

DEVELOPMENT AGREEMENT

BY AND BETWEEN

TOWNSHIP OF BERKELEY HEIGHTS

AND

THE CONNELL COMPANY

REGARDING

**REZONING OF THE OR-A ZONE AND POTENTIAL MIXED-USE
RESIDENTIAL DEVELOPMENT PROJECT WITH INCLUSIONARY
AFFORDABLE HOUSING**

IN

**THE TOWNSHIP OF BERKELEY HEIGHTS
COUNTY OF UNION, STATE OF NEW JERSEY**

WHEREAS, on March 24, 2015, the Township Council (the “Council”) of the Township of Berkeley Heights (the “Township”) adopted a resolution in which the Township reaffirmed its voluntary commitment to satisfy its affordable housing obligations, however they may ultimately be defined by COAH or a court; and

WHEREAS, in compliance with the New Jersey Supreme Court decision in In re Adoption of N.J.A.C. 5:96 & 5:97 by N.J. Council on Affordable Housing, 221 N.J. 1 (2015), on or about July 2, 2015, the Township filed an action with the Superior Court of New Jersey, entitled In the Matter of the Application of the Township of Berkeley Heights, County of Union, Docket No. UNN-L-2405-15, seeking a Judgment of Compliance and Repose approving its Fair Share Plan, in addition to related relief (the “Compliance Action”); and

WHEREAS, The Connell Company (“Connell”) has invested significant time and money in examining potential solutions for addressing the decline in occupancy rates of commercial office parks in New Jersey, and has retained experts who have developed a preliminary concept plan for ensuring that Connell’s land in the Township remains economically viable; and

WHEREAS, on or about November 10, 2015, Connell made a presentation to the Council at a public Council meeting for the expansion of permitted uses in the OR-A (Office and Research) Zone District located on the property identified as Block 4102, Lot 1, so as to permit multi-family residential, retail and ancillary uses; including the potential development of up to three hundred and twelve (312) unit luxury residential rental development (comprised of an estimated 377,000 square feet) with potentially approximately 45,000 square feet of retail space, including the provision of affordable housing units and a parking deck (the “Proposed Project”); and

WHEREAS, the portion of the property currently within the OR-A Zone proposed to be the site of the Proposed Project consists of approximately 11.4 acres located on part of the site of what was to have been 500 Connell Drive (designated as “Lot A” or the new “OR-A1 Zone” on the Plan annexed hereto as “**Exhibit A**”); and

WHEREAS, in connection with the establishment of the OR-A Zone, the Township and Connell entered into a Development Agreement, dated September 21, 1989, as subsequently modified by Settlement Agreement, dated January 24, 1995 (the “Settlement Agreement”), wherein Connell and the Township agreed that Connell would satisfy its affordable housing obligation generated in connection with the anticipated construction of up to 800,000 square feet of office and/or research use space by the payment to the Township of \$2,350,000 (the “Prior Affordable Housing Contribution”), which payment was made by Connell; and

WHEREAS, in connection with Connell’s payment of the Prior Affordable Housing Contribution, the Township amended the regulations for the OR-A Zone in accordance with the Settlement Agreement, including the exemption of the permitted construction of up to 800,000 square feet of office and/or research space from any ordinance requiring either inclusionary development of affordable housing or payment in lieu of such inclusion; and

WHEREAS, to date, Connell has constructed 542,000 square feet of office space in the OR-A Zone, leaving approximately 258,000 additional square feet of office and/or research uses space permitted to be developed without an additional contribution towards the Township’s affordable housing obligation being necessitated; and

WHEREAS, the current OR-A Zone and OR-B Zone comprise the area of the Township currently known as “Connell Corporate Park”, which Connell is looking to rebrand as “Connell Center”, including the development of a hotel and restaurant (approved and currently under construction in the OR-B Zone) and development of an outdoor recreation area (approved and currently under construction in the OR-A Zone and the OR-B Zone), and inclusive of the existing Lifetime Fitness facilities located in the OR-B Zone; and

WHEREAS, after ongoing discussions and negotiations with representatives of the Township and Connell, the parties have agreed upon the general terms of the rezoning of a portion of the OR-A Zone (to be known as the new “OR-A1 Zone”) to allow for the potential development of the Proposed Project within the OR-A1 Zone, with an inclusionary affordable housing component (to be located on and/or off-site) of any development reflecting the newly permitted uses; and

