

9B

Tax Parcels #18-020.00-041 & 271

Prepared By & Return To:  
City Secretary's Office  
220 South Main Street  
Newark, DE 19711

**ADDENDUM TO SUBDIVISION AGREEMENT**

**THIS ADDENDUM**, made this \_\_\_\_\_ day of \_\_\_\_\_, 2016, by and between **LANG DEVELOPMENT GROUP**, hereinafter referred to as the "Developer" and the **CITY OF NEWARK**, a municipal corporation of the State of Delaware, party of the second part hereto, hereinafter referred to as the "City";

**WITNESSETH:**

THAT WHEREAS, Lang Development Group sought the approval of its major subdivision plan for the development of 0.846 acres located at 21, 27, 39, 45 and 49 Center Street, hereinafter referred to as the "Site," in order to combine six RS zoned parcels, rezone said parcels from RS and NCV to BB, demolish the existing single-family dwellings and construct one two-story mixed use building with 3,000 square feet of first floor commercial office space with three (3) upper floor apartments (two [2] two-bedroom and one [1] three-bedroom unit) and one three-story residential building with first floor parking and twenty (20) upper floor apartments (twelve [12] two-bedroom and eight [8] three-bedroom units) to be known as the Lofts at Center Street, which shall comply with the BB zoning classification; and

WHEREAS, Newark City Council did approve said subdivision, which is reflected in an agreement dated September 8, 2016; and

WHEREAS, item 7 of the subdivision agreement provided that the Developer agreed to voluntarily deed restrict the property to limit the occupancy of the twenty-three (23) proposed units to four (4) unrelated individuals per unit or an aggregate of ninety-two (92) total tenants; and

WHEREAS, the Developer has submitted a request that Council amend the deed restriction requirement to permit five (5) unrelated individuals in each of the nine (9) three-bedroom units for an aggregate total of one hundred and one (101) total tenants.

NOW, THEREFORE, in exchange for the mutual promises contained herein and for other good and valuable consideration which is hereby deemed sufficient and is acknowledged by the parties hereto, the parties mutually agree as follows:

1) The Developer agrees to abide by the terms and conditions, if any, in Newark City Council Resolution No. 16-\_\_\_, dated \_\_\_\_\_, 2016, which resolution is attached hereto and made a part hereof by reference.

2) The Developer agrees to abide by the terms and conditions of the City of Newark Subdivision and Development Regulations and the Newark Zoning Code as relevant provisions thereof related to the BB zoning classification and to the aforesaid development.

3) The Subdivision Agreement, dated September 8, 2016, and recorded in the Office of the Recorder of Deeds aforesaid on September 22, 2016, at Instrument No. 20160922-0047999 shall be amended by replacing the first paragraph of the existing number 7 with the following:

“7) The Developer agrees to voluntarily deed restrict the property to limit the occupancy of the twenty-three (23) proposed units to four (4) unrelated individuals per two-bedroom unit and five (5) unrelated individuals per three-bedroom unit or an aggregate of one hundred and one (101) total tenants.”

The second paragraph of the existing number 7 regarding additional deed restrictions for BB zoning uses remains in full force and effect.

4) The Developer agrees that all other conditions set forth in Resolution No. 16-P, dated June 27, 2016, will continue to apply to the property.

5) This Agreement may be modified, but only with the written approval of the Newark City Council, the Developers, and/or their successors in interest.

6) The provisions of this Agreement shall be severable. If any provision of this Agreement is found by any court to be void or unenforceable, the remaining provisions hereof shall remain valid and in full force and effect.

7) This Agreement shall be interpreted pursuant to the Laws of the State of Delaware and shall be binding upon all heirs, successors in interest, and assigns of the parties hereto.

***IN WITNESS WHEREOF***, the parties hereto have duly executed this agreement on the day and year aforesaid.

**WITNESS:**

\_\_\_\_\_ By: \_\_\_\_\_  
Lang Development Group

**ATTEST:**

**CITY OF NEWARK**

\_\_\_\_\_  
City Secretary

\_\_\_\_\_  
City Manager

**STATE OF DELAWARE**

**SS.**

**NEW CASTLE COUNTY**

BE IT REMEMBERED, that on this \_\_\_\_ day of \_\_\_\_\_, in the year of Our Lord, two thousand and sixteen, personally came before me, a Notary Public for the State and County aforesaid, \_\_\_\_\_, representing party to this Indenture, known to me personally to be such, and does acknowledge this Indenture to be his act and deed and the act and deed of said corporation.

GIVEN under my hand and seal of office, the day and year aforesaid.

\_\_\_\_\_  
Notary Public

**STATE OF DELAWARE**

**SS.**

**NEW CASTLE COUNTY**

BE IT REMEMBERED, that on this \_\_\_\_ day of \_\_\_\_\_, in the year of Our Lord, two thousand and sixteen personally came before me, the subscriber, a Notary Public for the State and County aforesaid, **CAROL S. HOUCK**, City Manager of the City of Newark, Delaware, party of the second part to this Indenture, known to me personally to be such, and acknowledged this Indenture to be her act and deed and the act and deed of the Council of Newark; that the signature of the City Manager is in her own proper handwriting; that the seal affixed is the Seal of the City of Newark; and, that her act of signing, sealing, executing, acknowledging, and delivering said Indenture was duly authorized by order of said Council of the City of Newark.

GIVEN under my hand and seal of office, the day and year aforesaid.

