

FIRST AMENDED AND RESTATED SETTLEMENT AGREEMENT

This First Amended and Restated Settlement Agreement (the "Agreement") is entered into this ___th day of February, 2018 by and between:

The **TOWNSHIP OF HARDING**, a body politic of the County of Morris, State of New Jersey with offices located at 21 Blue Mill Road, New Vernon, New Jersey 07976 (the "Township"); and

S/K MT. KEMBLE ASSOCIATES, LLC an entity formed under the laws of the State of New Jersey with offices located at 520 U.S. Highway 22 East, PO Box 6872, Bridgewater, New Jersey 08807 ("Mt. Kemble") (Mt. Kemble and the Township are hereinafter sometimes individually referred to as a "Party" and collectively referred to as the "Parties")

WITNESSETH

WHEREAS 1, over the past decade, the New Jersey Council on Affordable Housing ("COAH") has failed to adopt constitutionally compliant Third Round Rules that have withstood judicial scrutiny; and

WHEREAS 2, on March 10, 2015, the New Jersey Supreme Court handed down its decision in In re Adoption of N.J.A.C. 5:96 and 5:97 ex rel. New Jersey Council on Affordable Housing, 221 N.J. 1 (2015), which terminated COAH's jurisdiction to administer and approve municipalities' affordable housing plans, determined that the Court would reassert primary jurisdiction over the same and directed interested municipalities to petition the Court for immunity while constitutionally compliant housing plans were prepared; and

WHEREAS 3, the Township was previously granted Substantive Certification for the Third Round on May 14, 2009 from COAH; however, due to the invalidation of the prior Third

Round Rules and the decision of the New Jersey Supreme Court in In re N.J.A.C. 5:96 and 5:97, 221 N.J. 1, 30 (2015) ("Mount Laurel IV"), on or about July 7, 2015, the Township filed a declaratory judgment action in the case entitled In the Matter of the Township of Harding for a Judgment of Compliance of Its Third Round Housing Element and Fair Share Plan, bearing Docket No. MRS-L-1762-15 (the "Township's DJ Action") seeking a declaration of its compliance with the Mount Laurel doctrine and the Fair Housing Act of 1985, N.J.S.A. 52:27D-301, et seq., and also petitioned the Court for temporary immunity from builder's remedy lawsuits; and

WHEREAS 4, by Order dated September 1, 2015, the Township was granted temporary immunity from builder's remedy actions, and continues to have immunity as of the date of this Agreement; and

WHEREAS 5, by Order dated February 26, 2016, Mt. Kemble was granted leave to intervene in the Township's DJ Action; and

WHEREAS 6, the Parties recognize that the settlement of Mount Laurel litigation is favored because it avoids delays and the expense of trial and results more quickly in the construction of housing for lower-income households; and

WHEREAS 7, the Parties have mediated this matter on multiple occasions and have agreed to resolve Mt. Kemble's intervention and to present this settlement to the trial court with jurisdiction over this matter to review; and

WHEREAS 8, pursuant to the Parties' settlement negotiations the Parties request that the Superior Court, Morris County, find that this Agreement is fair to the interests of lower-income households in New Jersey and partially addresses the Township's Third Round obligation in a reasonable fashion appropriate to the site in question; and

WHEREAS 9, the Parties recognize that this Agreement must be reviewed by the Court in accordance with the requirements of Morris County Fair Housing Council v. Boonton Township, 197 N.J. Super. 359, 364 (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 (App. Div. 1996), and that, in order to approve the settlement, the court must find that it adequately protects the interests of lower-income persons for whom the affordable units proposed by this settlement are to be built; and

WHEREAS 10, the Township will, in the future, seek the Court's approval of a Housing Element and Fair Share Plan (the "Plan"), inclusive of the project proposed by Mt. Kemble, but regardless of the Court's approval or disapproval of said Plan, the Parties intend to be bound by this Agreement; and

WHEREAS 11, in order to amicably resolve this matter in a way that the Parties agree complies with the Mount Laurel doctrine, the Parties have agreed to the terms and conditions set forth herein; and

WHEREAS 12, the Township and Mt. Kemble are parties to that certain Settlement Agreement, dated as of January 3, 2018 (the "Original Agreement"); and

WHEREAS 13, subsequent to the execution of the Original Agreement, the Special Master appointed by the Court by Order of October 25, 2017 provided comments and proposed revisions to the Original Agreement; and

WHEREAS 14, the Court must approve any settlement agreement involving affordable housing at a Fairness Hearing, and therefore, has directed the Parties to address the Special Master's comments in a revised agreement; and

WHEREAS 15, Paragraph 23 of the Original Agreement provides that the Original Agreement may be amended in writing signed by both Parties thereto; and

WHEREAS 16, each Party to the Original Agreement agrees to the terms and provisions of the Agreement and further acknowledges and agrees that this Agreement supersedes the Original Agreement; and

WHEREAS 17, Mt. Kemble will provide the Court Appointed Special Master the necessary information so that she can confirm the suitability of the site for the proposed development.

NOW THEREFORE, in consideration of the foregoing recitals, the promises and obligations set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound, the Parties mutually agree as follows:

1. **Incorporation of Recitals.** The Parties incorporate the foregoing recitals as if fully set forth at length herein and made a part hereof.

2. **Purpose of Agreement.** The purpose and intent of this Agreement is to resolve Mt. Kemble's intervention on terms that are fair to lower-income households in accordance with the requirements of the Mount Laurel doctrine and Fair Housing Act of 1985, N.J.S.A. 52:27D-301 et seq., for the Prior Round (1987-1999) and Third Round (1999-2025). This Agreement does not purport to resolve all of the issues in the Township's DJ Action. In the event the Court approves this Agreement but the Township is unable to reach a settlement with Fair Share Housing Center ("FSHC") or any other person or entity, the Township must still discharge its obligations under this Agreement, including but not limited to the adoption of the Ordinance, *infra*, and the duty to defend this Agreement.

3. Zoning Ordinance. All parties agree that the Township, through the adoption of a zoning ordinance (the “Ordinance”), the final form of which is presently being drafted by the Parties, and the implementation of this Agreement, partially satisfies its obligation under the Mount Laurel doctrine and Fair Housing Act of 1985, N.J.S.A. 52:27D-301 et seq., for the Prior Round (1987-1999) and Third Round (1999-2025). In that regard, and as part of any site plan submitted for approval by the Township Planning Board for the development proposed by Mt. Kemble and as part of this settlement, Mt. Kemble acknowledges that it shall not be permitted to have any access onto Blackwell Avenue. Additionally, as part of any site plan application to the Township Planning Board, the Parties acknowledge and agree that Mt. Kemble shall not seek a density variance in accordance with the provision of N.J.S.A. 40:55D-70(d)(5).

4. Resolution of Litigation. At this time and at this particular point in the process resulting from the Supreme Court’s Mount Laurel IV decision, even though fair share obligations have yet to be definitely determined, it is appropriate for the Parties to resolve Mt. Kemble’s intervention and generate affordable housing credits for the Township to apply to its Third Round obligation, as will be determined in the future.

5. The Mt. Kemble Site. Mt. Kemble is the owner of certain property identified as Block 23.02, Lot 5 on the Township’s official Tax Map, comprised of approximately fifteen (15) acres (the “Mt. Kemble Property”). In partial satisfaction of the Township’s Third Round affordable housing obligation, and within ninety (90) days after the approval of this Agreement by the Court at a Preliminary or Final Fairness Hearing, the Township will adopt the Ordinance to permit the construction of an inclusionary residential development as a permitted use on the Mt. Kemble Property, generally as depicted on the concept plan annexed hereto as **Exhibit A** (the “Concept Plan”), to provide for ninety-six (96) units, sixteen (16) of which will be reserved

for, and affordable to, low and moderate income households (collectively, the “Mt. Kemble Development”), subject to certain conditions and obligations set forth herein. The eighty (80) market-rate units shall be townhouse units owned in fee simple and the sixteen (16) affordable units, which may be either fee simple or rental¹, shall be incorporated into the Mt. Kemble Development as stacked flats as approximately reflected on the Concept Plan.

6. Fair Share Allocation for the Mt. Kemble Property. The Ordinance to be adopted by the Township that provides the zoning and bulk requirements for the construction of the Mt. Kemble Development shall provide for the following:

a. Notwithstanding any language contained herein that may be construed to the contrary, it is the agreement of the Parties that the affordable housing set-aside for the Mt. Kemble Development shall be 16 units to be constructed within the Mt. Kemble Development, in addition to the contribution as set forth in Paragraph 9 of this Agreement. Mt. Kemble further agrees that the affordable units within the Mt. Kemble Development shall not be age-restricted.

b. The affordable components of the Mt. Kemble Development shall include low income units (including very-low-income units) and moderate income units, as the term low-and-moderate income units have been defined in this Agreement in accordance with the requirements of the Second Round Rules, N.J.A.C. 5:93-1.1 et. seq.; applicable Uniform Housing Affordability Controls, N.J.A.C. 5:80-26.1 et. seq. (“UHAC Regulations”), and the requirement pursuant to N.J.S.A. 52:27D-329.1 that thirteen percent (13%) of the affordable housing units shall be available to very-low income families, defined as households

¹ If the developer makes a commitment that the affordable units will be and remain as rental units for as long as the affordability controls are in effect, then the Township will be entitled to claim rental bonuses, subject to the Court’s approval of the Township’s final Housing Element and Fair Share Plan.

earning thirty percent (30%) or less of the regional median household income by household size.

c. The affordable components of the Mt. Kemble Development shall be built in accordance with the following schedule:

Minimum Percentage of Low- and Moderate- Income Units Completed	Percentage of Market-Rate Housing Units Completed
10	25 + 1 unit
50	50 + 1 unit
75	75 + 1 unit
100	90

7. **Amendment to Wastewater Management Plan to Include the Mt. Kemble Development.** Mt. Kemble shall file an application to extend the Township’s sewer service area to include the entirety of the Mt. Kemble Development in the area-wide Wastewater Management Plan and the Township will take all reasonably necessary actions, as expeditiously as is reasonably possible, to support the inclusion of the Mt. Kemble Development in the Wastewater Management Plan to be approved by New Jersey Department of Environmental Protection (“NJDEP”). The Township’s support and cooperation shall include, but not be limited to the adoption of consent resolutions (e.g., for submission to the NJDEP, the County of Morris, or other necessary governmental agencies), certifications, participation at meetings, timely submission of paperwork, testimony, and other reasonable means of support to secure the inclusion of the Mt. Kemble Development in the NJDEP’s Wastewater Management Plan, whether by a site specific amendment or a revision thereto. The Township shall also cooperate,

as set forth herein, with Mt. Kemble's application to obtain and secure public water service to the Mt. Kemble Development. Mt. Kemble agrees that it will be responsible for the payment or reimbursement to the Township for any reasonable additional costs incurred by the Township as a result of any work that may be required to be performed by the Townships' professionals, such as the Township Engineer, Planner and Attorney in connection with the above.

8. Mutual Cooperation on All Governmental Approvals. The Township, including all of its officials, employees, agents, committees, departments, and subsidiary bodies, shall cooperate with Mt. Kemble's efforts, to the extent permitted under any applicable state or federal law, rule or regulations, to secure necessary municipal, county and state permits, approvals, licenses, waivers, exceptions, variations and variances for the development (which shall be de minimis in nature and limited in scope and number in relation to any site plan approval application before the Township Planning Board, except that it shall not include a density variance as set forth in paragraph 3 above), including Mt. Kemble's site plan application, Treatment Works Approval applications/permits, soil conservation district approvals, construction/building permits, and all other necessary governmental approvals. Mt. Kemble shall be responsible for payment of all fees associated with the foregoing permits, applications, licenses, etc., as required under law. The foregoing notwithstanding, the Parties agree that nothing in this paragraph shall usurp the authority of the Township Planning Board to grant or deny variances in accordance with the MLUL.

9. Mt. Kemble's Contribution to the Township's Affordable Housing Trust Fund. Mt. Kemble shall contribute a total of One Million Dollars (\$1,000,000.00) to the Township's Affordable Housing Trust Fund to finance the construction of at least two (2) affordable rental units at the Farm at Harding, in accordance with the following:

a. Mt. Kemble shall pay Two Hundred Thousand Dollars (\$200,000.00) to the Township within thirty (30) days of execution of this Agreement by all Parties (“Escrow”). In that regard, no Party shall unduly delay executing the Agreement. The Escrow shall be held in the attorney trust account of Roselli Griegel Lozier & Lazarro, P.C. (“Escrow Agent”), counsel for the Township, until forty-five (45) days have elapsed, without the filing of an appeal by a third-party, from the date of publication of the notice of the adoption of the Ordinance establishing the requirements for the construction of the Mt. Kemble Development, as set forth herein. If an appeal is filed, then such initial escrow shall continue to be held by the Escrow Agent until such time as said appeal is fully and finally resolved in favor of adoption of the ordinance and is not subject to any further appeal. The Escrow shall be non-refundable upon release to the Township by the Escrow Agent.

b. Mt. Kemble shall pay Five Hundred Thousand Dollars (\$500,000.00) to the Township within thirty (30) days of receipt of all final governmental approvals, i.e., those for which no party has filed an appeal and for which any appeal period for that approval has expired, necessary to permit the construction of the Mt. Kemble Development, but in no event shall payment of the \$500,000.00 by Mt. Kemble to the Township be made later than two (2) years from the date of the release of the Escrow by the Escrow Agent to the Township as set forth in subparagraph (a) above. This payment shall also be non-refundable.

c. Mt. Kemble shall pay Three Hundred Thousand Dollars (\$300,000.00) to the Township within thirty (30) days of Mt. Kemble’s receipt of

the first certificate of occupancy for a market-rate unit in the Mt. Kemble Development. This payment shall also be non-refundable.

d. Mt. Kemble agrees to act in an expeditious manner in obtaining all necessary approvals and commencing and continuing the construction of the Mt. Kemble Development and obtaining the first certificate of occupancy for a market rate unit as required in subparagraph (c) above.

10. Mt. Kemble's Obligation to Support. So long as the Township discharges its obligations under this Agreement in good faith, including but not limited to the adoption of the Ordinance referenced in paragraph 3 hereof, Mt. Kemble shall support this Agreement at the Fairness Hearing to be scheduled by the Court. Mt. Kemble's support of this Agreement shall include certifications, testimony and all other reasonable means of support as may be requested by the Township. Upon the Court's approval of this Agreement at the Fairness Hearing, Mt. Kemble shall withdraw from the Township's DJ Action.

11. Affordability Controls.

a. All affordable units shall include the required bedroom distribution, be governed by controls on affordability and affirmatively marketed in conformance with the UHAC Regulations or any successor regulation, with the exception that in lieu of ten percent (10%) of affordable units in rental projects being required to be at thirty-five percent (35%) or less of regional median household income by household size, thirteen percent (13%) of affordable units in such projects shall be required to be at thirty percent (30%) of median income, and all other applicable law. The Township shall adopt and/or update appropriate implementing ordinances in conformance with standard ordinances and guidelines developed by COAH to ensure that this provision is satisfied.

b. Mt. Kemble shall take all necessary steps to maintain affordability controls for the affordable units provided for under this Agreement in accordance with the UHAC regulations and all other applicable laws for a thirty (30) year period from the date that a certificate of occupancy is issued for each of the affordable units and, in accordance with applicable law, pursuant to the terms of the UHAC compliant deed restriction(s) to be filed for such units in the form approved by the Township's Administrative Agent. The deed restrictions to be filed by Mt. Kemble, whether for rental or fee simple units, shall be in accordance with the samples attached hereto as **Exhibit B**, which, however, shall be subject to final approval by the Administrative Agent prior to execution and filing.

12. New Construction. All affordable new construction units shall be adaptable in conformance with P.L.2005, c.350/N.J.S.A. 52:27D-311(a) and -311(b) and all other applicable law.

13. Effectuation of Settlement Terms. As an essential term of settlement, within ninety (90) days of entry of a Court Order approving this Agreement, the Township shall adopt the Ordinance which permits and enables Mt. Kemble to file an as-of-right site plan application for the Mt. Kemble Development, as described herein and in the Concept Plan annexed hereto as **Exhibit A**, with the Township's Planning Board. Upon the adoption of the Ordinance, Mt. Kemble shall be permitted to proceed for site plan approval before the Planning Board. The Township shall work diligently, in good faith, and shall undertake all reasonable efforts to effectuate the terms of this Agreement and the zoning contemplated herein.

14. Reservation of Rights. Regardless of the ultimate determination of the Township's Third Round affordable housing obligation for the period 1999-2025, the Township shall be obligated to implement the Ordinance referenced in paragraph 3 hereof.

15. Fairness Hearing. This Agreement must be approved by the Court following a Fairness Hearing in accordance with 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); East/West Venture v. Borough of Fort Lee, 286 N.J. Super. 311, 328-29 (App. Div. 1996). Mt. Kemble agrees to support said Agreement on the record at any Fairness Hearing as necessary. If the Agreement is rejected by the Court at a Fairness Hearing, it shall be null and void.

16. FSHC Attorneys' Fees and Costs. To the extent that counsel for Fair Share Housing Center ("FSHC") seeks or requires reimbursement from the Township of any attorneys' fees and/or costs in connection with the Township's DJ Action and/or settlement with FSHC, Mt. Kemble agrees that it shall contribute a maximum of \$3,500.00 towards said fees and costs on behalf of the Township of Harding.

17. Appeal. If an appeal is filed of the Court's approval or rejection of the Agreement, the Parties agree to defend the Agreement on appeal, including in proceedings before the Superior Court, Appellate Division and New Jersey Supreme Court, and to continue to implement the terms of the Agreement if the Agreement is approved by the trial court unless and until an appeal of the trial court's approval is successful, at which point the Parties reserve their right to rescind any action taken in anticipation of the trial court's approval, except with respect to any payments required to be made by Mt. Kemble hereunder that become non-refundable once paid to the Township as set forth in paragraph 9 above. All Parties shall have an obligation to fulfill the intent and purpose of this Agreement.

18. Process for Agreement to Become Final:

a. The Township Committee has considered and approved execution of this Agreement by Resolution.

b. If the Court upon review of the Agreement finds that it is fair and consistent with East/West Venture v. Bor. Of Fort Lee, 286 N.J. Super. 311 (App. Div. 1996), the Parties anticipate that the Court will enter an Order approving this Agreement.,

19. Enforcement. This Agreement may be enforced through a motion to enforce litigant's rights or a separate action filed in Superior Court, Morris County.

20. Severability. Unless otherwise specified, it is intended that the provisions of this Agreement are 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 of competent jurisdiction to be invalid, illegal, or unenforceable in any respect, such determination shall not affect the remaining sections.

21. Successors Bound. The provisions of this Agreement and 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 or other legal entity which at any particular time may have an interest in any of the provisions which are the subject of this Agreement.

22. Governing Law. This Agreement shall be governed by and construed by the laws of the State of New Jersey.

23. No Modification. This Agreement may not be modified, amended or altered in any way except by a writing signed by each of the Parties.

24. 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.

25. Voluntary Agreement. The Parties acknowledge that each has entered into this Agreement on its own volition without coercion or duress after consulting with its 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.

26. Preparation. Each of the Parties hereto acknowledges that this Agreement was not drafted by any one of the Parties, but was drafted, negotiated and reviewed by all Parties and, therefore, the presumption of resolving ambiguities against the drafter shall not apply. Each of the Parties expressly represents to the other Parties that: (i) it has been represented by counsel in connection with negotiating the terms of this Agreement' and (ii) it has conferred due authority for execution of this Agreement upon the persons executing it.