WHEREAS, the parties concur that, in return for the Township’s rezoning of a portion of the OR-A Zone by way of creation of new OR-A1 Zone in which the permitted uses are expanded to include market-rate multi-family housing, retail and related ancillary uses, Connell will incur an obligation to provide affordable housing units in connection with any development of residential units and to provide a non-residential development fee in connection with the development of any retail space, subject, in each case, to a credit to Connell for so much of the Prior Affordable Housing Contribution allocable to cover the affordable housing obligation related to the development of the 258,000 square feet of office and/or research use space that has not been built; and

WHEREAS, the Township and Connell wish to enter into this Agreement to memorialize the agreed upon terms of rezoning and the potential development of the Proposed Project;

NOW, THEREFORE, for and in good and valuable consideration in hand paid, receipt of which is hereby acknowledged, and in consideration of the mutual covenants and obligations hereinafter set forth, the Township and Connell hereby set forth in this Agreement that the following general terms shall apply to the rezoning of a portion of the OR-A Zone and the potential development of the Proposed Project, with an inclusionary affordable housing component (some or all of which component may be built outside the new OR-A1 Zone (i.e., “Off-Site”)):

1. The Township agrees to (a) proceed with a re-evaluation of the Township Master Plan to be heard before the Berkeley Heights Planning Board, which would allow the Township Council to adopt a zoning ordinance to amend the Municipal Land Use Procedures Ordinance (the “Land Use Ordinance”) for a portion of the OR-A Zone to allow for the development of the Proposed Project within the new OR-A1 Zone, with the Principal Permitted Uses to include multi-family residential with an inclusionary affordable housing component (to the extent such component is not satisfied with Connell’s development of affordable housing Off-Site in conjunction with the Proposed Project) and certain retail as described herein; and (b) adopt such a zoning amendment. Before making any determination to go forward with the Proposed Project, Connell agrees to convert its preliminary concept plan for the Proposed Project into a detailed development plan, by retaining the requisite architect and engineer to develop the requisite detailed site plans (including building plans) for the Proposed Project (the “Detailed Plans”). Upon its receipt and evaluation of the Detailed Plans (including due diligence as to cost to construct), Connell agrees to promptly determine whether it shall proceed with the Proposed Project, as the same may be modified in light of the Detailed Plans, subject in any case to requisite approval from the Planning Board, and other applicable governmental agencies. If Connell determines to proceed with the Proposed Project, the Township agrees to permit the Proposed Project, subject to the following conditions, all of which shall be set forth in the amendment to the Land Use Ordinance:

- a. Affordable Housing Component – Any residential rental development (including the Proposed Project) would normally have an inclusionary affordable housing component equal to 15% of the total residential units.
- b. Affordability Controls and Other Requirements. The parties agree that the affordability controls of each affordable rental unit (whether created within the OR-A1 Zone or Off-Site) shall expire at the end of thirty (30) years after the date of the initial occupancy of such affordable unit. The parties further agree that any such affordable housing units are to be included in the Township’s Fair Share Plan to be approved and credited by the Court in the Compliance Action towards the Township’s Round 3 affordable housing obligation. Connell will provide very low, low and moderate affordable housing units, and all such units (whether created within the OR-A1 Zone or Off-Site) will be developed subject to the Fair Housing Act, N.J.S.A. 52:27D-301, et seq., the Uniform Housing Affordability Controls (“UHAC”) regulations, N.J.A.C. 5:80-26.1, et seq., any other applicable affordable

housing regulations (including COAH Round 2 regulations), and any Orders of the Court handling the Compliance Action setting affordable housing standards county-wide (each a “Court Order”).

- c. Prior Affordable Housing Contribution Credit – The parties agree that Connell is entitled to a credit for its Prior Affordable Housing Contribution made to the Township in connection with the prior approval for the office and research space development in the OR-A Zone in connection with any proposed residential and retail development in the new OR-A1 Zone. Accordingly, the parties agree upon the following credit:

In lieu of the required 15% set aside for affordable housing units, the number of affordable rental units required to be developed by Connell for the Proposed Project (or any residential space ultimately built in the OR-A1 Zone) shall be reduced to 11.2% of the number of residential units developed (i.e., Connell shall receive a credit of 3.8% of the number of residential units developed.)

Based on the foregoing, assuming the 312 residential units of the Proposed Project were to be built, Connell’s affordable housing obligation resulting from the development of those residential units would be a total of thirty five (35) units.

In the event the Proposed Project is modified in light of the Detailed Plans, or in light of comments from the Township Planning Board following review of same, then the number of affordable housing units required to be developed by Connell for the modified Proposed Project shall be 11.2% of the reduced number of residential units actually developed under that project.

- d. Off-Site Affordable Housing – Connell may be permitted to satisfy some or all of its affordable housing obligation created by the Proposed Project, subject to credit for the Prior Affordable Housing Contribution, via Off-Site development of affordable housing, including without limitation, by qualifying group homes on properties owned or controlled by Connell. Any proposed group homes must qualify for affordable housing credits per bedroom. The group homes shall qualify as “supportive and special needs housing” as defined in prior COAH regulations, and be acceptable as affordable housing by COAH or comparable State department or agency, or by a Court of competent jurisdiction. The group homes shall not be age-restricted, nor will anyone under eighteen (18) years of age reside in the group homes. Connell agrees to the placement of 30-year affordable housing deed restrictions on any affordable housing, including any group homes, pursuant to the terms of the applicable affordable housing regulations or Court Order, and the UHAC regulations. The Township reserves the right to any bonus affordable housing credits generated by any group homes.

In connection with any development of the Proposed Project, Connell and the Township acknowledge that Connell may satisfy some or all of its affordable

housing obligation by the provision by the construction of “group homes”, each such group home providing residence for disabled persons. The group homes would be made available (on terms to be determined) to one or more not-for-profit organizations, which organizations would be responsible for their operation and for the caretaking of the residents. The Parties acknowledge that, for purposes of any affordable housing obligation, under the prior COAH Regulations, which is to govern the Court’s review of the municipalities’ Third Round compliance pursuant to the Supreme Court’s 2015 decision, each bedroom within such a group home shall be deemed an “affordable unit”. For example, were Connell to provide four group homes, each with four bedrooms for disabled persons, this would provide the equivalent of 16 affordable housing units; and Connell would provide the balance of its affordable housing obligation on other Connell-owned land on-site in the OR-A1 Zone, per the next paragraph below. Attached hereto as **Exhibit B** is a preliminary architect’s schemata presenting the location of, and preliminary design parameters for, the aforesaid group homes. Connell and the Township recognize and acknowledge that these plans are preliminary and will be subject to reasonable adjustment, including as may be required by the not-for profit operating agencies, the applicable governmental authorities, and/or the Court or Court Master.

The parties agree that if Connell does not fulfill any portion of its affordable housing obligation as set forth herein through Off-Site development, then affordable housing to satisfy such obligation shall be provided within the new OR-A1 Zone as an inclusionary development. Specifically, Connell and the Township recognize and acknowledge that the construction of any group homes is dependent upon numerous factors outside the control of Connell, including, by way of example only, the willingness of appropriate not-for-profit organizations to take on the responsibility for operating the group homes; the approval of the designated sites by the appropriate governmental agencies; and other matters. The Township agrees that it will use its best efforts to assist Connell in securing any required approvals from governmental agencies. Connell agrees that, should it be unable to identify such not-for-profit agencies willing and able to operate each of such group homes, or, should it be unable to secure required approval for each of such group homes from the applicable governmental agencies, and should Connell be unable to provide affordable units on any other property outside the OR-A1 Zone, then Connell, without requiring any further amendment to the OR-A1 Zone regulations or any further amendment to this Agreement, will dedicate as “affordable” rental units in accordance with applicable regulations so many of the apartment units within the planned residential community as may be constructed in the new OR-A1 Zone as are necessary to cause the total number of affordable units, when added to the affordable units provided outside the OR-A1 Zone (including within any group home(s) as are identified and approved), to achieve its obligation to provide affordable housing units in a number equal to no less than 11.2% of the residential units being developed.

