

**AMENDED AND RESTATED SETTLEMENT AGREEMENT**

**THIS AMENDED AND RESTATED SETTLEMENT AGREEMENT** (“Amended Settlement 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 (the “Borough”);

And

**GREEN BROOK GOLF COURSE REALTY ASSOCIATES LLC**, a New Jersey limited liability company and successor in interest to Green Brook Realty Associates, LLC, having an address at 100 Passaic Avenue, Suite 240, Fairfield, New Jersey 07004 (“Green Brook”);

Each individually a Party and collectively, referred to as the “Parties.”

**WHEREAS**, in response to the New Jersey Supreme Court’s decision 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 (“Mount Laurel IV”), the Borough filed an action 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 (the “Compliance Action”), seeking a Judgment of Compliance and Repose approving its Housing Element and Fair Share Plan (hereinafter “Affordable Housing Plan”), in addition to related relief, and simultaneously filed a motion for temporary immunity, which was subsequently granted by the Court and is still in full force and effect; and

**WHEREAS**, before the Fairness Hearing could be held, Green Brook became an “interested party” in the Compliance Action, and the Fairness Hearing was adjourned to allow time for Green Brook and the Borough to negotiate a settlement; and

**WHEREAS**, in connection with the Borough’s Compliance Action, 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 (the “Overall Property”), 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**, pursuant to the terms of the Settlement Agreement, the Borough created an overlay zone for the Property, permitting (i) age-targeted, age-restricted, and affordable housing units (ii) an assisted living facility, (iii) rights to maintain and operate the existing clubhouse as a restaurant and catering facility (the “IRO Zoning”); and

**WHEREAS**, the IRO Zoning 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 and the Borough now seek to repeal the IRO Zoning to remove the age-targeted housing, the assisted living use, all four-story buildings, and the restaurant/banquet use and replace it with 100% age-restricted housing and related accessory uses as recognized under the Federal Fair Housing Act (“FFHA”), and with the same affordable housing obligation (the “SIRO Zoning”); and

**WHEREAS**, the uses permitted pursuant to the SIRO Zoning result in a lesser impact to Borough schools, sewer, utilities, facilities and traffic than those uses permitted pursuant to the IRO Zoning; and

**WHEREAS**, the Parties desire to enter into an amended Settlement Agreement (the “Amended Settlement Agreement”), subject to Court approvals which will supersede and replace the Settlement 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 Amended Settlement Agreement. This Amended Settlement Agreement supersedes and replaces all agreements between the Parties, including but not limited to the Settlement Agreement. Once approved by the Court, the Settlement Agreement is of no further force or effect.
2. The definition of “Development” is hereby amended to be, “a 100% age-restricted market-rate housing development as recognized under the Federal Fair Housing Act (“FFHA”), together with age-restricted and family low- and moderate-income affordable units and related accessory uses and amenities.”
3. Through the crediting described in this Amended Settlement Agreement and through the adoption and implementation of an Affordable Housing Plan that is consistent with this Amended Settlement Agreement, and if the golf course is developed in the way described herein, the Borough will partially satisfy its obligations for the Prior Round (1987-1999) and for the Gap + Prospective Need (1999-2025) under the Mount Laurel doctrine, the Mount Laurel IV decision, and the Fair Housing Act of 1985, N.J.S.A. 52:27D-301 et seq. (“FHA”).
4. The Borough and Fair Share Housing Center (“FSHC”) shall amend the FSHC Settlement Agreement to incorporate the Development and said agreement may be required to be approved by the Court via an Order.
5. Green Brook agrees to file a good faith site plan application for the Property consistent with the SIRO Zoning (the “SIRO Site Plan Application”) within one hundred and twenty (120) days of the adoption of the SIRO Zoning Ordinance, subject to Section 11.f below. The Borough shall, to the extent allowable by law, request that the Planning Board treat such application as a priority; however the Borough cannot guarantee any actions or scheduling of the Planning Board. In the event the good faith SIRO Site Plan Application is either (i) denied, or (ii) not approved by the Borough Planning Board within nine (9)

months of filing, Green Brook shall have the right to either (1) appeal the denial, or (2) require that the Borough repeal the SIRO Zoning and reinstitute the IRO Zoning, and Green Brook shall be free to file a new site plan application under the IRO Zoning. If such an appeal is filed pursuant to Section 5(i)(1), the Borough shall not repeal the SIRO Zoning and reinstitute the IRO Zoning unless and until such appeal is denied. If the appeal is denied, Green Brook may require that the Borough repeal the SIRO Zoning and reinstitute the IRO Zoning, and Green Brook shall be free to file a new site plan application under the IRO Zoning. The deadlines in this Section 5 may be extended by agreement of the Parties and the Parties shall not unreasonably deny an extension of these deadlines. If Green Brook subsequently files an application with the Planning Board pursuant to the IRO Zoning, which is denied, the Parties shall be restored to the status quo ante, and all claims and defenses available prior to the execution of the Amended Settlement Agreement shall be available to the Parties.

6. In order to achieve the total number of units agreed to in this Amended Settlement Agreement, maximum building height shall be permitted as set forth in the SIRO Zoning Ordinance (defined herein) annexed hereto as Exhibit A.
7. The affordable units shall be located in two or more buildings to improve both finance options and efficient management. The buildings containing the affordable units shall utilize the same exterior building materials as the market rate buildings. The age-restricted affordable housing unit residents shall have full use of all of the amenities set forth in paragraph 11(d) herein. The family affordable housing unit building shall have its own amenity package to be designed by Green Brook and reasonably approved by the Borough as part of the SIRO Site Plan Application approval process and FSHC, as necessary.

The governing bulk standards are as set forth in the SIRO Zoning Ordinance annexed hereto as Exhibit A.

#### Maximum Impervious Cover

Maximum impervious cover shall be 33% and shall be calculated on a site wide basis. In calculating impervious cover, the denominator shall be the site's gross acreage (approximately 100 acres) and the numerator shall be all impervious surfaces excluding roads and streets.

8. The Borough hereby confirms support for the submissions and applications for all utilities (specifically including water and sewer service and the Caldwell Sewerage Authority) and all necessary private utility approvals related to all aspects of the Development (defined below) and will express such written support within thirty (30) days of a written request for such support. Specifically, the Borough shall take reasonable actions to cooperate with any submissions, applications, or dealings with Essex County, NJDOT, NJDEP, and any other public or private entity necessary to develop the Property consistent with the terms herein and the Development Plans attached hereto as Exhibit B. The Borough will not, however, provide support or assistance for applications to the North Caldwell Planning Board, the North Caldwell

Zoning Board of Adjustment or the Essex County Planning Board for applications that modify or deviate from this Amended Settlement Agreement. Specifically, as to sewer, utilities and access:

