

RESOLUTION NO. 116-2019

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE TOWNSHIP OF EAST HANOVER, IN THE COUNTY OF MORRIS, STATE OF NEW JERSEY AUTHORIZING THE SETTLEMENT AGREEMENT BETWEEN THE TOWNSHIP OF EAST HANOVER AND KRE ACQUISITION CORP.

WHEREAS, the Township of East Hanover ("Township") and KRE Acquisition Corp. ("KRE") have reached a settlement to resolve the pending litigation, a copy of the Settlement Agreement is incorporated herein as if set forth at length; and

WHEREAS, the Township of East Hanover Mayor and Council reviewed the proposed Settlement Agreement, find the settlement to be in the best interest of the Township of East Hanover, and recommend that same be accepted and executed; and

WHEREAS, the Settlement Agreement is subject to approval by Judge Michael C. Gaus, J.S.C. at the duly noticed "fairness hearing" scheduled for August 22, 2019; and

WHEREAS, the Township wishes its Affordable Housing Counsel and Township Attorney to seek approval of the Settlement Agreement at the duly noticed "fairness hearing."

NOW, THEREFORE, BE IT RESOLVED, by the Township of East Hanover Mayor and Council that the settlement is approved and authorized; and the Mayor, the Township Administrator, Township Attorney or the Special Affordable Housing Counsel are authorized to execute any agreements, releases or documents to be filed with the court and to take all actions reasonable and necessary to secure approval of the Settlement Agreement from the court at the duly noticed "fairness hearing."

I, Paula A. Massaro, Township Clerk of the Township of East Hanover, County of Morris, hereby certify the foregoing to be a true copy of a Resolution adopted by the Township Council at a duly convened meeting held on July 18, 2019.


Paula A. Massaro, RMC, Township Clerk

Councilman DeMaio
Councilman Martorelli
Councilwoman Jandoli
Council President Brokaw
Mayor Pannullo

YES	NO	ABSTAIN	ABSENT
X			
X			
X			
X			
X			

SETTLEMENT AGREEMENT

This Settlement Agreement (the “Agreement”) is made by, between, and among the Township of East Hanover (the “Township”), and KRE Acquisition Corp. (“KRE” or “Developer”) on the other hand (hereinafter, the Township and KRE shall sometimes collectively be referred to as the Parties”).

RECITALS

WHEREAS, the Township a municipal corporation of the State of New Jersey, County of Morris, having an address at 411 Ridgedale Avenue, East Hanover, New Jersey; and

WHEREAS, KRE is a New Jersey corporation, having an address of 520 US Hwy 22, PO Box 6872, Bridgewater, New Jersey 08807; and

WHEREAS, in compliance with the New Jersey Supreme Court’s decision in In re Adoption of N.J.A.C. 5:96 and 5:97 by N.J. Council on Affordable Housing, 221 N.J. 1 (2015), on or about July 2, 2015, the Township filed a Declaratory Judgment Action with the Superior Court of New Jersey (the “Court”), entitled In the Matter of the Application of the Township of East Hanover, County of Morris, Docket No. MRS-1658-15, seeking a Judgment of Compliance and Repose approving its Housing Element and Fair Share Plan (as defined herein), in addition to related reliefs (the “Compliance Action”); and

WHEREAS, KRE filed a motion to intervene in the Compliance Action, and KRE was granted leave to intervene by Order dated, April 13, 2018 (“KRE Intervention”); and

WHEREAS, KRE is the contract purchaser of property within the Township, which property comprises approximately 75 acres and is designated on the tax map of the Township as Block 42, Lots 37, 38, and 41 (hereinafter the “Property”); and

WHEREAS, the Township intends to prepare a Housing Element and Fair Share Plan

(hereinafter “Affordable Housing Plan”), that will be adopted by the Land Use Planning Board, endorsed by the Township Council, and submitted to the Court for review and approval; and

WHEREAS, the Affordable Housing Plan will include the Property as an inclusionary development at a density of 548 units, including a minimum of 50 rental units and 96 total units as affordable units (the “Inclusionary Development”); and

WHEREAS, the Township will seek the Court’s approval of the Affordable Housing Plan in connection with the Compliance Action, and KRE will support the Township’s application for approval of that plan; provided, however, regardless of whether the Court approves or disapproves the Affordable Housing Plan, the Parties agree to be bound by this Agreement; and

WHEREAS, KRE intends to develop the Property as an Inclusionary Development of 548 residential units including affordable units; and

WHEREAS, to ensure that the Inclusionary Development generates affordable housing credits to be applied to the Township’s Round 3 affordable housing obligations, the Affordable Units within the Inclusionary Development shall be developed in accordance with COAH prior round regulations, the Uniform Housing Affordability Controls, N.J.A.C. 5:80-26.1 et seq. (“UHAC”), and all other applicable law, including a requirement that 13% of all Affordable Units are available to very-low-income households as defined by the Fair Housing Act (“FHA”), and said Inclusionary Development shall be deed restricted for a period of at least 30 years (the “Affordable Units”); and

WHEREAS, the Parties wish to enter into this Agreement, setting forth the terms, conditions, responsibilities and obligations of the Parties, and seek the Court’s approval of this Agreement; and

NOW, THEREFORE, in consideration of the promises, the mutual obligations contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each of the Parties, the Parties hereto, each binding itself, its successors and assigns, do hereby covenant and agree, each with the other, as follows:

I. TERMS AND CONDITIONS.

A. The purpose of this Agreement is to settle the KRE Intervention and to create a realistic opportunity for the construction of the Inclusionary Development, and to generate affordable housing credits for the Township to apply to any Round 3 affordable housing obligation assigned to it. The Inclusionary Development shall be developed in a manner generally consistent with the concept plan attached hereto and made a part hereof as **Exhibit A** and the proposed rezoning ordinance, attached hereto made part hereof as **Exhibit B**. The aforesaid exhibits have each been reviewed and approved by the Township and the Township's professionals and it being understood by the parties that the Concept Plan has not been engineered and may ultimately be refined and reasonably modified during the engineering process.

B. This Agreement is subject to judicial approval by way of a "Fairness Hearing." The Township is responsible for the preparation and cost of the notice of the Fairness Hearing. The Parties shall work together to ensure that the Court approves the Agreement at the Fairness Hearing.

C. In the event of any legal challenges to the Court's approval of this Agreement, Required Approvals, as hereinafter defined, or the Township's Round 3 Housing Element and Fair Share Plan ("HEFSP"), including a challenge by any third party, the Parties shall diligently defend any such challenge and shall cooperate with each other regarding said defense. In

addition, if any such challenge results in a modification of this Agreement or of the Inclusionary Development, the Parties shall negotiate in good faith a mutually acceptable amended Agreement that would pass judicial scrutiny, provided that no such modification shall include an increase or decrease in density from the original 548 units agreed upon herein, unless agreed upon by KRE and the Township.

D. This Agreement does not purport to resolve all of the issues before the Court, not involving the KRE Intervention, that have been raised in the Compliance Action. In the event the Court approves this Agreement but the Township is unable to reach a settlement with Fair Share Housing Center (“FSHC”) or any other person or entity, the Township shall still be obligated to comply with the obligations of this Agreement, including but not limited to the adoption of a rezoning ordinance to permit the Inclusionary Development and the duty to defend this Agreement. Notwithstanding the foregoing, the Township represents that it has entered into a settlement agreement with FSHC on June 3, 2019.

II. KRE’S OBLIGATIONS. KRE shall have an obligation to deed-restrict 96 total units as Affordable Units in the Inclusionary Development as Affordable Units, of which at least 50 shall be rental units in accordance with the percentages required by UHAC, any applicable order of the Court, and other applicable laws. Nothing contained in the deed restriction of this Agreement shall restrict KRE from renting any or all of the Affordable Units.

A. The Affordable Units shall remain Affordable Units for a period of at least thirty (30) years from the date of the initial transfer of title to the Affordable Unit owner or the initial occupancy for a rental Affordable Unit (“Deed Restriction Period”), so that the Township may count the units against its obligations to provide affordable housing. This obligation includes, but is not limited to, the Developer’s obligation to comply with UHAC regulations, the Fair

Housing Act, COAH regulations and other applicable law, including, but not limited to (i) complying with the bedroom distribution requirements for the Affordable Units, (ii) the split of very low-income units (as defined by the Fair Housing Act) (at least 13%), low-income units (at least 50% inclusive of the very-low income units) and moderate-income units (not more than 50%), (iii) the phasing of the market units with the Affordable Units in accordance with all applicable regulations; (iv) appropriately marketing the Affordable Units; (v) pricing requirements; (vi) candidate qualification requirements; and (vii) deed restriction requirements. For purposes of this subparagraph, the Parties assume current UHAC regulations and COAH round two regulations (N.J.A.C. 5:93-1, et seq.) shall control. However, if COAH promulgates new applicable and lawful regulations prior to Developer securing preliminary site plan approval that impose different requirements to render the units creditworthy, then Developer shall comply with the new regulations. The immediately preceding sentence shall not be construed to increase the number of Affordable Units required for the Project. The Parties acknowledge that very low income shall be defined pursuant to the Fair Housing Act as households earning no more than 30% of the region's median income.

B. At least 34 Affordable Units shall be included within the 239 multifamily apartment portion of the Project and shall be integrated throughout the apartment development in accordance with UHAC regulations. Of the remaining 62 required Affordable Units in the townhome portion of the Project, at least 16 must be available as rental units (the "16-additional affordable housing rental units"). KRE may at its own discretion contract with a third party entity to manage the 16 additional affordable housing rental units. Upon its determination to do so, KRE shall provide notice to the Township and FSHC of its intention to enter into such a contract and the Township and FSHC shall be entitled to review the agreement to ensure compliance with

all affordable housing regulations and the Township's affordable housing plan. Whether or not KRE contracts with a Third Party to operate the 16-additional affordable housing rental units shall not affect KRE's requirement to comply with the requirements set forth in Section II-A hereinabove. All 62 Affordable Units, whether rental or for-sale shall be part of any homeowner's association or condominium association established. Any fees established for the Affordable Units pursuant to the homeowner's association declaration or master deed shall be set according to the regulations of COAH and/or UHAC. Consistent with COAH regulations the affordable housing units shall have access to all community amenities available to market rate units.

C. The distribution of the Affordable Units shall be in compliance with COAH's Round Two substantive regulations, N.J.A.C. 5:93.

D. Developer, its successors and/or assigns, shall contract with or employ not more than two (2) experienced administrative agents ("Administrative Agents"), subject to Township's approval, for the administration of the Affordable Units and shall have the obligation to pay all costs associated with properly deed restricting the Affordable Units in accordance with UHAC and other applicable laws for the Deed-Restriction Period (as defined in paragraph in II.A above). Developer and its Administrative Agents, shall work with the Township and the Township's administrative agent or other Township monitoring entities regarding any affordable housing monitoring requirements imposed by COAH or the Court.

E. Upon written notice, Developer, its successors and/or assigns, shall provide detailed information requested by the Township within 10 business days, concerning Developer's compliance with UHAC and other applicable laws.

F. The Parties agree that the Affordable Units are to be included in the Affordable Housing Plan to be approved and credited by the Court in the Compliance Action, and will be counted toward the Township's Prior Round and/or Round 3 affordable housing obligation.