- e. **Non-Residential Development Fee.** Pursuant to the New Jersey Non-Residential Development Fee Act, N.J.S.A. 40:55D-8.1, *et seq.*, and Township's Development Fee Ordinances, Connell shall be responsible for the payment of the two and a half percent (2.5%) non-residential development fee generated by the retail portion of the Proposed Project.
- f. **Rezoning** – The Township and Connell agree that residential and retail uses shall be made permitted uses within the new OR-A1 Zone by way of rezoning and zoning ordinance amendment to be adopted by the Township. The Township shall initiate a re-examination of the Master Plan to include the proposed residential and retail uses in the new OR-A1 Zone, including the required inclusionary affordable housing component, which may be satisfied in part, through Off-Site development. Except to the extent inconsistent with express provisions of this Agreement, the standards within the Land Use Ordinance applicable to the OR-A Zone shall apply to the OR-A1 Zone. The development regulations and bulk standards to be included in the amendment to the Land Use Ordinance for the new OR-A1 Zone (and, per clause v below, certain limited changes to bulk requirements in the OR-A Zone and the OR-B Zone made necessary by the carving out of the OR-A1 Zone from the OR-A Zone, and any subdivisions which may be prudent in light of such carve-out) shall include the following:
- i. **Permitted Principal Uses.** Permitted Principal Uses in the OR-A1 Zone shall be those permitted in the OR-A Zone, plus (a) multi-family residential housing with an inclusionary affordable housing component (when combined with any off-site development of affordable housing) of 11.2% of the maximum total residential units of 328, which is restricted by the maximum allowable buildable area for the OR-A1 Zone; and any proposed increase in the number of residential units above the 328 units within the constraints of the maximum allowable buildable area, which would require amendment to this Agreement, shall thereafter have an affordable housing component of 15% of the total residential units, if any; and (b) retail uses, including Supermarkets, restaurants (full service, with or without cocktail lounge), entertainment venues (such as theaters, night clubs and cabarets), and general retail sales and services. Multi-family residential uses may be in stand-alone buildings or in mixed-use buildings combined with retail or office uses on the ground floor.
- ii. **Permitted Accessory Uses.** Permitted Accessory Uses and ancillary uses in the OR-A1 Zone shall be those permitted in the OR-A Zone, plus parking structures, food service, restaurant facilities, and sundry shops and services within supermarkets and entertainment venues, and various amenities (clubhouse; swimming pool; fitness center; playgrounds; recreational courts; garbage, trash, and recycling facilities; rooftop decks and related amenities and the like) typical of Class "A" housing.

- iii. Maximum Buildable Area. The maximum allowable buildable area in the OR-A1 Zone shall be 458,000 square feet, which includes the undeveloped 258,000 square feet of building area that had been previously approved for office and/or research uses in this area when it was part of the OR-A Zone. As set forth in the Proposed Project, the maximum allowable building area is inclusive of the potential residential development and retail space, but does not include the parking deck.
- iv. Minimum Lot Size, Lot Width, and Setbacks; Maximum Building Height and Maximum Impervious Coverage. These shall be established by amendment to Section 6.1.1.B, Schedule of General Regulations, of the Land Use Ordinance, as set forth on **Exhibit C** hereto.
- v. Parking. – Parking within the OR-A1 Zone shall be as required by Section 11.1.2.B of the Land Use Ordinance. For residential/mixed use buildings, parking shall be provided as per that Section for “Apartments” as follows:

- 1 bedroom apartment – 1.8 parking spaces
- 2 bedroom apartment – 2.0 parking spaces
- 3 bedroom apartment – 2.1 parking spaces

For retail uses, parking shall be as required per that Section for the applicable use, including, for supermarkets, a minimum of one space per 300 square feet of gross floor area.

Parking may be provided inside a multi-level parking deck. No landscaping shall be required on any level of a parking deck.

- vi. Any development within the OR-A1 Zone shall comply with the Township’s Design Standards (Part 19 of the Land Use Ordinance).

2. Pursuant to any application from Connell for preliminary and final site plan application of the potential Proposed Project, the Township Planning Board must review and approve any final site plan, building elevations, architectural floor plans, design standards, building materials, streetscape improvements, passive recreation areas, amenities and like development information, including such information for the Off-Site and on-site affordable housing as well as a schedule for developing the affordable housing units.

3. The parties understand and agree that this Agreement sets forth the general agreed upon terms for the creation of the OR-A1 Zone, and the potential development of the Proposed Project within the OR-A1 Zone. Nothing herein shall bind or otherwise restrict the parties from negotiating and agreeing to additional and more specific terms of development, or restrict Connell from electing to complete development of the OR-A Zone with office and research uses subject to the original zoning.

4. Upon approval of this Agreement, and submission by Connell of any application to the Township Planning Board for preliminary and final site plan approval for the Proposed Project, Connell agrees to enter into an escrow agreement with the Township for the deposit of a reasonable amount of monies in escrow with the Township Planning Board to be utilized to tender payment of fees for professional services, including legal, engineering and planning services, being provided in conjunction with the review of the Proposed Project, along with the inclusionary affordable housing.

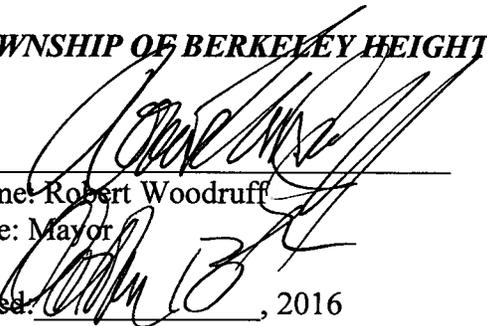
5. The parties agree to proceed in good faith through the rezoning process and potentially developing the site in compliance with the terms of this Agreement. This Agreement may be filed with the Court in the Compliance Action, and may be subject to the Court's and the Court Special Master's approval.

6. In addition to this Agreement, the parties agree that they will take such actions as are necessary to amend the January 24, 1995 Settlement Agreement to provide for the proposed rezoning of the portion of the OR-A Zone to be known as the OR-A1 Zone as set forth herein; which amendment shall be filed and submitted for approval by the appropriate Court.

7. Miscellaneous. This Agreement shall be governed by, and construed and enforced in accordance with the laws of the State of New Jersey. This Agreement may be modified or amended only by a written instrument signed by both parties. This is a negotiated agreement wherein both parties were represented by legal counsel. This Agreement shall not be construed against any party by virtue of its counsel having prepared same or part thereof. This Agreement may be executed in counterparts, and facsimile signatures shall be deemed original signatures.

IN WITNESS WHEREOF, the Township and Connell have executed this Agreement as of the dates set forth below.

TOWNSHIP OF BERKELEY HEIGHTS

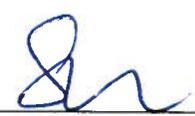
By: 

Name: Robert Woodruff

Title: Mayor

Dated: October 13, 2016

THE CONNELL COMPANY

By: 

