

#1340

ORDINANCE AUTHORIZING THE TOWNSHIP OF HADDON, COUNTY OF CAMDEN AND STATE OF NEW JERSEY TO ENTER INTO A SECOND AMENDMENT TO REDEVELOPMENT AGREEMENT FOR DYDEE REDEVELOPMENT PLAN BETWEEN THE TOWNSHIP AND FIELDSTONE ASSOCIATES, L.P. d/b/a TOWNE CENTER AT HADDON URBAN RENEWAL, LLC ("REDEVELOPER")

WHEREAS, the Redeveloper is the contract purchaser of property within the Township, which property is identified on the tax maps of the Township as Block as Block 21.05, Lot 43 and Block 21.06, Lot 12 ("Property");

WHEREAS, on November 26, 2002, pursuant to the Local Redevelopment and Housing Law, *N.J.S.A. 40A:12A-1 et seq.* (the "LRHL") the Township designated the Property as a "Redevelopment Area" as such a term is defined by the LRHL;

WHEREAS, on November 26, 2002, the Township adopted a redevelopment plan for the Property (the "Redevelopment Plan");

WHEREAS, the Board of Commissioners of the Township has been designated as the Redevelopment Entity for purposes of implementing the Redevelopment Plan;

WHEREAS, on July 15, 2003, by Resolution #2003-97, the Township appointed the Redeveloper as the Redeveloper of the Property;

WHEREAS, on November 10, 2003, as modified and readopted in 2006, the Township and Redeveloper entered into a Redevelopment Agreement which was amended by the First Amendment to Redevelopment Agreement dated August 17, 2010 (together, the "Redevelopment Agreement"), which Redevelopment Agreement set forth the terms and conditions relative to the redevelopment of the Property;

WHEREAS, the Redevelopment Agreement did not include any provisions or obligations for the Redeveloper to contribute to the Township's affordable housing obligations pursuant to the *Mount Laurel* Doctrine and the Fair Housing Act, *N.J.S.A. 52:27D-301, et seq.* (the "FHA");

WHEREAS, following the grant of Final Site Plan Approval of the redevelopment project by the Haddon Township Planning Board, by Resolution June 2, 2011, Fair Share Housing Center, Inc. ("FSHC") in the matter captioned *Fair Share Housing Center, Inc. v. The Township of Haddon, the Planning/Zoning Board of Haddon Township and Fieldstone Associates, LP d/b/a Towne Center at Haddon Urban Renewal, LLC*, Docket No. L-4888-11

challenged the Final Site Plan Approval and the Redevelopment Agreement (the "FSHC Lawsuit");

WHEREAS, following the filing of the FSHC Lawsuit, the Township, Redeveloper and FSHC entered into a Settlement Agreement of Litigation ("Settlement Agreement") that revised the Redeveloper's affordable housing obligations and provided for revisions to the Redevelopment Plan and the Project pursuant to the terms of the Agreement;

WHEREAS, modifications to the site plan to reduce the retail/commercial component, and modify the residential to include a maximum of 252 rental units, are required in order to provide affordable housing units at the Project;

WHEREAS, the Redeveloper and Township wish to amend the Redevelopment Agreement to reflect the terms of the Settlement Agreement; and

NOW, THEREFORE, be it Ordained by the Mayor and Board of Commissioners of the Township of Haddon, County of Camden, State of New Jersey, as follows:

1. The Mayor and Board of Commissioners of the Township of Haddon make such determinations and findings by virtue of and pursuant to and in conformity with the LRHL as set forth in the above Recitals.
2. The Second Amendment to Master Redevelopment Agreement for the Dydee Redevelopment Plan between the Township and Redeveloper, attached hereto as Exhibit "A" is hereby approved and authorized.
3. The Mayor of the Township of Haddon is hereby authorized to execute the Second Amendment to Master Redevelopment Agreement and any other documents necessary to effectuate same.

THE TOWNSHIP OF HADDON

BY: _____
RANDALL TEAGUE., MAYOR

BY: _____
PAUL DOUGHTERTY, COMMISSIONER

BY: _____
JOHN C. FOLEY, COMMISSIONER

ATTEST:

DAWN M. PENNOCK, MUNICIPAL CLERK

The foregoing Ordinance was introduced by the Board of Commissioners at the regular meeting held on July 28, 2015. This Ordinance will be considered for adoption on final reading and public hearing to be held on _____, 2015 at 7:00 p.m. in the Meeting Room, Haddon Township Municipal Building, 135 Haddon Avenue, Westmont, New Jersey.

The purpose of this Ordinance is to approve the Second Amendment to the Redevelopment Agreement for Dydee Redevelopment Plan between the Township and Redeveloper. A copy of this Ordinance is available at no charge to the general public between the hours of 8:30 AM to 4:30 PM, Monday through Friday (Legal Holidays excluded), at the Office of the Township Clerk, Haddon Township Municipal Building, 135 Haddon Avenue, Westmont, New Jersey.

I, do hereby certify the foregoing to be a true copy of an ordinance adopted by the Board of Commissioners of the Township of Haddon at a meeting held on ____ of _____, 2015.

DAWN M. PENNOCK, MUNICIPAL CLERK

EXHIBIT A

**SECOND AMENDMENT TO MASTER REDEVELOPMENT
AGREEMENT FOR DYDEE REDEVELOPMENT PLAN BETWEEN THE
TOWNSHIP AND REDEVELOPER**

SECOND AMENDMENT TO REDEVELOPMENT AGREEMENT

This Second Amendment to the Redevelopment Agreement (the "Amendment") made on _____, 2015 by and among Fieldstone Associates, L.P. d/b/a Towne Center at Haddon Urban Renewal, LLC ("Redeveloper"), a limited partnership of the State of Pennsylvania, with a business address of 1065 Route 22 West, Bridgewater, NJ 08807 and the Township of Haddon ("Township"), a New Jersey municipal corporation with a principal address of 135 Haddon Avenue, Westmont, NJ 08108.

WHEREAS (1st), the Redeveloper is the contract purchaser of property within the Township, which property is identified on the tax maps of the Township as Block as Block 21.05, Lot 43 and Block 21.06, Lot 12 ("Property");

WHEREAS (2nd), on November 26, 2002, pursuant to the Local Redevelopment and Housing Law, *N.J.S.A. 40A:12A-1 et seq.* (the "LRHL") the Township designated the Property as a "Redevelopment Area" as such a term is defined by the LRHL;

WHEREAS (3rd), on November 26, 2002, the Township adopted a redevelopment plan for the Property (the "Redevelopment Plan");

WHEREAS (4th), the Board of Commissioners of the Township has been designated as the Redevelopment Entity for purposes of implementing the Redevelopment Plan;

WHEREAS (5th), on July 15, 2003, by Resolution #2003-97, the Township appointed the Redeveloper as the Redeveloper of the Property;

WHEREAS (6th), on November 10, 2003, as modified and readopted in 2006, the Township and Redeveloper entered into a Redevelopment Agreement which was amended by the First Amendment to Redevelopment Agreement dated August 17, 2010 (together, the

“Redevelopment Agreement”), which Redevelopment Agreement set forth the terms and conditions relative to the redevelopment of the Property;

WHEREAS (7th), the Redevelopment Agreement did not include any provisions or obligations for the Redeveloper to contribute to the Township’s affordable housing obligations pursuant to the *Mount Laurel Doctrine* and the Fair Housing Act, *N.J.S.A. 52:27D-301, et seq.* (the “FHA”);

WHEREAS (8th), following the grant of Final Site Plan Approval of the redevelopment project by the Haddon Township Planning Board, by Resolution June 2, 2011, Fair Share Housing Center, Inc. (“FSHC”) in the matter captioned *Fair Share Housing Center, Inc. v. The Township of Haddon, the Planning/Zoning Board of Haddon Township and Fieldstone Associates, LP d/b/a Towne Center at Haddon Urban Renewal, LLC*, Docket No. L-4888-11 challenged the Final Site Plan Approval and the Redevelopment Agreement (the “FSHC Lawsuit”);