- a. The Borough previously delivered a letter endorsing the Property being placed in the sewer service area (“SSA”). The Borough processes its sanitary sewer with the Caldwell Sewer Authority (the “Authority”), which Authority had taken the position it had zero new capacity available. Green Brook was party to a lawsuit filed by several other municipalities and property owners compelling the Authority to make sewer service available. That litigation is ongoing.
  - b. In addition, Green Brook has been working with the Township of Fairfield (“Fairfield”) to send the Borough’s portion of the Green Brook sewer through Fairfield to the Two Bridges Sewer Authority (“Two Bridges”). Processing the sewer through Fairfield will require an amendment to the interlocal services agreement between the Borough and Fairfield.
  - c. Regardless of whether Green Brook elects to process the Property sewer at the Caldwell Authority or Two Bridges, the Borough agrees to cooperate with Green Brook to establish a sewer connection, including entering into a reasonable amendment to the interlocal services agreement with Fairfield (at no cost to the Borough) if necessary. Green Brook specifically agrees and acknowledges that any additional costs for these sewer services, due and owing to Fairfield and/or Two Bridges, shall be borne exclusively by Green Brook and any subsequent Home Owner’s Association and/or property owners.
  - d. The Borough shall work cooperatively with Green Brook and the County to arrange safe and convenient access to the Property, subject to the discretion of any and all applicable governmental and regulatory bodies. The Borough shall not object to Green Brook’s application to develop the Fairfield portion of the Overall Property provided that Green Brook site plan is in accordance with the existing zoning including the current amendment to the zoning regarding the definition of height.
9. Consistent with N.J.S.A. 52:27D-301 et seq. (Section 14b)), an application for development that is subject to the SIRO Zoning Ordinance shall not be subject to cost generative land use ordinances in order to achieve the number of units set forth in this Amended Settlement Agreement or to achieve a superior development layout. Green Brook shall be responsible for creating, extending or improving on and off-site infrastructure necessary to provide adequate potable water, waste water and stormwater service to the site, including control of storm water generated by the development of this site.
10. Affordable Housing Requirements: All affordable units in the Green Brook proposed project shall comply with the FHA, applicable Council on Affordable Housing (“COAH”) regulations, Uniform Housing Affordability Controls, N.J.A.C. 5:80:26.1 et. seq. (“UHAC”), the Borough’s Affordable Housing Ordinance, any applicable order of

the Court (including any Judgment of Compliance and Repose Order entered by the Court), and other applicable laws as may be amended and supplemented. Green Brook will also comply with the following provisions regarding the affordable units in its proposed project, which provisions will prevail in the case of a conflict with UHAC:

- a. **Deed Restriction Period:** Green Brook shall have an obligation to deed restrict the affordable units in the proposed project as very low, low or moderate income affordable units for a period of at least thirty (30) years from the date of the initial occupancy of each affordable unit (the “Deed-Restriction Period”), until the Borough takes action to release the controls on affordability, so that the Borough may count each affordable unit against its obligation to provide affordable housing. The Parties agree that the affordability controls shall not expire until such time, after thirty (30) years from the date of initial occupancy that the Borough takes action to release the controls on affordability, and that, thereafter, the affordability controls shall continue in effect until the date on which the individual affordable rental unit shall become vacant, provided that the occupant household continues to earn a gross annual income of less than 80 percent of the applicable median income. See N.J.A.C. 5:80-26.11(b). If, at any time after the release of the affordability controls by the Borough, a rental household’s income is found to exceed 80 percent of the regional median income, the rental rate restriction shall expire at the later of either the next scheduled lease renewal or sixty (60) days. See Ibid.
- b. **Deed Restriction:** Green Brook shall execute and record a Deed Restriction for the affordable units in a form agreed upon between the Parties before the first Certificate of Occupancy is issued for the Development. The Deed Restriction will be recorded in the Essex County Clerk’s office. The Borough shall take all actions necessary to release and discharge the Deed Restriction with respect to each affordable unit upon the expiration of the Deed Restriction Period with respect to such unit, subject to the terms herein.
- c. **Income Distribution Requirements:** Thirteen percent (13%) of the total number of the affordable rental units must be very low-income units, thirty-seven (37%) of the total number of affordable rental units must be low income units, and the remaining fifty percent (50%) must be moderate income rental units. These percentages shall be met both cumulatively across all of the affordable housing units in the entire development and separately for the family and age restricted components of the affordable housing units.
- d. **Bedroom Mix:** For the family rental units in the proposed affordable housing project, at least twenty percent (20%) of the affordable units shall be three-bedroom units, and no more than twenty percent (20%) of the affordable units shall be one-bedroom units. The remainder of the affordable family rental units shall be two- or three-bedroom units. Additionally, the affordable housing units shall have laundry facilities within the unit or in an area accessible to the unit. As to the affordable age restricted rental units, said units may be any combination of one-and two-bedroom units.