Name: SHANE CONNELL

Title: EXECUTIVE VICE PRESIDENT

Dated: October 12, 2016

EXHIBIT B

CONNELL DEVELOPMENT

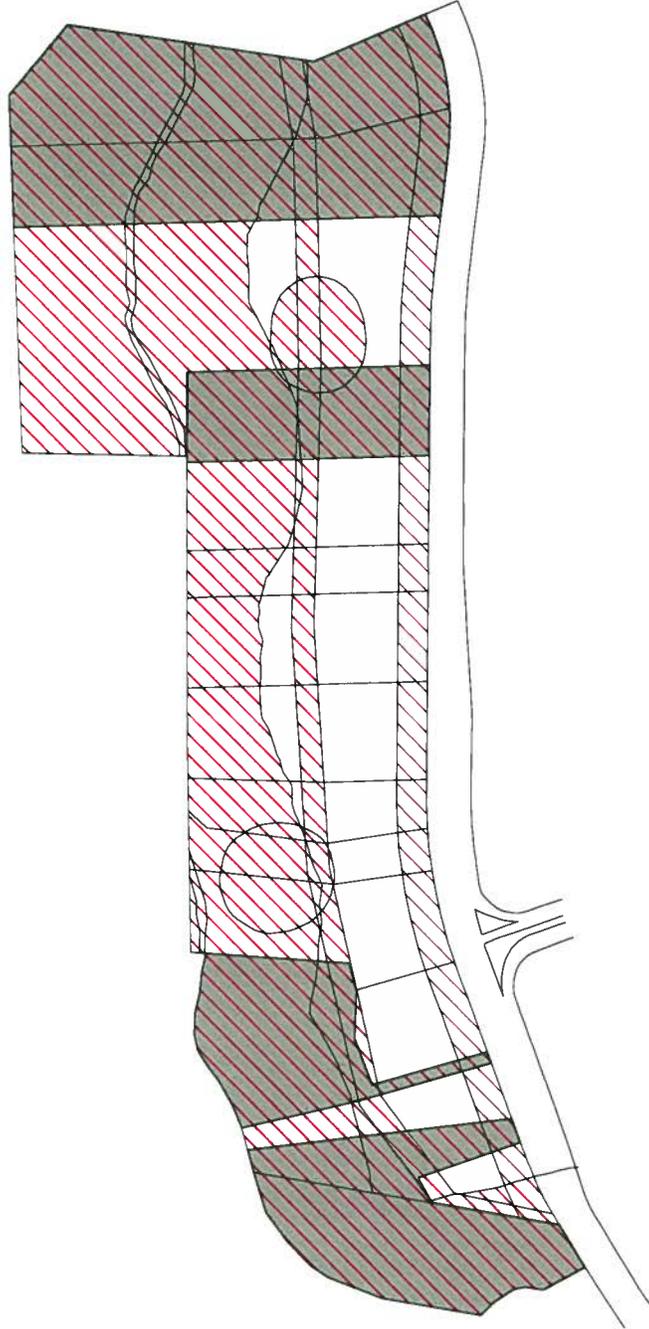
BERKELEY HEIGHTS DESIGN REVIEW



ARCHITECTS ³

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- NOT BUILDABLE
- FRONT YARD SETBACK
- BUILDABLE
- UNOWNED

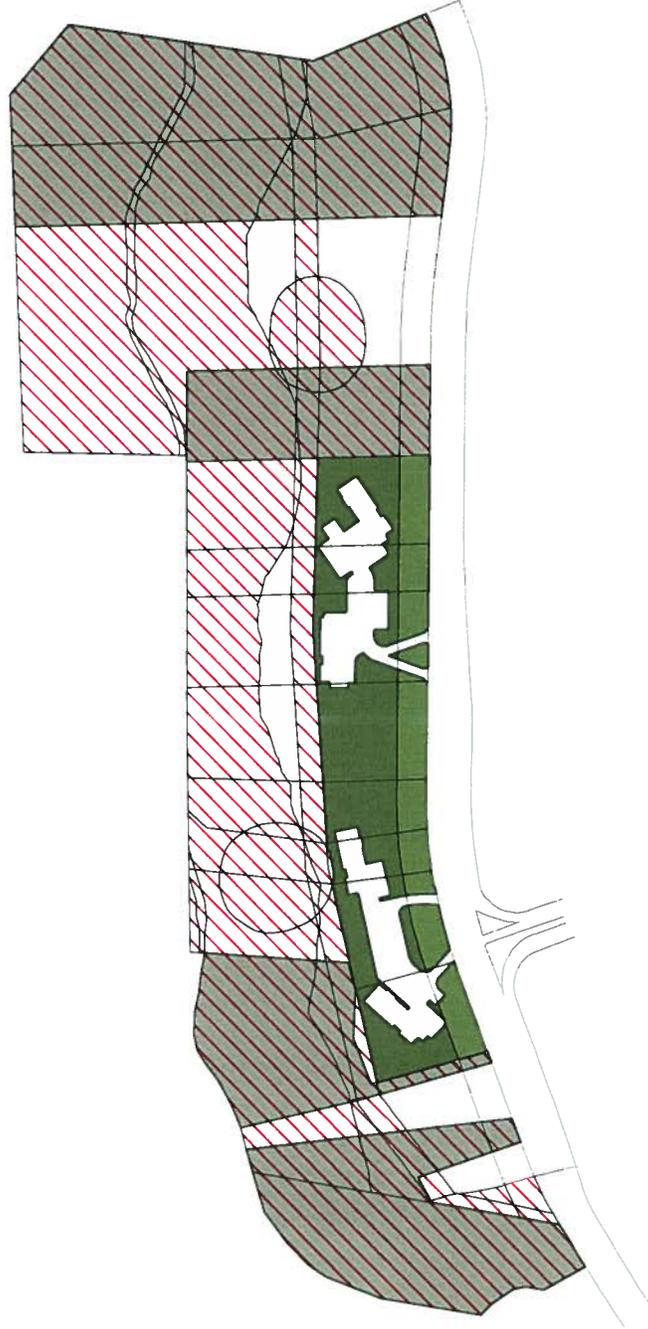


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CONNELL DEVELOPMENT

BERKELY HEIGHTS - BUILDABLE
SITE

SCALE: 1" = 160'-0"



-  NOT BUILDABLE
-  FRONT YARD SETBACK
-  BUILDABLE
-  UNOWNED



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CONNELL DEVELOPMENT

BERKELEY HEIGHTS -
BUILDABLE SITE W/ OVERLAY

SCALE: 1" = 160'-0"



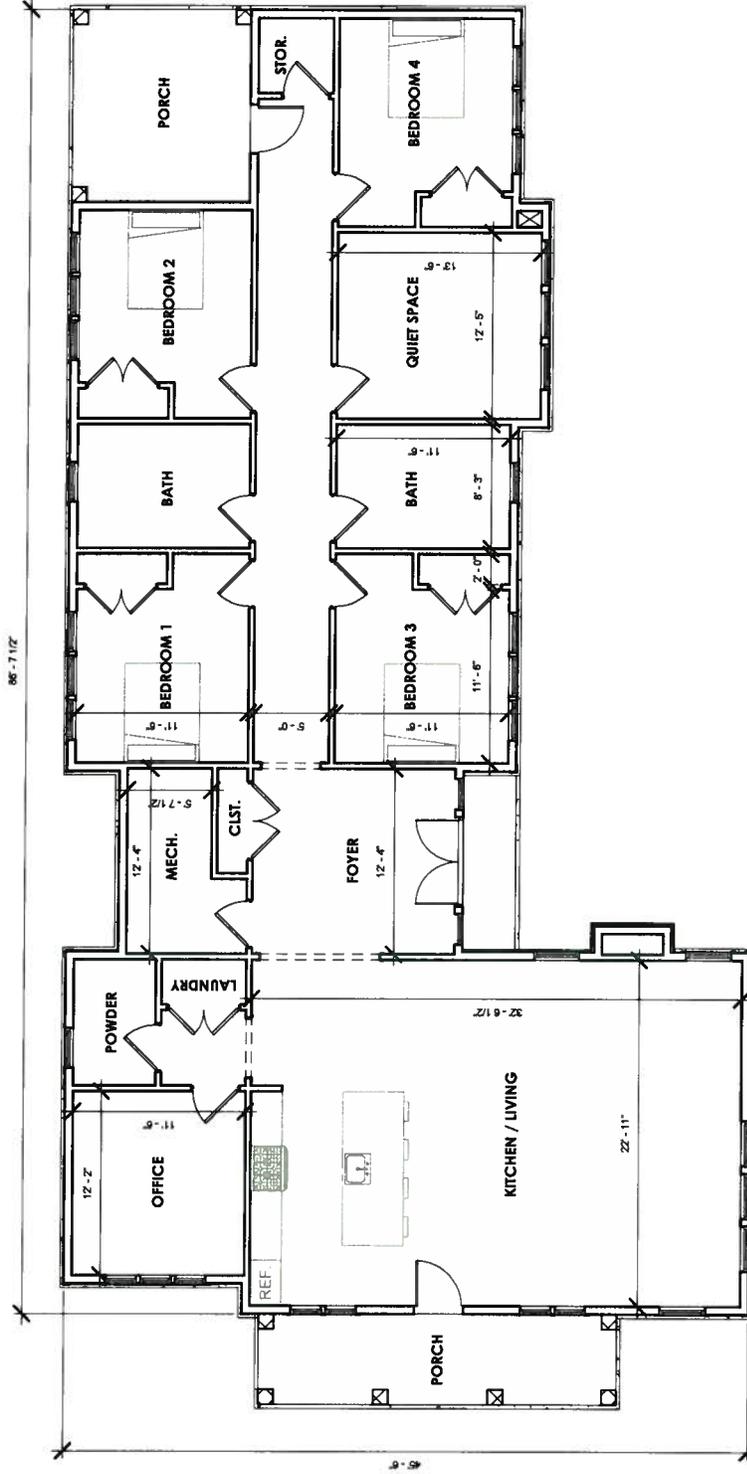
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CONNELL DEVELOPMENT

BERKELEY HEIGHTS -
SITE PLAN

SCALE: 1/64" = 1'-0"

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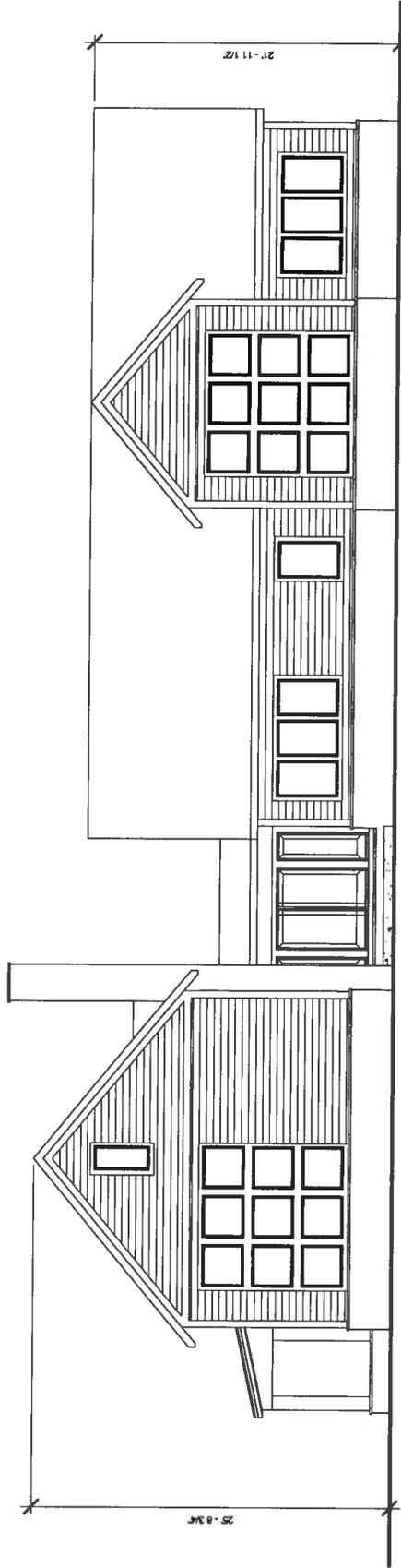
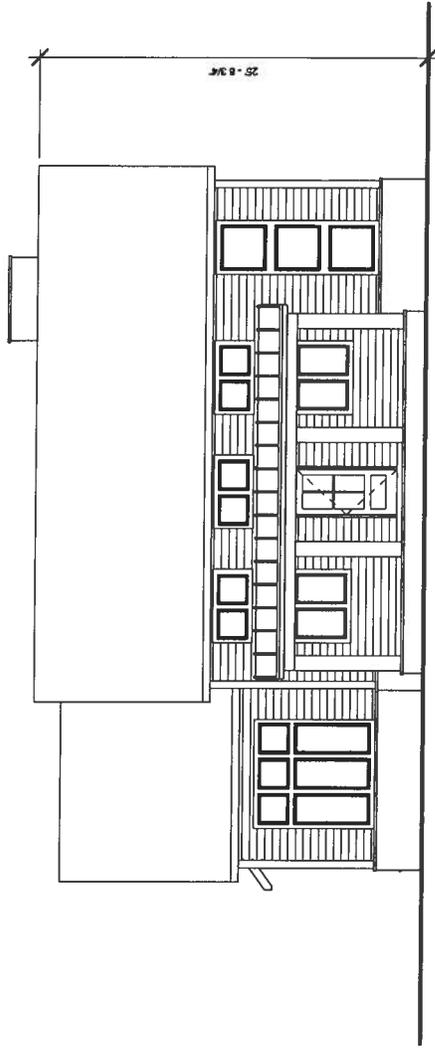
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CONNELL DEVELOPMENT

GROUP HOME FLOOR PLAN

SCALE: 1/8" = 1'-0"

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CONNELL DEVELOPMENT

PROPOSED ELEVATIONS

SCALE: 1/8" = 1'-0"

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CONNELL DEVELOPMENT

PROPOSED RENDERING

SCALE:



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CONNELL DEVELOPMENT

PROPOSED RENDERING

SCALE:

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CONNELL DEVELOPMENT

PROPOSED RENDERING

SCALE: