

**DISCHARGE OF RIGHT TO ACQUIRE LAND AND SERVICE AGREEMENT**

**THIS DISCHARGE OF RIGHT TO ACQUIRE LAND AND SERVICE AGREEMENT** (“Agreement”) made this \_\_\_\_\_ day of October, 2023, by and between:

**BOROUGH OF NORTH CALDWELL**, a municipal corporation of the State of New Jersey, County of Essex, having an address of 141 Gould Avenue, North Caldwell, New Jersey 07006-4213 (hereinafter the “Borough” or “North Caldwell”);

And

**GREEN BROOK REALTY ASSOCIATES, LLC**, a New Jersey limited liability company, having an address at 100 Passaic Avenue, Suite 240, Fairfield, New Jersey 07004 (hereinafter “Green Brook”);

Collectively, the Borough and Green Brook shall be referred to as the “Parties.”

**WHEREAS**, in connection with the Borough’s action filed with the Superior Court of New Jersey (“Court”), entitled In the Matter of the Application of the Borough of North Caldwell, County of Essex, Docket No. ESX-L-4696-15, seeking a Judgment of Compliance and Repose approving its Housing Element and Fair Share Plan, in addition to related relief, the Parties entered into that certain Settlement Agreement dated December 11, 2018 (the “Settlement Agreement”) relating to the development of the current Green Brook Country Club, which is described on the Borough’s tax map as Block 1600, Lot 1; and consists of 99.96 total acres in North Caldwell (the “Property”), 87.05 acres of which are developable, and an additional 71.2 acres located in the adjacent Township of Fairfield; and

**WHEREAS**, the Settlement Agreement included an obligation for Green Brook to dedicate 12 contiguous acres of buildable open space from the Property to the Borough suitable for future municipal use (the “Land Dedication”); and

**WHEREAS**, Green Brook wishes to retain the property that was contemplated as part of the Land Dedication; and

**WHEREAS**, the Borough has determined that it no longer requires the Land Dedication; and

**WHEREAS**, Green Brook desires to provide certain construction services in consideration of the Borough’s discharge and relinquishment of its rights to the Land Dedication; and

**WHEREAS**, the Parties desire to enter into an agreement as set forth herein:

**NOW THEREFORE**, the Parties agree to be mutually bound and hereby agree as follows:

1. The recitals set forth above are hereby incorporated herein as if set forth in full in the body of this Agreement.

2. The Borough hereby discharges and relinquishes its right to the Land Dedication.
3. In consideration of the Borough's discharge and relinquishment of its rights to the Land Dedication, Green Brook has agreed to the following items to the benefit of the Borough: provide construction services, which will serve as a public benefit to the Borough and its residents equal to approximately \$1,500,000.00 in value as follows:
  - a. The Borough previously acquired Walker's Pond and the house associated with that property (the "Walker House"). The Borough has partially demolished the Walker House interior. Green Brook agrees to work with the Borough-designated representatives to design and construct the Walker House to create an ADA compliant public meeting space including a kitchen, bathrooms, and flexible indoor/outdoor meeting space (the "Walker House Project").
  - b. The Borough currently owns and operates six tennis courts, which are in need of reconstruction. Within twelve (12) months following the execution of this Agreement, Green Brook shall work with the Borough to design, build, and construct new courts to include tennis, pickleball, and possibly basketball surfaces and related amenities (the "Tennis Court Project").
  - c. At the sole choice of the Borough, either the Walker House Project or the Tennis Court Project shall commence upon the execution of the Agreement. Each project shall proceed until such work is deemed complete by both parties.
  - d. To the extent allowable by law, Green Brook may engage and utilize Woodmont Properties, LLC ("WP") to serve as the general contractor for the services and/or work defined above, but will likely subcontract specialty work and, in that case, will oversee the design, bidding, and supervision of subcontractors to perform the specialty work. Green Brook through WP will provide the Borough with all plans and cost estimates for the Borough to approve before any work commences. Upon completion of all work, Green Brook through WP will provide the Borough final "as built" plans and receipts of actual costs paid.
4. The Borough shall be permitted to request quarterly status updates on the value of the above referenced construction services, which shall be provided within seven (7) days of said request. Green Brook shall prepare a final accounting of the value of the above referenced construction services when all services are completed (the "Accounting") and provide same to the Borough.
5. If, after the Accounting is provided, it is determined the value of said services is less than \$1,500,000.00, then Green Brook shall make a cash payment to the Borough for such difference. If it is determined that the value of the services exceeds \$1,500,000.00, then the Borough shall contribute the difference.