\_\_\_\_\_  
Notary Public

**CITY OF NEWARK  
DELAWARE**

**RESOLUTION NO. 16-\_\_**

**AMENDMENT OF THE APPROVED SUBDIVISION AGREEMENT  
FOR THE LOFTS AT CENTER STREET  
LOCATED AT 21, 27, 39, 45 AND 49 CENTER STREET**

WHEREAS, Lang Development Group sought the approval of its major subdivision plan for the development of 0.846 acres located at 21, 27, 39, 45 and 49 Center Street, hereinafter referred to as the "Site," in order to combine six RS zoned parcels, rezone said parcels from RS and NCV to BB, demolish the existing single-family dwellings and construct one two-story mixed use building with 3,000 square feet of first floor commercial office space with three (3) upper floor apartments (two [2] two-bedroom and one [1] three-bedroom unit) and one three-story residential building with first floor parking and twenty (20) upper floor apartments (twelve [12] two-bedroom and eight [8] three-bedroom units) to be known as the Lofts at Center Street, which shall comply with the BB zoning classification; and

WHEREAS, Newark City Council did approve said subdivision, which is reflected in an agreement dated September 8, 2016; and

WHEREAS, item 7 of the subdivision agreement provided that the Developer agreed to voluntarily deed restrict the property to limit the occupancy of the twenty-three (23) proposed units to four (4) unrelated individuals per unit or an aggregate of ninety-two (92) total tenants; and

WHEREAS, the Developer has submitted a request that Council amend the deed restriction requirement to permit five (5) unrelated individuals in each of the nine (9) three-bedroom units for an aggregate total of one hundred and one (101) total tenants.

NOW, THEREFORE, in exchange for the mutual promises contained herein and for other good and valuable consideration which is hereby deemed sufficient and is acknowledged by the parties hereto, the parties mutually agree as follows:

a) The Developer agrees to abide by the terms and conditions of the City of Newark Subdivision and Development Regulations and the Newark Zoning Code as relevant provisions thereof related to the BB zoning classification and to the aforesaid development.

b) The Subdivision Agreement, dated September 8, 2016, and recorded in the Office of the Recorder of Deeds aforesaid on September 22, 2016, at Instrument No. 20160922-0047999 shall be amended by replacing the first paragraph of the existing number 7 with the following:

"7) The Developer agrees to voluntarily deed restrict the property to limit the occupancy of the twenty-three (23) proposed units to four (4) unrelated individuals per two-bedroom unit and five (5) unrelated individuals per three-bedroom unit or an aggregate of one hundred and one (101) total tenants."

The second paragraph of the existing number 7 regarding additional deed restrictions for BB zoning uses remains in full force and effect.

c) The Developer agrees that all other conditions set forth in Resolution No. 16-P, dated June 27, 2016, will continue to apply to the property.

RESOLVED at a Regularly Scheduled Meeting on \_\_\_\_\_, 2016.

VOTE: \_\_\_ to \_\_\_.

\_\_\_\_\_  
Mayor

Attest:

\_\_\_\_\_  
City Secretary



**CITY OF NEWARK  
DELAWARE**

November 21, 2016

**TO:** Mayor and Members of Council

**VIA:** Carol S. Houck, City Manager 

**FROM:** Maureen Feeney Roser, Planning and Development Director 

**RE:** **CONSIDERATION OF AN AMENDMENT TO THE APPROVED SUBDIVISION AGREEMENT FOR THE LOFTS AT CENTER STREET**

The Lofts at Center Street Comprehensive Development Plan amendment, rezoning, major subdivision and special use permit plan was approved by City Council on June 27, 2016. The accompanying subdivision agreement for the project indicated that the developer would voluntarily deed restrict the property to limit occupancy of the twenty-three (23) proposed units to four (4) unrelated individuals per unit, or an aggregate of ninety-two (92) total tenants. Lang Development Group (LDG) now requests an amendment to allow for more occupancy than permitted by the subdivision agreement. Specifically, LDG requests that for the nine (9) three-bedroom units on site, the total occupancy be limited to five (5) tenants, which if approved, would bring the total aggregate of potential tenants to 101 for the project.

**BACKGROUND**

The limit of four unrelated individuals per unit was a Planning and Development Department recommendation based on the fact that the applicant was proposing a significant increase in unit and occupancy density from five (5) rental properties at the site with RS zoning restrictions of three (3) unrelated residents each (resulting in a maximum of 15 individuals permitted to reside there) to the requested 23 units, with a BB zoning restriction of one family or four (4) unrelated individuals for the two-bedroom units only (14 of the 23 proposed), and with no zoning restrictions on occupancy for the nine (9) three-bedroom units. In addition, at the time of consideration, the New Center Village (NCV) zoning for the site would have restricted all rental units there to two (2) unrelated individuals. Therefore, the Planning and Development Department reasoned that to limit the impact of potential occupancy on the surrounding area, the entire site, regardless of the number of bedrooms proposed in a unit, should be deed restricted to permit only four (4) unrelated tenants per unit, or a total of 92 total tenants.

**Planning Commission**

The Planning Commission did not recommend in favor of the development proposal. Therefore, the Commission did not provide a recommendation for the number of tenants in the units.

### **City Council Consideration**

As Council knows, LDG proceeded to Council with a negative Planning Commission recommendation. As the project moved toward Council consideration, the agreement was drafted and sent to LDG for review. When LDG received the subdivision agreement which was based on the Planning and Development Department's report, they objected and requested a five (5) tenant restriction on the three-bedroom units (as they are requesting now) instead of four (4), and were told that they could argue that point on the Council floor, and Council would make the decision. The night of the Council meeting, for whatever reason (perhaps the late hour), LDG did not ask for Council to reconsider the number of unrelated tenants permitted. Therefore, the subdivision was approved with an accompanying subdivision agreement calling for a deed restriction on occupancy to four (4) unrelated individuals per unit.

### **REQUEST**

Subsequently, recognizing their missed opportunity at the June 27, 2016 meeting, LDG would like for Council to consider an amendment to the subdivision agreement regarding site occupancy. We have attached the following materials for consideration: the original subdivision agreement approved by Council on June 27, 2016 is attached (A), and LDG's letter requesting the amendment is attached (B).

### **STAFF COMMENTS**

The Subdivision Advisory Committee has reviewed the proposed amendment to the subdivision agreement and has the following comments:

#### **Police Department**

The Department recommends that the occupancy restriction of four (4) unrelated tenants per unit be maintained. This recommendation is based on the assumption that additional tenants will likely lead to more vehicles in the area, which is already very congested and lacks residential parking.

#### **Public Works and Water Resources Department**

Public Works and Water Resources indicates that they have no objection to the requested amendment to the Lofts at Center Street subdivision agreement as it relates to increasing occupancy limits for three-bedroom units from four (4) to five (5).

#### **Planning and Development Department**

##### *Code Enforcement Division*

The Division indicates that the proposed amendment to the subdivision agreement would not

create any significant difference in the Division's areas of responsibility. They note that, in fact, it may assist in averting potential complaints for exceeding the deed restrictions in the three-bedroom units if the units were raised from four (4) unrelated individuals to five (5) unrelated individuals.

*Planning and Land Use*

The Planning and Land Use Division of the Department indicates that, as previously noted, the original Departmental recommendation for occupancy restrictions in all units in the Lofts at Center Street development was based on the fact that the previously existing five (5) rental units and zoning (RS and NCV) governing the site would have restricted occupancy to a maximum of fifteen individuals, and the new development plan proposed a significant increase in units (+18) and tenants. Specifically, regarding tenancy, because BB zoning restricts the two-bedroom units (14 of the 23) at the site to one family or four unrelated individuals, but places no such restriction on the three bedrooms units, a minimum of 92 individuals could reside there, and potentially many more. The Department, at the time, believed that restricting all units for a maximum of four (4) unrelated tenants would help reduce the impact of the occupancy on the surrounding area. The Department has reviewed LDG's request, and still believes the restriction will help limit impact of the development on the area and therefore, stands by its original recommendation.

No other Department offered comments regarding the requested amendment.

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The proposed revision to the Lofts at Center Street subdivision agreement has been placed on the Council agenda for November 28, 2016 for review and consideration.

Please let me know if you have any questions or need further information.

MFR/mv  
Attachments



20160922-0047999  
 Pages: 13 F: \$204.00  
 09/22/16 12:56:53 PM  
 T20160032290  
 Michael E. Kozikowski  
 New Castle Recorder MISC

Tax Parcels #18.020.00-040,  
 041, 042, 043, 044 & 045  
 Prepared By & Return To:  
 City Secretary's Office  
 220 South Main Street  
 Newark, DE 19711

**AGREEMENT**

**THIS AGREEMENT**, made this 9<sup>th</sup> day of September, 2016 by and between **21 CENTER STREET ASSOCIATES, LLC**, party of the first part hereto, hereinafter referred to as the "Developer," and the **CITY OF NEWARK**, a municipal corporation of the State of Delaware, party of the second part hereto, hereinafter referred to as the "City";

**WITNESSETH:**

THAT WHEREAS, the Developer is requesting a Comprehensive Plan amendment, rezoning, major subdivision and special use permit for the development of 0.846 acres located at 21, 27, 39, 45 and 49 Center Street, hereinafter referred to as the "Site," in order to combine six RS zoned parcels, rezone said parcels from RS and NCV to BB, demolish the existing single-family dwellings and construct one two-story mixed use building with 3,000 square feet of first floor commercial office space with three (3) upper floor apartments (two [2] two-bedroom and one [1] three-bedroom units) and one three-story residential building with first floor parking and twenty (20) upper floor apartments (twelve [12] two-bedroom and eight [8] three-bedroom units) to be known as the "Lofts at Center Street"; and

WHEREAS, the proposed development shall comply with the BB zoning classification; and

WHEREAS, the City has approved the recordation and development of said Site for the purpose stated above, as shown on a plot plan prepared by Karins and Associates, dated February 9, 2016, and as subsequently revised, attached hereto and made a part hereof by reference, subject to the conditions contained herein.

NOW, THEREFORE, in exchange for the mutual promises contained herein and for other good and valuable consideration which is hereby deemed sufficient and is acknowledged by the parties hereto, the parties mutually agree as follows:

1) The Developer agrees to abide by the terms and conditions, if any, in Newark City Council Resolution No. 16-P, dated June 27, 2016, which resolution is attached hereto and made a part hereof by reference.

2) The Developer agrees to abide by the terms and conditions of the City of Newark Subdivision and Development Regulations and the Newark Zoning Code as

relevant provisions therein relate to the BB zoning classification and to the aforesaid development.

3) The Developer agrees to comply with all applicable codes, standards and specifications of the City of Newark and shall contact the Public Works and Water Resources, Electric, and Code Enforcement Departments as part of the building permit application and review process to ensure compliance with such requirements.

4) The Developer agrees if there are any recorded or unrecorded existing easements or rights-of-way on, under, or over the Site and which benefit the City in any fashion, such easements and rights-of-way shall not be modified or changed in any way as a result of this agreement or the subdivision of lands covered by this agreement without the written consent of the City or other beneficial owners of such easements

5) In light of the City's ongoing efforts to encourage owner-occupancy, the City and Developer agree that the proposed units shall be designed so that they may be easily converted to condominium ownership and in such case, submittal of the appropriate State of Delaware required condominium documents to the City Solicitor for review and approval shall be required prior to their conversion from rental to condominium status.

6) The Developer agrees to submit revised subdivision plans with the accurate bedroom count prior to the submission of the plan for recordation to the Office of the Recorder of Deeds in and for New Castle County by the City Secretary's Office.

7) The Developer agrees to voluntarily deed restrict the property to limit the occupancy of the twenty-three (23) proposed units to four (4) unrelated individuals per unit or an aggregate of ninety-two (92) total tenants.

The Developer also agrees to voluntarily deed restrict the property to prohibit the following BB zoning uses:

- Retail food stores;
- Fast food and take-out style restaurants;
- Repair and servicing, indoor and off-site, of any article for sale which is permitted in this district;
- Related indoor storage facilities;
- Motels and hotels;
- Commercial indoor recreation and indoor theaters; and
- Tower, broadcasting and telecommunications installed on existing buildings or structures.

The exact wording of said restrictions shall be approved by the City Solicitor and shall be recorded in the Office of the Recorder of Deeds in and for New Castle County with a copy submitted to the City Secretary's Office prior to the issuance of the first building permit for the Site. The appropriate deed restriction language shall also be included in the residential and commercial lease agreements.

8) The Developer agrees that the architectural design of the proposed façade on the Site shall be consistent on all building elevations. In addition, storage areas, dumpsters, mechanical and utility hardware shall be screened from view from all public ways and nearby properties in a manner consistent with the proposed architectural design.

The Developer agrees that exterior lighting should be designed as an integral architectural element of the proposed architectural façade and to limit impact on adjoining and nearby properties.

The Developer further agrees to substantially conform to the elevations submitted to Council as part of the approval process and attached hereto as Exhibit A. Substantial conformance will be determined by the Planning and Development Director of the City. Changes that do not substantially conform to Exhibit A are not permitted unless such changes are approved by Council.

9) The Developer agrees the project will comply with the IBC Codes as amended and adopted by the City at the time of submittal for plan review. The project also will be required to meet the IFC or the Delaware State Fire Prevention Regulations, whichever is more restrictive.

10) The Developer agrees the project will comply with all accessibility standards and that sprinklers are required in both the mixed use building and residential apartment building. The Developer further agrees that a minimum of 25 LEED points will be incorporated into the Site.

11) The Developer agrees to submit a signage plan as part of the Construction Improvement Plan process, which shall show the fifteen (15) spaces required for office use as reserved for those uses during hours of office operation. The Developer further agrees that all parking spaces must meet the Code requirement of an unobstructed nine feet by eighteen feet (9' x 18') when constructed.

In addition, the Developer agrees that residential parking permits will not be issued, nor will guest passes be provided for this Site.

12) The Developer shall be responsible for providing refuse collection to the development. An easement and access agreement to place the trash compactor on the adjoining property between this parcel and the adjoining property will be required and shall be recorded in the Office of the Recorder of Deeds in and for New Castle County with a copy submitted to the City Secretary's Office prior to the issuance of the first building permit for the Site.

13) The Developer agrees, through the Construction Improvement Plan process, to submit to the Public Works & Water Resources Department for review and approval final plans for stormwater management and related public improvements.

14) The Developer agrees to the following conditions regarding water/sewer supply:

- To install water meters for each unit, both residential and commercial, at the expense of the Developer, the size of which shall be determined by the City in coordination with the developer, in a central location easily accessible to the City.
- To pay STP fees prior to the issuance of the Certificate of Occupancy for each unit.
- To investigate the capacity of the sanitary sewer system to determine if sufficient capacity exists to handle the proposed development and provide the report to the City for review and approval, including the required flow monitoring during peak hours, during the Construction Improvement Plan process.
- To submit water system plans in accordance with the State of Delaware Department of Health Drinking Water Standards for their review and approval as part of the Construction Improvement Plan approval process.
- To provide a copy of the approved DNREC "Construction of Wastewater Collection and Conveyance Systems" permit prior to Construction Improvement Plan approval.

15) The Developer agrees to the following conditions regarding electric supply:

- To pay towards the cost of transformers, meters and on-site materials necessary to service the development with the final fee to be determined once the transformer location and service information for the small building is provided to the Electric Department. This fee is due prior to issuance of the first Certificate of Occupancy. Once determined, this price will be subject to an annual CPI adjustment.
- To pay a \$300 fee for each commercial meter. This price is subject to an annual CPI adjustment.
- To provide a key to the City if electric meters are to be installed in a locked room.
- To plant no trees over 18 feet at maturity under any power lines.

16) The Developer agrees to pay to remedy issues associated with mitigating problem interference if the development is found to interfere with the City's smart metering system for electric and/or water meters when completed.

17) The Developer agrees to provide tree pits and a grate system to mirror those on Main Street for any trees located in the sidewalk easement.

The Developer further agrees to change the five (5) Pillar Pin Oaks noted along Center Street to one of the following: Columnar Sargent's Cherry, Little King Dwarf River Birch, Armstrong Red Maple or Sourwood Tree.

18) This Agreement may be modified, but only with the written approval of the Newark City Council, the Developer, and/or their successors in interest.

19) The provisions of this Agreement shall be severable. If any provision of this Agreement is found by any court to be void or unenforceable, the remaining provisions hereof shall remain valid and in full force and effect.

20) This Agreement shall be interpreted pursuant to the Laws of the State of Delaware and shall be binding upon the heirs, successors in interest, and assigns of the parties hereto.

**IN WITNESS WHEREOF**, the parties hereto have duly executed this agreement on the day and year aforesaid.

**WITNESS:**

Christopher R. Locke

By: [Signature]  
21 Center Street Associates, LLC

**ATTEST:**

[Signature]  
City Secretary

**CITY OF NEWARK**  
[Signature]  
City Manager

**STATE OF DELAWARE**

**SS.**

**NEW CASTLE COUNTY**

BE IT REMEMBERED, that on this 9<sup>th</sup> day of September, in the year of Our Lord, two thousand and sixteen, personally came before me, a Notary Public for the State and County aforesaid, JEFF LANG, representing party to this Indenture, known to me personally to be such, and does acknowledge this Indenture to be his act and deed and the act and deed of said corporation.

GIVEN under my hand and seal of office, the day and year aforesaid.

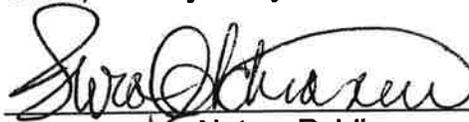
[Signature]  
Notary Public

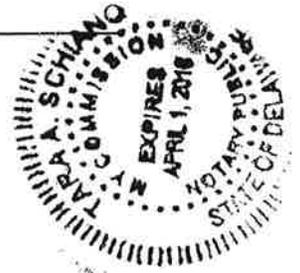
LeAnne Noval  
State of Delaware  
My Commission Expires 11/17/17  
Notary Public

STATE OF DELAWARE  
SS.  
NEW CASTLE COUNTY

BE IT REMEMBERED, that on this 10<sup>th</sup> day of September, in the year of Our Lord, two thousand and sixteen personally came before me, the subscriber, a Notary Public for the State and County aforesaid, **CAROL S. HOUCK**, City Manager of the City of Newark, Delaware, party of the second part to this Indenture, known to me personally to be such, and acknowledged this Indenture to be her act and deed and the act and deed of the Council of Newark; that the signature of the City Manager is in her own proper handwriting; that the seal affixed is the Seal of the City of Newark; and, that her act of signing, sealing, executing, acknowledging, and delivering said Indenture was duly authorized by order of said Council of the City of Newark.

GIVEN under my hand and seal of office, the day and year aforesaid.

  
\_\_\_\_\_  
Notary Public



**CITY OF NEWARK  
DELAWARE**

**RESOLUTION NO. 16-P**

**MAJOR SUBDIVISION OF 0.846 ACRES  
LOCATED AT 21, 27, 39, 45 AND 49 CENTER STREET**

WHEREAS, the Planning Commission, pursuant to Subdivision and Development Regulations adopted September 11, 1978, with various revisions to date, has transmitted to Council a report dated May 6, 2015, regarding an application from 21 Center Street Associates, LLC, for the major subdivision of 0.846 acres in order combine 6 RS zoned parcels, rezone said parcels from RS and NCV to BB, demolish the existing single-family dwellings and construct one two-story mixed use building with 3,000 square feet of first floor commercial office space with three (3) upper floor apartments (two [2] two-bedroom and one [1] three-bedroom units) and one three-story residential building with first floor parking and twenty (20) upper floor apartments (twelve [12] two-bedroom and eight [8] three-bedroom units) to be known as the "Lofts at Center Street" as shown on a plot plan prepared by Karins and Associates, dated February 9, 2016, and as subsequently revised, attached hereto and made a part hereof, subject to certain conditions.

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newark, that final approval of the above-mentioned plot plan showing the proposed subdivision, complying with BB zoning classification, be and the same is hereby granted upon the terms and conditions of the Subdivision and Development Regulations of the City of Newark.

BE IT FURTHER RESOLVED that said approval is granted upon the following conditions:

a) The Developer agrees if there are any recorded or unrecorded existing easements or rights-of-way on, under, or over the Site and which benefit the City in any fashion, such easements and rights-of-way shall not be modified or changed in any way as a result of this agreement or the subdivision of lands covered by this agreement without the written consent of the City or other beneficial owners of such easements

b) In light of the City's ongoing efforts to encourage owner-occupancy, the City and Developer agree that the proposed units shall be designed so that they may be easily converted to condominium ownership and in such case, submittal of the appropriate State of Delaware required condominium documents to the City Solicitor for review and approval shall be required prior to their conversion from rental to condominium status.

c) The Developer agrees to submit revised subdivision plans with the accurate bedroom count prior to the submission of the plan for recordation to the Office of the Recorder of Deeds in and for New Castle County by the City Secretary's Office.

d) The Developer agrees to voluntarily deed restrict the property to limit the occupancy of the twenty-three (23) proposed units to four (4) unrelated individuals per unit or an aggregate of ninety-two (92) total tenants.

The Developer also agrees to voluntarily deed restrict the property to prohibit the following BB zoning uses:

- Retail food stores;
- Fast food and take-out style restaurants;
- Repair and servicing, indoor and off-site, of any article for sale which is permitted in this district;
- Related indoor storage facilities;
- Motels and hotels;
- Commercial indoor recreation and indoor theaters; and
- Tower, broadcasting and telecommunications installed on existing buildings or structures.

The exact wording of said restrictions shall be approved by the City Solicitor and shall be recorded in the Office of the Recorder of Deeds in and for New Castle County with a copy submitted to the City Secretary's Office prior to the issuance of the first building permit for the Site. The appropriate deed restriction language shall also be included in the residential and commercial lease agreements.

e) The Developer agrees that the architectural design of the proposed façade on the Site shall be consistent on all building elevations. In addition, storage areas, dumpsters, mechanical and utility hardware shall be screened from view from all public ways and nearby properties in a manner consistent with the proposed architectural design.

The Developer agrees that exterior lighting should be designed as an integral architectural element of the proposed architectural façade and to limit impact on adjoining and nearby properties.

The Developer further agrees to substantially conform to the elevations submitted to Council as part of the approval process and attached hereto as Exhibit A. Substantial conformance will be determined by the Planning and Development Director of the City. Changes that do not substantially conform to Exhibit A are not permitted unless such changes are approved by Council.

f) The Developer agrees the project will comply with the IBC Codes as amended and adopted by the City at the time of submittal for plan review. The project also will be required to meet the IFC or the Delaware State Fire Prevention Regulations, whichever is more restrictive.

g) The Developer agrees the project will comply with all accessibility standards and that sprinklers are required in both the mixed use building and residential apartment building. The Developer further agrees that a minimum of 25 LEED points will be incorporated into the Site.

h) The Developer agrees to submit a signage plan as part of the Construction Improvement Plan process, which shall show the fifteen (15) spaces required for office use as reserved for those uses during hours of office operation. The Developer further agrees that all parking spaces must meet the Code requirement of an unobstructed nine feet by eighteen feet (9' x 18') when constructed.

In addition, the Developer agrees that residential parking permits will not be issued, nor will guest passes be provided for this Site.

i) The Developer shall be responsible for providing refuse collection to the development. An easement and access agreement to place the trash compactor on the adjoining property between this parcel and the adjoining property will be required and shall be recorded in the Office of the Recorder of Deeds in and for New Castle County with a copy submitted to the City Secretary's Office prior to the issuance of the first building permit for the Site.

j) The Developer agrees, through the Construction Improvement Plan process, to submit to the Public Works & Water Resources Department for review and approval final plans for stormwater management and related public improvements.

k) The Developer agrees to the following conditions regarding water/sewer supply:

- To install water meters for each unit, both residential and commercial, at the expense of the Developer, the size of which shall be determined by the City in coordination with the developer, in a central location easily accessible to the City.
- To pay STP fees prior to the issuance of the Certificate of Occupancy for each unit.
- To investigate the capacity of the sanitary sewer system to determine if sufficient capacity exists to handle the proposed development and provide the report to the City for review and approval, including the required flow monitoring during peak hours, during the Construction Improvement Plan process.
- To submit water system plans in accordance with the State of Delaware Department of Health Drinking Water Standards for their review and approval as part of the Construction Improvement Plan approval process.
- To provide a copy of the approved DNREC "Construction of Wastewater Collection and Conveyance Systems" permit prior to Construction Improvement Plan approval.

l) The Developer agrees to the following conditions regarding electric supply:

- To pay towards the cost of transformers, meters and on-site materials necessary to service the development with the final fee to be determined once the transformer location and service information for the small building is provided to the Electric Department. This fee is due prior to issuance of the first Certificate of Occupancy. Once determined, this price will be subject to an annual CPI adjustment.

- To pay a \$300 fee for each commercial meter. This price is subject to an annual CPI adjustment.
- To provide a key to the City if electric meters are to be installed in a locked room.
- To plant no trees over 18 feet at maturity under any power lines.

m) The Developer agrees to pay to remedy issues associated with mitigating problem interference if the development is found to interfere with the City's smart metering system for electric and/or water meters when completed.

n) The Developer agrees to provide tree pits and a grate system to mirror those on Main Street for any trees located in the sidewalk easement.

The Developer further agrees to change the five (5) Pillar Pin Oaks noted along Center Street to one of the following: Columnar Sargent's Cherry, Little King Dwarf River Birch, Armstrong Red Maple or Sourwood Tree.

RESOLVED at a Regularly Scheduled Meeting on June 27, 2016.

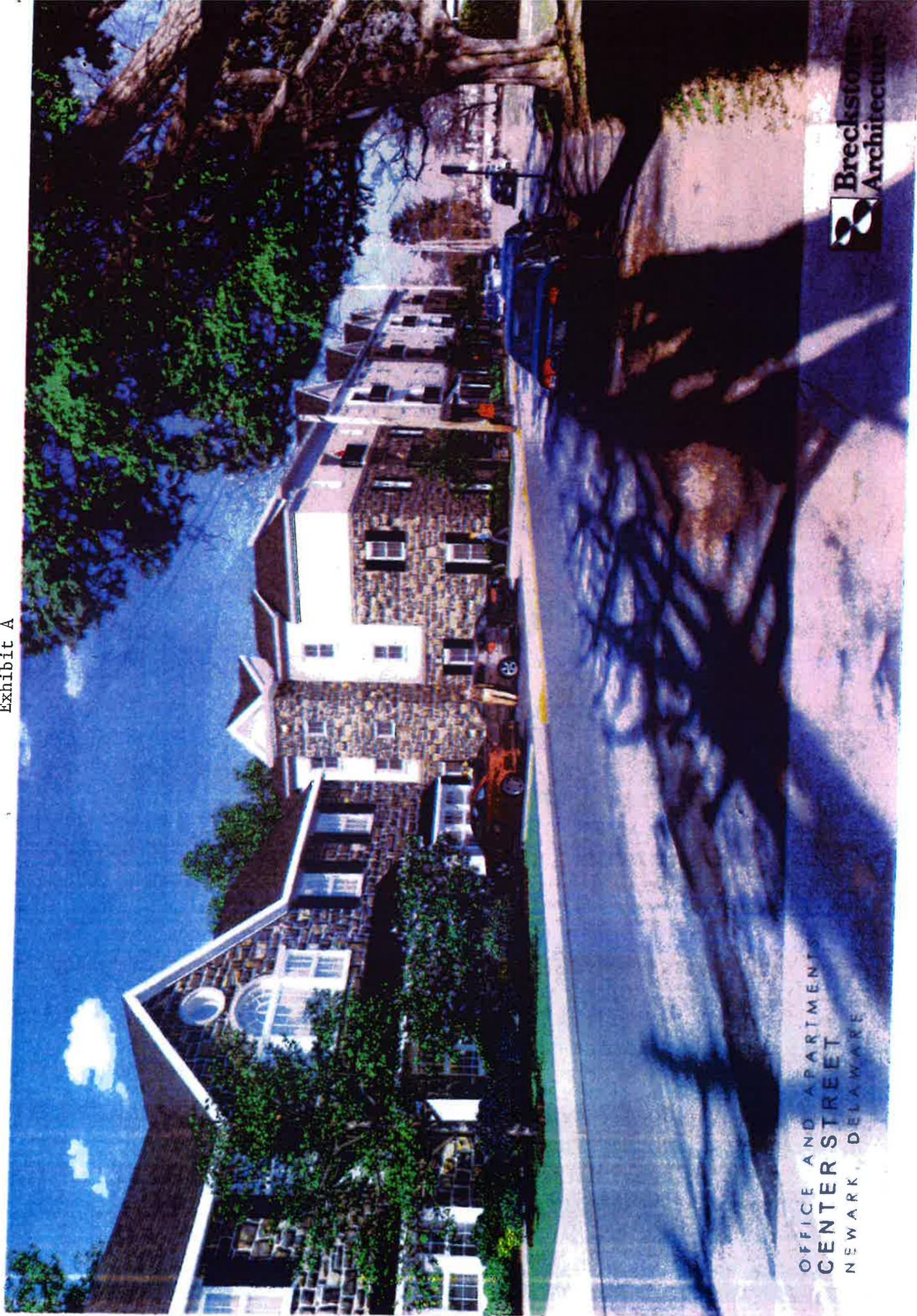
VOTE: 4 to 2.

