

**FIRST AMENDMENT TO
DEVELOPER'S AGREEMENT
BY AND BETWEEN
THE TOWNSHIP OF LAWRENCE
AND
BRANDYWINE OPERATING PARTNERSHIP, LP**

THIS FIRST AMENDMENT TO DEVELOPER'S AGREEMENT (hereinafter "**First Amendment**") is made this 9th day of February, 2020, by and between the **TOWNSHIP OF LAWRENCE** (hereinafter "**Township**" and/or "**Lawrence**") and **BRANDYWINE OPERATING PARTNERSHIP, LP** (hereinafter "**Brandywine**"), with joinder by JAS Homes, Inc. (hereinafter "**JAS**" and/or the "**Joinder Party**"). The Township and Brandywine are referred to collectively hereinafter as the "**Parties**".

RECITALS

1. Lawrence invoked the Superior Court's declaratory judgment jurisdiction pursuant to N.J.S.A. 52:27D-313 to have the Court review and approve its Third Round Housing Element and Fair Share Plan (collectively "**Compliance Plan**") to verify and confirm the Township's compliance with and satisfaction of its Third Round affordable housing obligation under the Mount Laurel doctrine and the Fair Housing Act ("**FHA**") in the matter captioned In re Application of the Township of Lawrence, County of Mercer, Docket No. MER-L-1538-15 (Mount Laurel) (the "**DJ Action**"); and

2. Brandywine is the owner of approximately 51.73 acres of land (approximately 34.9 acres of which are developable, after subdivision, for purposes of this First Amendment) in the Township which are designated on the Township's Tax Map as Block 5101, Lot 18 (the "**Property**"), and intervened in the DJ Action to facilitate the production of affordable housing on the Property to assist the Township in its Third Round Mount Laurel compliance initiatives.

3. Subsequent negotiations between the Parties resulted in the execution of a Developer's Agreement under date of September 14, 2017 (hereinafter the "**Original Agreement**"), which was reviewed and supported by the Court's Mount Laurel Master and co-intervenor Fair Share Housing Center ("**FSHC**").

4. The Original Agreement authorized the rezoning of the Property to permit the construction thereon of an inclusionary residential project consisting of up to 300 multi-family dwelling units at a gross density of 8.6 dwelling units/ developable acre (300/ 34.9) with a 20% set-aside for very low, low and moderate income units, to be split 50% very low and low income units and 50% moderate income units, with 13% of the units being very low income units (the "**Mount Laurel Units**") to facilitate the production of affordable housing (the "**Project**").

5. On December 19, 2017 the Township adopted Ordinance No. 2283-17 revising Section 409 (Apartment and Townhouse District) of its Land Use Ordinance and rezoning the Property in accordance therewith (the "**Rezoning Ordinance**").

6. The Original Agreement also required that the Mount Laurel Units shall meet the bedroom distribution requirements, be governed by the controls on affordability and be affirmatively marketed in conformance with the Uniform Housing Affordability Controls codified at N.J.A.C. 5:80-26.1 et seq. (the "**UHAC**").

7. The Original Agreement also required that all of the Mount Laurel Units be family rental units to assist the Township in addressing its 25% rental obligation under the FHA and the rules adopted by the New Jersey Council on Affordable Housing ("**COAH**") and to permit the Township to capture 2 for 1 family rental bonus credits up to the 25% rental minimum under the COAH rules.

8. The Original Agreement also required that the Mount Laurel Units be interspersed in and amongst the market-rate units if the entire Project is marketed as rental. However, the Original Agreement permitted Brandywine or the ultimate owner/developer of the Property, to select the tenure type ("sale" or "rental") of the market-rate units as required under established law, and allowed all of the Mount Laurel Units to be located together on a separate lot or portion of the Property if all of the market-rate units are marketed as sale units, so that the Mount Laurel Units may be financed separately from the market-rate units. Thus, the Mount Laurel rental component of the Project can be constructed as a singular apartment complex at one location if the rest of the units comprising the Project will be offered for sale (either fee simple townhomes or condominiums).

9. The Original Agreement, which was executed prior to Brandywine's selection of a builder to construct the Project, prior to detailed site constraint analysis, and prior to formal site plan layout by an engineer, requires the production of 60 Mount Laurel Units (*i.e.*, a 20% affordable housing set-aside), all of which to be rental units, if all 300 units can be physically located on the property in a well-planned and sensible manner.

10. Brandywine subsequently entered into a contingent sales agreement with JAS to acquire the property and construct the Project contingent (as between Brandywine and JAS) upon (a) more detailed site constraints analysis confirming site suitability, (b) site layout, design and yield of units acceptable to JAS and the Township's planning staff, and (c) the receipt of binding development approvals conferring vested rights to construct the Project from the Township's land use Boards in accordance with the Municipal Land Use Law ("MLUL") and the Township's development ordinances, including the Rezoning Ordinance. JAS is not a party to the DJ Action, and did not seek to intervene and was not otherwise granted interested party status in the DJ Action.

JAS is a Joinder Party to this Agreement based solely upon its status as a contingent contract purchaser of the Property from Brandywine who may succeed to Brandywine's rights and obligations under this Agreement, but JAS has no direct standing or rights under this Agreement unless and until it shall have closed title with Brandywine for the Property and Brandywine shall have assigned its rights and obligations to JAS and JAS shall have assumed such rights and obligations, in writing, and a copy of such writing shall have been provided to Lawrence. Notwithstanding the foregoing, the Parties acknowledge that a contract purchaser is included in the MLUL's definition of "developer" (N.J.S.A. 40:55D-4) and, as such, JAS has standing to sign, submit and prosecute development applications consistent with this First Amendment, and that JAS also is considered a "housing sponsor" and, as such, has standing to sign, submit and prosecute applications for financing and subsidies under the New Jersey Housing and Mortgage Finance Agency Law of 1983, N.J.S.A. 55:14K-1 et seq.

11. JAS thereafter retained an engineer and various consultants to (a) analyze site constraints, (b) prepare conceptual development plans to accommodate the constraints and applicable zoning and site design standards, and (c) confer with the Township's planning staff regarding an acceptable layout and design of the Project.

12. JAS' aforesaid efforts resulted in a significant downsizing of the Project from that envisioned when the Original Agreement was executed in 2017 (and when the Property was subsequently rezoned in accordance therewith) to accommodate the now known site constraints, regulatory requirements and limitations of other governmental agencies having jurisdiction over the development of the Property, and to ensure a well-planned community.

13. Several conceptual layouts for the Project were prepared by JAS's engineer and reviewed with the Township's planning staff which reduced the number of dwelling units in the

Project below the 300 dwelling units that were originally envisioned when the Original Agreement was executed in 2017. The current plan proposed by Brandywine (the “**Revised Project**”) yields a total of 189 dwelling units (down 111 dwelling units from the 300 originally contemplated), out of which 145 units will be market-rate fee simple townhouse or condominium units which will be marketed as sale units as permitted by the Original Agreement. Of the remaining 44 dwelling units in the Revised Project, 42 will be the Mount Laurel Units, which will be marketed as family rental units as required by the Original Agreement. As to the remaining two (2) units, one (1) will be a one-bedroom apartment unit to be used as a rental office and one (1) will be a one-bedroom apartment for occupancy by the apartment complex maintenance staff; provided, however, that if either or both of these units ever are marketed to the general public as residential dwelling units, they shall be subject to UHAC controls . Thus, the Revised Project currently proposed by Brandywine will result in 42 COAH-qualified Mount Laurel family rental units (satisfying the 20% set aside required under the Original Agreement). Brandywine believes that the Revised Project as now proposed does not require an amendment to the existing zoning standards in the Township’s Land Use Ordinance, including the Rezoning Ordinance, because density (189 dwelling units/ developable acres = 5.42 dwelling units per gross acre) is well below that which is permitted (8.6 dwelling units per gross acre) by the Original Agreement and the Rezoning Ordinance for the Project as originally anticipated. However, Brandywine acknowledges that variances and/or waivers will be required under current zoning, and, therefore, this First Amendment is subject to and conditioned upon the granting of site plan approval for the Revised Project, including approval of such variances and waivers, by the Township’s land use Boards.

14. The original intended yield of 60 COAH-qualified Mount Laurel family rental units from the Project and associated family rental bonus credits was incorporated into the Township’s

Third Round Compliance Plan which was endorsed and/or approved by the Township and its Planning Board and ultimately approved by the Court after the Court conducted a duly noticed Compliance Hearing in the DJ Action in accordance with well-established law. Co-intervenor FSHC did not object to the Compliance Plan and the Court thereafter entered a Third Round Final Judgment of Compliance and Repose in the DJ Action.

15. Brandywine recognizes and acknowledges that the Revised Project now proposed results in a loss of 18 Mount Laurel units/ 36 total credits including bonus rental credits from the approved Compliance Plan, and that the Court and/or FSHC will require that the Township recalculate its Realistic Development Potential (“RDP”) and devise a mechanism to address the 18 unit/ 36 credit shortfall. Brandywine further recognizes that the Revised Project currently proposed will necessitate the preparation and adoption of an Amended Third Round Compliance Plan and approval of same by the Court after the Court conducts another Compliance Hearing in the DJ Action upon adequate notice to the public. Accordingly, this First Amendment is also subject to and conditioned upon adoption and Court approval of an Amended Third Round Compliance Plan which addresses such matters and incorporates the Revised Project.

16. The Parties desire to execute this Amendment to the Original Agreement to allow the Revised Project to move forward with preparation of detailed development plans, and submission of applications for development approvals to the Township’s land use Boards, but subject to receipt of required variances and approvals from the Township’s land use Boards and adoption and Court approval of an Amended Third Round Compliance Plan which incorporates the Revised Project and addresses the loss of the 18 Mount Laurel Units/ 36 credits including bonus credits, while the Township undertakes compliance with directives from the Court to address the 18 unit/ 36 credit shortfall.

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

1. Incorporation of Recitals. The Recitals set forth above are incorporated by reference herein as if set forth herein at length.

2. Revised Project. A copy of the most recent Concept Plan which generally depicts the location/layout of the units and site improvements in the Revised Project as described in the Recitals, and which Brandywine may proceed with in connection with preparation of more detailed engineering so that development applications may be filed by Brandywine/JAS with the Township's land use Boards is attached hereto and made a part hereof as **Exhibit "A"**. A list of the variances and/or waivers that Brandywine believes are required to support the Revised Project depicted on attached **Exhibit "A"** is attached hereto as **Exhibit "B"**, which is incorporated by reference herein. In accordance with N.J.A.C. 5:93-10, the Township agrees to encourage its land use Boards to grant necessary variance and waiver relief as set forth on **Exhibit "B"**, as well as such additional variances and/or waivers as may be deemed necessary or required during the Board's formal review of development applications for the Revised Project, to the extent that the Township's planning staff and consultants find that such variances and/or waivers are reasonable and do not negatively impact the public health, safety and welfare. However, Brandywine acknowledges and agrees that this First Amendment is subject to and conditioned upon the grant of site plan approval and such variances and waivers.

3. Bedroom Distribution; Management of Mount Laurel Units. Anything in the Original Agreement or UHAC to the contrary notwithstanding, Brandywine acknowledges and hereby agrees that the bedroom distribution of the Mount Laurel Units in the Revised Project shall

be as follows: at least six (6) and no more than eight (8) one-bedroom units; at least nine (9) and not more than ten (10) three-bedroom units; and not more than twenty-four (24) two-bedroom units. The Mount Laurel Units within each bedroom type shall be split 50% very low and low income units and 50% moderate income units, with at least 13% of the Mount Laurel Units within each bedroom type being very low income units. Brandywine further agrees that the entity engaged to manage the Mount Laurel Units shall have a minimum of five (5) years' experience managing affordable rental housing complexes and shall be subject to the prior written approval of the Township, such approval not to be unreasonably withheld.

4. Amendment to Third Round Compliance Plan. Brandywine acknowledges and agrees that this First Amendment is subject to and conditioned upon the Township's adoption of an Amended Third Round Compliance Plan and Court approval thereof, which, in turn, will require the Township to devise an acceptable mechanism or plan to address the loss of the 18 Mount Laurel Units/ 36 total credits including bonus credits resulting from the Revised Project. The Township agrees to proceed diligently and in good faith to devise such a mechanism or plan, and to obtain Court approval of an Amended Third Round Compliance Plan that incorporates such mechanism or plan and the Revised Project. Brandywine agrees to reasonably cooperate with and assist the Township in these efforts, including, but not limited to, supporting the Amended Compliance Plan at public hearings before the Planning Board and the Court.

5. Resolution of Need and PILOT. The Township acknowledges that Brandywine/JAS intends to apply for 4% low income housing tax credits ("LIHTC") with the New Jersey Housing Mortgage Finance Agency ("NJHMF") to assist in the financing and construction of the Mount Laurel family rental Units component of the Revised Project. Brandywine/JAS advise that such LIHTC's are being sought, in part, because the Project's 20%

affordable rental unit set-aside exceeds the 15% rental unit set-aside specified in the Mount Laurel cases and COAH's rules, and because of the relative low density of the Revised Project as depicted on attached **Exhibit "A"** . In accordance with the Supreme Court's directives in Southern Burl. Co. NAACP v. Mount Laurel, 92 N.J. 158, 264 (1983) ("Mount Laurel II"), and provided that the Revised Project is incorporated into an Amended Third Round Compliance Plan approved by the Court and receives site plan and required variance and waiver approval from the Township's land use Boards, the Township agrees to adopt NJHMFA's standard Resolution of Need and endorse and execute such remaining documents, consents and endorsements as NJHMFA may require to allow for the processing of a 4% LIHTC application by Brandywine/JAS. Further, provided that Brandywine/JAS receives 4% LIHTCs and financing from the NJHMFA, the Township agrees to extend a Payment in Lieu of Taxes ("**PILOT**") Agreement to the Mount Laurel component of the Revised Project, commensurate with the duration of the affordability controls, in accordance with N.J.S.A. 55:14K-37. The percentage of the PILOT shall be twelve percent (12%) of the Revised Project's annual gross revenue. Any of the foregoing to the contrary notwithstanding, if Brandywine/JAS should fail to receive 4% LIHTCs and financing from NJHMFA, the Township is under no obligation to award a PILOT Agreement to the Mount Laurel component of the Revised Project under N.J.S.A. 55:14K-37 or the Long Term Tax Exemption Law, N.J.S.A. 40A:20-1 et seq., and the obligation of JAS to construct the affordable units provided for in this agreement shall remain in full force and effect if Brandywine/JAS should fail to receive 4% LIHTCs and financing from NJHMFA.

6. Expeditious Processing and Cost Generation Reduction. Provided that the Revised Project is incorporated into an Amended Third Round Compliance Plan which receives Court approval, the Township agrees to encourage its land use Boards to provide Brandywine/JAS with

expedited review of development applications and plans and to relax and/or reduce unnecessary development requirements and costs in accordance with COAH's cost reduction and expedition rules at N.J.A.C. 5:93-10 and Mount Laurel case law. Specifically, the Township acknowledges that the Property is one of several parcels owned and/or developed by Brandywine known as the Princeton Pike Corporate Center and, except as otherwise depicted or described on **Exhibit "A"**, that all off-tract roadway improvements required to accommodate the traffic generated by the full build-out of the office buildings approved for construction within the Corporate Center, including on the Property that has been rezoned for inclusionary residential development, were previously approved by the Township's land use Boards and have been constructed. The Township further acknowledges that the inclusionary residential development envisioned in the Original Agreement as amended herein will generate less traffic and have less traffic impact than the more intense office use that was previously approved for the Property. As such, the Township agrees that except as otherwise depicted or described on **Exhibit "A"**, no additional off-tract municipal traffic and roadway improvements shall be required in connection with the inclusionary residential development authorized by the Original Agreement as amended herein.

7. 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 and the Joinder Party, 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:

Brandywine Operating Partnership, LP
Attn: Anthony V. Ziccardi, Vice President
250 Memorial Drive
Camden, NJ 08103-1000
LegalNotices@bdnreit.com

WITH A COPY TO:

Ronald C. Morgan, Esq.
Parker McCay PA
9000 Midlantic Drive
Suite 300
Mt. Laurel, NJ 08054
rmorgan@parkermccay.com

TO THE JOINDER PARTY:

JAS HOMES, INC.
Attn: Michael Sawyer, President
88 Equestrian Drive
Burlington, NJ 08016
jashomes@verizon.net

WITH A COPY TO:

Christopher J. Norman, Esquire
Platt & Riso, P.C.
40 Berlin Avenue
Stratford, NJ 08084
cnorman@prlawoffice.com

8. Non-Waiver: The failure of any Party hereto to seek redress if 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.

9. Governing Law: This Agreement is made pursuant to, and shall be construed and enforced in accordance with the laws of the State of New Jersey, without regard to principles of choice of law. 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.

10. 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 and enforceable against any successor in interest of any Party to this Agreement and may be enforced by any such Party.

11. 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.

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

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

14. Further Assurance: 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.


15. Ratification and Confirmation: Except as expressly and specifically modified by this First Amendment, the terms and conditions of the Original Agreement remain in full force and effect, and are hereby ratified and confirmed.

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

ATTEST:

THE TOWNSHIP OF LAWRENCE


Kathleen Norcia, Municipal Clerk


James Kownacki, Mayor

BRANDYWINE OPERATING
PARTNERSHIP, LP




Anthony V. Ziccardi, Vice President

JAS HOMES, INC., JOINDER PARTY

Catherine Sawyer

MS
Michael Sawyer, President

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

Be it remembered on this 9 day of February, 2020 before me, the subscriber, a notary public/attorney-at-law of the State of New Jersey, personally appeared James Kownacki, to me, known to be the Mayor of the Township of Lawrence, Mercer County, New Jersey, mentioned in the within instrument, to which I first made known the contents thereof and thereupon he did acknowledge that he signed, sealed and delivered the same as his voluntary act and as authorized by the Lawrence Township Council.

David M. Roskos
Notary Public/Attorney-at-Law
State of New Jersey
DAVID M. ROSKOS
AN ATTORNEY-AT-LAW
OF THE STATE OF NEW JERSEY

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

Be it remembered on this 13 day of JULY, 2020 before me, the subscriber, a notary public/attorney-at-law of the State of New Jersey, personally appeared Anthony V. Ziccardi to me, known to be a Partner of Brandywine Operating Partnership, LP, mentioned in the within instrument, to which I first made known the contents thereof and thereupon he did acknowledge that he signed, sealed and delivered the same as his voluntary act and as authorized by Brandywine Operating Partnership, LP for the uses and purposes herein expressed.

Donna Dolan Lux
Notary Public/Attorney-at-Law
State of New Jersey

DONNA DOLAN LUX

NOTARY PUBLIC OF NEW JERSEY

My Commission Expires December 1, 2022

STATE OF NEW JERSEY)
COUNTY OF BURLINGTON)

:ss

Be it remembered on this ___ day of _____, 2020, before me, the subscriber, a notary public/attorney-at-law of the State of New Jersey, personally appeared Michael Sawyer, to me known to be President of JAS Homes, Inc., mentioned in the within instrument, to which I first made known the contents thereof and thereupon he did acknowledge that he signed, sealed and delivered the same as his voluntary act and as authorized by JAS Homes, Inc. for the uses and purposes therein expressed.

Notary Public/Attorney-at-law
State of New Jersey