- e. **Other Affordable Housing Unit Requirements:** Green Brook will also comply with all of the other requirements of UHAC and the Borough's Affordable Housing Ordinance, including but not limited to, (1) affirmative marketing requirements, (2) candidate qualification and screening requirements, and (3) unit phasing requirements. As to phasing requirements, Green Brook will follow the phasing requirements found in COAH regulation N.J.A.C. 5:93-5.6(d).
  - f. **Administrative Agent:** Green Brook shall contract with a qualified and experienced thirty party administrative agent, which may be the Borough's administrative agent (the "Administrative Agent") 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 this Amended Settlement Agreement for the Deed-Restriction Period. Green Brook and its Administrative Agent shall work with the Borough and the Boroughs administrative agent, should Green Brook's and the Borough's administrative agent not be one and the same, regarding any affordable housing monitoring requirements imposed by COAH or the Court. Green Brook shall provide, within thirty (30) days after written notice, detailed information reasonably requested by the Borough or the Borough's Administrative Agent, should Green Brook's and the Borough's Administrative Agent not be one and the same, concerning Green Brook's compliance with the UHAC, the Borough's Affordable Housing Ordinance, the Borough's Affordable Housing Plan, all applicable Court orders (including the Borough's JOR), and other applicable laws.
  - g. **Inclusion of Affordable Units In The Borough's Amended Affordable Housing Plan:** The Parties agree that all of the affordable units in the proposed project are to be included in the Borough's Affordable Housing Plan, which will be approved by the Court. The affordable housing credits generated by this proposed project will be applied against the Borough's gap (1999-2015) and Prospective Need (2015-2025) obligations.
  - h. **Adaptability Requirement:** All new construction units shall be adaptable in conformance with P.L. 2005, c.350/N.J.S.A. 52:27D-311a and -311b and all other applicable law.
11. As an essential term of this settlement, within thirty (30) days of the Amended Settlement Agreement effective date, the Borough shall introduce an ordinance establishing an overlay zone of the Property (the "SIRO Zoning Ordinance"), which is materially consistent with the ordinance attached hereto as Exhibit A and with the concept plan attached hereto as Exhibit B, and permit the development of the Property consistent with Sections 4 and 5 above, and the following provisions:
- a. Market-rate age restricted units (55 years old and over) to be designed as either stacked condo flats or townhomes consistent with the density requirements set forth in the SIRO Zoning Ordinance attached hereto as Exhibit A.

- b. In addition to the active-adult market rate units provided for above, Green Brook shall provide fifty (50) affordable units as part of the proposed project. Twenty-five (25) of the affordable units shall be family rental units in one building and twenty-five (25) units shall be age-restricted senior rental units restricted to seniors (55 and over) located in a second building.
- i. The affordable units shall be located on a separate lot; and
  - ii. All of the affordable units shall be subject to the affordable housing requirements detailed in Section 10 herein; and
  - iii. Deed Restriction Period: Green Brook shall have an obligation to deed restrict twenty-five (25) of the affordable units in the proposed project as age-restricted senior units.
  - iv. The age-restricted affordable units shall also be subject to a deed restricting, restricting their use to meet the needs of, and to be exclusively for, the residents of an age-restricted segment of the population where the head of the household is a minimum age of either 62 years, or 55 years and meets the provisions of the 42 U.S.C. §§3601 et seq., except that due to death, a remaining spouse of less than 55 years of age shall be permitted to continue to reside. This restriction will be recorded in the Essex County Clerk's office in a form agreed upon between the Parties before the first Certificate of Occupancy is issued for the Development.
- c. The market-rate age restricted units shall be subject to a deed restriction, restricting their use to meet the needs of, and to be exclusively for, the residents of an age-restricted population such that the units are occupied by at least one person that is 55 years or older, except that due to death, a surviving co-owner or beneficiary residing in the unit of less than 55 years of age shall be permitted to continue to reside. This restriction may be within a master deed. This restriction will be recorded in the Essex County Clerk's office before the first Certificate of Occupancy is issued for the Development.
- d. In no event shall the total number of units exceed that permitted by the SIRO Zoning Ordinance. The age-restricted market rate use and affordable housing may each be located on their own separate lot and there shall be no requirement that each lot have frontage on a public road. Any lot that lacks frontage on a public road shall have access to a public road via private roadways within the Development.
- e. The Development shall have, and among others, the following amenities:
- (i) a clubhouse;
  - (ii) outdoor swimming pool;
  - (iii) fitness center;
  - (iv) outdoor patio/BBQ area;
  - (v) pickle ball courts/tennis courts; and
  - (viii) dog park.

- f. The age-restricted affordable housing unit residents shall have full use of all of the amenities. The family affordable housing unit building shall have its own amenity package, including a playground, to be designed by Green Brook and reasonably approved by the Borough as part of the SIRO Site Plan Application approval process and FSHC, as necessary.
  - g. Upon introduction of the SIRO Zoning Ordinance, which shall be completed within thirty (30) days of the Amended Settlement Agreement effective date, subject to extension upon agreement of the Parties, the Borough shall refer the SIRO Zoning Ordinance to the Planning Board for review and recommendation at the Planning Board's next regularly scheduled meeting. By December 29, 2023, or as further extended by the Parties, the Borough shall vote on the approval of the SIRO Zoning Ordinance. If the Borough votes "No" at any time during the rezoning process, the IRO Zoning shall remain in place and Green Brook shall be permitted to pursue a development application subject to the IRO Zoning. Notwithstanding anything to the contrary herein, in the event the development application subject to the IRO Zoning is denied, all claims and defenses available now shall be available to the Parties and Green Brook shall have the right to apply to the Court to become an intervenor in the Compliance Action, and if such application is unsuccessful, Green Brook shall remain an "interested party" in the Compliance Action, which shall not impact Green Brook's rights under this Amended Settlement Agreement.
- 12. In the event the Court does not approve the amendment to the FSHC Settlement Agreement, if required, (i) this Amendment and all other agreements between the Parties subsequent to the Settlement Agreement shall be null and void, (ii) the Settlement Agreement shall become in full force and effect, and (iii) the IRO Zoning, to the extent that it was repealed and replaced, shall be readopted.
  - 13. If an appeal is filed of the Borough's adoption of the SIRO Zoning Ordinance, or, to the extent applicable, the Court's approval or rejection of this Amended Settlement Agreement, the Parties agree to defend the SIRO Zoning Ordinance and/or this Amended Settlement Agreement on appeal, including in proceedings before the Superior Court, Appellate Division and New Jersey Supreme Court, and to continue to implement the terms of this Amended Settlement Agreement until an appeal is successful. All Parties shall have an obligation to fulfill the intent and purpose of this Amended Settlement Agreement. Notwithstanding, if an appeal is successful, the Borough shall repeal the SIRO Zoning and reinstitute the IRO Zoning, and Green Brook shall be free to file a new site plan application under the IRO Zoning.
  - 14. This Amended Settlement Agreement may be enforced through a motion to enforce litigant's rights or a separate action filed in Superior Court, Essex County.
  - 15. This Amended Settlement Agreement shall be governed by and construed by the laws of the State of New Jersey.



16. This Amended Settlement Agreement may not be modified, amended or altered in any way except by a writing signed by each of the Parties.
17. This Amended Settlement 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 Amended Settlement Agreement.
18. The Parties acknowledge that each has entered into this Amended Settlement 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 Amended Settlement Agreement, that this Amended Settlement 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.
19. Each of the Parties hereto acknowledges that this Amended Settlement 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 Party that: (i) it has been represented by counsel in connection with negotiating the terms of this Amended Settlement Agreement; and (ii) it has conferred due authority for execution of this Amended Settlement Agreement upon the persons executing it.
20. Any and all Exhibits and Schedules annexed to this Amended Settlement Agreement are hereby made a part of this Amended Settlement 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 Amended Settlement Agreement with prior written approval of both Parties.
21. This Amended Settlement 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.
22. No member, official or employee of the Borough shall have any direct or indirect interest in this Amended Settlement Agreement, nor participate in any decision relating to this Amended Settlement Agreement which is prohibited by law, absent the need to invoke the rule of necessity.
23. Anything herein contained to the contrary notwithstanding, the effective date of this Amended Settlement Agreement shall be the date upon which all of the Parties hereto have executed and delivered this Amended Settlement Agreement.
24. All notices required under this Amended Settlement 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 COURT MASTER:**

Francis J. Banisch, III, PP/AICP  
Banisch Associates  
111 Main Street  
Flemington, NJ 08822

**TO THE BOROUGH:**

**Glenn Dominick**  
North Caldwell Borough Administrator  
141 Gould Avenue  
North Caldwell, New Jersey 07006

**WITH A COPY TO:**

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

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

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

Mayor Joshua Raymond  
North Caldwell Borough  
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

**TO FAIR SHARE HOUSING:**

Joshua D. Bauers, Esq.  
Fair Share Housing Center  
510 Park Boulevard  
Cherry Hill, New Jersey 08002

25. Green Brook has heretofore presented an SIRO Zoning Conceptual Development Plan to the Borough and its professionals to develop the Property, which is attached hereto as Exhibit B.
26. Assignment/Change of Control Event
- a. Green Brook shall have the right to assign any portion of this Amended Settlement 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 also have the right to assign any portion or all of this Amended Settlement Agreement to a national homebuilder listed on Schedule I attached hereto, or any affiliate, special purpose entity, or division thereof.
  - b. Green Brook shall have the right to assign its rights under this Amended Settlement 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 Amended Settlement Agreement and the Exhibits hereto 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 Amended Settlement 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 Amended Settlement Agreement by executing the Acknowledgment of Understanding attached hereto as Exhibit C prior to Borough approval. Green Brook acknowledges and agrees that it shall remain liable for all obligations created in this Amended Settlement Agreement until a subsequent non-Affiliated Entity assumes same and Green Brook is released.
  - c. Any Change of Control shall require prior approval of the Borough, which approval shall not be unreasonably withheld. For the purposes of this Amended Settlement Agreement a Change of Control shall mean a change in the direct or indirect ownership of more than 50% of the Green Brook or an entity (Affiliated or Non-Affiliated) which is a successor in interest to Green Brook.

27. The Parties hereto understand and agree that the within Amended Settlement Agreement shall be subject to the terms of a Developers Agreement between the parties regarding the construction phase of the proposed project described herein, including but not limited to the incorporation of the terms and conditions of resolutions and approvals granted by the Governing Body and Planning Board of the Borough of North Caldwell or any other governmental entity with jurisdiction herein, hours and terms of construction on the site, and Green Brook's indemnification, defense and responsibility for off-site impacts encountered or caused during construction.
28. Intentionally omitted.
29. The Borough and FSHC shall amend the FSHC Settlement Agreement to incorporate the Development, and said agreement may be required to be approved by the Court via an Order. In the event the Court does not approve the amendment to the FSHC Settlement Agreement, if required, this Amendment shall be null and void, the IRO Zoning, to the extent that it was repealed and replaced, shall be readopted.
30. All deadlines in this Amended Settlement Agreement may be extended by written agreement of the Parties and shall not be unreasonably denied by the Parties.

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

**Green Brook Golf Course Realty Associates LLC**

By: \_\_\_\_\_  
Name:  
Title:  
Date:

**Borough of North Caldwell, Essex County**

Attest:

By: \_\_\_\_\_  
Name:  
Title:  
Date:

By: \_\_\_\_\_  
Name:  
Title:  
Date:

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**Exhibit A**

**SIRO Zoning Ordinance**

**Exhibit B**

**Conceptual Development Plans**

## **Exhibit C**

### **Acknowledgement of Understanding**



## **SCHEDULE I**

D.R. Horton, Inc.

Lennar Corporation

Ryan Homes/N.V.R. Inc.

Toll Brother, Inc.