G. Obligation Not To Oppose Township's Application for Approval of its Affordable Housing Plan: KRE shall not directly or indirectly oppose or undertake any action to interfere with the Court's approval and/or implementation of the Affordable Housing Plan, as it may be amended in any form, unless the Affordable Housing Plan impairs or deprives any of KRE's rights as agreed to hereunder or unless any other defendants or interested parties undertake any action to obstruct, impede, challenge the Property's inclusion as part of the Township's Affordable Housing Plan, or challenge in any manner the rezoning of the Property or otherwise oppose, challenge, or appeal any Required Approvals needed to develop the Inclusionary Development on the Property.

H. At or before the time of closing of title to the Property, KRE shall enter into an agreement with Mondelez regarding covenants and restrictions, which shall include a) restrictions (with reasonable exceptions for emergency access) precluding Mondelez employees (other than Mondelez employees who are residents of the Property) from utilizing streets within the Property other than main entries and the "Ring Road" as shown on Exhibit A; and b) to the extent applicable to Mondelez, shall require Mondelez to adhere to the Rezoning Ordinance with respect to roads and signage located on the Property. In addition, the Township shall be afforded the opportunity to review the aforementioned agreement between KRE and Mondelez related to the conditions specified in this Section H prior to its execution. The Township shall also be afforded the opportunity to review the master deed or homeowners' association documentation for the townhouse portion of the Property prior to its recordation.

I. Obligation to Reimburse Township for Fees Required to be Paid to FSHC.

The Township has entered into a settlement agreement with FSHC, which calls for the payment of \$35,000 in attorney fees, but which provides that Intervenors may be responsible for those fees by way of separate agreement; KRE agrees to pay to FSHC the sum of \$35,000, representing attorneys' fees and costs incurred by FSHC in this matter. However, KRE shall not be obligated to make such payment until all obligations enumerated in Sections III and IV of this Agreement are satisfied, including the expiration of all applicable appeal periods and all building permits have been issued by the Township. Upon the satisfaction of the aforementioned conditions, within thirty (30) days following such satisfaction, KRE shall pay to FSHC the sum of \$35,000.

J. Contribution.

KRE agrees to make a contribution in the sum of \$500,000.00 made payable to the Township for improvements to _____ (the "Field"). The contribution shall be made in two (2) installments of \$250,000.00. The first installment of \$250,000.00 shall be due thirty (30) days after all obligations enumerated in Sections III and IV of this Agreement are satisfied, including the expiration of all applicable appeal periods and all building permits have been issued by the Township. The second installment of \$250,000.00 shall be due thirty days after the issuance of final certificates of occupancy for all apartments located in the apartment portion of the project. The Township shall be obligated to use the funds paid by KRE pursuant to this Section exclusively for improvements to the Field. Further, KRE shall not be obligated to provide a bond for these funds or the improvement of the Field.

III. THE TOWNSHIP'S OBLIGATIONS.

A. **The Rezoning Ordinance:** Within forty-five (45) days of the execution of this Agreement, the Township shall introduce an ordinance (hereinafter the "Rezoning Ordinance," which is attached hereto as **Exhibit B**) which allows for the development of the Property and the construction of 548 total units, of which 96 total units shall be Affordable Units and at least 50 of the affordable units shall be rental units. Simultaneously with the introduction of the Rezoning Ordinance, the Township shall refer the Rezoning Ordinance to the Land Use Planning Board for review and recommendation, which shall occur at the Land Use Planning Board's next regularly scheduled meeting. At the next regularly scheduled Township Council meeting after a recommendation has been made to the Township by the Land Use Planning Board regarding the Rezoning Ordinance, or after the expiration of the thirty-five (35) day referral period, whichever is earlier, the Township will vote on the approval of the Rezoning Ordinance. The Land Use Planning Board intends to hold a hearing and approve an amendment to the master plan, as defined in **Section IV-A** below, at the same time that it makes its recommendation to the Township Council regarding the Rezoning Ordinance. However, in the event that the Land Use Planning Board fails to adopt the Master Plan Amendment the Township will still vote on the Rezoning Ordinance and will put its reasoning for its decision on the record. In the event that the Township votes to reject or disapprove the Rezoning Ordinance, the parties shall be returned to *status quo ante* (prior to the execution of the Settlement Agreement) and KRE may apply to the Court for further relief and resume its role as Intervenor in the Township's Compliance Action.

B. **Utilities:** KRE will be required to coordinate with the East Hanover Township Municipal Utilities Authority ("MUA") to obtain approvals for sanitary sewer and water capacity and connections. The Township shall notify KRE of any requests for reservations of capacity by

any other property owners or developers, if it learns of any such requests from the MUA, and shall give KRE thirty (30) days' written notice prior to the MUA entering into any agreement to reserve water and/or sewer capacity. While the Township agrees that KRE and other affordable housing developers in the Township have priority over any non-inclusionary residential development and all non-residential developments regarding sewer and water capacity, it is the MUA that ultimately controls sanitary sewer and water capacity in the Township. KRE shall be responsible for off-site improvements required by the provisions of the Rezoning Ordinance if applicable. The Township shall waive all utility connection fees with respect to the 96 affordable housing units only including, but not limited to sewer and water connection fees. With respect to utility connection fees for market rate units on the Property, in the event KRE is required to make off-site improvements for utilities, all such expenditures shall be credited against KRE's obligation for connection fees on a dollar for dollar basis.

C. Matters Pertaining to Mondelez: The Township acknowledges that in order for KRE to construct the Inclusionary Development, the existing structure and associated parking lot on the Property must be demolished and a site plan amendment with respect to Mondelez parking shall be agreed to as set forth in the Mondelez Agreement (as defined herein) referenced below in this Section III-C with respect to the Mondelez Tract as hereafter defined. With respect to Block 42, Lot 37.02, (hereinafter the "Mondelez Tract") the Township, the Land Use Board, KRE, and Mondelez shall enter into an agreement (the "Mondelez Agreement," which will be voted upon after the execution of this Agreement and which will thereafter be attached hereto as **Exhibit C**) to allow for the demolition of the existing building on the Property and for a site plan amendment with respect to parking for the Mondelez Tract. The Township covenants to comply with the terms and conditions of the Mondelez Agreement.

D. Obligation to Cooperate: KRE and Mondelez will be required to obtain any and all necessary and applicable agreements, approvals, and permits from all relevant governmental entities and utilities having jurisdiction; such as, by way of example only, the Township, the Land Use Planning Board, the County of Morris, the Morris County Planning Board, the New Jersey Department of Environmental Protection, the New Jersey Department of Transportation, including the Township's ordinance requirements as to site plan and subdivision (the "Required Approvals"), The Township agrees to use all reasonable efforts to assist and cooperate with KRE and Mondelez in its undertakings to obtain the Required Approvals and not directly or indirectly impede or frustrate the approval process. The Court retains jurisdiction to promptly mediate and/or adjudicate any disputes related to this Agreement or the Required Approvals. The Township agrees to expedite and assist KRE and Mondelez in their undertakings to obtain the Required Approvals and serve as the applicant of record for any governmental permits requiring the Township to be the applicant. The Township's duty to expedite and assist KRE and Mondelez shall also include an affirmative obligation to grant or issue any and all necessary Required Approvals and permits in connection with the foregoing. KRE, in its sole and absolute discretion, shall determine the timing and sequence of such development/permit applications, and they may be submitted simultaneously. In addition, given the unique characteristics of the Property and certain site conditions that may impact KRE's development of the Inclusionary Development, and in furtherance of sound planning principles, the Township shall also have an affirmative obligation to consider reasonable adjustments of any lot lines, reasonable minor subdivisions, or reasonable minor consolidations of lots necessary to enable KRE to implement the Inclusionary Development.

E. Obligation to Refrain From Imposing Affordable Housing Fees: With the understanding that the Land Use Planning Board is not a party to this Agreement, the Land Use Planning Board recognizes that this Agreement, and, as applicable, the Rezoning Ordinance all contemplate the development of an “inclusionary development” within the meaning of the Mount Laurel doctrine, and KRE shall be entitled to any benefits, protections, and obligations afforded to developers of inclusionary developments. Therefore, KRE shall not be required to pay any affordable housing fees.

F. Obligation to Refrain from Zoning Amendments That Would Frustrate the Development of the Inclusionary Development: Unless mutually agreed to by the Parties, the Township shall take no action to alter or amend current zoning ordinances that would negatively affect or impact KRE’s ability to develop the Property consistent with the concept plan and Rezoning Ordinance attached as **Exhibits A and B** to this Agreement.

IV. THE LAND USE BOARD’S OBLIGATIONS.

A. Obligation to Rezone the Property and Amend the Master Plan: Notwithstanding any other provision of Article IV, the Parties understand that the Land Use Planning Board is not a party to this Agreement, but the Parties anticipate that the Land Use Planning Board will honor the provisions set forth herein. After the introduction of the Rezoning Ordinance and the referral from the Township to the Land Use Planning Board referenced in **Section III-A**, at the next regularly scheduled Land Use Planning Board meeting, the Land Use Planning Board shall make its recommendation to the Township. In addition, the Land Use Planning Board shall authorize a date for the holding of a public hearing on the adoption of an amendment to the master plan (hereinafter, the “Master Plan Amendment”. Such hearing and adoption of the Master Plan Amendment shall occur on the same date that the Land Use Planning

Board shall make its recommendation to the Township with regard to the Rezoning Ordinance as set forth in this **Section IV-A**.

B. Obligation to Process Development Applications with Reasonable Diligence:

With the understanding that the Land Use Planning Board is not a party to this Agreement, the Land Use Planning Board shall expedite the processing of the development applications arising out of the execution of this Agreement within the time limits imposed by the Municipal Land Use Law (“MLUL”). In accordance with N.J.A.C. 5:93-10(a)&(b), the Land Use Planning Board shall consider all reasonable waivers and/or variances that are necessary to develop the Property as contemplated by this Agreement. The Land Use Planning Board shall also refrain from imposing cost-generative features and shall expedite Required Approvals over which the Land Use Planning Board has jurisdiction, as contemplated in a manner consistent with COAH’s Round 2 regulations. The Township recognizes that this Agreement, and, as applicable, the Rezoning Ordinance all contemplate the development of an “inclusionary development” within the meaning of the Mount Laurel doctrine, and KRE shall be entitled to any benefits, protections, and obligations afforded to developers of inclusionary developments. In the event of any appeal of the Court approval of this Agreement, or, as applicable, the Rezoning Ordinance, the Land Use Planning Board, nonetheless, shall process and take action on any development application by KRE for the Property, which decision may be conditioned upon the outcome of any pending appeal.

C. The adoption of the Rezoning Ordinance shall not await the adoption of the Affordable Housing Plan. The adoption of the Affordable Housing Plan shall not be a prerequisite to the adoption of the Rezoning Ordinance.

V. DEFAULT.

A. Default with Respect to the Township: Default with respect to the Township shall be defined as the Township's and/or any applicable board's failure to vote "Yes" on KRE's applications for development or granting KRE's or Mondelez's applications with any conditions that KRE, in its sole discretion, finds unfavorable. The Township shall be considered in Default of this Agreement if, after written Notice of Default delivered to counsel for the Township, the Township has not cured any default within ten (10) business days or at the next regularly scheduled meeting of the Governing Body or the Land Use Planning Board, whichever is later. In the event the Township is in default, KRE may apply to the Honorable Michael Gaus of the Superior Court of New Jersey, Sussex Vicinage or such other judge of the Superior Court of New Jersey as may be assigned to handle Mt. Laurel matters for the Morris Vicinage, for an Order directing the Township to take whatever action is necessary to comply with the terms of the Agreement or allowing KRE to resume its role as Intervenor in the Township's Compliance Action.

B. Default with Respect to KRE: If KRE should default on any of the agreed upon terms and conditions of this Agreement, the Township will have the right to apply to the Court to enforce whichever term or condition has been violated. KRE shall be considered in default of this Agreement if, after written notice of default has been delivered to counsel for KRE by the Township, and KRE has not cured any default within ten (10) business days.

VI. RELEASES.

A. The Township's Release to KRE: The Township hereby fully and forever releases and discharges KRE and their respective past, present, and future directors, officers, members, shareholders, employees, agents, partners, representatives, attorneys, parent and affiliated corporations, subsidiaries, divisions, joint venturers, predecessors, successors,

beneficiaries, and assigns, from any and all claims asserted including that in the Compliance Action, including, but not limited to violations of substantive and procedural due process and civil rights violations of any nature whatsoever, whether known or unknown, suspected or unsuspected based on any legal or equitable theory of recovery, in any way arising out of, growing out of, or resulting from the Compliance Action from the beginning of time until the effective date of this Agreement.

B. KRE's Release to the Township: Once the operative terms of this Agreement have been completed and with respect to the property, the Township has granted all Required Approvals, building and other permits, certificates (including all permanent certificates of occupancy), and has cooperated fully in the pursuit of any other Required Approvals requiring the Township to be the applicant or requiring the Township's consent as may be necessary to complete the Inclusionary Development , and after all rights of appeals from any and all Required Approvals have expired without an appeal having been taken, or if an appeal has been taken, any and all appeals have been resolved finally to the satisfaction of KRE, KRE hereby fully and forever releases and discharges the Township and their respective past, present, and future council members, land use board members, and any and all other elected officials from any and all claims asserted and that could have been asserted, including, but not limited to violations of any municipal ordinances, whether known or unknown, suspected or unsuspected based on any legal or equitable theory of recovery, in any way arising out of, growing out of, or resulting from the Compliance Action from beginning of time until the effective date of this Agreement.

C. Releases Do Not Extend to Obligations Under This Agreement: The releases set forth above in **Sections VI-A** and **VI-B** are not intended to, and shall not, extend to or

otherwise release or discharge any rights, privileges, benefits, duties, or obligations of any of the Parties by reason of, or otherwise arising under this Agreement.

VII. MUTUAL OBLIGATIONS

A. Obligation To Comply with State Regulations: The Parties shall comply with any and all Federal, State, County and local laws, rules, regulations, statutes, ordinances, permits, resolutions, judgments, orders, decrees, directives, interpretations, standards, licenses, approvals, and similarly binding authority, applicable to the Inclusionary Development or the performance by the Parties of their respective obligations or the exercise by the Parties of their respective rights in connection with this Agreement.

B. Mutual Good Faith, Cooperation and Assistance. The Parties shall exercise good faith, cooperate, and assist each other in fulfilling the intent and purpose of this Agreement, including, but not limited to, the approval of this Agreement by the Court, the Required Approvals, the development of the Property consistent with the terms hereof, and the defense of any challenge with regard to any of the foregoing.

C. Costs of Defense of Agreement. Each Party exclusively shall be responsible for all costs which they may incur in obtaining Court approval of this Agreement and any appeal therefrom, or from obtaining any Required Approvals or the approval of the Affordable Housing Plan or any part thereof. The Parties shall diligently defend any such challenge.

VIII. AFFORDABLE HOUSING CREDITS

A. Upon written notice from the Township, Developer shall supply the Township and the Township's administrative agent, with all documents, within 10 business days, within its possession that may be reasonably necessary to demonstrate the qualification of the Affordable Units as Affordable Units.

IX. COOPERATION AND COMPLIANCE

A. Implementation And Enforcement Of Agreement The Parties agree to cooperate with each other, provide all reasonable and necessary documentation, and take all necessary actions to satisfy the terms and conditions hereof and assure compliance with the terms of this Agreement. The Township’s obligation to cooperate with KRE with regard to any approvals or permits for the implementation of the Inclusionary Development shall be further conditioned upon the Property being current with its real estate taxes pursuant to the Municipal Land Use Law, subject to any Exemption for the Inclusionary Development.

X. NOTICES.

A. Notices: Any notice or transmittal of any document required, permitted or appropriate hereunder and/or any transmittal between the Parties relating to the Property (herein “Notices”) shall be written and shall be served upon the respective Parties by facsimile or by certified mail, return receipt requested, or recognized overnight or personal carrier such as, for example, Federal Express, with certified proof of receipt, and, where feasible (for example, any transmittal of less than fifty (50) pages), and in addition thereto, a facsimile delivery shall be provided. All Notices shall be deemed received upon the date of delivery set forth in such certified proof, and all times for performance based upon notice shall be from the date set forth therein. Delivery shall be affected as follows, subject to change as to the person(s) to be notified and/or their respective addresses upon ten (10) days’ notice as provided herein:

TO KRE:

KRE Acquisition Corp.
Attention: David B. Kahan, Esq.
520 US Highway 22 East
PO Box 6872
Bridgewater, New Jersey 08807
Fax: (908)-575-2237

WITH COPIES TO:

O’Toole Scrivo Fernandez Weiner Van Lieu LLC

Attention: Thomas P. Scrivo, Esq.
14 Village Park Road
Cedar Grove, New Jersey 07009
Fax: (973) 239-3400

TO THE TOWNSHIP OF EAST HANOVER:

Township of East Hanover
Attention: Joseph Tempesta, Township Business Administrator
411 Ridgedale Avenue
East Hanover, New Jersey 07936
Fax:

WITH COPIES TO:

Jeffrey R. Surenian and Associates, LLC
Attention: Michael J. Edwards, Esq.
707 Union Avenue, Suite 301
Brielle, New Jersey 08730
Fax: (732) 612-3101

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

XI. MISCELLANEOUS PROVISIONS.

A. Amendments: Neither this Agreement nor any term set forth herein may be changed, waived, discharged, or terminated except by a writing signed by the Parties.

B. Agreement Voluntarily Entered Into By Each of The Parties: This Agreement is executed voluntarily by each of the Parties without any duress or undue influence on the part, or on behalf, of any of them. The Parties represent and warrant to each other that they have read and fully understand each of the provisions of this Agreement and have relied on the advice and representations of competent legal counsel of their own respective choosing.

C. Interpretation: This Agreement has been reviewed by experienced and knowledgeable legal counsel for each of the Parties. Accordingly, none of the Parties shall be

presumptively entitled to have any provisions of the Agreement construed against any of the other Parties in accordance with any rule of law, legal decision, or doctrine.

D. No Admission of Liability/No Precedential Value: The Parties agree that this Agreement is the result of a compromise of disputed issues, that the execution and delivery of this Agreement by any of the Parties shall not constitute or be construed as an admission of any liability, a course of performance, or wrongdoing on the part of any of them and that the settlement reflected in this Agreement shall be without precedential value. Nothing in this release shall be construed to represent an admission of wrong doing or a breach of contract.

E. Attorneys' Fees, Costs, and Expenses: Subject to the terms and conditions of Paragraph N, each of the Parties shall bear its own costs, attorneys' fees, and expenses in connection with the negotiations for and preparation of this Agreement, as well as costs involving Court approval of same.

F. Entire and Integrated Agreement: This Agreement is intended by the Parties as a final expression of their agreement and is intended to be a complete and exclusive statement of the agreement and understanding of the Parties with respect to the subject matters contained herein. This Agreement supersedes any and all prior promises, representations, warranties, agreements, understanding, and undertakings between or among the Parties with respect to such subject matters and there are no promises, representations, warranties, agreements, understanding, or undertakings with respect to such subject matters other than those set forth or referred to herein.

G. No Third Party Beneficiaries: Nothing in this Agreement is intended or shall be construed to give any person or entity, other than the Parties and their respective successors and permitted assigns, any legal or equitable right, remedy, or claim under or in respect to this

Agreement or any provisions contained herein; this Agreement and any conditions and provisions hereof being and intended to be for the sole and exclusive benefit of the Parties as well as each of their respective successors and permitted assigns, and for the benefit of no other person or entity. Notwithstanding the foregoing, it shall be understood by the Parties that Mondelez is a third party beneficiary to this Agreement and be entitled to enforce any legal or equitable right, remedy, or claim under or in respect to this Agreement related to any provision contained herein.

H. Severability: If any provisions of this Agreement, or the application thereof, shall for any reason or to any extent be construed by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement, and application of such provisions to other circumstances, shall remain in effect and be interpreted so as best to reasonably effect the intent of the Parties.

I. Headings: The section titles, captions, and headings contained in this Agreement are inserted as a matter of convenience and for reference, and shall in no way be construed to define, limit, or extend the scope of this Agreement or the effect of any of its provisions.

J. Additional Representations and Warranties: Each of the Parties represents and warrants that it is fully authorized to enter into this Agreement. In addition, each of the corporate Parties that is still in existence as of the Effective Date represents and warrants that (i) it is duly organized and existing in good standing under the laws of the United States, (ii) it has taken all necessary corporate and internal legal actions to duly approve the making and performance of this Agreement and that no further corporate or internal approval is necessary, and (iii) the making and performance of this Agreement will not violate any provision of law or the party's articles of incorporation, charter, or by-laws. In addition, each of the individuals

signing this Agreement represents and warrants that they are authorized to enter into this Agreement on behalf of the respective parties.

K. Additional Necessary Documents: The Parties, and each of them, agree to execute such additional documents as may be reasonably required in order to carry out the purpose and intent of this Agreement, or to evidence anything contained herein.

L. Execution in Counterparts: This Agreement may be signed in multiple counterparts and the separate signature pages executed by the Parties may be combined to create a document binding on all of the Parties and together shall constitute one and the same instrument. This Agreement may be executed in facsimile or electronic counterparts. An original signature will be provided if requested by any Party. The "Effective Date" of this Agreement is the date this Agreement has been executed and delivered by and to all Parties hereto.

M. Enforceability of Agreement: The Superior Court of New Jersey, Morris and/or Sussex Vicinage shall retain jurisdiction to enforce any and all terms of this Agreement. In the event of any dispute, claim, or action based upon, arising out of, or relating to, the breach, enforcement, or interpretation of any of the provisions of this Agreement or where any provision hereof is validly asserted as a defense, the prevailing party or parties in such dispute, claim, or action shall be entitled to recover its or their reasonable attorneys' fees, costs and expenses from the non-prevailing party or parties. In addition to the fees and costs recoverable under the preceding sentence, the Parties agree that the prevailing party shall be entitled to recover reasonable attorneys' fees, costs, and expenses incurred in connection with the enforcement of a judgment arising from such action or proceeding.

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

O. **Assignability:** KRE shall have the unconditional right to assign some or all of its rights under this Agreement to any individual, entity, or organization without the prior approval of the Township. KRE shall notify the Township of any assignment and provide the name of the assignee, but the Township shall not be permitted to prevent or delay an assignment by KRE of any of its rights under this Agreement in any manner.

P. **Conflicts:** In the event there is a conflict between this Settlement Agreement and the Rezoning Ordinance, the terms and conditions of this Settlement Agreement shall control and take precedence over any conflicting terms in the Rezoning Ordinance.

[THE REMAINDER OF THIS PAGE HAS BEEN INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, The parties have executed this Agreement as of the date set forth opposite the respective signatures set forth below.

Dated: July 29, 2019

The Township of East Hanover

By:



Name:

JOSEPH PANNILLO

Title:

MAYOR

Dated: _____, 2019

KRE Acquisition Corp.

By:

Name:

Title:

IN WITNESS WHEREOF, The parties have executed this Agreement as of the date set forth opposite the respective signatures set forth below.

Dated: _____, 2019

The Township of East Hanover

By:

Name:

Title:

Dated: July 18^{KTL}, 2019

KRE Acquisition Corp.

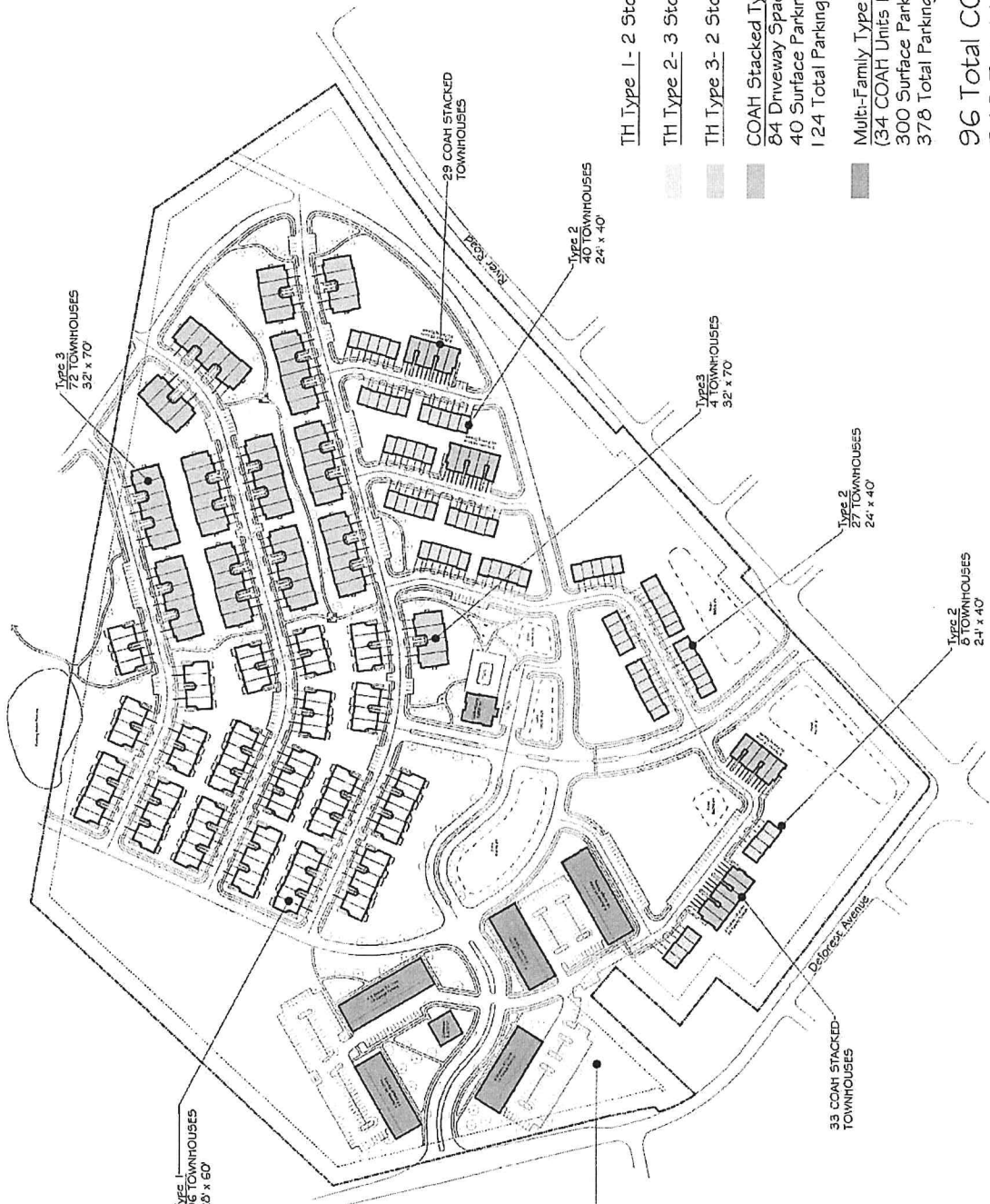
By: 

Name: Murray Kushner

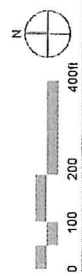
Title: President

EXHIBIT A

CONCEPT PLAN



- TH Type 1 - 2 Stones (28x60) 96 Total Units
- TH Type 2 - 3 Stones (24x40) 75 Total Units
- TH Type 3 - 2 Stones (32x70) 76 Total Units
- COAH Stacked Type - 3 Stones 62 Total Units
- 84 Driveway Spaces
- 40 Surface Parking Spaces
- 124 Total Parking Spaces (2.0 Parking Ratio)
- Multi-Family Type - 239 Total Units (34 COAH Units Included)
- 300 Surface Parking Spaces + 78 Private Garage
- 378 Total Parking Spaces (1.6 Parking Ratio)
- 96 Total COAH Units
- 548 Total Units



Mondelez Site Plan
East Hanover Twp, NJ

Project Number: 19002P
 Client: KRE
 Date: 2019.07.03

Concept Plan
 Scale: 1" = 100'-0"

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EXHIBIT B
REZONING ORDINANCE

ORDINANCE NO. 11-2019

AN ORDINANCE OF THE TOWNSHIP OF EAST HANOVER, IN THE COUNTY OF MORRIS, STATE OF NEW JERSEY, AMENDING AND SUPPLEMENTING THE TOWNSHIP CODE PART II: GENERAL LEGISLATION, CHAPTER 95 LAND USE AND ZONING, ARTICLE II DEFINITIONS, SECTION §95-3 DEFINITIONS; AND ARTICLE VII ZONING, SECTION §95-44 ESTABLISHMENT OF ZONES, ITEM A AND SECTION §95-53.4 (RESERVED) TO ESTABLISH AND SET FORTH THE STANDARDS AND CRITERIA FOR A RESIDENTIAL MULTI-FAMILY ZONE

WHEREAS, Block 42, Lots 37, 38, and 41 (also known as 100 and 112 Deforest Avenue and 188 River Road) are currently owned by Mondelez Global, LLC; and

WHEREAS, in compliance with the New Jersey Supreme Court's decision in *In re Adoption of N.J.A.C. 5:96* by N.J. Council on Affordable Housing, 221 *N.J.* 1 (2015), on or about July 7, 2015 the Township filed an action with the Superior Court of New Jersey, Docket No, MRS-L-1685-15 seeking a Judgment of Compliance and Reposed approving its Affordable Housing Plan in addition to related reliefs ("Compliance Action"); and

WHEREAS, on April 13, 2018, the Court granted the Kushner Real Estate Acquisition Corporation's ("KRE") Motion to Intervene in the Compliance Action; and

WHEREAS, in order to partially settle the Compliance Action, the Township of East Hanover approved a Settlement Agreement with the Fair Share Housing Center on June 3, 2019; and

WHEREAS, the Township is desirous of adopting an Ordinance intended to implement the provisions of the Settlement Agreement; and

WHEREAS, Part II: General Legislation, Chapter 95 Land Use and Zoning, Article II Definitions, Section § 95-3 Definitions, shall be amended and updated to include a new definition for "Street;" and to add five (5) new terms and definitions alphabetically as more specifically set forth below; and

WHEREAS, Part II: General Legislation, Chapter 95 Land Use and Zoning, Article VII Zoning, Section § 95-44 Establishment of Zones, Item A, shall be amended and updated to include a new section for "Residential Multi-Family" alphabetically as more specifically set forth below; and

WHEREAS, Part II: General Legislation, Chapter 95 Land Use and Zoning, Article VII Zoning, Section § 95-53.4 (Reserved) shall be amended and updated to include a new section for "Residential Multi-Family" and shall apply to Block 42, Lots 37, 38, and 41 (also known as 100 and 112 Deforest Avenue and 188 River Road) as more specifically set forth below.

NOW, THEREFORE, BE IT ORDAINED, by the Mayor and Council of the Township of East Hanover, New Jersey, that Part II: General Legislation, Chapter 95 Land Use and Zoning, Article II, Definitions, Section § 95-3 Definitions, shall be amended and updated to include a new definition for "Street;" and to add five (5) new terms and definitions alphabetically as follows:

DRIVEWAY

A private vehicular access constructed with a hard surface that provides access to a street or road.

DWELLING, MULTI-FAMILY

A building containing three or more dwelling units, including units that are located one over the other.

DWELLING, TOWNHOUSE

A one-family dwelling attached in a row of at least three such units in which each unit has its own front and rear access to the outside, no unit is located over another unit, and each unit is separated from any other unit by one or more vertical common fire-resistant walls or other such common wall system as may be approved by the Township Code Enforcement Officer.

STREET

Any vehicular way that: (1) is an existing state, county, or municipality roadway; (2) is shown upon a plat approved pursuant to law; (3) is approved by other official action; or (4) is illustrated on an approved site plan; or (5) is shown on a plat duly filed and recorded in the office of the county recording officer prior to the appointment of a planning board and the grant to such board of the power to review plats; a street includes the land between the street lines, whether improved or unimproved.

STREET, PRIVATE

A street that has not been dedicated or accepted by the municipality or other governmental entity. Said street is exempted from the Township’s requirement of a 50-foot right-of-way.

STREET, PUBLIC

Any street, road, or way dedicated or approved for public use.

BE IT FURTHER ORDAINED, by the Mayor and Council of the Township of East Hanover, New Jersey, that Part II: General Legislation, Chapter 95 Land Use and Zoning, Article VII Zoning, Section § 95-44 Establishment of Zones, Item A, is amended and updated to include a new section for “Residential Multi-Family” alphabetically as follows:

RMF Residential Multi-Family (Block 42, Lots 37, 38, and 41 (also known as 100 and 112 Deforest Avenue and 188 River Road)

BE IT FURTHER ORDAINED, by the Mayor and Council of the Township of East Hanover, New Jersey, that Part II: General Legislation, Chapter 95 Land Use and Zoning, Article VII Zoning, Section § 95-53.4 (Reserved) is amended and updated to include a new section “Residential Multi-Family” and shall apply to Block 42, Lots 37, 38, and 41 (also known as 100 and 112 Deforest Avenue and 188 River Road) as follows:

§ 95-53.4 Residential Multi-Family

The following standards shall apply to development in the Residential Multi-Family Zone. Other provisions of Chapter 95, Land Use and Zoning, of the East Hanover Code shall apply to development in the Residential Multi-Family Zone only where specifically indicated as applicable in Section § 95-53.4. When the standards herein conflict with other provisions of Chapter 95, the

standards herein shall apply.

- A. Purpose. The purpose of this zone is to construct an inclusionary housing development that provides credits towards the Township's affordable housing obligation. It is the vision of the Residential Multi-Family District that the site will be operated in a coordinated manner. Notwithstanding, the site may be subdivided and owned by different parties.
- B. Definitions. The following definitions shall apply only to the Residential Multi-Family Zone:

BUILDING HEIGHT

Within the Residential Multi-Family Zone, the building height shall be measured from the proposed/final average grade, not the existing average grade. Where a building is situated on a slope, the highest two building corners (which are the uphill corners) shall be used to determine the proposed/final average grade of the building.

CLUBHOUSE

A structure which is open for use by residents of a private community, their family or guests. The structure may include restrooms and a kitchen.

COMMUNITY POOL

A pool constructed or maintained for the use of residents of a private community, their family or guests, on land contained within the development site.

DWELLING, DUPLEX

A one-family dwelling in a row of two such units in which each unit has its own front and rear access to the outside, no unit is located over another unit, and each unit is separated from the other unit by one or more vertical common fire-resistant walls or other such common wall system as may be approved by the Township Code Enforcement Officer.

IMPERVIOUS COVERAGE

The accessory and principal building coverage plus the area of all paved surfaces, both impervious and pervious, which cover a lot, such as required parking spaces, including necessary maneuvering areas, passageways and driveways giving access thereto, service areas, accessways, streets, walkways, patios, decks, etc.

SIGN, STREET

A type of traffic sign that is freestanding and identifies the name of a street.

SIGN, WAYFINDING

A sign that provides information and directions necessary or convenient for visitors coming on the property, including signs marking entrances and exits, parking areas, circulation direction, and the like.

TRACT

The area encompassed by Block 42, Lots 37, 38, and 41.

- C. Off-site improvements.

- (1) This section supersedes the Residential Site Improvement Standards and Section 95-8 of the Township Code.
- (2) Off-tract improvements are required whenever an application for development requires the construction of off-tract improvements that are clearly, directly and substantially related to or necessitated by the proposed development. The Land Use Planning Board, as the case may be, shall require as a condition of final site plan or subdivision approval that the applicant provide for such off-tract improvements. Off-tract improvements shall include water, sanitary sewer, drainage, and street improvements, including such easements as are necessary or as may otherwise be permitted by law.
- (3) Determination of cost. When off-tract improvements are required, the Township Engineer shall calculate the cost of such improvements in accordance with the procedures for determining performance guaranty amounts in N.J.S.A. 50:55-D-53.4. Such costs may include, but not be limited to, any or all costs of planning, surveying, permit acquisition, design, specification, property and easement acquisition, bidding, construction, construction management, inspection, legal, traffic control and other common and necessary costs of the construction of improvements. The Township Engineer shall also determine the percentage of off-tract improvements that are attributable to the applicant's development proposal and shall expeditiously report his findings to the board of jurisdiction and the applicant.
- (4) Improvements required solely for the application's development. Where the need for an off-tract improvement is necessitated by the proposed development and no other property owners receive a special (i.e. more than incidental) benefit thereby, or where no planned capital improvement by a governmental entity is contemplated, or the improvement is required to meet the minimum standard of the approving authority, the applicant shall be solely responsible for the cost and installation of the required off-tract improvements. The applicant shall elect to either install the off-tract improvements or pay the municipality for the cost of the installation of the required off-tract improvements.
- (5) Improvements required for the applicant's development and benefitting others. Where the off-tract improvements would provide capacity in infrastructure in excess of the requirements in Subsection C(4) above, or address an existing deficiency, the applicant shall elect to either install the off-tract improvements, pay its pro-rata share of the cost to the Township, or pay more than its pro-rata share of the cost to facilitate the construction of the improvement(s) and accept future reimbursement so as to reduce its payment to an amount equal to its pro-rata share. If a developer elects to address the required off- tract improvement(s) by making a payment, such payment shall be made prior to the issuance of any building permit. If the applicant elects to install the off-tract improvements or to pay more than its pro-rata share of the cost of the improvements, it shall be eligible for partial reimbursement of costs of providing such excess. The calculation of excess shall be based on an appropriate and recognized standard for the off- tract improvement being constructed, including but not limited to gallonage, cubic feet per second and number of vehicles. Nothing herein shall be construed to prevent a different standard from being agreed to by the applicant and the Township Engineer. The process, procedures and calculation used in the determination of off-tract costs

shall be memorialized in a developer's agreement to be reviewed and approved by the Township Attorney, who may request advice and assistance from the Land Use Planning Board Attorney. Future developers benefiting from the excess capacity provided or funded by the initial developer shall be assessed in their pro-rata share of off-tract improvement cost based on the same calculation used in the initial calculation. Such future developers shall pay their assessment, plus a two percent administration fee not to exceed \$2,000, to the Township, at the time of the signing of the final plat or final site plan as a condition precedent to such signing. The Township shall forward the assessment payment to the initial developer, less any administration fee, within 90 days of such payment.

- (6) Performance guaranty. If the applicant elects to construct the improvements, the applicant shall be required to provide, as a condition of final approval, a performance guaranty for the off-tract improvements in accordance with N.J.S.A. 50:55D-53 and Subsection 95-53.4 above.
- (7) Certification of costs. Once the required off-tract improvements are installed and the performance bond released, the developer shall provide a certification to the Township Engineer of the actual costs of the installation. The Township Engineer shall review the certification of costs and shall either accept them, reject them, or conditionally accept them. In the review of costs, the Township Engineer shall have the right to receive copies of invoices from the developer sufficient to substantiate the certification. Failure of the developer to provide such invoices within six months of the Township Engineer's request shall constitute forfeiture of the right of future reimbursement for improvements that benefit other.
- (8) Time limit for reimbursement. Notwithstanding any other provisions to the contrary, no reimbursement for the construction of off-tract improvements providing excess capacity shall be made after 10 years has elapsed from the date of the acceptance of the certification of costs by the Township Engineer.

D. Uses.

- (1) Permitted principal uses.
 - a) Duplex dwellings.
 - b) Multi-family dwellings.
 - c) Townhouse dwellings.
 - d) Stacked townhouse dwellings.
 - e) Affordable housing units within townhouse buildings, which may be designed as one-over-one apartment flats within a townhouse configuration.
 - f) Public or private open space and recreation areas.
 - g) One or more of the above mentioned uses on one lot.
 - h) Access driveway or street for adjacent office use on Block 42, Lot 37.02.
 - i) Monument and wayfinding signs for adjacent office use on Block 42, Lot 37.02.
- (2) Permitted accessory uses.
 - a) Fences and walls, including retaining walls.

- b) Off-street parking and garages under or incorporated into the building design.
- c) Clubhouses.
- d) Public or private recreational facilities, including, but not limited to community pools, tennis courts, non-commercial fitness facilities and playgrounds.
- e) Public or private parks and open space facilities, including, but not limited to, walkways, bikeways, courtyards, plazas, community gardens, and dog parks.
- f) Leasing and management offices.
- g) Clubrooms, lounges, game rooms, mail rooms, business centers, and similar interior common resident amenities incorporated into a larger building design. These accessory uses shall not be in stand-alone structures.
- h) Dog spa or grooming facility, not including boarding or veterinarian services, only for residents of the development incorporated into a larger building design. This accessory use shall not be in a stand-alone structure.
- i) Signs.
- j) Temporary construction trailer, temporary sales trailer and temporary sales office in model home through final project certificate of occupancy.
- k) Trash enclosures and compactors.
- l) Common or centralized mailboxes, which are designed in keeping with the architecture of the buildings.
- m) Public and private utilities.
- n) Generators related to clubhouses, any required booster pumps, or for emergency services. No individual residential unit shall be permitted a generator.
- o) Unmanned gatehouse; however there shall be no gates blocking access.

E. Bulk standards.

- (1) Minimum tract area - 70 acres.
- (2) The standards in subsection (3) through (10) below shall apply to the entire tract area on an entire tract basis.
- (3) Minimum parcel area - 5 acres for public parks and public open spaces and 12 acres for residential development parcels
- (4) Minimum building tract setbacks:
 - a) Public streets – 50 feet.
 - b) Interior north lot line – 40 feet.
 - c) Interior northwest lot line – 85 feet.
- (5) Minimum distance between buildings:¹

¹ For purposes of this section, calculation of setbacks shall not include decks and patios, which may project a maximum of 10 feet from a building and porches, stairs and chimneys, which may project up to five feet from a building. However, porches within the front yard may project up to eight feet from a building. Front, side, and rear of buildings shall be designed on a building by building basis on the site plan based on building orientation.

- a) Front-to-front – 75 feet.
- b) Side-to-side – 25 feet.
- c) Rear-to-rear – 50 feet.
- d) Other configuration – 30 feet.

(6) Dimensional requirements:

- a) Maximum townhome and stacked townhome length – 200 feet.
- b) Maximum multi-family building length – 230 feet.
- c) Maximum number of units before vertical break: 2 units.
- d) Minimum front of townhouse building to inside (house side) of sidewalk along public or private street – 18 feet.
- e) Minimum side and rear of building to public or private street – 10 feet.
- f) Minimum building to off-street parking spaces – 10 feet. This standard does not apply to façades that contain garage doors.

(7) Maximum building coverage - 45%.

(8) Maximum impervious coverage - 60%.

(9) Maximum density – 7.4 units per acre, up to a maximum of 548 units, calculated on the overall tract size.

(10) Maximum building height – 40 feet for duplex, townhome, and stacked townhome dwellings with allowances for stepped foundations along the building length, in which case, said measurement shall then apply to each stepped section. 55 feet for multi-family dwellings.

F. Bedrooms. A maximum of 50% of the townhouse, duplex, and stacked townhouse units may have up to four bedrooms.

G. Affordable housing requirements.

(1) The Residential Multi-Family Zone shall have an obligation to deed-restrict 96 total units as affordable units. The units shall meet the very-low/low/moderate income split required by the Uniform Housing Affordability Controls and 13% of the required units shall be very-low income as defined by the Fair Housing Act (30% of the region's median income).

(2) Affordable units shall be dispersed throughout the site and designed to be architecturally consistent and compatible with the market-rate units.

(3) The affordable units shall have a minimum 30-year deed restriction. Any such affordable units shall comply with UHAC, applicable COAH affordable housing regulations, the Fair Housing Act, any applicable order of the Court, and other applicable laws.

(4) The units shall meet the bedroom distribution required by the Uniform Housing

Affordability Controls.

- (5) The developer/owner shall be responsible for retaining no more than two qualified Administrative Agents, subject to the reasonable approval of the Township Council to oversee the sales and rentals of the affordable housing units, at the developer's sole cost and expense.
- (6) A minimum of 50 of the affordable units shall be available to the general public as rental units and not restricted to any specific segment of the population.
- (7) All necessary steps shall be taken to make the affordable units provided "creditworthy" pursuant to applicable law for purposes of addressing the Township's affordable housing obligation.

H. Lighting.

- (1) Low-pressure sodium or mercury vapor lighting is prohibited.
- (2) Parking lot lighting shall be no more than 20 feet in height.
- (3) A minimum average of one-half footcandle shall be maintained within parking lots. A minimum average of 0.3 footcandle shall be maintained over all pedestrian walkways that are adjacent to streets.
- (4) Parking lot fixtures shall be full cut off.
- (5) Footcandles at the tract boundary shall not exceed one footcandle, except where there are entrance/exit driveways.
- (6) Streetlighting.
 - a) Public streets. Streetlights shall be installed as directed by the Township Engineering Department and in accordance with recommended practice of street and highway lighting of the Illuminating Engineering Society, where it is required by the Planning Board, along the streets within and abutting the subdivision. All fixtures or luminaries which will be required in a subdivision shall be installed at the same time, thereby constituting a single process of installation. All wires necessary to serve the streetlighting system shall be placed underground, and arrangements shall be made with the appropriate utility for carrying out this provision. Construction and maintenance easements shall be provided for such installations. The subdivider shall pay the cost of operating said streetlights until such time as the said lights which are installed shall be accepted by resolution of the Township Council as part of the acceptance of a public street of the Township. At the time of final approval, the subdivider shall deposit with the Township cash in an amount equal to twice the annual billing rate, as determined by the appropriate utility which shall provide streetlighting. The Township shall utilize said cash deposit to pay the annual billings for such streetlighting in the subdivision

until the streets are accepted by resolution of the Township Council, at which time the Township will return to the subdivider the remaining cash on deposit, if any.

- b) Private streets. Streetlights shall be installed to provide a minimum average of 1.0 footcandle over the cartway.
- (7) All street lights shall be decorative in style and compatible with the Township's streetscape lighting.

I. Fences and walls.

- (1) To the extent possible, the use of retaining walls should be used in the form of terraces to accommodate severe grade changes, rather than single tall retaining walls. However, no individual retaining wall shall exceed a height of ten feet. Where provided, retaining walls shall be screened with a variety of landscaping materials, in groupings, rather than utilizing hedges or uniform plant species and spacing. Retaining walls ten feet or taller shall be offset from one another so that the face of each retaining wall is no closer than five feet. Retaining walls less than ten feet shall be offset from one another so that the face of each retaining wall is no closer than four feet. A series of successive, terraced walls cannot be higher than 20 feet in total.
- (2) Fences and walls shall not be located in any required sight triangles.
- (3) When a wall or fence is installed on top of a berm, railroad tie wall or other similar structure or mounding, and located within six feet of the face or foot of the berm, wall or mounding, the height of the fence shall include the height of the berm, retaining wall or other mounding which is at a higher elevation than the predominant grade of the property on which the fence is located. However, a safety fence, no taller than four feet, shall not be included in the wall or fence height calculation.
- (4) Fences between a building and a street shall be a maximum of 48 inches tall and not less than 50% open, such as picket fences and post and rail fences, but in no instance shall said fence be made of chain link or similar materials. For the purpose of corner lots, both street frontages shall be treated as a front yard.
- (5) Fences that are not located between a building and the street shall be a maximum of six feet in height. Chain link fences are prohibited.
- (6) Fences or walls around trash receptacles or compactors may be a maximum of eight feet tall.
- (7) The horizontal members of fences shall be of the same material composition as the vertical members and shall be no wider nor of greater diameter than the vertical members and in no case shall be wider than nor have a diameter greater than six inches.
- (8) The use of barbed wire, razor wire or similar shall not be permitted on any fence or atop any wall, except for walls or fences where the use of such is required by state or federal

statute or regulation.

- (9) Fences and/or walls shall be designed and engineered to allow for the flow of drainage.

J. Site Improvement Standards.

- (1) Streets, curbs, gutters, sidewalks, pavements, street signs, parking lots, the water supply, fire hydrants, the sanitary sewer system, and stormwater management shall be designed in accordance with the Residential Site Improvement Standards.

K. Parking.

- (1) Off-street parking shall be provided and designed in accordance with the Residential Site Improvement Standards and the Americans with Disabilities Act requirements.
- (2) Minimum required off-street parking for duplex dwellings:
 - a) Two-bedroom unit – 1.5 spaces
 - b) Three-bedroom unit – 2.0 spaces
 - c) Four-bedroom unit – 2.5 spaces
- (3) Minimum off-street parking for townhouses and stacked townhouses:
 - a) Two-bedroom unit – 2.3 spaces
 - b) Three-bedroom unit – 2.4 spaces
 - c) Four-bedroom unit – 2.5 spaces
- (4) Minimum off-street parking for multi-family dwellings: 1.8 spaces per unit
- (5) Parking spaces shall measure nine feet wide by 18 feet long.
- (6) There shall be no parking of recreational vehicles, trailers or boats.
- (7) Parking spaces shall be designed in such a manner to ensure vehicles do not encroach on the minimum required four-foot-wide sidewalks, where sidewalks are required.
- (8) Hairpin striping shall be utilized to delineate parking spaces in a parking lot.
- (9) A maximum of ten (10%) percent of parking spaces may be compact. Compact spaces shall measure 8.5 feet wide by 16 feet long.

L. Circulation.

- (1) Walkways shall link all residential buildings within each section of the development.
- (2) Where walkways traverse streets, crosswalks shall be delineated by striping, a contrasting color or material. Where walkways traverse the ring roads, crosswalks shall be provided and marked with textured paving in a contrasting color or material.

- (3) Benches shall be located throughout the site along the pedestrian network. Benches shall be installed, at a minimum of one for every 750 linear feet of walkway. This requirement excludes sidewalks along streets.

M. Open space.

- (1) A minimum of five percent of the tract, excluding any public parks, shall be open space for the use of the residents. This may be linear walking paths, passive spaces, active recreation areas or the like.

N. Landscaping.

- (1) Landscaping shall be provided to promote a desirable visual environment, to accentuate building design, define entranceways, screen parking areas, mitigate adverse visual impacts and enhance buffer areas. The landscape design shall create visual diversity and contrast through variation in size, shaped, texture, and color. The selection of plants in terms of susceptibility to disease and insect damage, wind damage, habitat (wet-side, drought, sun, and shade tolerance), soil conditions, growth rate, maintenance requirements, etc., shall be considered.

- (2) Street trees.

- a) Street trees shall be provided along all contiguous public streets, an average of 50 feet on center. Street trees shall be provided along all internal roadways, whether public or private, an average of 60 feet on center. The following species are permitted:

- [1] Regent Scholar.
- [2] Chinese Elm.
- [3] October Glory Maple.
- [4] Katsure tree.
- [5] Maidenhair tree.
- [6] Greenspire Linden.
- [7] Village Green Zelkova.
- [8] Red Sunset Maple.

- b) Trees shall be a minimum of 2.5 inches caliper and ten feet in height.

- c) No more than 40% of the street trees shall be of the same species and/or variety.

- (3) Foundation plantings. The landscape plan shall include foundation plantings that provide an attractive visual setting for the development. These plantings shall include species that provide seasonal interest at varying heights to complement and provide pedestrian scale to the proposed architectural design of the buildings. The foundation planting shall incorporate evergreen shrubs and groups of small trees in order to provide human scale to the building facades and winter interest. Foundation plantings

shall be planted along the front facades of all buildings and along/beside primary building access points.

(4) Tract buffer.

- a) With respect to the entire tract, a minimum 20-foot-wide landscaped buffer shall be provided, except along the tract boundary with the Research Laboratory and Office Zone, where the width shall be a minimum of ten feet. Within this buffer area no existing tree shall be cut or removed unless the tree is diseased or dead or necessary for the installation of driveways, streets, or utilities.
- b) Buffer plantings shall consist of a combination of shade trees, evergreen trees, ornamental trees, and shrubs to provide a natural looking buffer while providing a visual screen.
- c) Buffer plantings shall be a mixed planting and shall include the following:
 - [1] One shade tree for every 50 linear feet of buffer (along public streets, the streets trees shall be counted towards this requirement);
 - [2] One evergreen tree for every 25 linear feet of buffer; and
 - [3] Ten shrubs for every 50 linear feet of buffer.
- d) Existing shade and evergreen trees within the buffer area may be counted in fulfilling the required buffer planting.
- e) Buffer plants shall be the following size at the time of planting:
 - [1] Shade trees shall be planted at a minimum three-inch caliper and shall be a minimum of 12 feet in height, balled and burlapped.
 - [2] Evergreen trees shall be planted at a minimum height of six to eight feet, balled and burlapped.
 - [3] Shrubs shall be planted at a minimum of 24 inches in height. However, a minimum of fifty (50%) percent of the shrubs shall be taller than 24 inches at installation. Fifty (50%) percent of shrubs shall be evergreen.
- f) Shade trees shall be considered deciduous trees that mature to a height of 50 feet or greater. Evergreen trees shall be considered trees which mature to a height of 30 feet. Should narrower varieties of evergreens be proposed for buffer plantings, additional plants shall be required to achieve a visual screen.
- g) No more than 25% of the plantings shall be of the same species and/or variety of plant.

- h) Proposed buffer plantings shall be arranged in a natural staggered pattern and shall not be lined up in straight, single rows.

(5) Parking lot landscaping.

- a) For every 20 surface parking spaces there shall be one landscape area, which may include the end caps, that is at least 162 square feet.
- b) The landscape area shall contain trees and/or shrubs.
- c) Trees shall be a minimum of 2.5 inches caliper and shrubs shall be at least 24 inches tall.
- d) Parking spaces within 150 feet of an off-site residential use, which face said residential use, shall be screened to a minimum height of four feet by the use of appropriate plantings of sufficient height and density so as to obscure the view of such parking from adjacent off-site residential uses. The use of ground contouring, i.e. berms, may be employed to assist with said screening.

(6) Landscaping within sight triangles shall not exceed a mature height of 30 inches.

(7) Landscaping of any new stormwater management facilities shall be as required by the development in accordance with NJDEP Best Management Plan requirements. Non-structural facilities shall be considered in the design of the proposed stormwater system to the extent practical.

(8) The landscape plan shall be prepared by a certified landscape architect certified by the New Jersey State Board of Landscape Architects.

(9) Each application within the Residential Multi-Family Zone shall be accompanied by a tree preservation plan. The plan shall identify all trees six inches or greater dbh (diameter at breast height) to be preserved. It should be noted that the tree survey provisions of the Ordinance do not apply.

O. Signs. The following types of signs are permitted in the Residential Multi-Family District:

(1) Monument signs.

- a) Two monument signs shall be permitted at each site entrance.
- b) The maximum sign area (excluding the base) shall be 40 square feet per side. A monument sign may have two sides, which are parallel to each other.
- c) The maximum sign height shall be six feet above grade.
- d) Monument signs shall be set back a minimum of ten feet from any property line and located outside of any sight triangles.

e) Monument signs may be externally illuminated.

(2) Street address and building signs.

a) Street address or building signage is required on each building or individual units.

b) Numbers on the duplex dwellings, townhouses, and stacked townhouses shall be a maximum of 1.5 feet in height.

c) Numbers or letters on the multi-family dwellings shall be a maximum of three feet in height.

(3) Wayfinding signage.

a) A maximum of ten wayfinding signs are permitted per tract to assist visitors to the site.

b) The maximum sign area shall be 12 square feet.

c) The maximum height shall be five feet.

d) Wayfinding signs shall be set back a minimum of ten feet from any tract boundary and located outside of any sight triangles.

e) Wayfinding signs may be internally or externally illuminated.

P. Trash.

(1) Trash receptacles and compactors shall not be visible from any public street and shall be located to the rear or side of the building.

(2) All trash receptables and compactors shall be screened by a solid fence or solid decorative masonry wall on three sides and heavy-duty gate closures on the fourth side.

(3) The trash enclosure and/or compactor shall be surrounded and screened on three sides by a mixture of deciduous and evergreen plant species.

(4) Trash pickup for the townhouse structures shall be curbside, unless solid waste regulations or industry standards change that would eliminate or modify the same. In such an instance, centralized trash enclosures shall be installed, which are subject to the review and approval of the Land Use Planning Board.

Q. Utilities. All utilities shall be underground.

R. Architectural standards.

(1) Building facades visible from a public street shall consist of brick, stone, cast stone,

vinyl, cementitious plank siding or other high-quality material.

- (2) Buildings shall avoid long, monotonous, uninterrupted walls or roof planes. Building wall offsets, including projections such as balconies, canopies and recesses shall be used in order to add architectural interest and variety and to relieve the visual effect of a simple, long wall.
- (3) The maximum spacing between building wall offsets shall be 30 feet.
- (4) The minimum projection or depth of any individual vertical offset shall not be less than one and a half feet.
- (5) Roofline offsets, which include dormers and gables, shall be provided in order to provide architectural interest and variety to the massing of a building and to relieve the effect of a single, long roof. The maximum spacing between roof offsets shall be 40 feet.
- (6) The architectural treatment of the front façade shall be continued in its major features around all visibly exposed sides of a building. All sides of a building shall be architecturally designed to be consistent with regard to style, materials, colors, and details.
- (7) Gable and hipped roofs shall be used to the greatest extent possible. Both gable and hipped roofs shall provide overhanging eaves on all sides that extend a minimum of one foot beyond the building wall. Flat roofs are permitted provided that all visibly exposed walls have an articulated cornice that projects horizontally from the vertical building wall plane.
- (8) Fenestration shall be architecturally compatible with the style, materials, colors, and details of the building. Windows shall be vertically proportioned.
- (9) All entrances to a building shall be defined and articulated by architectural elements such as lintels, pediments, pilasters, columns, porticoes, porches, overhangs, railings, etc.
- (10) Heating, ventilating and air-conditioning systems, utility meters and regulators, exhaust pipes and stacks, satellite dishes and other telecommunications receiving devices shall be screened or otherwise specially treated to be, as much as possible, inconspicuous as viewed from the public right-of-way and adjacent properties.
- (11) All rooftop mechanical equipment shall be screened from view.
- (12) Packaged terminal air conditioner units within the façade shall blend in with the color of the surrounding façade materials.

S. Generator standards.

- (1) Only one generator is allowed for each permanent structure.

- (2) Generators must be set back from any structure in accordance with the manufacturer's requirements or applicable electrical and fire codes.
- (3) The generator shall be used only during periods of emergency or for weekly testing, and necessary maintenance operations.
- (4) The generator footprint, including the pad, shall count in the calculation of impervious coverage.
- (5) The exhaust of the generator shall, as much as practically feasible, be vented upwards and directed away from residential uses.
- (6) The generator shall be operated for routine testing and maintenance purposes, not more than once in any seven-day period, and at no time shall exceed 30 minutes. Testing of emergency generators is permitted Monday through Saturday only (excluding holidays) between the hours of 11:00 am and 2:00 pm.
- (7) Testing may be conducted when the unit is being repaired, provided that such testing period shall not exceed 30 minutes and shall be conducted as such between the hours of 10:00 am and 5:00 pm, Monday through Saturday, excluding holidays.
- (8) The generator, shall always comply with any ordinance or regulation of the Township of East Hanover imposing noise restrictions except when used for emergency purposes, testing or repairs and said system must, at all times, be outfitted with a working muffler and manufacturer-specified sound attenuating enclosure/housing.
- (9) A generator must be screened and buffered on all sides.
- (10) Screening shall be as tall as top of the generator unit. The screening shall be offset from the generator in conformance to the manufacturer's specifications and in accordance with applicable electrical and fire codes.
- (11) Screening shall be comprised of solid-faced fencing. The generator fencing shall be entirely surrounded by landscaping with the exception of the access gate. The Township Land Use Planning Board shall determine the plantings required to buffer the generator. The generator shall be located no closer than 30 feet to any residential use, 30 feet to any recreational use, or 20 feet to any roadway or driveway. Any generator within 30 feet of a roadway shall be protected by bollards. However, a generator for water system purposes shall be no closer than 30 feet to any residential use, 5 feet to any recreation use, or 10 feet to any roadway or driveway. Any other generator required or requested for the site shall require Planning Board approval.
- (12) The generator installation and continued operation must comply with applicable federal, state and municipal codes, including New Jersey Department of Environmental Protection (NJDEP) air quality permitting.

T. General.

- (1) All applications within the Residential Multi-Family District shall prepare and submit an Environmental Impact Study as outlined in 95-39.1.
- (2) All applications within the Residential Multi-Family District shall comply with Section 95-39.2, Performance Standards.
- (3) Any application filed within the Residential Multi-Family District shall be submitted in compliance with Section 95-34 through 36. Additionally, a utility capacity study shall be submitted with any application for development.
- (4) On-tract improvements for site plans and subdivisions shall comply with Section 95-37 unless superseded by any previous section of Section 95-53.4 or the Residential Site Improvement Standards.
- (5) All applications within the Residential Multi-Family District shall comply with Article VIII Soil Moving. However, no tree survey shall be required.

BE IT FURTHER ORDAINED, by the Mayor and Council of the Township of East Hanover, New Jersey, that upon adoption of this Ordinance, the Township Planner is directed to amend the official Zoning Map of the Township of East Hanover to illustrate the location of the Residential Multi-Family Zone.

BE IT FURTHER ORDAINED, if any section, paragraph, subsection, clause or provision of this Ordinance shall be adjudged by the courts to be invalid, such adjudication shall apply only to the section, paragraph, subsection, clause or provision so adjudicated, and the remainder of the Ordinance shall be deemed valid and effective.

BE IT FURTHER ORDAINED, any ordinances or parts thereof in conflict with the provisions of this Ordinance are repealed to the extent of such conflict.

BE IT FURTHER ORDAINED, this Ordinance shall take effect upon passage and publication in accordance with applicable law.

Attest:

TOWNSHIP OF EAST HANOVER

Paula A. Massaro, Township Clerk

Joseph Pannullo, Mayor

Introduced: July 18, 2019

EXHIBIT C
THE MONDELEZ AGREEMENT

AGREEMENT

This Agreement (the “Agreement”) is made effective this ___ day of _____, 2019 (the “Effective Date”), and is made by and between Mondelez Global, L.L.C. (“Mondelez”), KRE Acquisition Corp. (“KRE”), the Township of East Hanover (the “Township”), and the Land Use Planning Board of the Township of East Hanover (the “Board” or the “Planning Board of the Township of East Hanover”) (collectively the “Parties”). The Parties agree as follows:

WHEREAS, the Township is a municipal corporation of the State of New Jersey, County of Morris, having an address at 411 Ridgedale Avenue in the Township; and

WHEREAS, the Board is a quasi-judicial body of the Township organized pursuant to N.J. S.A. 40:55D-23, having an address at 411 Ridgedale Avenue in the Township; and

WHEREAS, Mondelez is a limited liability company of the State of Delaware, having an address at 200 DeForest Avenue, in the Township, and is the owner of Block 42, Lots 37, 37.02, 38 and 41 in the Township; and

WHEREAS, KRE is a corporation of the State of New Jersey, having an address of 520 US Route 22, in the Township of Bridgewater, County of Somerset, State of New Jersey; and

WHEREAS, in compliance with the New Jersey Supreme Court’s decision in *In re Adoption of N.J.A.C. 5:96 and 5:97 by N.J. Council on Affordable Housing*, 221 N.J. 1 (2015), on or about July 2, 2015, the Township filed a Declaratory Judgment Action with the Superior Court of New Jersey (the “Court”), entitled *In the Matter of the Application of the Township of East Hanover, County of Morris*, Docket No. MRS-1658-15, seeking a Judgment of Compliance and Repose approving its Housing Element and Fair Share Plan (as defined herein), in addition to related reliefs (the “Compliance Action”); and

WHEREAS, KRE filed a motion to intervene in the Compliance Action, and KRE was granted leave to intervene by Order dated, April 13, 2018 (“KRE Intervention”); and

WHEREAS, KRE is the contract purchaser of property within the Township owned by Mondelez, which property comprises approximately 75 acres and is designated on the tax map of the Township as Block 42, Lots 37, 38, and 41 (the “KRE Property”); and

WHEREAS, Mondelez has retained for its own use certain adjacent land designated on the tax map of the Township of Hanover as Block 42, Lot 37.02, consisting of approximately 46.2 acres and improved with a Technology Center and other related improvements (the “Mondelez Property”); and,

WHEREAS, the KRE Property is currently improved with a vacant building, parking lot and other associated improvements. The now vacant building was formerly utilized by Mondelez. The parking lot on the KRE Property continues to be used by Mondelez as the parking capacity currently provided by the KRE Property is needed by Mondelez to support its continued use of the Technology Center on the Mondelez Property;

WHEREAS, the Township intends to prepare a Housing Element and Fair Share Plan (hereinafter “Affordable Housing Plan”), that will be adopted by the Land Use Planning Board, endorsed by the Township Council, and submitted to the Court for review and approval; and

WHEREAS, the Affordable Housing Plan will include the KRE Property as an inclusionary development at a density of 548 units, including a minimum of 50 rental units and 96 total units as affordable units (the “Inclusionary Development”); and

WHEREAS, the Township will seek the Court’s approval of the Affordable Housing Plan in connection with the Compliance Action, and KRE will support the Township’s application for approval of that plan; and

WHEREAS, KRE intends to develop the KRE Property as an Inclusionary Development of 548 residential units including affordable units; and

WHEREAS, KRE and the Township, in connection with the Inclusionary Development, have entered into a Settlement Agreement dated _____, 2019 providing for the development of the KRE Property in accordance therewith (the “Settlement Agreement”); and

WHEREAS, the development of the KRE Property as an Inclusionary Development in accordance with the Settlement Agreement will require the demolition of the existing vacant building and the parking lot situated thereon; and

WHEREAS, the continued use of the Mondelez Property by Mondelez will require an expansion of the existing parking lot on the Mondelez Property as a result of the demolition of the existing parking spaces situated on the KRE Property which, as noted above, are presently utilized by Mondelez in connection with its use and operation of the Technology Center on the Mondelez Property; and

WHEREAS, a portion of the existing parking lot on the KRE Property will remain in use by Mondelez following the demolition of the existing vacant building until an expansion of the existing parking lot on the Mondelez Property is completed; and

WHEREAS, Section IIIC of the Settlement Agreement provides that KRE, the Township, the Board and Mondelez shall enter into this Agreement with regard to (i) the demolition of vacant building and the parking spaces on the KRE Property and (ii) the expansion of the existing parking lot on the Mondelez Property; and Section IIID of the Settlement Agreement provides that the Township agrees to use all reasonable efforts to assist and cooperate with KRE in its undertakings to obtain the approvals necessary to implement the

Inclusionary Development, and that the Township will not directly or indirectly impede or frustrate the approval process; and

WHEREAS, this Agreement is entered into pursuant to Section IIIC of the Settlement Agreement and it is the Parties' intent that this Agreement be read *in pari materia* with the Settlement Agreement and constitutes a necessary aspect of the Inclusionary Development; and,

NOW THEREFORE, the Parties wish to enter into this Agreement, setting forth the terms, conditions, responsibilities and obligations of the Parties, and seek the Court's approval of this MOU; and

1. Purpose. The Parties enter into this Agreement pursuant to Section IIIC of the Settlement Agreement.

2. Terms.

a. Mondelez shall file with the Board an application for site plan approval and any other required relief for the expansion of the parking lot on the Mondelez Property ("Parking Lot Expansion Application") and shall also apply, either simultaneously or at a separate time in Mondelez's discretion, to the Board for a soil moving permit, site plan approval and any other relief as may be required for the demolition of the existing improvements on the KRE Property and for the installation of temporary security fencing and a construction trailer associated with such demolition work ("Demolition Application") (The Parking Lot Expansion Application and Demolition Application shall collectively be referred to as the "Application"). The plan to expand the Mondelez parking lot shall substantially conform to the plan attached hereto as **Exhibit A**, which is substantially different from a parking lot expansion plan that was the subject of a prior site plan application that was denied by the Board by resolution adopted on August 10, 2017. The plans to demolish the vacant building and parking on the KRE Property,

including the installation of temporary fencing and a construction trailer, are attached hereto as **Exhibit B.**

b. The Board shall expedite the processing of the Application within the time limits imposed by the Municipal Land Use Law. The Board shall also consider all reasonable waivers and/or variances and conditions of approval that are necessary pursuant to the Application, including, but not limited to, those specifically identified on the plan attached hereto as Exhibit A. Upon approval of the Application, and subject to any conditions of approval, the Township shall arrange for its construction department, following the submission of properly completed application forms, the demolition permit checklist, and the payment of any applicable fees, to issue any required permits for the construction of the expanded parking lot on the Mondelez Property and the demolition of the vacant building and parking lot on the KRE Property.

- c. The specific steps needed to obtain a demolition permit are as follows:
- (1) Submit a copy of survey indicating structure(s) to be demolished
 - (2) Submit paperwork demonstrating electric company disconnect
 - (3) Submit paperwork demonstrating gas company disconnect
 - (4) Submit paperwork demonstrating water company disconnect
 - (5) Submit paperwork demonstrating sewer utility disconnect
 - (6) Submit paperwork demonstrating telephone company disconnect
 - (7) Submit paperwork demonstrating cable TV company disconnect
 - (8) Submit an exterminator letter that indicates the site has been treated for rodent infestation
 - (9) Submit a copy of a letter to contiguous property owners
 - (10) Submit asbestos abatement verification

- (11) Submit removal of septic system verified by the Board of Health (if applicable)
- (12) Submit well capping certification prior to permit (if applicable)
- (13) Submit lead abatement per NJAC 5:17
- (14) Submit self-luminous exits signs 10 cfr 31.7
- (15) Submit certification of affidavit signed
- (16) Submit Morris County soils certification
- (17) Submit zoning permit application

d. The Parties shall exercise good faith, cooperate, and assist each other in fulfilling the intent and purpose of this Agreement, including, but not limited to, the approval of this MOU by the Court, if necessary, the approval by the Board of the Application and relief contemplated above, the development of the KRE Property and the Mondelez Property consistent with the terms hereof, and the defense of any challenge to the foregoing. The Township agrees to use all reasonable efforts to assist and cooperate with Mondelez in its undertakings to obtain the aforementioned approvals and not directly or indirectly impede or frustrate the approval process.

3. Governing Law. This Agreement shall be interpreted and enforced according to the laws of the State of New Jersey.

4. Consent To Jurisdiction And Venue; Fees. The Superior Court of New Jersey, Morris and/or Sussex Vicinage shall retain jurisdiction to enforce any and all terms of this Agreement in the same manner as set forth in Section XIM of the Settlement Agreement. In the event of any dispute, claim, or action based upon, arising out of, or relating to, the breach, enforcement, or interpretation of any of the provisions of this Agreement or where any

provision hereof is validly asserted as a defense, the prevailing party or parties in such dispute, claim, or action shall be entitled to recover its or their reasonable attorneys' fees, costs and expenses from the non-prevailing party or parties. In addition to the fees and costs recoverable under the preceding sentence, the Parties agree that the prevailing party shall be entitled to recover reasonable attorneys' fees, costs, and expenses incurred in connection with the enforcement of a judgment arising from such action or proceeding.

5. Binding Effect; Assignability. This Agreement shall bind and inure to the benefit of the Parties hereto and their respective heirs, legatees, representatives, receivers, trustees, successors, transferees and assigns.

6. Severability. This Agreement does not violate any federal or state statute, rule, regulation or common law known; but any provision which is found to be invalid or in violation of any statute, rule, regulation or common law shall be considered null and void, with the remaining provisions remaining viable and in effect. Notwithstanding the foregoing, the Parties acknowledge and agree that this Agreement, and the releases provided for above are each necessary to this settlement; without which any of these the Parties would not agree to this settlement.

7. Notices. Any notice or transmittal of any document required, permitted or appropriate hereunder and/or any transmittal between the Parties relating to the Property (herein "Notices") shall be written and shall be served upon the respective Parties by facsimile or by certified mail, return receipt requested, or recognized overnight or personal carrier such as, for example, Federal Express or United Parcel Service, with certified proof of receipt, and, where feasible (for example, any transmittal of less than fifty (50) pages), and in addition thereto, a facsimile delivery shall be provided. All Notices shall be deemed received upon the

date of delivery set forth in such certified proof, and all times for performance based upon notice shall be from the date set forth therein. Delivery shall be affected as follows, subject to change as to the person(s) to be notified and/or their respective addresses upon ten (10) days' notice as provided herein:

TO KRE:

KRE Acquisition Corp.
Attention: David B. Kahan, Esq.
520 US Highway 22 East
PO Box 6872
Bridgewater, New Jersey 08807
Fax: (908)-575-2237

WITH COPIES TO:

O'Toole Scrivo Fernandez Weiner Van Lieu LLC
Attention: Thomas P. Scrivo, Esq.
14 Village Park Road
Cedar Grove, New Jersey 07009
Fax: (973) 239-3400

TO THE TOWNSHIP OF EAST HANOVER:

Township of East Hanover
Attention: Joseph Tempesta, Township Business Administrator
411 Ridgedale Avenue
East Hanover, New Jersey 07936
Fax: 973-887-7210

WITH COPIES TO:

Jeffrey R. Surenian and Associates, LLC
Attention: Michael J. Edwards, Esq.
707 Union Avenue, Suite 301
Brielle, New Jersey 08730
Fax: (732) 612-3101

TO THE PLANNING BOARD OF THE TOWNSHIP OF EAST HANOVER:

Planning Board of the Township of East Hanover
Attention: Lisa Kiss, Planning Board Secretary

411 Ridgedale Avenue
East Hanover, New Jersey 07936
Fax: 973-887-7210

TO MONDELEZ INTERNATIONAL, INC.:

Thomas J. Malman, Esq.
Day Pitney, LLP
1 Jefferson Road
Parsippany, NJ 07054
Fax: 973-206-6636

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

8. Headings Not Controlling. The paragraph headings included herein are for reference only and are not a part of this Agreement. The headings shall not control or alter the meaning of this Agreement as set forth in the text.

9. Counterparts. This Agreement may be executed in any number of identical counterparts, notwithstanding that all Parties have not signed the same counterpart, with the same effect as if all Parties had signed the same document. All counterparts shall be construed as and shall constitute one and the same agreement.

10. Equal Opportunity To Participate In Drafting. The Parties have participated and had an equal opportunity to participate in the drafting of this Agreement. No ambiguity shall be construed against any party based upon a claim that that party drafted the ambiguous language.

11. Entire Agreement. This Agreement constitutes the entire agreement of the Parties on all subjects. This Agreement may not be modified, interpreted, amended, waived or revoked orally, but only by a writing signed by all Parties. This Agreement supersedes and

replaces all prior agreements, discussions and representations on all subjects, all of which are merged into, and superseded by, this Agreement. No party is entering into this Agreement in reliance on any oral or written promises, inducements, representations, understandings, interpretations or agreements other than those contained in this Agreement.

12. Full Understanding; Independent Legal Counsel; Authority. The Parties each acknowledge, represent and agree that they have read this Agreement; that they fully understand the terms thereof; that they have been fully advised by their legal counsel, accountants and other advisors with respect thereto; and that they are executed by them upon the advice and recommendation of their independent legal counsel. KRE and Mondelez represent that they have been given the authority to enter into this Agreement by their respective executives, members, managers, or boards of directors. The Township represents that it has been given the authority to enter into this Agreement by its governing body, and the Board represents that it has been given the authority to enter into this Agreement by the majority of the members of the Board.

[space intentionally left blank - signatures to follow on next page]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed as of the date first above mentioned.

By: Township of East Hanover

By: Joseph Pannullo
Witness

Township of East Hanover

By: Joseph Pannullo
Name: JOSEPH PANNULLO
Title: MAYOR
Date: 8.05.19

By: East Hanover Twp. Planning Board

By: Lisa S. Kill
Witness

East Hanover Twp. Planning Board

By: William Salemmé
Name: WILLIAM SALEMMÉ
Title: CHAIRMAN
Date: 7/31/19

By: KRE Acquisition Corp.

By: _____
Witness

KRE Acquisition Corp.

By: _____
Name:
Title:
Date:

By: Mondelez International, Inc.

By: Jason Larieny
Witness

Mondelez Global, L.L.C.

By: Jason Larieny
Name: JASON LARIENY
Title: VP. GLOBAL REAL ESTATE & FM
Date: 8/19/2019

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed as of the date first above mentioned.

By: Township of East Hanover

Township of East Hanover

By: _____
Witness

By: _____
Name:
Title:
Date:

By: East Hanover Twp. Planning Board

East Hanover Twp. Planning Board


By: _____
Witness

By: _____
Name:
Title:
Date:

By: KRE Acquisition Corp.

KRE Acquisition Corp.

By:  _____
Witness David B. Kahan

By:  _____
Name: Murray Kushner
Title: President
Date: July 18, 2019

By: Mondelez International, Inc.

Mondelez Global, L.L.C.

By: _____
Witness

By: _____
Name:
Title:
Date:

EXHIBIT A

EXHIBIT B

