworthy against the Township's affordable housing obligation pursuant to the Fair Housing Act, N.J.S.A. 52:27D-301 et seq., any applicable COAH regulations, UHAC, the Mount Laurel doctrine, the Township's Housing Element and Fair Share Plan, and any applicable Court order, pursuant to a deed restriction and related affordability controls.

For purposes of this Agreement, "Affordable Unit(s)" means the affordable rental units required by this Agreement and compliant with UHAC for creditworthiness under the Fair Housing Act and the Mount Laurel doctrine.

Developer shall be responsible to ensure that each Affordable Unit is created, marketed, priced, leased, operated, and maintained in compliance with UHAC, the Fair Housing Act, any applicable COAH regulations, the Township's affordable housing ordinances, the Township's Court approved affordable housing plan, the recorded deed restriction(s), this Agreement, and all applicable federal, state, county, and local law.

2.3 Obligation to Satisfy Full Affordable Housing Set Aside, Including Any Fractional Obligation

The Parties agree to a twenty percent (20%) affordable housing set aside for the Project if the Project contains more than ten (10) residential units.

At twelve (12) total residential units, Parties acknowledge that the twenty percent (20%) set aside equals 2.4 affordable units. Accordingly, the Project shall include two (2) on site Affordable Units, and Developer shall satisfy the remaining 0.4 fractional affordable housing obligation by making a payment in lieu to the Township's Affordable Housing Trust Fund in the amount of Seventy-Two Thousand Dollars (\$72,000.00), calculated as forty percent (40%) of One Hundred Eighty Thousand Dollars (\$180,000.00). Such fractional payment in lieu shall be payable as a condition of, and no later than, issuance of the first residential certificate of occupancy for the Project.

No temporary certificate of occupancy, certificate of occupancy, rental certificate, or other occupancy authorization for any residential unit shall issue unless and until the payment required by this Section has been paid in full, unless otherwise ordered by the Court.

For any unit count other than twelve (12), if the calculation of the twenty percent (20%) set aside results in a fractional obligation of less than 0.5 of an affordable unit, the fractional obligation shall be satisfied by a payment in lieu equal to the applicable fractional portion multiplied by One Hundred Eighty Thousand Dollars (\$180,000.00), payable as a condition of, and no later than, issuance of the first residential certificate of occupancy. If the calculation results in a fractional obligation greater than or equal to 0.5 of an affordable unit, the obligation shall be rounded up to the next whole Affordable Unit.

No waiver, reduction, alternate satisfaction, payment-in-lieu, or rounding methodology shall be effective unless expressly set forth in this Agreement, the Ordinance, or other Township implementing ordinance and approved by the Court or other reviewing authority to the extent required.

2.4 Obligation to Bear All Expenses Associated with Creating and Maintaining Creditworthy Units

Other than as specified in this Agreement, the Township shall have no financial obligations under this provision to assure that the Affordable Units are creditworthy, and all associated expenses, except as set forth herein to the contrary, shall be solely borne by Developer, its successors, or assigns. Developer shall pay all associated costs of the Administrative Agent which are incurred in connection with the Inclusionary Project.

Developer shall also be responsible for all professional escrow deposits, application fees, review fees, inspection fees, recording fees, administrative agent fees, and other fees or charges lawfully imposed in connection with the Project, the Affordable Units, the development application, and

the administration and monitoring of the Affordable Units.

2.5 Obligation to Cooperate with the Township in Its Efforts to Monitor the Units

The Parties acknowledge that the Township has the obligation from time to time to generate information necessary to demonstrate that units are creditworthy. Developer and its successors, at their own expense, shall cooperate and provide all reasonable and necessary information to the Township, the Township's Municipal Housing Liaison, and the Administrative Agent regarding monitoring and reporting requirements.

2.6 Administrative Agent

Developer shall work with the Township's Administrative Agent and special Mount Laurel counsel to ensure that the Affordable Units are administered in accordance with law. Developer shall be responsible for providing the Township with all information, if any, that it, the Administrative Agent, or other governmental entities may require.

The Administrative Agent shall be selected, designated, or approved by the Township in accordance with UHAC and applicable law. Developer shall pay all reasonable, actual, and necessary costs charged by the Administrative Agent for administration of the Affordable Units.

2.7 Obligation to Properly Deed Restrict the Inclusionary Project

Developer shall work with the Township and its Administrative Agent to record a deed restriction that is consistent with UHAC, N.J.A.C. 5:80-26.1 et seq., so that all Affordable Units in the Inclusionary Project shall have affordability controls for not less than forty (40) years because the Project is presently contemplated as a rental project. If the Project is converted to a for sale project by written amendment approved by the Township and the Court to the extent required, the Affordable Units shall have affordability controls for not less than thirty (30) years, or such longer period as may be required by applicable law.

Developer shall record the deed restriction(s) and all related affordability instruments in the Essex County Clerk/Register's Office at Developer's sole cost and expense. Unless otherwise approved in writing by the Township and the Administrative Agent, such deed restriction(s) and affordability instruments shall be recorded prior to issuance of any certificate of occupancy for any residential unit within the Project.

Property maintenance shall be continuous. The Affordable Units shall comply with UHAC with respect to bedroom distribution, income distribution, integration within the Project, affirmative marketing, rent levels, and all other applicable requirements. In the event Developer fails to timely record the required deed restriction(s) or affordability instruments, fails to maintain the

Affordable Units in compliance with UHAC, or leases, rents, occupies, transfers, or otherwise permits use of any Affordable Unit in violation of the applicable affordability controls, Developer shall be responsible for all reasonable costs and expenses incurred by the Township in enforcing this Agreement and the affordability controls, including reasonable attorneys' fees, administrative agent fees, professional fees, and court costs. In addition, to the fullest extent permitted by law and as an equitable remedy for noncompliance, Developer shall remit to the Township's Affordable Housing Trust Fund any rent, income, or other consideration collected from any Affordable Unit during the period of noncompliance, or, at minimum, the difference between the amount actually collected and the maximum lawful affordable rent permitted under UHAC, as determined by the Township, the Administrative Agent, or the Court.

2.8 Obligation to Lease Units in a Manner That Maintains Their Creditworthiness

Developer, including its successors and assigns, shall have the continuing responsibility to lease the Affordable Units in the Inclusionary Project in accordance with applicable federal, state, and local laws, UHAC, and the terms specified in this Agreement for at least forty (40) years and to maintain the Mount Laurel creditworthiness of the Affordable Units. In the event of any breach of this continuing responsibility, the Township shall have all remedies available in equity and law.

No Affordable Unit shall be leased, occupied, released, transferred, or otherwise made available except to an income qualified household approved by the Administrative Agent, at a rent approved by the Administrative Agent, and pursuant to a lease form approved by the Administrative Agent to the extent required by UHAC.

2.9 Obligation Not to Challenge the Township's Fourth Round Affordable Housing Plan

Developer or any affiliated entities or successors in interest will cooperate with and support the Township's request for approval of any amendment to the Township's affordable housing plan and the subsequent entry of a judgment of compliance and repose/compliance certification, will support the settled upon fair share plan, and will not otherwise challenge the validity of the Township's affordable housing plan, so long as Developer's site and this Inclusionary Project are included within the affordable housing plan. This obligation also specifically requires Developer to support or not object to the Township's Fourth Round Plan, to the extent the Township seeks approval of its Fourth Round Plan and Developer's site and this Inclusionary Project are contained within the Fourth Round Plan.

2.10 Obligation to File Development Applications in Accordance with the Ordinance and Concept Plan

After the Township's adoption of the Ordinance to permit development of the Inclusionary Project, Developer shall file development applications consistent with the Concept Plan attached hereto as Exhibit A and the Ordinance attached hereto as Exhibit B. Developer shall be responsible for obtaining any and all necessary and applicable agreements, approvals, and permits from all relevant public entities and utilities, including, but not limited to, the Township, Planning Board, Essex County, Essex County Planning Board, New Jersey Department of Environmental Protection, New Jersey Department of Transportation, applicable soil conservation district, utility providers, and any other governmental authority having jurisdiction.

Developer shall diligently pursue completeness, hearings, approvals, permits, outside agency approvals, construction permits, and certificates of occupancy in good faith and without unreasonable delay.

2.11 Court Approval / Fairness Hearing Trigger for Development Application

The Parties acknowledge that this Agreement may be subject to approval by the Court following what is commonly known as a fairness hearing. Unless otherwise ordered by the Court, Developer's development application shall be processed following Court approval of this Agreement after a fairness hearing, to the extent required, and passage/effectiveness of the Ordinance. The adoption of the Ordinance and/or the preparation or filing of a development application shall not be required to await such fairness hearing unless the Court so orders.

This Agreement does not purport to resolve all of the issues before the Court raised in the DJ Action. In the event the Court approves this Settlement Agreement, if such Court approval is required, but the Township is unable to reach a settlement with FSHC or any other person or entity, the Township is still obligated to comply with the obligations of this Settlement Agreement, including but not limited to the adoption of the Rezoning Ordinance and the duty to defend this Settlement Agreement. The Township agrees to contact the Court to request a fairness hearing be promptly scheduled, if one is required. The Township is responsible for the preparation and cost of the notice of the Fairness Hearing. The Parties will work together to ensure that the Court approves the Agreement at the Fairness Hearing.

If this Agreement is not approved by the Court following any required fairness hearing, then this Agreement shall be deemed terminated and shall be of no further force and effect, and the Parties shall return to their respective positions as if this Agreement had not been executed by the Parties, subject to any order of the Court.

2.12 Parking, Traffic, Access, and Off-Site Improvements

Developer shall be responsible, at its sole cost and expense, for satisfying all parking, traffic, access, loading, refuse, utility, stormwater, pedestrian safety, and off-site improvement requirements applicable to the Inclusionary Project, including those required by the Township,

Planning Board, Essex County, any outside agency, or any condition of approval, except as expressly provided otherwise in this Agreement.

Developer shall implement all parking, traffic, access, and off-site improvement measures agreed upon by the Parties and/or required by any approval, including:

- a. construction and maintenance of no fewer than nineteen (19) on-site parking spaces, with the area formerly proposed as ground floor commercial space in the Prior Application to be converted to structured/underground parking;
- b. purchase and annual repurchase by Developer of five (5) municipal parking permits at the standard municipal rate (to the extent the permits are available for purchase), in accordance with Paragraph 1.3(e) herein;
- c. installation and maintenance by Developer of a pedestrian warning device for vehicles exiting the parking garage;
- d. maintenance of the 5.14-foot setback from Park Drive North as shown on Developer's concept plan;
- e. delivery, loading, trash pickup, private hauler, rideshare, curb management, and similar operational measures required by the Planning Board or outside agencies; and
- f. any other traffic, parking, access, utility, or site mitigation measures required by the Planning Board, Township professionals, Essex County, or any outside agency.

The Township agrees to use reasonable efforts to assist Developer in its undertakings to obtain required approvals for the parking, traffic, access, and off-site improvements described in this Section. If Developer requests the Township's assistance regarding any required approvals, such assistance will be provided by the Township at Developer's expense, and any municipal consents or approvals required for such improvements shall not be unreasonably withheld, conditioned, or delayed where the Township has authority to issue same and where issuance is consistent with applicable law.

No temporary certificate of occupancy, certificate of occupancy, rental certificate, or other occupancy authorization shall be issued until all required parking, traffic, access, utility, stormwater, safety, and off-site improvements have been completed, bonded, inspected, or otherwise addressed to the satisfaction of the Township and any outside agency having jurisdiction, to the extent permitted by law.

ARTICLE III - TOWNSHIP OBLIGATIONS

3.1 Obligation to Include Property in Fourth Round HEFSP

The Township acknowledges that, subject to the terms of this Agreement, Court approval to the extent required, and Developer's full and timely performance of its obligations, the Property and Inclusionary Project shall be included in the Township's Fourth Round Housing Element and Fair Share Plan and related implementing measures for the provision of the Affordable Units and satisfaction of any applicable fractional obligation as set forth herein.

