

**RESOLUTION 81-15
BOROUGH OF CLAYTON
AUTHORIZING EXECUTION OF
REDEVELOPMENT AGREEMENT
WITH CONIFER REALTY, LLC**

WHEREAS, in order to stimulate redevelopment, the Borough Council of the Borough of Clayton (the "Borough"), pursuant to Resolution No. 126-11, designated certain properties within the "Delsea Drive (NJSH No. 47) Corridor" as an area in need of redevelopment (the "Redevelopment Area"), including Lot 13 in Block 1601 (the "Property") ; and

WHEREAS, subsection 8(f) of the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1, et seq. (the "Redevelopment Law") authorizes the Borough to arrange or contract with a redeveloper for the planning, construction or undertaking of any project or redevelopment work in the Redevelopment Area; and

WHEREAS, pursuant to Ordinance No. 13-2014, the Borough adopted the Redevelopment Plan For Parcels Within the Delsea Drive (NJSH No. 47) Corridor (the "Redevelopment Plan") for the Redevelopment Area; and

WHEREAS, Redeveloper proposes to build a seventy-six (76) unit affordable housing project on the Property (the "Project"); and

WHEREAS, the Borough has negotiated a Redevelopment Agreement with Conifer Realty, LLC for the redevelopment of the Property.

NOW, THEREFORE, BE IT RESOLVED, that the Borough of Clayton is hereby authorized to enter into and execute a Redevelopment Agreement for the Property with Conifer Realty, LLC, or one of its affiliates.

BE IT FURTHER RESOLVED, that the Mayor of the Borough of Clayton is hereby authorized to sign the Redevelopment Agreement with Conifer Realty, LLC, or one of its affiliates, and any other documents necessary in connection therewith.

ADOPTED, at a regular meeting of the Mayor and Council of the Borough of Clayton held on April 9, 2015.

BOROUGH OF CLAYTON



THOMAS BIANCO, Mayor

Attest:



CHRISTINE NEWCOMB, Borough Clerk

THIS REDEVELOPMENT AGREEMENT (this "Agreement") entered into this 9th day of April, 2015, by and between **THE BOROUGH OF CLAYTON**, a municipal corporation of the State of New Jersey having its principal offices at Clayton Municipal Building, 125 North Delsea Drive, Clayton, New Jersey 08312 (hereinafter referred to as the "Borough"), and **CONIFER REALTY, LLC**, a New York limited liability company, or an entity to be formed having Conifer Realty, LLC as its managing member, having an office at 20000 Horizon Way, Suite 180, Mt. Laurel, NJ 08054 (hereinafter referred to as the "Redeveloper");

RECITALS

WHEREAS, in order to stimulate redevelopment, the Borough Council, pursuant to Resolution No. 126-11, designated certain properties within the "Delsea Drive (NJSH No. 47) Corridor" as an area in need of redevelopment (the "Redevelopment Area"), including Lot 13 in Block 1601 (the "Property"); and

WHEREAS, subsection 8(f) of the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1, et seq. (the "Redevelopment Law") authorizes the Borough to arrange or contract with a redeveloper for the planning, construction or undertaking of any project or redevelopment work in the Redevelopment Area; and

WHEREAS, pursuant to Ordinance No. 13-2014, the Borough adopted the Redevelopment Plan For Parcels Within the Delsea Drive (NJSH No. 47) Corridor (the "Redevelopment Plan") for the Redevelopment Area; and

WHEREAS, Redeveloper proposes to build a seventy-six (76) unit affordable housing project on the Property (the "Project"); and

WHEREAS, by Resolution No. ____-15, the Borough Council resolved that the Project meets or will meet an existing housing need; and

WHEREAS, the parties desire to enter into this Agreement for the purpose of setting forth their respective undertakings, rights and obligations in connection with the Project and the Property.

Article 1 DEFINITIONS

1.1 The following words and phrases shall have the meanings set forth below, which definitions shall be applicable to both singular and plural forms:

"Affordable Housing Residential Unit" means a residential dwelling unit with respect to which the Governmental Approvals (as hereinafter defined) have been issued and which is subject to the requirement, resolution or limitation relating to the provision for "affordable housing" pursuant to the requirements of the Council On Affordable Housing or other applicable governmental laws, ordinances, rules or regulations, or any other restriction and/or agreement limiting the price for which a unit of property may be rented.

"Borough Indemnified Parties" means the Borough and its officers, elected officials, agents, employees, contractors and consultants.

"Construction" means all physical onsite work necessary to build the Project and the improvements requiring approval by the Planning Board of the Borough of Clayton.

"Effective Date" means the date upon which all of the parties hereto have executed and delivered this Agreement.