6. Both parties agree the Borough's relinquishment of its right to the Land Dedication is solely in consideration of the \$1,500,000.00 in value as detailed above.
7. This Agreement shall be governed by and construed by the laws of the State of New Jersey.
8. To save both parties time and avoid the costs of litigation, in the event of any claim or dispute between the Parties related to this Agreement or related to any performance of any services related to this Agreement ("Dispute"), the claim or dispute shall be submitted to binding arbitration administered by the American Arbitration Association ("AAA") in accordance with its Commercial Arbitration Rules. Such arbitration shall be the sole procedure for resolving any Dispute. Either party may initiate dispute resolution by sending written notice describing the particular issues that are the subject of a Dispute to the other party. The party initiating the Dispute shall promptly obtain a list of at least three (3) arbitrators meeting the qualifications provided from the AAA and the parties shall thereafter have ten (10) business days to agree upon an arbitrator from the list. If the parties are unable to agree upon an arbitrator in this period, at the request of either party, an arbitrator meeting the qualifications set forth herein shall be selected by AAA. Except as otherwise agreed to in writing by the Parties, the arbitrator shall be either a former state or federal judge or an attorney who has been in practice at least fifteen (15) years specializing in commercial real estate law, and who has no prior relationship with or connection to either party or their respective Affiliates and has had both training and experience as an arbitrator. "Affiliate" means a person or entity that directly, or indirectly through one or more intermediaries, controls or is controlled by or is under common control with a party. The term "control" (including the terms "controlled by" and "under common control with") means possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of an entity, whether through ownership of voting securities, by contract interest or otherwise. The arbitration proceeding shall be conducted in Essex County, unless another location is mutually agreed upon by the Parties. Any decision of the arbitrator shall be final, binding and conclusive. Any arbitration award may be entered in and enforced by any court having jurisdiction thereof and the parties hereby consent and submit to the jurisdiction of the court of any competent jurisdiction for purposes of the enforcement of any arbitration award.
9. This Agreement may not be modified, amended or altered in any way except by a writing signed by each of the Parties.
10. This Agreement may be executed in any number of counterparts, each of which shall be an original and all of which together shall constitute but one and the same Agreement.

11. The Parties acknowledge that each has entered into this Agreement on its own volition without coercion or duress after consulting with its counsel, that each party is the proper person and possess the authority to sign this Agreement, that this Agreement contains the entire understanding of the Parties and that there are no representations, warranties, covenants or undertakings other than those expressly set forth herein.
12. Each of the Parties hereto acknowledges that this Agreement was not drafted by any one of the Parties, but was drafted, negotiated and reviewed by all Parties and, therefore, the presumption of resolving ambiguities against the drafter shall not apply. Each of the Parties expressly represents to the other Parties that: (i) it has been represented by counsel in connection with negotiating the terms of this Agreement; and (ii) it has conferred due authority for execution of this Agreement upon the persons executing it.
13. This Agreement constitutes the entire agreement between the Parties hereto and supersedes all prior oral and written agreements between the Parties with respect to the subject matter hereof except as otherwise provided herein.
14. No member, official or employee of the Borough shall have any direct or indirect interest in this Agreement, nor participate in any decision relating to this Agreement which is prohibited by law, absent the need to invoke the rule of necessity.
15. Anything herein contained to the contrary notwithstanding, the effective date of this Agreement shall be the date upon which all of the Parties hereto have executed and delivered this Agreement.
16. All notices required under this Agreement ("Notice[s]") shall be written and shall be served upon the respective Parties by certified mail, return receipt requested, or by a recognized overnight or by a personal carrier. In addition, where feasible (for example, transmittals of less than fifty pages) shall be served by facsimile or e-mail. All Notices shall be deemed received upon the date of delivery. Delivery shall be affected as follows, subject to change as to the person(s) to be notified and/or their respective addresses upon ten (10) days' notice as provided herein:

**TO THE BOROUGH:**

Jarrid H. Kantor, Esq.  
Antonelli Kantor Rivera  
354 Eisenhower Parkway Suite 1000  
Livingston, NJ 07039

**WITH A COPY TO THE  
MUNICIPAL CLERK:**

Tami Michelotti  
Acting North Caldwell Borough Clerk  
141 Gould Avenue  
North Caldwell, New Jersey 07006

**TO WOODMONT PROPERTIES:**

Thomas P. Scrivo, Esq.  
O'Toole Scrivo Fernandez Weiner Van Lieu, LLC  
14 Village Park Road  
Cedar Grove, New Jersey 07009

**WITH A COPY TO:**

Stephen A. Santola, Esq.  
Woodmont Properties, LLC  
100 Passaic Avenue, Suite 240  
Fairfield, New Jersey 07004

**AND TO:**

Katharine A. Coffey, Esq.  
Day Pitney, LLP  
One Jefferson Road  
Parsippany, NJ 07054

17. Green Brook shall have the right to assign any portion of this Agreement to an Affiliated Entity without consent of the Borough. An Affiliated Entity shall be any entity owned or controlled by either Eric Witmond or Bruce Schonbraun. Green Brook shall have the right to assign its rights under this Agreement to any individual, entity, or organization that is not an Affiliated Entity with the prior approval of the Borough, which approval shall not be unreasonably withheld. The Borough shall not be permitted to unreasonably prevent or delay an assignment by Green Brook to any party not an Affiliated Entity of any of its rights under this Agreement as though they were a signatory hereto. Proposed assignments to non-Affiliated Entities shall be provided to the Borough for review and approval together with (i) financial information and experience of the proposed assignee and (ii) the proposed assignee's time table for development, at least 30 days prior to the anticipated execution of the assignment. The Parties acknowledge in the event Green Brook assigns any portion of this Agreement to any individual, entity, or organization that is not an Affiliated Entity, such individual, entity, or organization shall provide verification that the individual, entity, or organization has reviewed, understands, agrees and assumes the terms of this Agreement. Green Brook acknowledges and agrees that it shall remain liable for all obligations created in this Agreement until a subsequent non Affiliated Entity assumes same and Green Brook is released.

[Signature page follows]

By signing below, each party acknowledges that the signatory was authorized to execute this Agreement by the entity for which he or she signs.

Green Brook Realty Associates LLC

By: \_\_\_\_\_

Name:

Title:

Date:

Borough of North Caldwell, Essex County

Attest:

By: \_\_\_\_\_

Name:

Title:

Date:

By: \_\_\_\_\_

Name:

Title:

Date: