

**DEVELOPER'S AGREEMENT
TOWNSHIP OF LAWRENCE – 1052 SPRUCE, LLC**

THIS AGREEMENT made this 9th day of February, 2021 by and between the Township of Lawrence, a municipal corporation of the State of New Jersey, having its principal offices located at 2207 Lawrenceville Road, Lawrence, New Jersey 08648 (“Township”), and 1052 Spruce, LLC having its principal offices located at 1333 Brunswick Avenue, #200, Lawrence, NJ 08648 (“Developer”).

WITNESS

WHEREAS, the Developer is the owner of approximately 7.12± acres of land designated as Block 701, Lot 39, on the Lawrence Township Tax Map (“Subject Property”); and

WHEREAS, the Township entered into a Settlement Agreement of its declaratory judgment action¹ with Fair Share Housing Center, Inc. (“FSHC”) dated April 28, 2017, which Agreement included an inclusionary development for a total of 300 dwelling units, including 60 affordable housing rental units, on property owned by the Brandywine Operating Partnership, LP (“Brandywine”) identified as Block 5101, Lot 18 on the Lawrence Township Tax Map as part of the Township’s Third Round compliance plan;

WHEREAS, as a result of setbacks and restrictions necessitated by the Brandywine site’s proximity to a waterway under the jurisdiction of the Delaware and Raritan Canal Commission and the State and Nationally Registered Breatly House, the scale of the inclusionary development at the Brandywine site has been decreased to a total of 189 dwelling units of which forty-two (42) shall be affordable housing units, resulting in the loss of eighteen (18) affordable housing units and eighteen (18) bonus credits; and

¹ In the Matter of the Application of the Township of Lawrence, Docket No.: MER-L-1538-15.

WHEREAS, the Developer recently approached the Township regarding the development of the Subject Property for residential use, which currently contains a long vacant warehouse-office building, and has proposed to construct a rental inclusionary development on the Subject Property for a total of 120 rental dwelling units, including twenty-two (22) affordable housing rental units, as depicted on the Developer's Concept Plan dated September 4, 2020 attached hereto as **Exhibit A** ("Project"); and

WHEREAS, the Parties have agreed that said Project shall be one of the Township's compliance mechanisms for the satisfaction of the Township's Third Round obligation, particularly due to the loss of eighteen (18) affordable housing units at the Brandywine site, and shall be included in the Township's Third Round amended compliance plan; and

WHEREAS, the Parties now wish to enter into a Developer's Agreement in order to memorialize their understanding and agreement concerning the Project, and to ensure satisfaction of all conditions of the same.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the legal sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Incorporation of Preambles: The preambles to this Agreement are incorporated herein by reference and made a part hereof.
2. Settlement Agreement: The Township's Settlement Agreement with FSHC dated April 28, 2017 is hereby incorporated as **Exhibit B** to this Agreement as if fully set forth herein, and is attached hereto.
3. Rezoning of Subject Property: On or before April 15, 2021, the Township shall vote upon the adoption of an ordinance to implement zoning changes, if any, to the Subject Property permitting the Developer to proceed with the construction of the Project consistent with the terms

and conditions of the this Agreement, as proposed in the Concept Plan dated September 4, 2020 referenced below to be incorporated into an ordinance which upon adoption shall be made a part hereof and attached hereto as **Exhibit C**. The Subject Property will be developed by the Developer or its successor-in-interest substantially in accordance with the Concept Plan dated September 4, 2020, subject to such revisions as are the result of preparation of a fully engineered site plan and as are consistent with this Agreement.

The ordinance shall include a set aside for very low-, low- and moderate-income households of at least twenty (22) affordable housing rental units, and the twenty-two (22) affordable housing rental units shall follow the income/bedroom distribution established in the Uniform Housing Affordability Controls (“UHAC”), N.J.A.C. 5:80-26.1, et seq., with the sole exception that, among the eleven (11) low-income units overall, there shall be three (3) very low-income units (30% or less of median income) that shall be equally distributed among the bedroom makeups (*i.e.*, 1 one-bedroom very low-income unit, 1 two-bedroom very low-income unit, and 1 three-bedroom very low-income unit).

The twenty-two (22) affordable housing rental units generated by the Project shall be distributed as follows:

- 8 of the housing units for low-income (30% to 50% of median income) households: 1 one-bedroom, 5 two-bedroom, and 2 three-bedroom;
- 11 of the housing units for moderate-income (50% to 80% of median income) households: 2 one-bedroom, 6 two-bedroom, 3 three-bedroom; and
- 3 of the housing units as very low income (30% or less of median income): 1 one-bedroom, 1 two-bedroom, and 1 three-bedroom.

The parties recognize and agree that the twenty-two (22) affordable units shall be non-age-restricted family rental units and shall be integrated with the market units in the Project. The Developer recognizes and acknowledges that the Township requires that the affordable housing

units be integrated with the market-rate rental units, however, the affordable housing units may have different layouts and finishes than the market-rate rental units. Nevertheless, the affordable units must be of the same design and quality as the market-rate units, and the affordable units must not be externally distinguishable from the market-rate units. The affordable housing rental units shall not be age-restricted, that is, they shall be available to households of all age levels.

The Parties also agree that the ordinance shall require that all dwelling units within a structure shall be connected to approved and functioning public water and sanitary sewer systems.

4. Project Deemed Inclusionary: The Township acknowledges and agrees that with inclusion of twenty-two (22) family rental affordable units, the Project shall be inclusionary and, as such, shall be exempt from the imposition of any residential, affordable housing development fees. The Township will support any Developers request/application to seek additional subsidies from local, county, state or federal agencies to further assure long term viability of affordable units.

5. Further Review of Project: Even with amendments to the applicable zoning ordinance, the Parties acknowledge that the Project shall require review and approval from one of the Township's land use boards. Any such land use application shall be filed with the appropriate board, and shall be reviewed and acted upon in due course. The Parties further acknowledge and agree that any such grant of approvals may necessitate the execution of another developer's agreement between the Parties in order to ensure the satisfaction of all conditions of approval, and nothing contained herein shall prohibit or impede the Parties' ability to enter into further agreements concerning the Subject Property or the Project.

6. Use; Removal of Existing Structure: The Developer or its successor-in-interest hereby acknowledge and agree that, as of the date of full execution of this Agreement, the Subject Property shall cease to be utilized for any of its former uses, including conforming and non-conforming

uses, except for multi-family rental inclusionary development uses. The Developer or its successor-in-interest shall tear down and remove the existing vacant warehouse-office building, with all necessary permits and approval, on the Subject Property at its own costs and expense no later than one (1) year from receipt of approval and adoption of a memorializing resolution by the Lawrence Township Planning Board and other outside agency approvals that may be required to commence site development for the inclusionary development described herein or by July 1, 2025, whichever occurs sooner.

7. Phasing Schedule: The Developer or its successor-in-interest shall develop the Subject Property in accordance with N.J.A.C. 5:93-5.6 as replicated in the following phasing schedule:

% market complete	<u>Market Units</u>	<u>% affordable complete</u>	<u>Affordable Units</u>
- 25%	25	0%	0
- 25% +1	26	10%	3
- 50%	49	50%	11
- 75%	74	75%	17
- 90%	88	100%	22

8. Affordability Controls; Affirmative Marketing: The Developer or its successor in interest shall take all necessary steps to deed restrict and maintain affordability controls for the affordable units as provided for and in accordance with the UHAC regulations, N.J.A.C. 5:80-26.5 and - 26.11, for **at least** a thirty (30) year period from the date of initial occupancy of each affordable unit, which controls may be extended or released by the Township, in its sole discretion, in accordance with UHAC and applicable law after at least thirty (30) years.

All affordable units shall be affirmatively marketed in conformance with the UHAC regulations, N.J.A.C. 5:80-26.15, or any successor regulation. The Township shall add to the list

of community and regional organizations in its affirmative marketing plan, pursuant to N.J.A.C. 5:80-26.15(1)(5), FSHC, the New Jersey State Conference of the NAACP, the Latino Action Network, the Trenton, Greater Red Bank, Asbury Park/Neptune, Bayshore, Greater Freehold, and Greater Long Branch branches of the NAACP, and the Supportive Housing Association, and shall, as part of its regional affirmative marketing strategies during its implementation of this Agreement, provide notice to those organizations of all available affordable housing units. The Township also agrees to require any other entities, including developers or persons or companies retained to do affirmative marketing, to comply with this paragraph and other applicable law, including ensuring that each affordable unit is posted on the online New Jersey Housing Resource Center website at least sixty (60) days before the lottery is conducted to select an income-eligible applicant, per P.L. 2020, c. 51.

9. Notices:

a. The Parties and their respective counsel agree to promptly provide each other with notice of any lawsuits, actions, governmental proceedings or administrative proceedings, whether threatened or pending, which could possibly have a material adverse impact on implementation of this Agreement.

b. All notices required under this Agreement shall be in writing and shall be given by facsimile, e-mail, certified mail return receipt requested or same-day or overnight delivery service providing delivery confirmation. All notices shall be deemed received upon the date of delivery. Unless notice of a change in name or address has been provided to the other Parties, the persons and entities entitled to receive notice shall be as follows:

TO THE TOWNSHIP:

Township of Lawrence
Office of the Township Clerk
2207 Lawrenceville Road

Lawrence, NJ 08648
Clerk@lawrencetwp.com

WITH A COPY TO:

David M. Roskos, Esq.
Lawrence Township Attorney
Eckert Seamans Cherin & Mellott, LLC
P.O. Box 5404
Princeton, NJ 08543
droskos@eckertseamans.com

TO THE DEVELOPER:

1052 Spruce, LLC
Attn: Jeffrey D. Sussman, Manager
1333 Brunswick Avenue, #200
Lawrence, NJ 08648
Email: jsussman@nexusproperties.com

WITH A COPY TO:

Dino Spadaccini, Esq.
The Spadaccini Law Firm, LLC
98 Franklin Corner Road
Lawrence, NJ 08648
Email: dino@spadlaw.com

10. Non-Waiver: The failure of any Party hereto to seek redress of violation, or to insist upon the strict performance of any covenant, agreement, provision or condition of this Agreement shall not constitute a waiver thereof, and each Party hereto shall have all remedies provided herein with respect to any subsequent act that would have originally constituted a violation.

11. Governing Law: This Agreement is made pursuant to, and shall be deemed by and construed in accordance with the laws of the State of New Jersey. Jurisdiction of any litigation ensuing with regard to this Agreement exclusively shall be in the Superior Court of New Jersey, with venue in Mercer County.

12. Modification; Successors and Assigns: This Agreement contains the entire understanding of the Parties with respect to the subject matter hereof and it may not be changed or modified

orally, but only by duly authorized written instruments signed by the Parties. The terms and conditions set forth in this Agreement shall bind and inure to the benefit of and/or be the responsibility of any successor in interest of any Party to this Agreement and may be enforced by any such Party.

13. Cooperation; Severability: In the event of any legal action instituted by a third party or other governmental entity or official challenging the validity of any provision of this Agreement, the Parties hereby agree, to the extent permitted by law, to fully cooperate defending any such action to uphold the validity and enforceability of this Agreement. If any term or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, all other provisions hereof shall nevertheless remain in full force and effect.

14. Counterparts: This Agreement may be executed simultaneously in one or more counterparts, each of which shall be deemed an original.

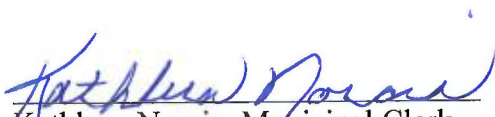
15. Validity and Enforceability: Each Party waives all rights to challenge the validity or enforceability of this Agreement.

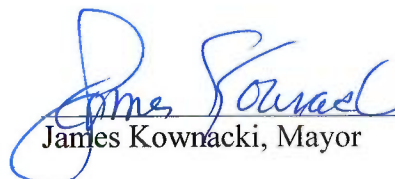
16. Further Assurances: Each Party shall execute and deliver to the other all such other future instruments and documents as may be reasonably necessary to carry out this Agreement in order to provide and secure to any other party the full and complete enjoyment of its rights and principles hereunder.

IN WITNESS WHEREOF, the Parties have duly executed this Developer's Agreement as of the day and year first written above.

ATTEST:

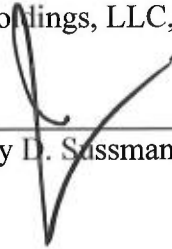
THE TOWNSHIP OF LAWRENCE


Kathleen Norcia, Municipal Clerk


James Kownacki, Mayor

A handwritten signature in blue ink that reads "Kathleen A. Ward". The signature is written in a cursive style and is positioned above a horizontal line.

1052 Spruce, LLC
a New Jersey limited liability company
By: Nexus Holdings, LLC, its sole member


A handwritten signature in black ink that reads "Jeffrey D. Sussman". The signature is written in a cursive style and is positioned above a horizontal line.

Jeffrey D. Sussman, Manager

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(Concept Plan)

EXHIBIT B
(FSHC Settlement Agreement)