The Township's inclusion of the Property and Inclusionary Project in its Fourth Round HEFSP is expressly conditioned upon Developer's compliance with this Agreement, UHAC, the Ordinance, all applicable approvals, and all applicable laws, including but not limited to the Municipal Land Use Law, N.J.S.A. 40:55D-1 *et seq.*

3.2 Obligation to Rezone or Adopt Implementing Ordinance for the Project

The Township acknowledges and agrees that the zoning ordinance necessary to permit as-of-right development of the Inclusionary Project on the Property in accordance with this Agreement shall be attached hereto as Exhibit B. Within thirty-five (35) days of the execution of this Agreement, the Township shall introduce the Rezoning Ordinance. Upon introduction of the Rezoning Ordinance, the Township shall refer the Rezoning Ordinance to the Planning Board for review and recommendation at the Planning Board's next regularly scheduled meeting. At the next regularly scheduled Township Committee meeting after a recommendation has been made to the Township by the Planning Board regarding the Rezoning Ordinance, or after the expiration of the thirty-five (35) day referral period, whichever is earlier, the Township will vote on the approval of the Rezoning Ordinance.

The Township shall take all necessary steps to promptly adopt the Ordinance attached hereto as Exhibit B, including adoption on second reading, and in compliance with all procedural requirements set forth in the Municipal Land Use Law, N.J.S.A. 40:55D-1 *et seq.* Nothing herein shall be construed to require the Township, the Governing Body, the Planning Board, or any Township official to act contrary to applicable law or any order of the Court.

3.3 Obligation to Cooperate

The Township acknowledges that, in order for Developer to construct its Inclusionary Project, it will be required to obtain any and all necessary and applicable agreements, approvals, and permits from all relevant public entities and utilities, including, but not limited to: the Township, the Township's Planning Board, Essex County, the Essex County Planning Board, the New Jersey Department of Environmental Protection, the New Jersey Department of Transportation, the applicable soil conservation district, and utility providers, including those approvals set forth in the Township's ordinances and requirements imposed by the Township's land use boards. The Township agrees to use all reasonable efforts to assist Developer in its undertakings to obtain the required approvals. If Developer requests the Township's assistance regarding any required approvals, such assistance will be provided by the Township at Developer's expense.

The Township recognizes that the unit count could be reduced as a result of Developer securing any and all necessary and applicable agreements, approvals, and permits. If the Project contains more

than ten (10) residential units, Developer will be required to provide twenty percent (20%) of the actual residential units constructed as Affordable Units, subject to the fractional obligation provisions of Section 2.3.

3.4 Obligation to Refrain from Imposing Cost Generative Requirements

The Township agrees that the Township will not impose standards and/or requirements that have not been agreed to by the Parties and would otherwise be considered cost generative, to the extent that Developer maintains the Affordable Units, which are specifically considered to be creditworthy under the Mount Laurel doctrine, entitling the Project to such protections. Therefore, the Township will not impose unnecessary cost-generative features/requirements pursuant to N.J.S.A. 52:27D-304(v).

3.5 Obligation with Regard to Utilities

The Township agrees to take all actions within its municipal authority, and to cooperate with all applicable utilities and agencies, to provide for and facilitate all utility connections and related off-site improvements required for the Inclusionary Project, including, without limitation, water, sanitary sewer, stormwater/drainage, electric, gas, and telecommunications, and shall issue all reasonable municipal consents and approvals necessary to do so, provided such consents and approvals are consistent with applicable law.

Developer shall be responsible, at its sole cost and expense, for all required design, permitting, construction, installation, fees, and restoration associated with such connections, including securing any required third-party easements, unless the Parties expressly agree otherwise in writing.

3.6 Capacity Representation

The Township represents that as of the Effective Date, and based solely on information reasonably available to the Township, the Township is not aware of a formal sanitary, sewer, or water moratorium / scare resource order presently applicable to the Property.

ARTICLE IV – TOWNSHIP PLANNING BOARD (PLANNING BOARD) OBLIGATION

4.1 Obligation to Participate in Zoning Ordinance Approval with Reasonable Diligence

After the introduction of the Rezoning Ordinance and the referral from the Township to the Board referenced in Section 3.2, at the next regularly scheduled Board meeting, the Board shall make its recommendation to the Township.

4.2 Obligation to Process Developer's Development Application with Reasonable Diligence

The Planning Board shall diligently process Developer's development applications following

passage of the necessary zoning ordinance set forth herein, and within the time limits imposed by the Municipal Land Use Law. The Board shall expedite the processing of 410 Main's development application in accordance with N.J.A.C. 5:93-10.1(a), adoption of the Rezoning Ordinance and within the time limits imposed by the MLUL. If necessary, the Board shall cooperate in scheduling special meetings to expedite the application to ensure that the Board acts on the development application within the time provisions set forth in the MLUL.

4.3 Right to Seek Approval of Variances, Waivers, or De Minimis Exceptions

The Planning Board recognizes that the zoning ordinance approval and this Agreement contemplate development of the Inclusionary Project, which is an "inclusionary development" within the meaning of the Mount Laurel doctrine, and Developer shall be entitled to any benefits, protections, and obligations afforded to developers of inclusionary developments. Nothing shall prevent Developer from applying for a waiver or bulk variance from any standard imposed by the Ordinance and/or the Township's land use and development ordinance, as applicable, and the standards set forth in the Municipal Land Use Law, the Fourth Round affordable housing regulations, or in this Agreement, or as otherwise established by law, as applicable, shall determine if Developer is entitled to this relief or from seeking a waiver or de minimis exception to any standard or requirement of the Residential Site Improvement Standards under the applicable regulations. Notwithstanding the above, the Planning Board is under no contractual obligation to grant or approve any request for a variance, waiver, or de minimis exception; however, the Township shall take all lawful and necessary steps to work with the Developer and the Planning Board to address any concerns so as to result in the terms of this Settlement Agreement being effectuated, as set forth in Section 5.2 herein.

4.4 Obligation to Cooperate

The Board acknowledges that, in order for Developer to construct its Inclusionary Project, it will be required to obtain any and all necessary and applicable agreements, approvals, and permits from all relevant public entities and utilities, including, but not limited to: the Township, the Township's Planning Board, Essex County, the Essex County Planning Board, the New Jersey Department of Environmental Protection, the New Jersey Department of Transportation, the applicable soil conservation district, and utility providers, including those approvals set forth in the Township's ordinances and requirements imposed by the Township's land use boards. The Board agrees to use all reasonable efforts to assist Developer in its undertakings to obtain the required approvals. If Developer requests the Township's assistance regarding any required approvals, such assistance will be provided by the Township at Developer's expense.

4.5 Obligation to Refrain from Imposing Cost Generative Requirements

The Board agrees that the Board will not impose standards and/or requirements that have not been agreed to by the Parties and would otherwise be considered cost generative, to the extent that Developer maintains the Affordable Units, which are specifically considered to be creditworthy under the Mount Laurel doctrine, entitling the Project to such protections. Therefore, the Board will not impose unnecessary cost-generative features/requirements pursuant to N.J.S.A. 52:27D-304(v).

ARTICLE V- MUTUAL OBLIGATIONS

5.1 Obligation to Comply with State Regulations

The Parties shall comply with any and all federal, state, county, and local laws, rules, regulations, statutes, ordinances, permits, resolutions, judgments, orders, decrees, directives, interpretations, standards, licenses, approvals, and similarly binding authority applicable to the Inclusionary Project, the Affordable Units, the Property, or the performance by the Parties of their respective obligations or the exercise by the Parties of their respective rights in connection with this Agreement.

5.2 Mutual Good Faith, Cooperation, and Assistance

The Parties shall exercise good faith, cooperate, and assist each other in fulfilling the intent and purpose of this Agreement, including, but not limited to, the Required Approvals, the development of the Property consistent with the terms hereof, and the defense of any challenge with regard to any of the foregoing.

5.3 Notices

Any notice or transmittal of any document required, permitted, or appropriate hereunder and/or any transmittal between the Parties relating to the Property or this Agreement (“Notice[s]”) shall be written and shall be served upon the respective Parties by certified mail, return receipt requested, or recognized overnight or personal carrier, with certified proof of receipt, and by email where an email address is provided below.

TO DEVELOPER: 410 Main Street Holdings, LLC
Attn: Shaul Moshe Sugar
6 Emma Lane
Jackson, New Jersey 08527

With a copy to: Prime Tuvel & Miceli, LLC
Attn: Benjamin T.F. Wine, Esq.
Attn: Danielle Novak Kinback, Esq.
1 University Plaza Drive, Suite 500
Hackensack, New Jersey 07601
Email: ben@primelaw.com
Email: dkinback@primelaw.com

and

TO THE TOWNSHIP: Township of West Orange
Attn: Township Clerk
66 Main Street
West Orange, New Jersey 07052
Email: clerk@westorange.org

With a copy to: Semeraro & Fahrney, LLC
Attn: Mark J. Semeraro, Esq.
155 Route 46, Suite 108
Wayne, New Jersey 07470
Email: msemeraro@semerarolaw.com

TO THE BOARD: [INSERT]

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

ARTICLE VI - MISCELLANEOUS

6.1 Severability

Unless otherwise specified, it is intended that the provisions of this Agreement are to be severable. The validity of any article, section, clause, or provision of this Agreement shall not affect the validity of the remaining articles, sections, clauses, or provisions hereof. If any section of this Agreement shall be adjudged by a court to be invalid, illegal, or unenforceable in any respect, such determination shall not affect the remaining sections.

6.2 No Modification

This Agreement may not be modified, altered, amended, supplemented, or waived in any way except by a writing signed by each of the Parties.

6.3 Counterparts

This Agreement may be executed in any number of counterparts, each of which shall be an original and all of which together shall constitute but one and the same Agreement.

6.4 Voluntary Agreement

The Parties acknowledge that each has entered into this Agreement on its own volition without coercion or duress after consulting with their counsel, that each party is the proper person and possesses the authority to sign the Agreement, that this Agreement contains the entire understanding of the Parties, and that there are no representations, warranties, covenants, or undertakings other than those expressly set forth herein.

6.5 Interpretation

In the event of any subsequent dispute or ambiguity involving the interpretation of this Agreement, inasmuch as the Parties and their attorneys have had input into the terms and conditions contained herein, this Agreement shall not be interpreted against the Township, the Planning Board, or any Party by reason of drafting.

6.6 Assignment

Developer may assign this Agreement with advance notice to the Township, provided, however, that any assignment shall require that the assignee expressly assume in writing Developer's obligations under Article II and all other obligations applicable to the Property and Inclusionary Project, and such assignment shall not relieve the assigning Developer/property owner of its obligations for acts or omissions occurring prior to the effective date of the assignment unless the Township expressly agrees in writing.

6.7 Schedules

Any and all Exhibits and Schedules annexed to this Agreement are hereby made a part of this Agreement by this reference thereto. The only exhibits to this Agreement are Exhibit A and Exhibit B unless the Parties amend this Agreement in writing.

6.8 Entire Agreement

This Agreement constitutes the entire Agreement between the Parties relating to the subject matter hereof, and supersedes all prior negotiations, discussions, representations, and understandings, whether written or oral, except to the extent expressly incorporated herein.

6.9 Effective Date

Anything herein contained to the contrary notwithstanding, the effective date of this Agreement shall be the date upon which all Parties execute the same in accordance with the proper legal processes designated by law and the court approves this Agreement or a similar agreement ("Effective Date").

6.10 Captions

The captions and section headings in this Agreement are for convenience only and shall not be used to interpret, expand, or limit the terms of this Agreement.

6.11 Waiver

The Parties agree that this Agreement is enforceable. Each of the Parties waives all rights to challenge the validity or the ability to enforce this Agreement. Failure to enforce any of the provisions of this Agreement by any of the Parties shall not be construed as a waiver of these or other provisions.

6.12 Notice of Actions

The Parties and their respective counsel agree immediately to provide each other with notice of any lawsuits, actions, applications, proceedings, appeals, or governmental declarations threatened or pending by third parties of which they are actually aware, which may affect the provisions of this Agreement.

6.13 Governing Law; Jurisdiction; Venue

This Agreement has been entered into and shall be construed, governed, and enforced in accordance with the laws of the State of New Jersey without giving effect to provisions relating to conflicts of law. Jurisdiction of any litigation ensuing with regard to this Agreement exclusively shall be in the Superior Court of New Jersey, Essex County Vicinage, including Docket No. ESX-L-886-25 and any consolidated or related matters to the extent retained by the Court. Service of any complaint may be effectuated consistent with the terms hereof for the delivery of Notices. The Parties waive formal service of process.

6.14 Default

In the event that either Party shall fail to perform any material obligation on its part to be performed pursuant to the terms and conditions of this Agreement, unless such obligation is waived by the other Party for whose benefit such obligation is intended, or by the Court, such failure to perform shall constitute a default under this Agreement. Upon the occurrence of any default, the nondefaulting Party shall provide notice to the defaulting Party, and the defaulting Party shall have a reasonable opportunity to cure the default within forty-five (45) days. In the event the defaulting Party fails to cure within forty-five (45) days or such reasonable period of time as may be appropriate, the Party for whose benefit such obligation is intended shall be entitled to exercise any and all rights and remedies that may be available in equity or under the laws of the State of New Jersey, including the right of specific performance to the extent available. Further, the Parties may apply to the Court for relief by way of motion to enforce litigants' rights. In the event of any default by Developer, Developer shall reimburse the Township for all reasonable attorneys' fees, costs, and expenses incurred by the Township in enforcing this Agreement, including any application to enforce litigants' rights.

In the event the Township fails to adopt the aforementioned zoning ordinance, the Developer shall, in addition to the rights set forth in the preceding paragraph, have the right upon notice in accordance with this Agreement, to terminate this Agreement under which circumstance, the parties shall have all rights restored to the status quo ante to the date hereof and all claims and defenses available now shall be available to the parties.

6.15 Fairness Hearing

The Parties acknowledge that this Settlement Agreement may be subject to approval by the Court following what is commonly known as a "fairness hearing" as set forth in Morris Cty. Fair Hous. Council v. Boonton Twp., 197 N.J. Super. 359, 367-69 (Law Div. 1984), *aff'd o.b.*, 209 N.J. Super. 108 (App. Div. 1986), and East/West Venture v. Borough of Fort Lee, 286 N.J. Super. 311, 328-29

(App. Div. 1996). If this Settlement Agreement is not approved by the Court, then this Settlement Agreement shall be deemed terminated and shall be of no further force and effect and the Parties shall return to their respective positions as if this Settlement Agreement had not been executed by the Parties. The adoption of the Ordinance and/or submission, processing of or hearing on a development application shall not be required to await such fairness hearing unless the Court so orders.

6.16 Recitals

The recitals set forth above are incorporated into and made part of this Agreement.

[SIGNATURE PAGE FOLLOWS]

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

TOWNSHIP OF WEST ORANGE

WITNESS/ATTEST:

By: _____
Susan McCartney, Mayor

By: _____
Karen J. Carnevale, Township Clerk

Date:

Date:

TOWNSHIP OF WEST ORANGE PLANNING BOARD

WITNESS/ATTEST

By: _____

By: _____

Date:

Date:

410 MAIN STREET HOLDINGS, LLC

By: _____
[insert name and title of principal]

Date:

WITNESS/ATTEST:

By: _____
[insert name and title of witness]

Date:

EXHIBIT A

(CONCEPT PLAN)

EXHIBIT B

(Ordinance)