"Environmental Law" or "Environmental Laws" means any and all federal, state, regional, and local laws, statutes, ordinances, regulations, rules, codes, consent decrees, judicial or administrative orders or decrees, directives or judgments relating to pollution, damage to or protection of the environment, environmental conditions, or the use, handling, processing, distribution, generation, treatment, storage, disposal, manufacture or transport of Hazardous Substances, presently in effect or hereafter amended, modified, or adopted including, but not limited to, the Clean Air Act (42 U.S.C. 7401-7642); the Toxic Substance Control Act (15 U.S.C. 2601-2629); the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. sect. 9601-9675); the Resource Conservation and Recovery Act of 1976 (42 U.S.C. sect. 6901, et. seq.), the Clean Water Act (33 U.S.C. sect. 1251, et. seq.); the New Jersey Spill Compensation and Control Act (N.J.S.A. 58:10-23.11, et. seq.); the Industrial Site Recovery Act, as amended (N.J.S.A. 13:1K-6, et. seq.); the New Jersey Underground Storage of Hazardous Substances Act (N.J.S.A. 58:10A-21, et. seq.), the New Jersey Water Pollution Control Act (N.J.S.A. 58:10A-1 et. seq.); the New Jersey Environmental Rights Act (N.J.S.A. 2A:35A-1, et. seq.); the New Jersey Air Pollution Control Act (N.J.S.A. 26:2C-1, et. seq.); and the rules and regulations promulgated under any of them.

"Governing Body" means the Mayor and Council of the Borough.

"Party" means the Borough or the Redeveloper.

"Person" means any individual, sole proprietorship, corporation, partnership, joint venture, limited liability company, trust, unincorporated association, urban renewal entity, institution, or any other entity.

"Planning Board" means the Borough of Clayton Planning Board.

Article 2 REDEVELOPER'S OBLIGATIONS

2.1 Agreement to Undertake Project. The Redeveloper agrees to prepare the Property and to plan, develop, and construct thereon the Project, as more fully described below, in conformity with the provisions of the Redevelopment Plan and in compliance with the terms and conditions of this Agreement and any Governmental Approvals. The Project shall consist of:

- (a) The Project. The Project shall be constructed on the Property and shall consist of seventy-five (75) Affordable Housing Residential Unit and, one (1) superintendent's unit together with an approximately 3,000 square foot

community building which shall include management offices, maintenance space, community room, office for People for People Foundation of Gloucester County, exercise room, common laundry room, and computer room. Fourteen (14) of the units will be 1-bedroom, forty (40) of the units will be 2-bedroom, and twenty-two (22) of the units will be 3-bedroom. All units will be ADA adaptable or accessible. Twenty-five percent (25%) of the units will be set aside for disabled veterans.

- (b) Site Work. All site preparation and on- and off-site improvements and infrastructure necessary to service the Project in accordance with the Governmental Approvals, including but not limited to roadways, storm drainage, municipal water and sewer service and other utility services, buffers and landscaping.

2.2 Project Compliance. The Project shall comply with the bulk requirements in the Redevelopment Plan, and shall be substantially similar to the conceptual site plan, which is annexed hereto and made a part hereof as Exhibit "A" (the Site Plan"). The Redeveloper shall notify the Borough if the Redeveloper seeks to make significant modifications to the Site Plan annexed hereto, and the Borough shall reasonably cooperate with the Redeveloper's efforts to modify the Site Plan, with such modifications approved by the Borough in the exercise of its reasonable discretion.

2.3 Acquisition of the Property. The Redeveloper represents that Redeveloper has entered into a contract to acquire the Property from The Keiluhn Venture (the "Agreement of Sale"). The Borough acknowledges that the Agreement of Sale contains certain financing and other contingencies running to the Redeveloper's benefit (collectively, the "Contingencies"). In the event the Redeveloper terminates the Agreement of Sale, it may terminate this Agreement.

2.4 Environmental Compliance. The Redeveloper shall obtain all necessary environmental clearances and approvals and shall satisfy all requirements of any Environmental Laws relating to the Property and any Governmental Approvals. Under no circumstances shall the Borough be required to contribute any funds toward environmental remediation of the Redevelopment Area or the Property.

2.5 Governmental Applications and Governmental Approvals.

- (a) The Redeveloper will cause to be prepared and filed such plans, drawings, documentation, presentations and applications (collectively called "Governmental Applications") as may be necessary and appropriate for the purpose of obtaining any and all final and unappealable governmental approvals required to complete the Project on the Property, including but not limited to site plan approvals, water and sewer allocation and connection permits, approvals from the New Jersey Department of Transportation, Soil Erosion and Soil Conservation, construction plans and specifications; environmental approvals, if necessary; and any and all other necessary permits (including building permits), licenses, consents and

approvals (hereinafter collectively called the "Governmental Approvals"). All of the Governmental Applications shall be in conformity with the Redevelopment Plan, including any amendments subsequent to the date hereof, this Agreement, and any and all federal, state, county, and municipal statutes, laws, ordinances, rules and regulations applicable thereto, subject to the Redevelopment Law. The Borough shall use best efforts to fully cooperate with the Redeveloper to facilitate obtaining all Governmental Approvals.

- (b) In accordance with the Agreement of Sale, the Redeveloper shall obtain all Governmental Approvals necessary to start Construction of the Project prior to acquisition of the Property.

2.6 Schedule; Delays and Extensions.

- (a) The Redeveloper shall apply for a building permit within one sixty (60) days after receipt of all necessary Governmental Approvals to permit commencement of Construction. The Redeveloper shall commence within ninety (90) days after obtaining building permits, and diligently prosecute to completion, the development of the Project, including the site improvements necessary to support the Project in accordance with the Governmental Approvals. The Redeveloper shall have twenty-four (24) months from the receipt of building permits in which to achieve Substantial Completion of the Project. The end date of this period shall be referred to as the "Project Completion Date." If for reasons beyond the Redeveloper's control, the Redeveloper needs an extension beyond the Project Completion Date, the Redeveloper may apply to the Borough in writing before the Project Completion Date stating in detail the reasons for requesting the extension. The Borough shall not unreasonably condition, withhold or delay its consent to the Redeveloper's timely request.
- (b) The Redeveloper shall be responsible for the letting of contracts, supervision of Construction and all other matters incidental to performance of the duties and powers expressly granted herein in connection with the Construction of the Project.
- (c) "Substantial Completion" is defined to mean completion of the Project in accordance with the Site Plan approval as evidenced in each case by a temporary or permanent Certificate of Occupancy and other permissions required, if any, of governmental authorities or agencies for the occupancy and use of the residential units and/or commercial units. The Borough shall not be required to issue a Certificate of Occupancy for the Project until such time as the Redeveloper has paid to the Borough all outstanding Borough Costs unless those costs have been contested. If the reason for the refusal to issue a Certificate of Occupancy is confined to the immediate availability of specific minor finish items, the Borough will issue its Certificate of Occupancy upon the posting of a bond (or other reasonably

satisfactory security) by the Redeveloper with the Borough in an amount representing the fair value of the work not yet completed. If the sole reason for the refusal to issue a Certificate of Occupancy is a dispute over municipal charges due from the Redeveloper, the Borough will issue the certificate(s) in question if the Redeveloper deposits the disputed amount into escrow. The time for Substantial Completion of the Project, or any portion thereof, may be extended for a period of time equal to any delay in Construction due to any of the force majeure causes set forth in Article 8 of this Agreement.

(d) The Redeveloper shall pay to the Borough an administrative fee in the amount of Twenty-Five Thousand Dollars (\$25,000.00) on the Effective Date.

2.7 Certificate(s) of Occupancy. Upon completion of any residential unit or commercial unit, which is then suitable by law for occupancy, the Redeveloper shall apply to the appropriate governmental officer or body for a temporary Certificate of Occupancy or a permanent Certificate of Occupancy, as appropriate under the circumstances according to the appropriate law or regulation. The Certificate of Occupancy, when issued, shall constitute evidence that Redeveloper has fully performed its obligations under applicable laws with respect to the construction of the Project for which unit the Certificate of Occupancy is issued. Upon the issuance of a Certificate of Occupancy, the Borough shall issue Redeveloper a Certificate of Completion stating that the conditions determined to exist at the time the area was determined to be in need of redevelopment shall be deemed to no longer exist.

2.8 Borough Costs.

- (a) Reimbursement Obligation. The Redeveloper agrees to reimburse the Borough in full for all actual and reasonable out of pocket administrative costs incurred by the Borough in connection with the Project and all direct costs paid by the Borough to third parties in connection with the Project, including reasonable legal and other reasonable professional fees; provided that all such costs incurred by the Borough shall have been reasonably incurred (the "Borough Costs"). Time billed by the Borough staff, excluding legal and other professionals, shall not be included in Borough Costs.
- (b) Escrow Fund. Within fifteen (15) business days after the Effective Date, Redeveloper shall deposit Fifteen Thousand (\$15,000.00) Dollars with the Borough (hereinafter referred to as the "Escrow Fund") and the Escrow Fund shall be maintained by the Borough in a separate, interest bearing escrow account and shall be drawn upon by the Borough to pay the Borough Costs. Interest earned on the Escrow Fund shall accrue to the Redeveloper. Use of the proceeds of the Escrow Fund shall be subject to the same standards set forth in N.J.S.A. 40:55D-53.2 with respect to escrows under the New Jersey Municipal Land Use Law. If the Escrow Fund drops below Five Thousand Dollars (\$5,000.00), the Borough shall notify the Redeveloper in writing and Redeveloper shall replenish the

Escrow Fund to the funding level of Ten Thousand (\$10,000.00) Dollars within ten (10) business days after the request made in writing by the Borough.

2.9 Administrative Agent. The Redeveloper shall, pursuant to the Council on Affordable Housing rules, be the administrative agent for the Project, and shall be solely responsible for marketing, leasing, and qualifying tenants. In such capacity, the Redeveloper shall, upon request from time to time, keep the Borough's Municipal Housing Liaison informed of the Redeveloper's activities in this regard.