Attest:

  
City Secretary

  
Mayor

Exhibit A



OFFICE AND APARTMENTS  
CENTER STREET  
NEWARK, DELAWARE

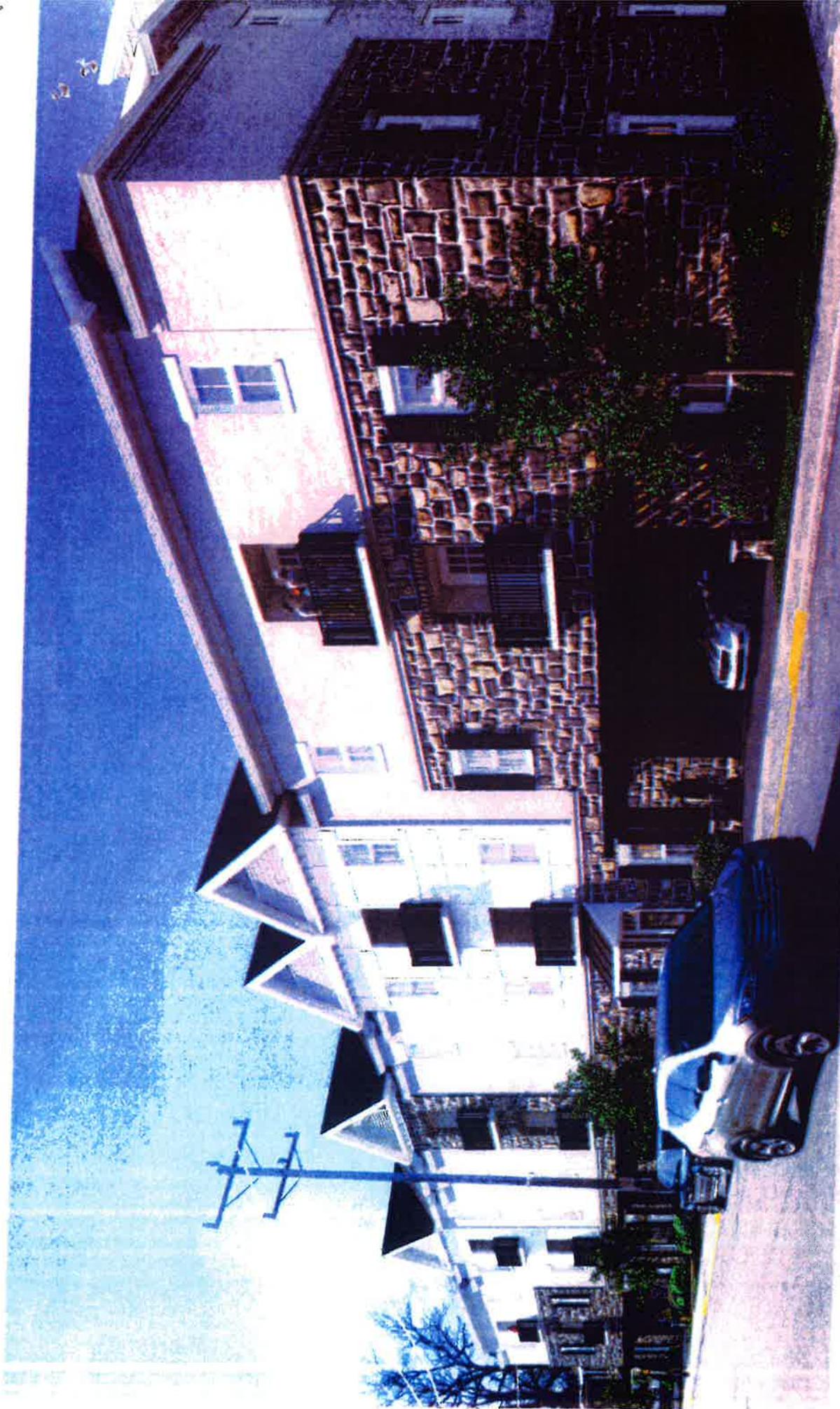




OFFICE AND APARTMENTS  
CENTER STREET  
NEWARK, DELAWARE



Breckstone  
Architecture



OFFICE AND APARTMENTS  
CENTER STREET  
NEWARK, DELAWARE





LANG  
DEVELOPMENT GROUP

10-24-16 P01:38 IN

100 Dean Drive, Newark, DE 19711  
302-731-1340

Maureen Feeney Roser  
Planning and Development Director  
City of Newark  
220 South Main Street  
Newark, Delaware 19711

October 20, 2016

Dear Ms. Feeney-Roser,

As you will recall on June 27, 2016 we submitted for City Council's review our project, The Lofts at Center Street. Council approved the project. As you may remember, the meeting was long that night and we did not start to present the project to Council until after 10:30 pm.

Prior to the Council meeting, the City Secretary had sent us a draft proposal of the Subdivision Agreement. After some minor modifications to the Agreement, we agreed with the Subdivision Agreement terms and conditions except for one issue, namely we would be allowed to have 5 unrelated people reside in the three bedroom units. We agreed to the restriction of four unrelated people for the two bedroom units. I sent an email to the City Secretary that we would like to discuss this matter during Council deliberations of our project. I have attached the email for your review. The purpose of our request to amend the Agreement is to allow for five unrelated persons in the three bedroom units. This would be consistent with almost all of the other projects that have been approved by the City for units with three bedrooms. Due to the lateness of the meeting, this issue was not discussed at the time of our presentation.

We believe The Lofts at Center Street is a signature project that will benefit the community in many ways. We have continued to design the Lofts for residential condominium conversions in the future. However, to be competitive in the marketplace, it is important to be able to provide our three bedroom units to five unrelated persons. The net increase of residents will only be nine people and therefore will have a minimum impact on City resources and will not change the project design.

Therefore, I respectfully request to schedule a time to present to Council our request to amend the Subdivision Agreement, section 7, to allow for five unrelated persons in the nine three bedroom units or an aggregate of 101 total tenants.

Best regards,

Christopher Locke  
General Counsel

(B)

LDG

Chris Locke &lt;chris@langdevgrp.com&gt;

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**Lofts at Center Street subdivision agreement**

6 messages

**Renee K. Bensley** <RBensley@newark.de.us>

To: Chris Locke &lt;chris@langdevgrp.com&gt;

Tue, Jun 14, 2016 at 4:54 PM

Chris,

Attached is the subdivision agreement for the Lofts at Center Street for your review. Please let me know if you have any questions or changes no later than Friday, 6/17 as this is scheduled to go out with the 6/27 Council packets. Thanks as always for your help!

Renee

Renee K. Bensley

Director of Legislative Services/City Secretary/City Treasurer/FOIA Coordinator, City of Newark

302.366.7000 x1001 | 220 South Main Street | Newark, DE 19711

www.cityofnewarkde.us | @CityofNewarkDE

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 **Lofts at Center Street.docx**  
33K**Chris Locke** <chris@langdevgrp.com>

To: "Renee K. Bensley" &lt;RBensley@newark.de.us&gt;

Fri, Jun 17, 2016 at 4:55 PM

Renee,

The only change is Paragraph 7: We do not think there should be a deed Restriction. However, if Council so deems then we request it to be 101 persons in the aggregate. 56 persons for the two bedrooms (4 per unit) and 45 for the three bedrooms (5 per unit).

Have a nice weekend.

Chris

[Quoted text hidden]

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Chris Locke  
Lang Development Group  
6000 Woolen Way  
Newark, De 19711

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**Renee K. Bensley** <RBensley@newark.de.us>

To: Chris Locke &lt;chris@langdevgrp.com&gt;

Fri, Jun 17, 2016 at 4:57 PM

Thanks Chris! I've forwarded this to Maureen and Bruce for review. Have a good weekend.

Renee

Renee K. Bensley

Director of Legislative Services/City Secretary/City Treasurer/FOIA Coordinator, City of Newark

302.366.7000 x1001 | 220 South Main Street | Newark, DE 19711

[www.cityofnewarkde.us](http://www.cityofnewarkde.us) | @CityofNewarkDE

**From:** Chris Locke [mailto:chris@langdevgrp.com]  
**Sent:** Friday, June 17, 2016 4:55 PM  
**To:** Renee K. Bensley <RBensley@Newark.de.us>  
**Subject:** Re: Lofts at Center Street subdivision agreement

[Quoted text hidden]

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**Chris Locke** <chris@langdevgrp.com>  
To: "Renee K. Bensley" <RBensley@newark.de.us>

Fri, Jun 17, 2016 at 4:58 PM

That is the formula we have done on other recent projects.

[Quoted text hidden]

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**Renee K. Bensley** <RBensley@newark.de.us>  
To: Chris Locke <chris@langdevgrp.com>

Mon, Jun 20, 2016 at 12:39 PM

Chris,

In speaking with Bruce, since the Planning Department recommended the occupancy deed restriction as it is written in the subdivision agreement and the Planning Commission did not make a recommendation on that restriction, the deed restriction will be included in the subdivision agreement as submitted to Council. Your proposed changes to that deed restriction will be noted in a cover memo to Council. As always, you are welcome to present the changes to Council on 6/27 and request the subdivision agreement and associated resolution be amended at that time. If you have any questions, please let me know.

Renee

Renee K. Bensley

Director of Legislative Services/City Secretary/City Treasurer/FOIA Coordinator, City of Newark

302.366.7000 x1001 | 220 South Main Street | Newark, DE 19711

[www.cityofnewarkde.us](http://www.cityofnewarkde.us) | @CityofNewarkDE

From: Chris Locke [mailto:chris@langdevgrp.com]

Sent: Friday, June 17, 2016 4:58 PM

[Quoted text hidden]

[Quoted text hidden]

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**Chris Locke** <chris@langdevgrp.com>  
To: "Renee K. Bensley" <RBensley@newark.de.us>

Mon, Jun 20, 2016 at 2:40 PM

Ok. Thank you. We will discuss at Council.

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