WHEREAS (9th), following the filing of the FSHC Lawsuit, the Township, Redeveloper and FSHC entered into a Settlement Agreement of Litigation (“Settlement Agreement”) that revised the Redeveloper’s affordable housing obligations and provided for revisions to the Redevelopment Plan and the Project pursuant to the terms of the Agreement;

WHEREAS (10th), modifications to the site plan to reduce the retail/commercial component, and modify the residential to include a maximum of 252 rental units, are required in order to provide affordable housing units at the Project;

WHEREAS (11th), the Redeveloper and Township wish to amend the Redevelopment Agreement to reflect the terms of the Settlement 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 the Township and Redeveloper, and further, to implement the purposes of the LRHL, the Township and Redeveloper hereby agree as follows:

1. Section 3.1 Purchase Price is revised to specify that the Purchase Price of the Project site shall be equal to Eight Million thirty-eight thousand dollars (\$8,038,000.00) as of the effective date of this Amendment, plus interest at the bond anticipation note rate accruing from the effective date of this Amendment and the Litigation Settlement Agreement until Closing. No additional fees shall be charged to the Redeveloper or added to the Purchase Price.

2. Section 4.1 Due Diligence Period. Subject to the Closing Conditions set forth in this Amendment, Redeveloper acknowledges and agrees that the Due Diligence Period has concluded and the Redeveloper waives any right to terminate the Redevelopment Agreement pursuant to Section 4.1, thereof.

3. Section 4.5 Redevelopment Plan Amendments is revised to specify that on or before August 1, 2015 the Township shall prepare documentation for amendments to the Redevelopment Plan to provide for a minimum of 252 apartment rental units which shall include 227 market rental units and, if 227 market rental units are approved, no less than 25 affordable family rental units on the Property, with a clubhouse and amenities, and the revision of parking to provide surface parking, private garages and parking on the grade level under buildings, and a reduction in the retail/commercial space to 12,500 sq. ft., including revisions to bulk standards required to implement the revised Redevelopment Plan, in accordance with the Approved Concept Plan (the "Amended Redevelopment Plan", annexed hereto as Exhibit B). The Settlement Agreement requires the Township to provide an additional thirteen (13) family

affordable housing units off-site if a Court determines that such units are necessary to satisfy the Township's Third Round obligation. Redeveloper will consider proposals from the Township to construct these thirteen (13) units on mutually acceptable business terms, but the obligation remains that of the Township if Redeveloper elects not to construct these thirteen (13) units. Redeveloper's obligation to provide the number of affordable family rental units set forth in this Amendment is conditioned upon receipt of the Development Approvals for 252 apartment rental units (227 market/25 affordable) on the Property.

4. New Section 4.7 is added to the Redevelopment Agreement to provide as follows:

"Affordable Housing. The Redeveloper's affordable housing obligation shall include 25 family rental units of affordable housing on-site and the Township's affordable housing obligation shall include 13 non-age restricted units of affordable housing, offsite, if required by Court determination, all as set forth in the _____, 2015 Settlement Agreement in the matter *Fair Share Housing Center, Inc. v. The Township of Haddon, the Planning/Zoning Board of Haddon Township and Fieldstone Associates, LP d/b/a Towne Center at Haddon Urban Renewal, LLC*, Docket No. L-4888-11, which Settlement Agreement is attached hereto as Exhibit C.

5. Section 5.1 Real Estate Tax Abatement... is revised to specify that the Financial Agreement between the Township and Redeveloper dated April 23, 2007 shall be amended and executed by the parties in the form annexed hereto as Exhibit D.

6. Section 5.2 Tax Exempt Notes... is revised to provide that the Township shall issue taxable general obligation bonds ("Bonds") pursuant to the New Jersey Local Bond Law (N.J.S.A. 40A:2-1 et seq.) in the amount of \$6,000,000.00 in accordance with the Financial Agreement (Exhibit D), which funds shall be provided and available to Redeveloper at Closing for the purposes set forth in Section 5.2. Redeveloper shall apply \$6,000,000.00 of Bond proceeds toward payment of the Purchase Price at Closing, with the balance of the Purchase Price paid by Fieldstone. The Redeveloper shall be responsible for the payment of any principal

and/or interest payments due and owing on the Bonds from the period commencing on the date of Closing and ending on Annual Service Charge Start Date (as such term is specifically defined and described in the Financial Agreement attached hereto as Exhibit D). On and after the Annual Service Charge Date, the Guarantors (as such term is defined in the Financial Agreement) shall be responsible for the payment of the Bonds Debt Service Charge (as such term is defined in the Financial Agreement) not otherwise paid by the Annual Service Charge (as such term is defined in the Financial Agreement) collected and paid by the Redeveloper; provided that the Guarantors shall not be responsible for paying any portion of the Bonds Debt Service Charge that shall be attributable to interest costs on the Bonds in excess of 6.5% per annum (all as more particularly set forth in the Financial Agreement).

7. Section 5.3 Concept Plan is revised to specify that the site concept plan annexed hereto as Exhibit E conforms to the Amended Redevelopment Plan and shall be the Approved Concept Plan.

8. Section 5.3(d) is supplemented to provide that the Redeveloper shall proceed in good faith and with due diligence to obtain Amended Preliminary/Final Site Plan Approval for the revised Project as depicted in the Approved Concept Plan and as specified in this Amendment and the Settlement Agreement, along with any related Development Approvals, which together shall constitute the Development Approvals. The Township shall cooperate with the Redeveloper in good faith and with due diligence to expedite the process to secure the Development Approvals. Redeveloper shall not be required to pay any application or professional review fees in connection with any development application and review of the Amended Preliminary/Final Site Plan. Redeveloper shall pay for any and all other application, escrow, permit and approval fees in connection with this Project as required by law or ordinance.

9. Section 8.2 Closing Conditions is deleted and replaced by the following: It is a condition to Redeveloper's obligation to close title that, as of the Closing Date, (i) all of Township's representations and warranties are true and correct in all material respects, (ii) Township shall have executed and adopted the revised Financial Agreement and PILOT by Ordinance; (iii) the Title Insurer shall have issued to Redeveloper and its lender, if applicable, a title insurance binder in form and substance to convey good and marketable title insurable at regular rates to the Redeveloper, in accordance with Paragraph 2.6 of the Redevelopment Agreement; (iv) the Township shall have adopted the Amended Redevelopment Plan; (v) the Redeveloper shall have received the revised Development Approvals to construct no less than 252 rental units and 12, 500 sq. feet of retail space, and the appeal period shall have passed without an appeal being filed; (vi) a Response Action Outcome shall have been issued by a LSRP for the soil contamination located on the Property and in the roadbed of Highland Avenue reflecting satisfactory performance of the activities described in the Remediation Specifications defined in Section 12 below; (vii) the bonds specified in Section 5.2 as amended and in the Financial Agreement shall have been issued; (viii) the Settlement Agreement shall have been executed and approved by the Court; and (ix) all appeal periods shall have expired on any action required to meet these conditions, and no litigation shall have been filed challenging same. The Redeveloper shall close within forty five (45) days of the satisfaction of these closing conditions and shall commence construction of the Project within sixty (60) days of Closing, subject to force majeure.

The groundwater contamination originating or emanating from the Property will be addressed post-Closing pursuant to a final RAW/CEA that will be developed based upon that certain plan titled Site Investigation Report/Remedial Investigation Report/Remedial Action

Selection Report/Remedial Action Workplan for Groundwater dated November, 2012 prepared by Langan and approved by Jorge Berkowitz, LSRP (“Approved Groundwater Workplan”), unless the activities as described in the Approved Groundwater Workplan would prevent or delay financing of the Project. The Parties acknowledge that the vapor intrusion activities conducted at and in connection with the Property have been satisfactorily completed such that an Immediate Environmental Concern no longer exists and that only annual reporting to be undertaken by the Redeveloper on the mitigation system installed at 207 Virginia Avenue is required.

10. The Township acknowledges and confirms that Chapter 189 of the Code of Haddon Township entitled Rent Control does not and shall not apply to this Project. Specifically, this Project consists of multiunit dwellings that are to be newly constructed and rented for the first time after the effective date of Chapter 189, and therefore are exempt from the definition of “Dwelling or Dwellings” and not regulated by Chapter 189.

11. All other terms and provisions of the Redevelopment Agreement are to remain except as specifically modified herein.

12. The remediation work as described in the specifications prepared by Langan Engineering and Environmental (the “Remediation Specifications”) has been completed.

13. The removal of the existing utilities and the installation of new utilities in the right-of-way of Highland Avenue which was necessitated as a consequence of the excavation of contaminated soil therefrom (the “Utility Specifications”) has been completed. A Declaration of Environmental Restriction (“DER”) and deed notice is not required, because the contaminated soils within the Highland Avenue right-of-way were removed. All other work to occur within the utility corridor, if any, shall be performed by Redeveloper’s contractor (the “Contractor”)

pursuant to the Utility Specifications, which shall include requirements (i) to obtain a road-opening permit; (ii) for the replacement of existing utilities; (iii) for clean fill with proper compaction requirements; (iv) for the provision of temporary utility service to those property owners whose service may be affected by the removal of utilities or interruption of utility service in connection with the Redeveloper's required excavation within Highland Avenue; and, (v) that if any user of the utilities located within Highland Avenue is damaged by the Contractor's failure to timely replace the utilities once the Contractor has removed the existing utilities, Contractor shall be solely responsible therefor; provided that Redeveloper shall be responsible therefor in the event that delay in performance is caused solely by the Redeveloper's willful misconduct. Redeveloper agrees to replace the utilities within the Project Area in the Highland Avenue right-of-way with utility facilities in accordance with the Development Approvals.

14. Redeveloper acknowledges that Remediation of the Property was commenced and has been completed (except for the requirement of quarterly monitoring of ground water wells, and the potential of discovery of additional contaminated soils under existing concrete slabs after construction is commenced, which such soils the Township would endeavor to secure HDSRF funding to remediate, but which would otherwise remain the Redeveloper's obligation to remediate. However, in the event that the Redevelopment Agreement is terminated for any reason, Redeveloper shall have no further obligation with respect to future remediation of the Property or replacement of the utilities from and after the date of termination.

15. This Amendment is subject to the execution and compliance with the litigation Settlement Agreement described in Paragraph 3, above.

IN WITNESS WHEREOF, the Parties' authorized representatives have signed this Agreement.

ATTEST:

TOWNSHIP OF HADDON

By: _____

ATTEST:

FIELDSTONE ASSOCIATES, L.P.

By: _____

ACKNOWLEDGEMENTS

STATE OF NEW JERSEY

SS:

COUNTY OF CAMDEN:

BE IT REMEMBERED that on _____, 2015, personally came before me and acknowledged under oath, to my satisfaction, that: (a) She/He is the _____ of the Township of Haddon, the municipal corporation named in this Amendment to the Redevelopment Agreement; (b) She/He is the attesting witness to the signing of this Litigation Settlement Agreement by the proper municipal official, _____, who is the _____ of the Township of Haddon; and (c) this Amendment to the Redevelopment Agreement was signed and delivered by the Township of Haddon as its voluntary act duly authorized by a proper resolution of the Township Council.

Notary Public of the State of New Jersey

STATE OF NEW JERSEY

SS:

COUNTY OF _____:

BE IT REMEMBERED that on _____, 2015, _____, Managing Partner of Fieldstone Associates, L.P. ("Fieldstone") personally came before me and acknowledged under oath, to my satisfaction, that Fieldstone is named in this Amendment to the Redevelopment Agreement and that this Amendment to the Redevelopment Agreement was signed by him on behalf of Fieldstone as voluntary and duly authorized act of Fieldstone.

Notary Public of the State of New Jersey

EXHIBIT A
ESCROW STATEMENT

[Attached]

EXHIBIT B

AMENDED REDEVELOPMENT PLAN

[Attached]

EXHIBIT C
SETTLEMENT AGREEMENT

EXHIBIT D
FINANCIAL AGREEMENT

EXHIBIT E
APPROVED CONCEPT PLAN