2.10 Indemnification.

- (a) The Redeveloper covenants and agrees, at its expense, to pay and to indemnify, protect, defend and hold the Borough Indemnified Parties harmless from and against all liability, losses, damages, demands, costs, claims, lawsuits, administrative proceedings, fines, penalties, and expenses (including reasonable attorneys' fees and court costs of every kind, character and nature resulting, wholly or partially, from (i) the condition, use, possession, conduct, management, acquisition, construction, installation, financing or leasing of the Property and/or (ii) the performance or any failure or delay of performance of this Agreement, any of which is the result of action or inaction by the Redeveloper, its agents, servants, employees or contractors, including but not limited to the death of any person or any accident, injury, loss, and damage whatsoever to any Person or to the property of any Person that shall occur on or adjacent to the Property and that results, wholly or partially, from any negligence or willful misconduct of the Redeveloper, its agents, servants, employees or contractors. The Redeveloper and the Borough shall consult with respect to any claims or litigation as to which the Borough demands indemnification by the Redeveloper.
- (b) In any situation in which a Borough Indemnified Party is entitled to receive indemnification by the Redeveloper, the Redeveloper shall resist and defend any action or proceeding on behalf of the Borough Indemnified Party. The Borough Indemnified Party shall have the obligation to consent to any reasonable settlement negotiated by the Redeveloper. These obligations of the Redeveloper may be performed by an insurer of the Redeveloper to the extent coverage has been acquired. The Redeveloper shall have the right, without the consent of the Borough Indemnified Party, to settle any such action on terms the Redeveloper deems appropriate, provided that the Redeveloper obtains a full release of the Borough Indemnified Party and no admission of liability by the Borough Indemnified Party is required.
- (c) The Redeveloper reserves the right to select, at its sole discretion, counsel for any claim or litigation as to which the Borough requires indemnification.

- (d) This indemnity shall survive the termination of this Agreement for a period of six (6) months and shall also survive for six (6) months after Substantial Completion.

Article 3 BOROUGH'S OBLIGATIONS.

3.1 Support for Redeveloper. The Borough shall use its best efforts to support the Redeveloper's efforts to obtain the approvals necessary for the Project, as long as the Project is consistent with the provisions of this Agreement. The Borough shall use best efforts to assist the Redeveloper's efforts to secure public funds and tax incentives. The Borough will cooperate with the Redeveloper to the extent necessary to secure funds for the Project from public sources, if available, such as the Department of Community Affairs ("DCA"), the New Jersey Housing and Mortgage Finance Agency, balanced housing, LIHTC, the Economic Redevelopment and Growth Grant program, a Community Development Block Grant, and the Housing and Urban Development HOME program, and will negotiate all reasonable tax incentives, including a (a) payment in lieu of tax agreement as to the residential portion only of the Project, providing for a maximum payment not to exceed six and twenty-eight one hundredths percent (6.28%) of gross revenue of the Affordable Housing Residential Units.

3.2 Cooperation with respect to Governmental Applications. The Borough will use best efforts to cooperate with the Redeveloper's efforts to make timely Governmental Applications and obtain all Governmental Approvals for the Project which are consistent with the Redevelopment Plan and this Agreement. Notwithstanding the foregoing or any other reference in this Agreement to cooperation by the Borough, nothing herein shall be deemed to impose restrictions on the Borough in the exercise of its police powers as a public entity nor shall such reference be construed as a restriction on the Borough's rights, duties and obligations to enforce any agreement in favor of the Borough in connection with the Project.

3.3 Exclusivity. So long as this Agreement remains in effect, the Redeveloper shall have sole and exclusive redevelopment rights to the Property.

Article 4 COVENANTS AND RESTRICTIONS.

4.1 Restrictions on Use. The Redeveloper shall execute and record a Declaration of Covenants and Restrictions setting forth that the Redeveloper and its successors and assigns shall devote the Property exclusively to the uses established in the Redevelopment Plan (as it may be amended) and as described in this Agreement.

4.2 Non-discrimination Covenants. The Redeveloper, its successors and assigns shall:

a. Not discriminate upon the basis of age (except as otherwise provided in this Agreement), race, color, creed, religion, ancestry, national origin, sex or marital status in the lease, rental, use or occupancy of the Property, or any buildings or structures erected or to be erected thereon, or any part thereof; and

b. Not effect or execute any covenant, agreement, lease, conveyance or other instrument whereby the Project, including any building or structure erected or to be erected

thereon, is restricted upon the basis of age (except as otherwise provided in this Agreement), race, color, creed, religion, ancestry, national origin, sex or marital status, and the Redeveloper, its successors and assigns shall comply with all federal, state and local laws prohibiting discrimination or segregation by reason of age (except as otherwise provided in this Agreement), race, color, creed, religion, ancestry, national origin, sex or marital status.

Article 5 PROHIBITION AGAINST ASSIGNMENT AND TRANSFER.

5.1 Prohibition against Speculative Development. Because of the importance of the redevelopment of the Property to the general welfare of the community, the Redeveloper represents and agrees that the Property and the Redeveloper's undertakings pursuant to this Agreement are, and will be used for the purpose of the redevelopment of the Property as provided herein and not for speculation.

5.2 Prohibition against Transfers. The Redeveloper recognizes that the Borough regards both the Project and the qualifications and identity of the Redeveloper and its principals as being of great importance to the general welfare of the community. The ownership structure of the Redeveloper is set forth on Exhibit "B". The Redeveloper shall, at such times as the Borough may reasonably request, furnish the Borough with a complete statement subscribed and sworn to by the manager of the Redeveloper, setting forth all of the ownership interests of the Redeveloper, or other owners of equity interests of the Redeveloper and the extent of their respective holdings in the Redeveloper, and in the event any other parties have a beneficial interest in the Redeveloper, their names and the extent of such interest in the Redeveloper. The Borough and the Redeveloper each acknowledges and agrees that a change in the ownership of the Redeveloper or any other act or transaction involving or resulting in a change in the controlling interest in the Redeveloper ("Significant Change") is, for practical purposes, a transfer or disposition of the Project then owned by the Redeveloper, including the right to redevelop the property, and that no voluntary or involuntary successor in interest of the Redeveloper shall acquire any interest in or rights or powers under this Agreement, except as expressly set forth herein. Except for Permitted Transfers, as set forth in Article 5.3, prior to the issuance of a final Certificate of Occupancy for the Project or any part thereof, the Redeveloper shall not, without the prior written consent of the Borough: (a) effect or permit Significant Change in the ownership of the Redeveloper, (b) assign or attempt to assign this Agreement or any rights herein or in the Property, or (c) make any total sale, lease, transfer or conveyance of the whole or any part of its interest in the Project other than leasing the residential and/or commercial units in the ordinary course of business (collectively a "Transfer").

5.3 Permitted Transfers. The Redeveloper may effect the following Transfers, to which the Borough hereby consents upon receipt of notice thereof, without the necessity of further action by the Borough (the "Permitted Transfers"): (a) any mortgage or related security (including conditional assignments to mortgagees or holders of a mortgage interest on the Property required as a condition to the closing of the financing so secured) granted by the Redeveloper to a holder of a mortgage interest for the sole purpose of financing the costs associated with, or incurred in connection with the acquisition, development and construction of the Property and the Project; (b) the encumbrances and restrictions imposed by the Declaration of Covenants and Restrictions, provided that such encumbrances and restrictions shall be in

compliance and consistent with the Redevelopment Plan and this Agreement; (c) utility and other development easements; (d) conveyance of the Property or assignment of this Agreement to a single purpose entity which will assume all of the Redeveloper's rights and obligations under this Agreement ("Transferee Entity"), provided that the Redeveloper retains management control of the Project and management control of the Transferee Entity; and (e) any conveyance to any investor with the Redeveloper retaining a controlling interest in the Project. The Borough recognizes that the Transferee Entity may be comprised of a number of investors as a vehicle to help fund the Project.

5.4 Notice of Permitted Transfers. With respect to any Permitted Transfer, the Redeveloper shall provide to the Borough written notice at least thirty (30) days prior to any such Permitted Transfer, including a description of the nature of such Permitted Transfer, and the name(s) and address(es) of the Transferee Entity and any parties, individuals and/or entities comprising the Transferee Entity.

5.5 Transfers of Interests in Which Control is Transferred. With the express prior written consent of the Borough (which consent shall not unreasonably be withheld, conditioned or delayed, if the Redeveloper complies with the requirements of this Article 5.5 and submits all information set forth herein), the Redeveloper may effect a Transfer of title to all or a portion of the Property and/or the Project to a transferee that has the qualifications and financial responsibility necessary and adequate, as may be reasonably determined by the Borough, to fulfill the obligations to be undertaken in this Agreement by the Redeveloper. As part of the Borough's consideration of any Transfer pursuant to this Article, the proposed transferee must provide the following information and satisfy any other conditions as reasonably determined by the Borough:

- (a) Reasonable evidence that the proposed transferee possesses the qualifications and financial responsibility necessary and adequate to fulfill the obligations undertaken in this Agreement with respect to the Project by the Redeveloper and other obligations pursuant to Governmental Approvals, or any part of such obligations that may pertain to the transferred interest or the transferred portion of the Property and/or Project, as determined from evidence of experience on comparable projects and letters of recommendation from reputable parties for whom the prospective transferee has undertaken a comparable development, stating that the proposed transferee or assignee possesses the competence and integrity to undertake the Project or part thereof.
- (b) Written documentation by the proposed transferee, in form and content reasonably satisfactory to the Borough, for itself and its successors and assigns, and for the benefit of the Borough, by which the proposed transferee (i) expressly assumes all of the obligations of the Redeveloper under this Agreement applicable to the property interest conveyed with such sale, assignment or Transfer and (ii) agrees to be subject to all the conditions and restrictions to which the Redeveloper is subject under this Agreement, including restrictions regarding the right to subsequent Transfers.

- (c) Evidence satisfactory to the Borough that the Redeveloper and its transferees have satisfied any other conditions that the Borough may find necessary in order to achieve and safeguard the purposes of the Redevelopment Plan.

5.6 Transfers Void. Any Transfer of the Redeveloper's interest in violation of this Article 5 shall be an Event of Default of the Redeveloper and shall be null and void ab initio. The Borough shall notify the Redeveloper of such default and provide thirty (30) days in which the Redeveloper shall have an opportunity to cure such default. Any such Event of Default shall entitle the Borough to seek all remedies available under the terms hereof, and those available pursuant to law or equity, including termination of this Agreement. In the absence of Permitted Transfers or specific written consent by the Borough, no such sale, Transfer, conveyance or assignment of the Property or Project, or any part thereof, shall be deemed to relieve the Redeveloper from any obligations under this Agreement.

Article 6 DEFAULT, CURE, REMEDIES AND TERMINATION.

6.1 Events of Default. Occurrence of any one or more of the following events shall constitute an "Event of Default" hereunder, unless such event results from the occurrence of a Force Majeure Event:

- (a) The Redeveloper fails to observe and perform any obligation, covenant, condition or other provision in this Agreement in any material respect, and such failure continues for a period of thirty (30) days after receipt by the Redeveloper of written notice specifying the nature of such failure and requesting that such failure be remedied (the "Default Notice"). However, if the breach of any such covenant, condition or agreement is one that cannot be completely remedied within thirty (30) days after such Default Notice has been given, it shall not be an Event of Default as long as the Redeveloper is proceeding with due diligence to remedy the same and the default is fully remedied not later than one hundred twenty (120) days after mailing of the Default Notice. If the Redeveloper is unable to cure the default within the 120 days after the mailing of the Default Notice, but has commenced to cure such default and diligently proceeds to prosecute such cure to completion, the Borough will not unreasonably withhold its approval of the Redeveloper's request for a further extension.
- (b) The Redeveloper experiences financial events such that any of the following occurs:
 - (i) The Redeveloper applies for or consents to the appointment of a custodian, receiver, trustee or liquidator of all or a substantial part of its assets;
 - (ii) The Redeveloper (a) makes a general assignment for the benefit of creditors, or (b) files a voluntary petition in bankruptcy or a petition or an

answer seeking an arrangement with creditors or takes advantage of any insolvency law;

- (iii) The Redeveloper files an answer admitting the material allegations of a petition in any bankruptcy or insolvency proceeding;
 - (iv) A petition in bankruptcy is filed against the Redeveloper and is not dismissed for a period of sixty (60) consecutive days;
 - (v) An Order for Relief is entered with respect to or for the benefit of the Redeveloper under the Bankruptcy Code;
 - (vi) An order, judgment or decree is entered, with or without the application, approval or consent of the Redeveloper, by any court of competent jurisdiction appointing a receiver, trustee, custodian or liquidator of the Redeveloper or a substantial part of its assets and such order, judgment or decree continues unstayed and in effect for any period of sixty (60) consecutive days; or
 - (vii) The Redeveloper suspends the transaction of its usual business.
 - (viii) A complaint in foreclosure is filed against the Redeveloper or a deed in lieu of foreclosure is granted by Redeveloper for any financing in connection with the Property or the Project.
- (c) The Redeveloper or its successor in interest fails to pay any real estate taxes on the land or assessments on the Property or any part thereof or any payments in lieu thereof when due, or
- (d) The Redeveloper implements a Transfer in violation of this Agreement.

6.2 Borough's Remedies. Upon the occurrence of any Event of Default which default remains uncured after notification as provided for elsewhere in this Agreement, the Borough shall have the right to terminate this Agreement and to pursue any other remedy as may be available to the Borough at law or in equity. If this Agreement is terminated by the Borough, the Borough shall terminate the Redeveloper's designation as the redeveloper of the Property. Notwithstanding the foregoing, the Borough shall not terminate this Agreement without first allowing any party (an address for whom has been given to the Borough by the Redeveloper) providing financing for the Redeveloper or the Project to cure any Event of Default, including having itself or its nominee (subject to the provisions hereof relating to Transfer) assume the Project and this Agreement.

6.3 Redeveloper's Remedies. Upon the occurrence of any Borough default, which default remains uncured after notification as may be provided for elsewhere in this Agreement, the Redeveloper shall have the right to institute whatever action, at law or in equity, it may deem

desirable, to cure and remedy such default, including the seeking of damages and specific performance.

6.4 No Waiver by Delay. The failure of either Party to avail itself of any remedy provided for in this Agreement, or any delay in seeking such remedy, shall not be deemed a waiver of the rights to be enforced thereby or of any right of enforcement that may accrue in the future.

Article 7 FORCE MAJEURE.

7.1 Force Majeure Events. Performance by either Party hereunder shall not be deemed to be in default where delays or failure to perform are the result of any of the following acts, events or conditions or any combination thereof ("Force Majeure Events") that (i) have had or may reasonably be expected to have a direct, material, adverse effect on the rights or obligations of the parties to this Agreement and (ii) are beyond the reasonable control of the Party relying thereon as justification for not performing an obligation or complying with any condition required of such Party under the terms of this Agreement:

- (a) An act of God, lightning, blizzards, earthquake, hurricanes, acts of a public enemy, war, terrorism, blockade, freight embargoes, epidemics, insurrection, economic emergency, riot or civil disturbance, sabotage or similar occurrence, or any event that results in the declaration of a state of emergency by the County, State or Federal government; but not including reasonably anticipated weather conditions for the geographic area of the Project other than those set forth above (such events being required to physically affect a Party's ability to fulfill its obligations hereunder); the consequential effect of such events (e.g., impact on market conditions) shall not be considered a Force Majeure Event.
- (b) A fire, explosion, flood, or similar occurrence not created by an act or omission of the Party relying thereon;
- (c) The order, judgment, action and/or determination of any federal, state or local court, administrative agency or governmental authority with jurisdiction within the Borough, excepting decisions interpreting federal, state and local tax laws generally applicable to all business taxpayers, adversely affecting the Construction of the Project; provided, however, that such order, judgment, action and/or determination shall not be the result of the willful, intentional or negligent action or inaction of the Party relying thereon and that neither the contesting of any such order, judgments, action and/or determination, in good faith, nor the reasonable failure to so contest, shall constitute or be construed as a willful, intentional or negligent action or inaction by such Party;
- (d) The suspension, termination, interruption, denial or failure of or delay in renewal or issuance of any Governmental Approval which is required for

the Project (as evidenced by written notices from the governmental authority having jurisdiction over such matter), or a third party challenge to any Governmental Approval, but (i) any such suspension, termination, interruption, denial or failure of renewal or issuance, or any third party appeal of an approval shall not be the result of the action or inaction of the Party relying thereon and (ii) neither the contesting of any such suspension, termination, interruption, denial or failure of renewal or issuance, in good faith, nor the reasonable failure to so contest, shall constitute or be construed as a willful, intentional or negligent action or inaction by such Party;

- (e) Strikes or similar labor action by equipment manufacturers, suppliers of material and/or transporters of same; or
- (f) Acts or omissions of another Party, except in conformance with this Agreement or, as to the Redeveloper, acts or omissions of the Borough.

Article 8 REPRESENTATIONS AND WARRANTIES.

8.1 Redeveloper's Representations. The Redeveloper represents and warrants the following to the Borough for the purpose of inducing the Borough to enter into this Agreement and to consummate the transactions contemplated hereby, all of which shall be true as of the Effective Date of this Agreement:

- (a) The Redeveloper is a limited liability company organized under the laws of the State of New York, is authorized to do business in and is in good standing under the laws of the State of New Jersey, and has all requisite power and authority to carry on its business as now and whenever conducted, and to enter into and perform its obligations under this Agreement.
- (b) The Redeveloper has the legal power, right and authority to enter into this Agreement and the instruments and documents referenced herein to which the Redeveloper is a party, to consummate the transactions contemplated hereby, to take any steps or actions contemplated hereby, and to perform its obligations hereunder.
- (c) This Agreement has been duly authorized, executed and delivered by the Redeveloper, and is valid and legally binding upon the Redeveloper and enforceable in accordance with its terms. The execution and delivery of this Agreement shall not constitute a default under or violate the terms of any indenture, agreement or other instrument to which the Redeveloper is a party.
- (d) The Redeveloper has not been declared ineligible from doing business with any state or the federal government.

- (e) There is no pending, or to the best of the Redeveloper's knowledge, threatened litigation which would prevent the Redeveloper from performing its duties and obligations hereunder or have a material adverse effect on its financial condition.
- (f) No receiver, liquidator, custodian or trustee of the Redeveloper has been appointed as of the Effective Date, and no petition to organize the Redeveloper pursuant to the United States Bankruptcy Code or any similar statute that is applicable to the Redeveloper has been filed as of the date of this Agreement.
- (g) No adjudication of bankruptcy of the Redeveloper or a filing for voluntary bankruptcy by the Redeveloper under the provisions of the United States Bankruptcy Code or any other similar statute that is applicable to the Redeveloper has been filed.
- (h) All materials and documentation submitted by the Redeveloper and its agents to the Borough and its agents were, at the time of such submission, and as of the date of this Agreement unless subsequently modified, materially accurate, and the Redeveloper shall continue to inform the Borough of any material and adverse changes in the documentation submitted. The Redeveloper acknowledges that the facts and representations contained in the submitted information are a material factor in the Borough's decision to enter into this Agreement.
- (i) The Redeveloper is capable of developing, designing, financing and constructing the Project.

8.2 Delivery of Documents by Redeveloper. Simultaneously with the execution of this Agreement, the Redeveloper shall deliver to the Borough copies of the Redeveloper's Certificate of Formation and Certificate of Good Standing. The Borough hereby acknowledges the receipt of these documents.

8.3 Borough's Representations. The Borough represents and warrants the following to the Redeveloper for the purpose of inducing the Redeveloper to enter into this Agreement and to consummate the transactions contemplated hereby, all of which shall be true as of the Effective Date of this Agreement:

- (a) The Borough is a municipal entity authorized to exercise certain powers pursuant to the Redevelopment Law. The Borough, through its Borough Council, has reserved to itself the power to act as the redevelopment entity pursuant to the Redevelopment Law.
- (b) The Borough has the legal power, right and authority to enter into this Agreement and the instruments and documents referenced herein to which the Borough is a party, to consummate the transactions contemplated hereby, and to perform its obligations hereunder.

- (c) This Agreement is duly executed by the Borough and is valid and legally binding upon the Borough and enforceable in accordance with its terms on the basis of laws presently in effect and the execution and delivery thereof shall not, with due notice or the passage of time, constitute a default under or violate the terms of any indenture, agreement or other instrument to which the Borough is a party.
- (d) There is no pending, or to the best of the Borough's knowledge, threatened litigation which would prevent the Borough from performing its duties and obligations hereunder.
- (e) Any prior designations of developer, redeveloper or likewise are of no further force and effect and no other person or entity, other than the Redeveloper, has any development or redevelopment rights to the Property.