27. Exhibits and Schedules. Any and all Exhibits and Schedules annexed to this Agreement are hereby made a part of this Agreement by this reference thereto. Any and all Exhibits and Schedules now and/or in the future are hereby made or will be made a part of this Agreement with prior written approval of all Parties.

28. Entire Agreement. This Agreement constitutes the entire Agreement between the Parties hereto and supersedes all prior oral and written agreements between the Parties with respect to the subject matter hereof except as otherwise provided herein.

29. Conflict of Interest. No member, official or employee of the Township shall have any direct or indirect interest in this Agreement, nor participate in any decision relating to the Agreement which is prohibited by law, absent the need to invoke the rule of necessity.

30. Effective Date. Notwithstanding anything herein contained to the contrary, the effective date of this Agreement shall be the date upon which all of the Parties hereto have executed and delivered this Agreement.

31. Notices. All notices required under this Agreement ("Notice[s]") shall be written and shall be served upon the respective Parties by certified mail, return receipt requested, or by a recognized overnight or by a personal carrier. In addition, where feasible (for example, transmittals of less than fifty pages) Notice may also be served by facsimile or e-mail. All Notices shall be deemed received upon the date of delivery, except if delivered by email, which shall require that the recipient acknowledge receipt. Delivery shall be affected as follows, subject to change as to the person(s) to be notified and/or their respective addresses upon ten (10) days notice as provided herein:

TO THE TOWNSHIP:

Clerk, Township of Harding
Township of Harding Municipal Building
21 Blue Mill Road
New Vernon, New Jersey 07976

WITH A COPY TO:

Steven A. Kunzman, Esq.
DiFrancesco, Bateman, Kunzman, Davis, Lehrer &
Flaum, P.C.
15 Mountain Blvd.
Warren, New Jersey 07059
-and-
Mark Roselli, Esq.
Roselli Griegel Lozier & Lazarro P.C.
1337 State Highway 33
Hamilton, N.J. 08690

TO MT. KEMBLE:

Murray Kushner, President
The KRE Group

520 US Highway 22
PO Box 6872
Bridgewater, New Jersey 08807

WITH A COPY TO:

David B. Kahan, Esq.
David B. Kahan, P.C.
520 US Highway 22
PO Box 6872
Bridgewater, New Jersey 08807

WITH A COPY TO:

John P. Inglesino, Esq.
Inglesino, Webster, Wyciskala & Taylor, LLC
600 Parsippany Road, Suite 204
Parsippany, New Jersey 07054

TO SPECIAL MASTER:

Elizabeth C. McKenzie, AICP, PP
Elizabeth C. McKenzie, PP, PA
9 Main Street
Flemington, New Jersey 08822

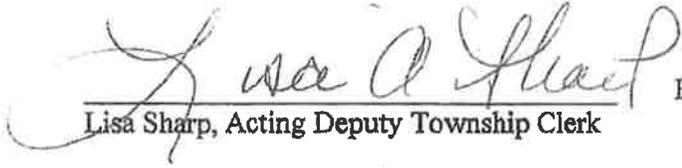
In the event any of the individuals identified above has a successor, the individual identified shall name the successor and notify all others identified of the successor.

[SIGNATURES ON FOLLOWING PAGE 17]

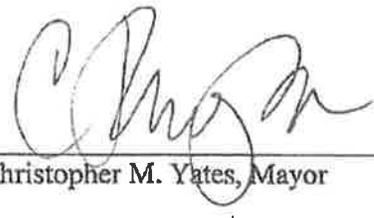
IN WITNESS WHEREOF, the Parties have caused this Settlement Agreement to be executed by their duly authorized representatives as of the date first written above.

Witness/Attest:

TOWNSHIP OF HARDING
a public body corporate and politic



Lisa Sharp, Acting Deputy Township Clerk

By: 

Christopher M. Yates, Mayor

Dated: 2/12/2018

Dated: 2/12/2018

S/K MT. KEMBLE ASSOCIATES, LLC

By: _____
By its Managing Member
S/K Mt. Kemble Corp.
Murray Kushner, President

Dated: _____

Dated: _____

IN WITNESS WHEREOF, the Parties have caused this Settlement Agreement to be executed by their duly authorized representatives as of the date first written above.

Witness/Attest:

TOWNSHIP OF HARDING
a public body corporate and politic

Paige Frank, Acting Township Clerk

By: _____
Christopher M. Yates, Mayor

Dated: _____

Dated: _____

S/K MT. KEMBLE ASSOCIATES, LLC



David B. Kahan

By: 

By its Managing Member
S/K Mt. Kemble Corp.
Murray Kushner, President

Dated: 2/9/18

Dated: 2/9/18

EXHIBIT A

MT. KEMBLE CONCEPT PLAN

EXHIBIT B

SAMPLE DEED RESTRICTIONS

MANDATORY DEED RESTRICTION FOR RENTAL PROJECTS

Deed Restriction

**DEED-RESTRICTED AFFORDABLE HOUSING PROPERTY
WITH RESTRICTIONS ON RESALE AND REFINANCING**

To Rental Property
With Covenants Restricting Rentals, Conveyance and Improvements
And Requiring Notice of Foreclosure and Bankruptcy

THIS DEED RESTRICTION, entered into as of this the ____ day of _____, 20____, by and between the Township of Harding, with offices located at 21 Blue Mill Road, New Vernon, New Jersey 07976, including any Administrative Agent it appoints to manage affordable housing (collectively referred to herein as “Municipality”), and S/K Mt. Kemble Associates, LLC, formed under the laws of the State of New Jersey, having offices at 52D U.S. Highway 22 East, P.O. Box 6872, Bridgewater, New Jersey 08807 (“Mt. Kemble”), the developer/sponsor (the “Owner”) of a residential low – and – moderate income project (the “Project”):

WITNESSETH

Article 1. Consideration

In consideration of benefits and/or right to develop received by the Owner from the Municipality regarding this rental Project, the Owner hereby agrees to abide by the covenants, terms and conditions set forth in this Deed restriction, with respect to the land and improvements more specifically described in Article 2, hereof (the Property).

Article 2. Description of Property

The Property consists of all of the land, and a portion of the improvements thereon, that is located in the municipality of the Township of Harding, County of Morris, State of New Jersey, and described more specifically as Block No. _____ Lot No. _____, and known by the street address:

More specifically designated as:

[INSERT MORE SPECIFIC DESCRIPTION OF PROJECT, INCLUDING BUT NOT LIMITED TO, THE TOTAL NUMBER OF UNITS, THE AFFORDABLE HOUSING SET ASIDE PERCENTAGE AND NUMBER OF UNITS, INCOME DISTRIBUTION, BEDROOM DISTRIBUTION, AGE-RESTRICTION, ETC.]

[List each affordable unit by unit number, number of bedrooms, income level, etc. For example, "Unit A, 2-bedroom low income family rental", on a list that shall be referred to herein as "Identified Affordable Units"]

Article 3. Affordable Housing Covenants

The following covenants (the "Covenants") shall run with the land for the period of time (the "Control Period"), determined separately with respect for each dwelling unit, commencing upon the date on which the first certified household occupies the unit, and expiring as determined under the Uniform Controls, as set forth below.

In accordance with N.J.A.C. 5:80-26.11, each restricted unit shall remain subject to the requirements of this subchapter, the "Control Period," 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.

- A. Sale and use of the Property is 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"), with the exception that in lieu of 10 percent of affordable units in rental projects being required to be affordable to households earning at or below 35 percent of the regional median household income by household size, 13 percent of affordable units in such projects shall be required to be affordable to households earning at or below 30 percent of the regional median household income by household size.
- B. The Identified 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 Municipality. 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.
- C. No improvements shall be made to the Property that would affect the bedroom configuration of any of its dwelling units, and any improvements to the Property must be approved in advance and in writing by the Municipality.
- D. The Owner shall notify the Municipality of any foreclosure actions filed with respect to the Property within five (5) business days of service upon Owner.
- E. The Owner shall notify the Municipality within three (3) business days of the filing of any petition for protection from creditors or reorganization filed by or on behalf of the Owner.

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 Owner, or any successor in interest of the Property, 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 Owner, 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.

IN WITNESS WHEREOF, the Municipality and the Owner have executed this Deed Restriction in triplicate as of the date first above written.

BY: _____

Title

On this the _____ day of _____, 20____, before me came _____, known to me to be the duly appointed representative of the Township of Harding, who states that he/she has signed this Deed Restriction on behalf of said Municipality for the purposes stated therein.

 NOTARY PUBLIC

[INSERT NAME OF DEVELOPER]:

BY: _____

Title

On this the _____ day of _____, 20____, before me came _____, known to me to be _____ of _____, the Owner of the Property, who states that he/she has signed this Deed Restriction for the purposes stated therein.

 NOTARY PUBLIC

APPROVED BY THE TOWNSHIP OF HARDING:

BY: _____

_____, Mayor

On this the _____ day of _____, 20____ before me came _____, known to me to be the Mayor of the Township of Harding, the Municipality identified as such in the foregoing Deed

Restriction, who states that he is duly authorized to execute said Deed Restriction on behalf of said Municipality, and that he has so executed the foregoing Deed Restriction for the purposes stated therein.

NOTARY PUBLIC

Language to be Inserted into Each Deed of Conveyance

Sale and use of the Property shall be and is governed by regulations known as the Uniform Housing Affordability Controls, which are found in the New Jersey Administrative Code at Title 5, chapter 80, subchapter 26 (N.J.A.C. 5:80-26.1, *et seq.*, the "Regulations" or "UHAC"). Consistent with the Regulations, the following covenants (the "Covenants") shall run with the land for the period of time commencing upon the date the initial certified household takes title to the Property and terminating only at such time as the Municipality in which the Property is located elects to release the unit from such requirements (the "Control Period"). Prior to such municipal election, the Property shall remain subject to the affordability controls set forth herein for a period of at least 30 years. In addition:

- A. The Property may only be conveyed to a household which has been approved in advance and in writing by the Township of Harding or its duly appointed Administrative Agent (hereinafter, the "Administrative Agent").
- B. No sale of the Property shall be lawful, unless approved in advance and in writing by the Administrative Agent, and no sale shall be for a consideration greater than the maximum permitted resale price ("Maximum Resale Price" or "MRP") as determined by the Administrative Agent.
- C. No refinancing, equity loan, secured letter of credit, or any other mortgage obligation or other debt (collectively, "Debt") secured by the Property, may be incurred except as approved in advance and in writing by the Administrative Agent. At no time shall the Administrative Agent approve any such Debt, if incurring the Debt would make the total of all such Debt exceed Ninety-Five Percent (95%) of the applicable MRP.
- D. The owner of the Property shall at all times maintain the Property as his or her principal place of residence.
- E. At no time shall the owner of the Property lease or rent the Property to any person or persons, except on a short-term hardship basis as approved in advance and in writing by the Administrative Agent.
- G. No improvements shall be made to the Property that would affect its bedroom configuration, and in any event, no improvement made to the Property will be taken into consideration to increase the MRP, except for improvements approved in advance and in writing by the Administrative Agent and consistent with N.J.A.C. 5:80-26.1, *et seq.*

Remedies for Breach of Affordable Housing Covenants

A breach of the Covenants will cause irreparable harm to the Administrative Agent, the Township of Harding 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. 5:80-26-1, *et seq.*, and the Constitutional obligation for the provision of low and moderate-income housing. Accordingly, and as set forth in N.J.A.C. 5:80-26.18:

- A. In the event of a threatened breach of any of the Covenants by the Grantee, or any successor in interest or other owner of the Property, the Administrative Agent 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 Grantee, or any successor in interest or other owner of the Property, the Administrative Agent 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.