Gregg F. Paster & Associates
Gregg F. Paster, Esq. (ID # 063951992)
18 Railroad Avenue - Suite 104
Rochelle Park, New Jersey 07662
Ph#: 201-489-0078 * Fax#: 201-489-0520
Attorneys for Defendants Borough of Dumont

DUMONT BOARD OF EDUCATION, Plaintiff, vs. BOROUGH OF DUMONT, Defendant.	SUPERIOR COURT OF NEW JERSEY LAW DIVISION: BERGEN COUNTY Docket No.: BER-L-2099-16 CIVIL ACTION **NOTICE OF MOTION FOR DISMISSAL OF COMPLAINT PURSUANT TO R. 4:6-2**

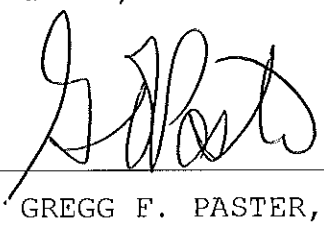
TO: James L. Plosia, Jr., Esq.
PLOSIA COHEN, LLC
385 Route 24 - Suite #3B
Chester, New Jersey 07930

PLEASE TAKE NOTICE that on Friday, April 1, 2016 at 9am or as soon thereafter as counsel may be heard, the undersigned counsel for Defendants, Borough of Dumont, will apply to the Honorable William C. Meehan of the Superior Court in Hackensack and assigned to hear such Motion at 10 Main Street, Hackensack, New Jersey, for an Order dismissing the complaint against the Defendant, pursuant to R. 4:6-2(e).

PLEASE TAKE FURTHER NOTICE THAT, Defendant will rely upon a brief, annexed hereto, in support of this Motion. Movant

consents to disposition on the papers in the absence of opposition hereto.

GREGG F. PASTER & ASSOCIATES
Attorneys for Defendants, Borough of Dumont,



Dated: March 15, 2016

By: GREGG F. PASTER, ESQ.

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Gregg F. Paster, Esq. (ID # 063951992)
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DUMONT BOARD OF EDUCATION Plaintiff, vs. BOROUGH OF DUMONT, Defendant.	SUPERIOR COURT OF NEW JERSEY LAW DIVISION: BERGEN COUNTY Docket No.: BER-L-2099-16 CIVIL ACTION

MEMORANDUM OF LAW IN SUPPORT OF DEFENDANT BOROUGH OF DUMONT'S MOTION FOR DISMISSAL FOR FAILURE TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED

GREGG F. PASTER, ESQ.
Of Counsel and on the Brief

ALFRED A. EGENHOFER, ESQ.
On the Brief

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PRELIMINARY STATEMENT

The Verified Complaint submitted by the Dumont Board of Education is fatally flawed for its misplaced reliance on N.J.S.A. 40A:12A-6(b)(3)(d), its misrepresentation of action taken by the Borough of Dumont, and ultimately its misconstrued analysis of the language in a 2016 Borough resolution and their own 1962 Bargain and Sale Deed.

In 1962, the Board of Education conveyed the property and structure thereupon to the Borough of Dumont. During the 54 years that followed the conveyance, the Borough of Dumont has continuously utilized the property, without interruption. The plan the Board of Education seeks to override constitutes further use of the property by the Borough into the foreseeable future. It was their Borough Hall and police department until the building's age and decrepitude made it unsafe for the employees of the borough to occupy. Even after the building became hazardous, the Borough continued to utilize the surrounding premises. The Dumont Police Department is still operating from 50 Washington Avenue, housed in trailers on the premises, and the new Borough Hall will occupy the space while simultaneously satisfying the Borough's constitutional obligation to provide affordable housing to its residents. For all the reasons that follow, the Board of Education's Complaint

should be dismissed with prejudice, pursuant to R. 4:6-2(e), for failing to state a claim upon which relief can be granted.

STATEMENT OF FACTS

1. On July 18, 1888, the Trustees of the School District Number 11, of the Township of Palisade in the County of Bergen, N.J. (now known as the Board of Education of the Borough of Dumont), acquired title to a certain parcel of property lying and situate within the Borough of Dumont, and known in 1962 as Lot 12 in Block 86 by deed recorded in the Bergen County Clerk's Office on July 23, 1888 in Book N-12 at page 207. See deed from Board of Education to Borough of Dumont dated June 7, 1962, attached to the Verified Complaint of the Plaintiff as Exhibit B.

2. The same property was conveyed from the Board of Education of the Borough of Dumont to the Borough of Dumont by the same Deed, attached to the Plaintiff's complaint as Exhibit B, which was recorded on June 15, 1962 in the Office of the Bergen County Clerk in Deed Book 4370 at Page 149. See Exhibit B to Verified Complaint of the Plaintiff herein.

3. Consistent with the Agreement between the Mayor and Council and the Board of Education of the Borough of Dumont dated April 26, 1962 and recorded in Deed Book 4367 at Page 533, and referenced in the Deed mentioned in paragraphs 1 and 2, supra.,

the Borough, upon information and belief, 'occupied and used said land and premises for use as a Borough Hall and other allied municipal purposes within six (6) months of the date of the delivery to it of the deed of conveyance…' This information and belief is based upon the fact that from 1962 until the present, there was never a previous demand for reversion of the property.

4. The Borough of Dumont continued to use and occupy the building on the subject property as a municipal complex and police department from that time in 1962 until the end of 2014, after the building, which was completed in 1918, was deemed uninhabitable by the Bergen County Health Department by virtue of an August 5, 2014 letter from Melissa Johnson, MS, which followed several years of problems and temporary or partial solutions by the Borough to maintain the building in working order. See Exhibit D to Verified Complaint of the Plaintiff.

5. Since the Borough was required to vacate the building in the winter of 2014/2015, the Borough has continued to use the property to house its police facilities, in temporary trailers at the front portion of the property, nearest to Washington Avenue. The Borough has occupied and used the subject property for municipal purposes continuously since 1962 up to and including the current day.

6. The Borough directed the Dumont Joint Land Use Board, acting as a Planning Board, to conduct an investigation of the subject property by resolution 15-76 on February 17, 2015, to determine whether the property qualifies as an Area in Need of Redevelopment on the basis of the document referred to in Paragraph 4, supra. A copy of Resolution 15-75 is attached to the Verified Complaint of the Plaintiff as part of Exhibit G.

7. On June 30, 2015, the Joint Land Use Board of Dumont, acting as the Planning Board, held a public hearing, on public notice, as required under N.J.S.A. 40A:12A-6, to determine whether the subject property, known as the Study Area, is an area in need of redevelopment pursuant to law. Notice to the public was published in the Record on June 10 and June 17. Following that hearing, the Joint Land Use Board adopted a resolution of even date finding that the Property constitutes an 'area in need of redevelopment.' A copy of the resolution finding that the property constitutes an area in need of redevelopment by the Joint Land Use Board is attached to the Verified Complaint of the Plaintiff as Exhibit I. Proofs of publication of the public notice in the Record on June 10 and June 17 as required by law, are attached hereto as exhibit A.

8. Pursuant to N.J.S.A. 40A:12A-6, any parties appearing on the assessor's record are entitled to actual mailed notice of the Planning Board's hearing. The Borough of Dumont is the only

party appearing on said assessor's tax card, and therefore, no mailed notice was issued. Such failure, however, even if it were required, is not grounds to invalidate the investigation or determination of an area in need of redevelopment. See N.J.S.A. 40A:12A-6(b)(3)(d). A copy of the Assessment Records of the Dumont Tax Assessor with regard to the subject property is attached hereto as Exhibit B.

8. Thereafter, on July 21, 2015, the Borough Council considered a resolution designating the Study Area an Area in Need of Redevelopment, but then opted to table same after objections from the public and disagreement among the Governing Body as to the efficacy of such action at that point in time. It was agreed that the status of the Board's 'right of first refusal' should be pursued to seek a voluntary resolution to any issues, real or perceived, to advance the greater public interest.

9. In the interim, the Borough has made numerous attempts to engage in an amicable discussion and negotiation with the Board of Education by letters dated February 17, March 17, December 26, 2015 and February 26, 2016, and with meetings between negotiating committees of the two bodies on March 5 and November 30, 2015 and February 23, 2016. While there is no apparent legal obligation to do so, and the Borough is absolutely within its rights as a municipality to declare any area that qualifies in

need of redevelopment, the Borough has gone to extraordinary lengths to procure the cooperation of the Board of Education, including the expense of an appraisal of the property and a financial offer of compensation, in pursuing an amicable conclusion to the right of first refusal question. Copies of all four letters referred to in this Paragraph 9 are attached hereto as Exhibit C.

10. All the while, since February of 2014, the Borough has been engaged in a builder's remedy litigation with Landmark Dumont, LLC, which was seeking a declaration of a builder's remedy, rezoning of property for which it is the contract purchaser, a finding that the Borough's zoning ordinance is exclusionary and unconstitutional, and related relief. A critical component of that litigation has been the need for affordable housing units to accompany market rate units demanded by the Plaintiff, Landmark Dumont, LLC. A copy of the Complaint in that matter is attached hereto as Exhibit D.

11. During settlement negotiations in connection with the developer in the above referenced builder's remedy litigation, it was suggested by planners involved in the litigation, including the Court appointed Special Master, Frank Banisch, that good planning practice would dictate that affordable housing units to be created as part of any development contemplated by the builder's remedy should be located closer to

essential services in the middle of Dumont, i.e., at the Borough hall property, than nearly a mile away at the D'Angelo Farm site which is the subject of the builder's remedy. As such, negotiations to settle that lawsuit focused on installing the affordable units, a constitutional obligation that constitutes a municipal use, at the 50 Washington Avenue property.

12. On February 2, 2016, the Borough Council adopted a resolution designating the Borough Hall property an area in need of redevelopment, after a public hearing, pursuant to the provisions of N.J.S.A. 40A:12A-6. A copy of that Resolution is attached to the Verified Complaint of the Plaintiff herein as Exhibit K.

13. At a public meeting of the Mayor and Council on February 16, 2016, where Landmark Dumont, LLC made a formal, public presentation of its proposal to settle the now 2 year old builder's remedy suit, Board of Education Vice President Karen Valido publicly rose and made a statement purportedly on behalf of the entire Board of Education. This statement asserted the contents of the Borough's December 26, 2015 letter, which made quite clear the Borough's intentions with regard to the property, and decrying the compensation offer made by the Borough, which was completely unnecessary, but made in the spirit of good faith, as entirely inadequate and threatened the instant legal action to assert the Board's 'right of first

refusal' as having been triggered by the February 2 area in need designation, which it crystal clearly was not.

13. On March 8, 2016, after having had a meeting on February 23 with the Board of Education and making abundantly clear the Borough's intentions, confirmed in a letter of February 26, 2016, the Board of Education served the instant lawsuit documents on the office of the Borough Attorney at approximately 4:30pm, just hours before a settlement agreement was to be considered for a vote by the Borough Council to conclude the builder's remedy litigation. Said settlement agreement was ratified by the Borough Council later that evening, including a provision that the 50 Washington Avenue property would be included as part of the settlement process to accommodate both municipal offices and the affordable housing obligation generated by the development sought in the builder's remedy litigation. The final settlement agreement is attached hereto as Exhibit E, and the resolution of ratification and authority for the Mayor to execute is attached hereto as Exhibit F.

14. The facts set forth herein, and the legal argument in Defendant's Brief in Support, leave no doubt whatsoever that the Borough has, and will in the future, continue to use the property as set forth in paragraph 6 of the April 26, 1962 agreement, and thus, the 'right of first refusal' asserted

therein, has not been triggered, rendering the within action ripe for dismissal.

LEGAL ARGUMENT

POINT I

A MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM PURSUANT TO RULE 4:6-2(E) SHOULD BE DECIDED ON THE SAME BASIS AS A MOTION FOR SUMMARY JUDGMENT PURSUANT TO RULE 4:46-2

In this case, Plaintiff Dumont Board of Education improperly seeks from Defendant the Borough of Dumont injunctive relief which cannot reasonably or legally be provided. The Borough of Dumont and the Borough Council has fulfilled all of their legal obligations to Plaintiff, so the Complaint as it pertains to the Borough of Dumont fails to state a cause of action upon which relief may be granted. New Jersey Court Rules, R. 4:6-2, states in pertinent part:

> Every defense, legal or equitable, in law or fact, to a claim for relief in any complaint, counterclaim, cross-claim, or third-party complaint shall be asserted in the answer thereto, except that the following defenses, unless otherwise provided by R. 4:6-3, may at the option of the pleader be made by motion, with briefs: … (e) failure to state a claim upon which relief can be granted … If a motion is made raising any of these defenses, it shall be made before pleading if a further pleading is to be made. No defense or objection is waived by being joined with one or more other defenses in an answer or motion.

Rule 4:6-2 goes on to state:

> If, on a motion to dismiss based on the defense numbered (e), matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided by R. 4:46, and all parties shall be given reasonable opportunity to present all material pertinent to such a motion.

Rule 4:46-2 provides, in pertinent part, that a litigant is entitled to Summary Judgment:

> if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to a judgment or order as a matter of law.

The rationale upon which this Rule is premised is enunciated in Judson v. People's Bank & Trust Co. of Westfield, wherein the Court held:

> It is designed to provide a prompt, businesslike and inexpensive method of disposing of any cause which a discriminating search of the merits in the pleadings, depositions and admissions on file, together with the affidavits submitted on the motion clearly shows not to present any genuine issue of material fact requiring disposition at a trial. In conjunction with the pretrial discovery and pretrial conference procedures, the summary judgment procedure aims at the swift uncovering of the merits and either their effective disposition or their advancement toward prompt resolution by trial.

17 N.J 67, 74 (1954) (internal citations and quotations omitted), superseded on other grounds by Murray v. Nicol, 224

N.J. Super. 303 (App. Div. 1988), SC Holdings v. AAA Realty Co., 935 F. Supp. 1354 (D.N.J. 1996).

When deciding a motion for Summary Judgment under R. 4:46-2, the New Jersey Supreme Court's holding in the case of Brill v. Guardian Life Ins. Co. of America is controlling. The Supreme Court held that:

> the determination whether there exists a genuine issue with respect to a material fact challenged requires the motion judge to consider whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party in consideration of the applicable evidentiary standard, are sufficient to permit a rational factfinder to resolve the alleged disputed issue in favor of the nonmoving party. This assessment of the evidence is to be conducted in the same manner as that required under R. 4:37-2(b).

142 N.J. 520, 523 (1995).

In reaching this holding, the Brill Court emphasized that R. 4:46-2 dictates that a motion for Summary Judgment should only be denied where the opposing party "has come forward with evidence that creates a genuine issue as to any material fact challenged." 142 N.J at 529. Thus, "a non-moving party cannot defeat a motion for summary judgment merely by pointing to any fact in dispute." Id. The opposing party must offer more than merely "facts which are immaterial or of an insubstantial nature, a mere scintilla 'fanciful, frivolous, gauzy or merely suspicious.'" Id. (quoting Judson, supra at 75). Bare

conclusions and pleadings without factual support and tendered affidavits will not and should not defeat a meritorious application for Summary Judgment. United States Pipe & Foundry Co. v. American Arbitration Assn., 67 N.J. Super. 384 (App. Div. 1961).

In Brill, "to encourage trial courts not to refrain from granting summary judgment when the proper circumstances present themselves," the Supreme Court articulated a new standard to be applied in deciding Summary Judgment motions:

> Some have suggested that trial courts out of fear of reversal, or out of an overly restrictive reading of Judson, or a combination thereof, allow cases to survive summary judgment so long as there is any disputed issue of fact. As to fear of reversal, we believe our judges are made of sterner stuff and have sought conscientiously over the years to follow the law. We may have permitted an encrustation of the Judson standard that obscured its essential import.

142 N.J. 520 (internal citation omitted).

In other words, the Court wrote that when the evidence "'is so one-sided that one party must prevail as a matter of law'…, the trial court should not hesitate to grant summary judgment." Id.

In the instant matter, there are no genuine issues of material fact in dispute, thereby leaving resolution of the dispute to the Court, as a matter of law. The questions before

the court are questions of law: whether N.J.S.A. 40A:12A-6 required individualized notice be delivered to the Board of Education, and if it was required, the legal effect of its absence; whether the Borough of Dumont should be prohibited from declaring the property at 50 Washington Avenue an area in need of redevelopment; and whether vacating the structure known as 50 Washington Avenue but continuing to use the property around that structure constituted adopting a resolution declaring that it was no longer in the public interest of the Borough of Dumont to continue to use the premises in question.

Therefore, the matter is appropriately before the Court for determination as a motion to dismiss pursuant to R. 4:6-2(e), under the Summary Judgment standard, as failing to have stated a claim upon which relief could be granted.

POINT II

THE PLANNING BOARD'S POSITION IN COUNT ONE WITH REGARD TO INSUFFICIENT NOTICE IS UNSUPPORTED BY THE STATUTE UPON WHICH IT RELIES.

In the first count of the verified complaint, the Dumont Board of Education (hereinafter "Board") seeks relief that is legally unavailable. In 2015, the Borough of Dumont (hereinafter "Borough") advised the Dumont Planning Board (hereinafter "Planning Board") to pursue a Redevelopment Study Area Determination Need for the property known as 50 Washington

Avenue, in the Borough of Dumont. N.J.S.A. 40A:12A-6(b) outlines the notice required after the Planning Board passed the resolution to undertake the investigation of the redevelopment area determination. The verified complaint alludes to N.J.S.A. 40A:12A-6(b)(3)(d) but makes no reference to the law's final sentence of N.J.S.A. 40A:12A-6(b)(3)(d) reads: "Failure to mail any such notice shall not invalidate the investigation or determination thereon." The meaning of this language is unambiguous. Whether or not the Planning Board, whom this firm does not represent and who is not a party to this action, had an obligation to mail notice of the Planning Board hearing whereat the Planning Board moved to undertake an investigation into the candidacy of 50 Washington Avenue as a redevelopment site, the fact that they did not should have no legal bearing on the investigation or determination that followed.

Moreover, the Board of Education was not due individualized notice. In 2010, the New Jersey Supreme Court considered the requirement for individualized notice for tenants of a property designated as part of an area in need of redevelopment. "[T]he only question before this Court is whether a long-term commercial tenancy, with a limited right of first refusal, amounts to a protected interest in the property that is equivalent to the building owner's interest in the property that is subject to a potential blight designation." Iron Mountain

Information Management, Inc. v. City of Newark, 202 N.J. 74, 78 (2010). In that case, the court held that the only parties who were due individualized notice were those listed as owners of record and those listed on the tax assessors' records. Id.

Then again, in a 2011 New Jersey Supreme Court decision, Town of Kearny v. Discount City of Old Bridge, Inc., the Court reaffirmed their 2010 stance that non-record owners of property are "not entitled to individualized notice that development is being considered but only to newspaper publication under N.J.S.A. 40A:12A-6(b)(3) and that if that party does not object or challenge the blight designation at the hearing or in a timely action in lieu of prerogative writs, the issue is foreclosed." Town of Kearny v. Discount City of Old Bridge, Inc., 205 N.J. 386, 393 (2011).

> As is evident from the words of the statute, the Legislature differentiated between the classes of persons entitled to general notice and those warranting specific notice. By that scheme, "the Legislature intended, in the blight designation context, to limit the right to actual notice to owners of record and those whose [names] are listed on the tax assessor's records…

Id. 205 N.J. at 403. The Board of Education is not listed as an owner of record in the tax assessor's records. As the language of the law and the prevailing legal opinion make abundantly clear, no individualized notice was required. For all the foregoing reasons, the first Count of the Board of

Education's complain should be dismissed with prejudice pursuant to Rule 4:6-2.

POINT III

THE ABSENCE OF ANY AFFIRMATIVE ACT RENDERS COMPLAINT'S ALREADY QUESTIONABLE ASSERTION OF SELF-CREATED HARM BASELESS.

The second count of the Board of Education's complaint makes the assertion that the Planning Board's resolution designating the property at 50 Washington Avenue in need of redevelopment should be overturned because the condition of 50 Washington Avenue represented a self-created hardship. Nowhere in the Board of Education's brief or complaint does the Board of Education provide factual or legal evidence in support of that claim.

The concept of self-created hardship appears to predominantly, if not exclusively, apply to applications for zoning variances. See Jock v. Zoning Bd. of Adjustment, 184 N.J. 562 (2005); Egeland v. Zoning Bd. of Adjustment of Tp. Of Colts Neck, 405 N.J. Super. 329 (App. Div. 2009); Simeone v. Zoning Bd. of Adjustment of Tp. Of East Hanover, 377 N.J. Super. 417 (App. Div. 2005); Cohen v. Board of Adjustment of Borough of Rumson, 396 N.J. Super 608 (App. Div. 2007). To that extent, its reference within the Board of Education's complaint does not seem appropriate. However, even if the court wishes to

contemplate whether the blighted condition of 50 Washington Avenue is, in fact, self-created hardship, New Jersey case law will direct a negative finding.

Without making reference to some affirmative act undertaken by the Borough of Dumont, the Board of Education's assertion of self-created hardship must fail. Jock v. Zoning Bd. of Adjustment, 184 N.J. 562, 569 (2005). The New Jersey Supreme Court declared in Jock, "…the notion of self-created hardship requires an affirmative act that transforms a conforming property into one that is non-conforming. Although an applicant's failure to take steps to bring non-conforming property into compliance is one consideration for determining the existence of hardship, it is not a disqualifying self-created hardship." Id. The Board of Education makes no reference to any affirmative action taken by the Borough. It cites no case or statute to guide the application of the self-created hardship designation. It provides no basis for concluding that the blighted condition of 50 Washington Avenue constitutes a self-created hardship, and it further provides no direction for how to apply the notion of self-created hardship to a municipality's decision to make a determination of a redevelopment site. Furthermore, the Board's argument fails to take into account the fact that we are discussing a nearly century old building that contains an extraordinary quantity of asbestos and other

environmental contaminants that requires abatement prior to any redevelopment of the property.

For the aforementioned reasons, Count two of the Dumont Board of Education's complaint should be dismissed with prejudice pursuant to R. 4:6-2.

POINT IV

THE REVERSION CLAUSE OF THE 1962 BARGAIN AND SALE DEED SHOULD NOT TRIGGER, BECAUSE THE BOROUGH OF DUMONT NEVER INDICATED VIA RESOLUTION THAT IT WAS NO LONGER IN THE PUBLIC INTEREST TO CONTINUE TO USE THE PREMISES, AND INDEED CONTINUES TO USE SAME.

The Board of Education's entire complaint hinges on the applicability of paragraph 6 of its 1962 Agreement with the Borough of Dumont. Paragraph 6 reads:

> That in the event the Mayor and Council of the Borough of Dumont shall, at some future date, **adopt a resolution declaring that it is no longer in the public interest of the Borough of Dumont for the said Borough of Dumont to continue to use the premises in question**, then before the Mayor and Council of the Borough of Dumont shall have the legal right either to sell or to transfer and convey the premises in question to any third party, the said Mayor and Council of the Borough of Dumont shall first offer to convey, transfer and give the premises in question, together with all improvements which may then be situated on said premises, to the Board of Education of the Borough of Dumont, the said conveyance, transfer and gift to be used by the said Board of Education within the scope of Title 18 of the New Jersey Statutes, and said transfer and conveyance to be made without any

consideration to be paid for same. (Emphasis added.)

Paragraph 6 hinges on the Mayor or the Council of the Borough adopting a "resolution declaring that it is no longer in the public interest of the Borough of Dumont to continue to use the premises in question." This is clearly a condition precedent to the activation of the right to recapture the property by the Board of Education. To the extent that the Board is asserting that the area in need designation constitutes a declaration that the Borough does not intend to continue to use the property, this notion is totally misguided. The Borough of Dumont has adopted no such resolution. The Borough has continued to use the property at 50 Washington Avenue for the last fifty-four years continuously. The building is very old, and the facilities that were once housed within the Borough Hall have moved to alternate physical locations for health reasons. Even still, the property is the physical location of the temporary structures that house the Borough's police department. Simply put the Borough has never discontinued their use of the premises.

In its complaint, the Board of Education made reference to the following language in paragraph 4 of the 2016 Borough of Dumont Resolution number 53, dated February 2, 2016, "The structure previously contained virtually all Borough Offices

(including the Police Department) and over the years has deteriorated to the point where it is no longer safe and all municipal offices have relocated from the **structure**, which is now vacant." The building is falling down. It is unsafe for occupancy. The Borough has continued to utilize the **premises**, however, through the same period that the structure has become vacant. Of important note, the Board of Education's "reversion" clause does not make reference to use of the structure, but rather to the premises, and any improvements thereupon. By the very language of the conveyance agreement, the Board of Education's Complaint is misguided.

Additionally, the Borough's future plans for the site include the construction of a new Borough Hall along with housing that will satisfy the borough's constitutionally mandated low income housing requirement. These two goals are completely within the public interest, and as such, constitute use of the property as could never have been imagined, much less anticipated, in 1962.

Even if the intended redevelopment was not specifically municipal in nature (which it is), the New Jersey Constitution plainly states, "[t]he clearance, replanning, development or redevelopment of blighted areas **shall be a public purpose and public use**, for which private property may be taken or acquired." N.J. Const. Art. VIII, § 3, cl. 1. This clause

effectively means that the very act of redevelopment of blighted property is also in the public interest. New Jersey courts subsequently have verified that such development constitutes a public purpose. "A valid development determination satisfies the public purpose requirement." Vineland Constr. Co. v. Twp. Of Pennsauken, 395, N.J. Super. 230, 250 (App Div. 2007) The Borough of Dumont's resolution was fully within the contemplation of the 1947 Blighted Areas Clause.

> The 1947 framers were "concerned with addressing a particular phenomenon, namely, the deterioration of 'certain sections' of 'older cities' that were causing an economic domino effect devastating surrounding properties." To address those concerns, the Blighted Areas Clause enables municipalities 'to intervene, stop further economic degradation, and provide further incentives for private investment.

Harrison Redevelopment Agency v. DeRose, 398 N.J. Super 361, 393-94 (App. Div. 2008); Quoting Gallenthin Realty Dev., Inc. v. Borough of Paulsboro, 191 N.J. 344 (2007). The New Jersey courts have upheld private redevelopment as a valid public interest for redeveloping blighted areas, so the Board of Education's claim that the Borough triggered their "reversion" clause is unreasonable, manifestly, and by its very definition.

However, even if the court does feel the reversion clause might be pertinent to analysis of the Board of Education's complaint, the Municipality has a constitutional right to make

the property in question the subject of an area in need of redevelopment study. "Pursuant to the authorization set forth in N.J. Const. art. VIII, § 3, para. 1, the legislature has enacted the New Jersey Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 to -49, which empowers municipalities to designate property as 'in need of redevelopment' and thus subject to New Jersey's eminent domain power." Gallenthin Realty Development, Inc. v. Borough of Paulsboro, 191 N.J. 344 (2007). That the property in question is currently owned by the Municipality making the area in need of development designation should not, and absolutely does not, disqualify that area from the reach of the Borough's constitutionally derived authority.

The Board of Education has asked this court to issue a "permanent judicial restraint prohibiting the Borough from taking any action to declare the 50 Washington Avenue property to be 'an area in need of redevelopment.'" This request is, as described above, unsupported by any fact or law, and is likely a denial of the Borough's constitutional and legislative right. For all the foregoing reasons, the third Count of Board of Education's Complaint should be dismissed with prejudice pursuant to R. 4:6-2.

CONCLUSION

For the reasons set forth above, Defendants respectfully request that Plaintiff's complaint be dismissed in its entirety with prejudice.

GREGG F. PASTER & ASSOCIATES

Dated: March 15, 2016

BY: Gregg F. Paster
Attorney for Defendant
Borough of Dumont

EXH. A

The Record

Publication Date: 06/10/2015

Ad Number:	3874356-01	Client Name:	/ PO# DUMONT JOINT LAN
Insertion Number:		Advertiser:	MARK D. MADAIO, ESQ.
Size:	1x33.00	Section/Page/Zone:	M/M005/
Color Type:	B&W	Description:	BOROUGH OF DUMONT JOINT LAND USE NO

Public Notices

BOROUGH OF DUMONT
JOINT LAND USE
NOTICE OF PUBLIC HEARING

Pursuant to the New Jersey Local Redevelopment and Housing Law N.J.S.A. 40A:12A-6, notice is hereby given that the Dumont Joint Land Use will conduct a public hearing regarding the Area in Need of Redevelopment Study of the Borough Hall property at the address of 50 Washington Avenue, Dumont, New Jersey 07628 - Block 1215 Lot 12. The redevelopment area determination shall not authorize the municipality to exercise the power of eminent domain to acquire property in the delineated area. Said hearing is scheduled to be held Tuesday, June 30, 2015 at 7:30 p.m. at 50 Dumont Avenue, Dumont, New Jersey 07628. All said hearing the Board will receive and consider public comments of the above-referenced study. A map and report has been prepared and is on file in the office of the Municipal Clerk at 80 West Madison Avenue, Dumont, New Jersey 07628, and may be reviewed and inspected between the hours of 9:00 a.m. - 3:00 p.m., Monday through Friday.

DUMONT JOINT LAND USE
By: Mark D. Madaio
Board Attorney
June 1, 2015
June 13,17 2015-Fee:$62.35(33) 3874356

EXHIBIT A

The Record

Publication Date: 06/17/2015

Ad Number:	3874356-01	Client Name:	/ PO# DUMONT JOINT LAN
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Color Type:	B&W	Description:	BOROUGH OF DUMONT JOINT LAND USE NO

Public Notices

BOROUGH OF DUMONT
JOINT LAND USE
NOTICE OF PUBLIC HEARING

Pursuant to the New Jersey Local Redevelopment and Housing Law (N.J.S.A.40A:12A-6) notice is hereby given that the Dumont Joint Land Use will conduct a public hearing regarding the Area in Need of Redevelopment Study of the Borough Hall property at the address of 50 Washington Avenue, Dumont, New Jersey 07628 - Block 1215 Lot 12. The redevelopment area determination shall not authorize the municipality to exercise the power of eminent domain to acquire property in the delineated area. Said hearing is scheduled to be held Tuesday, June 30, 2015 at 7:30 p.m., at 39 Dumont Avenue, Dumont, New Jersey 07628. At said hearing the Board will receive and consider public comments of the aforementioned study. A map and report has been prepared and is on file in the office of the Municipal Clerk at 50 West Madison Avenue, Dumont, New Jersey 07628, and may be reviewed and inspected between the hours of 9:00 a.m. - 3:00 p.m., Monday through Friday.

DUMONT JOINT LAND USE
By: Mark D. Madaio
Board Attorney
June 1, 2015
June 10,17,2015-fee:$62.33(33) 3874356

EXH. B

DUMONT | Land Desc: 150X286 | Owners Name: BOROUGH OF DUMONT | Land: 1,288,000 | REALTY APPRAISAL COMPANY
Block: 1215 | Bldg Desc: | Street Address: 50 WASHINGTON AVE | Impr: 1,489,000 | Reval Date: 2011
Lot: 12 | Addl Lots: | City & State: DUMONT NJ | Zip: 07628 | Total: 2,777,000 | Map:
Qual: | Acreage: 0.986 | Class: 15C | Property Location: 50 WASHINGTON AVENUE | Exempt: | Seq#: 4669 (#1 of 1)

SALES HISTORY

Grantor	Date	Book/Page	Price	Nu#

ASSESSMENT HISTORY

Year	Land	Impr	Total
2011	1298400	1489000	2787400
2012	1288000	1489000	2777000

BUILDING PERMITS/REMARKS

Date	Work Description	Amount	Compl.

LAND CALCULATIONS

Frt	Eff D	Back L	Tri	Dpf	FFF	Dep	Reason	Value
42934 SF	@	30.00	+		0	100%		1288020

Neigh: 800
VCS: SF80 | Front Ft Value:
Zone: B2 | Acre Value: 30
Min Front: | Lot Value:
Std Depth: | Land Value: 1,288,000

SITE INFORMATION

Road:	Util:
Curbs:	Gas:
Sidewalk:	Elec:
Loc:	Topo:

STAFF CONTROL

Info By:	Date:
Visits:	Collector:
Old B: 86	Prtd: 03/14/16
Old L: 12	Card: M

BUILDING INFORMATION

Class:	Roof Type:
Age/Eff Age: / 35 (Y)	Roof Material:
Exterior Walls:	Room Count: Total Rooms: 0 Bed Rooms: 0
Style:	Row/End:
Story Height:	Conversion:
Exterior Condition:	Number of Units:
Interior Condition:	Heat Source:
Foundation:	Livable Area: 0 SF

DEPRECIATION

Physical:	38 %	Auto:	Y
Func Obs:	%	Over Imp:	%
Econ Obs:	%	Under Imp:	%
		Final Net:	0.62

Baths: M: A: O:
Kitchens: M: A: O:

NOTES

BUILDING SKETCH

A:
M:
N:
O:
P:

MicroSystems-NJ.Com, L.L.C.

RESIDENTIAL COST APPROACH

Basement	Area	Rate	Const	Q/F	Mult	Value
Main Bldg						
Heat/AC						
Plumbing						
Fireplace						
Attic						
Deck/Patio						
Garage						

Base Cost: 0 | CCF: 1.25 | Cost New: 0
Net Cond: 0.62 | Bldg Value: 0

Detached Items:
BORO HALL AND POLICE 1,489,000

Land: 1,288,000 | Impr: 1,489,000 | Total: 2,777,000

tabbies EXHIBIT B

PRESS(Q)uery, (N)ext, (P)revious, (A)dd, (U)pdate, (R)emove, (O)utput (B)ye
(S)creen ** 1: prc file**

---Screen:1 of 5

0210 Block: 1215 Lot: 12 Q: M
Prior Block: 86 Lot: 12 Q: 03/14/16
Loc: 50 WASHINGTON AVENUE 10 DUMONT, NJ 07628
Owner: BOROUGH OF DUMONT Billing Code: 00000
Street: 50 WASHINGTON AVE Account Num: 000000
Town: DUMONT NJ Zip: 07628 Mtg Acct#:
Class: 15C Deductions:S 0 V 0 W 0 R 0 D 0 Own: 0 Amt: 0
SaleD: 00/00/00 Bk: Pg: Price: 0 NU#: Cd: R: 0.00

	2016	2017	Taxes	2015	Exemptions/Abatements		
Land:	1288000	1288000	(57):	0.00	1	0	
Impr:	1489000	1489000		2016	2	0	
	0	0	(58):	0.00	3	0	NetCalc
Net:	2777000	2777000	Partial:		4	0	0

Land Dim: 150X286 Class4Cd: YrBlt: 0000 Neigh: 800
Bldg Desc: BldgClass: SF: 0
Addl Lots: Type/Use: PrcSF 0 UCd: 20
Style: Zone: B2 Map:

EXH. C

GREGG F. PASTER & ASSOCIATES

ATTORNEYS AT LAW

WWW.PASTERESQ.COM

18 RAILROAD AVENUE - SUITE 104
ROCHELLE PARK, NEW JERSEY 07662
TEL (201) 489-0078 • FAX (201) 489-0520

GREGG F. PASTER
ADMITTED NJ & PA
GPASTER@PASTERESQ.COM

STEVEN W. KLEINMAN
ADMITTED NJ & NY
OF COUNSEL
SKLEINMAN@PASTERESQ.COM

February 17, 2015

VIA EMAIL plosia@ammm.com AND REGULAR MAIL

James L. Plosia, Esq.
Apruzzese, McDermott, Mastro & Murphy, P.C.
Somerset Hills Corporate Center
25 Independence Boulevard
PO Box 112
Liberty Corner, New Jersey 07938

Re: Dumont Borough Hall Deed and Property

Dear Mr. Plosia:

Thank you for taking the time to call me this afternoon to discuss the above referenced matter, and specifically the terms of Paragraph 6 of the April 26, 1962 deed to the Dumont Borough Hall property located at 50 Washington Avenue.

Please allow this letter to confirm that we agreed that once the Borough occupied the property for municipal purposes in 1962, any reverter clause extinguished by the terms of the deed in paragraph 2. This shall further confirm that we agreed, and you intend to advise the Board of Education, that paragraph 6 of the deed does not constitute a reverter clause, but rather, is a right of first refusal for the Board of Education to reacquire the property for use as an educational facility, and that to your knowledge, the Board has no intention of exercising that right.

You further expressed some concern by members of the Board and the Administration that the Borough would attempt to require the Board to re-take title to the property, for which in your estimation the Board has no use and no desire. I will be advising the Governing Body consistently with our discussion.

Should there be any further questions please feel free to call.

Very truly yours,
GREGG F. PASTER & ASSOCIATES

BY: Gregg F. Paster, Esq.

GFP: ms
cc: Susan Connelly, RMC-Borough Clerk (via email only)

EXHIBIT C

Gregg F. Paster & Associates

Attorneys At Law
www.pasteresq.com
18 Railroad Avenue – Suite 104
Rochelle Park, New Jersey 07662
Tel (201) 489-0078 · Fax (201) 489-0520

Gregg F. Paster
Admitted NJ & PA
gpaster@pasteresq.com
Alfred A. Egenhofer
Admitted NJ&NY-Of Counsel

Steven W. Kleinman
Admitted NJ & NY
Of Counsel
Skleinman@pasteresq.com

March 17, 2015

VIA EMAIL plosia@ammm.com AND REGULAR MAIL

James L. Plosia, Esq.
Apruzzese, McDermott, Mastro & Murphy, P.C.
Somerset Hills Corporate Center
25 Independence Boulevard
PO Box 112
Liberty Corner, New Jersey 07938

Re: Dumont Borough Hall Property Condition

Dear Mr. Plosia:

In furtherance of our earlier conversations and in response to your letter of February 25, 2015, I enclose herewith for your review and information, a report of August 5, 2014 prepared by Melissa Johnson, MS, an Industrial Hygienist with the Bergen County Department of Health Services, based upon industrial hygiene investigation conducted on July 7, 23 and 30, 2014, as set forth in the report. This report provides substantial information on the condition of the existing, but currently out of service borough hall building located at 50 Washington Avenue, Dumont, of which we had previously spoken.

This is the only property condition report in the possession of this office for the property. I am unaware of any appraisals or comparative market analyses performed on the subject property in the 10 plus years that I have been Dumont Borough Attorney. I am aware of some other inspections and studies of the property that have been conducted over the years, but do not have copies readily available. I have requested that the Borough Administrator provide same so that I may provide them to you, but as of this writing, same have not been located, in large part due to the fact that the borough offices have been moved to a different location and the records are not immediately accessible. In any event, the attached report details the history of the building and the current condition in sufficient detail to provide a baseline for discussion by and among the Board of Education members and administration.

Should there be any further questions please feel free to call.

Very truly yours,
GREGG F. PASTER & ASSOCIATES

BY: Gregg F. Paster, Esq.

GFP: ms
cc: Susan Connelly, RMC-Borough Clerk (via email only w/o encl.)
John P. Perkins, CPM-Borough Administrator (via email only w/o encl.)

GREGG F. PASTER & ASSOCIATES

ATTORNEYS AT LAW

WWW.PASTERESQ.COM

18 RAILROAD AVENUE - SUITE 104
ROCHELLE PARK, NEW JERSEY 07662
TEL (201) 489-0078 • FAX (201) 489-0520

GREGG F. PASTER
ADMITTED NJ & PA

STEVEN W. KLEINMAN
ADMITTED NJ & NY
OF COUNSEL

ALFRED A. EGENHOFER
ADMITTED NJ - OF COUNSEL

December 26, 2015

VIA EMAIL plosia@ammm.com AND REGULAR MAIL

James L. Plosia, Esq.
Apruzzese, McDermott, Mastro & Murphy, P.C.
Somerset Hills Corporate Center
25 Independence Boulevard
PO Box 112
Liberty Corner, New Jersey 07938

Re: Dumont Borough Hall Property
50 Washington Avenue, Dumont

Dear Jamie:

First of all, please accept my condolences on the recent passing of your father. It is never easy losing a family member, but during the holiday season, it is only more difficult. My heartfelt sympathies to you and your family.

John Perkins advised that he contacted the Superintendent to schedule a follow up to our recent meeting and was advised that the Board will not be meeting again until January 7 and cannot commit to a discussion with the Mayor and Council until after that. Unfortunately, the Borough is pressed for time based upon the court's schedule in the pending declaratory judgment litigation for a judgment of compliance with affordable housing obligations, as I had previously explained. The Borough is currently in negotiations with the contract purchaser for the D'Angelo's farm property to settle the litigation over that property, which will also resolve the vast majority of the issues necessary for the Borough to obtain its judgment of compliance with affordable housing requirements from the Court. Although no official decisions have been made, it is the Borough's intention to locate 20-24 units of affordable housing at a 100% affordable complex at 50 Washington Avenue. Any settlement of the builder's remedy litigation as well as the COAH declaratory judgment action will require that the affordable requirement be addressed. We are on a short timeline to complete this negotiation, as the litigation has been pending for nearly two years now.

As a result of this time urgency, this letter will explain the Borough's position and offer to amicably resolve the issue of title to the Borough Hall property. The appraisal previously provided lists an 'as is' value of the property at Eight Hundred Eighty Five Thousand and 00/100 ($885,000.00) Dollars. Various estimates of demolition and environmental abatement costs have been received in the approximate amount of

$750,000. Additional environmental remediation will be required to render the property suitable for redevelopment. The Borough is prepared to guarantee the Board of Education the difference between the appraised value and the actual costs of demolition and remediation of the building and property in exchange for the Board relinquishing its right of first refusal to conveyance of the property. In the event the costs exceed the appraised value, I am sure we can negotiate a nominal payment as consideration for the abandonment of residuary rights of the Board.

Please consider this proposal with the Board at your first opportunity, since, as mentioned above, there is not a great deal of time to make necessary decisions.

Should there be any further questions please feel free to call.

Very truly yours,
GREGG F. PASTER & ASSOCIATES

BY: Gregg F. Paster, Esq.

GFP: ms
cc: Susan Connelly, RMC-Borough Clerk (via email only)

Gregg F. Paster & Associates

Attorneys At Law
www.pasteresq.com
18 Railroad Avenue – Suite 104
Rochelle Park, New Jersey 07662
Tel (201) 489-0078 · Fax (201) 489-0520

Gregg F. Paster
Admitted NJ & PA
gpaster@pasteresq.com
Alfred A. Egenhofer
Admitted NJ&NY-Of Counsel

Steven W. Kleinman
Admitted NJ & NY
Of Counsel
Skleinman@pasteresq.com

February 26, 2016

VIA EMAIL jplosia@pclawnj.com only

James L. Plosia, Esq.
Plosia Cohen LLC
Chester Woods Complex
385 Route 24-Suite 3G
Chester, New Jersey 07930

Re: Dumont Borough Hall Property
50 Washington Avenue, Dumont

Dear Jamie:

In furtherance of our meeting of February 23, 2016 of the Board of Education and Mayor and Council committees, this shall serve to confirm our understanding of the respective positions of the parties with respect to the above referenced property. First of all, I agreed, and this shall confirm, that the Borough will not assert the 45 day statute of limitations as a defense to any suit by the Board of Education challenging the Area in Need of Redevelopment designation adopted by resolution of the borough council on or about February 2, 2016. As I also advised, I cannot speak for the Planning Board, who held their hearing on the Area in Need study and ratified same and recommended designation to the Council in June of 2015. Furthermore, I do not believe that either the area in need designation nor, indeed, the use of the property as a site for affordable housing required by the New Jersey Constitution, trigger the Board of Education's right of first refusal, as the Borough has neither adopted a resolution specifying that the Borough no longer intends to use the property, nor ceased to use the property, as required under paragraph 6 of the April 26, 1962 agreement recorded in Book 4367 at page 535 in the office of the Bergen County Clerk.

Review of NJSA 40A:12A-6 also reveals that the Board of Education was not entitled to any actual notice of any action in furtherance of the area in need designation, notwithstanding the fact that the Borough has attempted to engage the Board in repeated efforts to rectify the issues related to the 'right of first refusal' appearing in the April, 1962 Agreement, as evidenced by my letters to you of February 17, 2015, March

17, 2015 and December 26, 2015, and meetings between Board and Borough representatives of March 5, 2015, November 30, 2015 and February 23, 2016. All actions taken and contemplated by the Borough in connection with the referenced property have been taken in public, on notice, with opportunity to be heard consistent with the open public meetings act and the Local Redevelopment Act. Indeed, Robert DeWald of the Board of Education appeared at the February 2, 2016 and commented publicly on the question. As such, for the Board of Education to claim ignorance of the intention to designate the property is clearly disingenuous.

Setting all of the foregoing aside, in response to the Board's demand of $885,000 to relinquish its right of first refusal as outlined above, please allow me to reiterate that the Borough is prepared to guarantee the Board of Education the difference between the appraised value and the actual costs of demolition and remediation of the building and property in exchange for the Board relinquishing its right of first refusal to conveyance of the property. In the event the costs exceed the appraised value, I am sure we can negotiate a nominal payment as consideration for the abandonment of residuary rights of the Board. Estimates of the demolition and remediation costs from environmental consultants commissioned to investigate the condition of the property range from $750,000 to $1,000,000, as set forth in the information provided at our February 23 meeting.

Please consider this a settlement proposal in contemplation of litigation, and discuss with the Board at your first opportunity, since, as mentioned above, there is not a great deal of time to make necessary decisions.

Should there be any further questions please feel free to call.

Very truly yours,
GREGG F. PASTER & ASSOCIATES

BY: Gregg F. Paster, Esq.

GFP: ms
cc: Susan Connelly, RMC-Borough Clerk (via email only)

EXH. D

Antimo A. Del Vecchio, Esq.
New Jersey Attorney Identification No. 015191989
BEATTIE PADOVANO, LLC
50 Chestnut Ridge Road
P.O. Box 244
Montvale, New Jersey 07645
(201) 573-1810
Attorneys for Plaintiff
Landmark Dumont, LLC

Landmark Dumont, LLC

Plaintiff,

vs.

Borough of Dumont, a Municipal Corporation of the State of New Jersey, County of Bergen; the Mayor and Council of the Borough of Dumont; and the Planning Board of the Borough of Dumont

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: BERGEN COUNTY

(Mount Laurel II/Builders Remedy)

Docket No. L-1297-14

Civil Action

COMPLAINT IN LIEU OF PREROGATIVE WRIT AND FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiff, Landmark Dumont, LLC ("Landmark") having a business address of 392 Main Street, Township of Wyckoff, County of Bergen, State of New Jersey 07481 (hereinafter referred to as "Plaintiff"), by way of Complaint against the Defendants, Borough of Dumont, a Municipal Corporation of the State of New Jersey, County of Bergen ("Borough"); the Mayor and Council of the Borough of Dumont ("Mayor and Council"); the Planning Board of the Borough of Dumont ("Board"), whose municipal addresses are 50 Washington Avenue, Dumont, New Jersey 07628 (hereinafter collectively referred to as "Defendants") says:

INTRODUCTION

This is an exclusionary zoning (Mt. Laurel II) suit brought by Plaintiff, the contract purchaser of property in the Borough of Dumont, Bergen County, against the Borough of Dumont and the Borough of Dumont Planning Board. The suit alleges, *inter alia,* that the Borough of Dumont has failed to create sufficient realistic opportunities for the construction of safe, decent housing affordable to low and moderate income households to satisfy its fair share of the unmet regional need for such housing and is thereby in violation of the New Jersey Constitution as construed by the New Jersey Supreme Court in *Southern Burlington County NAACP v. Mt. Laurel Borough,* 67 N.J. 151 (1975) and 92 N.J. 158 (1983), and the Fair Housing Act of 1985, P.L. 1985 c. 222. Plaintiff seeks a declaration that the Borough of Dumont is in violation of its constitutional obligations, an order requiring the Defendants to rezone and to take such other steps as may be necessary to bring it into compliance with its constitutional obligations, appointment of special master, awarding a site-specific builder's remedy requiring rezoning of the D'Angelo Property (as hereinafter defined), and awarding reasonable attorney fees and litigation expenses.

FIRST COUNT

1. The Estate of Marylou D'Angelo is the owner of real property located in the Borough of Dumont, County of Bergen and State of New Jersey. The property owned by the D'Angelo Estate is commonly known as 511 Washington Avenue and 546 Washington Avenue, Dumont, New Jersey, and known and designated as Block 212, Lot 20 and Block 215, Lot 1 on the Tax Maps of the Borough of Dumont (hereafter collectively referred to as the "D'Angelo Property" or "Properties").

2. Landmark is a limited liability company organized under the laws of the State of New Jersey and is the contract purchaser of the D'Angelo Property (as hereinafter defined).

3. The D'Angelo Properties are located generally in the central portion of the Borough. Dumont and is located in Bergen County and has a constitutional fair share housing obligation to create sufficient opportunities for construction of safe, decent housing affordable to low and moderate income households to satisfy the unmet housing needs of its indigenous poor and its fair share of the unmet housing needs of the poor in the housing region in which it is located.

4. Sufficient water capacity is available to adequately service the proposed development of the Property.

5. The sewage system has sufficient capacity to adequately service the proposed development of the Property.

6. The Property is within easy access to employment opportunities, shopping, regional transportation network, schools and other community and municipal services.

7. The Property is located in the P-Parks and Public Use zone on the Zoning Map of the Borough.

8. Competent land use professionals have examined the Property.

9. Said examination has concluded that the Property is physically well suited for higher density multi-family residential development.

10. The Property qualifies for improved development and/or infilling to obtain higher densities but the Property does not qualify to be subject to the New Jersey Local Redevelopment and Housing Act, N.J.S.A. 40A:12A-1 et seq..

11. The Defendants have failed to comply with the Fair Housing Act, N.J.S.A. 52:27D-301, et seq. and has otherwise failed to comply with the COAH regulations.

12. Dumont has not received substantive certification for a housing element and fair share plan filed with the Council on Affordable Housing under the terms of the Fair Housing Act of 1985, N.J.S.A. 52:27D-301 et seq.

13. Dumont is not now subject to a judgment of repose entered by the courts pursuant to *Southern Burlington County NAACP v. Mt. Laurel Borough,* 92 N.J. 158 (1983).

14. Dumont's zoning ordinance makes no affirmative provision for the construction of housing for low and moderate income households.

15. The Housing Element and Fair Share Plan adopted by the Board and approved by the Mayor and Council designate the Property as a site to be rezoned for inclusionary development to satisfy a portion of the municipality's constitutional fair share housing obligation, including 17 units of low and moderate income housing.

16. Although Defendants have designated the Property as a site to be rezoned for inclusionary development to satisfy the municipality's constitutional fair share housing obligation, they have failed to rezone the property for that purpose.

17. The Borough is a duly organized municipal corporation of the State of New Jersey with an address of 50 Washington Avenue, Dumont, New Jersey 07628. Pursuant to N.J.S.A. 40:55D-1 et seq. (hereinafter the "Municipal Land Use Act, or "MLUL"), the Borough has exercised its authority through its Mayor and Council and its Board and has adopted zoning and land use regulations controlling the use, extent and cost of developing lands within the Borough's boundaries.

18. Dumont's Zoning Ordinance contains residential zones and non-residential zones. The least restrictive residential zone does not provide a realistic opportunity for the construction of low and moderate income housing unless infilling and improved development takes place with

higher densities.

19. Dumont's Zoning Ordinance does contain certain multi-family zones which permit the construction of multi-family units. However, because of the ordinance's density limitation, other excessive cost generating features and the limited designation of sites for this zone, the zones do not allow for a realistic opportunity for the construction of affordable housing without higher densities and an appropriate density bonus.

20. Dumont's Zoning Ordinance contains numerous excessive cost generating features, and compliance with the Borough's other land use development and design regulations impedes or limits opportunities for development of affordable housing. Thus, none of the Borough's zones permit the realistic development of housing which would be affordable to persons or families of low and moderate income.

21. The D'Angelo Property is available for a Mount Laurel development at a higher density.

22. Only a development at a substantial density would allow the minimum 20% set aside for sale units and 15% for rental units for low and moderate income housing to be economically possible.

23. A development and/or infilling of the D'Angelo Property with a substantial density and a 20% set aside for sale units and 15% for rental units would help Dumont satisfy its fair share obligation.

24. Dumont's zoning ordinances and development regulations are unreasonable, onerous and are calculated to or have the effect of producing indirect artificial constraints on development which, in turn, increases unit rental and sales costs beyond a level affordable to low and moderate income families of the Borough and the region.

25. The Borough's land use controls, as currently constituted contains numerous

provisions which are not reasonably calculated to preserve or necessary to protect the public interest, health, safety or general welfare.

26. The Borough's zoning ordinances fail to provide adequate mandatory set asides (at reasonable compensating density) or other affirmative measures/techniques which encourages or acts as an incentive for the development of a substantial number of low or moderate income units.

27. Dumont, through its zoning ordinances and development regulations, violated its obligations under Mount Laurel by failing to:

(a) comply with its constitutional obligation to provide for and create a realistic opportunity for the construction of low and moderate income housing and an appropriate choice and variety of housing;

(b) promote the general welfare of all people within the Borough, as well as the region;

(c) provide a realistic opportunity and incentive for the construction of the Borough's fair share, which includes its present and prospective need for low and moderate income housing units; and

(d) provide for or address the housing needs of the Borough's indigenous need.

28. The Borough's land use regulations are intended to have and have precluded the creation of a realistic opportunity for or the actual construction of low or moderate income housing units anywhere within the Borough.

29. The Borough's land use regulations, upon information and belief, are exclusionary in that they do not permit or create a reasonable opportunity or incentive for the construction of Mount Laurel type units anywhere within the Borough.

30. Dumont's ordinances and master plan do not create sufficient opportunities for

construction of safe, decent housing affordable to low and moderate income households to satisfy the unmet housing needs of its indigenous poor and its fair share of the unmet housing needs of its aggregate fair share of the poor in the housing region in which it is located.

31. By its failure to affirmatively plan and provide for the construction of low and moderate income housing and by its failure to the other steps necessary to enable the development of such housing, Dumont has failed to create sufficient realistic housing opportunities for low and moderate income households to satisfy its fair share housing obligation in violation of the requirements of the New Jersey Constitution and the New Jersey Fair Housing Act.

32. The Property lies in Planning Area 1 (Metropolitan Planning Area) as shown on the State Development and Redevelopment Plan adopted by the New Jersey Planning Commission pursuant to the State Planning Act, N.J.S.A. 52:18A-186 et seq. It is State policy in this area to "[p]rovide a full range of housing choices through redevelopment, new construction, rehabilitation, adaptive reuse of nonresidential buildings, and the introduction of new housing into appropriate nonresidential settings."

33. The Borough of Dumont's Zoning Ordinance and development regulations are presumptively and facially invalid, ultra vires, and in contravention of substantive due process and equal protection guarantees secured by Article I, Section I of the New Jersey Constitution (1949) and in violation of the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq.

34. Plaintiff is ready, willing and able to present an economically feasible multi-family residential plan which provides for an improved development and/or infilling to provide a higher density, in conformance with the principles established by Mount Laurel. The Plan would include providing a substantial percentage of low and moderate income units and be in conformance with sound land use and environmental principles.

35. By reason of the facts set forth herein, Dumont is in violation of its duty to create sufficient realistic opportunities for the construction of safe, decent housing affordable to low and moderate income families to satisfy its fair share of the unmet regional need for such housing and is thereby in violation of the New Jersey Constitution as construed by the New Jersey Supreme Court in *Southern Burlington County NAACP v. Mt. Laurel Borough,* 67 N.J. 151 (1975) and 92 N.J. 158 (1983), and the Fair Housing Act of 1985, P.L. 1985 c. 222.

36. By the reason of the facts set forth herein, the Planning Board is in violation of the its statutory duties to formulate a housing plan that provides for sufficient realistic opportunities for the construction of safe, decent housing affordable to low and moderate income families to satisfy its fair share of the unmet regional need for such housing and is thereby in violation of the New Jersey Constitution as construed by the New Jersey Supreme Court in *Southern Burlington County NAACP v. Mt. Laurel Borough, 67* N.J. 151 (1975) and 92 N.J. 158 (1983), and the Fair Housing Act of 1985, P.L. 1985 c. 222.

37. Plaintiff has made a good faith effort to secure voluntary rezoning of this property for inclusionary development. Further efforts would be futile.

38. By reasons of the facts set forth herein, Plaintiff is entitled to a site-specific builder's remedy.

39. By reason of the facts set forth in herein, Defendants have deprived both Plaintiff and low and moderate income persons in the housing region in which Dumont is located of substantive rights, privileges or immunities secured by the Constitution or laws of this State.

40. By reason of the facts set forth herein, Plaintiff is entitled to injunctive relief and award of reasonable attorney fees and litigation expenses under the New Jersey Civil Rights Act, N.J.S.A. 10: 6-2.

WHEREFORE, Plaintiff demands judgment against the Defendants as follows:

(a) Declaring the entire Zoning Ordinance and other land use regulations of the Borough of Dumont unconstitutional, null and void and of no effect;

(b) Enjoining the Borough of Dumont from enforcing its entire Zoning Ordinance and land use regulations;

(c) Appointing a special master to revise the Borough of Dumont's zoning ordinance and land use regulations, to supervise the implementation of a builder's remedy for D'Angelo's Property, and to insure a bona fide and expeditious review by the Defendants of all development applications for D'Angelo's Property;

(d) Ordering the Defendants to revise their zoning and land use ordinances within 90 days to meet its fair share obligation including affirmative measures to provide a reasonable incentive for the actual construction of low or moderate income housing units;

(e) Formulating a "builder's remedy" which shall order the Defendants to permit 40 units per acre for multi-family residential, including, or such other higher density consistent with sound land use and environmental planning, including, but not limited to, any density bonus, and sufficient to provide a reasonable economic return to Plaintiff so as to permit the construction of low or moderate income housing units, in accordance with and/or consistent with the holding in Tomu Development Co. v the Borough of Carlstadt, Planning Board of Carlstadt and the New Jersey Meadowlands Commission, bearing Docket No. BER-L-5894-03 and 5895-03, allowing a density of 100 units per acre (see also, East/West Venture v. Fort Lee 286 NJ Super 311, 322 (App. Div. 1996), which permitted a density of 110 units per acre);

(f) Alternatively, if the Court should determine that the Mount Laurel obligation

cannot be otherwise satisfied, then directing the Court-appointed master to assist in developing rezoning and land use regulations which provide a realistic opportunity for the construction of "least-cost" housing in the Borough;

(g) Directing that inclusionary Mount Laurel development applications be reviewed and approved in time periods substantially shorter than those prescribed by the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq. and as such be "fast tracked";

(h) Directing that fees, including but not limited to application fees, escrow fees, inspection fees, engineering fees, legal fees, building fees, permit fees and certificate of occupancy fees be waived for all inclusionary Mount Laurel developments;

(i) Ordering that all performance and maintenance guarantees and associated fees, except those absolutely essential to protect the public health and safety be waived and that all decisions and inspections required also be "fast tracked";

(j) Directing the Borough to provide a tax abatement for all inclusionary Mount Laurel developments;

(k) Ordering the Defendants to reimburse Plaintiff's reasonable attorney fees and cost of suit; and

(l) For such other relief as the Court shall deem just and equitable.

SECOND COUNT

41. The allegations of the Introduction and First Count are repeated herein and incorporated by reference as if set forth at length.

42. Defendants have an obligation to provide a realistic opportunity for its fair share of the region's present and prospective low and moderate income housing needs.

43. Dumont has an obligation to provide for low and moderate income housing for its indigenous need.

44. The Council on Affordable Housing has calculated Dumont's indigenous need.

45. The Borough has failed to effectuate compliance with its obligation or to create a realistic opportunity for even COAH's most conservative estimate of its fair share obligation.

46. The zoning ordinances and land use regulations of Dumont are violative of the mandates of: Mount Laurel II; Hills Development Co. v. Bernards Twp.; The Fair Housing Act, N.J.S.A. 52:27D-301 et seq., case law and in contravention of substantive due process and equal protection guarantees secured by Article I, Section I of the New Jersey Constitution (1949) and in violation of the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq.

47. The Borough's land use regulations are intended to have and, in fact, have precluded the creation of a realistic opportunity for or the actual construction of low or moderate income housing units anywhere within the Borough.

48. Plaintiff is ready, willing and able to present an economically feasible residential development plan, in conformance with the principles established by Mount Laurel. The Plan would include providing a substantial percentage of low and moderate income units and be in conformance with sound land use and environmental principles.

WHEREFORE, Plaintiff demands judgment against the Defendants as follows:

(a) Declaring the entire zoning ordinance and other land use regulations of the Borough of Dumont unconstitutional, null and void and of no effect;

(b) Enjoining the Borough of Dumont from enforcing its entire zoning ordinance and land use regulations;

(c) Appointing a special master to revise the Borough of Dumont's zoning ordinance and land use regulations, to supervise the implementation of a builder's remedy for Plaintiff's property, and to insure a bona fide and expeditious review by the Defendants

of all development applications for D'Angelo's Property;

(d) Ordering the Defendants to revise their zoning and land use ordinances within 90 days to meet its fair share obligation including affirmative measures to provide a reasonable incentive for the actual construction of low or moderate income housing units;

(e) Formulating a "builder's remedy" which shall order the Defendants to permit 40 units per acre for multi-family residential, including, or such other higher density consistent with sound land use and environmental planning, including, but not limited to, any density bonus, and sufficient to provide a reasonable economic return to Plaintiff so as to permit the construction of low or moderate income housing units in accordance with and/or consistent with the holding in Tomu Development Co. v the Borough of Carlstadt, Planning Board of Carlstadt and the New Jersey Meadowlands Commission, bearing Docket No. BER-L-5894-03 and 5895-03, allowing a density of 100 units per acre (see also, East/West Venture v. Fort Lee 286 NJ Super 311, 322 (App. Div. 1996), which permitted a density of 110 units per acre);

(f) Alternatively, if the Court should determine that the Mount Laurel obligation cannot be otherwise satisfied, then directing the Court-appointed master to assist in developing rezoning and land use regulations which provide a realistic opportunity for the construction of "least-cost" housing in the Borough;

(g) Directing that inclusionary Mount Laurel development applications be reviewed and approved in time periods substantially shorter than those prescribed by the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq. and as such be "fast tracked".

(h) Directing that fees, including but not limited to application fees, escrow fees, inspection fees, engineering fees, legal fees, building fees, permit fees and certificate of occupancy fees by waived for all inclusionary Mount Laurel developments;

(i) Ordering that all performance and maintenance guarantees and associated fees, except those absolutely essential to protect the public health and safety be waived and that all decisions and inspections required also be "fast tracked";

(j) Directing the Borough to provide a tax abatement for all inclusionary Mount Laurel developments;

(k) Ordering the Defendants to reimburse Plaintiff's reasonable attorney fees and cost of suit; and

(l) For such other relief as the Court shall deem just and equitable.

THIRD COUNT

49. The allegations of the Introduction and First and Second Counts are repeated herein and incorporated by reference as if set forth at length.

50. On December 17, 2013, the Defendant Dumont Planning Board adopted a Housing Element and Fair Share Plan ("HEFSP").

51. On December 17, 2013, the Defendant Mayor and Council of the Borough of Dumont endorsed the Housing Element and Fair Share Plan.

52. The Housing Element and Fair Share Plan identifies that it was prepared using the Council on Affordable Housing's ("COAH") "Third Round" regulations that were adopted in 2008.

53. The Housing Element and Fair Share Plan relies upon COAH's "Growth Share" methodology to calculate Dumont's affordable housing obligation which obligation is required under the New Jersey Constitution.

54. COAH's "Growth Share" methodology was held to be legally invalid because it violates the Fair Housing Act, *N.J.S.A.* 52:27D-301 *et seq.*, by the New Jersey Supreme Court in

I/M/O the Adoption of N.J.A.C. 5:96 and 5:97 by the Council on Affordable Housing, 215 N.J. 578 (2013).

55. The Supreme Court invalidated the "Growth Share" methodology on September 26, 2013.

56. Although legally invalid and not enforceable, the Planning Board adopted the Housing Element and Fair Share Plan based upon the "Growth Share" methodology which methodology was declared invalid by the New Jersey Supreme Court nearly three (3) months prior to Dumont's adoption of its HEFSP.

57. The decision to adopt the Housing Element and Fair Share Plan despite the invalidity of the methodology upon which it is based was arbitrary, capricious and unreasonable.

WHEREFORE, Plaintiff demands judgment against the Defendants as follows:

(a) Declaring that the Housing Element and Fair Share Plan adopted on December 17, 2013 is arbitrary, capricious and unreasonable;

(b) Declaring that the Housing Element and Fair Share Plan adopted on December 17, 2013 is invalid, null, void and of no force and effect;

(c) Awarding interest, costs of suit, and legal fees; and

(d) Such other relief that the Court deems equitable and just.

FOURTH COUNT

58. The allegations of the Introduction, First, Second and Third Counts are repeated herein and incorporated by reference as if set forth at length.

59. Upon information and belief, the Dumont Planning Board did not provide proper notice, in accordance with the Municipal Land Use Law, for the public hearing on the adoption of the Housing Element and Fair Share Plan that was held on December 17, 2013.

60. Upon information and belief, the Dumont Planning Board did not otherwise comply with the procedural requirements for the adoption of the Housing Element and Fair Share Plan.

61. The adoption of the Housing Element and Fair Share Plan was arbitrary, capricious and unreasonable.

WHEREFORE, Plaintiff demands judgment against the Defendants as follows:

(a) Declaring that the Housing Element and Fair Share Plan adopted on December 17, 2013 is arbitrary, capricious and unreasonable;

(b) Declaring that the Housing Element and Fair Share Plan adopted on December 17, 2013 is invalid, null, void and of no force and effect;

(c) Awarding interest, costs of suit, and legal fees; and

(d) Such other relief that the Court deems equitable and just.

CERTIFICATION

I certify that the dispute which is the subject of this litigation is not the subject of any other action pending in any other court or a pending arbitration proceeding to the best of my knowledge and belief. Also, to the best of my knowledge and belief no other action or arbitration proceeding is contemplated. Further, other than the parties set forth in this complaint, I know of no other parties that should be made a part of this lawsuit. In addition, I recognize my continuing obligation to file and serve on all parties and the court an amended certification if there is a change in the facts stated in this original certification.

I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with Rule 1:38-7(b).

I certify that this is not an appeal from any local agency decision. There are no transcripts to be ordered.

BEATTIE PADOVANO, LLC
Attorneys for Plaintiff,
Estate of Landmark Dumont, LLC

Dated: February 4, 2014

By: _____
Antimo A. Del Vecchio, Esq.
For the Firm

DESIGNATION OF TRIAL COUNSEL

Pursuant to Rule 4:25-4, Antimo A. Del Vecchio, Esq. is hereby designated as trial counsel in the within matter.

BEATTIE PADOVANO, LLC
Attorneys for Plaintiff,
Estate of Landmark Dumont, LLC

Dated: February 4, 2014

By: _____
Antimo A. Del Vecchio, Esq.
For the Firm

EXH. E

March 7, 2016

SETTLEMENT AGREEMENT

This Agreement dated this _____ day of _____, 2016 among:

LANDMARK DUMONT, LLC, having a business address of 392 Main Street, Wyckoff, New Jersey 07481 (hereinafter "Developer");

THE BOROUGH OF DUMONT, a municipal corporation of the State of New Jersey having offices at 80 W. Madison Avenue, Dumont, New Jersey, (hereinafter "Borough"); and

THE PLANNING BOARD OF THE BOROUGH OF DUMONT, the duly constituted Planning Board of the Borough of Dumont, having offices at 80 W. Madison Avenue, Dumont, New Jersey (hereinafter "Board").

WITNESSETH, whereas, the Borough has, pursuant to law, an obligation to provide a realistic opportunity for the construction for its fair share of the regional need of low and moderate income housing;

WHEREAS, the Borough was named a party defendant in a certain action in the Superior Court, Law Division, entitled Landmark Dumont, LLC v. the Borough of Dumont, a Municipal Corporation in the State of New Jersey; the Mayor and Council of the Borough of Dumont; and the Planning Board of the Borough of Dumont, Docket No.: BER-L-001297-14; ("Builders Remedy Action" or "BRA") and

WHEREAS, the Borough of Dumont filed a Declaratory Judgment action captioned: In the Matter of the Application of the Borough of Dumont, a Municipal Corporation of the State of New Jersey, bearing Docket No.: BER-L-006065-15 ("Declaratory Judgment Action" or "DRA"). Pursuant to the Supreme Court's decision in In Re N.J.A.C. 5:96 and 5:97, 221 N.J. (215) ("Mount Laurel IV"); and

WHEREAS, the Borough not having previously secured either a Judgment of Repose or Substantive Certification in connection with its affordable housing obligations; and

WHEREAS, as a result of settlement discussions conducted by and between the parties with the assistance of the Court appointed Master, Francis J. Banisch II, PP, AICP; and

WHEREAS, the Developer is the contract purchaser of certain property commonly referred to as D'Angelo Farms and formally designated as Block 212, Lot 20 (the "Main Tract") and Block 215, Lot 1 (the "Second Tract") on the Tax Assessment maps of the Borough, which lots collectively consists of approximately 7.1 acres and are located on Washington Avenue (collectively the "Property"); and

WHEREAS, the Borough is the owner of certain property commonly designated as 50 Washington Avenue which contains the existing vacant Borough Hall municipal building ("Borough Property") which was conveyed to the Borough of Dumont by the Borough of

EXHIBIT E

Dumont Board of Education by deed dated June 7, 1962 and recorded in the Bergen County Clerk's office in Book 4370 beginning at Page 149; and

WHEREAS, as part of the settlement discussions, the parties have agreed upon certain terms and conditions for the Development of the Property and the facilitation of the construction of affordable housing within the Borough of Dumont.

SECTION 1. Definitions

A. "Alternate Development" shall mean the permitted development of the Property which will permit 124 units of market rate housing on the Main Tract and 18 units of affordable housing on the Second Tract as depicted on Exhibit C.

B. "Board" or "Planning Board" shall mean the duly constituted Planning Board of the Borough of Dumont, New Jersey.

C. "Borough Property" shall mean the Property commonly designated as 50 Washington Avenue and more formally designated as Block 1215, Lot 12 on the Tax Assessment maps of the Borough of Dumont being the same Property conveyed to the Borough of Dumont by deed dated June 7, 1962 and recorded in the Bergen County Clerk's office in Book 4370 beginning at Page 149.

D. "Builders Remedy Action or BRA" shall mean the litigation captioned, Landmark Dumont, LLC v. The Borough of Dumont, A Municipal Corporation of the State of New Jersey; the Mayor and Council of the Borough of Dumont; and the Planning Board of the Borough of Dumont bearing Docket No.: BER-L-001297-14.

E. "Declaratory Judgment Action or DJA" shall mean the litigation filed by the Borough of Dumont entitled, In The Matter of the Application of The Borough of Dumont, a Municipal Corporation of the State of New Jersey bearing Docket No.: BER-L-006065-15.

F. "Developer" shall mean Landmark Dumont, LLC and its successors and/or assigns to any interest in the Property.

G. "Development Fee" shall mean any duly adopted ordinance of the Borough of Dumont which seeks to impose, or collect, a fee towards Dumont's affordable housing obligation as may be authorized by Holmdel Builders Association v Holmdel Township, 121 N.J. 550 (1990).

H. "Development" shall mean the permitted development of the Property and Borough Property which will permit 108 units of market rate housing on the Main Tract, 16 units of market rate housing on the Second Tract and 18 units of affordable housing together with, up to, 12,000 s.f. of municipal office space on the Borough Property as depicted on Exhibits A and B.

I. "Density Bonus" shall mean the fair and good consideration granted Landmark Dumont, LLC for its construction of 18 rental affordable housing units on the Borough Property or the Property. The Density Bonus Enhancement shall grant the Developer the permission to construct, without variance, waiver, exception or diminimus exception from the Residential Site Improvement Standards, N.J.A.C. 5:21-1 et seq.: (1) 108 multi-family housing units on the Main Tract; (2) 16 market rate multi-family housing units on the Second Tract; and (3) 18 affordable multi-family units, together with up to 12,000 s.f. of office space, on the Borough Property as generally depicted on Exhibits A and B, or if the provisions of Section 2 become applicable, the Alternate Development as generally depicted on Exhibit C.

J. "Effective Date of This Agreement" shall mean the later date of entry of a final un-appealable judgment by a court of competent jurisdiction being entered with respect to the Property and Borough Property and/or Development or the Alternate Development No. 1 either: 1. upholding the Board's approval of the Development of the Property and the Borough Property and/or 2. the Borough's adoption of the ordinances or redevelopment plans required by this Agreement. If no such appeal shall be filed, the effective date shall be deemed to be 10 days after the expiration date by which such an appeal could be filed. In no way shall this Agreement be deemed subject to approval of the Borough's entire DJA and/or entire Housing Element and Fair Share Plan, nor shall it be deemed subject to the resolution of other objections, litigations, etc involving the Borough's affordable housing obligations.

K. "Fast Track Process" shall mean the process described in this Agreement and incorporated by reference in the ordinance and/or Redevelopment Plan, for the review and approval by the Planning Board of the application for approvals required by the Developer for the Development or Alternate Development No. 1, or any portion of the Development or Alternate Development No. 1, of the Property or the Borough Property.

L. "LTTE or PILOT" shall mean a long term tax exemption and/or payment in lieu of tax agreement between the Borough of Dumont and the Developer for the Property and/or Borough Property adopted in accordance with the requirements of N.J.S.A. 40A:20-1 et. seq.

M. "Main Tract" shall mean the portion of the Property designated as Block 212, Lot 20 on the Tax Assessment maps of the Borough of Dumont"

N. "Off-Track Improvement" shall mean any improvements that are not proposed to be directly located on the Property.

O. "Ordinance" shall mean the re-zoning ordinance re-zoning the Property and/or Borough Property so as to permit without variance or waiver the Development and Alternate Developments contemplated by this Agreement as depicted in Exhibits A, B

and C including the potential relocation of the 18 affordable rental units from what was intended to be constructed on the Borough Property to the Property.

P. "Property" shall mean the property commonly referred to as D'Angelo Farms and formally designated as Block 212, lot 20 and Block 215, Lot 1 on the Tax Assessment maps of the Borough of Dumont and located along Washington Avenue. Collectively, these 2 lots are referred to as the "Property".

Q. "Redeveloper or Redevelopment entity" means a municipality or an entity authorized by the governing body of a municipality pursuant to subsection c. of section 4 of P.L. 1992, c.79 (C.40A:12A-4) to implement redevelopment plans and carry out redevelopment projects in an area in need of redevelopment, or in an area in need of rehabilitation, or in both.

R. "Redevelopment Plan" shall mean the properly adopted and completed plan for the redevelopment of the Property and/or Borough Property to permit the Borough to declare the Properties as areas in need of redevelopment and/or rehabilitation and to permit without variance or waiver the Development and Alternate Developments of the Property and Borough Property in accordance with this Agreement and as depicted on Exhibits A, B and C. The Redevelopment Plan shall be adopted in accordance with all applicable laws and procedures including, but not limited to, N.J.S.A. 40A:12-1 et. seq. and N.J.S.A. 40A:20-1 et. seq.

S. "Second Tract" shall mean the portion of the Property designated as Block 215, Lot 1 on the Tax Assessment maps of the Borough of Dumont.

T. "Site Plan Approval" shall mean, to the extent required for multi-family housing configurations, minor and/or preliminary and/or final site plan approval contemplated by this Agreement in accordance with the Ordinance or Redevelopment Plan.

U. "Subdivision Approval" shall mean minor and/or preliminary and/or final approval of the subdivision contemplated by this Agreement, if any, and referenced in the Density Bonus Enhancement in accordance with the Ordinance or Redevelopment Plan further as generally depicted on the exhibits attached hereto.

SECTION 2. Obligations of the Borough

The following shall be the obligations of the Borough and/or Board under this Agreement:

1. In consideration of the Developer's agreement to construct 18 affordable rental units on the Borough Property or the Property, if the Alternate Development of Section 2 becomes applicable, the Borough and the Board shall grant to the Developer certain Density Bonus to permit the Development or Alternate Development.

2. On or before August 1, 2016, the Borough and/or Board shall undertake any and all actions necessary to either: (1) declare and/or declaring the Property and Borough

Property as areas in need of redevelopment and/or rehabilitation, adopt a Redevelopment Plan to provide Density Bonus to permit the Development and Alternate Development and to appoint the Developer as the designated Redeveloper for the Property and Borough Property; or (2) adopt an Ordinance and/or Master Plan and Fair Share Plan to re-zone the Property and Borough Property to permit the Development or Alternate Development within the same time period specified above.

3. The Redevelopment Plan and Ordinance shall provide for the relaxation and modifications of all current zoning, bulk and design requirements of the Borough that may apply to the Property and Borough Property to permit the Development and Alternate Development of the Property and Borough Property. The modification shall ensure that the Property and Borough Property can be developed as of right, without variance or waiver, in accordance with the Development and Alternate Development concept plans attached hereto as Exhibits A, B and C. The parties agree that within thirty (30) days of executing this Agreement, the parties will agree upon a set of zoning, design and bulk standards to implement the requirements of this paragraph. The Main Tract shall be permitted to be developed for 108 units having a minimum front and rear yard setbacks of 15 feet, minimum side yard setback of 25 feet, and a maximum building height of 2 stories and 35 feet and minimum parking stall size of 9 feet by 18 feet together with the requisite number of off-street parking stalls necessary to remain complaint with the RSIS. All of the units to be constructed on the Main Tract will be market rate units. The Borough agrees that the Development will be subject only to those zoning ordinances which are currently in effect and do not trigger a variance or waiver, as modified by the Ordinance and/or Redevelopment Plan. Accordingly, any future change to the Borough Ordinances and/or Redevelopment Plan shall not be made applicable to the Property or Borough Property unless the Developer consents to do so. The parties recognize that the zoning requirements, bulk requirements and design standards to be detailed in the Ordinance are based upon preliminary information and sketches available at the time of the execution of this Agreement. It is the parties intent that the deviation from the Ordinance requirements necessary to accommodate the Development of the Property or Borough Property as contemplated by the within Agreement shall be favorably and promptly acted upon by the Borough and/or Board by way of prompt and timely amendments to any Ordinance, Redevelopment Plan, and/or the grant of necessary variance relief necessary to accommodate the Development of the Property or Borough Property as contemplated by the within Agreement shall be favorably and promptly acted upon by the Borough and/or the Board upon request by the Developer.

    a. If the Alternate Development is triggered by the Developer pursuant to Section 2, then the Redevelopment Plan and/or Ordinance required by Paragraph 3 above shall permit 124 units of market rate housing on the Main Tract having a minimum front yard building setback of 25 feet, minimum rear yard building setback of 25 feet, a minimum side yard building setback of 25 feet and a maximum building height of 3 stories and 45 feet. All of the other provisions of Paragraph 3 shall apply to the Alternate Development on the Main Tract.

4. The Board and Borough shall act in concert with the Developer to take action to ensure that neither the Borough, Board nor the County of Bergen or any other governmental agency requires the installation of any off-tract and/or off-site improvement if the need for the improvement does not solely and directly arise from the Development of the Property, and would not constitute a cost generating feature as defined in Section 4 of this Agreement. However, nothing contained in this sub-paragraph is intended to create an obligation or require the Borough or Board to undertake off-site or off-tract improvements resulting from the Development.

5. The Borough and Board will promptly adopt all necessary resolutions, ordinances, sign all applications, endorsements or other documents, and take such other actions as may be necessary to implement this Agreement or to assist the Developer in developing the Property and/or Borough Property, or any portion thereof, in accordance with the terms of this Agreement, any Ordinance, Redevelopment Plan or act(s) pursuant to this Agreement.

6. The Borough and Board shall take no action inconsistent with this Agreement and to the extent permitted by law, fully perform all of its obligations thereunder.

7. The Borough and Board shall take all actions, including the adoption of ordinances if necessary, to cause the Board to process all applications (including but not limited to subdivision and site plan approvals) utilizing the Fast Track Process described in this Agreement.

8. The Second Tract shall be permitted to be developed for 16 units having a minimum front and rear yard setbacks of 15 feet, minimum side yard setback of 25 feet, and a maximum building height of 2 stories and 35 feet and minimum parking stall size of 9 feet by 18 feet together with the requisite number of off-street parking stalls necessary to remain complaint with the RSIS. All of the units to be constructed on the Second Tract will be market rate housing. The Borough agrees that the Development and Alternate Development will be subject only to those ordinances and design standards which are currently in effect, as modified by the Ordinance and/or Redevelopment Plan. Accordingly, any future change to the Borough Ordinances and/or Redevelopment Plan shall not be made applicable to the Property or Borough Property unless the Developer consents to do so. The parties recognize that the requirements detailed in the Ordinance are based upon preliminary information and sketches available at the time of the execution of this Agreement. It is the parties intent that the deviation from the ordinance requirements necessary to accommodate the Development or Alternate Development of the Property as contemplated by the within Agreement shall be favorable acted upon by the Borough and/or Board by way of prompt and timely amendments to any Ordinance, Redevelopment Plan, and/or the grant of necessary variance relief necessary to accommodate the Development or Alternate Development of the Property as contemplated by the

within Agreement shall be favorably and promptly acted upon by the Borough and/or the Board upon request by the Developer.

a. If the Alternate Development is triggered by the Developer, pursuant to Section 2, then the Redevelopment Plan and/or Ordinance required by Paragraph 8 above shall permit 18 units of affordable housing having a minimum front yard building setback of 15 feet, minimum rear yard building setback of 15 feet, minimum side yard building setback of 15 feet and a maximum building height of 3 stories and 45 feet. All of the other provisions of Paragraph 9 shall apply to the Alternate Development of the Second Tract.

9. If the Developer proceeds with the Development (as opposed to, and not including, the Alternate Development) then the Redevelopment Plan and/or Ordinance required by this Agreement shall permit the construction of at least 12,000 s.f. of office space in addition to 18 units of affordable housing on the Borough Property. The bulk standards for the Borough Property will provide for a minimum front yard setback of 100', minimum rear yard setback of 15', minimum side yard setback of 15' and a maximum building height of 4 stories and 60'. Parking to serve the residential units shall be of the size and number required by the RSIS. Parking to serve the office space shall be satisfied offsite solely and exclusively by the Borough at the Borough's own cost and expense. The Ordinance and/or Redevelopment Plan shall permit the office parking to be satisfied off site.

10. The Borough is currently the owner of the Borough Property which property is subject to certain conditions stated within the Deed of Conveyance and/or the agreement between the Borough and the Dumont Board of Education. The Borough and Board shall take any and all actions to extinguish the condition, to the extent such condition is applicable, enter into a lease or other arrangement which does not trigger the reversion condition in the deed or agreement with the Dumont Board of Education or otherwise deliver title to the Borough Property free and clear to the Developer, at no cost, beyond the Developer's agreement to perform the environmental remediation required by this Agreement for the construction of the Development. Should the Borough and Board fail to be able to do so on or before August 1, 2016, in the alternative, the Developer, at its sole discretion, shall be permitted to proceed with the Alternate Development which relocates 18 units of affordable housing intended to be constructed on the Borough Property to be constructed on the Second Tract and relocate 18 market rate units intended to be built on the Second Tract to the Main Tract, for a total of 124 market rate units on the Main Tract as shown on Exhibit C. Upon notifying the Borough and Board that the Developer will proceed with the Alternate Development, the Borough and/or Board, if not already provided for in the Ordinance and/or Redevelopment Plan, shall adopt and make effective, within sixty (60) days, any necessary amendment to the Redevelopment Plan and/or Ordinance for the Property to permit the Alternate Development to be constructed on the Property. If the Developer proceeds with the Alternate Development, then the Developer's Obligation under Section 6, Paragraph d, of this Agreement shall be deemed null and void.

11. The Borough and Board agree that the provision of 18 rental units of affordable housing meeting the requirements of the Fair Housing Act and/or COAH regulations shall satisfy any and all obligations of the Developer as it concerns the construction of affordable housing or any Development Fee and this Property. If the Borough and/or Board shall fail to comply with the terms of this Agreement including, but not limited to, the Declaration of Redevelopment and/or Rehabilitation, adoption of the Master Plan and Fair Share Plan, Redevelopment Plan, Ordinance(s) and/or other land use amendments within the time frames established herein, the Developer may declare this Agreement to be null and void and permit the Developer to renew its objections and permit the Developer to reinstate its BRA and to participate as an interested party in the DJA and the Borough and Board hereby waive any and all defenses to the Developer doing so.

12. The Board and Borough agree that all of the market rate units to be constructed as part of the Development shall be subject to a PILOT or LTTE Agreement for a period of no less than twenty-five (25) years between the Borough and the Developer in accordance with N.J.S.A. 40A:20-1 et. seq. The Developer and Borough agree to promptly negotiate to enter into a LTTE Agreement on or before June 15, 2016. The parties further agree that the annual PILOT payment on a per unit basis, for units on the Property, shall not exceed $3,500.00 per unit per year in years 1-15 and not to exceed $3,750.00 in years 16-25.

    a. The Board and Borough agree that all of the affordable units to be constructed as part of the Development shall be subject to a PILOT or LTTE Agreement for a period of no less than twenty-five (25) years between the Borough and the Developer in accordance with N.J.S.A. 40A:20-1 et seq. The Developer and Borough agree to promptly negotiate to enter into a LTTE Agreement on or before June 25, 2016. The parties further agree that the annual PILOT payment on a per unit basis, for units on the property, shall not exceed $350.00 per unit per year in years 1-25.

SECTION 3. Expeditious Review.

The Board shall process, review and adjudicate all Development applications for the Property in an expeditious ("Fast Track") process in accordance with the time tables and deadlines set forth in the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq. as set forth in and modified in Exhibit "D" which, if necessary, shall include the holding of special meetings for the sole and exclusive purposes of reviewing and hearing the Developer's application(s). The Developer agrees to reimburse the Board $750.00 per special meeting plus the reasonable cost for its engineers, planner's fees and Board's attorneys. Specifically, included in the concept of "Fast Track", shall be the review of the Borough's and Board's agreement to review and decide the developer's application notwithstanding that other federal, state, county or other agencies approvals or permits may ultimately be required for the Development of

the Property and, where appropriate, the granting of local approval "subject to" any such outstanding approvals in accordance with N.J.S.A. 40:55D-22.

b. If required to complete the Fast Track Process, the Board shall agree to hold special meetings for the sole processing of the Developers' application for Development.

c. The Developer shall send copies of any plans, applications or reports directly to the Board's Attorney, Engineer and Planner. All municipal agencies including, but not limited to, all Borough and Board personnel, departments, agents, contractors and/or vendors required to review an application for Development or construction permit shall complete its review and provide comments or request revisions to an Application for Development within 14 days of receipt thereof by the Borough or the Board so as to permit compliance with the Fast Track Process by the Borough and Board.

d. The absence of a report or recommendation from any other municipal agency shall not be grounds for the denial of an application or for the delay of a hearing or action by the Board beyond the time period set forth in the Fast Track Process.

e. The Board shall not deny or delay its actions on an application for Development by the Developer because of the absence of any, or the dependency of any, approval by any other governmental agency that may make such approval a condition of the Board's approval.

f. The Developer may waive any of the time periods set forth in the Fast Track Process only by a writing signed by the Developer or an authorized representative of the Developer. No such waiver shall be required as a condition for the filing of an application, to the declaration of completeness or to the action of the Borough or Board thereon.

SECTION 4. Cost Generating Features.

The Borough and Board shall take all steps reasonably necessary to eliminate cost generating features, elements and processes which are inconsistent with the intent of this Agreement. The Developer shall construct the Developments in substantially the configuration as shown on the exhibits attached hereto.

a. For purposes of this Agreement, "cost generating" shall be defined by N.J.S.A. 5:93-10.2 et seq.

b. To the extent sections, elements, requirements or features of the Borough's ordinance and land use ordinance or Redevelopment Plan, or the Board's process of review of Development applications are cost

generating, such sections, elements, requirements or features are deemed inconsistent with the terms of this Agreement, it shall be considered inapplicable to any Development applications for the Property. In particular (including by way of example and not limitation), the Board shall grant relief from those checklist items requirements that require, to any extent: 1. the submission of other governmental approval as part of the Borough's and/or Board's completeness review; 2. The surveying, locating or identifying of trees outside of the proposed area of disturbance and/or; 3. The installation of any off-tract or off-site improvements, the need for which improvements does not solely and directly arise from the Development of the Property or Borough Property and would not constitute a cost generating feature as defined in this Agreement.

c. The Borough and Board shall take those steps reasonably necessary to remove or waive such cost generating or inconsistent sections, elements, requirements and features from their respective ordinances and procedures or grant such waivers, exceptions or variances to ensure they are in their ability to develop an application for the Property or Borough Property.

d. The Borough is currently in the process of investigating the condition and capacity of its sanitary sewer system which is currently experiencing infiltration and capacity issues. The Borough and Developer will work together to investigate, and determine, a solution to provide sufficient capacity for the Development or Alternate Development. The Borough agrees to prioritize and complete (within twenty (20) days of the date of this Agreement) and share with the Developer its ongoing investigation of the portions of the sanitary sewer system which would serve the Development or Alternate Development. Upon receipt of the results of the Borough's sewer investigation, the Developer shall, in consultation with the Borough and the Bergen County Utilities Authority, (within twenty (20) days) determine what repairs or improvements may be needed to ensure that there is adequate sewer capacity to serve the Development and/or Alternate Development. The Developer agrees to pay the cost of repairs needed solely to provide adequate sewer service/capacity to the Development or Alternate Development. If the cost to repair or improve the sewer system exceeds the amount budgeted by the Developer for sewer repair and improvements, the Developer shall have the right to: (1) negotiate a mutually acceptable resolution of the sewer repair or improvements needed with the Borough; and/or (2) terminate this Agreement, and, if terminated, the Developer shall have all rights and remedies available to them as of the date immediately prior to the execution to this Agreement and no statute of limitations or

other time limitations imposed by law or rule of law shall apply to any action to the enforcements of such rights or remedies.

SECTION 5. Affordable Housing Regulations.

The Developer shall take all steps necessary to place affordability controls and other appropriate restrictions as may be required by COAH regulations (or any other subsequent agency or court governing affordable housing) upon the affordable rental units to be created on the Borough Property. To that end, the affordable rental units shall be constructed so as to qualify as a unit of affordable housing under COAH's regulations as follows:

a. "Affordable Unit" shall mean a housing unit as defined by N.J.A.C. 5:93-1.3.

b. That the municipality, if eligible, may receive bonus credits for the rental units provided either through a rental bonus and/or redevelopment bonus.

c. That it can be administered in accordance with N.J.A.C. 5:93-9 and/or UHAC rules.

d. The Developer agrees to restrict and place the affordability control on the Property for a period not less than thirty (30) years in accordance with N.J.A.C. 5:93-9.2(a).

e. The unit mix for the 18 units of affordable housing shall meet the requirements of N.J.A.C. 5:93-7.2 and 7.3 including 2 very low income units.

f. Developer will administer the affordable housing units to insure affordable controls, income verification and tenant selection.

SECTION 6. Obligations of the Developer.

As long as the Borough and Board have not defaulted in their obligations under this Agreement, the Developer shall have the following obligations:

a. At any time after the execution of this Agreement, the Developer shall have a right to submit an application for Development and/or Alternate Development pursuant to Section 2 of this Agreement to the Borough or Board for the Property or Borough Property which application is in accordance with the concept plans attached hereto. Thereafter, upon submission, the Developer will diligently prosecute its application for approval and the approvals from other governmental agencies as may be required.

b. The Developer will participate in a Fairness Hearing and/or hearing before the Court assisting the Borough in securing a Partial Judgment of Compliance and extension of temporary immunity as it pertains to its prior round affordable housing obligations.

c. The Developer shall not be obligated to pay any Development Fee that may be due in accordance with the provisions of the Borough of Dumont ordinance since the Development is an inclusionary Development and the providing of the affordable rental units shall fully satisfy any and all affordable housing obligations from the Development of the Property or Borough Property.

d. If by August 1, 2016, the Borough is legally able to convey title to the Borough Property "free and clear" and provide sufficient parking to serve the office development contemplated by the Development at an off-site location in accordance with, and as more fully set forth in, Section 2 so as to legally permit the Development, the Developer agrees to accept title to the Borough Property from the Borough upon the condition that the Borough shall: 1. Deliver good and marketable title to the Borough Property free from all prior liens, judgments and encumbrances including, but not limited to, the conditions that may exist between the Borough and the Board of Education concerning the prior conveyance of this Property from the Board of Education to the Borough; 2. The Developer will accept a bargain and sale deed with covenants against grantor's act in the conveyance of the Property; 3. The Developer will assume full responsibility for the remediation of any on-site contamination of the Borough Property and the demolition of all improvements and structures which may exist on the Borough Property. If the provisions of this Paragraph are applicable, the Borough shall convey title, use and occupancy and possession to the Developer on or before September 1, 2016. The Borough's failure to timely do so shall permit the Developer to unilaterally trigger (by notice to the Borough) the applicability of, and proceed with, Alternate Development in accordance with this Agreement.

e. Should Alternate Development No. 2 be triggered pursuant to this Agreement, the Developer shall be released from all obligations in Paragraph 6d and in lieu of those obligations, the Developer shall: (i) be responsible to remediate all asbestos and lead contamination within the existing building on the Borough Property; (ii) demolish the existing building and remove and properly dispose of all debris from the demolition; (iii) properly remove and dispose of the single existing underground storage tank on the Borough Property as identified on Exhibit "E." The Developer is not responsible for the testing or remediation of any leak or contamination including, but not limited to, soil or ground water related to the Borough Property.

f. The affordable housing units required by this Agreement shall be phased in pursuant to the phasing schedule established by N.J.A.C. 5:93-5.6d.

g. The Developer will provide a reasonable amount of landscaping along the perimeter of the Property to soften the visual impact of the buildings to be constructed.

SECTION 7. Cooperation and Good Faith.

a. The parties and all of their respective members, officers, agents, representatives, consultants and employees shall cooperate and conduct themselves in good faith to effectuate the terms and objectives of this Agreement.

b. Such cooperation shall include, by way of example and not limitation, the timely submission and review of reports and documents; timely inspections; execution of documents or applications for other coordinate agencies endorsing any and all necessary application for the extension of utilities or facilities to the Property or the entity for permits or approvals necessary for the Development of the Property.

SECTION 8. General Provisions.

a. No hereinafter enacted Borough Ordinance construction standard or Borough specifications for improvements required in connection with zoning, sub-division or site plan approvals shall apply to the Development and/or the Property or Borough Property.

b. Provided the Borough and Board are not in default or breach of any of the provisions of this Agreement, or that this Agreement has been declared null and void as permitted by this Agreement, the Developer's covenant not to sue the Borough or bring any action or proceeding before COAH, Courts or any other body having jurisdiction, for non-compliance with the provisions of any case law, statute or rule or regulation relating to the provision of affordable housing based upon the Property or directly relating to the actions referenced in this Agreement. In the event of a breach by the Borough or the Board the Developer shall have all rights and remedies available to them as of the date immediately prior to the execution to this Agreement and no statute of limitations or other time limitations

imposed by law or rule of court shall apply to any action to the enforcements of such rights or remedies.

c. This Agreement may be recorded at the Developer's option, at its cost and expense in the Bergen County Clerk's office. The recording of this Agreement shall not be deemed to create a lien on the Property or Borough Property.

d. The Developer represents that it is the holder of a valid contract to purchase the entirety of the Property and has sufficient interest in the Property to pursue the applications for Development referred to in this Agreement.

e. This Agreement shall be construed and enforced in accordance with the laws of the State of New Jersey.

f. This Agreement shall not be amended or modified without the express and written consent of all parties.

g. No party to this Agreement shall cause an appeal to be taken contesting the validity of this Agreement or any of the actions deemed necessary in furtherance of this Agreement. In the event the Agreement is challenged by a third party, the Developer, Borough and Board agree to jointly defend such action and take any and all steps necessary to uphold the validity of this Agreement. The Borough and Board shall join the Developer as a party should any challenge or proceeding be filed or brought which directly or indirectly effects this Agreement, or any other actions taken pursuant to or are related to this Agreement.

(i) In the event any appeal is filed, be it a challenge to the Settlement Approval, zoning revision, area in need of redevelopment studies, designations and/or plans, site plan approval, or any other legal challenge, all time limits set by this Agreement shall be tolled for the period of time such appeal(s)/litigation is pending[1]. In the event any appeal/litigation is pending for more than one (1) year without having concluded with an un-appealable final judgment/decision, the Developer may elect to void this Agreement and the Developer shall have all rights and remedies available to them as of the date immediately prior to the execution of this Agreement and no statute of

[1] This tolling provision shall not apply (nor toll the time) to the August 1, 2016 date set forth in Section 2, Paragraph 10. If a legal action remains unresolved between the Borough and Board of Education as of August 1, 2016, the Borough shall be entitled to request a one-time thirty (30) day extension of the August 1, 2016 date of September 1, 2016, which extension shall not be unreasonably withheld by the Developer.

limitations or other time limitations imposed by law or rule of court shall apply to any action to the enforcements of such rights or remedies. Notwithstanding anything to the contrary contained herein, in the event a challenge to this Agreement and/or the Borough's ability to convey, in whole or in part, title or an interest in the Borough Property to the Developer, is filed by the Board of Education of the Borough of Dumont or a third party, the Borough shall defend, indemnify and hold harmless the Developer from any and all costs incurred in connection with such litigation.

h. The terms and conditions and obligations of this Agreement shall run with the land and shall bind the respective parties and respective heirs, executors, assigns or successors.

i. By executing this Agreement, all parties so execute and acknowledge its validity and accordingly, agree to carry out the terms of this Agreement in good faith and to refrain from any and all acts which question or jeopardize this Agreement. All parties to this Agreement will execute any and all further documents and instruments necessary to effectuate this Agreement or to evidence the party's good faith, cooperation or compliance.

j. To the extent feasible, the Borough agrees to provide the Developer with a copy of any and all ordinance or resolution which may impact upon the subject matter of this Agreement and/or the Development of the Property or Borough Hall Property at least 10 days prior to the consideration thereof at a public meeting.

k. This Agreement was the product of negotiation among the parties. No party shall be considered the drafting party against whom the terms of this Agreement shall be construed.

l. This Agreement may be executed in counterparts.

m. The terms of this Agreement, including specific enforcements of the obligations hereunder may be enforced by the commencement of an action in the Superior Court of New Jersey, Law Division, Bergen County notwithstanding any provision herein to the contrary, attorney fees and costs shall be reimbursed to the prevailing party and any such action for enforcement.

n. If any portion of this Agreement shall be deemed to be found to be unlawful or unenforceable, such provisions shall be severable and the balance of this Agreement shall be enforceable in accordance with the

terms provided. However, the Developer's obligation to participate in seeking a partial judgment of compliance and extension of temporary immunity as to the Borough's prior round affordable housing obligation is dependent upon the Borough and the Board's approval of the Development of the Property and Borough Property and are, therefore, not severable from each other.

o. In the event the Development, which includes the construction of up to 12,000 s.f. of municipal offices on the Borough Property is the development option that the parties proceed with, the Developer agrees to construct the municipal office space generally as depicted on Exhibit "B" and to be finished pursuant to a set of plans to be provided to the Developer within ninety (90) days of the date of this Agreement. The construction of municipal office spaces will occur on the Borough Property as shown on Exhibit "B" but no off-street parking will be provided by the Developer on the Borough Property or otherwise to service the municipal offices. The Borough shall solely and exclusively be responsible for promptly and timely designating and providing at the Borough's sole cost and expense the location of off-street parking to be provided to service the office space constructed on the Borough Property. The Developer agrees to construct the municipal offices at its cost plus ten (10%) percent profit which amount shall be paid by the municipality in at least four (4) equal progress payments pursuant to a further agreement to be executed by and between the parties. The Developer's cost to construct the municipal offices will include any and all additional costs incurred by the Developer to construct solely residential units within a three (3) story configuration as opposed to a mixed use project (office and residential) in a four (4) story configuration which includes, by way of example and not limitation, any possible increase in cost associated with the need to change the nature and extent of construction materials from wood to steel, the need for fire separation and/or the installation of elevators.

p. Nothing contained herein shall prevent the Developer from assigning its rights, in whole or in part, under the terms of this Agreement to a third party, including by way of example and not limitation, an entity which may wish to provide the Development or Alternate Development No. 2 on the Borough Property.

q. Upon the execution hereof, this Agreement constitutes the entire Agreement between Landmark and the Borough and/or the Board. No prior agreement or understanding pertaining to the same shall be valid or of any force or effect, and the terms and conditions of this Settlement Agreement cannot be altered, changed, modified or added to, except in writing signed by the Developer, Borough and Board.

IN WITNESS HEREOF, the Developer and the Borough and the Board have duly executed this Agreement the date and first year written above.

ATTEST:

_____

LANDMARK DUMONT, LLC

By: _____

ATTEST:

_____
Susan Connelly
Borough Clerk

BOROUGH OF DUMONT

By: _____
James Kelly
Mayor

ATTEST:

_____

Planning Board Secretary

PLANNING BOARD OF THE BOROUGH OF DUMONT

By: _____

Chairman of the Planning Board

STATE OF NEW JERSEY)
) **ss:**
COUNTY OF BERGEN)

BE IT REMEMBERED that on this _____ day of _____, 2016, before the subscriber, a (Notary Public/Attorney at Law) of New Jersey, personally appeared _____ who being by me duly sworn on his oath deposes and makes proof to my satisfaction that:

(a) he/she is the Managing Member of Landmark Dumont, LLC, the company named in this document, and is duly authorized to execute this Agreement on behalf of the company;

(b) this document was signed and delivered by the company as its duly authorized, voluntary act, for the purposes expressed herein.

Sworn and Subscribed to Before Me
on _____, 2016

_____ _____
(Notary Public/Attorney at Law of NJ)

STATE OF NEW JERSEY)
) ss:
COUNTY OF BERGEN)

BE IT REMEMBERED that on this _____ day of _____, 2015, before the subscriber, a (Notary Public/Attorney at Law) of New Jersey, personally appeared SUSAN CONNELLY, who being by me duly sworn on her oath deposes and makes proof to my satisfaction that:

(a) she is the Borough Clerk of the Borough of Dumont, the municipal corporation named in the within instrument;

(b) James Kelly is the Mayor of said municipal corporation;

(c) the execution as well as the making of the instrument has been duly authorized by a proper resolution of the Governing Body of the Borough of Dumont;

(d) deponent well knows the corporate seal of said municipal corporation; and that the seal affixed to said instrument is the proper corporate seal and was thereto affixed and said instrument was signed and delivered by said Mayor as an for the voluntary act and deed of said municipal corporation, in the presence of deponent who thereupon subscribed here name thereto as attesting witness.

Sworn and Subscribed to Before Me
on _____, 2016

_____
SUSAN CONNELLY,
Borough Clerk

STATE OF NEW JERSEY)
: SS:
COUNTY OF BERGEN)

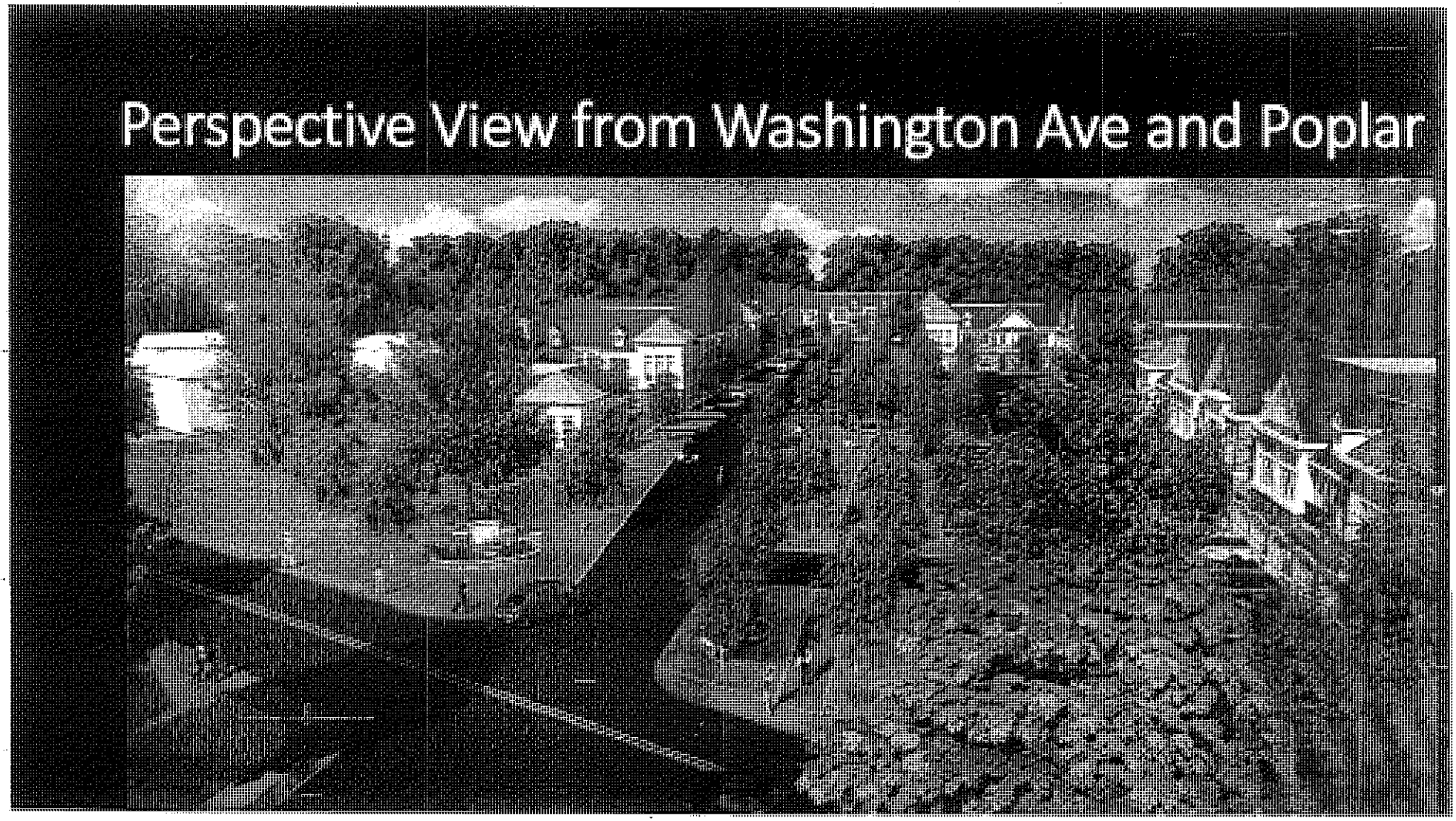
BE IT REMEMBERED that on this _____ day of _____, 2016, before me the subscriber, personally appeared _____, who being by me duly sworn on her oath deposes and makes proof to my satisfaction that she is the Secretary of the Planning Board of the Borough of Dumont, the municipal corporation named in the within instrument; that _____ is the Chairman of said municipal corporation; that the execution as well as the making of this instrument has been duly authorized by a proper resolution of the Planning Board of the Borough of Dumont; that deponent well knows the corporate seal of said municipal corporation; and that the seal affixed to said instrument is the proper corporate seal and was thereto affixed and said instrument was signed and delivered by said Chairman as and for the voluntary act and deed of said municipal corporation, in the presence of deponent, who thereupon subscribed her name thereto as attesting witness.

_____

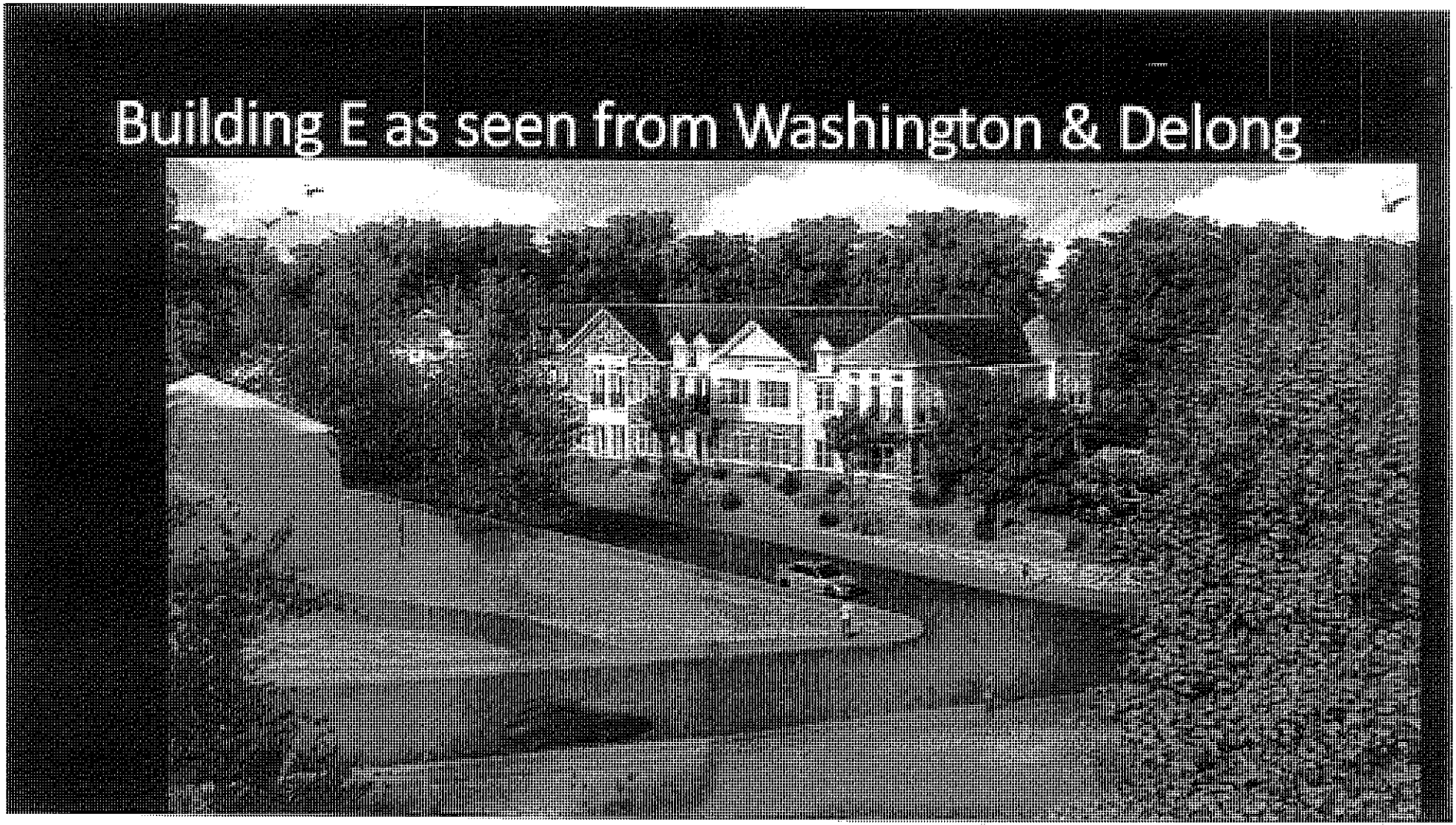
Sworn and Subscribed to
before me this _____ day
of _____, 2016.

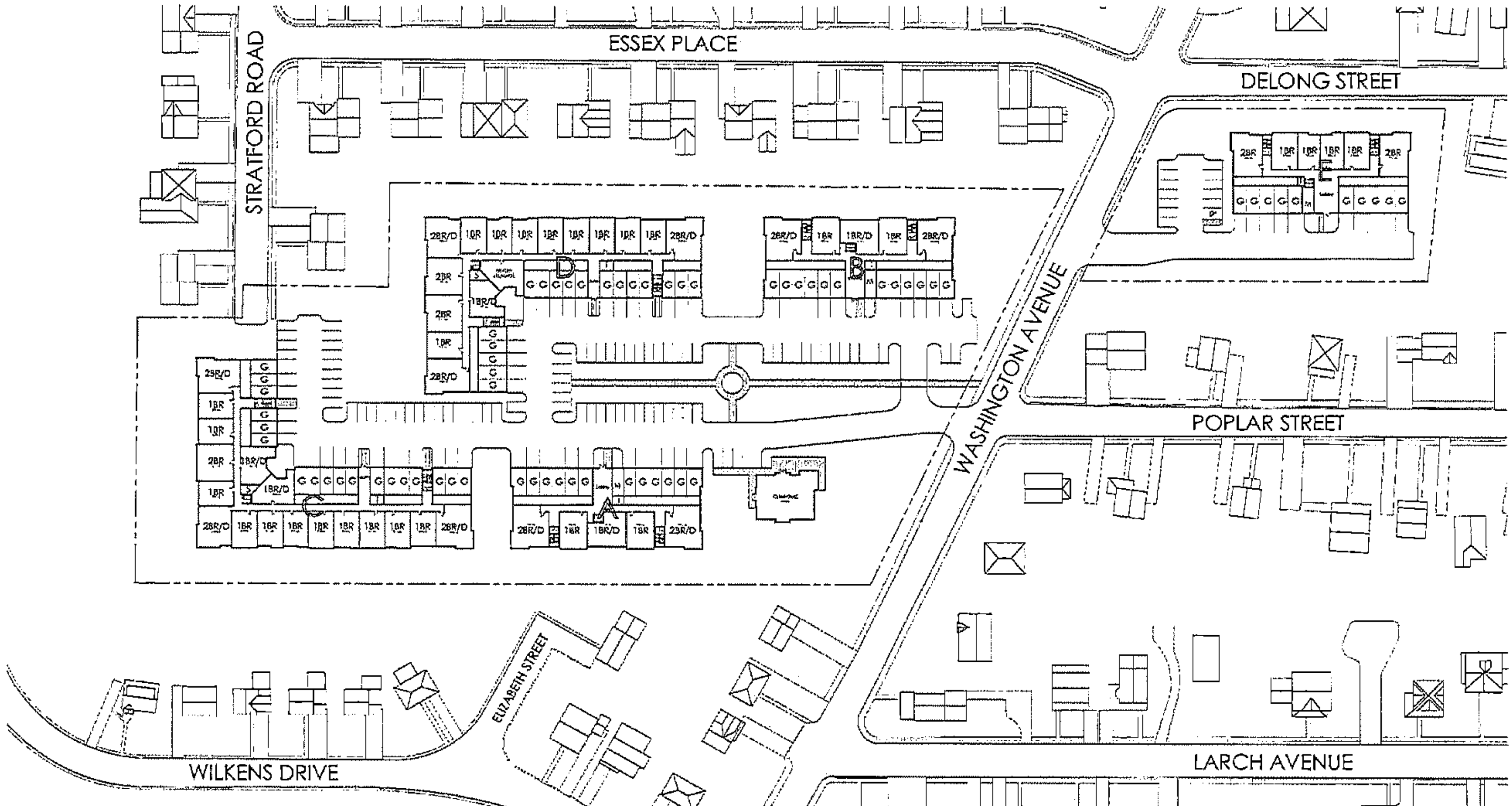
EXHIBIT "A"

Perspective View from Washington Ave and Poplar



Building E as seen from Washington & Delong





ZONING CHART

BUILDING A,B,C,D SETBACK	
FRONT YARD	[illegible]
REAR YARD	[illegible]
SIDE YARD	[illegible]
BUILDING E SETBACK	
FRONT YARD	[illegible]
REAR YARD	[illegible]
SIDE YARD	[illegible]
BUILDING HEIGHT	[illegible]

BUILDING UNIT COUNT

BUILDING	UNIT MIX TOTAL
BUILDING A	[illegible]
BUILDING B	[illegible]
BUILDING C	[illegible]
BUILDING D	[illegible]
BUILDING E	[illegible]
TOTAL	[illegible] D.U.

BUILDING UNIT CALCULATIONS

MARKET RATE UNITS	UNIT MIX TOTAL	UNIT MIX %
[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	
[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	
TOTAL	[illegible] D.U.	[illegible]
PARKING	[illegible]	

03/14/2016
SCALE: 1"=50'-0"

EXHIBIT A

DATE: 03/04/2016

MINNO WASKO
ARCHITECTS AND PLANNERS

[illegible] LAMBERTVILLE, NEW JERSEY [illegible] MINNOWASKO.COM

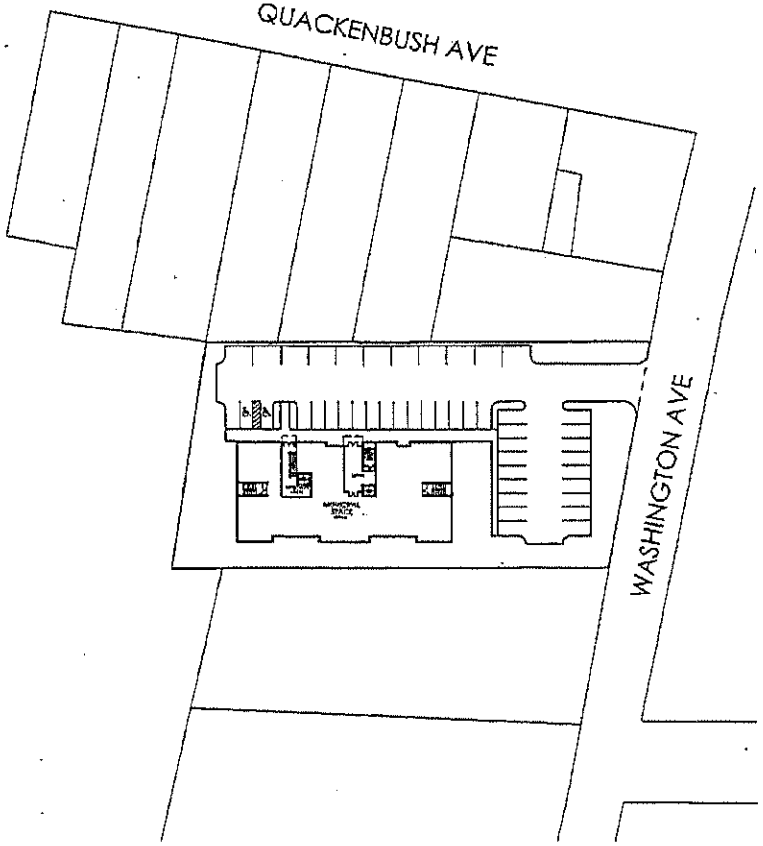
Landmark Dumont LLC

WASHINGTON PROMENADE

BOROUGH OF DUMONT, BERGEN COUNTY, NEW JERSEY

15-0738-01

EXHIBIT "B"



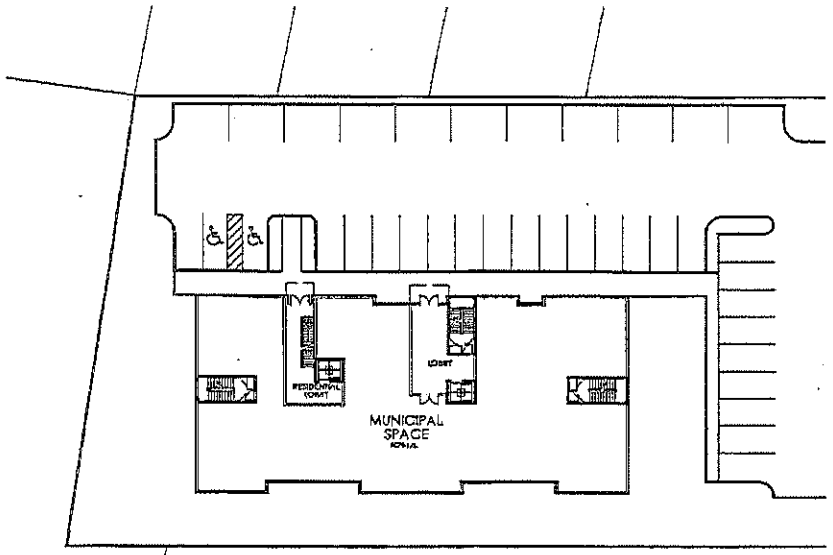
SITE PLAN

EXHIBIT B - PAGE 1
BUILDING F
DATE: 03/04/2016

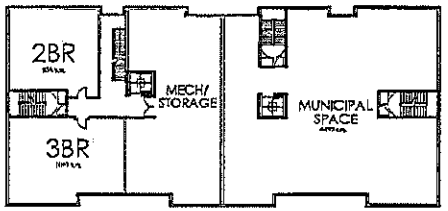
MINNO WASKO
ARCHITECTS AND PLANNERS

Landmark Dumont LLC

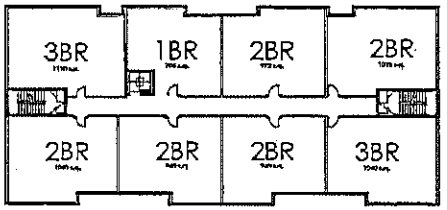
WASHINGTON PROMENADE
BOROUGH OF DUMONT, BERGEN COUNTY, NEW JERSEY



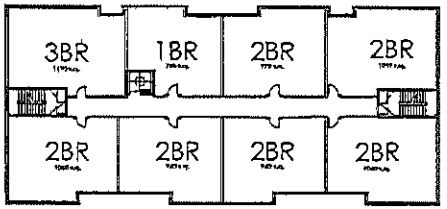
GROUND FLOOR



SECOND FLOOR



THIRD FLOOR



FOURTH FLOOR

ZONING CHART

EXHIBIT B - PAGE 2
BUILDING F DATE: 03/04/2016

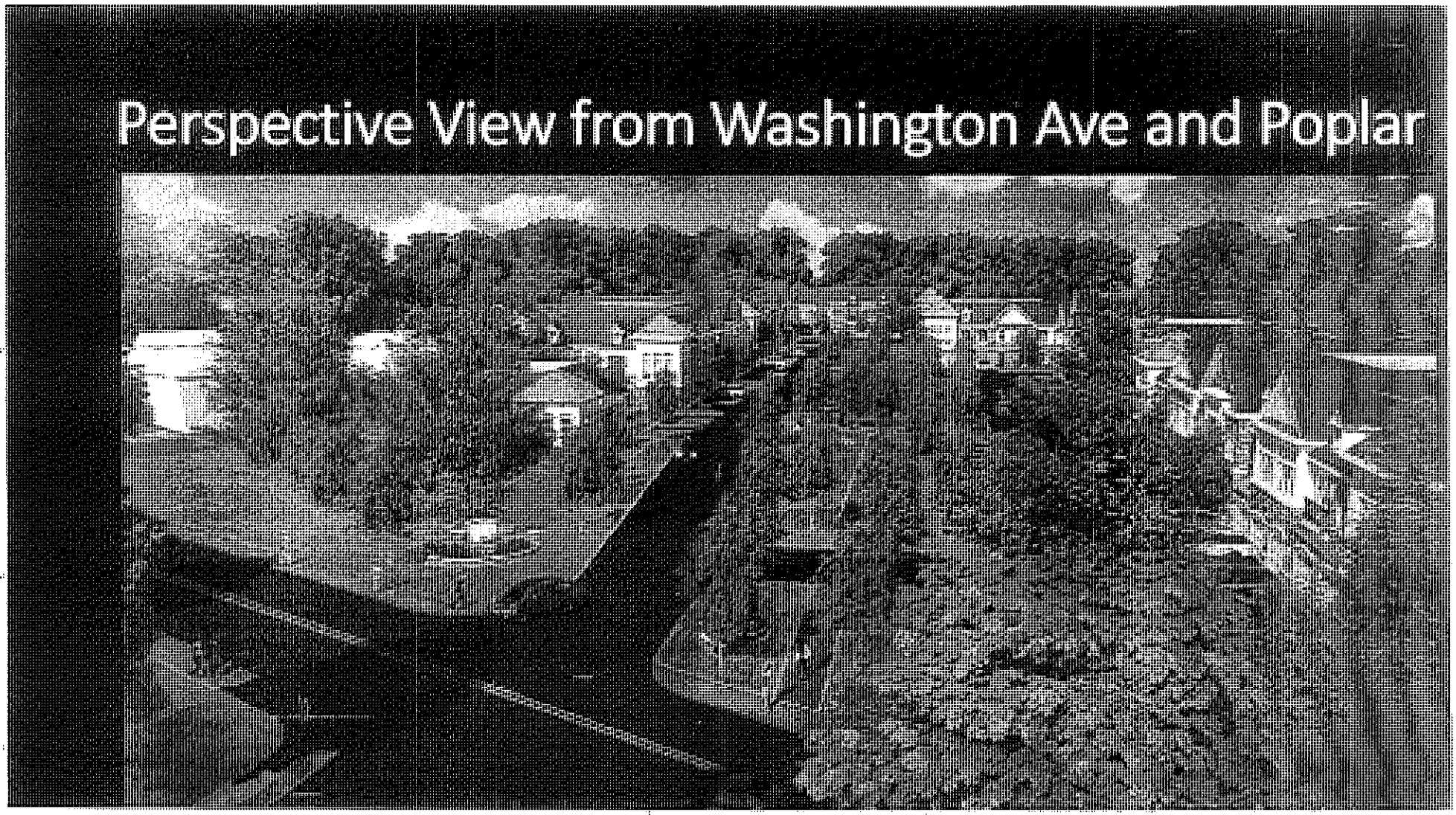
MINNO WASKO
ARCHITECTS AND PLANNERS

Landmark Dumont LLC

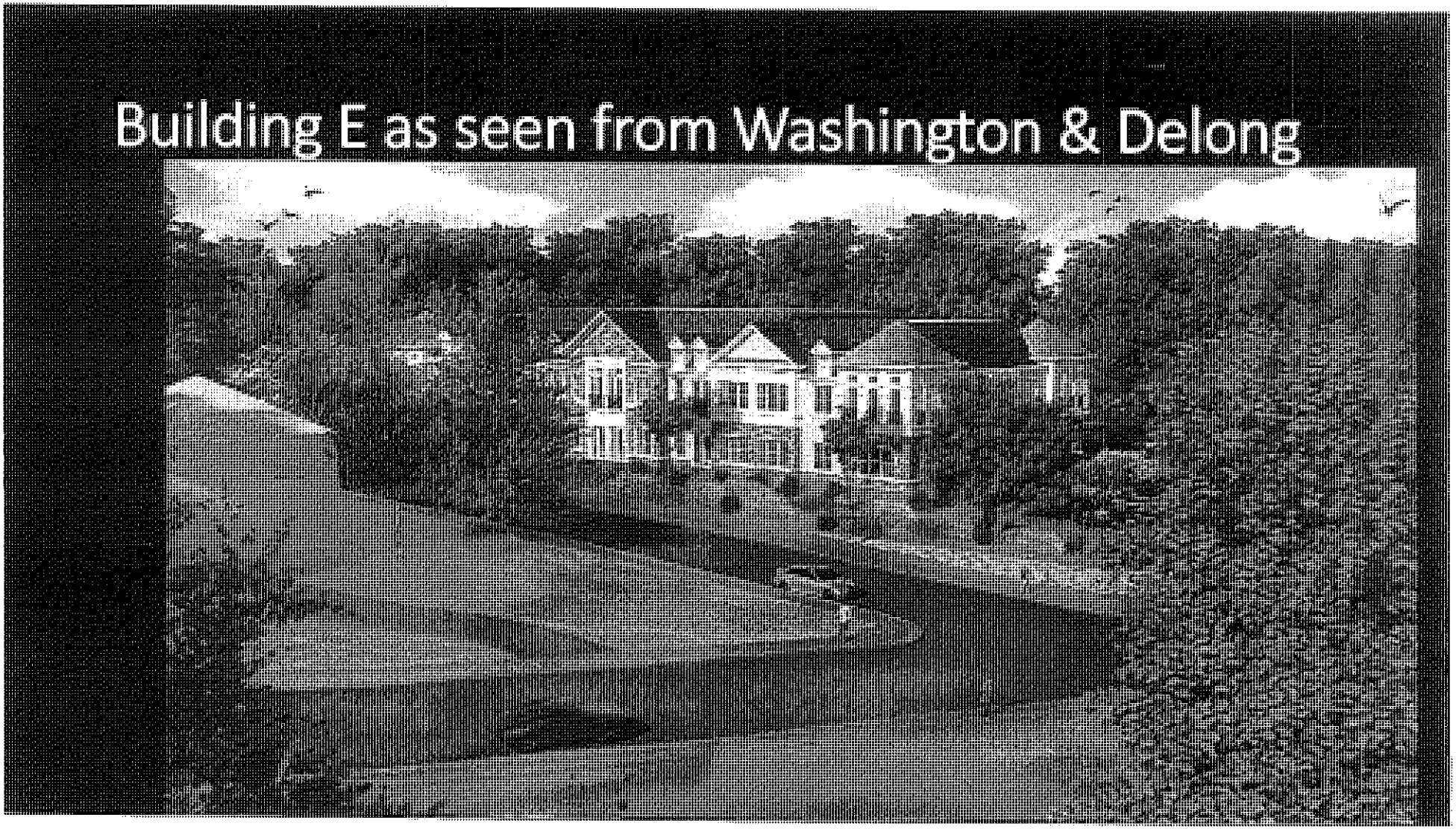
WASHINGTON PROMENADE
BOROUGH OF DUMONT, BERGEN COUNTY, NEW JERSEY

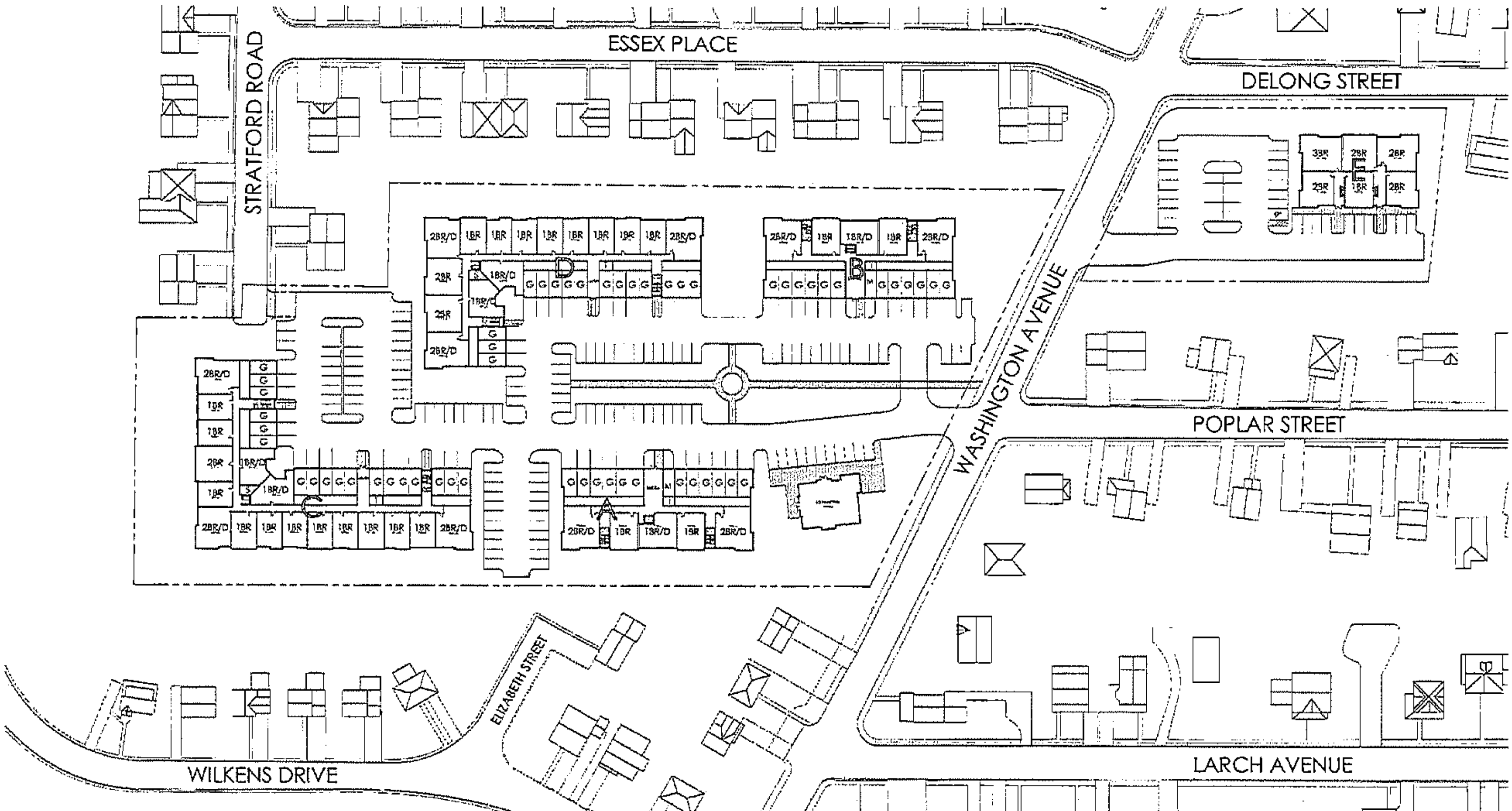
EXHIBIT "C"

Perspective View from Washington Ave and Poplar



Building E as seen from Washington & Delong





ZONING CHART

BUILDING A,B,C,D SETBACK	
FRONT YARD	[illegible]
REAR YARD	[illegible]
SIDE YARD	[illegible]

BUILDING E SETBACK	
FRONT YARD	[illegible]
REAR YARD	[illegible]
SIDE YARD	[illegible]

BUILDING HEIGHT	
BUILDING A	[illegible]
BUILDING B	[illegible]
BUILDING C	[illegible]
BUILDING D	[illegible]
BUILDING E - AFFORDABLE	[illegible]

BUILDING UNIT COUNT

BUILDING	[illegible]
BUILDING A	[illegible]
BUILDING B	[illegible]
BUILDING C	[illegible]
BUILDING D	[illegible]
BUILDING E - AFFORDABLE	[illegible]
TOTAL	[illegible]
PARKING	[illegible]

BUILDING UNIT CALCULATIONS

MARKET RATE UNITS	RESIDENTIAL FL.			[illegible]	[illegible]
	[illegible]	[illegible]	[illegible]		
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
TOTAL	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
PARKING				[illegible]	

BUILDING E AFFORDABLE UNITS	RESIDENTIAL FL.			[illegible]	[illegible]
	[illegible]	[illegible]	[illegible]		
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
TOTAL	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
PARKING				[illegible]	

03/14/2016
SCALE: 1"=50'-0"
EXHIBIT C
DATE: 03/04/2016

MINNO WASKO
ARCHITECTS AND PLANNERS
60 LAMBERT LANE, SUITE 105 LAMBERTVILLE, NEW JERSEY 08530 MINNOWASKO.COM

Landmark Dumont LLC

WASHINGTON PROMENADE

BOROUGH OF DUMONT, BERGEN COUNTY, NEW JERSEY

15-0738-01

EXHIBIT "D"

EXHIBIT D: TIMELINES/FAST TRACK

The parties agree to use all best efforts to adhere to the following timelines for the review of the Developer's Development applications for the Owner's Parcels:

a. The Planning Board's authorized designee shall examine the Developer's Development applications with diligence and shall report to Developer that the application is either complete or incomplete within forty-five (45) days after submission of the application to the Planning Board and shall provide Developer with a detailed list of deficiencies, if any, from the checklist governing the application. The Planning Board's authorized designee shall provide this notification in writing, in a single completion letter, and may not amend the list of deficiencies once submitted to Developer. Developer shall provide all materials found by the Planning Board's authorized designee as deficiencies from the checklist that are listed in the completeness letter no less than ten (10) days prior to the next regularly scheduled Planning Board hearing.

b. The Planning Board shall thereafter accept any additional information required by the completeness review letter, and shall consider whether the application is complete in accordance with newly submitted information at its next regular meeting following receipt of such necessary additional information, provided Developer complies with Paragraph c above.

c. This Paragraph is not intended to modify or alter the provisions of N.J.S.A. 40:55D -10.3, but is tailored to encourage the Planning Board to deliberate and decide on completeness in an expeditious fashion, with the parties' intent that the Planning Board not protract the process beyond the statutory maximum permitted time periods. Developer may request a submission waiver from the Planning Board checklist requirements in accordance with Planning Board procedures.

d. Once deemed complete, Developer's application shall be reviewed in accordance with applicable law, so that the Planning Board shall make a decision concerning the proposed project within ninety-five (95) days following submission of a complete application, if no variance is requested, or one hundred twenty (120) days following submission of a complete application, if any bulk variance pursuant to N.J.S.A. 40:55D-70(c) is requested, except as said time frame may be extended by Developer. The parties recognize that the final Ordinance or Redevelopment Plan may differ from that proposed in this Settlement, but shall not substantially alter the standards necessary to permit the Development in accordance with Exhibits A, B and C without voiding this Agreement. No further Mt. Laurel contributions to the Borough or modifications of the design of the Developer except as set forth on Exhibits A, B, and C, except as provided by this Agreement or by mutual agreement among the parties, shall be required of Developer. All plans for the residential component of the projects shall be in accordance with the Residential Site Improvement Standards ("RSIS"), as then promulgated by the State of New Jersey.

e. Developer shall post professional review escrow fees in accordance with Municipal Land Use Law (N.J.S.A. 40:55D-1 (et. seq.)) and Borough ordinances for the Borough's costs for professional consultants, including engineers, planners and attorneys for all public hearings on this application.

f. A Resolution of Memorialization shall be adopted no later than forty-five (45) days following Planning Board action regarding the project and any required Developer's Agreement or other Borough approvals shall be prepared and executed by the parties not later than sixty (60) days following the approval of a Resolution of Memorialization.

EXHIBIT "E"

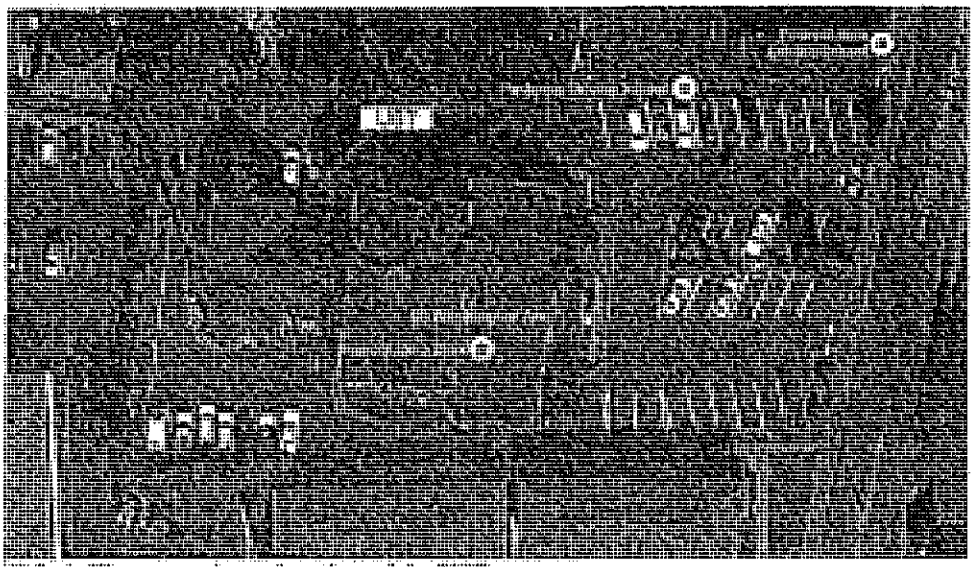


FIG. 1. The approximate location of the UST.

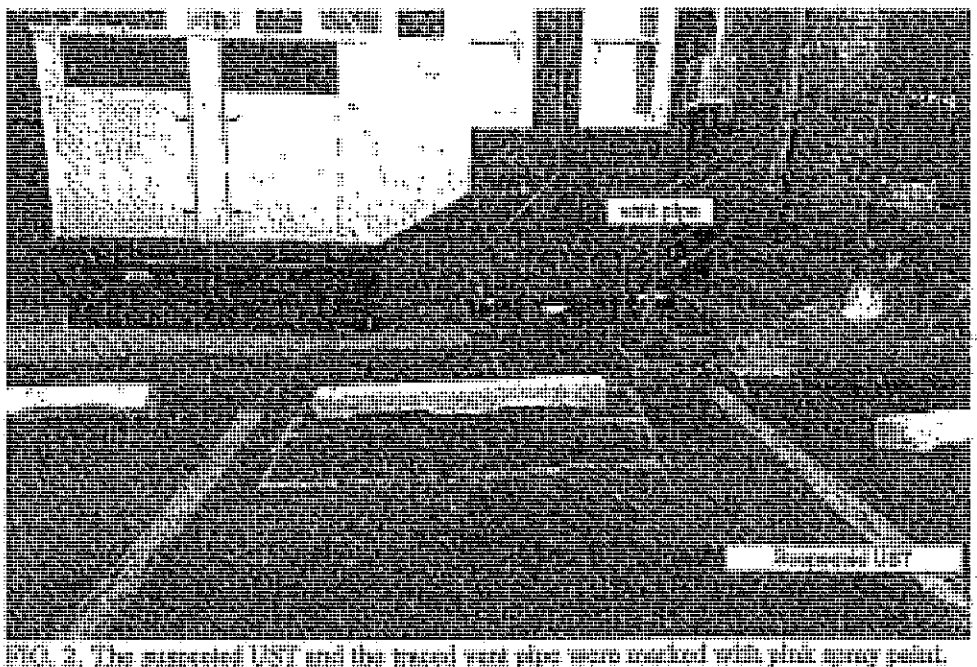


FIG. 2. The suspected UST and the travel vent pipe were marked with pink spray paint.

EXH. F

2016
BOROUGH OF DUMONT
RESOLUTION

MEMBERS	AYE	NAY	ABSTAIN	ABSENT
CORREA		✓		
DI PAOLO	✓			
HAYES	✓			
MORRELL	✓			
RIQUELME	✓			
ZAMECHANSKY	✓			
MAYOR KELLY				
TOTALS	5	1		

Resolution No. 68
Date: March 8, 2016
Page: 1 of 2
Subject: Landmark v Dumont
Purpose: Settlement of Litigation
Dollar Amount:
Prepared By: Gregg Paster, Esq.

Offered by: Riquelme
Seconded by: Hayes

Certified as a true copy of a Resolution adopted by the Borough of Dumont on above date at a Regular Meeting by: Susan Connelly

Susan Connelly, RMC, Municipal Clerk
Borough of Dumont, Bergen County, New Jersey

RESOLUTION OF THE BOROUGH OF DUMONT, IN THE COUNTY OF BERGEN AND STATE OF NEW JERSEY AUTHORIZING SETTLEMENT OF LITIGATION ENTITLED LANDMARK DUMONT, LLC V. BOROUGH OF DUMONT, ET ALS., DOCKET NO. BER-L-1297-14

WHEREAS, on February 4, 2014, a lawsuit was filed entitled Landmark Dumont, LLC v. Borough of Dumont, Mayor and Council of the Borough of Dumont; and the Planning Board of the Borough of Dumont, (collectively 'the Parties') bearing Docket number BER-L-1297-14 (hereinafter the 'Litigation'); and

WHEREAS, the Litigation seeks, among other things, declaration of a site-specific

EXHIBIT F

builder's remedy related to property commonly known as the D'Angelo Farm property, rezoning of the said property for high density housing of 40 units to the acre, including a set aside for low and moderate income residential units, a declaration that the Borough of Dumont's zoning ordinances are unconstitutional, appointment of a special master to revise and implement a new zoning code and land use ordinances for the Borough of Dumont, an order directing that inclusionary development applications be reviewed and improved in an expedited fashion under court supervision, waiving all application, permit and escrow fees in connection with said applications and for a tax abatement for all such developments; and

WHEREAS, the Parties have engaged in a lengthy and detailed negotiation over the issues related to the Litigation and have agreed that the certainty and predictability of an amicable resolution is preferable to the cost and risk of continued litigation; and

WHEREAS, the Mayor and Council now seek to enter into a settlement agreement to conclude the Litigation and to seek a Judgment of Compliance with its First and Second Round Mount Laurel Affordable Housing obligations and further immunity from additional builder's remedy suits pending consideration of Third Round obligations and plans, subject to court approval and negotiation of final details; and

WHEREAS, neither party admits any wrongdoing or liability in connection with the Litigation but seeks to resolve same on terms and conditions mutually acceptable to the parties.

BE IT RESOLVED by the Borough Council of the Borough of Dumont, that it endorses and ratifies the settlement of the above captioned Litigation, more particularly described in the Settlement Agreement annexed hereto and incorporated herein by reference, and authorizes the Mayor, Borough Attorney and Borough Clerk to execute and deliver the said Settlement Agreement and to apply to the Superior Court of New Jersey, Law Division-Bergen County for a fairness hearing in the usual course of business to enter an Order approving the Settlement; and

BE IT FURTHER RESOLVED, that a copy of this Resolution shall be served upon the Service List in the consolidated litigation and any other interested parties upon execution and certification hereof.

James J. Kelly, Mayor