Article 9 NOTICE.

9.1 A notice, demand or other communication under this Agreement by any Party to the other shall be sufficiently given or delivered if e-mailed or sent by facsimile, followed by United States Registered or Certified Mail, postage prepaid and return receipt requested, or delivered by overnight courier or delivered personally (and receipt acknowledged) to the parties at their respective addresses set forth herein, or at such other address or addresses with respect to the parties or their counsel as any Party may, from time to time, designate in writing and forward to the others as provided in this Article 9.

If to the Borough:

Borough of Clayton
Clayton Municipal Building
125 North Delsea Drive
Clayton, New Jersey 08312
Telephone: (856) 881-2882

With a Copy to:

M. James Maley Jr. Esq.
Maley & Associates, PC
931 Haddon Avenue
Collingswood, NJ 08108-2111
Telephone: (856) 854-1515
Facsimile: (856) 858-2944

If to the Redeveloper:

Conifer Realty LLC
20000 Horizon Way, Suite 180
Mt. Laurel, NJ 08054
Telephone: (856) 793-2083
Facsimile: (856) 793-2007

With a Copy to:

Conifer Realty, LLC
1000 University Avenue, Suite 500
Rochester, NY 14607
Attn: Susan Jennings, Esq.
Telephone: (585) 324-0526
Facsimile: (585) 324-0555

and:

Kevin D. Sheehan, Esq.
Parker McCay P.A.
9000 Midlantic Drive, Suite 300
P.O. Box 5054
Mount Laurel, NJ 08054
Telephone: (856)596-8900
Facsimile: (856)596-9631

Article 10 MISCELLANEOUS.

10.1 Title of Articles. The titles of the several Articles of this Agreement, as set forth at the heads of said Articles, are inserted for convenience of reference only and shall be disregarded in construing or interpreting this Agreement.

10.2 Severability. The invalidity of any Article, clause or provision of this Agreement shall not affect the validity of the remaining Articles, clauses or provisions hereof.

10.3 Successors Bound. All agreements and covenants required under this Agreement shall be binding on the Redeveloper itself, each owner and successor in interest to the Property, or any part thereof, and each party in possession or occupancy, respectively, only for such period as the Redeveloper or such successor or party shall have title to, or an interest in, or possession or occupancy of the Property, the buildings and structures thereon or any phase or part thereof. Additionally, this Agreement shall be binding upon the Borough's successors in interest.

10.4 Waiver. No waiver made by a party with respect to the performance (including the manner or time of performance) of any obligation of any other party, or with respect to the satisfaction of any condition to the waiving party's own obligations under this Agreement, shall be considered a waiver of any rights of the party making the waiver, except with respect to those rights expressly waived in writing. Moreover, no such waiver shall constitute a waiver with respect to any other rights of the waiving party or any other obligations of any other party.

10.5 Cooperation and Compliance. The parties agree to cooperate with each other and to provide all necessary and reasonable documentation, certificates, and consents in order to satisfy the terms and conditions hereof and the terms and conditions of this Agreement. The reasonable cost of any such action shall be borne by the Redeveloper.

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

10.7 Counterparts. This Agreement may be executed in counterparts. All such counterparts shall be deemed to be originals and together shall constitute but one and the same instrument.

10.8 Entire Agreement. This Agreement constitutes the entire agreement between the parties hereto as to the subject matter hereof and supersedes all prior oral and written agreements between the parties, except as otherwise provided herein.

Article 11 INTERPRETATION AND CONSTRUCTION.

11.1 All statements in the Recitals are hereby repeated in their entirety as if set forth at length herein.

11.2 In this Agreement, unless the context otherwise requires:

- (a) Gender-specific words mean and include every other gender and words that are singular in number mean and include the plural number and vice versa.
- (b) Words connoting persons mean and include firms, associations, partnerships (including limited partnerships), trusts, corporations, limited liability companies and other legal entities, including public or governmental bodies, as well as natural persons.
- (c) Any headings preceding the texts of the several Articles of this Agreement, and any table of contents or marginal notes appended to copies hereof, shall be solely for convenience of reference and shall not constitute a part of this Agreement, nor shall they affect its meaning, construction or effect.
- (d) Unless otherwise indicated, all approvals, consents and acceptances required to be given or made by any Person or Party hereunder shall not be unreasonably withheld, conditioned, or delayed.

- (e) All notices to be given hereunder and responses thereto shall be given, unless a certain number of days is specified, within a reasonable time.

Article 12 EXHIBITS.

12.1 Any and all Exhibits annexed to this Agreement are hereby made a part of this Agreement by this reference thereto. The following exhibits are attached to this Agreement:


Exhibit A: Conceptual Site Plan
Exhibit B: Ownership Structure of Redeveloper

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first written above.

BOROUGH:

ATTEST:

THE BOROUGH OF CLAYTON



Christine Newcomb, Municipal Clerk

By: 

Thomas Bianco, Mayor

REDEVELOPER:

WITNESS:

CONIFER REALTY, LLC

Name:

Title:

By: _____

Name:

Title: