

Master Plan Element Section IV

Housing Element & Fair Share Plan

Appendices (Book 3 of 3)

Adopted February 27, 2019

Township of West Windsor



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Appendices

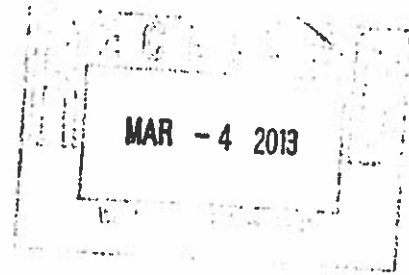
Appendix R:
Princeton Terrace 2 Affordable Housing Report (for the
Glen at West Windsor, LLC)



INSTR # 2013009702
D BK 6165 PG 586 Pgs 586 - 604; (19 pgs)
RECORDED 02/20/2013 08:49:52 AM
PAULA SOLLAMI COVELLO, COUNTY CLERK
MERCER COUNTY, NEW JERSEY

AFFORDABLE HOUSING REPORT
FOR
THE GLEN AT WEST WINDSOR, L.L.C.

P310-01
BLF 15.14
LOT 14.01



Record and Return to:
Gerald J. Muller, Esq.
Miller, Porter & Muller, P.C.
One Palmer Square, Suite 540
Princeton, New Jersey 08542

December 2012

205
19 PGS.
13.00

In satisfaction of Condition 23-62 of the October 20, 2010 resolution memorializing the July 14, 2010 grant of preliminary and final major site plan approval and planned development approval with variances and waivers for West Windsor Gardens II (PB10-01), to become part of what was formerly known as West Windsor Gardens I and what is now known as Princeton Terrace, which incorporates all conditions of the West Windsor Gardens I approval, including condition 24-2 requiring an Affordable Housing Report, The Glen at West Windsor, L.L.C. submits the following information as the required Affordable Housing Report.

- a. Total number of units: 120

- b. Total number and percentage of low- and moderate-income units by number of bedrooms and income classification: 12 low-income units (9 two bedrooms and 3 three bedrooms) and 12 moderate-income units (10 two bedroom and 2 three bedroom) for a total of 24 low- and moderate-income units (20% of the total number of units). The breakdown between the number of two bedroom low-income units and two bedroom moderate-units is calculated based upon treating West Windsor Gardens I and West Windsor Gardens II, to be known jointly as Princeton Terrace, as one development, consistent with the West Windsor Planning Board's decision, set forth in the resolution memorializing the July 14, 2010 approval of West Windsor Gardens II, to treat both developments as a single planned development.

c. **Affordability criteria:** The attached documentation (Exhibit A) demonstrates that the monthly cost of shelter, including rent and utilities (gas, electric, oil, water, and sewer), will not exceed 30% of the gross income as defined and adjusted from time to time for low- and moderate-income households.

d. **Maintenance of affordability:**


1. The Deed Restriction (Exhibit B) has been approved by the West Windsor Affordable Housing Attorney and requires compliance with all Township and COAH affordable housing requirements for a minimum period of 30 years and until terminated by the Township.

2. The Affirmative Marketing Plan used for West Windsor Gardens I, which has been approved by the West Windsor Affordable Housing Attorney and Piazza & Associates, will serve as the affirmative marketing plan for West Windsor Gardens II, since the two are part of the same planned development. The plan establishes a marketing approach for rental of units that provides for advertising within the municipalities included within West Windsor's housing region and for notifying public and private agencies concerned with expanding housing opportunities. It is in conformance with all State and federal non-discrimination obligations and with COAH requirements.

e. Floor plans: Floor plans of a two bedroom and three bedroom unit are attached as Exhibit C.

f. The Glen at West Windsor, L.L.C. agrees to construct and rent 24 affordable units open to the public in accordance with the terms of the approval and the Township and Council on Affordable Housing regulations governing affordable housing.

WITNESS:

By: 

Harry Stadler, Attorney-at-Law
of State of New Jersey

THE GLEN AT WEST WINDSOR, LLC

By: 

David Halpern, Managing Member

EXHIBIT A

**Preliminary Rent Calculations and Income Qualifications for 2012
PRINCETON TERRACE PHASE II AT WEST WINDSOR - (Mercer County)**

- > Revised: All Very Low as 2BR and Updated Utility Allowances
- > Assumes trash is included in rent.
- > Assumes gas as the type of heat, hot water & cooking.
- > Rents restricted to an average 52%.

<u>Unit Median Calculation</u>		<u>Unit Median</u>
2 Bed Rm	3 persons	\$82,252
3 Bed Rm	4.5 persons	\$95,047

<u>Utility Allowance Calculation (HUD 7/23/2010)</u>		
<u>Bed Rooms</u>	<u>2</u>	<u>3</u>
Gas Heat	\$29	\$38
Gas Hot Wtr	\$23	\$28
Gas Cooking	\$16	\$18
Electric	\$48	\$58
Water	\$34	\$42
Sewer	\$26	\$32
Totals	\$176	\$214

<u>Number of Family Members:</u>	<u>Median Income Adjusted by Family Size</u>					
	<u>One</u>	<u>Two</u>	<u>Three</u>	<u>Four</u>	<u>Five</u>	<u>Six</u>
Median Income COAH 2011	\$63,974	\$73,113	\$82,252	\$91,391	\$98,703	\$106,014
80.00% of Median	\$51,179	\$58,490	\$65,802	\$73,113	\$78,962	\$84,811
50.00% of Median	\$31,987	\$36,557	\$41,126	\$45,696	\$49,351	\$53,007

<u>Unit Type</u>	<u>Basis of Median</u>	<u>Maximum Rents</u>	<u>Min Inc. @ 35.00%</u>	<u>Maximum Incomes</u>				
				<u>2 Persons</u>	<u>3 Persons</u>	<u>4 Persons</u>	<u>5 Persons</u>	<u>6 Persons</u>
2 Bed Rm								
low @35%	35.00%	\$544	\$24,686	\$36,557	\$41,126	\$45,696		
Low	47.05%	\$791	\$33,154	\$36,557	\$41,126	\$45,696		
Moderate	60.00%	\$1,057	\$42,274	\$58,490	\$65,802	\$73,113		
3 Bed Rm								
Low	47.07%	\$904	\$38,331	\$41,126	\$45,696	\$49,351	\$53,007	
Moderate	60.00%	\$1,211	\$48,857	\$65,802	\$73,113	\$78,962	\$84,811	

<u>Rent Calculations</u>						
<u>Number of Units</u>	<u>Estimated Unit Rents</u>	<u>Actual Initial Unit Rents</u>	<u>Unit Average</u>	<u>Rent by Unit Type</u>	<u>Weighted Average</u>	<u>Gross Potential Rent</u>
<u>2 Bed Rm**</u>						
3	\$544	\$544	35.01%	\$1,632	105.04%	\$19,584
6	\$791	\$791	47.03%	\$4,746	292.18%	\$56,952
10	\$1,057	\$1,057	59.96%	\$10,570	599.62%	\$126,840
19	Total 2 BR					
<u>3 Bed Rm</u>						
3	\$904	\$904	47.05%	\$2,712	141.15%	\$32,544
2	\$1,211	\$1,211	59.97%	\$2,422	119.94%	\$29,064
5	Total 3 BR					
				AVERAGE	51.998%	GPR
						\$264,984 per year
24 Total Units				Low = 12	Mod = 12	\$22,082 per month

** Percent of low income 2BR units based on total provided in combined phases one and two.

EXHIBIT B

Deed Restriction

**To State Regulated Multi-Family Rental Property
With Covenants Restricting Rentals, Conveyance and Improvements
And Requiring Notice of Foreclosure and Bankruptcy**

Prepared by:



Gerald J. Muller

THIS DEED RESTRICTION, entered into as of this the ___ day of _____, 2012, by and between Piazza & Associates, Inc., with offices at 216 Rockingham Road, Princeton, NJ 08540, as Administrative Agent for the Township of West Windsor ("Administrative Agent"), and The Glen at West Windsor, L.L.C., having an address at 90 Woodbridge Center Drive, Woodbridge, New Jersey, the developer/sponsor (the "Owner") of a residential low- and moderate-income rental project formerly known as "West Windsor Gardens II" and to be known as part of Princeton Terrace (the "Project"):

WITNESSETH

Article 1. Consideration

The Owner hereby agrees to abide by the covenants, terms and conditions set forth in this Deed restriction with respect to the land and improvements more specifically described in Article 2 hereof (the Property).

Article 2. Description of Property

The Property consists of those units identified as affordable units located on the real property designated as Block No. 15.14, Lots 14, 15 and 34 in the Township of West Windsor, County of Mercer, State of New Jersey, and described more fully in Schedule A attached hereto.

Article 3. Affordable Housing Covenants

The following covenants (the "Covenants") shall run with the land for the period of time (the "Control Period"), determined separately with respect for each dwelling unit, commencing upon the date on which the first certified household occupies the unit and shall and expire as determined under the Uniform Controls, as defined below, in place at the time of execution of this Deed.

A. Sale and use of the Property is governed by regulations known as the Uniform Housing Affordability Controls, which are found in New Jersey Administrative Code at Title 5, chapter 80, subchapter 26 (N.J.A.C. 5:80-26.1, *et seq.*, the "Uniform Controls").

~~B. The Property shall be used solely for the purpose of providing rental dwelling~~
units for low- or moderate-income households, and no commitment for any such dwelling unit shall be given or implied, without exception, to any person who has not been certified for that unit in writing by the Administrative Agent. So long as any dwelling unit remains within its Control Period, sale of the Property must be expressly subject to these Deed Restrictions, deeds of conveyance must have these Deed Restrictions appended thereto, and no sale of the Property shall be lawful, unless approved in advance and in writing by the Administrative Agent.

C. No improvements may be made to the Property that would affect the bedroom configuration of any of its dwelling units, and any improvements to the Property must be approved in advance and in writing by the Administrative Agent.

D. The Owner shall notify the Administrative Agent and the State of any foreclosure actions filed with respect to the Property within five (5) business days of service upon Owner.

E. The Owner shall notify the Administrative Agent and the State within three (3) business days of the filing of any petition for protection from creditors or reorganization filed by or on behalf of the Owner.

Article 4. Remedies for Breach of Affordable Housing Covenants

A breach of the Covenants will cause irreparable harm to the Township of West Windsor and its Administrative Agent, to the State and to the public, in light of the public policies set forth in the New Jersey Fair Housing Act, the Uniform Housing Affordability Control rules found at N.J.A.C. 5:80-26, and the obligation for the provision of low and moderate-income housing.

A. In the event of a threatened breach of any of the Covenants by the Owner, or any successor in interest of the Property, the Township of West Windsor and its Administrative Agent and the State shall have all remedies provided at law or equity, including the right to seek injunctive relief or specific performance.

B. Upon the occurrence of a breach of any Covenants by the Grantee, or any successor in interest or other owner of the Property, the Township of West Windsor and its Administrative Agent shall have all remedies provided at law or equity including but not limited to forfeiture, foreclosure, acceleration of all sums due under any mortgage, recouping of any funds from a sale in violation of the Covenants, diverting of rent proceeds from illegal rentals, injunctive relief to prevent further violation of said Covenants, entry on the premises, those provided under Title 5, Chapter 80, Subchapter 26 of the New Jersey Administrative Code and specific performance.

Article 5. Other

A. The Owner shall be obligated to pay a service fee to the Administrative Agent for initial occupancy and at the time of each new rental occupancy.


IN WITNESS WHEREOF, the Administrative Agent and the Owner have executed this Deed Restriction in triplicate as of the date first above written.

ATTEST:



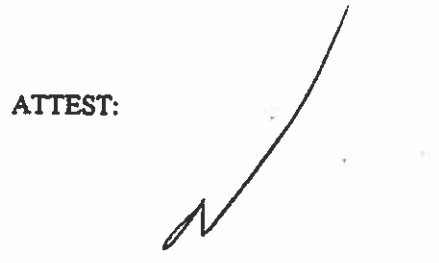
Piazza & Associates, Inc., as
Administrative Agent for the
Township of West Windsor

By:



Frank Piazza, President

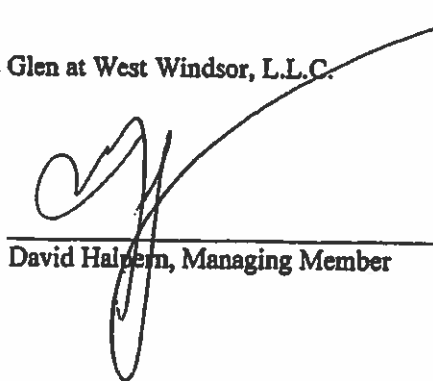
ATTEST:



Harry Stadler, Esq.

The Glen at West Windsor, L.L.C.

By:



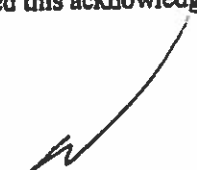
David Halpern, Managing Member

ACKNOWLEDGMENT

STATE OF NEW JERSEY)
) SS:
COUNTY OF MIDDLESEX)

On this 14th day of December, 2012 before me, the subscriber, a Notary Public or Attorney at Law of the State of New Jersey personally appeared David M. Halpern, who I am satisfied is the individual named as a Managing Member of The Glen at West Windsor, L.L.C., the limited liability company named in an subscribing to the foregoing Deed Restriction and being by me duly sworn, acknowledged, deposed and said that he signed, sealed and delivered the same as his voluntary act and deed, and the voluntary act and deed of such limited liability company, and as authorized by the limited liability company, for the uses and purposes therein expressed.

IN WITNESS WHEREOF, I have signed and sealed this acknowledgment as of the day and year first above written.



HARRY STADLER, Attorney-at-Law
of State of New Jersey

Signed and Sworn to before me on
this day of , 2012.

ACKNOWLEDGMENT

STATE OF NEW JERSEY)
) SS:
COUNTY OF MERCER)

I certify that on January 29th, 2013 KATHI SCHULTE personally came before me and acknowledged under oath to my satisfaction that:

- a. This person is the Vice President of Piazza & Associates, Inc., named in this document;
- b. This person is the attesting witness to the signing of this Instrument by the proper official, who is the President of Piazza & Associates;
- c. This document was signed and delivered by Piazza & Associates as its voluntary act duly authorized and as the Administrative Agent of the Township of West Windsor so designated by a proper resolution of the West Windsor Township Council; and
- d. This person knows the proper seal of Piazza & Associates, Inc.
- e. This person signed this proof to attest to the truth of these facts.

Kathi Schulte

Sworn to and subscribed
before me this 29 day of January,
2013

Denise A. Keenan

Record and Return to:
Miller Porter & Muller, P.C.
One Palmer Square, Suite 540
Princeton, NJ 08542

DENISE A. KEENAN
ID # 2384728
NOTARY PUBLIC OF NEW JERSEY
Commission Expires 4/16/2014

SCHEDULE A

The Glen at West Windsor LLC.

Building 2200 to Building 2700 Osprey Way	120 x 20%=24 units/COHA
Total units 120 x 20% restricted/COHA	Two Bedroom Very Low = 3
24 units restricted	Two Bedroom Low = 6
	Three Bedroom Low = 3
96 Market units	Two Bedroom Moderate = 10
	Three Bedroom Moderate = 2

22201

22202

22203

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22205

22206

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22208

22209

22210

22211

22212

22101 2M COHA

22102 2M COHA

22103 3L COHA

22104 2L COHA

23201

23202

23203

23204

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23207

23208

23209

23210

23211

23212

23101 2VL COHA

23102 2L COHA

23103 3M COHA

The Glen at West Windsor LLC.

24201
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24101 2VL COHA
24102 2L COHA
24103 2M COHA
24104 2M COHA
24105 2M COHA

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25213

The Glen at West Windsor LLC.

25214
25215
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25101 2M COHA
25102 2M COHA
25103 3M COHA
25104 2L COHA

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26215
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26101 2M COHA
26102 3L COHA
26103 2L COHA
26104 2M COHA

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The Glen at West Windsor LLC.

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27216

27101 2L COHA

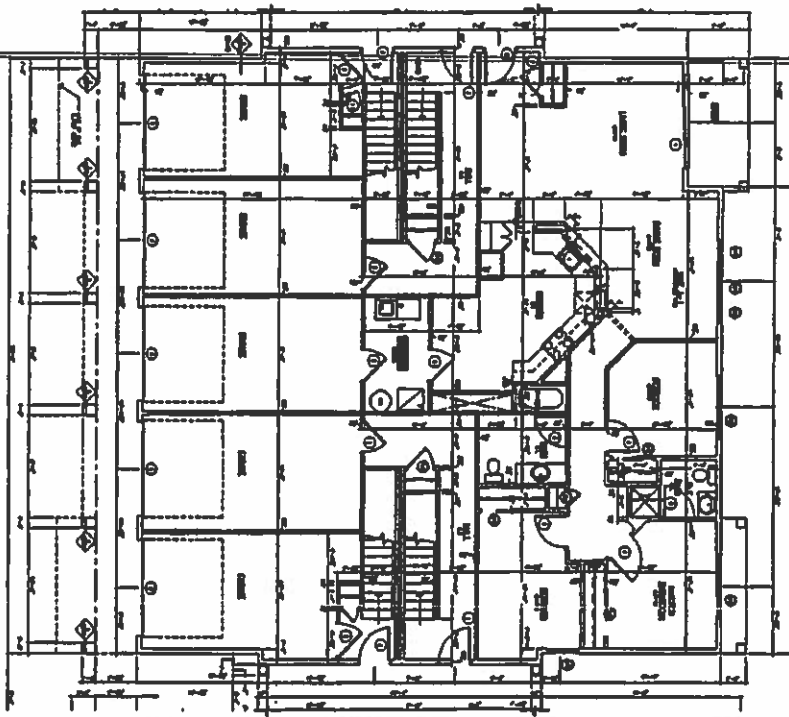
27102 3L COHA

27103 2VL COHA

27104 2M COHA

EXHIBIT C

PLAN OF UNIT A - ALTERNATE 3 BEDROOM PLAN
SCALE: 1/8" = 1'-0"



NOTES

1. REFER TO SHEET A-1 FOR DOORS AND WINDOW SCHEDULES.

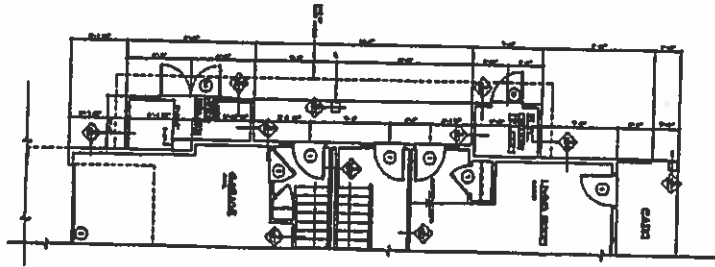
2. REFER TO SHEET A-2 FOR LIGHT FIXTURE SCHEDULES.

3. ALL EXTERIOR WALLS TO BE 2' MIN. THICK.

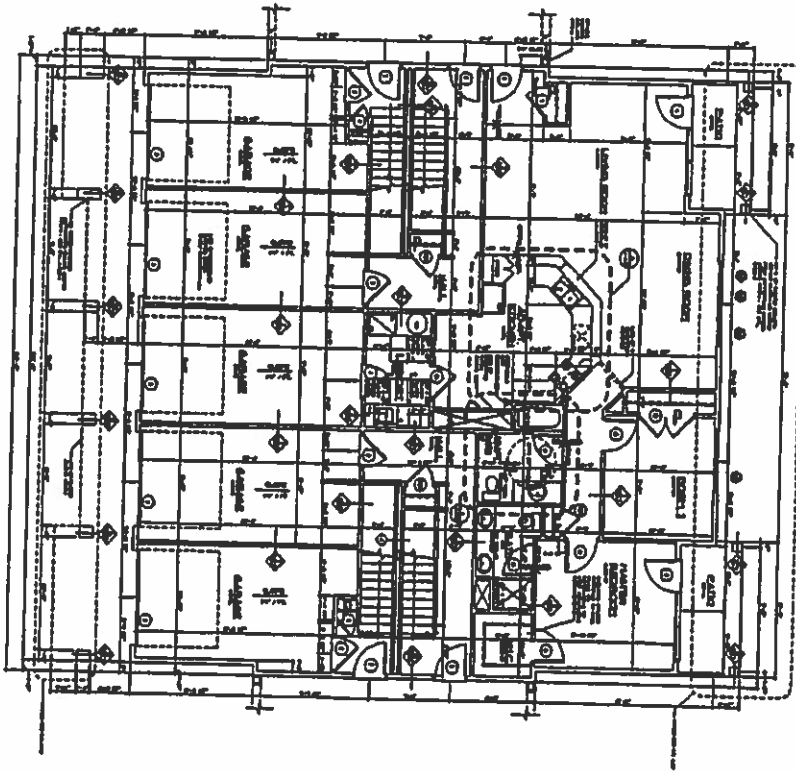
4. ALL INTERIOR WALLS TO BE 1/2" MIN. THICK.

<p>A-3 ALTERNATE</p>	<p>Sheet 102 FIRST FLOOR UNIT PLANS 3 BEDROOM 7-28-10</p>	<p>THE GLEN AT WEST WINDSOR, LLC WEST WINDSOR GARDENS II WEST WINDSOR, NEW JERSEY</p>	<p>BERKOWSKY AND ASSOCIATES, INC. ARCHITECTURAL AND CONSTRUCTION SERVICES 1000 ROUTE 100, SUITE 100, CHERRY HILL, NJ 08012 TEL: 609-683-1000 FAX: 609-683-1001 WWW.BERKOWSKYANDASSOCIATES.COM</p>
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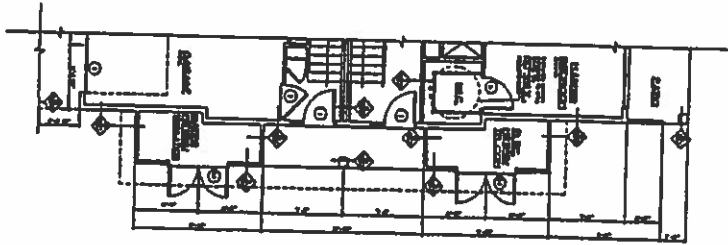
PARTIAL PLAN OF UNIT A
WEST WINDOR BND COND.



PLAN OF UNIT A



PARTIAL PLAN OF UNIT A
WEST WINDOR BND COND.

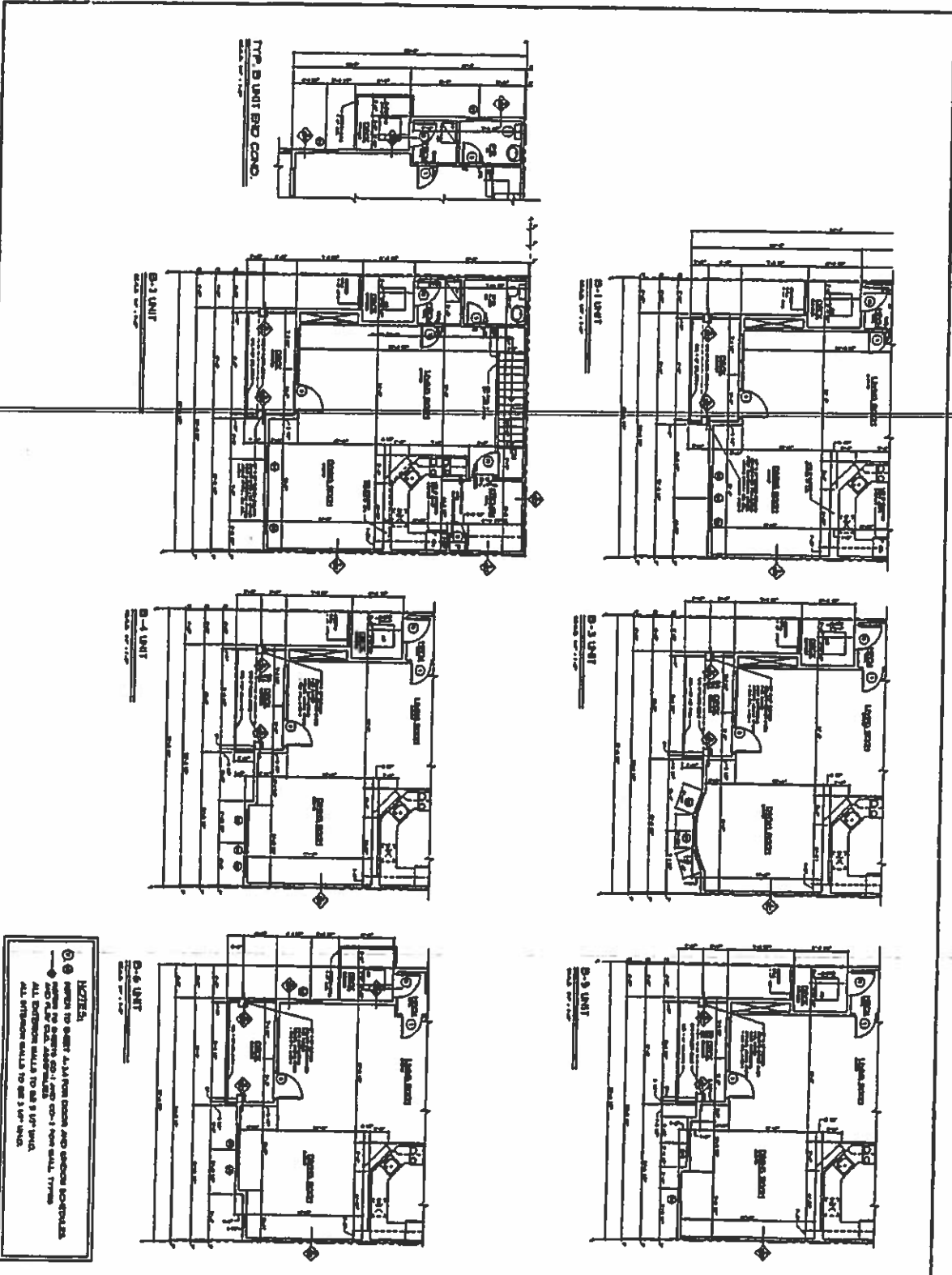


NOTES:
 1. ROOMS TO BE UNIT 4-3/4 FROM ROOMS AND SERVICE SCHEDULES.
 2. ROOMS TO BE UNIT 4-3/4 FROM ROOMS AND SERVICE SCHEDULES.
 3. ALL DIMENSIONS UNLESS NOTED OTHERWISE.
 4. ALL DIMENSIONS UNLESS NOTED OTHERWISE.

DATE: 1-25-02
 FIRST FLOOR UNIT PLANS
 A-30

THE GLEN AT WEST WINDSOR, LLC
 WEST WINDSOR GARDENS II
 WEST WINDSOR, NEW JERSEY

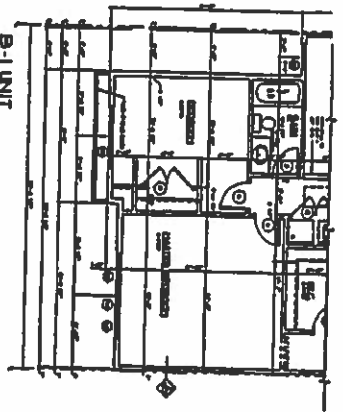
BERKOWSKY AND ASSOCIATES, INC.
 ARCHITECTURAL AND CONSTRUCTION SERVICES
 2241 ROUTE 200 CHANONVILLE, NJ 08815
 TEL: 908-261-2241 FAX: 908-261-2242
 A TOTAL QUALITY MANAGEMENT FIRM



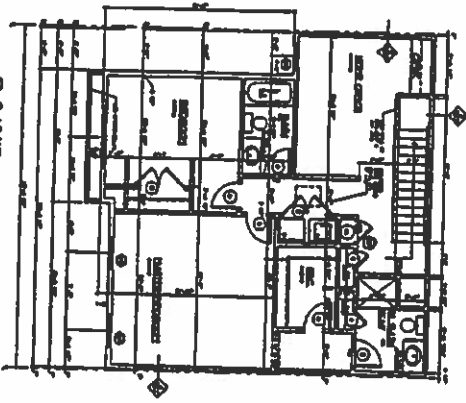
NOTES:

- 1. REFER TO SHEET A-1.14 FOR ROOM AND WINDOW HIGHLIGHTS AND TO SHEET A-1.15 FOR WALL TYPES.
- 2. ALL EXTERIOR WALLS TO BE 8" CMU.
- 3. ALL INTERIOR WALLS TO BE 5" CMU.

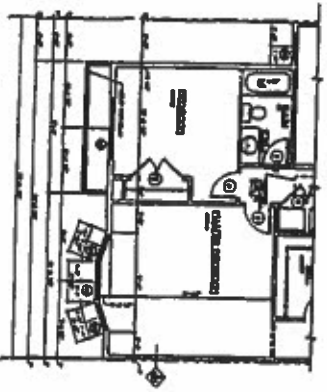
<p>A-3.2</p>	<p>SECOND FLOOR UNIT PLANS</p>	<p>THE GLEN AT WEST WINDSOR, LLC WEST WINDSOR GARDENS II WEST WINDSOR, NEW JERSEY</p>	<p>BERKOWSKY AND ASSOCIATES, INC. ARCHITECTURAL AND CONSTRUCTION SERVICES 2001 ROUTE 100, SUITE 100, WEST WINDSOR, NJ 07080 TEL: 908-261-1111 FAX: 908-261-1112 WWW.BERKOWSKYANDASSOCIATES.COM</p>
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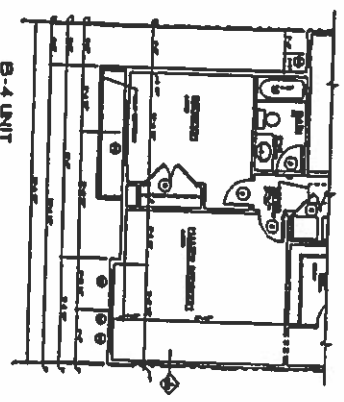
B-1 UNIT



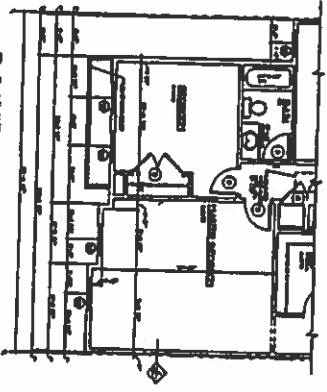
B-2 UNIT



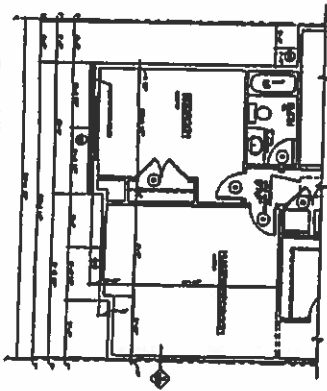
B-3 UNIT



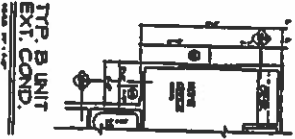
B-4 UNIT



B-5 UNIT



B-6 UNIT



TYP. B UNIT
EXT. COND.

NOTES:
 1. REFER TO SHEET A-3 FOR ROOM AND FINISH SCHEDULES.
 2. REFER TO SHEET C-0.1 FOR FINISH SCHEDULES.
 3. ALL PORTION WALLS TO BE 1 1/2" W.G.A.
 4. ALL INTERIOR WALLS TO BE 1 1/2" W.G.A.

THIRD FLOOR
 UNIT PLANS
 1/18/13
 A-3.3

THE GLEN AT WEST WINDSOR, LLC
 WEST WINDSOR GARDENS II
 WEST WINDSOR, NEW JERSEY

BERKOWSKY AND ASSOCIATES, INC.
 ARCHITECTURAL AND CONSTRUCTION SERVICES
 200 SOUTH 100
 SUITE 200
 WEST WINDSOR, NJ 07093
 WWW.BERKOWSKYANDASSOCIATES.COM

Appendix S:
Artis Senior Living License, Declaration of Restrictive
Covenants

NEW JERSEY DEPARTMENT OF HEALTH
DIVISION OF CERTIFICATE OF NEED AND LICENSING

Presents, pursuant to N.J.S.A. 26:2H-1 et seq.,

this

LICENSE

to

ARTIS SENIOR LIVING OF PRINCETON JUNCTION, LLC

which is hereby licensed to operate

ARTIS SENIOR LIVING OF PRINCETON JUNCTION

861 ALEXANDER ROAD - PRINCETON, NEW JERSEY 08540

a(n):

ASSISTED LIVING RESIDENCE

64 ASSISTED LIVING BEDS



A handwritten signature in black ink, appearing to read "Shereef M. Elnahal".

Shereef M. Elnahal, MD, MBA
Commissioner

License #: 11A013

Effective: 02/20/2018
Expires: 02/28/2019

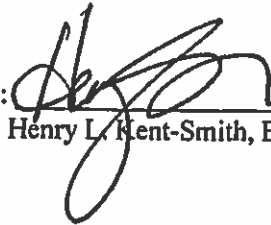
Issued: 03/09/2018

MUST BE POSTED IN A CONSPICUOUS PLACE IN THE FACILITY
THIS LICENSE IS NOT TRANSFERABLE, APPLIES ONLY TO THE ABOVE LOCATION, AND TERMINATES ON NOTICE BY THE DEPARTMENT



INSTR # 2015043927
D BK 6229 PG 1036 Pgs 1036 - 1039 (4 pgs)
RECORDED 09/25/2015 09:45:24 AM
PAULA SOLLANI COVELLO, COUNTY CLERK
MERCER COUNTY, NEW JERSEY

Record and Return To:
Henry L. Kent-Smith, Esq.
Fox Rothschild LLP
997 Lenox Drive
Lawrenceville, New Jersey 08648

Prepared by: 
Henry L. Kent-Smith, Esq.

DECLARATION OF RESTRICTIVE COVENANT

THIS DECLARATION OF RESTRICTIVE COVENANT (the "Declaration") is made this 16 day of September 2015, by ARTIS SENIOR LIVING OF PRINCETON JUNCTION, LLC, a Delaware Limited Liability Company, having an address of 1651 Old Meadow Road, Suite 100, McLean, VA 22102 (hereinafter referred to as the "Declarant").

WITNESSETH:

WHEREAS, the Declarant is the owner in fee simple of certain real property situated in the Township of West Windsor, County of Mercer, State of New Jersey, which property is currently shown on the Official Tax Map of the Township of West Windsor as Block 6, Lot 64 (hereinafter the "Property"); and

WHEREAS, Declarant obtained a use variance approval by Resolution adopted on April 24, 2014, and Preliminary and Final Major Site Plan Approvals from the Zoning Board of Adjustment of West Windsor Township (the "Zoning Board") by Resolution adopted on April 2, 2015 (the "Approvals"), as shown on a certain Final Site Plan prepared by Princeton Junction Engineering (the "Final Plan"), a copy of which is attached hereto as "Exhibit A"; and

WHEREAS, the Zoning Board required as a condition of the Approvals, among other things, that the Declarant execute and record this Restrictive Covenant.

NOW, THEREFORE, for and in consideration of the facts recited above and the restriction contained herein, the Declarant, for itself, its successors and assigns, in order to comply with the Approvals and enforce the obligations of the Declarant and its successors and assigns as set forth in the Approvals, hereby creates, establishes and declares the restriction hereinafter set forth, which shall run with the land, and to which the Property shall be held, sold and conveyed, leased, mortgaged and/or transferred, subject to the terms and conditions hereinafter recited.

ARTICLE I — DECLARATION

Section 1.01. Declaration of Restrictive Covenant. The Declarant hereby declares that the Property is to be subject to the restriction set forth in Article III hereof, which restriction shall be attached to and run with the land and shall inure to the benefit of and be enforceable by the party set forth in Article IV hereof, its successors and assigns.

205 4pg 63 ck. 8738

ARTICLE II — THE ENCUMBERED LANDS

Section 2.01. Description of Encumbered Lands. The Property (together with the improvements to be constructed thereon) which is intended to be encumbered and is encumbered by this Declaration consists of Lot 64, Block 6 on the West Windsor Township Tax Map (the "Property"). The Property is to be developed for a licensed Memory Care Assisted Living Facility (the "Facility").

ARTICLE III — RESTRICTIVE COVENANT

Section 3.01. Restriction. The Declarant hereby declares that the Property is expressly made subject to the following restrictive covenant, which shall be attached to and run with the Property:

(a) The Declarant and/or any successor in interest shall provide ten percent (10%) of the available beds in the Facility as Medicaid beds, in accordance with the New Jersey Department of Health regulations, for a minimum of thirty (30) years and thereafter until such requirement is terminated by West Windsor Township.

ARTICLE IV — BINDING EFFECT

Section 4.01. Binding Effect. This Declaration shall be binding upon the Declarant and its successors and assigns, including each and every subsequent owner of the Property. Further, the Township of West Windsor shall have the right, but shall not be obligated, to enforce the provisions of this Declaration, which shall be binding upon it in all events.

IN WITNESS WHEREOF, Declarant has signed, sealed and delivered this Declaration of Restrictive Covenant the day and year first above written.

DECLARANT:

ARTIS SENIOR LIVING OF PRINCETON JUNCTION, LLC,
a Delaware limited liability company

BY: Artis Senior Living, LLC,
a Delaware limited liability company
its Manager

By: Donald E. Feltman
Name: Donald E. Feltman
Title: President & CEO

COMMONWEALTH OF VIRGINIA :
COUNTY OF FAIRFAX : SS:

I CERTIFY that on September 16, 2015 Donald E. Feltman personally came before me and acknowledged under oath, to my satisfaction, that this person:

(a) is named in and personally signed the attached document as the President & CEO of Artis Senior Living, LLC, a Delaware limited liability company, which is the Manager of Artis Senior Living of Princeton Junction, LLC, a Delaware limited liability company; and

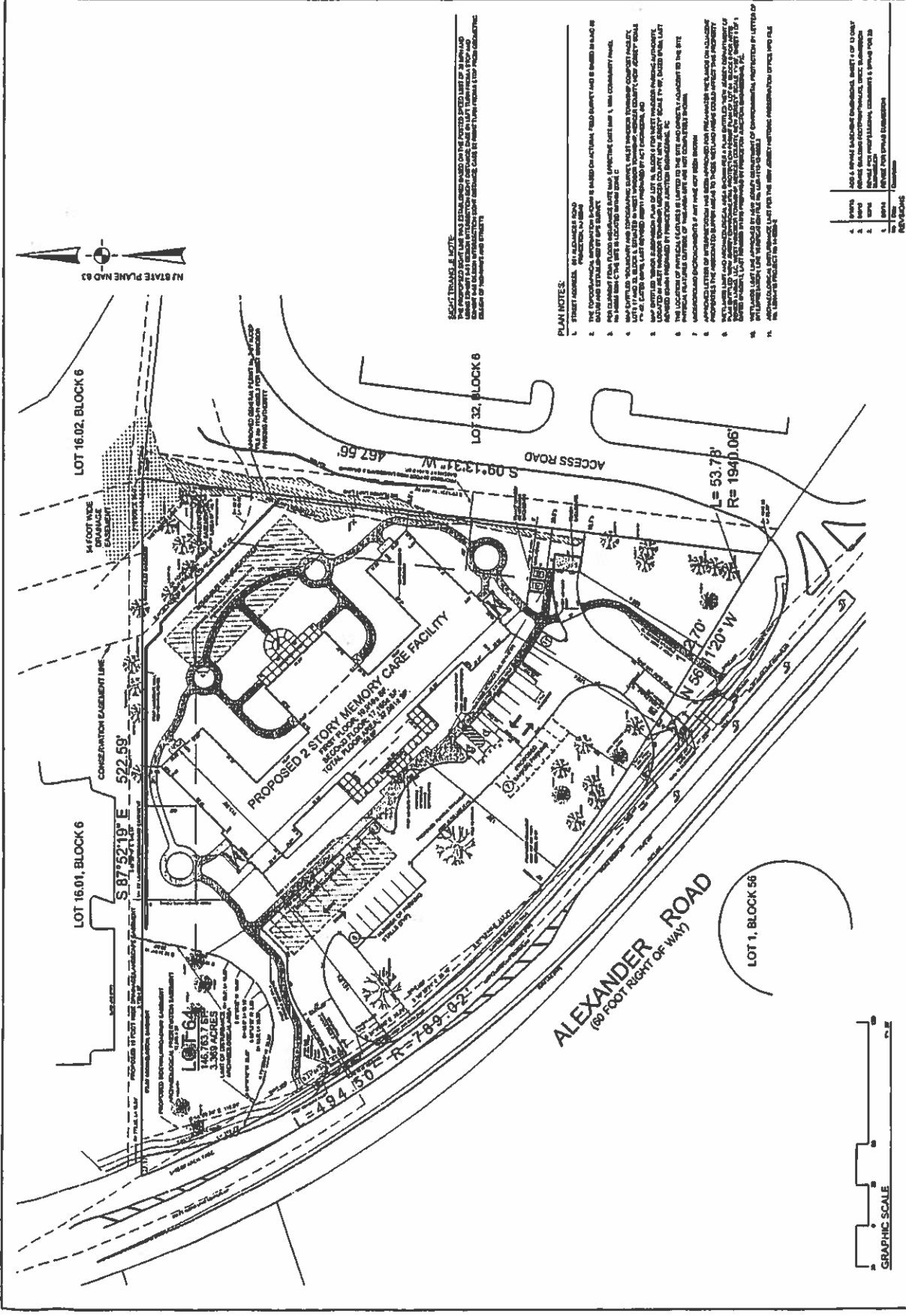
(b) signed and delivered this document as his or her act and deed on behalf of said limited liability company.

Tiffany Amacher
Notary Public

My commission expires: 5/31/16
Notary registration no.: 7217928

TIFFANY AMACHER
Notary Public
Commonwealth of Virginia
My Commission Expires May 31, 2016
Commission ID# 7217928

Exhibit "A"



PRELIMINARY/FINAL SITE PLAN

SITE PLAN

Artis Senior Living, LLC
 c/o Kevin M. Brake
 112 Princeton Junction, New Jersey 08550
 Tel: 609.426.1100
 Fax: 609.426.1100

Kevin M. Brake
 112 Princeton Junction, New Jersey 08550
 Tel: 609.426.1100
 Fax: 609.426.1100

Professional Engineers, Land Surveyors and Planners, P.C.
 Princeton Junction, New Jersey 08550
 Tel: 609.426.1100
 Fax: 609.426.1100

Professional Engineers, Land Surveyors and Planners, P.C.
 Princeton Junction, New Jersey 08550
 Tel: 609.426.1100
 Fax: 609.426.1100

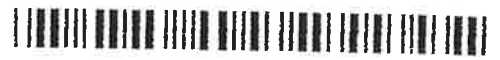
Sheet 4 of 13

- PLAN NOTES:**
1. STREET ADDRESS: 601 ALEXANDER ROAD, PRINCETON JUNCTION, NEW JERSEY 08550.
 2. THE CONSTRUCTION SHALL BE BASED ON THE ACTUAL FIELD SURVEY AND IS SUBJECT TO THE FIELD SURVEY AND ESTABLISHMENT BY THE SURVEYOR.
 3. THE CONSTRUCTION SHALL BE BASED ON THE ACTUAL FIELD SURVEY AND IS SUBJECT TO THE FIELD SURVEY AND ESTABLISHMENT BY THE SURVEYOR.
 4. THE CONSTRUCTION SHALL BE BASED ON THE ACTUAL FIELD SURVEY AND IS SUBJECT TO THE FIELD SURVEY AND ESTABLISHMENT BY THE SURVEYOR.
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 9. THE CONSTRUCTION SHALL BE BASED ON THE ACTUAL FIELD SURVEY AND IS SUBJECT TO THE FIELD SURVEY AND ESTABLISHMENT BY THE SURVEYOR.
 10. THE CONSTRUCTION SHALL BE BASED ON THE ACTUAL FIELD SURVEY AND IS SUBJECT TO THE FIELD SURVEY AND ESTABLISHMENT BY THE SURVEYOR.
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 12. THE CONSTRUCTION SHALL BE BASED ON THE ACTUAL FIELD SURVEY AND IS SUBJECT TO THE FIELD SURVEY AND ESTABLISHMENT BY THE SURVEYOR.
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 15. THE CONSTRUCTION SHALL BE BASED ON THE ACTUAL FIELD SURVEY AND IS SUBJECT TO THE FIELD SURVEY AND ESTABLISHMENT BY THE SURVEYOR.
 16. THE CONSTRUCTION SHALL BE BASED ON THE ACTUAL FIELD SURVEY AND IS SUBJECT TO THE FIELD SURVEY AND ESTABLISHMENT BY THE SURVEYOR.
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 18. THE CONSTRUCTION SHALL BE BASED ON THE ACTUAL FIELD SURVEY AND IS SUBJECT TO THE FIELD SURVEY AND ESTABLISHMENT BY THE SURVEYOR.
 19. THE CONSTRUCTION SHALL BE BASED ON THE ACTUAL FIELD SURVEY AND IS SUBJECT TO THE FIELD SURVEY AND ESTABLISHMENT BY THE SURVEYOR.
 20. THE CONSTRUCTION SHALL BE BASED ON THE ACTUAL FIELD SURVEY AND IS SUBJECT TO THE FIELD SURVEY AND ESTABLISHMENT BY THE SURVEYOR.

REVISIONS

NO.	DATE	DESCRIPTION
1		ISSUED FOR PERMITS
2		ISSUED FOR PERMITS
3		ISSUED FOR PERMITS
4		ISSUED FOR PERMITS

Appendix T:
Avalon Watch, 2014 Affordable Housing Plan



INSTR # 2014036181
D BK 6200 PG 1980 Pgs 1980 - 1991 (12 pgs)
RECORDED 08/28/2014 09:19:03 AM
PAULA SOLLAMI COVELLO, COUNTY CLERK
MERCER COUNTY, NEW JERSEY

AFFORDABLE HOUSING PLAN

Avalon Princeton Junction

LD 5
#12985
#1433

Table of Contents

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INTRODUCTION

This Affordable Housing Plan was created as the successor to the Affordable Housing Plan for Steward's Watch that was submitted to the Township of West Windsor, New Jersey (hereafter, the "Township") as a condition of site plan approval by the developers of what was originally known as Steward's Watch, a 512-unit residential rental community that was constructed on Clarksville Road in the Township (hereafter, the "Property"). Pursuant to the Zoning Ordinance in place when it was built, the developers of the Property set aside 103 apartments (20% of the residential units) as low- and moderate- income housing (hereafter, the "Affordable Units"). Specifically, the Affordable Units consisted of 51 units for low-income households, and 52 units for moderate-income households. The Affordable Housing Plan for Steward's Watch provides, among other things, that the affordability controls would remain in effect for a minimum of 30 years and that at the end of the 25th year from the date the issuance of a certificate of occupancy for the Affordable Units the governing body must establish by ordinance whether or not some or all of the affordable units would remain subject to the controls. By Ordinance 2013-13, adopted on September 30, 2013, the West Windsor Township Council extended the controls indefinitely until terminated by future action of the Council, but such termination could not occur prior to October 14, 2048.

The original developer of Steward's Watch was Crow, Terwilliger & Dressler, Inc. Subsequent to the development of the Property, the name was changed from Steward's Watch to Avalon Watch, and finally, to Avalon Princeton Junction, as it is known today. The current owner and operator of the Property is Avalon Bay Communities, Inc. (hereafter, the "Owner").

The purpose for the zoning requirement to provide the Affordable Units is to help the Township meet its constitutional obligation set forth by the Mt. Laurel doctrine, the Fair Housing Act and regulations of the New Jersey Council on Affordable Housing (hereafter "COAH").

BEDROOM MIX OF AFFORDABLE UNITS

The bedroom mix of the affordable units is set forth in the table below:

Avalon Princeton Junction Bedroom Mix		
	Low-Income	Moderate-Income
1 BR	51	24
2 BR	0	12
3 BR	0	16
Totals	51	52

LOCATION OF AFFORDABLE UNITS

The location of the Affordable Units shall be as shown on Exhibit A attached hereto and made a part hereof. The affordable units are not interchangeable with the market units at the Property.

UNIFORM HOUSING AFFORDABILITY CONTROLS

Subsequent to the development of the Property, the State of New Jersey adopted the N.J.A.C. 5:80-26.1 et seq. to its Administrative Code. Originally adopted October 1, 2001, and amended December 20, 2004, this section of the code is known as the Uniform Housing Affordability Controls (hereafter, "UHAC"). UHAC sets forth the rules and regulations that govern, among other things, the "administration of affordability controls on restricted units that receive COAH credit under the Fair Housing Act." (N.J.A.C. 5:80-26.1)

Notwithstanding the fact that the Property was constructed prior to the adoption of UHAC and that the unit mix, location and original rents of the Affordable Units do not conform to UHAC, the administration of the Affordable Units as constructed shall be governed by and consistent with UHAC and in compliance with UHAC, as it may be amended from time to time.

AFFORDABILITY

Pursuant to N.J.A.C. 5:80-26.2, the following definitions of affordability shall apply to the Affordable Units at the Property:

“Low-income household” means a household with a total gross annual household income equal to 50 percent or less of the median income.

“Low-income unit” means a restricted unit that is affordable to a low-income household.

“Median income” means the median income by household size for an applicable county, as adopted annually by COAH.

“Moderate-income household” means a household with a total gross annual household income in excess of 50 percent but less than 80 percent of the median income.

“Moderate-income unit” means a restricted unit that is affordable to a moderate-income household.

CONTROLS ON AFFORDABILITY

As set forth in N.J.A.C 5:80-26.11 and as described in the Introduction, the Affordable Units shall be deed restricted until October 14, 2048 and continuing thereafter until the restrictions are terminated by the West Windsor Township Council to ensure that the units are affordable to and occupied by low and moderate income households.

ADMINISTRATIVE AGENT

COAH requires that the Affordable Units be administered by a qualified Administrative Agent. Piazza & Associates, Inc. (hereafter, “Piazza”), a qualified firm, has been designated by the Township of West Windsor to serve as the Administrative Agent, and so to ensure that the affordable housing units comply with the applicable regulations as set forth in UHAC. Piazza or its successor Administrative Agent will be responsible to:

1. Monitor the rental rates and notify the Owner as to maximum rental rates allowed for the Affordable Units, pursuant to stratification of rental rates (gross and net) and income limits as set forth in N.J.A.C. 5:80-26.12;
2. Market the Affordable Units on its web site and on the site provided by the State of New Jersey and notify the Owner when additional marketing is required;

3. Include the information about the Property in the West Windsor Preliminary Application for Affordable Housing;
4. Certify all applicants of affordable housing according to UHAC, COAH requirements and its own policies and procedures; and
5. Establish and maintain a database of applicants for the Affordable Units.
6. Maintain the priority placement of every applicant throughout the application process.
7. Provide such other services as may from time to time be required.

The Owner will cooperate with the Administrative Agent in its efforts to administer the Affordable Units.

APPLICATION PROCESS

1. The Owner or its agent ("Leasing Agent") will notify the Administrative Agent when an Affordable Unit becomes available. This notice shall include the apartment #, move-out date, and the size and affordability category of the unit.
2. The Administrative Agent shall mail Final Applications for Affordable Housing ("Final Applications") to applicants on the applicable waiting list in sufficient numbers that it deems necessary.
3. The Administrative Agent will notify the Leasing Agent of the names and telephone numbers of the applicants who were sent Final Applications.
4. The applicants will be required to contact the Leasing Agent within 7 days to make an appointment to visit the leasing office, learn about the available unit and complete the Property application.
5. The Leasing Agent will be prepared to show units, answer questions and collect the information required to perform the credit and criminal background checks as applicable to the market units in the property.
6. The Leasing Agent shall report back to the Administrative Agent as to the applicants who have met the required deadlines.
7. At the same time, the applicants will be required to complete the Final Application; sign it; and submit it together with all of the required documentation.
8. The Administrative Agent will review the Final Application form only to determine if the income and household size stated therein meet the criteria of the available unit. No other documentation will be reviewed at this time.
9. The Administrative Agent will then authorize the Leasing Agent to perform the credit and criminal background checks on each applicant based on their priority order and initial review. Credit and criminal background checks can

only be performed if there is actually a unit available for the applicant, so only one authorized check per available unit can be done at a time.

10. If the applicant passes the review by the Leasing Agent, then the Administrative Agent is notified and begins a thorough review of the Final Application. No notice shall be given to the applicant at this time.
11. If the applicant is denied by the Leasing Agent for failing to meet the minimum tenant selection criteria, then the Leasing Agent sends a Notice of Adverse Action to the applicant and informs the Administrative Agent accordingly.
12. The Administrative Agent will review the Final Application and make a determination as to the qualification of the applicant. During the review process, it should be noted that 5 additional days may be granted to applicants who have submitted an incomplete application.
13. The Administrative Agent shall send a copy of the final determination to the applicant with a copy to the Leasing Agent. If approved, the Administrative Agent shall also send the requisite certification forms to the Leasing Agent for execution by the applicant. The Leasing Agent shall return the completed forms, together with a copy of the Lease Agreement to the Administrative Agent within 10 days.

INCOME VERIFICATION AND REFERRAL PROCEDURES

In placing households in low and moderate income units, the following policies shall be followed and verification and certification procedures shall be employed:

1. This is an equal housing opportunity. Federal law prohibits discrimination against any person making application to buy or rent a home with regard to age, race, religion, national origin, sex, handicapped or familial status. State law prohibits discrimination on the basis of race, creed, color, national origin, ancestry, nationality, marital or domestic partnership or civil union status, familial status, sex, gender identity or expression, affectional or sexual orientation, disability, source of lawful income or source of lawful rent payment (including Section 8).
2. Every household member 18 years of age or over who will live in the affordable unit and receives income shall be required to provide income documentation as applicable and determined by the Administrative Agent. This includes income received by adults on behalf of minor children for their benefit. Household members 18 years of age or over not receiving income must produce documentation of current status.
3. Verification may include, but is not limited to, the following:
 - a. At least four consecutive pay stubs including overtime, bonuses, or tips dated within 120 days of the application date or a letter from an employer stating present annual income figure as projected annually;

- b. A copy of regular IRS Form 1040 (Tax computation form) 1040A, or 1040 EZ as applicable and State income tax returns filed for each of the three years prior to the date of interview;
 - c. A letter or appropriate reporting form verifying benefits such as Social Security, Unemployment, Welfare, Disability or Pension income (monthly or annually);
 - d. A letter or appropriate reporting form verifying any other sources on income claimed by the applicant such as alimony and child support;
 - e. Reports that verify income from assets to be submitted by banks or other financial institutions managing trust funds, money market accounts, certificates of deposits, stocks or bonds;
 - f. Evidence or reports of income from assets such as real estate or businesses that are directly held by any household member;
 - g. Evidence or reports that verify assets that do not earn regular income such as non-income producing real estate or savings that do not earn interest;
 - h. A notarized statement of explanation in such form as to be satisfactory to the Administrative Agent; and
 - i. Any other such documentation to verify household status and / or income as more fully set forth in the Operating Manual or determined by the Administrative Assistant at the time of application.
4. Generally, sources of annual income shall be based on regular income that is reported to the IRS and that can be utilized for mortgage approval. Household annual gross income shall be calculated by projecting current gross income over a 12-month period.
 5. Income includes but is not limited to wages, salaries, tips, commissions, alimony, regularly scheduled overtime, pensions, social security, unemployment compensation, AFDC, verified regular child support, disability, net income from business or real estate, and income from assets such as savings, CDs, money market, mutual funds, stocks and bonds and imputed income from non-income producing assets such as equity in real estate.
 6. Assets not earning a verifiable income shall have an imputed interest income using a current average annual savings interest rate. Assets not earning income include present real estate equity. Applicants owning

real estate must produce documentation of a market value appraisal and outstanding mortgage debt. The difference will be treated as the monetary value of the asset, and the imputed interest will be added to income.

7. Income from assets that have delayed earnings, such as IRA's or annuity programs, shall not be included in current income until such payments are being received. However, these assets must be reported and verified.
8. Net rent from real estate is considered income after the monthly mortgage payment including real estate taxes and insurance is deducted. Other expenses are not deductible. In addition, the equity in the rented real estate is considered an asset and will have the imputed interest income on the calculated value of equity added to income.
9. Income does not include payments, rebates or credits received under Federal or State low income home energy assistance programs, Food Stamps, payments received for care of foster children, relocation assistance benefits, income of live-in attendants, scholarships, student loans, personal property such as automobiles, lump-sum additions to family assets such as inheritances, one-time lottery winnings, and insurance settlements except for additional income earned from these additions, and causal, sporadic or irregular gifts and bonuses.
10. Court-ordered payments for alimony or child support to another household shall be considered a regular monthly debt whether or not it is being paid regularly.
11. Generally, households will be subject to minimum income requirements as set forth in N.J.A.C. 5:80-26.13.
12. Households whose total Gross Annual Income is measured at 50 percent or below 50 percent of the authorized median income guideline shall be certified as low income households and referred to units designated for low income households.
13. Households whose total gross annual income is measured above 50 percent but below 80 percent of the authorized median income shall be certified as moderate income households and referred to units designated for moderate income households.
14. At the discretion of the Administrative Agent, households may also be required to produce documentation of household composition for determining the correct unit size and the applicable median income guide.

15. Generally, households will be referred to available units using the following standards for occupancy:
 - a. At least one person per bedroom; and
 - b. Not more than two persons per bedroom.
16. A form for certification shall be prepared by the Administrative Agent and signed by the Landlord and the applicant. Only households receiving certification shall be referred to affordable housing units.
17. Certified Households that reject an opportunity for affordable housing will be withdrawn from the list, but may reapply for a subsequent unit.
18. Applications can be withdrawn by the Administrative Agent for other such reasons as set forth in more detail in the Operating Manual.
19. Applicants must also meet the minimum Tenant Selection Criteria set forth by the Landlord for the market units in the Project, (e.g., minimum credit criteria and criminal background checks).
20. Certification shall be valid for no more than 120 days unless a valid lease has been executed within that time period.
21. Certifications may be renewed in writing at the request of a Certified Household for no more than an additional period of 120 days at the discretion of the Administrative Agent.
22. Households who are denied certification may make a written request for a re-determination. Households shall be required to produce additional documentation to support their claim. Households who are denied certification a second time may request an appeal to the New Jersey Council on Affordable Housing by forwarding a written request to the Administrative Agent 30 days following the household's receipt of denial notification. If a written request has not been received within the 30 day time period, the ineligible determination will be final. The hearing decision shall be final.

RESTRICTIONS FOR RENTAL UNITS

Pursuant to N.J.A.C. 80-26.12, the Administrative Agent will ensure that:

1. At the anniversary date of the tenancy of the certified household occupying a restricted rental unit, the rent may be increased, if such increase is consistent with the regional income limits most recently published by COAH and has been filed with the Administrative Agent. If the landlord has charged a tenant less than the initial maximum allowable rent for a restricted unit, the landlord may, with the approval of the Administrative Agent, use the maximum allowable rent instead of the current rent to establish the rent for the next tenant under a new lease.

2. Rents may not be increased more than once a year. Rents may not be increased by more than one COAH-approved increment at one time. Rents may not be increased at the time of a new occupancy if the new occupancy occurs within a year of the last occupancy and prior to the next published COAH-adopted increase. No additional fees or charges may be added to the approved rent without the express written approval of the Administrative Agent.

3. A written lease is required for all restricted rental units. Final lease agreements are the responsibility of the landlord and the prospective tenant. Tenants are responsible for security deposits and the full amount of the rent as stated on the lease. All lease provisions shall comply with applicable law. The landlord shall provide the Administrative Agent with sufficient information for a preparation of a unit inventory form for entry into the centralized affordable housing unit inventory system. The landlord shall submit a copy of each lease entered into with a certified household to the Administrative Agent within ten business days after the execution of each lease.


4. Those tenant-paid utilities that are included in the utility allowance shall be so stated in the lease. The allowance for utilities shall be consistent with the utility allowance approved by DCA for its Section 8 program.

MONITORING


The Administrative Agent shall submit to the Township Municipal Housing Liaison any monitoring forms or reports required by COAH and provide other such information to the Township Municipal Housing Liaison as may be required.

Witness:

AvalonBay Communities, Inc.



Catherine T. White, Assistant Secretary

By: 

Matt Smith, SVP Property Operations

Virginia
STATE OF NEW JERSEY)
Arlington) SS:
COUNTY OF MERCER)

I certify that on August 19, 2014 Catherine T. White, ^{Assistant} Secretary,
personally came before me and acknowledged under oath to my satisfaction that:

a. This person is the Ast. Secretary of Avalon Bay Communities, Inc.
named in this Agreement; and

b. This person is the attesting witness to the signing of this document
by the proper officer; and

c. This document was signed and delivered by
Avalon Bay Communities, Inc. as its voluntary act duly authorized by a proper resolution; and

d. This person signed this proof to attest to the truth of these facts.



Catherine T. White

Sworn to and subscribed
before me this 19th day of August
2014

Marion Lucille Kennedy

Record + Return to:

Miller Porter & Muller, P.C.
One Palmer Square, Suite 540
Princeton, NJ 08542

Appendix U:
Windsor Haven Sample Deed Restriction



INSTR # 2015015787
D BK 6215 PG 1385 Pgs 1385 - 1389 (5 pgs)
RECORDED 04/10/2015 10:05:38 AM
PAULA SOLLAMI COVELLO, COUNTY CLERK
MERCER COUNTY, NEW JERSEY

W-272250
4 OF 4

Declaration of Covenants, Conditions and Restrictions Implementing Affordable Housing Controls On State Regulated Property

Fair Housing Act Required Covenants Restricting Use, Conveyance and Mortgage Debt

THIS DECLARATION is made this ^{6TH} day of FEB, 2015, by Melissa Free, whose address is about to be 31 Ketley Place, Unit A-10, West Windsor, New Jersey 08550 (hereinafter referred to as "Owner").

WHEREAS, Owner is the owner of 31 Ketley Place, Unit A-10, West Windsor, New Jersey, an affordable unit that is situated within Windsor Haven, a development located in the Township of West Windsor, County of Mercer, State of New Jersey; and

WHEREAS, municipalities within the State of New Jersey are required by the Fair Housing Act (P.L. 1985, c. 222) (hereinafter the "Act") to provide for their fair share of housing that is affordable to households with low or moderate incomes in accordance with the provisions of the Act; and

WHEREAS, the Act requires that municipalities ensure that such designated housing remains affordable to low and moderate income households;

WHEREAS, pursuant to the Act, the Affordable Unit described above has been designated as low and moderate income housing as defined by the Act; and

WHEREAS, the purpose of this Declaration is to insure that the described Affordable Unit remains affordable to low and moderate income eligible households for that period of time described in this Declaration.

NOW, THEREFORE, it is the intent of this Declaration to ensure that the affordability controls are recorded on the Affordable Unit so as to bind the Owner of the Affordable Unit with the covenants, conditions and restrictions, with which they shall be required to comply, and to notify all future purchasers of the Affordable Unit that the housing unit is encumbered with affordability controls.

Article 1. Affordable Housing Covenants

The sale and use of the Affordable Unit subject to this Declaration is governed by regulations governing controls on affordability, which are found in New Jersey Administrative Code at Title 5, chapter 93, subchapter 9 (N.J.A.C. 5:93-9.1, *et seq*), and chapter 80, subchapter 26 (N.J.A.C. 5:80-26.1, *et seq*) (the "Regulations"). Consistent with the Regulations, the following covenants (the "Covenants") shall run with the land, for the Affordable Unit, for the period of time commencing upon the earlier of (a) the

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date hereof or (b) the date the initial certified household took title to the unit ("Control Period"), and terminating upon the expiration of the Control Period as provided in Section 1I hereof.

- A. The Affordable Unit may be conveyed only to a household who has been approved in advance and in writing by the Township of West Windsor, or other administrative agent appointed under the Regulations (hereinafter, collectively, the "Administrative Agent").
- B. No sale of the Affordable Unit shall be lawful unless approved in advance and in writing by the Administrative Agent, and no sale shall be for a consideration greater than maximum permitted price ("Maximum Resale Price", or "MRP") as determined by the Administrative Agent.
- C. No refinancing, equity loan, secured letter of credit, or any other mortgage obligation or other debt (collectively, "Debt") secured by the Affordable Unit may be incurred except as approved in advance and in writing by the Administrative Agent. At no time shall the Administrative Agent approve any such Debt, if incurring the Debt would make the total of all such Debt exceed Ninety-Five Percentum (95%) of the applicable MRP.
- D. The owner of the Affordable Unit shall at all times maintain the Affordable Unit as his or her principal place of residence.
- E. Except as set forth in F, below, at no time shall the owner of the Affordable Unit lease or rent the Affordable Unit to any person or persons, except on a short-term hardship basis as approved in advance and in writing by the Administrative Agent.
- F. If the Affordable Unit is a two-family home, the owner shall lease the rental unit only to income-certified low-income households approved in writing by the Administrative Agent, shall charge rent no greater than the maximum permitted rent as determined by the Administrative Agent, and shall submit for written approval of the Administrative Agent copies of all proposed leases prior to having them signed by any proposed tenant.
- G. No improvements may be made to the Affordable Unit that would affect its bedroom configuration, and in any event, no improvement made to the Affordable Unit will be taken into consideration to increase the MRP, except for improvements approved in advance and in writing by the Administrative Agent.
- H. The affordable housing covenants, declarations and restrictions implemented by this Declaration and by incorporation, N.J.A.C. 5:80-26.1 *et seq.*, shall remain in effect despite the entry and enforcement of any judgment of foreclosure with respect to the Affordable Unit so long as the Affordable Unit remains subject to the affordability controls being implemented by this Declaration.

I. The Affordable Unit shall remain subject to the requirements hereof until the municipality in which the unit is located elects to release the unit from such requirements. Prior to such a municipal election, a restricted unit must remain subject to the requirements of this subchapter for a period of at least 30 years and until terminated by the Township; provided, however, that units located in high-poverty census tracts shall remain subject to these affordability requirements for a period of at least 10 years;

Article 2. Remedies for Breach of Affordable Housing Covenants

A breach of the Covenants will cause irreparable harm to the Administrative Agent and to the public, in light of the public policies set forth in the New Jersey Fair Housing Act, the Uniform Housing Affordability Control rules found at N.J.A.C. 5:80-26, and the obligation for the provision of low and moderate-income housing. Accordingly, and as set forth in N.J.A.C. 5:80-26.18:


A. In the event of a threatened breach of any of the Covenants by the Affordable Unit Owner, or any successor in interest or other owner of the Affordable Unit, the Administrative Agent shall have all remedies provided at law or equity, including the right to seek injunctive relief or specific performance.

B. Upon the occurrence of a breach of any Covenants by the Grantee, or any successor in interest or other owner of the Property, the Administrative Agent shall have all remedies provided at law or equity including but not limited to forfeiture, foreclosure, acceleration of all sums due under any mortgage, recouping of any funds from a sale in violation of the Covenants, diverting of rent proceeds from illegal rentals, injunctive relief to prevent further violation of said Covenants, entry on the premises, those provided under Title 5, Chapter 80, Subchapter 26 of the New Jersey Administrative Code and specific performance.

This Declaration replaces and supersedes the Declaration of Covenants, Conditions and Restrictions of Resale of Affordable Units in Windsor Haven as set forth in Deed Book 2503, page 553, rerecorded in Deed Book 2519, page 298 and as amended in Deed Book 2539, page 867 and Deed Book 2543, page 718.

WITNESS WHEREOF, Owner has caused this instrument to be executed this 6TH day of FEB, 2015

WITNESS:



Melissa Free

STATE OF NEW JERSEY)
) ss.:
COUNTY OF MERCER)

On this the 6TH day of FEB., 2015 before me came Melissa Free, who acknowledges and makes proof to my satisfaction that she is the Owner named within this Declaration, and that she has executed said Declaration for the purposes set forth therein, sworn to and subscribed by them in my presence on this date.

Sworn to and subscribed before me
this the 6TH day of FEB., 2015





Record and Return to:

Miller Porter & Muller, P.C.
One Palmer Square, Suite 540
Princeton, NJ 08542

Free Declaration of Covenants

Appendix V:
Maneely/Toll Resolution



WEST WINDSOR TOWNSHIP

DEPARTMENT OF COMMUNITY DEVELOPMENT
DIVISION OF LAND USE

February 8, 2016

Henry Kent-Smith, Esq.
Fox Rothschild LLP
PO Box 5231
Princeton, NJ 08543-5231

RE: **PB14-10**
Maneely Princeton LLC
Preliminary/Final Major Subdivision and Site Plan; Subdivision with Variances
Block 10, Lot 8.01
Property Zoned: PMN District

Dear Mr. Kent-Smith:

The West Windsor Township Planning Board adopted a Resolution of Memorialization regarding the above-referenced application at its meeting on February 3, 2016.

A copy is attached for your records.

Sincerely,

Diane Hurlburt
Planning Board Secretary

Attachment

c: PB14-10

Samuel J. Surtees, Manager, Division of Land Use
Gerald Muller, Planning Board Attorney
Marvin Gardner, Planning Board Chair
Joe Valeri, Construction Official *via email*
Steve Benner, Tax Assessor *via email*
John Madden, Planning Consultant *via email*
Francis Guzik, Township Engineer *via email*
Dan Dobromilsky, Township Landscape Architect, *via email*
Chris Jepson, Environmental Consultant, *via email*
Jim Kochenour, Traffic Engineer, *via email*
Jim Yates, Fire Marshall, *via email*

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WEST WINDSOR TOWNSHIP PLANNING BOARD

_____)	
In the Matter of the Application of)	FINDINGS OF FACT
)	AND
<u>Toll Brothers, Inc.</u> for Preliminary)	CONCLUSIONS OF LAW
)	
and Final Major Site Plan and)	
)	File Nos. PB14-01
Subdivision Approval with Variances)	and PB14-10SW
)	Block 10, Lot 8.01
and Waivers)	
)	Approval granted:
)	October 21, 2015
_____)	

Be it resolved by the Planning Board of the Township of West Windsor that the action of this Board on October 21, 2015 in this matter is hereby memorialized by the adoption of this written decision setting forth the Board's findings and conclusions.

RELIEF SOUGHT AND JURISDICTION

1. The applicant filed an application with the Township for site plan and subdivision approval in order to develop the property under contract as a multi-use center with retail, residential units over the retail, townhouses, corporate suites, and a 10 acre site for a municipally-sponsored affordable housing development. Subdivision of the 10 acre tract and of other lots was also sought. The applicant also filed an application for approval of a signage package for which waivers were required. The two applications were consolidated and heard together.

2. The subject of this application is within the jurisdiction of this Board. The Board acted within the time required by law.

3. The street address of the property is Bear Brook and Old Bear Brook Road.

4. The property is located in an area designated on the West Windsor Township Zoning Map as the PMN zoning district.

THE APPLICANT

5. The applicant is Toll Bros., Inc., which is the contract purchaser of the property from Maneely Princeton LLC, the owner.

NOTICE

6. The applicant obtained a list of all property owners within 200 feet of the property that is the subject of this application from the West Windsor Township tax office.

7. The applicant filed an affidavit stating that the notice was given at least ten days in advance of the hearing date to the surrounding property owners and to the public entities required to be noticed. The applicant has also filed a proof of publication confirming that newspaper publication was made in accordance with legal requirements. Proper notice was given.

8. The notice and publication stated that the hearing would be held at the meeting of the Board scheduled for August 5, 2015.

THE HEARING

9. The public hearing on the application was heard on the date for which it was noticed and was also heard on August 19, 2015, October 7, 2015 and October 21, 2015. At the hearing, the applicant and all other interested parties were given the opportunity to present evidence and to be heard

PLANS PRESENTED

10. At the hearing, the Board reviewed the following plans:

- Preliminary and Final Subdivision and Site Plan (59 sheets), prepared by ESE Consultants, Inc. and revised through July 13, 2015

- Commercial/Apartment Elevations and Floor Plan (16 sheets), prepared by Barton Partners and revised through September 21, 2015
- Townhome Architectural Floor Plans and Elevations (15 sheets), prepared by Toll Architecture and revised through February 16, 2015
- Comprehensive Signage Plan (16 sheets), prepared by Younts Design Inc. and dated August 11, 2015
- Plan entitled "Aerial Plan, Maneely Property, Township of West Windsor, Mercer County" and revised through July 13, 2015
- Survey of Property, prepared by Taylor Wiseman & Taylor and dated September 28, 2014

TOWNSHIP REPORTS

11. At the hearing, the Board considered the following reports presented by Township officials and bodies and consultants to the Board:

- Memoranda from John Madden and Daniel Bloch to the Board dated July 29, 2015 and August 13, 2015
- Memorandum from John Madden to the Board dated September 30, 2015
- Memoranda from Francis A. Guzik, P.E. to the Board dated July 29, 2015 and October 7, 2015
- Memoranda from Dan Dobromilsky, L.L.A. to the Board dated July 29, 2015, September 30, 2015, October 7, 2015, and October 21, 2015
- Memoranda from James L. Kochenour, P.E. to the Board dated July 29, 2015, August 13, 2015 and September 28, 2015
- Memoranda from Christopher B. Jepson, P.E. to the Board dated July 28, 2015 and September 30, 2015
- Memorandum from James V.C. Yates to Chairperson, Planning Board dated July 29, 2015
- Memoranda from Gerald J. Muller to the Board dated October 14, 2015 and October 19, 2015
- Memorandum from Susan Abbey (Site Plan Review Advisory Board) to Planning Board Chair dated August 17, 2015
- Memorandum from Jean Jacobsohn and Alison Miller (Affordable Housing Committee Chair and Member respectively) to Mayor Hsueh, Planning Board Chair and Planning Board members and professionals

EXHIBITS AND APPLICANT'S REPORTS

12. At the hearing, the Board considered the following reports prepared by the applicant's consultants and advisors and the following exhibits that were introduced as evidence during the course of the hearing:

Applicant's Exhibits and Other Submissions

- Exhibit A-1 – Color rendering of aerial photograph entitled “Aerial Exhibit Maneely Tract”
- Exhibit A-2 – Color rendering of site plan with Constraints map entitled “Enclave at Princeton Junction Mixed Use Communities”
- Exhibit A-3 – Colored photograph of existing light fixture in another development, to be used in corporate suites area
- Exhibit A-4 – Typical Elevations of Building A (Barton Partners Sheet 2 of 16 revised through February 12, 2015)
- Exhibit A-5 – Front Elevation of Building B (Barton Partners Sheet 5 of 16 dated September 8, 2014)
- Exhibit A-6 – Front Elevation of Building C-1 (Barton Partners Sheet 11 of 16 revised through May 15, 2015)
- Exhibit A-7 – Front Elevation of Building C-2 (Barton Partners Sheet 14 of 16 revised through May 15, 2015)
- Exhibit A-8 – Rear and Side Elevations of Building C-1 (Barton Partners Sheet 12 of 16 revised through May 15, 2015)
- Exhibit A-9 – Front “Colonial” elevation and floor plan for four unit townhome building, dated February 16, 2015
- Exhibit A-10 – Rear elevation four unit townhome building, dated May 14, 2015
- Exhibit A-11 – “Fenway” exterior unit townhome floor plan, dated May 14, 2015
- Exhibit A-12 – “Fenway” townhome side elevation, dated May 14, 2015
- Exhibit A-13 – “Brookhollow” interior unit floor plan, dated May 14, 2015
- Exhibit A-14 – “Fenway” floor plan with expanded breakfast room and extended family room, dated February 16, 2015
- Exhibit A-15 – “Fenway” floor plan showing enclosed garage connection option, dated February 16, 2015
- Exhibit A-16 – “Fenway” townhome side elevation showing garage connection, dated May 14, 2015

- Exhibit A-17 – “Fenway” townhome floor plan showing loft option, dated February 16, 2015
- Exhibit A-18 – “Fenway” townhome floor plan with finished room over garage option, dated February 16, 2015
- Exhibit A-19 – Draft Deed Restriction for townhome lots
- Exhibit A-20 – Sign location plan, prepared by Younts Design (second page of sign package)
- Exhibit A-21 – Wall mounted “W-1” wall sign identifying the Enclave at Princeton Junction on wall separating the public space from Old Bear Brook Road, prepared by Younts Design
- Exhibit A-22 – Plan showing sidewalk route to train station, prepared by ESE
- Exhibit A-23 – Typical Building Section of Building C-1 (Barton Partners Sheet 1 of 1 dated October 7, 2015) on presentation board
- Exhibit A-24 – Typical eave details for building types A, B and C (Barton Partners Sheet 1 of 1 dated October 7, 2015) on presentation board
- Exhibit A-25 – Revised Deed Restriction for townhome lots, marked up by Board Attorney
- Development Application with Rider dated July 14, 2015
- Request for Bulk Variance
- Site Plan Checklist
- Subdivision Checklist
- Green Development Practices Checklist
- Freshwater Wetlands LOI – Extension, dated July 6, 2010
- Response Letters from ESE Engineering, dated July 14, 2015
- Traffic Engineering Assessment, prepared by Shropshire Associates, LLC, dated September 9, 2014
- Report entitled "Stormwater Management Report for Maneely Tract, Tax Maps 8.04, 9.03 & 15.01, Parcel Number Block 10, Lot 8.01, Township of West Windsor, Mercer County, New Jersey, Prepared for Toll Bros., Inc., 250 Gibraltar Road, Horsham, PA, 19044," prepared by ESE Consultants, Inc., dated September 10, 2014 and revised through June 30, 2015
- Report entitled "Analysis of Stormwater Impacts to Windsor Haven for Maneely Tract, Tax Maps 8.04, 9.03 & 15.01, Parcel Number Block 10, Lot 8.01, Township of West Windsor, Mercer County, New Jersey, prepared for Toll Bros., Inc., 250 Gibraltar Road, Horsham, PA, 19044," prepared by ESE Consultants, Inc., dated June 20, 2015

- Report entitled "Stormwater Management Facilities Measures Operation and Maintenance Manual for Maneely Tract, Township of West Windsor, Mercer County, NJ," prepared by ESE Consultants, Inc., dated February 17, 2015 and revised through June 30, 2015
- Report entitled "Sanitary Sewer Report for Maneely Tract, Tax Maps 8.04, 9.03 & 15.01, Parcel Number Block 10, Lot 8.01, Township of West Windsor, Mercer County, New Jersey, Prepared for Toll Bros., Inc., 250 Gibraltar Road, Horsham, PA, 19044," prepared by ESE Consultants, Inc., dated May 18, 2015 and revised through June 30, 2015
- Report entitled "Environmental Impact Statement Report, Maneely Tract Project, Block 10, Lot 8.01, West Windsor Township of West Windsor, Mercer County, NJ," prepared by ESE Consultants, Inc., dated September 4, 2014
- Report entitled "Traffic Response Letter, Maneely Property - Planned Mixed Use Neighborhood, PB14-10, Block 10, Lot 8.01, West Windsor Township, Mercer County, NJ, SA Project No. 14009-AA," prepared by Shropshire Associates, LLC, dated May 28, 2015

Planning Board Exhibits

- Exhibit PB-1 – Flood Hazard Permit Map
- Exhibit PB-2 – Muller October 14, 2015 memo
- Exhibit PB-3 – Muller October 19, 2015 memo
- Exhibit PB-4 – Letter from Doug Heppe to Sam Surtees dated August 19, 2014
- Exhibit PB-5 – Letter from Edwin W. Schmierer to Doug Heppe dated August 29, 2014
- Exhibit PB-6 – Letter from Henry Kent-Smith to Edwin W. Schmierer dated September 16, 2014
- Exhibit PB-7 – Oakwood Extended Stay guest lease for Mews at Princeton Junction
- Exhibit PB-8 – Google material for extended stay, Mews at Princeton Junction

TESTIMONY AND PUBLIC INPUT

13. The testimony presented by and on behalf of the applicant and advice by Board consultants were given by the following persons:

Henry L. Kent-Smith, Esq. represented the applicant. Mark Mayhew, P.E., Managing Director of ESE Consultants, Inc., its civil engineer; David Shopshire, P.E. its traffic engineer; Robert W. Cogan (Barton Partners), the architect for the corporate suites and mixed use retail & apartment buildings; James Majewski, a representative of Toll Brothers who testified about the design of the townhomes; Paul Phillips, a professional planner; Bryan Oos, the Vice

President of Development of Toll Brothers Apartment Living; and Joshua Rubinich, the Division Assistant Vice President for Toll Brothers Apartment Living, testified on the applicant's behalf.

The following Township staff and professionals gave advice to the Board at the hearing: John Madden, planner; Francis A. Guzik, P.E., civil engineer; Dan Dobromilsky, L.L.A., landscape architect; James Kochenour, P.E., and Michael Wright, P.E., traffic engineers; Christopher B. Jepson, P.E., environmental engineer; and Gerald J. Muller, attorney.

14. The statements of the members of the public made during the course of the hearing may be summarized as follows:

Members of the public expressed concern about buffering of the ten acre site from the adjoining residential lots; landscape screening on Block 9.02, Lot 3 and maintenance of the lawn and sidewalk on that lot adjacent to the new roundabout; screening on Windsor Haven property from vehicle headlight glare traversing the roundabout; storm water impacts on Windsor Haven; the impact of the height of certain corporate suite buildings on the Estates at Princeton Junction; and the magnitude of the signage proposed.

FINDINGS AND CONCLUSIONS RE: PRELIMINARY AND FINAL SITE PLAN APPROVAL

15. Nature of application. The applicant proposes to construct a mixed use village style center with a main street on which 22,662 square feet of retail space and 40 apartments above it will be located, 51 townhomes, 192 corporate suites that include an approximately 7,200 square foot area for business support services, meeting rooms, front desk and other indoor complimentary amenities, and additional outdoor recreational facilities that include a pool, bocce court and a 5,000 square foot public plaza adjacent to the retail and Old Bear Brook Road, supporting infrastructure for the development, and infrastructure connections for the 10 acre site to be subdivided from the broader 45.8 acre tract. All of this is contemplated by the regulations for the Planned Mixed Use Neighborhood, or PMN, zone that is comprised entirely of the property in question. The proposed development is largely consistent with the zoning regulations for the PMN District although a number of variances and waivers are required.

16. The proposed development was the subject of extensive review at both the staff and SPRAB level, and a number of changes were made by the applicant in response to

concerns raised, including a significantly revised circulation system that connected the sections of the development that in earlier designs functioned more independently. A number of issues remained and were the subject of extended discussion by the Board, public, and applicant. These included the developability of the 10 acre parcel in light of the archeological sites within it that were identified during the NJDEP permitting process and provision of certain infrastructure in conjunction with the future development of this site; the options for the townhomes that provided for a finished room over the garage and for an extension of the unit to the garage by virtue of an expanded breakfast room and extended family room; lighting in the townhome section with respect to the kind of fixtures to be used and the sufficiency of the lighting in the alleys and on the streets; the extent of the signage and the identification of "Toll Brothers" on some of the signs; and access to the train station. The affordable housing obligation, project phasing, green elements, buffering of abutting residential properties, and bicycle storage for residents of the apartments were also discussed. All of the issues were resolved to the Board's satisfaction.

17. The Board spent considerable time reviewing the development constraints on the 10 acres to be deeded by the owner to the Township for a municipally-sponsored affordable housing project. There are wetlands and wetland buffer areas on the site, but the area outside them is sufficient to develop a 72 unit Project Freedom development using a development concept plan that Project Freedom has used elsewhere. A concept plan was prepared by the applicant using that template received from Project Freedom. The Township has contracted to convey the 10 acre parcel to Project Freedom and provided additional funding for the development. No site plan approvals, however, were given to the 10 acre site, as no formal site plan application for it was before the Board.

The primary concern was that three archeological sites were identified during the process of obtaining NJDEP permits. Two of the three sites, on the far eastern side of the 10 acre tract and near Road B, are outside of the area that will be disturbed for the affordable housing development. While a third is located within the development node, both the applicant's engineer and the Board's environmental consultant, Mr. Jepson, testified that it did not represent a constraint on development. Given that the applicant has now received all of the NJDEP permits it needs for both its own project and for the 10 acre parcel, there is no additional permit that will necessitate further archeological study. In addition, the worst case scenario would be that a detailed archeological study would have to be undertaken and any artifacts found would need to be removed and given to the State. Condition 6 ensures that that is the responsibility of the applicant to pay for any further archeological investigation and artifact reclamation, if necessary, in the event any future permitting and other steps require same so that the municipally

sponsored project, be it by Project Freedom or another affordable housing provider, can proceed provided, however, that the Project Freedom concept plan is not materially changed by Project Freedom, or any other affordable housing provider.

As to utilities being provided for the 10 acre parcel, the plans show the extension of water and sewer lines to the Project Freedom property line, a storm sewer outfall from the site into proposed storm water management Pond 4 and Basins 2B and 2C, a roadway abutting the site, and pedestrian access via sidewalks. There will be no charge to the municipality, Project Freedom or other affordable housing provider for the construction and use of the pond and basins. Condition 3 provides that the applicant will request from the respective utility companies that CATV, gas, electric, and telephone utility connections are provided up to the Project Freedom site property line as part of the utility company installations for the townhomes and are sized to accommodate the anticipated service loads for the development of the 10 acre tract.

18. The options for an extension of a townhome to the garage and a finished room over the garage, first proposed by the applicant at the SPRAB hearings, were also discussed at length. Staff expressed a concern that use of the room and basement as sleeping quarters could generate more vehicles and result in parking space shortages. The matter was resolved upon the following conditions: the applicant agreed not to finish the room over the garage, to provide access via a pull down stair rather than a finished stair as it originally proposed, and to prohibit use of the basement as a bedroom. Condition 25 address this issue by requiring the recording of a bedroom deed restriction as part of the townhome Homeowners Association Declaration and individual deeds for unit owners, which will be recorded with the Mercer County Clerk.

19. There was also discussion of the option to extend the townhome unit to the garage, something that had not been shown in the prior concept plans on which the zoning was based. The Board Attorney ruled, however, that such extension did not violate any of the PMN zoning requirements and could not be prohibited by the Board.

20. Staff raised questions as to whether lighting in the alleys and on the streets in the townhome section was adequate. Condition 27 provides that the applicant in conjunction with Township staff will review the lighting plan, including the fixtures to be used, so as to ensure an appropriate lighting scheme for these areas.

21. There was extensive discussion at the staff and Board levels as to a new direct pedestrian access to the train station. The applicant agreed to construct an off-tract sidewalk, the cost of which would be a credit against its off-tract assessment, and subject to any field changes the applicant determines is necessary and if approved by the Township Engineer, to accommodate proper installation of the sidewalk, and to provide access to the train station via Old Bear Brook Road, Alexander Road, and Vaughn Drive and via Old Bear Brook Road and Alexander Road. This sidewalk is shown in red on Exhibit A-22, a copy of which is appended hereto as Attachment 1.

22. The signage package shows a substantial number of signs. The waivers necessary for the proposed signs to be installed are addressed in the Waiver section. The Board is satisfied that the number and placement of signs are appropriate and that the addition of "by Toll Brothers" or "managed by Toll Brothers" on some of the signs should not be barred, given that there are other signs in the Township identifying the project developer.

23. The applicant agreed to provide indoor bike storage in the C-1 and C-2 apartment buildings or in an ancillary structure subject to the review and approval of the Township Landscape Architect for use by the apartment residents, as Condition 52 so provides.

24. The number of affordable units that must be provided over the retail could not be determined at the time of the hearings, since it is a function of the value of the 10 acre parcel and what the applicant's nonresidential development fee would be. The latter can be calculated only after construction drawings are provided to the Township. Condition 7 provides that the affordable housing obligation will be worked out by the attorneys, with the applicant having the option of returning to the Board if it is not satisfied with the result.

25. Section 200-194.2L(3) requires that all buildings in the PMN zone be set back a minimum of 50 feet from an existing residential lot not separated by a public road if adequate buffering, as determined by the Planning Board, is provided. If adequate buffering is not provided, the setback must be 75 feet from the property line. In either case, the existing wooded area within the buffer must be preserved to the extent feasible. Proposed Road B and a 33 foot wide strip of open space will separate the townhome section of the development from adjacent residential Lots 22 and 35. Some of the existing vegetation in this area will be removed with supplemental planting and berming specified in this location. The Board finds that the buffering, including the existing trees, supplemental plantings, and berming is adequate for its purposes, and the 50 foot rather than 75 foot setback therefore applies.

26. The PMN regulations require a phasing plan. The applicant represented that the entirety of the development, excluding the 10 acre parcel, will be built at the same time.

27. Conclusion re: site plan approval. The Board finds that, with the waivers granted and conditions imposed, the applicant has met all Township site plan standards. Preliminary and final site plan approval, accordingly, is granted.

FINDINGS AND CONCLUSIONS RE: PRELIMINARY AND FINAL SUBDIVISION APPROVAL

28. Nature of application. The proposed subdivision will result in a total of 64 lots, one lot for the retail with apartments and corporate suites, 51 townhome lots, 11 open space lots that will be owned by the townhome homeowners' association, and the 10 acre parcel. Proposed Lot 52, which will encompass the corporate suites, retail space, and apartments, is 17.17 acres and is labeled on the plans as Parcels A and C. Ten of the proposed open space lots, proposed Lots 55-64, are slivers abutting townhome end units, and one larger one, proposed Lot 54, is 10.36 acres and will contain Storm Water Retention Pond 4 and additional open space. This overall area is designated as Parcel B and contains 18.6 acres. Parcel D, proposed Lot 53, is the 10 acre municipal-sponsored affordable housing site parcel. No development was proposed for this site at this time, with the exception of buffering along its Road B frontage.

29. A primary subdivision issue, resolved with staff, was circulation. The vehicular, pedestrian, and bicycle circulation plan presented to the Board provides for a sound circulation system interconnecting all the different sections of the overall development. A second issue was the open space slivers, ranging in size from 487 square feet to 688 square feet. While they are an unusual aspect of the subdivision plan, the Board is satisfied that they are appropriately being handled as the maintenance obligation therefor rests with the townhome homeowner's association. Indeed, they represent an opportunity for special landscape treatment and pocket parks in the future. While there was a question raised as to whether these slivers should be incorporated into the right-of-way, they should remain as open space lots maintained by the homeowners' association. No other subdivision issues are presented by the application.

30. Conclusion re subdivision approval. The Board finds that, with the waivers granted and conditions imposed, the applicant has satisfied all Township subdivision standards. Preliminary and final subdivision approval, accordingly, is granted.

FINDINGS AND CONCLUSIONS RE: VARIANCES

31. The application necessitates five sets of variances. The variances and the Board's action on them are as follows.

a. Variances: From Section 200-194.2L(1)(a)[2], which requires a minimum lot width of 20 feet per dwelling and a maximum lot width of 30 feet per dwelling, while the applicant proposes 39 feet for the 10 exterior townhome lots and 38 feet for the 20 interior townhome lots.

Variance granted: Granting the variance furthers Municipal Land Use Law purposes "a" and "c," which are to encourage appropriate development of land in a manner that promotes the public health, safety, morals, and general welfare and to provide adequate light, air and open space respectively, as doing so permits wider units with more windows and therefore more light entering the units. This benefit substantially outweighs any detriment from the wider units. The positive criteria for a flexible "c" variance are therefore satisfied. The negative criteria are also satisfied. There is no substantial detriment to the public good. The intent and purpose of the PMN District will not be substantially impaired because the proposed plan largely conforms to the PMN requirements, and the townhome lots with the lot width deviations cannot, in the context of the overall project, be considered substantial deviations from the zoning requirements applicable to the zone. The variance request, accordingly, is granted.

b. Variances: From Section 200-194.2L(2)(a)[5], which provides that the maximum building height for corporate suites on streets other than Bear Brook Road and more than 250 feet from Old Bear Brook Road is 50 feet, or four stories, whichever is less, while the applicant proposes a height of 51 feet 10.5 inches for Buildings B-1 and B-2.

Variances granted: The applicant's architect for the corporate suites, explained that the height increase is necessary to accommodate increased insulation requirements caused by the IFC (International Family of Codes), nine foot ceilings, a 24" wood floor truss, and a 6/12 roof pitch, as required by Ordinance design standards. The variances, if granted, would further Municipal Land Use Law purposes "a", which is to encourage the appropriate development of land, and "c," which is to provide adequate light, air and open space. The benefit of granting the variance is that the ceiling height would otherwise have to be lowered to eight feet, making the space much less desirable, while the detriments are insignificant since the

additional height is minimal and would be barely noticeable, since Buildings B-1 and B-2 are set back 360 and 480 feet from Bear Brook Roads, respectively. Certainly it will not be perceptible from outside the tract itself. There will also be increased energy efficiency because of the increased insulation. The flexible “c” criteria are therefore satisfied. For these reasons, and based on the de minimus visual impact to the public, the negative criteria are satisfied as well. Due to the significant setback of the B-1 and B-2 buildings from Bear Brook Roads, there is no substantial detriment to the public good, as there would be no negative impact to the public, and the intent and purpose of the PMN zone regulations will not be impaired. Similarly, the deviation from the height requirement being of such a low order of magnitude would not create a substantial detriment to the public good or substantially impaired the intent and purpose of the PMN zone regulations. The variance request is therefore granted.

c. Variations: From Section 200-194.2L(2)(b)[8], which limits the building height of commercial and mixed-use buildings to 40 feet, with an exception not pertinent hereto, while retail Buildings C-1 and C-2 are proposed to be a height of 44 feet.

Variations granted: The applicant requests the variance in order to accommodate 11 foot high ceilings for the retail space and 9 foot high ceiling for the apartments, which is customary for apartments. The variations are also necessitated by the roof pitch, as provided for in the Township zoning ordinance. Municipal Land Use Law purposes “a” and “c” are again furthered, as the increase in height permits more commodious and less confining space. Higher ceilings for both the retail and residential units would be beneficial since they would make the spaces more attractive. This includes the units for affordable households. There will be no real detriment to the public good, as the increase in height will not be significant. The C-1 and C-2 buildings front on the main access road and only a limited side façade profile faces Old Bear Brook and Bear Brook Roads, which substantially reduces the visual impact of the additional height of the proposed mixed use buildings. For these reasons, the benefits outweigh the detriments, and the flexible “c” criteria are therefore satisfied. There is no substantial detriment to the public good for the reasons given above, and no substantial impairment of the intent and purpose of the zoning ordinance and zone scheme since the variance does not undercut the PMN zoning program and allows for sufficient ceiling height for the retail first floor users and a nine foot apartment ceiling height. The negative criteria are therefore satisfied. The variance request, accordingly, is granted.

d. Variance: From Section 200-194.2L(2)(a)[7], which requires that parking be behind the corporate suites buildings or screened from public view in side or front yards,

while all of the parking for the corporate suites is either in parking courtyards in front of the buildings or along internal streets and drives.

Variance granted: The variance furthers Municipal Land Use Law purpose “a,” which is to provide for the appropriate development of land. The location of the parking has the benefit of efficiently using the land in the corporate suites sector and, given that it will not be visible from outside the corporate suites area, it will not result in any substantial detriment. Because of this, the benefits outweigh the detriments, and the flexible “c” positive criteria have been satisfied. The negative criteria are satisfied as well. There is no substantial detriment to the public good for the reasons given. There is no substantial impairment of the intent and purpose of the zoning ordinance and zone scheme because the variance is a minor part of the overall project that largely conforms to the detailed zoning regulations for the PMN district. The variance request is therefore granted.

e. Variance: From Section 200-194.2L(2)(b)[10], which requires that parking be located behind the retail buildings and screened from public view, while some of the parking for the retail buildings is on the main street in front of them.

Variance granted: The on-street parking is consistent with the village concept and was part of the original concept plan presented to the Board. It acts as a traffic calming device and enlivens the streetscape. Because of this, Municipal Land Use Law purpose “a” is advanced. Given this and given that there are substantial benefits and no detriments, the flexible “c” criteria have thus been satisfied. The negative criteria have been satisfied as well. Since there are no detriments at all, there is no substantial detriment to the public good. Nor is there substantial impairment of the intent and purpose of the zoning ordinance and zone scheme, since parking in front of the stores was always contemplated. The variance request is therefore granted.

NOTE: There was discussion of the need for variances for the width of the open space slivers adjacent to townhome end units. Variances for these slivers are unnecessary, as there are no PMN regulations governing the width of open space lots.

FINDINGS AND CONCLUSIONS RE: WAIVERS

32. The application necessitates 19 sets of waivers. The waivers and Board’s action on them are as follows:

a. Waiver: From Section 200-26B(1), which in this case would require 128 parking spaces, including guest parking, for the townhome section, while 150 to 155 spaces have been provided, including parking in the garages and alleys, on-street parking, and a 10 stall parking area by the tot lot. It is unclear how many spaces are actually being provided, since the on-street parking will not be striped, and how many vehicles can realistically use the streets for parking therefore cannot be ascertained with any certainty.

Waiver granted with condition. There will almost certainly be a need for additional parking beyond that required by Code, since the Board's experience is that a number of garage spaces will actually be used for storage. Given this, the waiver request is reasonable. It comes within the intent and purpose of the ordinance provision by providing an appropriate amount of parking without unnecessary surface lots. Literal enforcement of the ordinance provision would work an undue hardship upon the applicant by requiring it to unnecessarily restrict on-street parking while on-street parking is to be encouraged as a traffic calming device, as a means of separating the town homes from the travel way, and as a way of satisfying the parking demand. Condition 29, however, does provide a limitation on the location of on-street parking to ensure that sight lines and access to fire hydrants will not be obstructed. The waiver request, accordingly, is granted.

b. Waiver: From Section 200-27B(1), which in this case requires 61 parking spaces for the apartments, while 76 have been provided.

Waiver granted: There is a shared parking arrangement for the apartment residents and guests and for the retail customers and employees. Because the minimum retail requirement of one space per 500 square feet of gross floor area is considerably less than what is usually required, with the ITE recommendation being almost twice that, it is prudent to have excess parking, whether attributable to the apartments or the retail, so as to avoid insufficient parking at peak retail times and potential for undesirable parking on nearby public streets. For these reasons, the waiver request is reasonable and comes within the intent and purpose of the ordinance provision to provide an appropriate amount of parking. Literal enforcement of the ordinance provision would work an undue hardship on the applicant by limiting the amount of apartment and retail parking it can install, with the risk of an occasional parking shortfall. For the foregoing reasons, the waiver request is granted.

c. Waiver: From Section 200-57E, which requires intersection sight triangles of specified dimensions, while the applicant is proposing to use the following AASHTO standards to establish the appropriate intersection sight triangles.

- Bear Brook Road intersection with corporate suites access
Design speed – 40 mph
Length of sight triangle to left – 385'
Length of sight triangle to right – 445'
- Old Bear Brook Road intersection with Road A and Road B
Design speed – 30 mph
Length of sight triangle to left – 290'
Length of sight triangle to right – 335'
- All internal intersections where sight triangles are established
Design speed – 25 mph
Length of sight triangle to left – 240'
Length of sight triangle to right – 280'

Waiver granted: The waiver request is reasonable, as the AASHTO standards are from a nationally-recognized organization, well-regarded in the traffic engineering profession and uniformly recognized and applied sight triangle standards. There is no detriment given that the AASHTO standards are national design safety standards for sight triangles. The Code provisions for sight triangle lengths are based on uncontrolled intersections whereas the AASHTO requirements are based on STOP sign controlled intersections and therefore are much more appropriate for this development. The benefits therefore outweigh the detriments. Literal enforcement of the ordinance provision would work an undue hardship on the applicant because it would unnecessarily require site redesign, resulting in excessive area restricted by sight triangles. This waiver request, accordingly, is granted.

d. Waiver: From Section 200-27D(2), which requires loading berths for a series of uses that include the corporate suites buildings, while no loading berths have been provided for those buildings.

Waiver granted: There is no particular need for loading berths for the corporate suites. The waiver request is therefore reasonable and comes within the intent and

purpose of the ordinance provision, which is to require loading berths when they are in fact warranted. Literal enforcement of the ordinance provision would work an undue hardship upon the applicant because it would require it to install unnecessary facilities. The waiver request is therefore granted.

e. Waiver: From Section 200-29G(1), which requires among other things that all parking areas have minimum lighting of three foot candles at driveway intersections with main roads, while one foot candle is proposed in the townhome section.

Waiver granted with condition: This is a residential area, with low traffic levels, and more lighting than is necessary would be inconsistent with the character of the area. Condition 27 requires that the applicant work with the Township Engineer to establish an appropriate lighting scheme. Given this, the waiver request is reasonable and comes within the intent and purpose of the ordinance provision, since the involvement of the Township Engineer will ensure that appropriate lighting given the nature of the area is provided. Literal enforcement of the ordinance provision would work an undue hardship upon the applicant by requiring it to put in place a higher level of lighting than may be advisable. Accordingly, the waiver request, is granted.

f. Waiver: From Section 200-91P(5)(b)[4][a], which requires that large-sized trees (5 inch caliper and 20-24 foot height) be installed near large commercial buildings to provide more immediate scale and visual relief, while only 63 of the 110 required trees are of this size or greater.

Waiver granted: There is no room for more larger trees, and the applicant has provided them to the extent practicable without creating conflicts with access to the buildings. Given this, the waiver request is reasonable and comes within the ordinance provision of providing immediate scale and visual relief since the applicant has done as much as it can in this regard. Literal enforcement of the ordinance provision would be impracticable since no more large trees can be planted. The waiver request is therefore granted.

g. Waiver: From Section 200-91P(4)(a)[1][u], which requires that detention basins have naturalized shapes, while Basins 2A, 2B, and 2C are to a significant extent geometric in shape.

Waiver granted: The applicant's storm water management system results in a 40 percent increase in infiltration above the minimum required by NJDEP standards. The applicant has sought to maximize the size of the basins in order to decrease the flow off site, and one benefit of this will be the reduction of flow from the site into the center of Windsor Haven. The three basins at issue are at the rear of the corporate suites section and will not be visible either from the roadway or from most of the development. In addition, the applicant has proposed substantial landscape on the corporate suites side of the basins. The effort to minimize off-site flow is laudable, and the basins' location and the landscaping for them mitigate any adverse visual effects they may have on the development. Given this, the waiver request is reasonable. It comes within the intent and purpose of the ordinance provision, which is to avoid the appearance of engineered structures. Literal enforcement of the ordinance would be impracticable as it would result in reducing the size of the storage available within the basins and increasing off-site flow. The waiver request, accordingly, is granted.

h. Waiver: From Section 200-91P(4)(a)[1], which requires plantings in the detention basins, while the applicant has not proposed such plantings because the bottom of the basins must be composed of sand.

Waiver granted with condition: The requirement of sand-bottom basins comes out of NJDEP requirements, and the applicant's freedom of action in this regard is limited. The waiver request is reasonable given this. The applicant is required, however, by virtue of Condition 10 to make a reasonable effort to seek relief from the NJDEP so that the basins' bottoms will have compositions suitable for vegetation. Given this qualification, and given the heavy landscaping around the basins, the waiver request comes within the intent and purpose of the ordinance provision. Literal enforcement of the ordinance provision would be impracticable since basin plantings consistent with ordinance provisions cannot be provided absent relief from NJDEP. The waiver request is, accordingly, granted.

i. Waiver: From Section 200-36C(3)(c)[5], which requires one tennis court for each 100 dwelling units, or in this instance one tennis court for the development, while the applicant does not propose a tennis court.

Waiver granted: The applicant does not believe that a tennis court will be used and notes that tennis courts in any event are available at the nearby Duck Pond Park. In response to a suggestion from staff to add a tennis court or at least a small play court for basketball or a rebound wall, a bocce court was added. In addition, the applicant agreed that all residents of the

townhomes, apartments, and municipally-sponsored project, but no other persons, could join the proposed corporate suites pool and any gym facility that is installed for a uniform fee. This will improve the recreational opportunities for the entire development. Given all of this, the waiver request is reasonable as the overall plan should provide sufficient recreational opportunities for the residents of the entire development. The intent and purpose of the ordinance provision, to provide an array of recreational facilities, is satisfied. Literal enforcement of the ordinance provision would work an undue hardship on the applicant by requiring it to put in place a facility that may very well not be used and that is available nearby. Accordingly, the waiver request is granted.

j. Waiver: From Section 200-258D(4)(a)[3], which limits the letter height of wall signage in this case to 12 inches given that linear tenant frontage, while 18 inches are proposed. Section 200-258D applies to signage in the PMN district by virtue of Section 200-194.20.

Waiver granted: The letter height is appropriately sized for the retail buildings, suitable in scale with the buildings and suitable for tenant identification. Given this, the waiver request is reasonable and comes within the intent and purpose of the ordinance provision to limit letter heights so that the letters are not obtrusive but sufficient in height so that the tenant can be readily identified. Literal enforcement of the ordinance provision would work an undue hardship on the applicant by requiring it to install signage which, in context, would be undersized, while it is important to have signs that will attract as many customers as possible and make the retail area a vibrant one. The waiver request, accordingly, is granted.

k. Waiver: From Section 200-258D, which does not permit ground-mounted project/tenant identification signs, while the applicant is proposing a ground-mounted identification sign, Sign M1, located on the westerly corner of the retail entrance.

Waiver granted: As indicated above, it is important to maximize the identity of the businesses to ensure the success of the retail project. Given this, having a ground-mounted project/tenant identification sign is appropriate. As the sign area and height are in scale with the development, the sign comes within the intent and purpose of the ordinance provision by providing useful, but not oversized, signage. Literal enforcement of the ordinance provision would work an undue hardship upon the applicant by eliminating the opportunity for signage that will enhance the success of the retail space. The waiver request, accordingly is granted.

l and m. Waivers: From Section 200-258D(4)(d)[2] and [3], which provide that the maximize area and height for monument signs shall be 30 square feet and six feet respectively, the standards that should apply in this case, while the proposed ground-mounted project/identification sign is 42 square feet and seven feet in height.

Waivers granted: There are no area and height standards for ground-mounted projects/tenant identification signage in the PMN district, since such signage is not permitted. The closest analogy is the monument sign, for which the area and height standards are as set forth above. The waiver requests are reasonable, since the deviation from the sign area and height standards are not substantial and the increased dimensions are necessary in order to provide tenant identification. As noted above, it is important that the signage be designed so as to maximize retail tenant identification and thereby enhance the prospect of success of the retail space. This is particularly so because the project is not on a major roadway, and identification of the retail space takes on additional importance. The sign area and height waiver requests come within the intent and purpose of the ordinance provision, which is to provide appropriate signage but no more in number and dimension than is necessary to serve its function. Literal enforcement of the ordinance provision would work an undue hardship on the applicant by barring it from installing signage that is an important element of the retail project's success. The waiver request is therefore granted.

n. Waiver: From Section 200-32B(4)(a), which limits the number of tenant slots on ground-mounted/tenant identification of signs to six, while the applicant proposes 12 such slots.

Waiver granted: The PMN district regulations provide no guidance in this regard because, as indicated above, ground-mounted project/tenant identification signs are not permitted. They are permitted, however, in non-residential planned developments generally, and Section 200-32B(4)(a) provides for a maximum of six tenant slots on such signs. For the reasons given above, maximizing tenant identification is important for this project as it is not on a major roadway. Having sufficient slots for all tenants is therefore reasonable. It comes within the intent and purpose of the ordinance provision by providing an appropriate number of tenant slots given the location of the project. Literal enforcement of the ordinance provision would work an undue hardship upon the applicant because all tenants could not otherwise be identified as vehicles approach the retail area. Their wall signage cannot be readily seen from the street because the main street on which the retail is located is perpendicular to Bear Brook Road. The waiver request is therefore granted.

o. Waivers: From Section 200-258D, which does not permit directional signs, while the applicant has proposed four such signs.

Waivers granted: The applicant is proposing directional signs (Sign D1) throughout the development, one at the corporate suites entrance, one at the retail entrance, and two between the retail and corporate suites. The waiver request is reasonable as the signs serve an important way finding function for this large multi-use project. Granting the waiver yields significant benefits, while the detriments of multiple signage are not significant. The benefits therefore outweigh the detriments. Literal enforcement of the ordinance provision would work an undue hardship upon the applicant by prohibiting it from installing signage that will aid those accessing the site. The waiver requests, accordingly, are granted.

NOTE: No variances are necessary for the sign area of 30 feet and height of 6 feet, since by analogy the monument sign standards would apply and the directional sign area and height are consistent with them.

p. Waiver: From Section 200-53C(8), which require plans and profiles showing proposed utility layouts, while the applicant has requested a waiver from the requirement to show gas and electric utilities in profile, as they have been shown in plan view only.

Waiver granted: The applicant has provided adequate utility information. Given this, the waiver request is reasonable and comes within the intent of the ordinance provision, which is to provide sufficient utility information. Literal enforcement of the ordinance provision would work an undue hardship upon the applicant by requiring it to provide information that is not necessary. The waiver request, accordingly, is granted.

q. Waiver: From Section 200-53C(15), which provides that the Planning Board may require as a condition of final approval test holes or borings deemed necessary to determine the suitability of the soil to support new construction of the corporate suites and mixed use buildings, while the applicant has not submitted soils information at this time and has indicated that borings will be performed and the information provided as a condition of the issuance of building permits for the commercial buildings of the project.

Waiver granted with condition: The request is a reasonable one as it relates to the timing rather than the submission of the necessary information, and submission of soils information at the time building permits are issued sufficiently satisfies the provision. Because it does so, it comes within the intent and purpose of the ordinance provision as the necessary information is provided at a suitable time. Literal enforcement of the ordinance provision would work an undue hardship upon the applicant by requiring it to provide soils information for the commercial buildings before it is necessary for the Township to receive it. Accordingly, the waiver request is granted.

r. Waiver: From Section 200-53C(19), which requires that wetland areas be depicted by metes and bounds information showing the out boundaries of such areas, while the applicant has not provided such information.

Waiver granted: The applicant has submitted a Letter of Interpretation from the New Jersey Department of Environmental Protection, which expired on November 2, 2015, and the plans do show the wetland boundaries, though they are not shown with metes and bounds. The applicant proposed to provide such information at the time the NJDEP General Permits and Wetlands Transition Averaging approvals are obtained. The applicant advised the Board during the hearing that in fact such approvals were obtained. It is unnecessary, however, to provide such metes and bounds information since the wetlands will be in the Greenbelt and, as per Condition 20, a metes and bounds description will be provided for it. The request is reasonable in that the pertinent information will be provided, and this brings the request within the general intent and purpose of the ordinance provision. The waiver request is therefore granted.

s. Waivers: From Sections 200-13C(11), -14C(1)(b)[6], and -53C(22), which require a traffic signage plan showing the nature and proposed location of traffic and street signs needed to assure the safe and efficient flow of traffic, among other things, while a traffic signage plan was not submitted with the application.

Waiver granted: A traffic signage plan was subsequently submitted and is the subject of a number of conditions. Given this submission, the waiver request is reasonable and comes within the intent and purpose of the ordinance provision, which is to have a satisfactory traffic signage plan in place. Literal enforcement of the ordinance provision would work an undue hardship on the applicant, as it will require the submission of a traffic signage

plan with the application, which cannot be done at this point in time. The waiver request is therefore granted.

RECOMMENDATION TO TOWNSHIP COUNCIL

33. The Board recommends that Township Council adopt an ordinance prohibiting parking on Old Bear Brook Road.

CONDITIONS REQUIRED

34. The Board finds that, in order to address the concerns expressed during the course of the hearing and to limit the relief to that reasonably necessary to satisfy the applicant's legitimate requirements, the relief granted is subject to the following conditions:

Affordable housing

1. The applicant shall enter into a Developer's Agreement for the transfer of the 10 acre parcel to the Township in accordance with Section 200-192.4J.
2. The deed to the Township for the 10 acre parcel shall be conveyed immediately after the subdivision plat is recorded in conjunction with the closing between the applicant and the owner.
3. The applicant shall extend sewer and water connections to the 10 acre parcel as shown on the approved site plan. It shall also request from all utility companies (CATV, electric, phone, gas) that they install their respective utility connections up to the 10 acre parcel property line, sized to accommodate the anticipated future development, in conjunction with the utility company service installation for the townhomes. The applicant shall notify the Township Engineer when such requests are made so that Township representatives can participate in the discussion with the utilities and the applicant.
4. The applicant shall prepare and record a Storm Water Management Maintenance Manual with a storm water easement permitting the discharge of the storm water outfall from the 10 acre parcel into Pond 4 and Basins 2B and 2C. The applicant shall incorporate the

NJDEP major development storm water summary checklist into the Storm Water Management Maintenance Manual and same should be included in the Storm Water Maintenance Report. The storm water easement shall be prepared by the Board Attorney and shall include a maintenance cost allocation based on flow rate into the pond and basins between the townhome association and Project Freedom or subsequent owner/ developer of the 10 acre Township affordable housing parcel. There shall be no cost to Project Freedom or a subsequent developer of the parcel for the easement and for construction of the pond and basins.

5. The homeowners' association for the townhomes shall maintain the landscaping buffer along the 10 acre parcel frontage on Road B, which shall be delineated on a landscape and maintenance easement with the Township, acceptable to the Board Attorney.
6. The applicant shall provide copies of all reports it has submitted, or submits to, or has received, or receives, from the New Jersey State Historic Preservation Office ("SHPO"). If additional State permits, approvals or investigations regarding the historic preservation areas ME281 and the New Prehistoric Area are required for the development of the 10 acre parcel as depicted on the concept plan appended hereto as Attachment 2, the applicant shall be responsible for paying for any further permitting costs and archeological investigation and artifact reclamation (if necessary), provided the proposed development on the 10 acre parcel is not materially changed from the concept plan.
7. The Board's and applicant's attorneys shall consult as to the number of affordable units that may be required for the overall development, but not including the 10 acre parcel, pursuant to Section 200-194.2J. If the attorneys cannot reach agreement as to such affordable housing obligation, the applicant may return to the Board, with Municipal Land Use Law notice, for a final determination if it is unwilling to accept the determination by the Board Attorney. If any affordable units are required to be located in Buildings C-1 or C-2, the distribution of such affordable units shall be subject to the review and approval of the Township Planner and the bedroom mix shall be in

accordance with COAH standards. The Developer's Agreement shall address the affordable housing requirement.

8. The applicant shall provide the Township Engineer with a metes and bounds description for the most environmentally restrictive line, consisting of the most extensive line for the restrictions imposed by other governmental entities such as the NJDEP and Delaware and Raritan Canal Commission, in the 10 acre parcel.

Storm water management

9. Without the runoff from the developed 10 acre parcel, the ability to provide the recommended base flow to Pond 4 south of the townhomes is lessened. The applicant shall continue to perform piezometer testing to confirm the ground water elevation range through the year. Once that testing is completed, the applicant shall submit the results to the Township Engineer. Should Pond 4 experience water supply and water level deficiencies at a time prior to release of performance and maintenance guarantees, a proposed alternative solution shall be submitted by the applicant to the Township Engineer and, upon its approval by him, shall be constructed by the applicant, with any permit modifications required through the NJDEP.
10. The applicant shall make a reasonable effort to secure relief from the NJDEP from installing a sand bottom for infiltration Basins 1, 2A, 2B, 2C, and 3. If given relief, the landscape plans shall be clarified with respect to the seed mixture for the dry basin bottoms. The seed mixture shall be subject to the review and approval of the Township Landscape Architect, and shall maximize the possibility of the survival of the vegetation in or adjacent to a sand-layered basin. The Township Engineer and Township Landscape Architect shall be copied on all correspondence with the NJDEP on this topic.
11. The land area used as a nonstructural storm water management measure shall be subject to a conservation easement, to be prepared by the Board Attorney, to ensure that that measure or an equivalent storm water management measure approved by the reviewing agency is maintained in perpetuity.

12. Construction details for the townhome drainage system acceptable to the Township Engineer shall be included on the final site plans. This includes construction details for the connections and cleanouts of the foundation draining system consisting of an eight inch diameter PVC foundation drain pipe that extends down Road D and is tied into the southernmost townhome lots with lateral connections. The Declaration of Covenants, Conditions and Restrictions for the townhome homeowner's association (the "Townhome Declaration") shall state that the mains for the foundation drainage system located outside of the townhome lots will be owned and maintained by the townhome homeowners' association.
13. A full set of drainage area maps and any other associated mapping shall be provided for the latest Storm Water Management Report. Drainage area maps shall be provided with the final site plan
14. For the supplemental study of the Windsor Haven detention basin that was prepared, the applicant shall clarify the discrepancies in the stage-storage areas between the study and the basin as-built plan, and is to clarify the basin maximum water surface elevation for both existing and proposed conditions in relation to the as-built emergency spillway elevation.
15. Porous pavers and suitable tree root zone/pavement subsoil shall be installed at the public activity area and adjacent to the tree wells along the main street, and construction details for such paver system shall be provided. The pavers, their location, and the construction details for them shall be subject to the review and approval of the Township Engineer.
16. A note shall be added to the final plat sheet that the owner of the corporate suites and mixed use commercial area shall maintain Rain Garden 1, within the Old Bear Brook Road right-of-way, and Rain Gardens 2-5. In addition, as the Rain Gardens are part of the overall storm water management design, they shall be specifically noted in the narrative of the Storm Water Report and shall be incorporated into the Storm Water Management Easement.

17. The applicant has provided a rain garden detail, which includes an overflow pipe noted as being directed back to the basin. Rain Garden 1 is not to be directed back to Basin 3, but toward the next downstream inlet, number 353. The note on the plans showing the rain garden detail shall be revised to reflect this.

Landscaping, site amenities and conservation

18. The applicant shall provide landscaping at the base of the monument sign and submit a landscaping plan therefor to the Township Landscape Architect for his review and approval.

19. The applicant shall work in consultation with Township Landscape Architect to substitute evergreen trees for deciduous trees as shown on the approved landscape plan in order to improve the screening of the development from the nearest homes in the Estates at Princeton Junction. The revised landscape plan shall be subject to the review and approval of the Township Landscape Architect.

20. The applicant shall establish the required Township greenbelt area, subject to the Township Landscape Architect's approval, and execute a greenbelt conservation easement therefor prepared by the Board Attorney. The greenbelt easement shall include the D&R Canal Commission Stream Corridor Buffer line and freshwater wetlands and their buffers as modified and approved by the NJDEP and DRCC. It shall also include the natural features for which the NJDEP requires protection. The applicant shall submit to the Township Engineer a metes and bounds description for the Greenbelt.

21. For the corporate suites and two mixed use buildings, the applicant shall provide screening of the HVAC systems and other elements set forth in Section 200-194.2P(12) so as to shield them from public view, to the extent this is possible relative to any Code implications, restrictions and third party utility provider requirements and limitations.

All required screening of the HVAC systems and other elements shall be subject to the review and approval of the Township Landscape Architect.

22. The applicant shall provide decorative sidewalk pavement at the stairwells and main lobby entry to the apartments in Buildings C-1 and C-2. Such decorative sidewalk pavement shall be subject to the review and approval of the Township Landscape Architect.

23. The final landscape plan shall be subject to the review and approval of the Township Landscape Architect.

Recreation

24. The corporate suites recreational facilities shall be open to the residents of the townhomes, apartment, and municipally-sponsored tract at a uniform fee that is reasonable and comparable to similar area facilities. The recreational facilities shall not be made available for a fee to other persons.

The Townhomes

25. The applicant shall include the deed restriction appended hereto in Attachment 3 in all deeds to townhome unit owners and in the Townhome Declaration and shall provide a recorded copy of such instruments to the Board Attorney. The floor plan for the townhomes shall indicate that the townhomes are to be used and occupied as three bedroom units only.

26. The applicant shall submit to the Township Landscape Architect for his review and approval design elements that clearly define the front yards of all townhome units using the elements set forth in Section 200-194.2P(14).

Lighting

27. The applicant shall work with the Township professionals to formulate a lighting plan that best suits the townhome neighborhood. The plan shall provide sufficient wall or garage lighting for Townhome Alleys A and B and Roads C and D, add additional mid-block lights on Roads A through D if required by the Township Engineer and Township Landscape Architect, and include cut sheets for fixtures, including decorative lights. The plan shall be subject to the review and approval of the Township Engineer and Township Landscape Architect.

Traffic and parking control and signage

28. The applicant shall file a Title 39 application with the Township. The application shall include a plan identifying all traffic regulations to be enforced and in which areas of the sites such regulations shall apply.
29. The designation of internal street areas on which parking is prohibited in accordance with Title 39 shall be noted on the final site plans. Sections of the curbs in the townhome section back from the intersections and around the hydrants acceptable to the Township Traffic Consultant shall be signed and striped so as to prohibit parking.
30. The Townhome Declaration shall give the homeowner association the power to enforce all traffic regulations within the townhome area roads and alleys.
31. The M1, M2, W1, and W2 signs shall be located outside the sight triangles.
32. The site directional sign, D1, which had been proposed along the south side of Road C opposite to the exit side of the main site roadway, has been eliminated from the sign exhibit, Exhibit A-20, and shall be removed from the site plans.

33. The applicant shall confirm that the D1 signs to be installed adjacent to the west end of Building A-1 and to be installed at the northwest corner of the intersection of Roads A and C are outside of the sight triangle. The location of these two signs and resulting sight triangles shall be shown on the site plans.
34. The sign permit application shall show the exact text that will be provided for each project sign (sign types W1, W2, and M2, D1, and E1) to the extent that it is possible to do so.
35. The M2 and W2 signs proposed for the west side of the access along Bear Brook Road at the corporate suites access and for the west side of the access along Old Bear Road at Road A respectively shall be eliminated.
36. Sign D1, just south of the roundabout along the main access road, has been eliminated from the sign plan and shall be eliminated from the site plans as well.
37. A D1 sign has been shown along Road A at the intersection of Road C. It shall also be shown on the set of site plans so that it does not obstruct a sight triangle.
38. The proposed P1 signs shall be located so that they do not interfere with the proposed handicap-accessible parking/signage in the same area. Their location shall be subject to the review and approval of the Township Traffic Consultant.

Off-tract assessment and improvements

39. The applicant shall contribute its off-tract road assessment in accordance with Section 200-88. The applicant's cost of required off-tract improvements as determined in the manner set forth in Condition 40 shall be credited against such assessment.
40. (a) Off-tract improvements to be constructed by the applicant shall be delineated as an exhibit to the Off-Tract Developer's Agreement and shall be constructed by the applicant.

They include the complete reconstruction of Old Bear Brook Road, the extension of the drainage system along the north side of the roadway from the roundabout, the resurfacing of Bear Brook Road from the roundabout to Alexander Road, and the construction of the sidewalk shown on Exhibit A-22 in red with such modifications as the Township Engineer recommends and subject to any field changes determined by the applicant to be necessary and as approved by the Township Engineer to accommodate proper installation of the sidewalk. Exhibit A-22 is appended hereto as Attachment 1 and shall be appended to the Off-Tract Developer's Agreement.

- (b) The actual soft and hard costs incurred in designing and constructing the improvements set forth herein, except for the improvements to the roadway along the Lot 8.01 frontage to the right-of-way midpoint, shall be a credit against the applicant's off-tract assessment. Any such costs in excess of the assessment will be reimbursed by the Township to the applicant in the manner set forth in subparagraph (c).
- (c) Upon completion of the off-tract improvements set forth in this paragraph, the applicant shall submit a certified accounting of all actual hard and soft costs, including true copies of all contracts and of all bills, with all soft and hard costs attributed to off-tract improvements clearly identified. Costs for any work in excess of the applicant's estimate prepared for performance guarantee purposes shall be subject to the review and approval of the Township Engineer prior to construction. The Township shall not be liable for costs exceeding the applicant's estimated costs unless prior approval of the Township Engineer has been obtained for those items exceeding said estimate. Any costs in excess of the off-tract assessment shall be paid by the Township through payments of the full off-tract contributions assessment by future developers of developments that have a direct and substantial impact upon the improvements set forth in this paragraph. If the reimbursable amount to the applicant has not been paid in full within two years of the date of completion of construction of the improvements, then the Township shall promptly withdraw funds from sub-accounts in its Off-Tract Assessment Fund that contain assessments from developments that have a reasonable nexus to the off-tract improvements set forth herein and pay the applicant the full balance due to the extent

funds are or become available in such Fund. The Township will give priority status to such payments.

Other off-tract work

41. The applicant shall install a K-turn and install the landscaping on the property designated as Block 9.02, Lot 3 as shown on Attachment 4 appended hereto and shall install such landscaping within the first planting season following construction of the roundabout and reconstruction of curbing in this area.

42. The townhome homeowners' association shall be responsible for removal of snow and ice from the sidewalk as shown on Attachment 4 on property designated as Block 9.02, Lot 3, and will be responsible for mowing the lawn within the right of way in front of such property adjacent to the roundabout. This provision shall be included in the Townhome Declaration.

43. The applicant shall landscape the existing gaps in the landscaping buffer between the Windsor Haven townhomes and the new Bear Brook Road roundabout, approximately between the two roundabout crosswalks for approximately 110 feet in length, in consultation with the Township Landscape Architect. Such landscaping shall be subject to his review and approval and shall be installed within the first planting season following construction of the roundabout.

Other

44. The applicant shall provide a limitation on nightly and weekly stays in accord with the corporate suite operating statement submitted with the application and incorporated in to the Developer's Agreement. No more than five percent of the corporate suites shall be used for stays of seven days or less.

45. No construction vehicles or construction workers shall be permitted to park on Old Bear Brook Road, nor shall Old Bear Brook Road otherwise be used for staging of construction. A note shall be added to the plans so providing.
46. No retail store may exceed 25 percent of the total retail floor space, and only one store can contain 25 percent of such space.
47. The applicant in consultation with the Township professionals shall install splitter islands with pedestrian refuge areas and additional signage at the roundabout.
48. Soil borings for the corporate suites and mixed use buildings shall be provided prior to issuance of a building permit.
49. The applicant shall provide the Township Engineer with the recorded copy of the Flood Hazard Permit, and copies of the Flood Plain Delineation Plan and Flood Study report approved by NJDEP, the NJDEP General Permits, and Wetlands Transition Averaging approvals.
50. Separate metes and bound descriptions with closure calculations for all lots, including the townhome lots, and for all easements and dedications shall be provided to Township Engineer for his review and approval.
51. All roads within the townhome section shall be private roads maintained by the townhome association, and all roads within the corporate suites and mixed-use sections shall be private roads maintained by the owner of the corporate suites.
52. The applicant shall provide indoor bike storage in the C-1 and C-2 buildings for use by apartment tenants. If bicycle storage structures are to be provided outside of such

buildings, their design and location shall be acceptable to the Township Landscape Architect.

53. The number of outdoor bicycle spaces located in the bicycle racks shall be noted on the plans.
54. The applicant shall execute a Developer's Agreement covering the matters set forth in Conditions 1-8 as to the 10 acre parcel and affordable housing obligation and matters as to the corporate suites operation set forth in Condition 44 and an Off-Tract Developer's Agreement covering the matters set forth in Conditions 39 and 40 as to the off-tract assessment, off-tract improvements, and a credit for the cost of the off-tract improvements against the assessment.
55. The applicant shall, to the extent required, secure approval of the NJDEP, Mercer County Planning Board, Delaware & Raritan Canal Commission, Mercer County Soil Conservation Service, West Windsor Township Fire Subcode Official, and other governmental entities with jurisdiction over the development of the subject property. In addition to the NJDEP approvals that have been identified or otherwise required, the applicant shall secure NJDEP Flood Hazard Area Verification, a Flood Hazard Area General Permit, and a NJDEP Certificate of Authorization. All such approvals shall be submitted to the Township Engineer.
56. Construction cost estimates for the on-site private improvements, the on-tract public improvements, and the off-tract public improvements shall be submitted by the applicant's engineer for review and approval by the Township Engineer for determination of performance guarantee and inspection fee amounts. The applicant shall execute a land development performance guarantee agreement in a form satisfactory to the Township Council and post the performance guarantees and inspection fees in the amounts as determined by the Township Engineer, all in accordance with the MLUL.
57. All construction details shall be subject to the review and approval of the Township Engineer.

58. All real estate taxes and inspection fees and required deposits in accordance with the MLUL must be paid and maintained as current, and no zoning permits or certificates of occupancy shall be issued if property taxes and escrow and inspection fees and required deposits therefor are not current, as permitted by law.
59. All marked exhibits shall be transferred to the Division of Land Use Office prior to issuance of a building permit.
60. All plan revisions shall be subject to the review and approval of such Township professionals as are designated by the Manager of Land Use unless otherwise designated herein.
61. An easement acceptable to the Board Attorney shall be recorded for each easement shown on the plat or plan.
62. All instruments required to be recorded hereby shall be provided to the Planning Board Attorney, and applicant's attorney shall record all instruments required to be recorded, except as otherwise provided. The applicant shall submit for review and approval by the Board Attorney and Township Engineer cross easements or blanket easements for roadways, parking, utilities, storm water management areas, and any other matter which is the subject of the overall easement plan that has been submitted. The entity responsible for maintenance shall be set forth in these easements.
63. The applicant shall reserve sufficient sewer capacity and secure a Treatment Works Approval. This includes securing authorization from Township Council for execution of the required NJDEP Treatment Works Approval permit applications for extension of the collection system.
64. In accordance with Section 200-81.1, approved site plans and subdivision plats being submitted for signature by Planning Board officials and as-builts upon project completion but prior to release of bond shall be submitted electronically and by hard copy. All electronic submissions shall be formatted using AutoCAD for plans and, for text, using either MS Word or Adobe Portable Document Format (PDF).

65. The Townhome Declaration shall be subject to the review and approval of the Board Attorney.

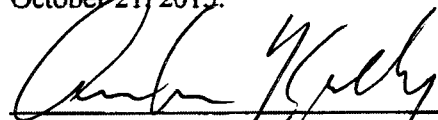
CONCLUSION

Based on the foregoing, the Board at its October 21, 2015 meeting voted to approve the plans with revisions made therein and as supplemented and modified by the exhibits and to grant the relief identified above subject to the conditions and to be revised in accordance with the conditions set forth herein.

This resolution of memorialization was adopted on February 3, 2016 by a vote of who voted to grant the relief sought by the applicant.

The date of decision shall be October 21, 2015 except that the date of the adoption of this memorializing resolution is the date of decision for purposes of (1) mailing a copy of the decision to the Applicant within 10 days of the date of the decision; (2) filing a copy of the decision with the administrative officer; and (3) publication of a notice of this decision. The date of the publication of the notice of decision shall be the date of the commencement of the vesting protection period.

We do hereby certify that the foregoing resolution was adopted by the Planning Board at its regular meeting held February 3, 2016. This resolution memorializes formal action taken by the Board at its regular meeting held October 21, 2015.



Andrew Kuttel, Acting Chair

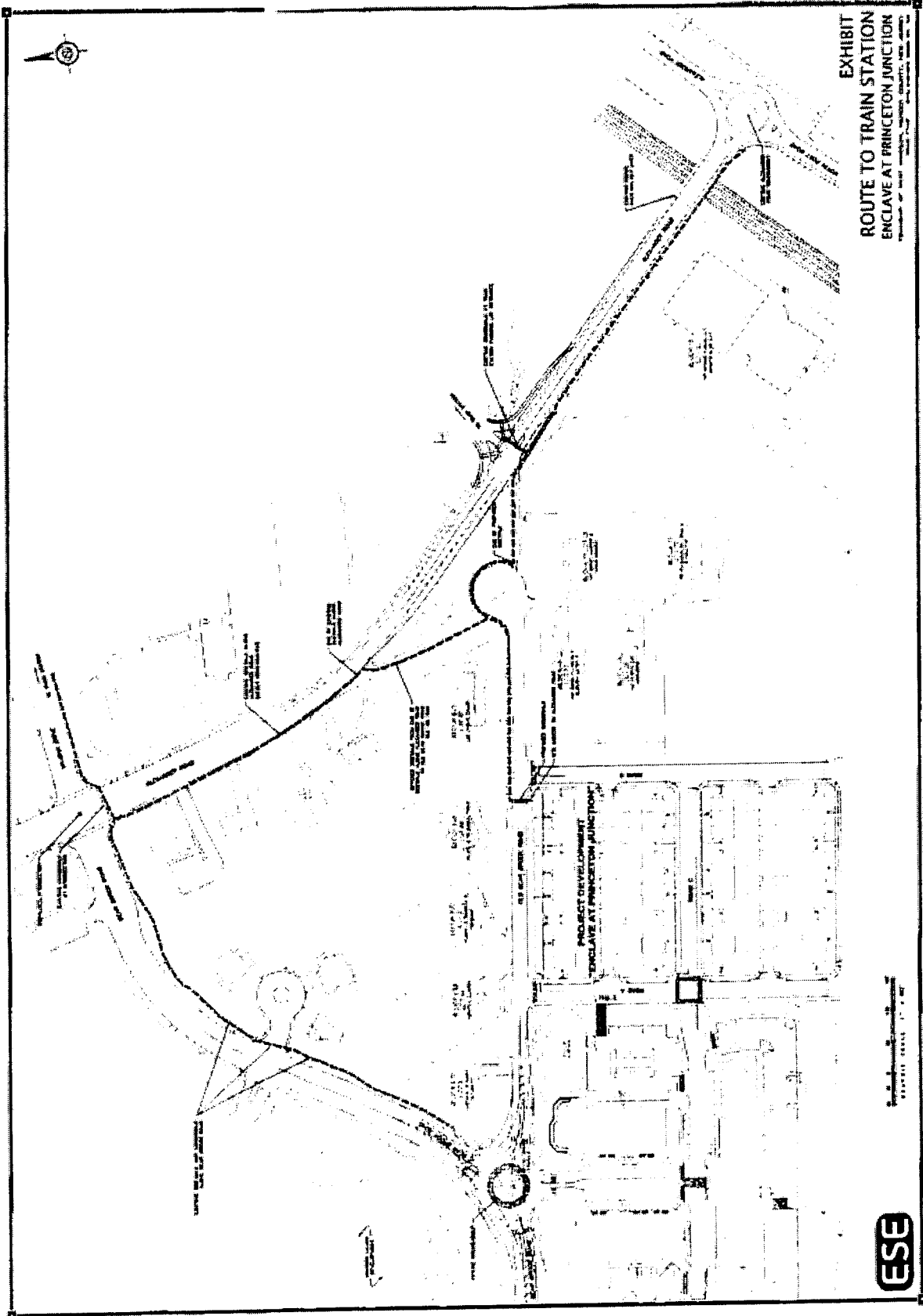


Diane Hurlburt, Administrative Assistant

Marvin Gardner, Chair – Yea
Michael Karp, Vice-Chair – Absent
Sue Appelget – Yea
Shing-Fu Hsueh – Yea
Linda Geever – Yea
Michael Huey – Yea
Andrew Kulley – Yea
Robert Loverro – Absent
Simon Pankove – Absent
Eric Payne, Alternate 1 – Yea
Anis Baig, Alternate 2 – Yea

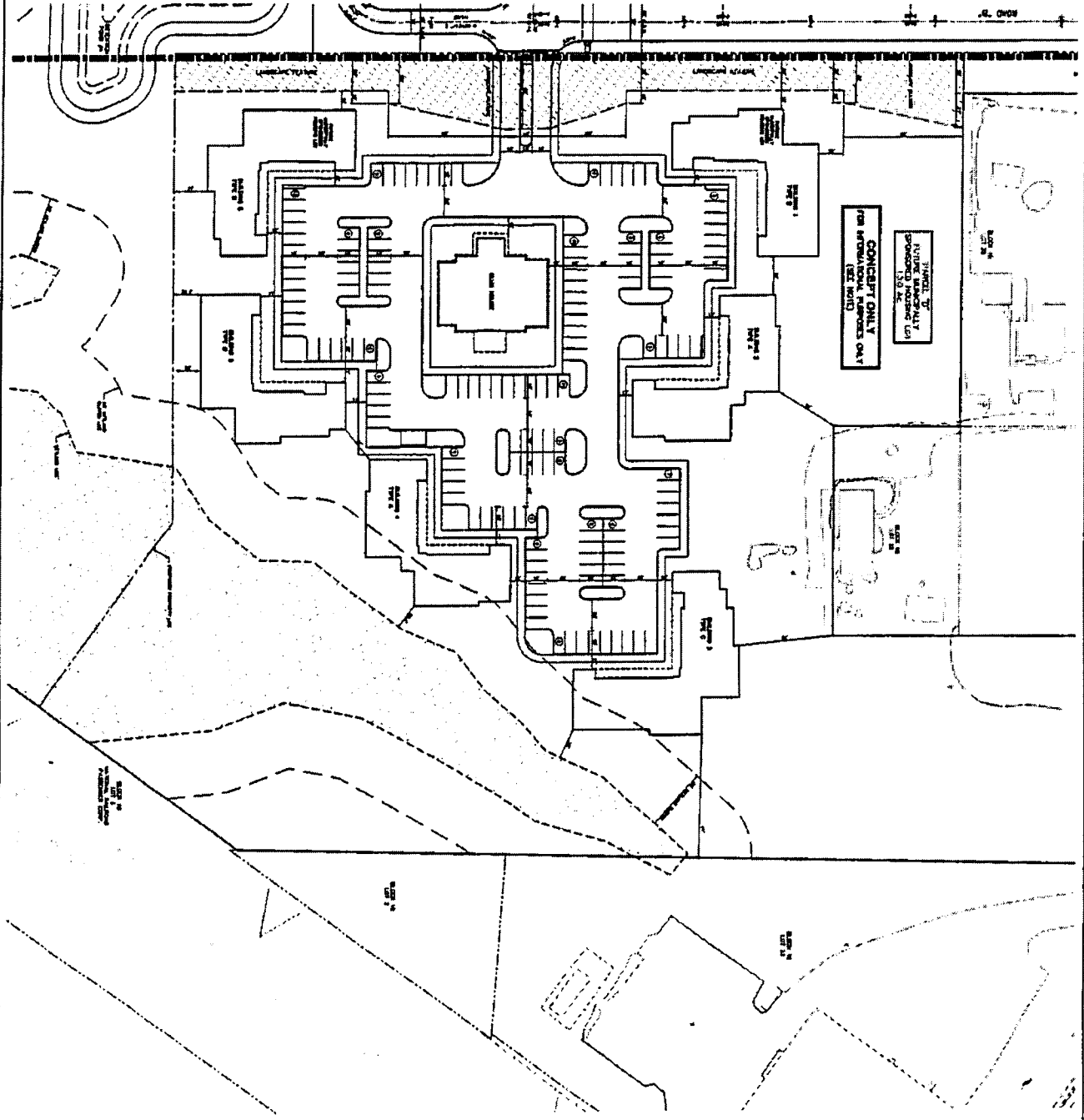
Toll Mancey Findings of Fact 2016 1-26-16

ATTACHMENT 1

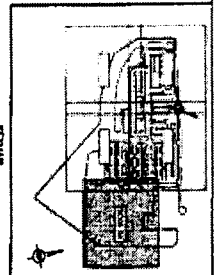


ATTACHMENT 2

MATCH LINE SEE ED05.04 FROM
PRELIMINARY / FINAL SITE PLAN SET

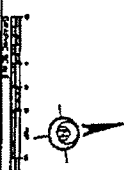


CONCEPT ONLY
FOR APPROVAL PURPOSES ONLY



- LEGEND**
- 1. Building Footprint
 - 2. Parking Space
 - 3. Driveway
 - 4. Walkway
 - 5. Utility Line
 - 6. Easement
 - 7. Property Boundary
 - 8. Survey Point
 - 9. Contour Line
 - 10. Spot Elevation

NOTES: 1. CONCEPT ONLY FOR APPROVAL PURPOSES ONLY. 2. ALL DIMENSIONS ARE IN FEET AND INCHES. 3. ALL DIMENSIONS ARE TO CENTERLINE UNLESS OTHERWISE NOTED. 4. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE NOTED. 5. ALL DIMENSIONS ARE TO CENTERLINE UNLESS OTHERWISE NOTED. 6. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE NOTED. 7. ALL DIMENSIONS ARE TO CENTERLINE UNLESS OTHERWISE NOTED. 8. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE NOTED. 9. ALL DIMENSIONS ARE TO CENTERLINE UNLESS OTHERWISE NOTED. 10. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE NOTED.



<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 25%;">NO.</td> <td style="width: 25%;">REV.</td> <td style="width: 25%;">DATE</td> <td style="width: 25%;">BY</td> </tr> <tr> <td> </td> <td> </td> <td> </td> <td> </td> </tr> </table>	NO.	REV.	DATE	BY					<p>SITE LAYOUT AND DIMENSION PLAN MUNICIPALLY SPONSORED HOUSING CONCEPT</p> <p>CONCEPT MANEELY PROPERTY Township of WEST WOODBORO, MERCER COUNTY, NEW JERSEY</p>	<p>ESE Land Planning Engineering Land Surveying</p>	<p>257 Westfield, Inc. 475 Eastman Road Westfield, NJ 07091 Tel: 732-466-9444 Fax: 732-466-9444</p>
NO.	REV.	DATE	BY								

ATTACHMENT 3

TOWNHOME OWNER AND HOMEOWNER ASSOCIATION DEED RESTRICTION

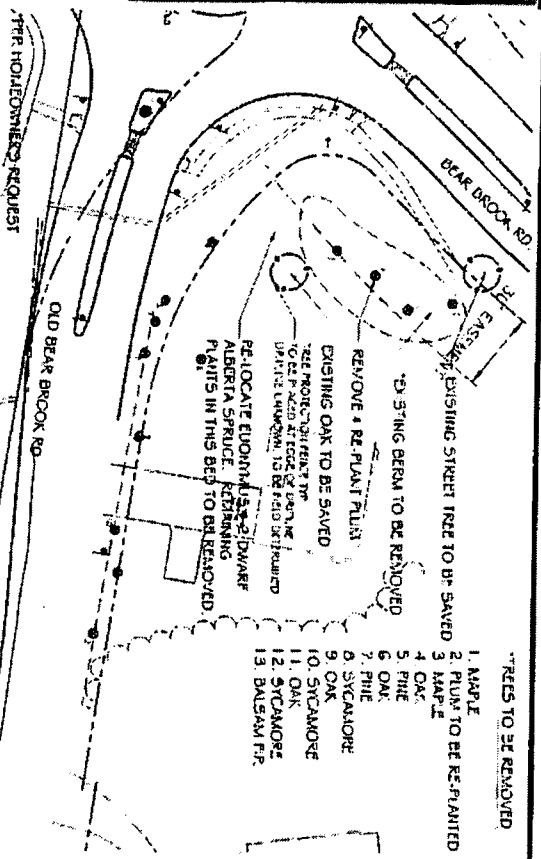
PROHIBITION AGAINST ROOM CONVERSION TO CREATE ADDITIONAL BEDROOMS

Each Owner, by acceptance of the deed and ownership of their Unit, hereby acknowledges and agrees that the Unit is sold as Three (3) Bedroom Unit. The Floor Plan establishes the three (3) Bedroom locations within the Unit. For purposes of this Deed Restriction, a "Bedroom" is defined as a room having floor to ceiling walls and having a separate "privacy" door, which is intended to be utilized as a permanent sleeping area. The interior walls for the loft shall be 42 inches.

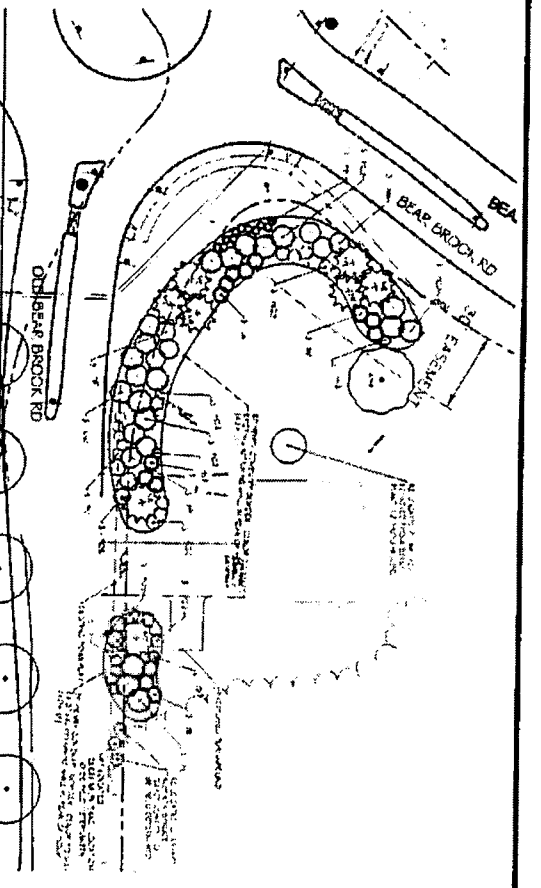
The Unit shall not be modified, renovated, reconstructed or otherwise changed so as to create any additional Bedroom other than the approved Three (3) bedrooms as set forth on the Floor Plan. This prohibition includes renovation or conversion of the following so as to accommodate a Bedroom: (i) any basement area; (ii) the space located above the garage; and (iii) the finished loft option. Nor shall the basement area, the space located above the garage, or the loft be used as a sleeping area. The space above the garage shall not be finished with walls or ceiling or otherwise finished and shall have no utilities other than electric. No egress windows or doors shall be installed in the basements. Access to such space shall be by a pull down stairway and not by a permanent stairway.

The Township of West Windsor shall have the right to enforce the restrictions by filing an appropriate action in a court of competent jurisdiction. The Homeowners' Association and individual townhouse owners shall also have such right in addition to whatever other rights of enforcement it or they may have.

DEMOLITION PLAN
1" = 20'



PROPOSED PLANTING PLAN - OPTION 2
PLANT SCHEDULE AMIRA
1" = 20'



NO.	DESCRIPTION	QTY	SIZE	DATE
1	MAPLE	1	24" DBH	2012
2	PLUM TO BE RE-PLANTED	1	24" DBH	2012
3	MAPLE	1	24" DBH	2012
4	OAK	1	24" DBH	2012
5	PINE	1	24" DBH	2012
6	OAK	1	24" DBH	2012
7	PINE	1	24" DBH	2012
8	SYCAMORE	1	24" DBH	2012
9	OAK	1	24" DBH	2012
10	SYCAMORE	1	24" DBH	2012
11	OAK	1	24" DBH	2012
12	SYCAMORE	1	24" DBH	2012
13	BALSAM FIR	1	24" DBH	2012



Scale 1" = 20'

Notes for the demolition and planting plans, including details on tree removal and re-planting procedures.

NO.	DESCRIPTION	QTY	SIZE	DATE
1	MAPLE	1	24" DBH	2012
2	PLUM TO BE RE-PLANTED	1	24" DBH	2012
3	MAPLE	1	24" DBH	2012
4	OAK	1	24" DBH	2012
5	PINE	1	24" DBH	2012
6	OAK	1	24" DBH	2012
7	PINE	1	24" DBH	2012
8	SYCAMORE	1	24" DBH	2012
9	OAK	1	24" DBH	2012
10	SYCAMORE	1	24" DBH	2012
11	OAK	1	24" DBH	2012
12	SYCAMORE	1	24" DBH	2012
13	BALSAM FIR	1	24" DBH	2012



60 30 0 30 60 120 180
 GRAPHIC SCALE: 1" = 60'

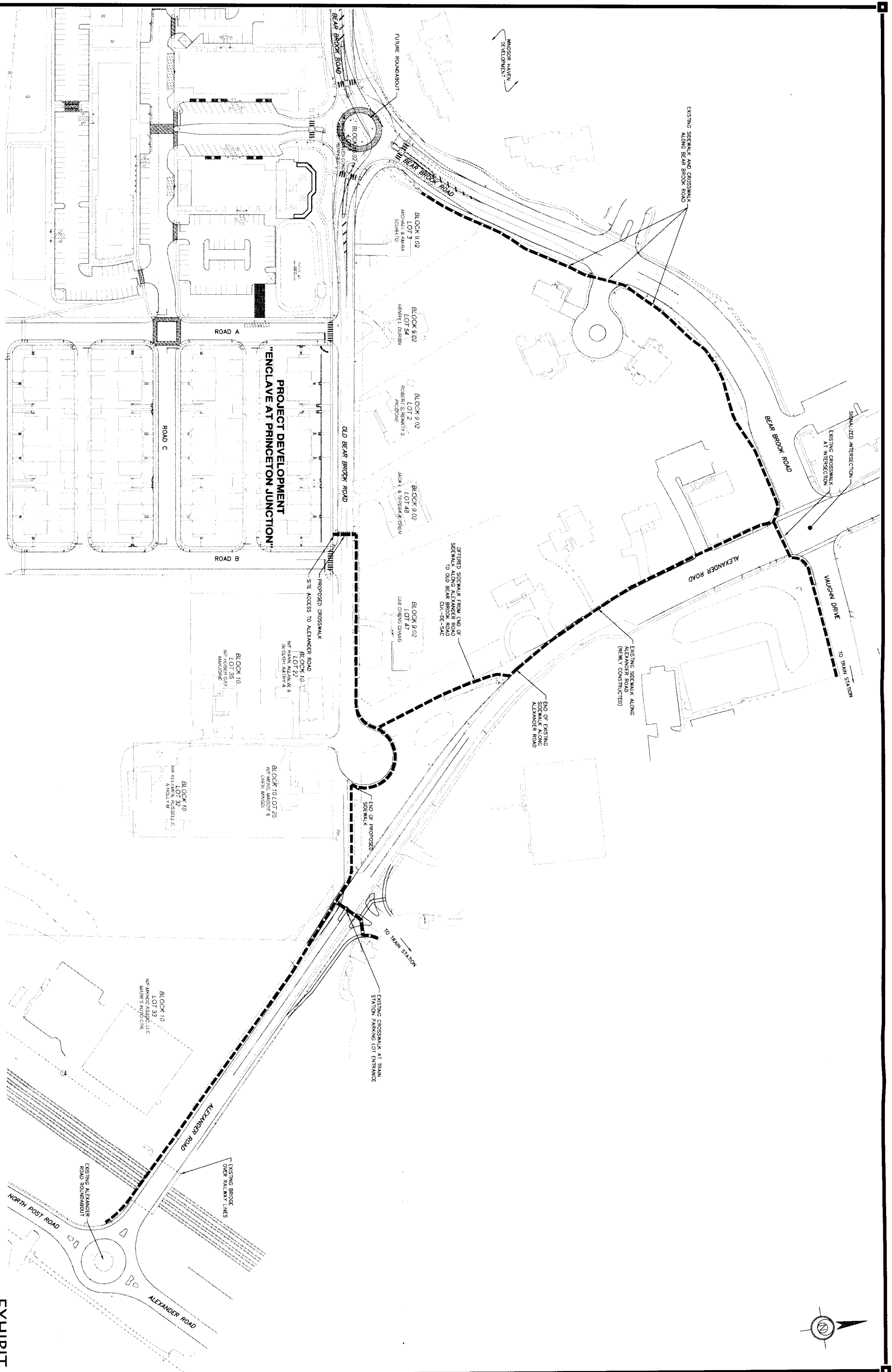
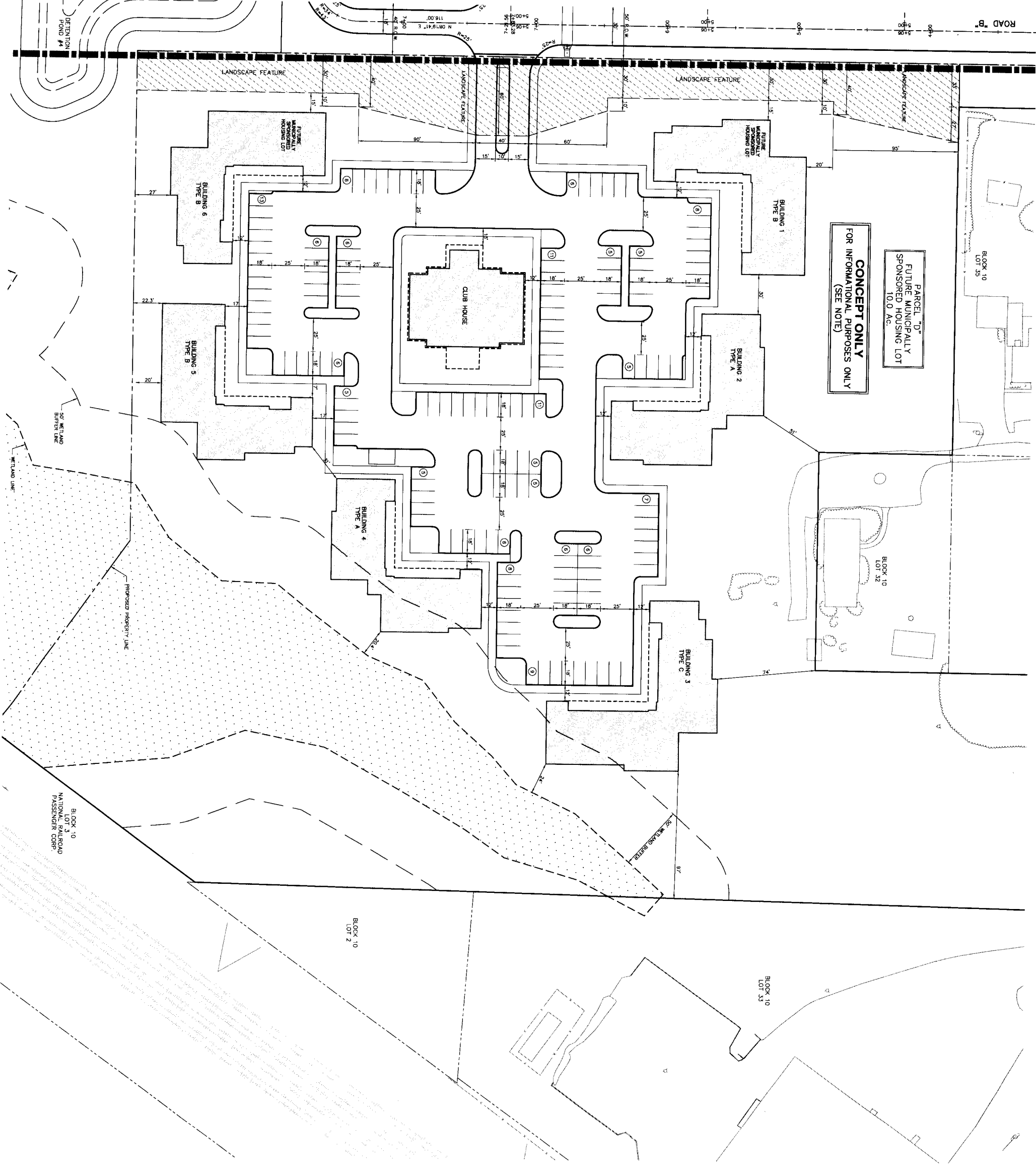


EXHIBIT
ROUTE TO TRAIN STATION
ENCLAVE AT PRINCETON JUNCTION
 TOWNSHIP OF WEST WINDSOR, MERCER COUNTY, NEW JERSEY
 SCALE: 1"=60'
 DATE: 6-28-2015 DRAWN BY: TAD

Attachment 1

MATCH LINE SEE SD05.04 FROM
PRELIMINARY / FINAL SITE PLAN SET



CONCEPT ONLY
FOR INFORMATIONAL PURPOSES ONLY
(SEE NOTE)

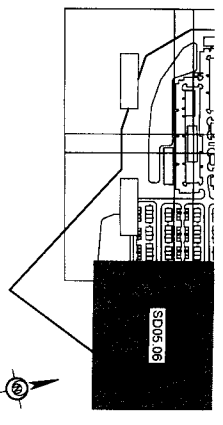
PARCEL "D"
FUTURE MUNICIPALY
SPONSORED HOUSING LOT
10.0 AC.

NOTE:
CONCEPT ONLY-FOR INFORMATIONAL PURPOSES
ALL INFORMATION SUPPLIED BY OTHERS, NOT
FOR APPROVAL PURPOSES, FUTURE SITE PLAN
APPLICATION BY OTHERS.

LEGEND

- EXISTING TREE LINE
- BUILDING SETBACK LINE
- BUILDING CENTER LINE
- STREET LINE
- PROPOSED PROPERTY LINE
- EXISTING DRIVEWAY
- PROPOSED DRIVEWAY
- PROPOSED DRIVEWAY WITH ACCESS ROAD
- OUTBOUND LINE
- TOWNSHIP BOUNDARY LINE
- PROPOSED SP-4-4P
- STOP SIGN
- HANDICAP SIGN
- YIELD SIGN
- ONE WAY SIGN
- KEEP RIGHT STRAIGHT
- PEDESTRIAN CROSSING SIGN
- NO PARKING LOADING ZONE
- NO PARKING
- STREET SIGN
- THE UNIT NUMBER
- NUMBER OF PARKING SPACES
- HANDICAP DEPRESSED CURB

KEYMAP



Attachment 2

DATE: 21.2014
SCALE: 1"=30'
DESIGNER: [Signature]
DRAWN: [Signature]

SITE LAYOUT AND DIMENSION PLAN
MUNICIPALLY SPONSORED HOUSING CONCEPT

CONCEPT
MANEELY PROPERTY
TOWNSHIP OF WEST WINDSOR, MERCER COUNTY, NEW JERSEY

REV.	DATE	DESCRIPTION	DRAWN

ESE Land Planning
Engineering
Land Surveying

ESE Consultants, Inc.
670 Spotswood
Englishtown Road
Monroe, NJ 08831
TEL: 732-446-8446
FAX: 732-446-8469

New Jersey Certificate of Authorization No. 246427999900

ANDREW J. PROFFER
REGISTERED PROFESSIONAL
NEW JERSEY
NO. GE

ATTACHMENT 3

TOWNHOME OWNER AND HOMEOWNER ASSOCIATION DEED RESTRICTION

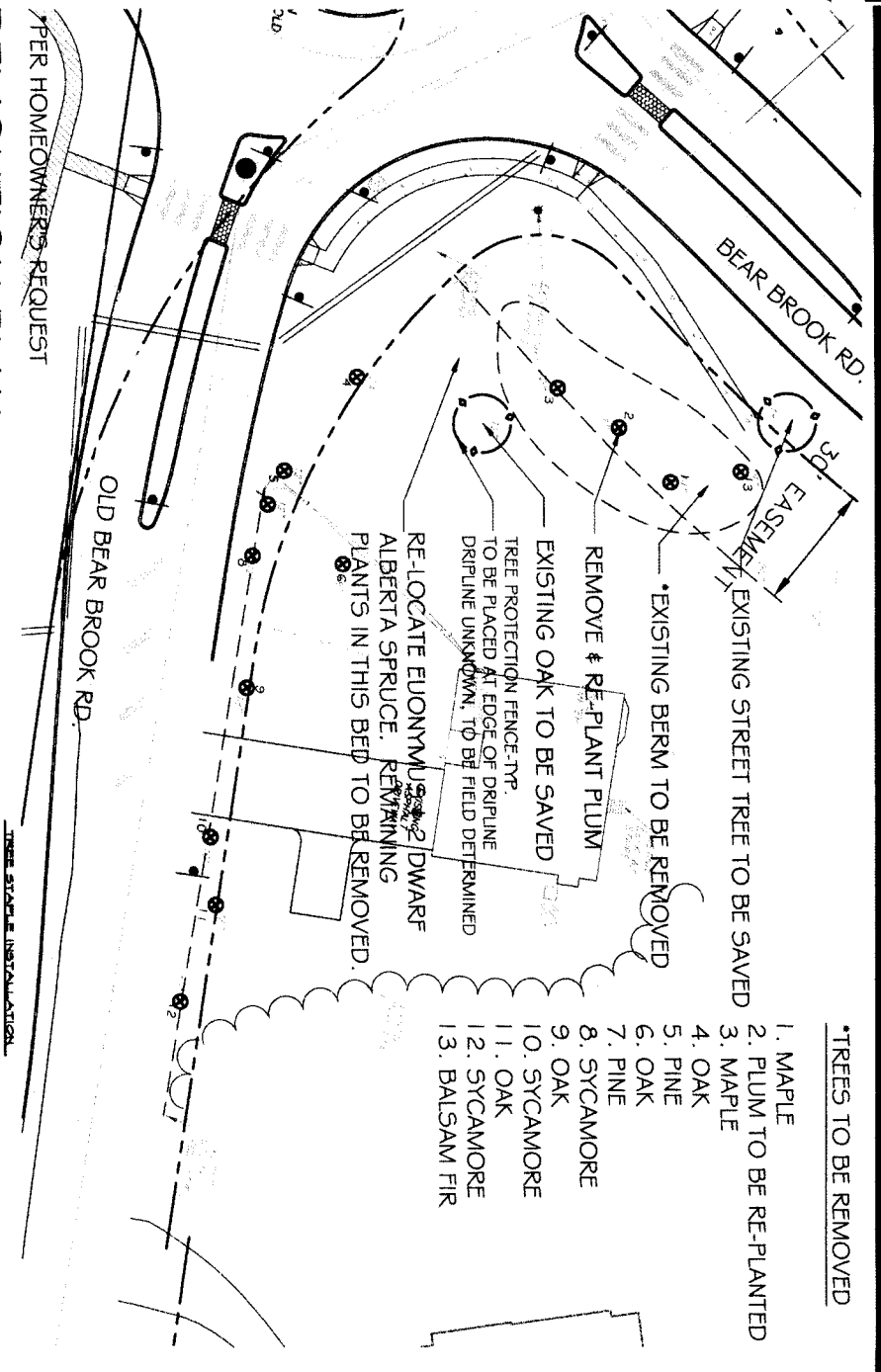
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The Township of West Windsor shall have the right to enforce the restrictions by filing an appropriate action in a court of competent jurisdiction. The Homeowners' Association and individual townhouse owners shall also have such right in addition to whatever other rights of enforcement it or they may have.

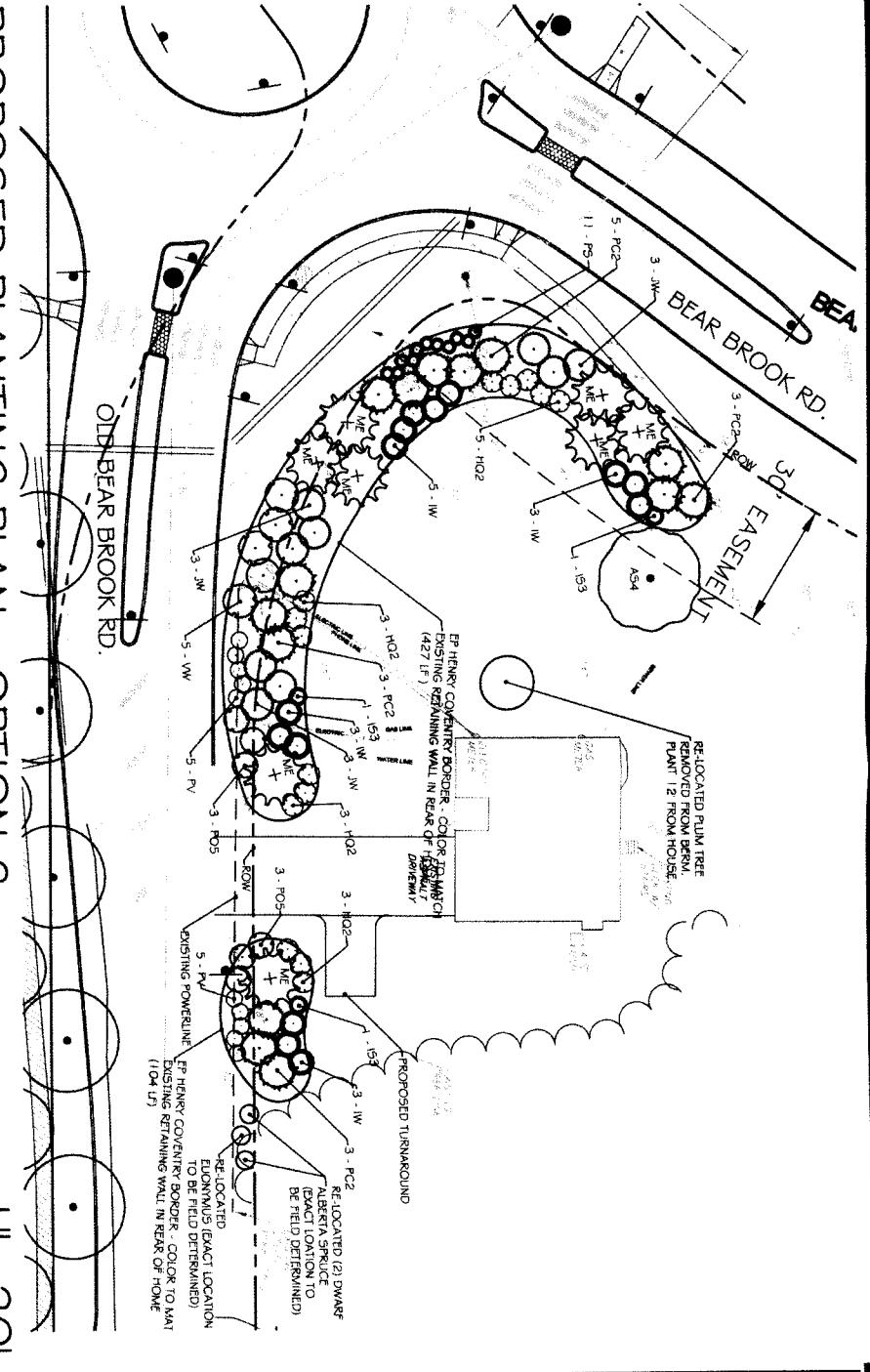
PER HOMEOWNERS REQUEST
DEMOLITION PLAN
1" = 20'



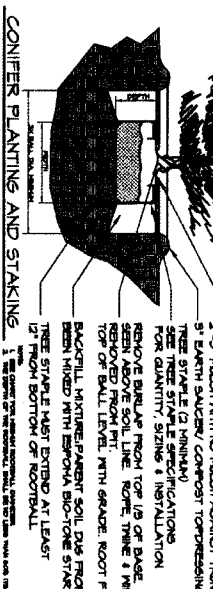
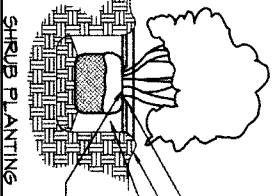
*TREES TO BE REMOVED

1. MAPLE
2. PLUM TO BE RE-PLANTED
3. MAPLE
4. OAK
5. PINE
6. OAK
7. PINE
8. SYCAMORE
9. OAK
10. SYCAMORE
11. OAK
12. SYCAMORE
13. BALSAM FIR

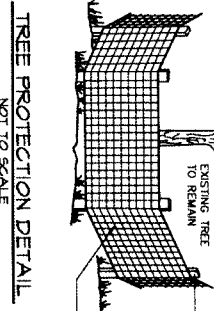
PROPOSED PLANTING PLAN - OPTION 2
PLANT SCHEDULE AMIRA
1" = 20'



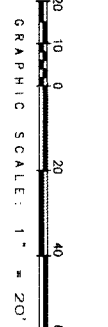
Type of Plant	Quantity	Type of Plant	Quantity
Maple	1	Maple	1
Plum	1	Plum	1
Maple	1	Maple	1
Oak	4	Oak	4
Pine	5	Pine	5
Oak	6	Oak	6
Pine	7	Pine	7
Sycamore	8	Sycamore	8
Oak	9	Oak	9
Sycamore	10	Sycamore	10
Oak	11	Oak	11
Sycamore	12	Sycamore	12
Balsam Fir	13	Balsam Fir	13



TREE STAKE INSTALLATION
Tree stakes shall be installed in the trunk of trees to be removed. The stakes shall be made of 1/2" x 1/2" x 6' steel pipe. The stakes shall be installed in the trunk of trees to be removed. The stakes shall be made of 1/2" x 1/2" x 6' steel pipe.



LANDSCAPE NOTES:
1. IN THE EVENT THAT ANY DISCREPANCIES BETWEEN THE QUANTITIES OF PLANTS INDICATED ON THE PLANT SCHEDULE AND THOSE INDICATED ON THE PLAN SHALL GOVERN.
2. PLANT MATERIAL IN THE FIELD SHOULD BE IDENTIFIED BY THE CONTRACTOR AND ACCEPTABILITY OF THE MATERIALS SHALL BE IMMEDIATELY REPORTED TO THE ARCHITECT.
3. ALL PLANTS SHALL BE PLANTED IN ACCORDANCE WITH THE AMERICAN ASSOCIATION OF NURSERYMEN, INC. (A.A.N.) 2010 RESIDENT EDITION AS PUBLISHED BY THE AMERICAN ASSOCIATION OF NURSERYMEN, INC.
4. PLANTS WITH BROKEN BRANCHES OR DAMAGED ROOT BALLS SHALL BE REJECTED. SYNETIC MATERIALS SHALL NOT BE USED FOR PLANTS TO BE PLANTED.
5. PLANTS SHALL BE PLANTED IN ACCORDANCE WITH THE AMERICAN ASSOCIATION OF NURSERYMEN, INC. (A.A.N.) 2010 RESIDENT EDITION AS PUBLISHED BY THE AMERICAN ASSOCIATION OF NURSERYMEN, INC.
6. PLANTS SHALL BE PLANTED IN ACCORDANCE WITH THE AMERICAN ASSOCIATION OF NURSERYMEN, INC. (A.A.N.) 2010 RESIDENT EDITION AS PUBLISHED BY THE AMERICAN ASSOCIATION OF NURSERYMEN, INC.
7. PLANTS SHALL BE PLANTED IN ACCORDANCE WITH THE AMERICAN ASSOCIATION OF NURSERYMEN, INC. (A.A.N.) 2010 RESIDENT EDITION AS PUBLISHED BY THE AMERICAN ASSOCIATION OF NURSERYMEN, INC.
8. PLANTS SHALL BE PLANTED IN ACCORDANCE WITH THE AMERICAN ASSOCIATION OF NURSERYMEN, INC. (A.A.N.) 2010 RESIDENT EDITION AS PUBLISHED BY THE AMERICAN ASSOCIATION OF NURSERYMEN, INC.
9. PLANTS SHALL BE PLANTED IN ACCORDANCE WITH THE AMERICAN ASSOCIATION OF NURSERYMEN, INC. (A.A.N.) 2010 RESIDENT EDITION AS PUBLISHED BY THE AMERICAN ASSOCIATION OF NURSERYMEN, INC.
10. PLANTS SHALL BE PLANTED IN ACCORDANCE WITH THE AMERICAN ASSOCIATION OF NURSERYMEN, INC. (A.A.N.) 2010 RESIDENT EDITION AS PUBLISHED BY THE AMERICAN ASSOCIATION OF NURSERYMEN, INC.



West Windsor Township, Mercer County, NJ
DATE: 08/29/2015 DRAWN BY: CDW

Scurato Property
Landscape Buffer Plan

Attachment 4

Appendix W:
Project Freedom Resolution and Deed Restrictions



WEST WINDSOR TOWNSHIP

DEPARTMENT OF COMMUNITY DEVELOPMENT
DIVISION OF LAND USE

February 22, 2017

John H. Dumont, Esq.
Dumont & Watson
600 Alexander Road, Suite 1-1
PO Box 3349
Princeton, NJ 08543-3349

RE: **PB16-09**
FREEDOM VILLAGE @ WEST WINDSOR (Project Freedom)
Preliminary/Final Major Site Plan
Block 10, Lot 8.01 (future lot 108.01)
Property Zoned: PMN District

Dear Mr. Dumont:

The West Windsor Township Planning Board adopted a Resolution of Memorialization regarding the above-referenced application at its meeting on February 8, 2017.

A copy is attached for your records.

Sincerely,

Diane Hurlburt
Planning Board Secretary

Attachment

Samuel J. Surtees, Manager, Division of Land Use
Gerald Muller, Planning Board Attorney
Marvin Gardner, Planning Board Chair
Joe Valeri, Construction Official *via email*
Steve Benner, Tax Assessor *via email*
Francis Guzik, Township Engineer, *via email*
Dan Dobromilsky, Landscape Architect *via email*
Jim Kochenour, Traffic Engineer Consultant, *via email*
Chris Jépson, Environmental Consultant, *via email*

o:\planning\pb-2016\pb16-09 project freedom\resol letter.doc

WEST WINDSOR TOWNSHIP PLANNING BOARD

_____)	FINDINGS OF FACT
In the Matter of the Application of <u>Project Freedom, Inc.</u>)	AND
(<u>Freedom Village at West Windsor</u>) for Preliminary)	CONCLUSIONS OF
and Final Major Site Plan Approval with Variances)	LAW
and Waivers)	Block 10, Lot 108.01
_____)	Approval Granted:

Be it resolved by the Planning Board of the Township of West Windsor that the action of this Board on February 8, 2017 in this matter is hereby memorialized by the adoption of this written decision setting forth the Board's findings and conclusions.

RELIEF SOUGHT AND JURISDICTION

1. The applicant filed an application with the Township in order to construct a 72 unit all-affordable development for individuals with disabilities and other low- and moderate-income persons.
2. The subject of this application is within the jurisdiction of this Board. The Board acted within the time required by law.
3. The street address of the property is Old Bear Brook Road.
4. The property is located in an area designated on the West Windsor Township Zoning Map as the PMN zoning district.

THE APPLICANT

5. The applicant has an interest in the property by virtue of an agreement with the Township, to which the subject property will be conveyed shortly by the owner. The owner has consented to the application.

NOTICE

6. The applicant obtained a list of all property owners within 200 feet of the property that is the subject of this application from the West Windsor Township tax office.

7. The applicant filed an affidavit stating that notice of the hearing was given at least ten days in advance of the hearing date to the surrounding property owners and to the public entities required to be noticed. The applicant has also filed a proof of publication confirming that newspaper publication for the hearing was made in accordance with legal requirements. Proper notice was given.

8. The notices and publication stated that the hearing would be held at the meeting of the Board scheduled for February 8, 2017.

THE HEARING

9. The public hearing on the application was heard on the date for which it was originally noticed. At the hearing, the applicant and all other interested parties were given the opportunity to present evidence and to be heard.

PLANS PRESENTED

10. At the hearing, the Board reviewed the following plans:
- A. Plans entitled "Preliminary and Final Major Site Plan, Freedom Village at West Windsor, Current: Block 10, Lot 8.01, (Future Block 10, Lot 108.01) Township of West Windsor, Mercer County, New Jersey, Tax Map #8.04, 9.03, 14.02 & 15.01" 19 Sheets total, prepared by ESE Consultants, Inc., dated November 2, 2016, revised through January 18, 2017
 - B. Plan entitled "Survey of Property, Block 10, Lot 8.01, West Windsor Township,

Mercer County, New Jersey" 1 Sheet, prepared by Taylor, Wiseman & Taylor, dated February 5, 2013, revised to October 25, 2016

- C. Plans entitled "Map of Topography — Block 10, Lot 8.01 — Maneely Site — West Windsor Township, Mercer County, New Jersey" 4 sheets total, prepared by ESE Consultants, Inc., dated April 25, 2013, revised through March 13, 2015
- D. Report entitled "Supplemental Stormwater Management Report for Freedom Village at West Windsor, Tax Maps 8.04, 9.03 & 15.01, Parcel Number, Current Block 10, Lot 8.01, (Future Block 10, Lot 108.01) Township of West Windsor, Mercer County, New Jersey, Prepared for Project Freedom, Inc., 1 Freedom Boulevard, Lawrence, New Jersey 08648" prepared by ESE Consultants, Inc., dated November 2, 2016, revised to January 17, 2017
- E. Plan entitled "Aerial Plan, Freedom Village at West Windsor, Township of West Windsor, Mercer County, New Jersey" 1 Sheet, prepared by ESE Consultants, Inc., dated Nov. 2, 2016
- F. Architectural Plans entitled "Proposed New Residential Community for Project Freedom, Inc." 14 Sheets total, prepared by Joseph F. McKiernan Jr., Architects & Associates, dated November 11, 2016
- G. Document entitled "Berm Option- Freedom Village at West Windsor, Township of West Windsor, Mercer County, New Jersey" 1 sheet, prepared by ESE Consultants, Inc., dated January 18, 2017
- H. Plan entitled "Grading Detail Plan - Preliminary and Final Major Site Plan, Freedom Village at West Windsor, Township of West Windsor, Mercer County, New Jersey, dated January 18, 2017

TOWNSHIP REPORTS

11. At the hearing, the Board considered the following reports presented by Township officials and bodies and consultants to the Board:

- Memorandum from Francis A. Guzik, P.E. to the Board dated January 31, 2017
- Memorandum from Joseph H. Burgis, P.P. to the Board dated January 31, 2017
- Memorandum from Dan Dobromilsky, PLA to the Board dated January 31, 2017
- Memorandum from James L. Kochenour, P.E. to the Board dated January 31, 2017
- Memorandum from Christopher B. Jepson, P.E. to the Board dated January 31, 2017
- Memorandum from James V.C. Yates to Chairperson, Planning Board dated January 13, 2017

- Memorandum from SPRAB to the Board, undated
- Memorandum from Jean Jacobsohn, Affordable housing Chair, to the Board dated January 30, 2017

EXHIBITS AND APPLICANT'S REPORTS

12. At the hearing, the Board considered the following reports prepared by the applicant's consultants and advisors and the following exhibits that were introduced as evidence during the course of the hearing:

- Exhibit A-1 – floor plan and elevation of one building, community room, and gazebo and four photos of Toms River Project Freedom development
- Exhibit A-2 – color-rendered site layout plan
- Exhibit A-3 – Sheet entitled “Berm Option”
- Exhibit A-4 – Sheet entitled “Window Screening”
- Exhibit A-5 – Detail of refuse enclosure
- Copy of a Freshwater Wetlands Transition Area Waiver — Averaging Plan Permit issued to Toll Brothers by NJDEP, approval date September 24, 2015, expiration date September 23, 2020
- Copy of a Flood Hazard Area Applicability Determination issued to Toll Brothers by NJDEP, dated July 22, 2016
- Copy of a Flood Hazard Area Verification Approval issued to Toll Brothers by NJDEP, dated September 15, 2015 and stamped "filed" by the Mercer County Clerk on December 10, 2015
- Copy of a Phase II Archaeological Investigation issued by NJDEP, dated June 1, 2016
- Color photographs showing the shed, gravel drive and light post utilized by the owners of Block 10, Lot 32 that encroach onto the subject property;
- Document entitled "Fire Truck Maneuverability — Freedom Village at West Windsor", consisting of three sheets: "Pathway 1", "Pathway 2" and "Pathway 3", dated January 12, 2017
- Document entitled "Garbage Truck Maneuverability — Freedom Village at West Windsor", consisting of one sheet, dated January 12, 2017
- Development Application Package including:

- Development Application
- Site Plan Checklist
- West Windsor Township Green Development Practices Checklist

TESTIMONY AND PUBLIC INPUT

13. The testimony presented by and on behalf of the applicant and advice by Board consultants were given by the following persons:

John H. Dumont, Esq. represented the applicant. Andrew J. Grover, P.E., its civil engineer; Joe McKernan, its architect; and Tracie Battis, its Director of Housing and Development, testified on the applicant's behalf.

The following Township staff and professionals gave advice to the Board: Francis A. Guzik, P.E., Joseph Burgis, Dan Dobromilsky, James L. Kochenour, P.E., Christopher Jepson, P.E., and Gerald J. Muller.

14. The statements of the members of the public made during the course of the hearing may be summarized as follows: One member expressed concern about traffic and the necessity for sound attenuation given train horn soundings nearby. Two members expressed support for the development.

FINDINGS AND CONCLUSIONS RE: PRELIMINARY AND FINAL MAJOR SITE PLAN

15. Nature of application. The subject property is a 10.024 acre parcel fronting on what is designated as Road "B" on the approved Toll Brothers site plan and on Old Bear Brook Road. It is part of a larger 45.77 acre parcel known as the Maneely tract, for which major subdivision and site plan approval was granted on October 21, 2015. The site plan approval was for a mixed use development consisting of retail space, corporate suites, apartments with an affordable housing component, and townhouses on the entire tract other than the subject property. The subdivision plat has been filed.

16. The applicant proposes to construct 72 low- and moderate-income units, at least half of which will be low-income and at least 13 percent of which will be very-low income, conforming to the requirements of the Uniform Housing Affordability Controls, *N.J.A.C. 5:80-26.1 et seq.*, and applicable provisions of the New Jersey Council on Affordable Housing. One

quarter of the units will be rented by the Department of Human Services for disabled low- and moderate-income individuals, and the remainder will be open to low- and moderate-income households that do not have members with disabilities. As per Federal law, applicants in need of mobility devices are given a priority over households without members in need of mobility devices for the remaining 54 units.

17. The proposed development replicates a built Project Freedom development in Hopewell Township, with six two-story apartment buildings that enclose parking and a 5,232 square foot community center containing a multi-purpose room with kitchen attached, four offices, and a conference room. Other site amenities include park benches and a gazebo. Attendant site improvements are provided for.

18. Section 200-194.2L(3) requires that all buildings in the PMN District be set back a minimum of 50 feet from any existing residential lot not separated by a public road if adequate buffering, as determined by the Planning Board, is provided and 75 feet if it is not provided. While the 75 foot setback will be exceeded for most of the buildings and existing lots, and existing trees will be preserved in many of these areas, the northeast corner of proposed Building No. 2 will be set back exactly 50 feet from the corner of existing Lot 32 and a 60 foot portion of Building No. 3 will be set back at a range between 56 and 70 feet from existing Lot 32. The Board finds that an adequate buffer, discussed below and the subject of Condition 23d, will be provided and that the set back therefore need not be greater than 50 feet.

19. The only site plan issue of import relates to buffer of abutting Lot 32. The applicant has proposed two landscape alternatives. One utilizes only landscaping, while the second, the Berm Option, incorporates a berm with a height of approximately 6 feet. The Board determined that the landscaping with the berm, shown on Exhibit A-3 should be installed, and Condition 23d so provides.

20. Conclusion re site plan approval. The Board finds that, with the waivers granted and conditions imposed, the applicant has met all Township site plan standards. Preliminary and final site plan approval, accordingly, is granted.

FINDINGS AND CONCLUSIONS RE: VARIANCES

21. The application necessitates seven variances. The variances and the Board's action on them are as follows.

a. Variations: From Section 200-194.2L(1)(d)[2][b] and [c], which require a build-to line on internal streets of 15 feet and a maximum front yard of 20 feet, while the building adjacent to Road “B” is a variable distance from that internal street, with the closet distance being 45 feet.

Variations granted: The setback of the building is a function of the landscape berm on the western edge of the property that was required as part of the site plan approval of the Toll Brothers mixed use development on the remainder of the Maneely tract. The result is a design that will buffer the proposed development from the townhome section of the Toll project, providing a landscaped view instead of a view of roadways and buildings. Granting the variance furthers Municipal Land Use Law purpose a, in that it permits the appropriate development of the site; g, in that it permits the open space represented by the landscape berm to be situated in an appropriate location; and i, in that it promotes a desirable visual environment. There are substantial benefits in the granting the variance, by breaking up a site to be developed with landscaping so as to enhance the visual environment for both the proposed development and the townhome section of the Toll project while creating no detriments. The flexible “c” criteria have therefore been satisfied.

The negative criteria have been satisfied as well. For the reasons given, there is no substantial detriment to the public good, in that the adjacent residential neighborhood will benefit from rather than be burdened by the landscape berm. Nor is there a substantial impairment of the intent and purpose of the zone plan and zoning ordinance in that the concept of a mixed use neighborhood with a municipally-sponsored affordable housing development is respected. The negative criteria are therefore satisfied as well.

Accordingly, the two variations requested are granted.

b. Variations: From Section 200-194.2O, which provides that the sign standards in Section 200-258D apply, and from Section 200-258D, which does not permit directional signs and which, as per subsection (d), permits only one monument sign with a sign area no greater than 30 square feet, and only if the buildings are set back more than 50 feet from the right-of-way, while the applicant proposes two monument signs and a directional sign.

Variations granted: The applicant proposes one monument sign at the southeasterly corner of the intersection of Old Bear Brook Road and proposed Road “B” and a

second at the southeasterly corner of the entrance drive opposite Road “D.” The sign area, including the base for each monument sign, is 31.5 square feet. A directional sign is also proposed, located along the easterly side of Road “B” across from Road “C.” Since Project Freedom is tucked into a rear portion of the Maneely tract and will not be visible from Old Bear Brook Road, it is important to have a monument sign at the intersection of Old Bear Road and Road “B” and a second at the entrance to the development so that travelers can find the site. The signs are suitably sized. The directional sign is an additional way finding aid.

The positive flexible “c” criteria are satisfied. Municipal Land Use Law purpose a, to encourage the appropriate development of land, is furthered, since all three signs are part and parcel of a development that will provide valuable services to the community and for which proper signage to direct visitors to the site is essential. The benefits of the signage as sized are substantial, since without them travelers will have difficulty locating the development, and the detriment, an additional element on Bear Brook Road, is minimal. The benefits therefore substantially outweigh the detriments.

The negative criteria are satisfied as well. There is no substantial detriment to the public good for the reasons given above. Indeed, the public good will be furthered. Nor is there any substantial impairment of intent and purpose of the zone plan and zoning ordinance. The zone plan will be furthered by making the affordable housing development, an essential feature of the PMN district, more workable.

Accordingly, the three signage variances are granted.

c. Variances: From Section 200-194.2L (1)(d)[2][f], which requires a distance of at least 75 feet between buildings with a window wall to window wall structure arrangement, while the distance between Buildings Nos. 1 and 2 and between Buildings No. 5 and 6, all of which have side window walls, is dimensioned at 30.5 feet.

Variances granted: For each of these type “B” buildings, the floor plans are arranged so that only one bedroom window will face another window, thus limiting to a considerable extent privacy issues when window walls face window walls.

The applicant has satisfied the flexible “c” standards. Municipal Land Use Law purpose a is satisfied, since the applicant is proposing a well designed project that satisfies an important need for affordable units, including those available to persons with disabilities, and

requiring a full 75 foot distance would substantially reduce the number of units. While there are detriments for the privacy reasons given above, they will be significantly mitigated by the landscaping required by Condition 23e and substantially outweighed by the benefits. The flexible “c” positive criteria have thus been satisfied.

The negative criteria have also been satisfied, as the public good the proposed development will yield is substantial, and the detriment from the proximity of window wall to window wall, especially with the landscaping, is not great. Nor is there a substantial impairment of the intent and purpose of the zone plan and zoning ordinance, which contemplates the 72 unit all-affordable development proposed.

Accordingly, the two variances are granted.

FINDINGS AND CONCLUSIONS RE: WAIVERS

22. The application necessitates 11 waivers. The waivers and the Board’s action on them are as follows.

a. Waiver: From Section 200-29M(3), which requires that parking bays be separated from access or circulation drives by 10 foot wide curbed islands for the full width of the bay at the ends of rows, while the applicant proposes to stripe the areas at the ends of the bays in nine locations instead of installing landscape islands.

Waiver granted: The striped end peninsulas are proposed to serve a functional purpose, namely, the likelihood that a high percentage of persons needing less restricted access to vehicle doors for wheel chairs or other walking assistance could be anticipated for parking at these sites, given that the development is intended to serve persons with disabilities, among others. Because of these exceptional circumstances, the waiver request is reasonable and comes within the general purpose and intent of the island provision, which is to separate the parking bays from access drives. Literal enforcement of the provision would be impracticable given the needs of the population the development will serve. The waiver, accordingly, is granted.

b. Waiver: From Section 200-28D(1)(d), which in this instance requires two loading spaces, while none have been provided.

Waiver granted: This is not the type of facility that will be serviced by trucks needing loading docks or other loading areas. Deliveries will be handled by box trucks and vans. Given this, the waiver request is reasonable and comes within the general purpose and intent of the ordinance loading provisions, which are intended to provide for loading areas when it is important to have them. Literal enforcement of the ordinance provision would be impracticable in that it will necessitate use of space that would most likely result in the loss of units. The waiver is therefore granted.

c. Waiver: From Section 200-57E, which requires sight triangles at intersections, while the applicant has proposed sight triangles that meet AASHTO, but not Township, standards.

Waiver granted: The AASHTO standard is sufficient, adequately providing for sufficient sight distances. Given this, the waiver request is reasonable and comes within the intent and purpose of the ordinance sight triangle provision, since functional sight triangles will be provided. Literal enforcement of the ordinance provision would be impracticable because it will necessitate a redesign that may result in a loss of units. The waiver request, accordingly, is granted.

d. Waiver: From Section 200-29G, which requires an average illumination level of 0.5 foot-candles throughout the parking area, while the applicant has proposed an average of 1.0 foot-candle.

Waiver granted: Because a number of the residents will have disabilities, including mobility constraints, it is important that the parking lot at night be well lit to avoid injuries. Given this, the waiver request is reasonable and comes within the intent and purpose of the illumination provision of the ordinance, which is to require sufficient illumination, but no more than is necessary. Literal enforcement of the ordinance provision would be impracticable because it could create conditions for persons with mobility issues that are less than optimal. The waiver request, therefore, is granted.

e. Waiver: From Section 200-31K, which requires 3.0 foot-candles at intersections, while the applicant has proposed the same fixture as at the Enclave at Princeton Junction, which will be slightly less than 3.0-foot candles.

Waiver granted: The purpose of the intersection lighting plan is to provide sufficient lighting without having an adverse impact on the Enclave townhouses. The waiver request is therefore reasonable and comes within the intent and purpose of the ordinance provision because adequate intersection lighting will be provided without adversely impacting the adjacent townhouses. Literal enforcement of the ordinance provision will be impracticable because the adjacent residential units cannot be adequately protected from light glare. The waiver request, accordingly, is granted.

f. Waiver: From Section 200-13C3(q), which requires that the location of all outdoor lighting, both freestanding and on buildings, be shown on the plans, while the plans do not show building-mounted entrance lights.

Waiver granted with condition: The applicant will provide the on-building lighting, showing lighting at the front entrance, and the waiver is therefore for a deferral of this submission. The lighting planned will have little impact on the adjacent townhouses, and any that will create spillover will be shielded. The waiver request is therefore reasonable and comes within the intent and purpose of the ordinance provision because the front entrance lighting will be sufficient and, with the Township Engineer's review, will be designed so as to avoid light spillover. Literal enforcement of the ordinance provision would work an undue hardship on the applicant because it would require denial of the application when all the pertinent information will be supplied to the Township. The waiver request, accordingly, is granted. As per condition 23x, however, the lighting plans must be submitted for Township Engineer review.

g. Waiver: From Section 200-13C4, which requires an environmental impact statement, while an environmental impact statement has not been submitted by the applicant.

Waiver granted with condition: Toll Brothers submitted an EIS for the entire Maneely tract, including the property that is the subject of this application. There is no point in the applicant submitting a separate one, and the waiver request is therefore reasonable. It comes within the intent and purpose of the EIS ordinance provision in that an EIS has in fact been submitted. Literal enforcement of the ordinance provision will work an undue hardship on the applicant because it is a not-for-profit developer and monies for affordable housing development are extremely tight. Rather than expending them on a redundant document, they could better be used for affordable housing purposes. The waiver request is therefore granted.

As per Condition 23aa, however, copies of the original EIS prepared for the Toll application, PB14-10, must be submitted by the applicant.

h. Waiver: From Section 200-13C6, which requires a traffic report, while the applicant has not submitted its own traffic report.

Waiver granted with condition: Toll also submitted a traffic report for the entire tract, and a separate one for the subject property it is therefore unnecessary. The waiver request is reasonable and comes within the intent and purpose of the ordinance provision, since a traffic report has in fact been submitted. As noted above, literal enforcement of the ordinance provision will work an undue hardship on the applicant because it is a not-for-profit developer and monies for affordable housing development are extremely tight. They should be used for affordable housing purposes. The waiver request is therefore granted. As per Condition 23bb, however, the Toll traffic report must be submitted by the applicant.

i. Waivers: From Section 200-13C11 and 200-14C1(b)(6), which require a traffic signage plan with applications for preliminary and final site plan approval respectively, while a traffic signage plan has not been submitted.

Waivers granted: Traffic signage and striping areas are shown on the site layout and dimension plans. While the Board would normally require a separate traffic signage plan as well, the applicant, as noted above, is a not-for-profit developer and that monies for affordable housing development are limited and could be better spent on the development. Given the fact that the appropriate traffic information has in fact been submitted, the waiver request is reasonable and comes within the ordinance intent and purpose. Requiring a separate traffic signage plan would work an undue hardship on the applicant for the reasons given. The waiver requests are, accordingly, granted.

j. Waiver: From Section 200-14C1a, which requires a copy of the preliminary approval resolution, while such has not been submitted.

Waiver unnecessary: As this is an application for both preliminary and final approval and there is no prior preliminary approval, a resolution cannot be provided.

CONDITIONS REQUIRED

23. The Board finds that, in order to address the concerns expressed during the course of the hearing and to limit the relief to that reasonably necessary to satisfy the applicant's legitimate requirements, the relief granted is subject to the following conditions:

Affordable housing

- a. All of the units shall be available to low- and moderate-income households and shall meet the standards set forth in the Uniform Housing Affordability Controls, *N.J.S.A. 5:80-26.1 et seq.*, and, to the extent applicable, the regulations of the New Jersey Council on Affordable Housing.
- b. At least half of the units shall be made available to low-income households, including very-low income households, and at least 13 percent of the total number of units shall be made available to very-low income households earning no more than 30 percent of the median household income in COAH's Housing Region IV.
- c. A deed restriction governing all affordability requirements for the units shall be subject to the review and approval of the Board Attorney and be recorded by him.

Landscaping and site amenities

- d. The applicant shall install the landscaping alternative that includes the berm and fence as shown on Exhibit A-3.
- e. The landscape plan shall show the plantings indicated on Exhibit A-4.
- f. The proposed landscaping shall be changed as follows:

- (1) The *Psuedotsuga menziesii*, Douglas Fir trees, shall be changed to other evergreen tree species that are not susceptible to needlecast or other pests

and diseases that are currently prevalent in this area. *Abies concolor*, White fir; *Thuja plicata*, Green Giant Arborvitae; and *Ilex attenuate*, Nellie Stevens Holly, are alternate selections to consider. The modification shall be subject to the review and approval of the Township Landscape Architect.

- (2) Understory trees specified for parking lot and walk areas (Serviceberry and Plum) shall be specified as single stem and tree form to avoid branching conflicts with vehicles and pedestrians.
 - (3) The proposed *Thuja occidentalis*, Emerald Green Arborvitae, shall be changed to a species of evergreen tree that is less susceptible to deer foraging. The modification shall be subject to the review and approval of the Township Landscape Architect.
- g. The landscape plan shall be amended to clearly indicate the limits of turfgrass, meadow, mulch beds, and leaf litter edges.
- h. A mow strip treatment shall be specified for portions of the building facade that will not be planted along the base of the building.
- i. Exterior building hose bibs for watering shall be indicated.
- j. Some of the accessory elements or structures are not clearly detailed or may require modification to match Township standards as follows:
- (1) The proposed board on board fence refuse enclosure and gates are typically not durable, frequently failing within a very short time after construction. An enclosure and gates made of wood with metal corners and galvanized posts as per Exhibit A-5 shall be provided.
 - (2) Planting that coordinates with the enclosure and overall landscape plan shall be provided and shall be subject to the review and

approval of the Township Landscape Architect.

- (3) The location of all utility meters and mechanical equipment (HVAC) shall be depicted on the plans with appropriate screening that is subject to the review and approval of the Township Landscape Architect.
 - (4) A wider paved pad adjacent to the sitting benches shall be provided to accommodate wheelchairs so as to avoid the sidewalks being blocked.
- k. An on-site review of the proposed clearing limits shall be conducted with Township staff before the plans are finalized to determine if any particular trees should be preserved or removed.
- l. The final landscape plan is subject to the review and approval of the Township Landscape Architect.

Access and circulation

- m. The detailed grading plan for accessible ramps for each of the buildings shall be incorporated into the overall plan set, and the following information shall be provided with respect thereto:
- (1) Additional spot grades shall be provided to establish compliant landings at the top of all ramps.
 - (2) Additional grading detail at the interface of the concrete ramp and brick pavers at the clubhouse shall be provided.
 - (3) The applicant shall integrate a concrete flair to eliminate the need to warp the paver grades or otherwise disconnect the two surfaces in this area or shall provide such other mechanism as is acceptable to the Township Engineer that will achieve the same result.

- n. Sight triangles shall be shown on the Landscape Plan in accordance with the current edition (2011) of AASHTO's A Policy on Geometric Design of Highways and Streets.
- o. The sight triangle along Road "B" is to be based on the design speed of 30 mph, assuming a posted speed of 25 mph along Road "B."
- p. The proposed dumpster in front of Building 6 shall be shown on the Landscape Plan in the same location as it is shown on the Site Layout and Dimension Plan (Sheet 5 of 19).
- q. Notes 10 and 17 on the Landscape Plan shall be reconciled.
- r. The applicant shall discuss with Toll Brothers a cross-maintenance agreement with The Enclave at Princeton Junction Homeowners' Association or Toll Brothers, as the case may be, for Road "B."

Storm water management

- s. The applicant shall enter into a cross-maintenance agreement for the storm water BMPs with the owner of the downstream retention basin, which will be either the Enclave HOA or Toll Brothers, depending on the timing of approvals and construction.
- t. The proposed storm water onsite collection system shall be maintained by the applicant. The applicant's engineer shall prepare a maintenance document outlining the required inspection and maintenance activities, as well as the required frequency of same, for use by Project Freedom maintenance staff.
- u. Because the applicant's storm water management design is dependent upon the status and sequence of construction of the Enclave project, no site work associated with this application may commence until Pond No. 4 within the Enclave development property is constructed and operational.

- v. If the Berm Option is chosen for the landscape buffer with Lot 32, any revisions to the berm shall be made so as to maintain the existing drainage and shall be subject to the review and approval of the Township Engineer.

Lighting

- w. The proposed fixtures, hours, and means of accomplishing the shutting off or reduction in light intensity overnight shall be indicated on the site lighting plan and shall be subject to the approval of the Township Engineer.
- x. The applicant shall provide an on-building lighting plan subject to the review and approval of the Township Engineer.

General

- y. The applicant shall show on the plan the future location near the Community Center for back-up generators.
- z. As the project goes forward, the applicant shall consider greater use of green development design and construction options that can be found in the West Windsor Green Development Checklist.
- aa. A copy of the original EIS prepared for the Toll Brothers application, PB14-10, shall be submitted by the applicant.
- bb. The traffic report prepared by Toll Brothers for PB10-14 shall be submitted by the applicant.
- cc. The applicant shall, to the extent required, secure approval of the NJDEP for treatment works approval, Mercer County Planning Board, Delaware & Raritan Canal Commission,

Mercer County Soil Conservation Service, and other governmental entities with jurisdiction over the development of the subject property.

- dd. A construction cost estimate shall be submitted by the applicant's engineer for review and approval by the Township Engineer for determination of performance guarantee and inspection fee amounts. The applicant shall post performance guarantees and inspection fees in an amount as determined by the Township Engineer.
- ee. The applicant shall execute a land development performance guarantee agreement in a form satisfactory to the Township Council and shall post such performance and maintenance guarantees as are required.
- ff. All real estate taxes and escrow and inspection fees and required deposits therefor must be paid and maintained as current, and no zoning permits or certificates of occupancy shall be issued if property taxes and escrow and inspection fees and required deposits therefor are not current.
- gg. All marked exhibits shall be transferred to the Division of Land Use office prior to issuance of a building permit.
- hh. All plan revisions shall be subject to the review and approval of such Township professionals as are designated by the Manager of Land Use unless otherwise designated herein.
- ii. All instruments required to be recorded hereby shall be provided to the Planning Board Attorney for recordation.
- jj. As per Ordinance section 200-81.1 the applicant will be required to provide, via both hard copy and in electronic format, approved site plans being submitted for signature and as-built surveys upon project completion should this project be approved and constructed.

CONCLUSION

Based on the foregoing, the Board at its February 8, 2017 meeting voted to approve the plans with revisions made therein and as supplemented and modified by the exhibits and to grant the relief identified above subject to the conditions and to be revised in accordance with the conditions set forth herein.

This resolution of memorialization was adopted on February 8, 2017 by a vote of who voted to grant the relief sought by the applicant.

The date of decision shall be February 8, 2017 except that the date of the adoption of this memorializing resolution is the date of decision for purposes of (1) mailing a copy of the decision to the applicant within 10 days of the date of the decision; (2) filing a copy of the decision with the administrative officer; and (3) publication of a notice of this decision. The date of the publication of the notice of decision shall be the date of the commencement of the vesting protection period.

We do hereby certify that the foregoing resolution was adopted by the Planning Board at its regular meeting held on February 8, 2017 memorializing formal action taken by the Board on February 8, 2017.


Marvin Gardner, Planning Board Chair


Diane Hurlburt, Administrative Secretary

Marvin Gardner, Chair – Yea
Michael Karp, Vice-Chair – Yea
Sue Appelget – Absent
Ayesha Hamilton – Yea
Shing-Fu Hsueh – Yea
Michael Huey – Yea
Andrew Kulley – Yea
Robert Loverro – Yea
Simon Pankove – Absent
Eric Payne, Alternate 1 – Yea
Anis Baig, Alternate 2 – Yea

Freedom Village Findings of Fact 2/16/17

LAW OFFICES
MILLER PORTER & MULLER, P.C.
Suite 540
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Princeton, New Jersey 08542

William Miller (1913-1977)
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Gerald J. Muller

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Fax (609) 497-1439
e-mail address: gmuller@mpmglaw.com

July 23, 2018

Ms. Gay Huber, Clerk
West Windsor Township
Municipal Building
271 Clarksville Road
Post Office Box 38
Princeton Junction, NJ 08550

Re: Project Freedom, West Windsor

Dear Gay:

Enclosed is the recorded Deed Restriction for Project Freedom.

Sincerely,


Gerald J. Muller

GJM:rsd

Enclosures

cc: Mr. Samuel J. Surtees (via electronic transmission)
Ms. Darlene Green (via electronic transmission)
Ms. Lisa Komjati (via electronic transmission)



INSTR # 2018020411
 D BK 6327 PG 119 Pgs 119 - 126; (8 Pgs)
 RECORDED 05/17/2018 01:29:59 PM
 PAULA SOLLAMI COVELLO, COUNTY CLERK
 MERCER COUNTY, NEW JERSEY

Mercer County Clerk Recording Data Page
Paula Sollami Covello Esq
Mercer County Clerk

Official Use Only - Realty Transfer Fee

Date of Document 4/05/2018	Type of Document DEED
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First Party Name TOWNSHIP OF WEST WINDSOR	Second Party Name PROJECT FREEDOM AT WEST WINDSOR URBAN RENEWAL, LP
--	--

Additional Parties

THE FOLLOWING SECTION IS REQUIRED FOR DEEDS ONLY

Lot 108.01	Block 10
Municipality WEST WINDSOR	Consideration 1.00
Mailing Address of Grantee 1 FREEDOM BLVD, LAWRENCEVILLE, NJ 08648	

THE FOLLOWING SECTION IS FOR ORIGINAL MAORTGAGE BOOKING AND PAGING INFORMATION FOR ASSIGNMENTS, RELEASES, SATISFACTIONS, DISCHARGES AND OTHER MORTGAGE AGREEMENTS ONLY

Original Book NA	Original Page NA
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DD5 Spg # 103.00

APPENDIX E-2

MANDATORY DEED RESTRICTION FOR RENTAL PROJECTS

Deed Restriction

**DEED-RESTRICTED AFFORDABLE HOUSING
PROPERTY WITH RESTRICTIONS ON RESALE
AND REFINANCING**

To Rental Property
With Covenants Restricting Rentals, Conveyance and Improvements
And Requiring Notice of Foreclosure and Bankruptcy

THIS DEED RESTRICTION, entered into as of this the 5 day of April 2016 by and between the Township of West Windsor, a municipal corporation of the State of New Jersey, having an address of 271 Clarksville Road, PO Box 38, West Windsor, NJ 08550, and Project Freedom at West Windsor Urban Renewal, L.P. a New Jersey limited partnership having offices at 1 Freedom Boulevard, Lawrenceville, New Jersey 08648 the developer/sponsor (the "Owner") of a residential low- or moderate-income rental project (the "Project"):

WITNESSETH

Article 1. Consideration

In consideration of benefits and/or right to develop received by the Owner from the Municipality regarding this rental Project, the Owner hereby agrees to abide by the covenants, terms and conditions set forth in this Deed restriction, with respect to the land and improvements more specifically described in Article 2, hereof (the Property).

Article 2. Description of Property

The Property consists of all of the land and the improvements thereon that are located in the municipality of West Windsor, County of Mercer, State of New Jersey, and described more specifically as Block No. 10 Lot No. 108.01 as shown on the Tax Map of the Township of West Windsor and more fully described in "Schedule A," annexed hereto.

Article 3. Affordable Housing Covenants

The following covenants (the "Covenants") shall run with the land for the period of time (the "Control Period"), determined separately with respect for each dwelling unit, commencing upon the later of the date

hereof or the date on which the first Certificate of Occupancy is issued, and shall expire 45 years later (the "Control Period").

In accordance with N.J.A.C. 5:80-26.11, each restricted unit shall remain subject to the requirements of this subchapter during the Control Period. A restricted unit must remain subject to the requirements of this subchapter for the Control Period; provided, however, that:

1. Units located in high-poverty census tracts shall remain subject to these affordability requirements for a period of at least 10 years; and
 2. Any unit that, prior to December 20, 2004, received substantive certification from COAH, was part of a judgment of compliance from a court of competent jurisdiction or became subject to a grant agreement or other contract with either the State or a political subdivision thereof, shall have its control period governed by said grant of substantive certification, judgment or grant or contract.
- A. Sale and use of the Property is governed by regulations known as the Uniform Housing Affordability Controls, which are found in New Jersey Administrative Code at Title 5, chapter 80, subchapter 26 (N.J.A.C. 5:80-26.1, *et seq.*, the "Uniform Controls").
 - B. The Property shall be used solely for the purpose of providing rental dwelling units for low- or moderate-income households, and no commitment for any such dwelling unit shall be given or implied, without exception, to any person who has not been certified for that unit in writing by the Administrative Agent. So long as any dwelling unit remains within its Control Period, sale of the Property must be expressly subject to these Deed Restrictions, deeds of conveyance must have these Deed Restrictions appended thereto, and no sale of the Property shall be lawful, unless approved in advance and in writing by the Administrative Agent. At least 13 percent of the dwelling units shall be made available to very low-income households, at least 37 percent of the dwelling units shall be made available to low-income households, and the remaining dwelling units shall be made available to moderate-income households.
 - C. No improvements may be made to the Property that would affect the bedroom configuration of any of its dwelling units, and any improvements to the Property must be approved in advance and in writing by the Administrative Agent.
 - D. The Owner shall notify the Administrative Agent and the Municipality of any foreclosure actions filed with respect to the Property within five (5) business days of service upon Owner.
 - E. The Owner shall notify the Administrative Agent and the Municipality within three (3) business days of the filing of any petition for protection from creditors or reorganization filed by or on behalf of the Owner.
 - F. The Administrative Agent shall initially be Piazza & Associates.

Article 4. Remedies for Breach of Affordable Housing Covenants

A breach of the Covenants will cause irreparable harm to the Administrative Agent, to the Municipality and to the public, in light of the public policies set forth in the New Jersey Fair Housing Act, the Uniform Housing Affordability Control rules found at N.J.A.C. 5:80-26, and the obligation for the provision of low and moderate-income housing.

- A. In the event of a threatened breach of any of the Covenants by the Owner, or any successor in interest of the Property, the Administrative Agent and the Municipality shall have all remedies provided at law or equity, including the right to seek injunctive relief or specific performance.
- B. Upon the occurrence of a breach of any Covenants by the Grantee, or any successor in interest or other owner of the Property, the Administrative Agent and the Municipality shall have all remedies provided at law or equity including but not limited to forfeiture, foreclosure, acceleration of all sums due under any mortgage, recouping of any funds from a sale in violation of the Covenants, diverting of rent proceeds from illegal rentals, injunctive relief to prevent further violation of said Covenants, entry on the premises, those provided under Title 5, Chapter 80, Subchapter 26 of the New Jersey Administrative Code and specific performance.

[Intentionally Left Blank – Signature Pages to Follow]

IN WITNESS WHEREOF, the Township and the Owner have executed this Deed Restriction in triplicate as of the date first above written.

Project Freedom at West Windsor Urban
Renewal, L.P.
By: West Windsor Freedom Properties, Inc.
its General Partner

By: Timothy J. Doherty

TOWNSHIP OF WEST WINDSOR, a
municipal corporation of the State of New
Jersey

By: Hemanth Marathe
Name: Hemanth Marathe
Title Mayor

ACKNOWLEDGEMENTS

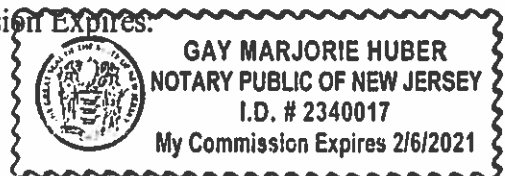
STATE OF NEW JERSEY)
) SS:
COUNTY OF Mercer)

I CERTIFY that on this 5 day of April, 2018, before me, the subscriber, personally appeared Timothy J. Doherty, President of West Windsor Freedom Properties, Inc. acting as General Partner of Project Freedom at West Windsor Urban Renewal, LP who I am satisfied is the person who executed the foregoing instrument and who acknowledged that he in such capacity, being authorized to do so, executed the foregoing instrument as President of West Windsor Freedom Properties, Inc. as General Partner and on behalf of Project Freedom at West Windsor Urban Renewal, LP as its voluntary act and deed for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Gay Marjorie Huber
Notary Public

My Commission Expires:

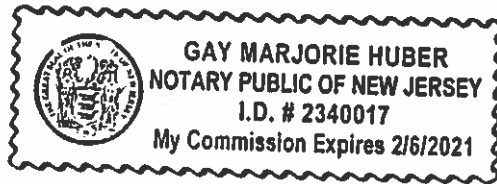


STATE OF NEW JERSEY)
) SS:
COUNTY OF Meeker)

I CERTIFY that on this 5 day of April 2018, before me, the subscriber, personally appeared Hemant Murathe who I am satisfied is the person who executed the foregoing instrument as Mayer of West Windsor Township, a municipal corporation, the entity named in the foregoing instrument, and who acknowledged that he/she, in such capacity, being authorized to do so, executed the foregoing instrument as such entity's voluntary act and deed for the purposes therein contained by signing on behalf of West Windsor Township.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Gay Marjorie Huber
Notary Public
My Commission Expires



LEGAL DESCRIPTION

Commitment No.: 3471-2375371-PRC

Real property in the Township of West Windsor, County of Mercer, State of New Jersey:

All that certain lot or parcel of land situated in the Township of West Windsor, Mercer County, State of New Jersey, as shown on plans entitled, "Preliminary and Final Subdivision and Site Plan, Enclave at Princeton Junction, Block 10, Lot 8.01", record Sheet Nos. 1 thru 8 of 60, dated September 8, 2014, last revised January 25, 2017, and recorded in the Mercer County Recorder of Deeds Office on February 3, 2017, Map #4115 through #4115G, Book 36, Pages 33 through 40 and "Exhibit Plan, Township Parcel, Block 10 Lot 108.01, Enclave at Princeton Junction", Sheet 1 of 1, dated August 12, 2016, prepared by ESE Consultants, Inc., Horsham, PA 19044, filed or about to be filed in the Mercer County Recorder of Deeds Office, more particularly described as follows:

BEGINNING at a common corner Block 10, Lot 108.01 and Block 10, Lot 25 on the southerly side of Old Bear Brook Road (Width Varies), a concrete monument found, and running

- 1) Along said southerly side, South 81 degrees 40 minutes 19 seconds East, a distance of 118.40 feet to intersection of the southerly side of Old Bear Brook Road with the southwesterly side of Alexander Road (Width Varies), a concrete monument to be set; thence
- 2) Along the southwesterly side of Alexander Road, South 46 degrees 25 minutes 42 seconds East, a distance of 77.24 feet to a corner of Block 10, Lot 33, a concrete monument to be set; thence
- 3) Along Block 10, Lots 33 and 2, South 09 degrees 39 minutes 36 seconds West, a distance of 782.65 feet to a corner of Block 10, Lot 3, a concrete monument found; thence
- 4) Along Block 10, Lot 3, South 44 degrees 17 minutes 36 seconds West, a distance of 194.55 feet to a corner of Block 10, Lot 107.01, a concrete monument to be set; thence
- 5) Along Block 10, Lot 107.01, the following three (3) courses and distances, North 45 degrees 42 minutes 24 seconds West, a distance of 178.17 feet, a concrete monument to be set; thence
- 6) North 81 degrees 40 minutes 19 seconds West, a distance of 371.84 feet to a concrete monument to be set; thence
- 7) North 08 degrees 19 minutes 41 seconds East, a distance of 109.83 feet to a corner of Block 10, Lot 107.01, on the easterly side of Brambling Road (50' Wide R.O.W.) (Block 10, Lot 101.14), a concrete monument to be set; thence
- 8) Along said easterly side of Brambling Road, North 08 degrees 19 minutes 41 seconds East, a distance of 517.60 feet to a corner of Block 10, Lot 101.13, a concrete monument to be set; thence
- 9) Along Block 10, Lot 101.13, South 81 degrees 40 minutes 19 seconds East, a distance of 32.89 feet to a corner of Block 10, Lot 35, a concrete monument found; thence
- 10) Along Block 10, Lot 35, South 81 degrees 25 minutes 14 seconds East, a distance of 265.59 feet to a corner of Block 10, Lot 32, a concrete monument found; thence
- 11) Along Block 10, Lot 32, the following two (2) courses and distances, South 08 degrees 47 minutes 16 seconds West, a distance of 101.50 feet, a concrete monument found; thence

12) South 81 degrees 25 minutes 14 seconds East, a distance of 166.50 feet, a rebar found; thence

13) Continuing along Block 10, Lot 32 and along Block 10, Lot 25, North 08 degrees 47 minutes 16 seconds East, a distance of 355.80 feet to the first mentioned point and place of BEGINNING.

The above description is in accordance with a survey prepared by ESE Consultants dated November 27, 2017 and last revised April 20, 2018.

Together with the beneficial easements as set forth in that certain Cross Easement and Covenants of Contribution made by Toli NJ I, LLC, TB Princeton Village, LLC and Township of West Windsor, dated April 24, 2017 and recorded in the Mercer County Clerk's Office on June 16, 2017 in Book 6289 Page 260 and the Temporary Utility Easement (Brambling Road) recorded in Deed Book ____ Page ____.

NOTE FOR INFORMATION ONLY: Being Lot(s) 108.01 formerly part of Lot 8.01, Block 10 on the Tax Map of the Township of West Windsor.

Appendix X:
Ellsworth Center Resolution, Deed Restriction, Corrective
Deed Restriction

**RESOLUTION OF MEMORIALIZATION
WEST WINDSOR TOWNSHIP ZONING BOARD OF ADJUSTMENT**

In the Matter of the Application of Ellsworth Realty Associates, LLC for Use Variances, Bulk Variances, Waivers and Preliminary/Final Major Site Plan Approval for Property Located at 15, 19, 23 and 25 Cranbury Road and 33 Princeton-Hightstown Road and Designated as Block 5, Lots 20, 20.01-20.04, 62 and 76 on the West Windsor Township Tax Map

Resolution in File No. ZB 13-01

Be it resolved by the West Windsor Township Zoning Board of Adjustment (hereinafter referred to as the "Board") that the following findings of fact and basis for decision involving the above-referenced application considered and decided by the Board on December 5, 2013 are hereby memorialized.

FINDINGS

FINDINGS REGARDING THE APPLICANT:

1. Ellsworth Realty Associates, LLC (hereinafter referred to as the "Applicant") is the owner of 15, 19, 23 and 25 Cranbury Road and 33 Princeton-Hightstown Road, which are designated as Block 5, Lots 20, 20.01-20.04, 62 and 76 on the West Windsor Township Tax Map (hereinafter referred to as the "Property").

FINDINGS REGARDING THE NATURE OF THE APPLICATION AND RELIEF SOUGHT:

2. The Applicant has proposed a comprehensive commercial and residential redevelopment of the property commonly referred to as the Ellsworth Center. The Applicant proposes to redevelop the Ellsworth Center consisting of approximately 22,258 square feet of commercial space and two apartments into a mixed use village-type development pursuant to the West Windsor Township Master Plan, the Princeton Junction Redevelopment Plan and the requirements of the RP-7 zoning district wherein the Property is located. The Applicant proposes demolishing approximately 3,764 square feet, and adding approximately 33,600 square feet of additional commercial space and 18 additional one-bedroom apartments, 4 of which will be affordable housing units, above the commercial space. The total commercial area (existing and proposed) is

52,160 square feet. To support the redevelopment, the Applicant proposes to provide parking and stormwater management facilities on Lots 62 and 76 located adjacent to the Ellsworth Center. These lots are zoned residential (R-20B) and the Applicant seeks d(1) use variance relief to utilize these lots in support of the overall redevelopment plan for the above-referenced non-residential purposes. The Applicant also seeks a d(4) floor area ratio variance for Lot 20, a bulk variance for maximum improvement coverage for Lots 20, 62 and 76, and a bulk variance from the “build-to line” for Lot 20. The Applicant seeks a sign waiver to allow an 86 square foot project/tenant identification sign along the Princeton-Hightstown Road side of the Property and a project directory sign near the center of the Property. Finally, the Applicant seeks preliminary/final major site plan approval for the overall redevelopment plan.

FINDINGS REGARDING THE BOARD'S JURISDICTION:

3. The authority to grant the above referenced use variances, bulk variances, waivers and preliminary/final major site plan approval being vested in the Board, the Board accepted jurisdiction and conducted public hearings on this Application on the following dates: September 5, 2013, October 3, 2013, November 7, 2013 and December 5, 2013.

NOTICE AND PUBLICATION:

4. The Applicant complied with the notice requirements of the New Jersey Municipal Land Use Law (MLUL) as follows:
 - A. The Applicant obtained a list of all property owners within 200 feet of the Property which is the subject matter of this Application from the West Windsor Township Zoning Department.
 - B. The Applicant served notice of the Application upon all owners within 200 feet of the Property, likewise published notice of the Application at least 10 days prior to the first hearing on the Application in a newspaper with general circulation within the Township of West Windsor, all of which is required by law.
 - C. The Applicant has filed an affidavit stating that the notice was properly given in advance of the first hearing on this Application on September 5, 2013. The Applicant also filed a proof of publication confirming that the aforementioned newspaper publication was made in accordance with legal requirements.
 - D. Subsequent notice of publication was sufficient under the Municipal Land Use Law (“MLUL”) and the West Windsor Township Land Use Ordinance (“LUO”) for the public hearing which commenced on September 5, 2013.

THE HEARING:

5.
 - A. Public hearings were heard on this Application by the Board on the following dates: September 5, 2013, October 3, 2013, November 7, 2013 and December 5, 2013. The Applicant and all other interested parties were given the opportunity to present evidence and to be heard at all of the hearings.
 - B. The record should reflect that Board member Lin listened to the tape of the Board hearing on the Application conducted on September 5, 2013 and was therefore eligible to vote on the Application pursuant to *N.J.S.A. 40:55D-10.2*.
 - C. The record should reflect that Board member Gary Guleria listened to the tape of the Board hearing on the Application conducted on October 3, 2013 and was therefore eligible to vote on the Application pursuant to *N.J.S.A. 40:55D-10.2*.
 - D. The record should further reflect that Board member Alice Ng listened to the tape of the Board hearing on the Application which took place on October 3, 2013 and thus she was likewise eligible to vote on the Application pursuant to *N.J.S.A. 40:55D-10.2*.
 - E. The record should also reflect that Board Member Curtis Hoberman stepped down and did not participate in the hearings involving the Application.

EXHIBITS PRESENTED:

6. At the hearings which took place on September 5, 2013, October 3, 2013, November 7, 2013 and December 5, 2013, the Board reviewed the following exhibits submitted by the Applicant:

Exhibit A-1: Aerial photograph map centered on the Princeton Junction Train Station.

Exhibit A-2: Aerial photograph map of area surrounding Block 5, Lots 20, 76 and 62, West Windsor Township Tax Map.

Exhibit A-3: Aerial photograph map of existing Ellsworth Center.

Exhibit A-4: Site rendering of Ellsworth Center Redevelopment prepared by ACT Engineering Inc., dated May 1, 2013.

Exhibit A-5: Outline of redevelopment area map – land use map prepared by Maser Consulting P.C.

Exhibit A-6: Aerial photograph map of Block 5, Lots 20, 76 and 62, West Windsor Township Tax Map (at different scale than Exhibit A-2)

Exhibit A-7: Building key plan – new and existing buildings prepared by TJB Architects LLC by Timothy J. Burton, A.I.A.

- Exhibit A-8:** Rendering of Route 571 entrance area to Block 5, lots 20, 76 and 62, West Windsor Township Tax Map prepared by TJB Architects LLC by Timothy J. Burton, A.I.A.
- Exhibit A-9:** Rendering from Cranbury Road of access to Block 5, lots 20, 76 and 62, West Windsor Township Tax Map prepared by TJB Architects LLC by Timothy J. Burton, A.I.A.
- Exhibit A-10:** Rendering of access to Block 5, lots 20, 76 and 62, West Windsor Township Tax Map from the corner of Cranbury Road and Carlton Place prepared by TJB Architects, LLC, by Timothy J. Burton, A.I.A.
- Exhibit A-11:** Material board of building typical detail by TJB Architects, LLC, by Timothy J. Burton, A.I.A.
- Exhibit A-12:** Plan Entitled: "Site Structures: Schematic Design" prepared by TJB Architects LLC dated 6/24/13 (Sheet SS-3)
- Exhibit A-13:** Aerial Photo Exhibit of two (2) adjacent residential lots and outline of boundary of Ellsworth Center Improvements.
- Exhibit A-14:** Color photograph of adjacent Block 5, Lot 19 West Windsor Township Tax Map.

At the hearings on the Application commencing September 5, 2013, October 3, 2013, November 7, 2013 and December 5, 2013, the owner of adjacent Block 5, Lot 20, Jacinta Rodriquez appeared as an objector to the Application. At the September hearing, the objector was represented by John Frieri, Esq. and at the remaining hearings by Jeffrey Baron, Esq. who in turn offered and marked the following exhibits:

- Exhibit O-1:** Easement Agreement pertaining to Lots 19 and 20 dated April 2, 1985; Easement Agreement pertaining to Lot 19 and 20 dated September 2, 1989.
- Exhibit O-2:** Rendered conceptual site plan for Lot 19 depicting development potential for said adjacent property.
- Exhibit O-3:** P. David Zimmerman, PP, Floor Area Ratio Analysis Documents (consisting of five sheets).
- Exhibit O-4:** Chart of Zoning requirements submitted by Applicant entitled: Ellsworth Center, West Windsor Township Zoning and Design Standards.

WITNESSES:

7. At the various Board hearings referenced above, the Board considered testimony from the following witnesses:
 - A. Shawn Ellsworth, Managing Member, Ellsworth Realty Associates LLC, Applicant.
 - B. Robert Korkuch, P.P., P.E., Act Engineer Inc., Applicant's Engineering and Planning Consultant.
 - C. John Madden, P.P., A.I.C.P., Maser Consulting, P.C., West Windsor Township Planning Consultant.
 - D. Timothy J. Burton, A.I.A., TJB Architects LLC, Applicant's Architect.
 - E. Karl A. Pehnke, P.E., PTOE, Langan Engineering and Environmental Services Inc., Applicant Traffic Consultant.
 - F. Gary Davies, P.E., AECOM, West Windsor Township Consultant.
 - G. Samuel J. Surtees, Manager, West Windsor Township Land Use Division/Zoning Officer
 - H. Daniel Dobromilsky, LLA/PP/CTE, West Windsor Township Landscape Architect.
 - I. James A. Ruddiman, PE, Richard Alaimo Association of Engineers, West Windsor Township Engineering Consultant.
 - J. Christopher B. Jepson, PE, Van Cleef Engineering Associates, West Windsor Township Environmental Consultant.
 - K. Jacinta Rodriquez, President, Pereria Investments (owner of the adjacent Lot 19).
 - L. P. David Zimmerman, PP, Jacinta Rodriquez Planning Consultant.
 - M. Allison Miller, Resident

INTERESTED PARTIES QUESTIONING APPLICANT:

8. At the various Board hearings referenced hereinabove, the following individuals were given an opportunity to question the Applicant and their professionals:
 - A. Memant Marathe
 - B. Brian Maher
 - C. John Church

- D. Allison Miller
- E. Linda Geevers
- F. John R. Frieri, Esq., Attorney for Pereria Investments
- G. Jeffrey Baron, Esq., Attorney for Pereria Investments
- H. Michelle Paller, Resident
- I. Andrew Kulley, Member SPRAB

STAFF REPORTS:

- 9. During the course of considering this Application, the Board considered the following staff reports:
 - A. Daniel Dobromilsky, LLA, Landscape Report dated August 28, 2013.
 - B. Mason, Griffin & Pierson, PC legal report dated August 28, 2013.
 - C. Richard A. Alaimo Association of Engineers, Engineering Reports dated July 23, 2013, August 5, 2013 and August 27, 2013.
 - D. AECOM traffic report dated August 26, 2013.
 - E. Van Cleef Engineering Associates, Environmental Report dated August 27, 2013.
 - F. Maser Consulting PC, Planning Report dated August 27, 2013.
 - G. West Windsor Fire Marshall Report dated July 10, 2013.
 - H. SPRAB Minutes, dated June 10, 2013.

FINDINGS BASED ON THE HEARING AND TESTIMONY:

- 10. Based upon all of the testimony presented, the Application materials including the booklet presented by the Applicant setting forth the history of the Ellsworth Family involvement with the Property, the Board makes the following findings:
 - A. The Applicant was represented by Mark A. Solomon, Esq., Pepper Hamilton, LLP.
 - B. The Applicant is the owner of the Property.

- C. A majority of the Property is located in the RP (Redevelopment Plan) -7 zoning district. Adjacent Lots 62 and 76 are zoned residentially and are included in the R-20B zoning district.
- D. The Property (except for Lots 62 and 76) is currently improved with the existing Ellsworth Center. The Ellsworth Center is an existing strip commercial development consisting of 22,258 square feet of retail use and two apartments within four structures which shares a central parking area and other site improvements. The Ellsworth Center is located within the Princeton Junction Redevelopment Area.

The entire Property which is proposed for redevelopment consists of 4.79 +/- acres of land. It is located at the intersection of Cranbury Road and the Princeton-Hightstown Road.

The Applicant proposes to redevelop the Ellsworth Center by adding an additional 23,590 square feet of retail space and 18 one-bedroom apartments on the second story, 4 of which will be deed restricted as affordable housing units. The buildings will be oriented towards the public streets and pedestrian and bicycle amenities have been incorporated into the plan. Access to the redeveloped site would be from an existing driveway access from the Princeton-Hightstown Road (Route 571). Another driveway access will be constructed from Cranbury Road and will line up with Carlton Place directly to the south. In order to undertake and complete this redevelopment, the Applicant seeks the following relief:

- A. Section 200-173.5 West Windsor Township Land Use Ordinance (LUO): The Applicant has acquired two adjacent lots to the existing Ellsworth Center (Lots 62 and 76). He proposes utilizing this additional land as a detention basin and parking areas. This land is zoned R-20B for residential uses. The proposed uses by the Applicant are not therefore permitted. The Applicant therefore seeks a d(1) use variance.
- B. Section 200-173.5B(1) Maximum Floor Area Ratio: In the RP-7 zoning district, the maximum floor area ratio (FAR) is permitted at 25%. The Applicant proposes a FAR of 38%. The Applicant therefore seeks a d(4) variance.
- C. Section 200-173.6E Maximum Improvement Coverage: In the R-20B district, the maximum improvement coverage (MIC) is permitted at 20%. On Lots 62 and 76, the MIC proposed is 27.9% and 65.3% respectively. The Applicant seeks a c(2) bulk variance.
- D. Section 200-266B(2): Maximum Improvement Coverage: Within the RP-7 zoning district, an 80% MIC is permitted. The Applicant is proposing an 84.3% MIC on the lots within this zone. The Applicant seeks a c(2) bulk variance.

- E. Section 200-266B(2) Build To Line: In the RP-7 district, a build to line of 15 feet is required. The Applicant is proposing a 19.2 foot front yard setback along Cranbury Road and a 10 foot setback along Princeton-Hightstown Road. The Applicant seeks c(2) bulk variances.
- F. Section 200-258D(4): This section sets forth the standards for directory signs. The Applicant proposes a 10.5 foot directory sign located in the center of the development near the flagpole. Directory signs are not permitted in the RP-7 zoning district. A sign waiver is sought.
- G. Section 200-258D(4)(d): This section sets forth the requirements for monument signage within the RP-7 zoning district. The Applicant proposes to replace existing ground mounted project/tenant identification sign on the Princeton-Hightstown Road frontage with a comparably sized 86 square foot sign. Ground mounted project/tenant identification signs are not permitted in the zone. The Applicant seeks a waiver.
- H. Section 200-13.C(3)(t): This section requires that a site plan contain a tabulation of building perimeter dimensions. The Applicant's site plan does not contain this tabulation. The Applicant therefore seeks a submission waiver as this information will be provided at a later date.
- I. Section 200-91.U: The Applicant is seeking a waiver from the requirement to show proposed traffic signage on the site development plans.
- J. Section 200-227: The Applicant seeks a waiver from the requirement to provide a 25 foot landscape transition buffer between the eastern parking lot and the property line within the residential zone (R-20B). The Applicant is providing a 20 foot landscape transition buffer. A waiver is sought.
- K. Section 200-1 Site Plan: The Applicant seeks preliminary/final major site plan approval for its redevelopment plan.

LEGAL STANDARD TO BE APPLIED TO THE APPLICATION:

11. In evaluating the Application, the Board should apply the following legal standards:

A. Use Variances:

- 1. As indicated above, the Applicant proposes to utilize Lots 62 and 76 which are residentially zoned as a part of its overall commercial development. On these lots, the Applicant proposes to install parking and stormwater management facilities. Since these lots are zoned for residential and not commercial use, the standards set forth in *Medici vs. BPR Co.*, 107 N.J. 1 (1987) must be applied. In this decision, the New

Jersey Supreme Court noted that in addition to finding "special reasons" that must exist for the zoning relief, an applicant must also present to the Zoning Board of Adjustment an "enhanced quality of proof" to demonstrate that the use variance sought is not inconsistent with the intent and purpose of the Master Plan or the Zoning Ordinances for the area of the community wherein the property is located. In evaluating this variance relief, the Board can take notice of the fact that these residential lots immediately abut or are adjacent to the existing Ellsworth Center and that if folded into the redevelopment of the Center would be supportive of the vision which the West Windsor Township Master Plan and the Princeton Junction Redevelopment Plan have for this property. The Applicant must also present proofs to the Board's satisfaction to reconcile that the granting of the use variance for these residential properties is not contrary to the zoning scheme for the area of the Township wherein the current Ellsworth Center is located. In addition, the Board must be satisfied that by granting the use variance the "negative criteria" will be satisfied and addressed. The Maser Consulting, P.C. August 27, 2013 planning report at subparagraph VI. C.2. on page 5 provides a good summary of the negative criteria analysis.

2. The other "d" variance is a (d)(4) FAR variance for Lot 20. For the FAR variance, Coventry Square vs. Westwood Zoning Board of Adjustment, 138 N.J. 285 (1994) provides guidance to the Board and requires the Applicant to demonstrate to the Board's satisfaction that the site will accommodate any problems associated with a floor area greater than that permitted by the Ordinance. For the Lot 20 variance, therefore, the Board must evaluate how this lot is integrated into the overall commercial/residential redevelopment of the site and whether it can support the additional density on that lot in the context of the overall development plan.

B. **Bulk Variances:**

The Applicant requires two (2) MIC variances from the requirements of Section 200-173.6 and Section 200-266B(2). There is also a bulk regulation in the RP-7 District at Section 200-266B(2) requiring a build-to-line of 15' for which bulk variance relief is sought. In evaluating these bulk variances, it is recommended that the C(2) "flexible c" standards be applied. This would involve a finding by the Board that: (1) the request relates to a specific piece of property; (2) that the purposes of the Municipal Land Use Law would be advanced by a deviation from the Zoning Ordinance requirements; (3) that the variance can be granted without substantial detriment to the public good; and (4) that the benefits of the deviation would substantially outweigh any detriment; (5) that the variance will not substantially impair the intent and purpose of the zone plan and the Zoning Ordinances for the section of the Township wherein the property is located.

Therefore, if the Board is satisfied that the overall redevelopment of the Ellsworth Center for a mixed commercial/residential village type development would promote or advance the purposes of the Township's Master Plan and Redevelopment Plan for this area of the Township, and no substantial detriments will result, then the variance relief sought can be granted.

C. **Waivers:**

The Applicant seeks waivers for identification signage on the property within the development and along the Princeton-Hightstown Road. If the Board is satisfied that the signage proposed is appropriate for the property and strict adherence to the sign design standards is not required, pursuant to *N.J.S.A. 40:55D-10.3*, waivers can be granted.

D. **Site Plan Approval:**

Pursuant to Section 200-1 et seq. of the West Windsor Township LUO, the Board has concurrent jurisdiction over the preliminary/final major site plan elements of this application. The Board may grant the site plan approval if the Board is satisfied that the improvements proposed on the property have appropriately been designed and issues related to stormwater detention, drainage, traffic circulation, etc. have been addressed to the satisfaction of the Board.

ADDITIONAL FINDINGS AND BASIS FOR DECISION:

12. The Board having made the above-referenced findings of fact voted 7 in favor (Roeder, Abbey, Ng, Jacobsohn, Salem, Guleria and Lin) and none opposed to grant to the Applicant the requested variances, waivers and preliminary/final major site plan approval as more fully set forth hereinabove. The Application was approved for the following reasons:

A. A majority of the Property is located in the RP-7 zoning district, within the Princeton Junction Redevelopment Zone. The Property is at a major intersection in the redevelopment zone with road frontage on Cranbury Road and the Princeton-Hightstown Road/Route 571. This intersection represents the "gateway" to the Village Center District and the "main street" which the West Windsor Township Master Plan and Redevelopment Plan hope to create. The Property is also proximate to the West Windsor Township train station. The Board has heard other applications for development, which have been approved, in the vicinity of the Property so the Board is fully familiar with the conditions and constraints applicable to the Property. The plan presented by the Applicant is consistent with the goals of the Princeton Junction Redevelopment Plan and the West Windsor Township Master Plan. Except for several minor deviations, the Applicant's plan satisfies the requirements of the RP-7 zone. The Property therefore is highly visible and presents to the Board a unique opportunity to

implement a number of goals for the West Windsor Township community as set forth in the aforementioned redevelopment plan.

B. The Property also includes Lots 62 and 76 which are residentially zoned and immediately adjacent to the existing Ellsworth Center. The design of the redevelopment of the Property approved by the Board creates an appropriate buffer while utilizing these two lots for non-residential purposes (stormwater detention and parking) for the existing residential development further to the east along Cranbury Road. The landscaping and buffering proposed by the Applicant will appropriately allow these two residential lots to be blended into the overall redevelopment of the Ellsworth Center and using these two lots as proposed by the Applicant will have no detrimental impact on any of the existing residential lots to the east.

C. It is clear from the testimony presented and as confirmed by the Board's Planning Consultant who prepared the Princeton Junction Redevelopment Plan and the West Windsor Township Master Plan for the area of the Township wherein the Property is located that the development Application clearly utilizes and follows the ordinances which were adopted to implement redevelopment of the portion of the Township wherein the Property is located. The new commercial/residential uses are compatible and are as envisioned by the aforementioned redevelopment plan. The redeveloped Ellsworth Center is walkable, pedestrian friendly, architecturally designed to reflect the village center objectives of the redevelopment plan and appropriately handles traffic and vehicular movements to and from the site. The Applicant, while implementing its plan, will address several Township infrastructure problems primarily at the intersection of Cranbury Road and the Princeton-Hightstown Road/Route 571 by pavement widening and adding a bike lane. Sidewalks will also be installed along the length of the development on Cranbury Road. The alignment of the entrance to the Property from Cranbury Road with Carlton Place will likewise improve the safety of traffic flow not only from the Property but to and from Carlton Place. The entrance to the Property utilizing the driveway aligned with Carlton Place, and the addition of a turning lane from Cranbury Road at that location, also improves traffic safety by moving the current entrance further from the aforementioned intersection and eliminating the current off-set of the existing entrance and Carlton Place, and provides for improved traffic flow. The variance relief sought when the overall plan is considered is de minimis and by including the adjacent Lots 62 and 76 the variances for the redevelopment project have been kept to a minimum. Notably, the overall lot coverage and floor area ratio inclusive of all lots included in the application will comply with the RP-7 limits (for MIC, 80% is allowed and 71.6% is proposed overall; for FAR, .25 is allowed and .25 is proposed overall).

D. As to specific testimony, the Applicant's engineer/planner was fully familiar with the area and the Redevelopment Plan. He carefully described the application and

the relief required. He discussed the Redevelopment Plan and the RP-7 goals and demonstrated that those goals and the purposes of the Municipal Land Use Law will be promoted by the application. He provided testimony, supported by facts in the record, that the site can accommodate the additional density and that no substantial detriment will result from the development. The Board finds his testimony persuasive. The Board's planning consultant supported these conclusions. As indicated above, the Applicant's traffic engineer described the improvements to traffic circulation that will result from the application, and the Applicant's architect described and demonstrated through his exhibits how the site layout and architecture will contribute to the goals of the Redevelopment Plan.

The objector's planner argued that the application was inconsistent with the Redevelopment Plan and that special reasons did not exist. He argued that the new development would adversely affect the residential properties further to the east on Cranbury Road and that the existing residential properties (Lot 62 and 76) should remain residential. The Board finds his testimony unpersuasive. He did not appear familiar with the area, did not know the properties designated as RP-7 in the Redevelopment Plan, and was unfamiliar with the importance of Carlton Place in the Master Plan. His argument that Lots 62 and 76 should remain residential against the commercial Ellsworth Center in order to buffer residential properties farther to the east which are already separated from those Lots by an intervening Township right-of-way was not compelling. Importantly, no residents appeared to object to the application. All public comment, with the exception of the owner of Lot 19, supported the application.

- E. The objector in this matter (the owner of Lot 19 behind the Applicant's property) introduced a concept plan for redevelopment of his property at the November 7 hearing. The property today consists of derelict unoccupied buildings and is in great need of improvement. Nonetheless, the Board finds that his concept plan is not probative as to the application before the Board. It was not an engineered plan, was not supported by the testimony of a planner or engineer, and was not the subject of the application before the Board. In addition, the objector himself offered no substantive testimony as to negative impacts on his property from the Applicant's proposed development. The Board finds that the Application as approved by the Board will have no negative impact on adjacent Lot 19. During the course of the hearings on this Application, the Board became fully aware of the easements and other private agreements that benefit Lot 19 and by approving the redevelopment of the Property, none of these easements or agreements are adversely effected. If and when the owner of Lot 19 wishes to redevelop it, the Board will evaluate that application on its separate merits.
- F. The objector's attorney argued that the Board did not have jurisdiction to consider the "d" variance requests for Lots 62 and 76 for technical reasons related to the definitions of principal and accessory uses. The Board finds that it has

jurisdiction under *N.J.S.A. 40:55D-70.d (1)* to hear this application for “a use ... in a district restricted against such use” He also argued that the variance request for the two lots was tantamount to a rezoning. The Board finds that the two lots are relatively isolated and small (.78 and .88 acres respectively) and that the variance request and approval is fully within the authority granted to it by the Municipal Land Use Law. Further, the Board finds persuasive the argument that the governing body did not include these lots in the original Redevelopment Area because at the time of designation of the Redevelopment Area they were in separate residential ownership and not owned by the Applicant. Now that they are in common ownership with the adjacent commercial development they are particularly suited to integration into the Ellsworth Center.

- G. The objector’s attorney also argued that the application was deficient because the floor area ratio (FAR) calculations were based only on commercial square footage and did not include the residential square footage. The Board’s Staff explained that approach to be the long-standing practice in the Township and had so advised the Applicant when it inquired when preparing its application as to the proper way to make the calculation. Moreover, the Board and the public were fully informed of the scope of the application and the uses proposed, including the 18 additional residential units, 4 of which are affordable. The Applicant fully explained the proposal and the Board fully understood the square footage and intensity of use proposed. In approving the application, the Board approves the FAR as calculated by either methodology.
- H. In sum, the Board finds the application has very strong merit, will advance the purposes of the Master Plan, the Redevelopment Plan and the MLUL, and presents no or little detriment.

This approval is granted subject to the following conditions:

1. The Project shall make a contribution to the West Windsor Township Transportation Improvement District (TID) as required by the TID Ordinance and as determined by the West Windsor Township Traffic Consultant.
2. The Applicant shall post a Performance Guarantee in the favor of West Windsor Township in an amount not to exceed 120% of the cost installation for improvements necessitated by the application pursuant to *N.J.S.A. 40:55D-53*.
3. Upon completion of the project, the Applicant shall post the necessary Maintenance Guarantees as required by *N.J.S.A. 40:55D-53.3*.

4. The Applicant shall deposit with West Windsor Township all required inspection fees pursuant to *N.J.S.A. 40:55D-53.1*.
5. The Applicant shall enter into a Developer's Agreement with West Windsor Township to address issues associated with the application including but not limited to Affordable Housing, Sewer, TID payments, etc. Said Agreements shall be in a form reviewed and approved by the Board Attorney and Board Engineer.
6. The Applicant's landscape plan shall include the installation on the berm proposed along the perimeter of the parking area to the westerly side of the Property adjacent to residential properties a planting scheme. Said installation shall include solid landscape screening which will be viable year round so as to block any lights from cars parking on the Property from spilling on to the adjacent residential homes. The screening shall include fencing with plantings at varying, staggered heights. The final landscape plan for this area of the Property shall be field located and reviewed and approved administratively by the West Windsor Township Landscape Architect.
7. All sound emanating from the property shall not go beyond the boundary of the Property and in particular at the common boundary to the east with the residential homes in compliance with New Jersey State am/pm noise standards.
8. Signage for the development on the Property shall provide space along the Cranbury Road entrance for signage for adjacent Lot 19.
9. The street trees to be installed by the Applicant pursuant to the approved landscape plan along Cranbury Road and Route 571 will be of a flowering species type as reviewed and approved by the West Windsor Township Landscape Architect.
10. The Applicant shall satisfy the following engineering conditions:
 - (a) The Applicant shall revise its site plan to note thereon a tabulation of the building perimeter dimensions that front on a public or private street or on a fire apparatus space.
 - (b) The demolition plan shall be revised to identify the limits of removal of the existing 12 (twelve) inch RCP storm drain adjacent to the west side of the existing building on Lot 20.01 and the existing 15 (fifteen) inch storm RCP storm drain at the easterly driveway east of Lot 20.02. Said demolition plan shall be further revised to reflect the proposed modifications to the existing parking areas at the westerly area of the Property,

in particular, the limits of existing pavement to be removed which shall be shown on the revised site plan.

- (c) Construction details for all paving elements shall be added to the site plan.
- (d) The width of the sidewalk adjacent to proposed Building E-2 shown on the Site Layout plan is 4.5 feet in width. Concrete wheel stops shall be provided to prevent vehicle overhang.
- (e) The site plan shall be revised concerning the planter strip between the curb and sidewalk along the easterly side of the proposed parking lot on Lots 62 and 76. This revision shall show a minimum planter strip width of two (2) feet in order to provide an appropriate setback between the parking lot and the four (4) foot wide sidewalk and to accommodate the proposed two (2) foot diameter light pole bases.
- (f) With regard to the banked parking approved at the easterly end of Building E-1, a detail shall be added to the site plan to show the construction requirements of this area including curb, grading and location of sidewalk along head of parking stalls (six [6] foot wide sidewalk required if a sidewalk above a curb).
- (g) The site plan shall be amended by adding thereto a pedestrian crosswalk signage on Cranbury Road for the crosswalk at the intersection of Cranbury Road and Carlton Place.
- (h) The grading and drainage plan shows proposed grading outside of the Property line on the easterly side and northerly side of the property. All grading and drainage must be within the limits of the Property unless the Applicant provides written authorization from adjacent property owners to perform grading on properties outside of the Property. Said authorization shall be administratively reviewed and approved by the Board Attorney.
- (i) The proposed grading plan for the grade adjacent to the rear of Building N-2 shall be addressed since it is higher than the proposed first floor elevation.
- (j) The Applicant shall submit to the Board Engineer for administrative review and approval, additional grading information concerning inlet D5 to demonstrate that the runoff from a 100 year storm will be captured by the inlet.

- (k) Top of curb and bottom of curb spot elevations and spot elevations at high points and low points on the Property shall be provided throughout the site on the grading and drainage plan and shall differentiate between existing grades to remain and propose grades.
- (l) Bottom and top of wall spot elevations shall be provided for the proposed retaining wall located adjacent to the detention basin.
- (m) Construction details for the proposed retaining walls shall be shown on the revised site plan. The retaining walls and calculations prepared by a New Jersey licensed professional engineer shall be submitted for review and administrative approval to the Board's Consulting Engineer prior to construction.
- (n) The Applicant shall provide a structural evaluation for the proposed 15 (fifteen) inch RCP pipe proposed between Building N-2 and N-3. There is section AA on Sheet 14 of 16 shows the invert of the RCP to be below the bottom of the footings for the two (2) adjacent buildings. The building footings may need to be below the invert of the RCP. These additional structural evaluations shall be submitted for administrative review and approval to the Board Consulting Engineer.
- (o) Spot elevations shall be provided at the corners of the accessible parking stalls and access isles to demonstrate compliance with slope requirements. Said compliance shall be administratively reviewed and approved by the Board Consulting Engineer.
- (p) Grading and spot elevations shall be provided for the proposed improvements located between the existing Building E-1 and the easterly driveway, and for the proposed sidewalk and retaining wall improvements have the northerly Property line. Said grading and spot elevation shall be administratively reviewed and approved by the Board Consulting Engineer.
- (q) Field survey spot elevations shall be provided along the limits of disturbance to support the proposed grading for the site.
- (r) A flared end section is to be provided at the outfall for the proposed 12 (twelve) inch HDPE storm drain location at the northwest corner of the Property.
- (s) The grate elevation shall be provided and noted on the revised site plan for inlet D11.

- (t) All roof drains for buildings on the Property are to be shown on the revised site plan and are to be connected to the storm drainage system.
- (u) Site plan shall be revised to note that all utility service on the Property will be installed underground.
- (v) All parking striping shall be made of long life thermo plastic. The site plan referenced to "painted" stripes shall be deleted.
- (w) The site plan shall be revised to add thereto a crosswalk detail.
- (x) The Patterned Decorative Paving Detail on Sheet 11 of 16 shall be revised to note the color and pattern for the Trafficprint Polymer Resin material. The pattern for the decorative paving shall be different than the pattern used in the crosswalk detail.
- (y) The ADA Parking Stall at Existing Sidewalk detail on Sheet 11 of 16 shall be deleted and replaced with a curb ramp detail.
- (z) The Standard Parking Lot Striping detail on Sheet 11 of 16 shall be revised to show hairpin striping as set forth in the Township's Plan Use Development Ordinance.
- (aa) The Applicant shall provide an Operating and Maintenance Manual for the stormwater management facilities and must include the maintenance requirements for the Jellyfish Manufactured Treatment Device and the porous pavement element proposed for the Property. All requirements of the NJDEP BMP Manual shall be incorporated into the operation and maintenance manual. Said manual shall also contain a provision authorizing West Windsor Township to undertake and complete maintenance of the Storm Management Facilities should the Applicant or its successor fail to do so and further allow the Township to charge back as a lien any cost for same.
- (bb) The Applicant shall submit a Soil Erosion and Sediment Control Plan with the final, revised site plan.
- (cc) The Applicant shall submit to the Board Consulting Engineer the Boundary and Topographic Survey Plan prepared by ACT Engineers, Inc. dated March 13, 2013.
- (dd) All construction details are subject to final review and approval by the Board's Consulting Engineer and the West Windsor Township Construction Official.

11. The Applicant shall comply with the following environmental requirements:
- (a) The Applicant shall inspect the existing storm water basin located on Lot 19 to insure that it is properly functioning. The basin is currently overgrown and requires maintenance which will be undertaken and completed by the Applicant. The final condition of the storm water basin following the maintenance work performed by the Applicant shall be administratively reviewed and approved by the Board's Consulting Engineer and the Board's Consulting Environmental Engineer.
12. The Applicant shall comply with the following requirements recommended by the Township's Landscape Architect:
- (a) The site plan indicates that approximately 35 (thirty five) of the existing trees on the Property will remain. These trees shall be protected during demolition and construction on the Property. The Applicant shall coordinate with the West Windsor Township Landscape Architect to develop a protocol which will involve tagging and preserving these existing trees.
- (b) The planting design for the Carlton Place extension shall be adjusted with regard to planting quantity and/or locations so as to insure the creation of a dense hedge and to avoid damage by parked cars. The species of plantings under the tree canopy shall be reviewed and approved as well as this overall planting design administratively by the West Windsor Township Landscape Architect.
- (c) The Applicant shall work with the West Windsor Township Landscape Architect to insure that the plantings proposed along the front of the Property on Cranbury Road will receive adequate sun and water. Following the creation of the construction documents for the Property, the Applicant shall further consult with the West Windsor Township Landscape Architect with regard to the need to increase or relocate certain proposed shrubbery and/or ground cover plants to fully achieve the detailed landscape architectural design proposed by the Applicant. Any adjustments shall be reviewed and administratively approved by said Landscape Architect.
- (d) The Applicant's landscape plan shall be clarified with regard to the location of the installation of the wild flower seed mix proposed for the upper areas of the storm water basin and the turf grass also proposed for the basin vicinity. The boundary between these two seed types and maintenance regimes shall be delineated on the revised site plan and shall be

administratively reviewed and approved by the West Windsor Township Landscape Architect.

- (e) All building utilities, meters and HVAC equipment shall be obscured or screened from view. The Applicant shall add a note to the revised site plan setting forth specifically the methods of screening for each of these facilities. Said screening shall be administratively reviewed and approved by the West Windsor Township Landscape Architect.
13. The Applicant shall deed restrict the 4 affordable housing units to be constructed on-site. The deed restrictions shall be administratively reviewed and approved by the Board Attorney. Said units shall be marketed in accordance with the requirements of the West Windsor Township Affordable Housing Program. The Applicant shall also comply with the New Jersey State-Wide Non-Residential Development Fee Act, P.L. 2008 Chapter 46 of the Laws of the State of New Jersey as may be applicable.
 14. The design details and construction materials for the redevelopment of the Property shall be as shown on the architectural drawings and renderings reviewed and approved by the Board during its consideration of the Application materials.
 15. Within the redeveloped Ellsworth Center, there shall be at no time a system playing “canned” music.
 16. In accordance with the requirements of the West Windsor Township Sign Ordinance, there shall be no posters affixed to the inside of the windows within the commercial space in the redeveloped Ellsworth Center.
 17. In order to utilize Lots 62 and 76 as a part of the redevelopment plan for the Ellsworth Center, the Board urges the release of the covenants which restrict the use of these lots for residential purposes. The Applicant has offered to undertake and complete improvement to park lands on adjacent Lot 15 so that these lands can be utilized as the first handicapped accessible park area within the Township of West Windsor. The Board would encourage therefore the State of New Jersey, Department of Environmental Protection, County of Mercer and the West Windsor Township Council to enter into an agreement releasing the aforementioned restrictive covenants on Lots 62 and 76.

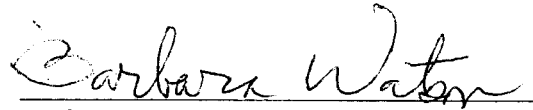
CONCLUSION:

13. Based upon the foregoing findings of fact and for the reasons set forth hereinabove and subject to the conditions set forth hereinabove, the Board at its meeting on December 5, 2013 voted unanimously (7 in favor and none opposed) to grant to the Applicant all of the requested relief for the redevelopment of the Ellsworth Center. This resolution of memorialization was adopted on February 6, 2014. The date of this decision however shall be December 5, 2013 except for the purposes of: (1) mailing a copy of this decision

to the Applicant within 10 days of the date of decision; (2) filing a copy of this decision with the Administrative Officer; and (3) publishing a notice of this decision.

CERTIFICATION

I, Barbara Watson, Administrative Secretary to the West Windsor Township Zoning Board of Adjustment do hereby certify that the above Resolution was adopted by the Board at its regular meeting held on February 6, 2014. This Resolution memorializes the Board's approval of this matter at its meeting on December 5, 2013.

A handwritten signature in cursive script that reads "Barbara Watson". The signature is written in black ink and is positioned above a horizontal line.

Barbara Watson, Administrative Secretary
West Windsor Township
Zoning Board of Adjustment



INSTR # 2017030456
 D BK 6291 PG 889 Pgs 889 - 894; (6 pgs)
 RECORDED 07/06/2017 10:23:18 AM
 PAULA SOLLAMI COVELLO, COUNTY CLERK
 MERCER COUNTY, NEW JERSEY



Mercer County Clerk Recording Data Page
 Paula Sollami Covello Esq
 Mercer County Clerk

RECEIVED
 JUL 13 2017
 WEST WINDSOR TOWNSHIP
 DIVISION OF LAND USE

Official Use Only - Realty Transfer Fee

Date of Document 7/5/17	Type of Document Deed Restriction
-------------------------	-----------------------------------

First Party Name Township of West Windsor	Second Party Name Ellsworth Realty Associates
--	--

Additional Parties

THE FOLLOWING SECTION IS REQUIRED FOR DEEDS ONLY

lots 20, 20.01-20.04, 62 & 76	Block 5
Municipality	Consideration
Mailing Address of Grantee	

THE FOLLOWING SECTION IS FOR ORIGINAL MORTGAGE BOOKING AND PAGING INFORMATION FOR ASSIGNMENTS, RELEASES, SATISFACTIONS, DISCHARGES AND OTHER MORTGAGE AGREEMENTS ONLY

Original Book	Original Page
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DDM 67 # 2/4/73

APPENDIX E-2

MANDATORY DEED RESTRICTION FOR RENTAL PROJECTS

Deed Restriction

**DEED-RESTRICTED AFFORDABLE HOUSING
PROPERTY WITH RESTRICTIONS ON RESALE
AND REFINANCING**

To Rental Property
With Covenants Restricting Rentals, Conveyance and Improvements
And Requiring Notice of Foreclosure and Bankruptcy

THIS DEED RESTRICTION, entered into as of this the 21 day of JUNE, 2017, by and between the Township of West Windsor, a municipal corporation of the State of New Jersey, having an address of 271 Clarksville Road, West Windsor, NJ 08550 (the "Municipality"), and Ellsworth Realty Associates, LLC, a New Jersey limited liability company having offices at 4 Coventry Farm Lane, Princeton, NJ 08540, the developer/sponsor (the "Owner") of a mixed use development containing low- and moderate-income rental units (the "Project"):

WITNESSETH

Article 1. Consideration

In consideration of benefits and/or right to develop received by the Owner from the Municipality regarding this rental Project, the Owner hereby agrees to abide by the covenants, terms and conditions set forth in this Deed restriction, with respect to the land and improvements more specifically described in Article 2, hereof (the "Property").

Article 2. Description of Property

The Property consists of all of the land, and a portion of the improvements thereon that are located in the Township of West Windsor, County of Mercer, State of New Jersey, and described more specifically as Block No. 5, Lots No. 20, 20.1, 20.02, 20.03, and 20.04 on the Tax Map of the Township of West Windsor. The units to which this Deed Restriction applies are a two bedroom very low-income unit with the maximum rent set so that is available to a household making no more than 30 percent of the regional median income; a two bedroom low income unit; a two bedroom moderate-income unit; and a three bedroom moderate-income unit. The location of such units will be determined at a later date and will be set forth in an Amended Deed Restriction identifying the units by building and unit number and by floor plans that will be attached thereto.

Record + Return to:

Mr. Samuel J. Surtees
Land Use Manager
West Windsor Township
271 Clarksville Road
Princeton Junction, NJ 08850

Article 3. Affordable Housing Covenants

The following covenants (the "Covenants") shall run with the land for the period of time (the "Control Period"), determined separately with respect for each dwelling unit, commencing upon the later of the date hereof or the date on which the first certified household occupies the unit, and shall expire as determined under the Uniform Controls, as defined below.

In accordance with N.J.A.C. 5:80-26.11, each restricted unit shall remain subject to the requirements of this subchapter, the "Control Period," until the municipality in which the unit is located elects to release the unit from such requirements. Prior to such a municipal election, a restricted unit must remain subject to the requirements of this subchapter for a period of at least 30 years; provided, however, that:

1. Units located in high-poverty census tracts shall remain subject to these affordability requirements for a period of at least 10 years; and
 2. Any unit that, prior to December 20, 2004, received substantive certification from COAH, was part of a judgment of compliance from a court of competent jurisdiction or became subject to a grant agreement or other contract with either the State or a political subdivision thereof, shall have its control period governed by said grant of substantive certification, judgment or grant or contract.
- A. Sale and use of the Property is governed by regulations known as the Uniform Housing Affordability Controls, which are found in New Jersey Administrative Code at Title 5, chapter 80, subchapter 26 (N.J.A.C. 5:80-26.1, *et seq.*, the "Uniform Controls").
 - B. The Property shall be used solely for the purpose of providing rental dwelling units for low- or moderate-income households, and no commitment for any such dwelling unit shall be given or implied, without exception, to any person who has not been certified for that unit in writing by the Administrative Agent. So long as any dwelling unit remains within its Control Period, sale of the Property must be expressly subject to these Deed Restrictions, deeds of conveyance must have these Deed Restrictions appended thereto, and no sale of the Property shall be lawful, unless approved in advance and in writing by the Administrative Agent.
 - C. No improvements may be made to the Property that would affect the bedroom configuration of any of its dwelling units, and any improvements to the Property must be approved in advance and in writing by the Administrative Agent.
 - D. The Owner shall notify the Administrative Agent and the Municipality of any foreclosure actions filed with respect to the Property within five (5) business days of service upon Owner.
 - E. The Owner shall notify the Administrative Agent and the Municipality within three (3) business days of the filing of any petition for protection from creditors or reorganization filed by or on behalf of the Owner.

Article 4. Remedies for Breach of Affordable Housing Covenants

A breach of the Covenants will cause irreparable harm to the Administrative Agent, to the Municipality and to the public, in light of the public policies set forth in the New Jersey Fair Housing Act, the Uniform Housing Affordability Control rules found at N.J.A.C. 5:80-26.1, *et seq.* and the obligation for the provision of low and moderate-income housing.

-
- A. In the event of a threatened breach of any of the Covenants by the Owner, or any successor in interest of the Property, the Administrative Agent and the Municipality shall have all remedies provided at law or equity, including the right to seek injunctive relief or specific performance.
- B. Upon the occurrence of a breach of any Covenants by the Grantee, or any successor in interest or other owner of the Property, the Administrative Agent and the Municipality shall have all remedies provided at law or equity including but not limited to forfeiture, foreclosure, acceleration of all sums due under any mortgage, recouping of any funds from a sale in violation of the Covenants, diverting of rent proceeds from illegal rentals, injunctive relief to prevent further violation of said Covenants, entry on the premises, those provided under Title 5, Chapter 80, Subchapter 26 of the New Jersey Administrative Code and specific performance.

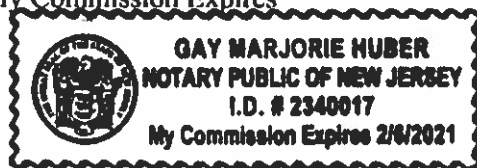
[Intentionally Left Blank – Signature Pages to Follow]

STATE OF NEW JERSEY)
) SS:
COUNTY OF Mercer)

I CERTIFY that on this 22 day of June 2017, before me, the subscriber, personally appeared Shing-Fu Hsieh who I am satisfied is the person who executed the foregoing instrument as Mayer of West Windsor Township, a municipal corporation, the entity named in the foregoing instrument, and who acknowledged that he/she, in such capacity, being authorized to do so, executed the foregoing instrument as such entity's voluntary act and deed for the purposes therein contained by signing on behalf of West Windsor Township.

IN WITNESS WHEREOF, I hercunto set my hand and official seal.

Gay Marjorie Huber
Notary Public
My Commission Expires



APPENDIX E-2

MANDATORY DEED RESTRICTION FOR RENTAL PROJECTS

Corrective Deed Restriction

**DEED-RESTRICTED AFFORDABLE HOUSING
PROPERTY WITH RESTRICTIONS ON RESALE
AND REFINANCING**


To Rental Property
With Covenants Restricting Rentals, Conveyance and Improvements
And Requiring Notice of Foreclosure and Bankruptcy

THIS DEED RESTRICTION, entered into as of this the ___ day of October, 2017, by and between the **Township of West Windsor**, a municipal corporation of the State of New Jersey, having an address of 271 Clarksville Road, West Windsor, NJ 08550 (the "Municipality"), and **Ellsworth Realty Associates, LLC**, a New Jersey limited liability company having offices at 4 Coventry Farm Lane, Princeton, NJ 08540, the developer/sponsor (the "Owner") of a mixed use development containing low- and moderate-income rental units (the "Project"):

This Corrective Deed Restriction corrects a certain Deed Restriction: Deed-Restricted Affordable Housing Property with Restrictions on Resale and Refinancing entered into between the Township of West Windsor and Ellsworth Realty Associates on June 21, 2017 and recorded on July 6, 2017 in Deed Book 6291, Pgs 889-894 in the Mercer County Clerk's Office by changing the reference in Article 2 thereof from Block No. 5, Lot 20.1 to Block No. 5, Lot 20.01; by changing the term "Administrative Agent" to "Township of West Windsor" in the in Witness Whereof clause on page 4; and by changing the title of the signatory of the Owner from "Managing Partner" to "Managing Member." All other provisions in such Deed Restriction remain in force and effect.

IN WITNESS WHEREOF, the Township of West Windsor and the Owner have executed this Deed Restriction in triplicate as of the date first above written.

ELLSWORTH REALTY ASSOCIATES,
LLC, a New Jersey Limited Liability
Company

By: 
Name: Shawn Ellsworth
Title: Managing Member

STATE OF NEW JERSEY)
) SS:
COUNTY OF MERCER) *ye*

I CERTIFY that on this 13th day of October 2017, before me, the subscriber, personally appeared Shing-Fu Hsueh who I am satisfied is the person who executed the foregoing instrument as Mayor of West Windsor Township, a municipal corporation, the entity named in the foregoing instrument, and who acknowledged that he ~~she~~, in such capacity, being authorized to do so, executed the foregoing instrument as such entity's voluntary act and deed for the purposes therein contained by signing on behalf of West Windsor Township.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Cynthia Churchwell-Rhymer
Notary Public
My Commission Expires February 27, 2021



Appendix Y: RP-1 Ordinance

TOWNSHIP OF WEST WINDSOR
COUNTY OF MERCER, NEW JERSEY

1st Reading November 19, 2018

Date to Mayor December 11, 2018

2nd Reading & Public Hearing December 10, 2018

Date Signed December 11, 2018

Date Adopted December 10, 2018*

Date Resubmitted to Council _____

Date Effective December 31, 2018

Approved as to Form and Legality [Signature]
Township Attorney

DOT APPROVAL RECEIVED _____

ORDINANCE 2018-28

**AN ORDINANCE TO AMEND AND SUPPLEMENT
THE CODE OF THE TOWNSHIP OF WEST WINDSOR (1999)**

**AN ORDINANCE AMENDING THE REDEVELOPMENT PLAN
FOR PRINCETON JUNCTION BY MODIFYING THE RP-1 DISTRICT**

RECORD OF VOTE													
First Reading							Second Reading						
Council	Yes	No	NV	AB	Mov	Sec	Council	Yes	No	NV	AB	Mov	Sec
GEEVERS	✓					✓	GEEVERS	✓					
HAMILTON	✓						HAMILTON	✓					✓
MANZARI	✓				✓		MANZARI	✓				✓	
MILLER	✓						MILLER	✓					
ZHANG	✓						ZHANG				✓		

x-Indicates Vote AB-Absent NV-Not Voting Mov-Moved Sec-Seconded

Rejected

Approved [Signature] December 11, 2018
Hemanth Marathe, Mayor Date

Reconsidered by Council _____ Override Vote: YES _____ NO _____

[Signature]
Gay M. Huber, Township Clerk

* Planning Board Review 11/27/18 - Minor revisions amended by Council to accept 12/10/18.

ORDINANCE 2018-28

**AN ORDINANCE TO AMEND AND SUPPLEMENT
THE CODE OF THE TOWNSHIP OF WEST WINDSOR (1999)**

**AN ORDINANCE AMENDING THE REDEVELOPMENT PLAN
FOR PRINCETON JUNCTION BY MODIFYING THE RP-1 DISTRICT**

BE IT ORDAINED by the Township Council of the Township of West Windsor, County of Mercer, State of New Jersey, as follows:

Section 1. The first full paragraph on page 8 is amended as necessary to reflect the new district regulations set forth below.

Section 2. The Executive Summary is amended as necessary to reflect the new district regulations set forth below.

Section 3. The Redevelopment Plan Development Summary on page 12 is amended to reflect the new district regulations set forth below.

Section 4. The Study Area District Map on page 25 is amended by increasing the size of the RP-1 District in the manner set forth in the map change that is part of the ordinance codifying the District Regulations set forth below.

Section 5. The following shall be added at the end of the District Regulations.

DISTRICT RP-1

RP-1 District use regulations

A. RP-1 District Use Regulations

- (1) Purpose. The RP-1 District is envisioned as the core of the Redevelopment Area on the west side of the rail line where a mix of residential, retail, office and civic space can be designed as a

distinctive walkable center with a sense of place for Princeton Junction.

- (2) Principal permitted uses. In the RP-1 District, no building or premises shall be used and no building shall be erected or altered on a lot which is arranged, intended or designed to be used, except for one or more of the following uses:
 - (a) Multi-family dwellings, townhouses, stacked townhouses, age-restricted housing and live-work units, including affordable housing meeting all Uniform Housing Affordability Controls (“UHAC”) standards. Residential structures may occur in mixed-use structures. Residential structures will comply with all federal and state accessibility laws.
 - (b) Civic spaces and uses, including a farmer’s market.
 - (c) One hotel[s].
 - (d) Stores and shops for the conduct of any retail business, including specialty and gift shops and boutiques, excluding drive through facilities.
 - (e) Personal service establishments (e.g., tailor, barbershop, or beauty salon).
 - (f) Offices for professional services (e.g., physicians, lawyers, financial advisors or architects); commercial offices (e.g., realtors or travel agencies); governmental offices (e.g., post office branch); and offices incidental to uses permitted in this section.
 - (g) Restaurants, cafes, luncheonettes and delicatessens, excluding curb service establishments and drive-through facilities but not excluding walk up services and outdoor dining.
 - (h) Indoor recreation facilities, including instructional studios and fitness centers.
 - (i) Banks and similar financial institutions, including walk-up automated teller machines (ATM), provided that such are compatible with the design of the building and are appropriately located at the side or rear of a building. Drive-through facilities serving such uses are not permitted.

- (j) Attended laundry and retail dry-cleaning services, not including bulk processing and, in the case of dry-cleaning establishments, not providing for the storage of more than five gallons of flammable or toxic cleaning fluid on the premises.
 - (k) Book, newspaper, periodical and stationery stores and copy centers.
 - (l) Parcel package shipping stores or mailing centers.
 - (m) Artisan studios, craftsman workshops, and art galleries.
 - (n) Museums and other cultural and civic facilities of a similar nature.
 - (o) Parks and plazas.
 - (p) Buildings and uses for municipal purposes owned or operated by West Windsor Township or not-for-profits designated by the Township.
- (3) Permitted accessory uses.
- (a) Recreational and open space facilities, including, but not limited to, pools, walkways, courtyards and plazas.
 - (b) Off-street parking and loading, including parking structures attached to buildings with principal permitted uses, appropriately screened from public view.
 - (c) Signs.
 - (d) Street furnishings, planters, street lights, and exterior, garden type shade structures.
 - (e) Sidewalk cafes and outdoor dining facilities associated with permitted restaurants, cafes, luncheonettes, and delicatessens.
 - (f) Fences and walls, which shall complement the architectural style, type and design of the building and the overall project design.
 - (g) Decks, patios and terraces (including rooftop facilities), which shall complement the architectural style, type and design of the building and the overall project design.

- (h) Community bulletin or message boards, including electronic signs with changeable type only for the purpose of conveying information about community events. However, animated type signs shall not be permitted.
 - (i) Public service facilities.
 - (j) Accessory uses customarily incidental to permitted principal uses, including structured parking, management and maintenance offices, fitness and other resident amenities, storm water management facilities and structures.
 - (k) Open air structures such as gazebos, pavilions, children's play areas and pet parks.
 - (l) Kiosks, which may have restrooms.
- (4) Conditional uses. In the RP-1 District, the following uses may be permitted as conditional uses: Child care centers meeting the standards set forth in Section 200-241, except that (i) they shall not be permitted in freestanding buildings, (ii) the minimum standards applicable to a freestanding child care center in Section 200-241. A. (1), (3) and (4) shall not be applicable and (iii) the provisions related to an outdoor play area center in Section 200-241. A. (8) and (9) shall not be applicable, if one is not provided as permitted by the New Jersey Department of Human Services.

B. RP-1 District Intensity, Bulk and Other Regulations

The following shall be the standards for the RP-1 District:

- (1) Minimum tract area: The entirety of the District, which shall be conceptually planned in a comprehensive integrated manner showing the proposed development for the entire District. Individual components of the District may be shown conceptually to allow for the District to be developed in phases.
- (2) Number of dwelling units: The redeveloper may construct up to 800 dwelling units as of right, at least 95 of which shall be age-restricted. 16.5% of the dwelling units constructed shall be set-aside as affordable units complying with all UHAC regulations. At least 37 percent of the affordable units shall be made available to low-income households and at least 13 percent shall be made available to very low-income households as defined by the New Jersey Fair Housing Act. The remaining affordable units shall be made available to moderate-income households. The affordable units within each residential

component of the development shall be dispersed throughout such component.

- (3) Amount of indoor non-residential square footage: At least 37,000 square feet of indoor non-residential space shall be constructed by the redeveloper. Non-residential uses may be located on the first floor of multi-use buildings, except that freestanding one or two-story non-residential structures are permitted to be located within the promenade as kiosks or fronting the promenade in a corner location as a non-residential building. Kiosks and commercial uses within the hotel shall not be counted towards the minimum indoor non-residential square footage requirement.
- (4) Required outdoor civic space and uses: Consistent with Exhibit E of the Settlement and Redeveloper's Agreement, civic uses shall include a minimum of 50,000 square feet contained in the promenade and shall be provided, owned and maintained by the redeveloper at its cost in perpetuity. It may be used for a farmer's market and other public events sponsored by civic organizations which shall be according to a schedule of availability and rules of usage established by the redeveloper in cooperation with the township. The promenade shall include a sheltered public gathering space permanently affixed and constructed primarily of glass or other transparent material subject to the approval of the Township. The promenade shall also include a plaza, utilities, and at least one kiosk with public bathrooms and shall be located at a place where the streets could be closed for vehicular traffic at appropriate locations. If necessary, the redeveloper shall provide public use easements allowing the public to use and enjoy the promenade. Public access to restrooms shall be provided during normal business hours and scheduled public events.
- (5) A hotel may be constructed and shall be fronting the promenade.
- (6) Maximum improvement coverage: 95%
- (7) Maximum building height: Four stories with the exception of:
 - (a) Mixed-use buildings with non-residential uses on the ground floor which can be up to five stories provided that the fifth floor façade is stepped back a minimum of six (6) feet from the fourth floor façade below.
 - (b) One hotel may be up to five stories plus open or partially covered rooftop terraces and outdoor dining facilities.

- (c) Parking structures attached to buildings with principal permitted uses may be up to six levels.
- (d) Architectural enhancements and building elements and appurtenances such as parapets, chimneys, spires, cupolas, belfries, corner towers or flagpoles, designed for ornamental purposes, as well as functional elements such as elevator housing, roof-mounted HVAC equipment, and roof-access stairwells, are not subject to any specific height limitation but shall not exceed the height of the rooftop they project from by more than 15 feet. Section 200-229 F of Chapter 200 of the Township's Code relating to height exceptions shall not apply.

Consistent with the definition from the International Building Code (Section 505.2), mezzanines shall not constitute a story or half story and shall be considered a portion of the story below.

- (8) Parking requirements: 1.4375 off-street parking spaces per apartment unit are to be provided within the District. RSIS standards shall apply for townhouses. Non-residential uses may rely on shared parking and, if available, commuter parking spaces in off hours and on weekends without the provision of dedicated parking except for employees at a ratio of 1.0 space per 1,000 square feet of non-residential square footage (as described in section C.) excluding hotels. Parking serving hotel guests and employees shall be provided at the rate of 0.6 spaces per room. The required number of spaces for residential uses (excluding townhouses) and non-residential uses may be reduced if a shared parking analysis demonstrates to the Planning Board's satisfaction that a lower number of spaces will be sufficient.

[except that the required number of spaces may be reduced if a shared parking analysis demonstrates that a lower number of spaces will be sufficient.]

The applicable parking requirement may be reduced where it can be demonstrated to the satisfaction of the Planning Board that such reductions are justified by reason of proximity to public transportation and/or documented arrangements for shared parking supported by analyses consistent with the Urban Land Institute's Shared Parking Analysis or other generally accepted standards applicable to shared parking.

- (9) Other standards:
 - (a) No development shall proceed in the District without a redeveloper's agreement with the Township.

- (b) There shall be no FAR (Floor Area Ratio) or MIC (Maximum Improvement Coverage) requirements for individual lots, such requirements applying only district-wide regardless of subdivisions created to separate buildings, uses, ownership or financing within the overall RP-1 District. Setback and building distance standards are not applied in order to maximize flexibility of the design and to achieve the goals of the RP-1 District as a compact, walkable center with an active public space and street life.

C. RP-1 District Design Standards

The RP-1 District is intended to promote redevelopment to achieve the goals of the District as a compact, walkable center with active street life and a promenade as the primary public space. The creation of a cohesive built environment where existing and proposed commercial and residential development are integrated is essential to this district. These design standards are intended to maximize flexibility of the design to achieve the goals of the district. All standards set forth in the Township Land Use Code, other than District regulations, shall continue to apply except when inconsistent with the design standards set forth below.

- (1) Promenade public space (which is shown conceptually in Exhibit E of the settlement and Redeveloper's Agreement).
 - (a) The promenade shall be designed to include passive areas and active public gathering space that can host a farmer's market and other public events.
 - (b) If applicable, the farmer's market shall include stall areas, an open air pavilion structure, a plaza and utilities such as electric and water. It shall be located on the promenade at a place where the streets could be closed to vehicular traffic at appropriate locations.
 - (c) The promenade shall utilize shared space principles that combine movement and other civic functions of streets and public space. This includes aesthetic treatments considering decorative materials and/or patterns for all vehicular, pedestrian and shared paved surfaces. Pavements should be specifically designed to emphasize the creation of spaces and transition between spaces or zones and to provide visual clues to pedestrians, bicyclists and motorists to reinforce the use and function of the area as a low speed pedestrian-oriented public space through which motor vehicles travel and park. Bollards shall be used in place of curbs to provide visual clues for defining separation of pedestrian circulation from vehicular

travel lanes and on-street parking. More refined pavements should be utilized to emphasize and enhance areas designed for larger volumes of pedestrian activity such as building entrances, plazas and terraces, nodes, drop-off and pick-up zones and crosswalks. A palette of compatible decorative pavements and/or pavement patterns should be developed for the entire promenade.

- (2) Circulation and parking.
 - (a) Streets shall include on-street parallel or angled parking in order to promote pedestrian street activity, lower vehicular speeds, and provide convenient access to retail uses and the promenade.
 - (b) Off-street parking and service access shall be designed to avoid the backing in and out of streets.
 - (c) Sidewalk widths shall measure between 10 feet and 15 feet in the core retail and promenade area in the RP-1 District and shall be a minimum of five feet wide in all other areas (except where vehicle parking overhang of a sidewalk area can occur wherein the width of the sidewalk area is to be a minimum of 6'). All sidewalks should be durably paved and smoothly surfaced to provide for the free movement of pedestrians. All sidewalks and pathways must be designed to provide access for the physically disabled. Access ramps shall be conveniently placed and sloped to provide easy connection to streets and sidewalks, in conformance with the applicable accessibility standards.
 - (d) The minimum width for off-road bike lanes is eight feet.
 - (e) Surface parking cannot be located between the building and the front property line. Where surface parking may be located along a street frontage, such must be screened from the street by a solid fence or wall at a minimum height of 48 inches.
 - (f) Structured parking may be contained within, under or attached to buildings. Parking structures or podium-type parking under buildings may not front toward the promenade public space. Where parking structures front on public streets, such may

feature liner buildings which are shallow commercial buildings on the facades of parking structures or ground floor space along the sidewalk designed as retail, commercial or office space

- (g) All facilities that provide parking to the public for non-residential uses shall provide parking for bicycles at a rate of one bicycle space per 10 automobile parking spaces for the first 100 parking stalls and one bicycle space every 20 automobile parking spaces beyond that.
 - (h) A minimum of two spaces will be provided for parking for shared car services.
 - (i) Loading for non-residential uses fronting on the promenade may be accommodated by collective provision for loading facilities that allow for sharing of such facilities among two or more uses and may be located in either on-street loading zones or off-street loading areas, which may be located within a building or a parking structure. A hotel shall provide an off-street loading area with a minimum of 1 berth.
- (3) Landscape architectural treatments and guidelines.
- (a) All plants, trees, shrubs, pedestrian pavements and streetscape elements shall be installed in accordance with a landscape plan and schedule provided by the redeveloper, subject to the approval of the Planning Board.
 - (b) Landscape architectural treatments shall be provided throughout the redevelopment area to create spatial definition or separation, shade, visual interest, seasonal color, visual buffering, microclimatic enhancement, and habitat and to improve safety.
 - (c) Indigenous plant species shall be primarily specified within the District and invasive exotic species shall be avoided. Any landscaping that is not resistant to the environment, or that dies, shall be replaced by the redeveloper in accordance with the maintenance guarantee provisions of the municipal land use law. {perpetuity}.

- (d) In landscaped spaces, passive systems such as cisterns and water gardens that collect rainwater for irrigation or recharge are encouraged.
 - (e) Soil moisture-sensing irrigation systems shall be used.
- (4) Building orientation, massing and façade composition.
- (a) New buildings within the District should be considered an integral part of the overall site design and developed with appropriate consideration for both proposed and existing buildings with respect to height, mass, siting, location, materials, orientation, signs, lighting and use.
 - (b) Buildings shall front on the promenade and public streets to provide form and function to the streetscape. The streetscape should be continuous and varied through the use of street furniture, landscaping, building articulation, building frontage setbacks and changes in sidewalk types and textures. Driveway intersections with the public street should be minimized to avoid excessive interruptions in the streetwall.
 - (c) Buildings shall be designed to present an articulated facade from all vantage points. Parking structures shall not front on the promenade. Parking structures or that portion of a building containing a parking structure that is not fronting on the promenade may have an exterior clad in a vine-covered trellis, graphic panels, solar panels, a window-like facade treatment, liner buildings or ground floor space along the sidewalk designed as retail, commercial, residential or office space.
 - (d) The architectural treatment of the front facade shall be continued in its major features around all visibly exposed sides of a building with the exception of parking structures or that portion of a building containing a parking structure. All sides of a building shall be architecturally designed to be consistent with regard to style, materials, colors and details. Blank wall or service area treatment of side and/or rear elevations visible from public view shall be avoided.
- [a]

- (e) Unless the redeveloper proposes a specific use that requires a unique building, such as a hotel, buildings should be designed utilizing base, middle and top forms as the primary method relating buildings to each other.
- (f) The base shall be considered the first story of the facade facing a public street, depending on the overall heights of the building. The design of the base, as well as the quality and durability of its materials, should be emphasized to create visual interest and support pedestrian activity. The building's base should be presented to the Planning Board at a larger scale of drawing and greater detail than the remainder of the facade to ensure it meets the building design objectives.
- (g) In addition to the base, the exterior design of mixed-use residential buildings shall include a middle field section and a cap on the top. The middle of the building shall be differentiated from the base by a horizontal transition line. A horizontal transition line should also be established separating the middle field from the cap or top of the buildings.
- (h) The base transition line should generally be defined at the water table, sill of the ground floor windows or top of the ground floor. The upper transition line articulating the cap, should generally be defined by a cornice, projecting overhang or other appropriate means that defines the cap of the building.
- (i) Building exteriors shall have vertical and/or horizontal offsets to create visual breaks on the exterior. Long, monotonous, uninterrupted walls or roof planes shall be avoided. Building wall offsets, including projections such as balconies, canopies, awnings, and signs, recesses, and changes in floor level shall be used in order to add architectural interest and variety and to relieve the visual effect of a simple, long wall. Similarly, roofline offsets, dormers, or gables shall be provided in order to provide architectural interest and variety to the massing of a building and to relieve the effect of a single, long roof.
- (j) For townhouses or stacked townhouses, buildings may contain a maximum of twelve townhouse dwellings or stacked townhouse

modules (twenty-four stacked townhomes) in a single row and shall not require any façade, height or roofline offsets. The base of townhouses or stacked townhouses should generally be defined at the water table, sill of the ground floor windows or top of the ground floor and the cap should generally be defined by a cornice or overhanging eave line. Townhouses or stacked townhouses shall have a front entry that faces a street, courtyard, mews or other open space, with garages accessed from the rear (via a driveway), and are not required to have private outdoor space at the ground level.

- (k) In general, it is preferred to keep the street facade parallel to the property line in alignment with adjacent buildings.
- (l) Blank walls must contain architectural relief such as expressive details, blind windows, murals, etc.
- (m) All buildings shall provide scale-defining architectural elements or details at the first two floor levels minimum, such as windows, spandrels, awnings, porticos, pediments, cornices, pilasters, columns and balconies.
- (n) Windows for residential buildings shall be primarily vertically proportioned. Tinted and highly reflective glass are discouraged.
- (o) Ground-floor retail, services, and restaurant uses shall have large transparent windows. Such windows shall be framed by the surrounding wall and shall be a minimum of 75% of the total ground-level facade area adjoining the sidewalk. The window wall facade area may be reduced if, due to a particular use or settings, the provision of windows will present concerns for aesthetic design or security. However, the facade design should employ an arrangement of materials that reflects the required window area and/or lines to be compatible with the intent of these guidelines.
- (p) The predominant material of all street walls on primary and secondary streets shall be brick, precast, cement-board

siding, wood and finished masonry block, or curtain wall. Stucco may be used as an accent. All materials, colors and elevations shall be approved by the Planning Board.

- (q) Shop fronts may have a kick plate that ranges in height from 18 inches to 42 inches running continuously beneath the required fenestration.
- (r) Public access to commercial and governmental buildings shall be provided at sidewalk grade. The primary floor of and access to residential structures may be elevated.
- (s) The front doors of all buildings shall be visible from the street unless fronting on a courtyard, mews or other open space. If located more than 10 feet from the front building line, their location must be reinforced with additional graphics, signage, lighting, marquees or canopies.
- (t) All entrances to a building, except service and emergency egress doors, shall be defined and articulated by architectural elements such as lintels, pediments, pilasters, columns, porticoes, porches, overhangs, railings, balustrades and other elements, where appropriate. Any such element utilized, including doors, shall be architecturally compatible with the style, materials, colors and details of the building as a whole. The main entrance shall face the street on which the property fronts.
- (u) Awnings, which add visual richness to the commercial corridor while enhancing the quality of public walkways, are encouraged for all storefronts. Awnings shall have fixed or retractable metal framework.
- (v) Canopies, unlike awnings, are non-retractable. They shall be constructed of wood or metal framing, standing-seam metal roof or glass roof as solid canopies or semi-open trellises. Canopies may incorporate signage and down lighting. Security shall be implemented so that it cannot be seen, and

security grille housing is specifically prohibited.

- (w) All awnings and canopies shall be securely attached to the building so that the lowest part of the awning or canopy is mounted a minimum of eight feet above the sidewalk at the storefront. Awnings and canopies may project over a sidewalk and/or in the public right-of-way.
- (x) Buildings directly fronting the promenade shall be designed to appear as landmark buildings. One possible treatment to achieve this goal would have buildings designed with additional height or architectural embellishments, such as corner towers, to emphasize their location.
- (y) Appropriate design of the corner of mixed-use buildings directly fronting the promenade shall include one of the following patterns:
 - [1] Opening the space at ground level for people to walk across the corner, with the building mass above redefining the corner.
 - [2] A recessed entry at the corner such as the familiar angled wall with an entry door.
 - [3] A corner window with an important view into the building.
 - [4] Balconies or bay windows that wrap the corner
 - [5] A tower element
- (z) Multistory buildings with flat roofs shall provide light color roof surfaces. Green roof plantings and solar photovoltaic systems on roofs and parking decks shall be permitted.
- (aa) Excepting the antenna itself, all parts and components of personal communications antennas, satellite dishes, and television and radio antennas shall be screened from view regardless of elevation, or shall be disguised within an enclosed structure. The screening shall be designed as part of

the overall design theme of the building to which it is associated.

- (bb) Dish antennas may not exceed 12 feet in diameter.
- (cc) Mechanical equipment located on building roofs shall be screened so as not to be visible from the ground level from adjacent developments and from public streets and spaces. Mechanical equipment at ground level shall be screened and in the rear.

(5) Lighting

- (a) Lighting levels along paved portions of public walks shall be an average of no less than one foot candle for commercial areas and 0.5 foot candle for residential areas.
- (b) Fixtures serving to light streets shall be at a height of no greater than 20 feet above the adjacent roadway surface. The light center of a fixture for a pedestrian walkway shall be mounted at a height of 12 feet to 14 feet above the adjacent surface of the walkway. The fixtures shall include attachments to accommodate such amenities as banners and flower pots.
- (c) The design for a proposed facade must consider the appearance of the building in the evening and develop an exterior lighting plan that includes display window lighting, building lighting, and pedestrian-scaled lighting for both buildings and pedestrian areas within the site. Lighting shall be warm in color, with control of glare for the pedestrian.

(6) Streetscape

- (a) A palette of compatible site furnishings should be developed for the entire District. Street furnishings may include elements such as benches, gazebos, trash and recycling receptacles, bicycle racks, bird houses, drinking fountains, kiosks, sculptural elements, decorative fountains, bollards, decorative fences, seat walls, and pedestrian-scale lighting.

- (b) Community bulletin boards, such as kiosks, may be provided at strategic locations, including on the promenade.
- (c) Freestanding newspaper and advertising dispensers shall not be permitted in the right-of-way of primary streets and shall be incorporated into approved buildings or pavilions.
- (d) Outdoor cafes may extend onto the public right-of-way upon issuance of a license by the Township. Such encroachment shall convey no rights to the licensee beyond those enumerated in the license. Outdoor cafes shall be delineated from the public way by planters and/or metal fencing with no more than two entrances to the cafe seating area. A clear width of at least four feet shall be maintained between any outward portion of the cafe and the closest street furniture and equipment.

(7) Signage

In lieu of Section 200-258D, the following shall apply:

- (a) The temporary display of signs, banners, flags, pennants and similar devices, in connection with special events or activities of a public or nonprofit nature shall be permitted, provided such display shall not exceed 14 days and shall not occur more than twelve times per calendar year.
- (b) The temporary display of signs, banners, flags, pennants and similar devices in connection with the opening of a new business use or reopening of an existing business use shall be permitted provided such display shall not exceed three months for non-residential uses and 15 months for hotel and residential uses.
- (c) Existing nonconforming signs shall be removed from this District within a period of 12 months after building permit issuance.
- (d) All signs within the project area shall be part of the overall total design scheme and in keeping with the architectural character of the District in which the sign is located.

- (e) Each type of signage shall be permitted on the same site, provided that the standards set forth below are satisfied.
 - [1] Wall signage.
 - [a] The following types of wall signs shall be permitted:
 - [i] Internally lit raised letters.
 - [ii] Backlit raised letters.
 - [iii] Signage board with gooseneck lighting.
 - [iv] Individual cut letters with gooseneck lighting.
 - [b] The maximum sign area shall be 80% of the linear tenant frontage, with a maximum of 50 square feet.
 - [2] Hanging signs.
 - [a] One hanging sign shall be permitted per business with the exception of residential and hotel buildings which can have one (1) per building entry and one (1) for each exterior building corner.
 - [b] The maximum sign area shall be 10 square feet with the exception of blade signs for residential and hotel buildings which maximum sign area shall be 50 square feet.
 - [c] The letter and logo height shall be a maximum of 12 inches with the exception of blade signs which maximum height shall be 18 inches.
 - [d] Hanging signs may project over a sidewalk and/or in the public right-of-way.
 - [3] Street address signage.
 - [a] Street address signage shall be provided on each building or for each individual tenant.
 - [b] Street address numbers shall have a maximum height of eight inches.

- [4] Kiosk signage.
 - [a] Free-standing signs designed as Parisian-style kiosks shall be permitted in order to identify the promenade and individual uses located in the District to passersby on major roads at the edges of the District as well as within or leading to the promenade.
 - [b] The maximum kiosk sign area shall be 30 square feet, as measured on each face.
 - [c] The maximum kiosk sign height shall be 16 feet above finished grade.
 - [d] Kiosk signs may be located in a paved sidewalk area including within the public right-of-way of streets.
 - [e] The base of the kiosk sign shall be landscaped with plants that extend a minimum of two feet in all directions unless such kiosk is located within a paved sidewalk area.

[5] Awnings and canopies.

- [a] Awnings and canopies shall be architecturally compatible with the building.
- [b] Awnings and canopies shall be kept in good order.
- [c] One sign on an awning or canopy shall be permitted, provided that:
 - [i] The letter logo height does not exceed 50% of the main area of the awning or canopy.
 - [ii] The letter and logo area may be located on the valance of the awning or face of the canopy and shall not exceed twelve inches in height.
 - [iii] The letter and logo area may be located above the canopy and shall not exceed

twelve inches in height.

[6] Window lettering and signs. Window lettering and signs shall be permitted, provided that they:

[a] Are inside the window

[b] Do not exceed 15% of the window area.

[c] Pertain only to the establishment occupying the premises where the window is located.

(f) Temporary construction and sales signage

[1] Signage shall be removed within three years of the issuance of a sign permit or one year of the time of the final certificate of occupancy, whichever comes first. One sign per each road frontage shall be permitted. However, construction signs which contain noncommercial messages, such as signs identifying individual lots or construction ingress and/or egress, shall be permitted.

[2] Temporary contractor signage. Only one sign shall be permitted identifying lenders, architects, engineers or contractors doing work on the site. Such sign shall be a maximum of four square feet per entity, but not to exceed 25 square feet. This sign shall be removed when work ceases or is abandoned or when a certificate of occupancy for the project is issued, whichever occurs sooner.

(g) Billboards are prohibited.

Section 6. This ordinance shall be in force after action or inaction by the Mayor as provided by law or an override of mayoral veto by the Council whichever is applicable, and publication according to law.

INTRODUCTION: November 19, 2018

PLANNING BOARD REVIEW/APPROVAL; November 27, 2018*

PUBLIC HEARING: December 10, 2018

ADOPTION: December 10, 2018

MAYOR'S APPROVAL: December 11, 2018

EFFECTIVE DATE: December 31, 2018

*Minor changes were requested. These changes were approved by the Township Council on 12/10/2018

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November 30, 2018

Sent via electronic transmission

Council President Miller and Members of Council
West Windsor Township
271 Clarksville Road
P.O. Box 38
West Windsor, NJ 08550

Re: Ordinances 2018-28 and 2018-29

Dear Council President Miller and Members of Council:

At its November 27, 2018 meeting, the Planning Board reviewed the above-referenced ordinances. By a vote 8-0 with no abstentions, the Board voted to advise Council that it agreed with the ordinances subject to the language changes set forth below and that they are not currently consistent with the West Windsor Master Plan.

In Ordinance 2018-28, "Hotels" should be changed to "One hotel" in Section A(2)(c) and in Section B(7)(b). The reason for this is that hotel is referred to in the singular elsewhere and that the contemplation is that there would be only one hotel. In addition, the following should be added after "liner buildings" in Section C(2)(f): ", which are shallow commercial buildings on the façades of parking structures." Lastly, the second "a" in Section C(4)(y)[2] should be eliminated.

In ordinance 2018-29, "Hotels" should be replaced with "One hotel" in Section 200-260 A(2)(c) and in 200-260B(7)(b).

Sincerely,

Miller Porter & Muller, P.C.
Attorneys for the West Windsor Planning Board

By: Gerald J. Muller
Gerald J. Muller

**TOWNSHIP OF WEST WINDSOR
COUNTY OF MERCER, NEW JERSEY**

1st Reading November 19, 2018
 2nd Reading & Public Hearing December 10, 2018
 Date Adopted December 10, 2018*
 Date Effective December 31, 2018
 DOT APPROVAL RECEIVED _____

Date to Mayor December 11, 2018
 Date Signed December 11, 2018
 Date Resubmitted to Council _____
 Approved as to Form and Legality [Signature]
 Township Attorney

ORDINANCE 2018-29

**AN ORDINANCE TO AMEND AND SUPPLEMENT
THE CODE OF THE TOWNSHIP OF WEST WINDSOR (1999)**

**AN ORDINANCE AMENDING THE CODE OF THE TOWNSHIP OF WEST WINDSOR (1999) BY MODIFYING
THE RP-1 DISTRICT**

RECORD OF VOTE													
First Reading							Second Reading						
Council	Yes	No	NV	AB	Mov	Sec	Council	Yes	No	NV	AB	Mov	Sec
GEEVERS	✓					✓	GEEVERS	✓					✓
HAMILTON	✓						HAMILTON	✓					
MANZARI	✓				✓		MANZARI	✓				✓	
MILLER	✓						MILLER	✓					
ZHANG	✓						ZHANG				✓		

x-Indicates Vote AB-Absent NV-Not Voting Mov-Moved Sec-Seconded

Rejected

Approved [Signature] December 11, 2018
 Hemant Marathe, Mayor Date

Reconsidered by Council _____ Override Vote: YES _____ NO _____

[Signature]
 Gay M. Huber, Township Clerk

* Planning Board Review 11/27/18 - minor revisions amended by Council to accept 12/10/18

ORDINANCE 2018-29

**AN ORDINANCE TO AMEND AND SUPPLEMENT
THE CODE OF THE TOWNSHIP OF WEST WINDSOR (1999)**

**AN ORDINANCE AMENDING THE CODE OF THE TOWNSHIP OF WEST WINDSOR
(1999) BY MODIFYING THE RP-1 DISTRICT**

BE IT ORDAINED by the Township Council of the Township of West Windsor, County of Mercer, State of New Jersey, as follows:

Section 1. Chapter 200 of the Code of the Township of West Windsor (1999), Land Use, Part 1, Site Plan, Article II, Terminology, Section 200-4, Definitions, is amended by ADDING the following definition:

STACKED TOWNHOUSE – A building containing two or more connected dwelling units stacked one dwelling above another, which can include shared floors divided by walls and shared common party walls connected to other such building modules, with private entrances to each dwelling. For purposes of this chapter, a townhouse may include dwelling units in condominium or cooperative ownership or any combination thereof.

Section 2. Chapter 200 of said Code, Land Use, Part 4, Zoning, Article XXVI, Titles, Purposes, Establishment of Districts; General Conditions, Section 200-143, Zoning Map, is amended to read as follows:

The boundaries of said zoning district are hereby established as shown on the Zoning Map, Township of West Windsor, dated May 23, 2009, and revised through June 11, 2018, which, with all explanatory matter thereon, is hereby adopted and made part of this Part IV. An official copy of said Map, indicating the latest amendments shall be kept up-to-date in the office of the Land Use Manager for the use and benefit of the public and shall have the most current revision date shown thereon. The Zoning Map for that shall be the official reference as to the current zoning classification of the land within the boundaries of the Township of West Windsor.

Section 3. Chapter 200 of said Code, Land Use, Part 5, Princeton Junction Redevelopment Plan Regulatory Provisions, Article XXXIV, Land Use Controls, is hereby amended by deleting Section 200-260 and ADDING in its stead the following:

§ 200-260 RP-1 District.

A. RP-1 District Use Regulations

- (1) Purpose. The RP-1 District is envisioned as the core of the Redevelopment Area on the west side of the rail line where a mix of residential, retail, office and civic space can be designed as a distinctive walkable center with a sense of place for Princeton Junction.
- (2) Principal permitted uses. In the RP-1 District, no building or premises shall be used and no building shall be erected or altered on a lot which is arranged, intended or designed to be used, except for one or more of the following uses:
 - (a) Multi-family dwellings, townhouses, stacked townhouses, age-restricted housing and live-work units, including affordable housing meeting all Uniform Housing Affordability Controls (“UHAC”) standards. Residential structures may occur in mixed-use structures. Residential structures will comply with all federal and state accessibility laws.
 - (b) Civic spaces and uses, including a farmer’s market.
 - (c) One hotel[s].
 - (d) Stores and shops for the conduct of any retail business, including specialty and gift shops and boutiques, excluding drive through facilities.
 - (e) Personal service establishments (e.g., tailor, barbershop, or beauty salon).
 - (f) Offices for professional services (e.g., physicians, lawyers, financial advisors or architects); commercial offices (e.g., realtors or travel agencies); governmental offices (e.g., post office branch); and offices incidental to uses permitted in this section.
 - (g) Restaurants, cafes, luncheonettes and delicatessens, excluding curb service establishments and drive-through facilities but not excluding walk up services and outdoor dining.
 - (h) Indoor recreation facilities, including instructional studios and fitness centers.
 - (i) Banks and similar financial institutions, including walk-up automated teller machines (ATM), provided that such are compatible with the design of the building and are appropriately located at the side or rear of a building. Drive-through facilities serving such uses are not permitted.

- (j) Attended laundry and retail dry-cleaning services, not including bulk processing and, in the case of dry-cleaning establishments, not providing for the storage of more than five gallons of flammable or toxic cleaning fluid on the premises.
 - (k) Book, newspaper, periodical and stationery stores and copy centers.
 - (l) Parcel package shipping stores or mailing centers.
 - (m) Artisan studios, craftsman workshops, and art galleries.
 - (n) Museums and other cultural and civic facilities of a similar nature.
 - (o) Parks and plazas.
 - (p) Buildings and uses for municipal purposes owned or operated by West Windsor Township or not-for-profits designated by the Township.
- (3) Permitted accessory uses.
- (a) Recreational and open space facilities, including, but not limited to, pools, walkways, courtyards and plazas.
 - (b) Off-street parking and loading, including parking structures attached to buildings with principal permitted uses, appropriately screened from public view.
 - (c) Signs.
 - (d) Street furnishings, planters, street lights, and exterior, garden type shade structures.
 - (e) Sidewalk cafes and outdoor dining facilities associated with permitted restaurants, cafes, luncheonettes, and delicatessens.
 - (f) Fences and walls, which shall complement the architectural style, type and design of the building and the overall project design.
 - (g) Decks, patios and terraces (including rooftop facilities), which shall complement the architectural style, type and design of the building and the overall project design.
 - (h) Community bulletin or message boards, including electronic signs with changeable type only for the purpose of conveying information

about community events. However, animated type signs shall not be permitted.

- (i) Public service facilities.
 - (j) Accessory uses customarily incidental to permitted principal uses, including structured parking, management and maintenance offices, fitness and other resident amenities, storm water management facilities and structures.
 - (k) Open air structures such as gazebos, pavilions, children's play areas and pet parks.
 - (l) Kiosks, which may have restrooms.
- (4) Conditional uses. In the RP-1 District, the following uses may be permitted as conditional uses: Child care centers meeting the standards set forth in Section 200-241, except that (i) they shall not be permitted in freestanding buildings, (ii) the minimum standards applicable to a freestanding child care center in Section 200-241. A. (1), (3) and (4) shall not be applicable and (iii) the provisions related to an outdoor play area center in Section 200-241. A. (8) and (9) shall not be applicable, if one is not provided as permitted by the New Jersey Department of Human Services.

B. RP-1 District Intensity, Bulk and Other Regulations

The following shall be the standards for the RP-1 District:

- (1) Minimum tract area: The entirety of the District, which shall be conceptually planned in a comprehensive integrated manner showing the proposed development for the entire District. Individual components of the District may be shown conceptually to allow for the District to be developed in phases.
- (2) Number of dwelling units: The redeveloper may construct up to 800 dwelling units as of right, at least 95 of which shall be age-restricted. 16.5% of the dwelling units constructed shall be set-aside as affordable units complying with all UHAC regulations. At least 37 percent of the affordable units shall be made available to low-income households and at least 13 percent shall be made available to very low-income households as defined by the New Jersey Fair Housing Act. The remaining affordable units shall be made available to moderate-income households. The affordable units within each residential component of the development shall be dispersed throughout such component.

- (3) Amount of indoor non-residential square footage: At least 37,000 square feet of indoor non-residential space shall be constructed by the redeveloper. Non-residential uses may be located on the first floor of multi-use buildings, except that freestanding one or two-story non-residential structures are permitted to be located within the promenade as kiosks or fronting the promenade in a corner location as a non-residential building. Kiosks and commercial uses within a hotel shall not be counted towards the minimum indoor non-residential square footage requirement.
- (4) Required outdoor civic space and uses: Consistent with Exhibit E of the Settlement and Redeveloper's Agreement, civic uses shall include a minimum of 50,000 square feet contained in the promenade and shall be provided, owned and maintained by the redeveloper at its cost in perpetuity. It may be used for a farmer's market and other public events sponsored by civic organizations which shall be according to a schedule of availability and rules of usage established by the redeveloper in cooperation with the township. The promenade shall include a sheltered public gathering space permanently affixed and constructed primarily of glass or other transparent material subject to the approval of the Township. The promenade shall also include a plaza, utilities, and shall be located at a place where the streets could be closed for vehicular traffic at appropriate locations. If necessary, the redeveloper shall provide public use easements allowing the public to use and enjoy the promenade. Public access to restrooms shall be provided during normal business hours and scheduled public events.
- (5) A hotel may be constructed and shall be fronting the promenade.
- (6) Maximum improvement coverage: 95%
- (7) Maximum building height: Four stories with the exception of:
 - (a) Mixed-use buildings with non-residential uses on the ground floor which can be up to five stories provided that the fifth floor façade is stepped back a minimum of six (6) feet from the fourth floor façade below.
 - (b) One hotel may be up to five stories plus open or partially covered rooftop terraces and outdoor dining facilities.
 - (c) Parking structures attached to buildings with principal permitted uses may be up to six levels.
 - (d) Architectural enhancements and building elements and appurtenances such as parapets, chimneys, spires, cupolas, belfries, corner towers or flagpoles, designed for ornamental purposes, as well as functional elements such as elevator housing, roof-mounted

HVAC equipment, and roof-access stairwells, are not subject to any specific height limitation but shall not exceed the height of the rooftop they project from by more than 15 feet. Section 200-229 F of Chapter 200 of the Township's Code relating to height exceptions shall not apply.

Consistent with the definition from the International Building Code (Section 505.2), mezzanines shall not constitute a story or half story and shall be considered a portion of the story below.

- (8) Parking requirements: 1.4375 off-street parking spaces per apartment unit are to be provided within the District. RSIS standards shall apply for townhouses. Non-residential uses may rely on shared parking and, if available, commuter parking spaces in-off hours and on weekends without the provision of dedicated parking except for employees at a ratio of 1.0 space per 1,000 square feet of non-residential square footage (as described in section C.) excluding hotels. Parking serving hotel guests and employees shall be provided at the rate of 0.6 spaces per room, **The required number of spaces for residential uses (excluding townhouses) and non-residential uses may be reduced if a shared parking analysis demonstrates to the Planning Board's satisfaction that a lower number of spaces will be sufficient.**

[except that the required number of spaces may be reduced if a shared parking analysis demonstrates that a lower number of spaces will be sufficient.]

The applicable parking requirement may be reduced where it can be demonstrated to the satisfaction of the Planning Board that such reductions are justified by reason of proximity to public transportation and/or documented arrangements for shared parking supported by analyses consistent with the Urban Land Institute's Shared Parking Analysis or other generally accepted standards applicable to shared parking.

- (9) Other standards:
- (a) No development shall proceed in the District without a redeveloper's agreement with the Township.
 - (b) There shall be no FAR (Floor Area Ratio) or MIC (Maximum Improvement Coverage) requirements for individual lots, such requirements applying only district-wide regardless of subdivisions created to separate buildings, uses, ownership or financing within the overall RP-1 District. Setback and building distance standards are not applied in order to maximize flexibility of the design and to achieve the goals of the RP-1 District as a compact, walkable center with an active public space and street life.

- (c) Procedures for snow storage and removal shall be identified.

C. RP-1 District Design Standards

The RP-1 District is intended to promote redevelopment to achieve the goals of the District as a compact, walkable center with active street life and a promenade as the primary public space. The creation of a cohesive built environment where existing and proposed commercial and residential development are integrated is essential to this district. These design standards are intended to maximize flexibility of the design to achieve the goals of the district. All standards set forth in the Township Land Use Code, other than District regulations, shall continue to apply except when inconsistent with the design standards set forth below.

- (1) Promenade public space (which is shown conceptually in Exhibit E of the Settlement and Redeveloper's Agreement).
 - (a) The promenade shall be designed to include passive areas and active public gathering space that can host a farmer's market and other public events.
 - (b) If applicable, the farmer's market shall include stall areas, an open air pavilion structure, a plaza and utilities such as electric and water. It shall be located on the promenade at a place where the streets could be closed to vehicular traffic at appropriate locations.
 - (c) The promenade shall utilize shared space principles that combine movement and other civic functions of streets and public space. This includes aesthetic treatments considering decorative materials and/or patterns for all vehicular, pedestrian and shared paved surfaces. Pavements should be specifically designed to emphasize the creation of spaces and transition between spaces or zones and to provide visual clues to pedestrians, bicyclists and motorists to reinforce the use and function of the area as a low speed pedestrian-oriented public space through which motor vehicles travel and park. Bollards shall be used in place of curbs to provide visual clues for defining separation of pedestrian circulation from vehicular travel lanes and on-street parking. More refined pavements should be utilized to emphasize and enhance areas designed for larger volumes of pedestrian activity such as building entrances, plazas and terraces, nodes, drop-off and pick-up zones and crosswalks. A palette of compatible decorative pavements and/or pavement patterns should be developed for the entire promenade.
- (2) Circulation and parking.
 - (a) Streets shall include on-street parallel or angled parking in order

to promote pedestrian street activity, lower vehicular speeds, and provide convenient access to retail uses and the promenade.

- (b) Off-street parking and service access shall be designed to avoid the backing in and out of streets.
- (c) Sidewalk widths shall measure between 10 feet and 15 feet in the core retail and promenade area in the RP-1 District and shall be a minimum of five feet wide in all other areas (except where vehicle parking overhang of a sidewalk area can occur wherein the width of the sidewalk area is to be a minimum of 6'). All sidewalks should be durably paved and smoothly surfaced to provide for the free movement of pedestrians. All sidewalks and pathways must be designed to provide access for the physically disabled. Access ramps shall be conveniently placed and sloped to provide easy connection to streets and sidewalks, in conformance with the applicable accessibility standards.
- (d) The minimum width for off-road bike lanes is eight feet.
- (e) Surface parking cannot be located between the building and the front property line. Where surface parking may be located along a street frontage, such must be screened from the street by a solid fence or wall at a minimum height of 48 inches.
- (f) Structured parking may be contained within, under or attached to buildings. Parking structures or podium-type parking under buildings may not front toward the promenade public space. Where parking structures front on public streets, such may feature liner buildings which are shallow commercial buildings on the facades of parking structures or ground floor space along the sidewalk designed as retail, commercial or office space.
- (g) All facilities that provide parking to the public for non-residential uses shall provide parking for bicycles at a rate of one bicycle space per 10 automobile parking spaces for the first 100 parking stalls and one bicycle space for every 20 automobile parking spaces beyond that.
- (h) A minimum of 2 spaces will be provided for parking for shared car services.

- (i) Loading for non-residential uses fronting on the promenade may be accommodated by collective provision for loading facilities that allow for sharing of such facilities among two or more uses and may be located in either on-street loading zones or off-street loading areas, which may be located within a building or a parking structure. A hotel shall provide an off-street loading area with a minimum of 1 berth.
- (3) Landscape architectural treatments and guidelines.
- (a) All plants, trees, shrubs, pedestrian pavements and streetscape elements shall be installed in accordance with a landscape plan and schedule provided by the redeveloper, subject to the approval of the Planning Board.
 - (b) Landscape architectural treatments shall be provided throughout the redevelopment area to create spatial definition or separation, shade, visual interest, seasonal color, visual buffering, microclimatic enhancement, and habitat and to improve safety.
 - (c) Indigenous plant species shall be primarily specified within the District and invasive exotic species shall be avoided. Any landscaping that is not resistant to the environment, or that dies, shall be replaced by the redeveloper in **accordance with the maintenance guarantee provisions of the municipal land use law.**

[perpetuity].

- (d) In landscaped spaces, passive systems such as cisterns and water gardens that collect rainwater for irrigation or recharge are encouraged.
 - (e) Soil moisture-sensing irrigation systems shall be used.
- (4) Building orientation, massing and facade composition.
- (a) New buildings within the District should be considered an integral part of the overall site design and developed with appropriate consideration for both proposed and existing buildings with

respect to height, mass, siting, location, materials, orientation, signs, lighting and use.

- (b) Buildings shall front on the promenade and public streets to provide form and function to the streetscape. The streetscape should be continuous and varied through the use of street furniture, landscaping, building articulation, building frontage setbacks and changes in sidewalk types and textures. Driveway intersections with the public street should be minimized to avoid excessive interruptions in the streetwall.
- (c) Buildings shall be designed to present an articulated facade from all vantage points. Parking structures shall not front on the promenade. Parking structures or that portion of a building containing a parking structure that is not fronting on the promenade may have an exterior clad in a vine-covered trellis, graphic panels, solar panels, a window-like facade treatment, liner buildings or ground floor space along the sidewalk designed as retail, commercial, residential or office space.
- (d) The architectural treatment of the front facade shall be continued in its major features around all visibly exposed sides of a building with the exception of parking structures or that portion of a building containing a parking structure. All sides of a building shall be architecturally designed to be consistent with regard to style, materials, colors and details. Blank wall or service area treatment of side and/or rear elevations visible from public view shall be avoided.
- (e) Unless the redeveloper proposes a specific use that requires a unique building, such as a hotel, buildings should be designed utilizing base, middle and top forms as the primary method relating buildings to each other.
- (f) The base shall be considered the first story of the facade facing a public street, depending on the overall heights of the building. The design of the base, as well as the quality and durability of its materials, should be emphasized to create visual interest and support pedestrian activity. The building's base should be presented to the Planning Board at a larger scale of drawing and greater detail than the remainder of the facade to ensure it meets the building design objectives.

- (g) In addition to the base, the exterior design of mixed-use residential buildings shall include a middle field section and a cap on the top. The middle of the building shall be differentiated from the base by a horizontal transition line. A horizontal transition line should also be established separating the middle field from the cap or top of the buildings.
- (h) The base transition line should generally be defined at the water table, sill of the ground floor windows or top of the ground floor. The upper transition line articulating the cap, should generally be defined by a cornice, projecting overhang or other appropriate means that defines the cap of the building.
- (i) Building exteriors shall have vertical and/or horizontal offsets to create visual breaks on the exterior. Long, monotonous, uninterrupted walls or roof planes shall be avoided. Building wall offsets, including projections such as balconies, canopies, awnings, and signs, recesses, and changes in floor level shall be used in order to add architectural interest and variety and to relieve the visual effect of a simple, long wall. Similarly, roofline offsets, dormers, or gables shall be provided in order to provide architectural interest and variety to the massing of a building and to relieve the effect of a single, long roof.
- (j) For townhouses or stacked townhouses, buildings may contain a maximum of twelve townhouse dwellings or stacked townhouse modules (twenty-four stacked townhomes) in a single row and shall not require any façade, height or roofline offsets. The base of townhouses or stacked townhouses should generally be defined at the water table, sill of the ground floor windows or top of the ground floor and the cap should generally be defined by a cornice or overhanging eave line. Townhouses or stacked townhouses shall have a front entry that faces a street, courtyard, mews or other open space, with garages accessed from the rear (via a driveway), and are not required to have private outdoor space at the ground level.
- (k) In general, it is preferred to keep the street facade parallel to the property line in alignment with adjacent buildings.
- (l) Blank walls must contain architectural relief such as expressive details, blind windows, murals, etc.

- (m) All buildings shall provide scale-defining architectural elements or details at the first two floor levels minimum, such as windows, spandrels, awnings, porticos, pediments, cornices, pilasters, columns and balconies.
- (n) Windows for residential buildings shall be primarily vertically proportioned. Tinted and highly reflective glass are discouraged.
- (o) Ground-floor retail, services, and restaurant uses shall have large transparent windows. Such windows shall be framed by the surrounding wall and shall be a minimum of 75% of the total ground-level facade area adjoining the sidewalk. The window wall facade area may be reduced if, due to a particular use or settings, the provision of windows will present concerns for aesthetic design or security. However, the facade design should employ an arrangement of materials that reflects the required window area and/or lines to be compatible with the intent of these guidelines.
- (p) The predominant material of all street walls on primary and secondary streets shall be brick, precast, cement-board siding, wood and finished masonry block, or curtain wall. Stucco may be used as an accent. All materials, colors and elevations shall be approved by the Planning Board.
- (q) Shop fronts may have a kick plate that ranges in height from 18 inches to 42 inches running continuously beneath the required fenestration.
- (r) Public access to commercial and governmental buildings shall be provided at sidewalk grade. The primary floor of and access to residential structures may be elevated.
- (s) The front doors of all buildings shall be visible from the street unless fronting on a courtyard, mews or other open space. If located more than 10 feet from the front building line, their

location must be reinforced with additional graphics, signage, lighting, marquees or canopies.

- (t) All entrances to a building, except service and emergency egress doors, shall be defined and articulated by architectural elements such as lintels, pediments, pilasters, columns, porticoes, porches, overhangs, railings, balustrades and other elements, where appropriate. Any such element utilized, including doors, shall be architecturally compatible with the style, materials, colors and details of the building as a whole. The main entrance shall face the street on which the property fronts.
- (u) Awnings, which add visual richness to the commercial corridor while enhancing the quality of public walkways, are encouraged for all storefronts. Awnings shall have fixed or retractable metal framework.
- (v) Canopies, unlike awnings, are non-retractable. They shall be constructed of wood or metal framing, standing-seam metal roof or glass roof as solid canopies or semi-open trellises. Canopies may incorporate signage and down lighting. Security shall be implemented so that it cannot be seen, and security grille housing is specifically prohibited.
- (w) All awnings and canopies shall be securely attached to the building so that the lowest part of the awning or canopy is mounted a minimum of eight feet above the sidewalk at the storefront. Awnings and canopies may project over a sidewalk and/or in the public right-of-way.
- (x) Buildings directly fronting the promenade shall be designed to appear as landmark buildings. One possible treatment to achieve this goal would have buildings designed with additional height or architectural embellishments, such as corner towers, to emphasize their location.
- (y) Appropriate design of the corner of mixed-use buildings directly fronting the promenade shall include one of the following patterns:

- [1] Opening the space at ground level for people to walk across the corner, with the building mass above redefining the corner.
 - [2] A recessed entry at the corner such as the familiar angled wall with an entry door.
 - [3] A corner window with an important view into the building.
 - [4] Balconies or bay windows that wrap the corner
 - [5] A tower element
- (z) Multistory buildings with flat roofs shall provide light color roof surfaces. Green roof plantings and solar photovoltaic systems on roofs and parking decks shall be permitted.
 - (aa) Excepting the antenna itself, all parts and components of personal communications antennas, satellite dishes, and television and radio antennas shall be screened from view regardless of elevation, or shall be disguised within an enclosed structure. The screening shall be designed as part of the overall design theme of the building to which it is associated.
 - (bb) Dish antennas may not exceed 12 feet in diameter.
 - (cc) Mechanical equipment located on building roofs shall be screened so as not to be visible from the ground level from adjacent developments and from public streets and spaces. Mechanical equipment at ground level shall be screened and in the rear.
- (5) Lighting
 - (a) Lighting levels along paved portions of public walks shall be an average of no less than one foot candle for commercial areas and 0.5 foot candle for residential areas.
 - (b) Fixtures serving to light streets shall be at a height of no greater than 20 feet above the adjacent roadway surface. The light center of a fixture for a pedestrian walkway shall be mounted at a height of 12 feet to 14 feet above the adjacent surface of the walkway. The

fixtures shall include attachments to accommodate such amenities as banners and flower pots.

- (c) The design for a proposed facade must consider the appearance of the building in the evening and develop an exterior lighting plan that includes display window lighting, building lighting, and pedestrian-scaled lighting for both buildings and pedestrian areas within the site. Lighting shall be warm in color, with control of glare for the pedestrian.

(6) Streetscape

- (a) A palette of compatible site furnishings should be developed for the entire District. Street furnishings may include elements such as benches, gazebos, trash and recycling receptacles, bicycle racks, bird houses, drinking fountains, kiosks, sculptural elements, decorative fountains, bollards, decorative fences, seat walls, and pedestrian-scale lighting.
- (b) Community bulletin boards, such as kiosks, may be provided at strategic locations, including on the promenade.
- (c) Freestanding newspaper and advertising dispensers shall not be permitted in the right-of-way of primary streets and shall be incorporated into approved buildings or pavilions.
- (d) Outdoor cafes may extend onto the public right-of-way upon issuance of a license by the Township. Such encroachment shall convey no rights to the licensee beyond those enumerated in the license. Outdoor cafes shall be delineated from the public way by planters and/or metal fencing with no more than two entrances to the cafe seating area. A clear width of at least four feet shall be maintained between any outward portion of the cafe and the closest street furniture and equipment.

(7) Signage

In lieu of Section 200-258 D, the following shall apply:

- (a) The temporary display of signs, banners, flags, pennants and similar devices, in connection with special events or activities of a public or nonprofit nature shall be permitted, provided such display shall not

exceed 14 days and shall not occur more than twelve times per calendar year.

- (b) The temporary display of signs, banners, flags, pennants and similar devices, in connection with the opening of a new business use or reopening of an existing business use shall be permitted provided such display shall not exceed 3 months for non-residential uses and 15 months for hotel and residential uses.
- (c) Existing nonconforming signs shall be removed from this District within a period of 12 months after building permit issuance.
- (d) All signs within the project area shall be part of the overall total design scheme and in keeping with the architectural character of the District in which the sign is located.
- (e) Each type of signage shall be permitted on the same site, provided that the standards set forth below are satisfied.

[1] Wall signage.

[a] The following types of wall signs shall be permitted:

- [i] Internally lit raised letters.
- [ii] Backlit raised letters.
- [iii] Signage board with gooseneck lighting.
- [iv] Individual cut letters with gooseneck lighting.

[b] The maximum sign area shall be 80% of the linear tenant frontage, with a maximum of 50 square feet.

[2] Hanging signs.

[a] One hanging sign shall be permitted per business with the exception of residential and hotel buildings which can have one (1) per building entry and one (1) for each exterior building corner

[b] The maximum sign area shall be 10 square feet with the exception of blade signs for residential and hotel buildings which maximum sign area shall be 50 square feet.

[c] The letter and logo height shall be a maximum of 12 inches with the exception of blade signs which maximum height shall be 18 inches.

[d] Hanging signs may project over a sidewalk and/or in the public right-of-way.

[3] Street address signage.

[a] Street address signage shall be provided on each building or for each individual tenant.

[b] Street address numbers shall have a maximum height of eight inches.

[4] Kiosk signage.

[a] Free-standing signs designed as Parisian-style kiosks shall be permitted in order to identify the promenade and individual uses located in the District to passersby on major roads at the edges of the District as well as within or leading to the promenade.

[b] The maximum kiosk sign area shall be 30 square feet, as measured on each face.

[c] The maximum kiosk sign height shall be 16 feet above finished grade.

[d] Kiosk signs may be located in a paved sidewalk area including within the public right-of-way of

streets.

- [e] The base of the kiosk sign shall be landscaped with plants that extend a minimum of two feet in all directions unless such kiosk is located within a paved sidewalk area.

[5] Awnings and canopies.

- [a] Awnings and canopies shall be architecturally compatible with the building.

[b] Awnings and canopies shall be kept in good order.

- [c] One sign on an awning or canopy shall be permitted, provided that:

- [i] The letter logo height does not exceed 50% of the main area of the awning or canopy.

- [ii] The letter and logo area may be located on the valance of the awning or face of the canopy and shall not exceed twelve inches in height.

- [iii] The letter and logo area may be located above the canopy and shall not exceed twelve inches in height.

[6] Window lettering and signs. Window lettering and signs shall be permitted, provided that they:

- [a] Are inside the window

- [b] Do not exceed 15% of the window area.

- [c] Pertain only to the establishment occupying the premises where the window is located.

(f) Temporary construction and sales signage

- [1] Signage shall be removed within three years of the issuance of a

sign permit or one year of the time of the final certificate of occupancy, whichever comes first. One sign per each road frontage shall be permitted. However, construction signs which contain noncommercial messages, such as signs identifying individual lots or construction ingress and/or egress, shall be permitted.

[2] Temporary contractor signage. Only one sign shall be permitted identifying lenders, architects, engineers or contractors doing work on the site. Such sign shall be a maximum of four square feet per entity, but not to exceed 25 square feet. This sign shall be removed when work ceases or is abandoned or when a certificate of occupancy for the project is issued, whichever occurs sooner.

(g) Billboards are prohibited.

Section 4. This ordinance shall be in force after action or inaction by the Mayor as provided by law or an override of mayoral veto by the Council, whichever is applicable, and publication according to law.

INTRODUCTION: November 19, 2018

PLANNING BOARD REVIEW/APPROVAL; November 27, 2018*

PUBLIC HEARING: December 10, 2018

ADOPTION: December 10, 2018

MAYOR'S APPROVAL: December 11, 2018

EFFECTIVE DATE: December 31, 2018

*Minor changes were requested. These changes were approved by the Township Council on 12/10/2018

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November 30, 2018

Sent via electronic transmission

Council President Miller and Members of Council
West Windsor Township
271 Clarksville Road
P.O. Box 38
West Windsor, NJ 08550

Re: Ordinances 2018-28 and 2018-29

Dear Council President Miller and Members of Council:

At its November 27, 2018 meeting, the Planning Board reviewed the above-referenced ordinances. By a vote 8-0 with no abstentions, the Board voted to advise Council that it agreed with the ordinances subject to the language changes set forth below and that they are not currently consistent with the West Windsor Master Plan.

In Ordinance 2018-28, "Hotels" should be changed to "One hotel" in Section A(2)(c) and in Section B(7)(b). The reason for this is that hotel is referred to in the singular elsewhere and that the contemplation is that there would be only one hotel. In addition, the following should be added after "liner buildings" in Section C(2)(f): ", which are shallow commercial buildings on the façades of parking structures." Lastly, the second "a" in Section C(4)(y)[2] should be eliminated.

In ordinance 2018-29, "Hotels" should be replaced with "One hotel" in Section 200-260 A(2)(c) and in 200-260B(7)(b).

Sincerely,

Miller Porter & Muller, P.C.
Attorneys for the West Windsor Planning Board

By: Gerald J. Muller
Gerald J. Muller

Appendix Z:
PTS/Woodstone Resolution

WEST WINDSOR TOWNSHIP PLANNING BOARD

In the Matter of the Application of Woodstone at West Windsor for Preliminary and Final Major Site Plan and Subdivision Approval with Waivers	)	FINDINGS OF FACT AND CONCLUSIONS OF LAW
	)	File No. PB-17-08 Block 7, Lot 61.02
	)	Approval Granted: June 13, 2018

Be it resolved by the Planning Board of the Township of West Windsor that the action of this Board on June 13, 2018 in this matter is hereby memorialized by the adoption of this written decision setting forth the Board's findings and conclusions.

RELIEF SOUGHT AND JURISDICTION

1. The applicant filed an application with the Township to construct a multi-family inclusionary development.
2. The subject of this application is within the jurisdiction of this Board. The Board acted within the time required by law.
3. The street address of the property is Wheeler Way and Canal Pointe Blvd.
4. The property is located in an area designated on the West Windsor Township Zoning Map as the R-5A zoning district.

THE APPLICANT

5. The applicant is Woodstone at West Windsor, LLC. The property owner is the Princeton Theological Seminary. The applicant has or will have a long term ground lease for the subject property.

NOTICE

6. The applicant obtained a list of all property owners within 200 feet of the property that is the subject of this application from the West Windsor Township tax office.

7. The applicant filed an affidavit stating that notice of the hearing was given at least ten days in advance of the hearing date to the surrounding property owners and to the public entities required to be noticed. The applicant has also filed a proof of publication confirming that newspaper publication for the hearing was made in accordance with legal requirements. Proper notice was given.

8. The notice and publication stated that the hearing would be held at the meeting of the Board scheduled for May 9, 2018. It was held at such meeting and was continued to and also heard on June 6, 2018 and June 13, 2018.

THE HEARING

9. The public hearing on the application was heard on the date for which it was noticed. At the hearing, the applicant and all other interested parties were given the opportunity to present evidence and to be heard.

PLANS PRESENTED

10. At the hearing, the Board reviewed the following plans:

- Plans entitled "Preliminary/Final Major Site Plan, Woodstone at West Windsor, Block 7, Lot 61.02, Township of West Windsor, Mercer County, New Jersey," 32 Sheets total, prepared by MidAtlantic Engineering Partners, LLC, dated June 8, 2017, revised through February 27, 2018

- Plans entitled “Plan of Subdivision for Princeton Theological Seminary West Windsor Campus, Lot 61.02, West Windsor Township, Mercer County, New Jersey,” 1 Sheet total, prepared by ACT Engineers, Inc., dated October 30, 2017
- Plans entitled “Boundary & Topographic Survey, Block 7, Lot 61.01, Block 7.02, Lot 1, Township of West Windsor, Mercer County, New Jersey,” 3 Sheets total, prepared by MidAtlantic Engineering Partners, LLC, dated June 20, 2016
- Plans entitled “Woodstone at West Windsor, Block 7, Lot 61.01 (formerly 58.01 & 61), Block 7.02, Lot 1, Aerial Exhibit, West Windsor Township, Mercer County, New Jersey,” 1 Sheet total, prepared by MidAtlantic Engineering Partners, LLC, dated June 8, 2017
- Plans entitled “Tree Survey Exhibit, Block 7, Lot 61.01, Block 7.02, Lot 1, Township of West Windsor, Mercer County, New Jersey,” 2 Sheets total, prepared by MidAtlantic Engineering Partners, LLC, dated June 8, 2017
- Plans entitled “Turning Analysis Plan, Woodstone at West Windsor, Block 7, Lot 61.02,” 5 Sheets total, prepared by MidAtlantic Engineering Partners, LLC, dated October 31, 2017, revised through February 27, 2018
- Plan entitled “Golf Course Safety Zone Exhibit,” prepared by MidAtlantic Engineering Partners, LLC, dated February 27, 2018 with article entitled “Forensic Architect’s Investigation of Golf Course Safety,” prepared by Michael S. Johnstone, AIA, dated December 2009
- Architectural Plans entitled “Woodstone at West Windsor, Township of West Windsor, Mercer County, NJ,” 43 Sheets total, prepared by VLBJR+ Architecture, dated June 8, 2017
- Plans entitled “Existing Conditions” and “Conceptual Roadway Improvements” – Meadow Road and Canal Pointe Boulevard, prepared by Shropshire Associates LLC, dated October 25, 2017
- Architectural Plan entitled “Sun Study - Woodstone at West Windsor, Township of West Windsor, Mercer County, NJ,” 1 Sheet total, prepared by VLBJR+ Architecture, undated and unsigned

TOWNSHIP REPORTS

11. At the hearing, the Board considered the following reports presented by Township officials and bodies and consultants to the Board:

- March 13, 2018 memorandum from Francis A. Guzik, P.E. to the Board
- March 12, 2018 memorandum from David Novak, P.P. to the Board and the Planning Department
- March 13, 2018 memorandum from Dan Dobromilsky, P.L.A. to the Board
- March 6, 2018 and May 18, 2018 memorandum from James L. Kochenour, P.E. to Samuel J. Surtees
- March 12, 2018 memorandum from Christopher P. Jepson, P.E. to the Board
- February 28, 2018 memorandum from James V.C. Yates to Chairperson, Planning Board
- Memorandum from Site Plan Review Advisory Board to the Board, undated
- February 19, 2018 memorandum to Gene R. O'Brien from Affordable Housing Committee

EXHIBITS AND APPLICANT'S REPORTS

12. At the hearing, the Board considered the following reports prepared by the applicant's consultants and advisors and the following exhibits that were introduced as evidence during the course of the hearing:

- Exhibit A-1 – Booklet with colored photographs and plans
- Exhibit A-2 – Aerial photograph of area with proposed development and property boundaries superimposed, on presentation board
- Exhibit A-3 – Existing Conditions, 2012 (first page of Exhibit A-1), on presentation board
- Exhibit A-4 – Existing Conditions, current, on presentation board
- Exhibit A-5 – Site Rendering (second page of Exhibit A-1), on presentation board

- Exhibit A-6 – Blown up rendering (third page of Exhibit A-1), on presentation board
- Exhibit A-7 – July 1, 2016 rendering of project
- Exhibit A-8 – Sheet 3 of plan site
- Exhibit A-9 – Golf Course Zone Safety Exhibit
- Exhibit A-10 – Photographs of existing of Golf Club buffer
- Exhibit A-11 – Site Plan key plan with arrows showing location of perspectives shown on Exhibit A-12
- Exhibit A-12 – 3-D rendering entitled “Exterior View #4”
- Exhibit A-13 – 3-D rendering entitled “Exterior View #3”
- Exhibit A-14 – First floor plan of certain buildings
- Exhibit A-15 – 3-D rendering entitled “Exterior View #2”
- Exhibit A-16 – 3-D rendering entitled “Exterior View #1”
- Exhibit A-17 - Partial floor plan of Buildings 1 and 2
- Exhibit A-18 – Sun study
- Exhibit A-19 – Front elevation of Building-type C
- Exhibit A-20 – Front elevation of Building-type E
- Exhibit A-21 – Materials board
- Exhibit A-22 – Front elevation of Building-type F
- Exhibit A-23 – Front elevation of Building-type D
- Exhibit A-24 – Rear elevation of Building-type C, which faces Canal Pointe Blvd.
- Exhibit A-25 – Rear elevation of Building-type D, which faces Canal Pointe Blvd.
- Exhibit A-26 – Unit Matrix
- Exhibit A-27 – Conceptual Roadway Improvement Plan
- Exhibit A-28 – Parking Distribution Plan
- Exhibit A-29 – June 5, 2018 Kochenour email agreeing with Guzik comments
- Exhibit A-30 – Plan with built parking spaces in blue and not built in orange – Site Layout Striping and Signage Plan (part of Princeton Theological Seminary site)
- Exhibit A-31 – Plan with built parking spaces in blue and not built in orange – Site Layout Striping and Signage Plan (second part of Princeton Theological Seminary site)

- Exhibit A-32 – Sheets for another Woodstone development showing fees among other things
- Exhibit A-33 – Enlarged parking plan
- Exhibit A-34 – Colored rendering of monument sign
- Report entitled “Stormwater Management Report for Woodstone at West Windsor, Block 7, Lot 61.01 (formerly 58.01 & 61), Block 7.02, Lot 1, West Windsor Township, Mercer County, New Jersey,” prepared by MidAtlantic Engineering Partners, LLC, dated June 8, 2017, last revised February 27, 2018
- Report entitled “Environmental Impact Statement for Woodstone at West Windsor, Block 7, Lot 61.01 (formerly 58.01 & 61), Block 7.02, Lot 1, , West Windsor Township, Mercer County, New Jersey,” prepared by MidAtlantic Engineering Partners, LLC, dated May 9, 2017
- Document entitled “Affordable Housing Compliance Statement – Woodstone at West Windsor, LLC – Site Plan Application – Block 7, Lot 61.02,” submitted to Board on June 13, 2018
- Deed of Consolidation dated February 10, 2017 recorded with the Mercer County Clerk on February 26, 2017, consolidating previous Block 7, Lot 61.01, Block 7.02, Lot 1 and previously vacated rights-of-way into new Block 7, Lot 61.02
- Document entitled “Operation & Maintenance Manual for Stormwater Management Facilities for Woodstone at West Windsor – Block 7, Lot 61.02 – West Windsor Township, Mercer County, New Jersey,” prepared by MidAtlantic Engineering Partners, LLC, dated October 31, 2017
- Document entitled “Description of a Variable Width Utility Easement Through Existing Block 7, Lot 61.02 on Proposed Lot ”A” – West Windsor Township, Mercer County, New Jersey,” prepared by ACT Engineers, dated October 30, 2017
- Document entitled “Description of a Variable Width Utility and Access Easement Through Existing Block 7, Lot 61.02 on Proposed Lot “B” – West Windsor Township, Mercer County, New Jersey,” prepared by ACT Engineers, Inc., dated October 30, 2017

- Documents entitled “Parcel Map Check Report” prepared by ACT Engineers, Inc., for each of the following:
 - “Parcel A,” dated October 13, 2017
 - “Parcel B,” dated October 13, 2017
 - “Parcel Utility Easement,” dated October 31, 2017
 - “Parcel Access and Utility Easement,” dated October 31, 2017
- Document entitled “Proposed Lot “A” – Being a Part of Existing Block 7, Lot 61.02 – West Windsor Township, Mercer County, New Jersey,” prepared by ACT Engineers, Inc., dated January 9, 2018
- Document entitled “Proposed Lot “B” – Being a Part of Existing Block 7, Lot 61.02 - West Windsor Township, Mercer County, New Jersey,” prepared by ACT Engineers, Inc., dated January 9, 2018
- Document entitled “Anti-Seep Collar Calculations,” prepared by MidAtlantic Engineering Partners, LLC dated January 9, 2018
- Document entitled “100 Year Storm Pipe Capacity Analysis – Woodstone at West Windsor – Block 7, Lot 61.02 – Township of West Windsor, Mercer County, New Jersey,” prepared by MidAtlantic Engineering Partners, LLC dated January 10, 2018
- Soil Investigation and Infiltration Testing report prepared by Underwood Engineering Company, dated December 28, 2017
- Response letters prepared by MidAtlantic Engineering Partners dated November 3, 2017 and January 12, 2018
- Response letters prepared by Shropshire Associates, LLC dated November 1, 2017 and January 10, 2018
- June 5, 2018 letter from Nathan B. Mosely, P.E. to Township of West Windsor, Division of Land Use
- Exhibit PB-1 – Six Guzik photographs of pervious pavements at Princeton Terrace

TESTIMONY AND PUBLIC INPUT

13. The testimony presented by and on behalf of the applicant and advice by Board consultants were given by the following persons:

Henry L. Kent-Smith, Esq. represented the applicant. Stephen Santola, its Executive Vice President and General Counsel; Gregory Domalewski, P.E., its civil engineer; Victor L. Barr, Jr., its architect; Nathan B. Mosely, P.E., its traffic engineer; Herman Martinez, Princeton Theological Seminary facilities manager; John Gilmore, Princeton Theological Seminary Vice President; and Arthur J. Corsini, Jr., a principal member of the applicant testified on the applicant's behalf.

The following Township staff and professionals gave advice to the Board at the hearing: Francis A. Guzik, P.E.; Joseph H. Burgis, P.P.; Dan Dobromilsky, P.L.A.; James L. Kochenour, P.E.; Christopher B. Jepson, P.E., and Gerald J. Muller.

14. The statements of the members of the public made during the course of the hearing may be summarized as follows: Alison Miller discussed the need for snow storage in a manner that will not lose parking spaces; the installation of a pickleball court; and confirmation that there would be no amenity fee for the affordable units and no bicycle parking fee. John Church asked what a "tax subdivision" was and urged the use of 3-D renderings as early in the process as possible. Miguel Vivarro discussed the need for recreational trails; the fact that permeable surfaces help mitigate the heat island effect; the mechanics of installing conduit for solar; and the appropriateness of using the basins for snow storage.

FINDINGS AND CONCLUSIONS RE: PRELIMINARY AND FINAL SUBDIVISION APPROVAL

15. Nature of application. The subject property is a 68.38 acre tract originally consisting of Block 7, Lot 61.01 and Block 7.02, Lot 1, which were consolidated into new Block 7, Lot 61.02 in February, 2017. The applicant now proposes to subdivide the consolidated lot into Lot A, consisting of 44.617 acres and on which the Princeton Theological Seminary graduate student apartments are located, and Lot B, the 23.763 acre parcel that is the subject of this application. Both lots will continue to be owned by Princeton Theological Seminary, and the applicant will hold a ground lease for Lot B. The subdivision is being proposed because the graduate student housing on Lot A is tax exempt, while the applicant's development, on Lot B, is taxable. The subdivision is necessary so that the Tax Assessor could appropriately tax the overall tract.

The application does not present any subdivision issues.

16. Conclusion re subdivision approval. The Board finds that, with the waivers granted and the conditions imposed, the applicant has met all Township subdivision standards. Preliminary and final subdivision approval is, accordingly, granted.

FINDINGS AND CONCLUSIONS RE: PRELIMINARY AND FINAL MAJOR SITE PLAN APPROVAL

17. Nature of application. The tract is bounded on the northwest by the Delaware and Raritan Canal, on the northeast by the Colonnade Pointe residential development, and on the southwest by the Princeton Country Club. The property fronts on Canal Pointe Boulevard and Wheeler Way and backs up to the Delaware and Raritan Canal. The majority of the rear of the property (formerly Block 7, Lot 61.01) is currently developed with the Princeton Theological Seminary student housing campus.

The applicant is applying for preliminary and final site plan approval in order to construct 12 apartment buildings containing a total of 443 residential units with a 20% affordable set aside (89 units). One hundred fourteen of the units will be one bedroom, 295 two bedroom, and 34 three bedroom. With respect to the affordable set aside, 17 of the units will be one bedroom, 54 two bedroom, and 18 three bedroom. In addition to the 12 apartment buildings, the site plan also proposes three detached garage building units, a maintenance building, and a clubhouse with swimming pool. Other amenities include a playground, volleyball court, bocce ball court, outdoor barbeque area, dog walk, and a trash compactor/recycling area. The applicant is proposing to construct 793 parking spaces, in addition to the 328 existing Seminary parking spaces with 33 additional parking spaces on Loetscher Place to be shared between the applicant and the Seminary. The plans show an additional 84 banked parking stalls.

The site plan raised a number of issues, primarily relating to the use of pervious surfaces, addressed in the Waiver section, parking, and circulation. Questions were raised about the sufficiency of the parking and whether proposed banked spaces should be constructed. A related question was whether six proposed spaces should be removed from Emmons Drive because of sight line problems. The Board is satisfied that the number of spaces proposed to be paved is sufficient and that the banked spaces will be converted into usable

spaces as necessary. It is also satisfied that the six Emmons Drive spaces should be removed from the plans as per Condition 23n.

The Board is also satisfied that, with the modifications to the circulation plan, particularly the vacation of Farber Road and the extension of Loetscher Place to the existing Canal Pointe Blvd./ Wheeler Way-Meadow Road intersection, the circulation plan should work satisfactorily.

18. Conclusion re site plan approval. The Board finds that, with the waivers granted and conditions imposed, the applicant has met all Township site plan standards. Preliminary and final major site plan approval, accordingly, is granted.

FINDINGS AND CONCLUSIONS RE: WAIVERS

19. The application necessitates eleven waivers. The waivers and the Board's action on them are as follows:

a. Waiver: From Section 200-36C, which requires specified recreational elements, while the application is deficient in playground size, toddler play lot size, older children's play lot size, play elements (swing, slide, play elements, and benches required while a swing with four seats and two benches is proposed), and tennis court (four tennis courts required while none proposed).

Waiver granted: The applicant has proposed a recreation package geared to the population it intends to serve, including a pool with barbeque pits, bocce courts, volleyball courts, fitness equipment in the clubhouse, and a playground, with Condition 23cc providing that additional playground equipment can be added as necessary at the applicant's sole discretion. Given this, the waiver request is reasonable. The recreation package meets the intent and purpose of the recreation requirements by providing appropriate recreational opportunities for the residents. That is enhanced by the fact that the Delaware and Raritan Canal towpath, to which the Township will seek public access through the Princeton Golf Course, a public course, is adjacent to the tract. Literal enforcement of the ordinance provision would be impracticable because there is limited room for more recreational features, and providing them will decrease the number of units, including the number of affordable units.

The waiver request, accordingly, is granted.

b. Waiver: From Section 200-30A5, which requires a minimum distance of 75 feet between window walls, while the distance between proposed Buildings 1 and 2 window walls is 32 feet.

Waiver granted: The ordinance requires the Board to reduce the 75 foot distance by not more than one third if there is an angle of 20 degrees or more between buildings and landscaping or buffers are placed between them. That is the case here, and therefore the required distance is 50 feet. The applicant will stagger the windows between Buildings 1 and 2, other than bathroom windows on the walls facing each other, and will use opaque glass material in bathrooms, as is required by Condition 23j. This eliminates the privacy issue that the ordinance was intended to address. The intent and purpose of the ordinance provision is therefore furthered, since the privacy concerns underlying the provision are addressed. Literal enforcement of the ordinance provision would be impracticable in that it would require a redesign of the site, most likely with fewer units and fewer affordable units.

For the foregoing reasons, the waiver request is granted.

c. Waiver: From Section 200- 32A1(a), which does not permit monument signs in residential districts, while the applicant proposed four monument signs, two at the intersection of Wheeler Way and Emmons Drive and two at the intersection of Wheeler Way/Canal Pointe Blvd and Loetscher Place. It reduced the number of monument signs by half to one at each location at the hearing.

Waiver granted: The monument signs are well designed and serve an appropriate wayfinding function. Given this, the waiver request is reasonable. It is consistent with the intent and purpose of the ordinance provision in that the development is large, and identification of it is useful for persons not familiar with the area. In addition, no more monuments than necessary are provided. Literal enforcement of the ordinance provision would work an undue hardship on the applicant by prohibiting it from putting in place appropriate signage.

The waiver request, accordingly, is granted.

d. Waiver: From Section 200-29N(3), which requires that bicycle access be combined with motor vehicle access where possible and that two-way drives are to be 30 feet

wide to provide for bicycle access, while the applicant has proposed eight foot wide multiple use paths along the western side of Emmons Drive and eastern side of Loetscher Place.

Waiver granted: The waiver request is reasonable in that the applicant is providing for bicycle access through a path that can be used by bicyclists rather than through widened roadways, and that itself has advantages. The intent and purpose of the ordinance provision is satisfied in that appropriate bicycle access is provided. Literal enforcement of the ordinance provision would be impracticable in that it would require project redesign and, again, the possible loss of affordable units.

The waiver request, therefore, is granted.

e. Waiver: From Section 200-31D, which provides that site lighting, other than that needed for security purposes, be set up on a timer system that shuts off all but security lighting by 11:00 p.m., while the applicant proposes to have lighting on from dusk until dawn.

Waiver granted: In a development of this size, it is reasonable to expect that a number of people will be returning to their apartments or leaving them for work or social activity during darkness. Given this, regular sight lighting is appropriate. The intent and purpose of the ordinance provision is satisfied in that this is an instance in which applying it would not be appropriate. Literal enforcement of the ordinance provision would work an undue hardship on the applicant by requiring it to shut off all but security lighting at 11:00 p.m., making use of the parking and other areas by individuals after 11:00 p.m. and before daylight less safe than it could otherwise be.

The waiver request, accordingly, is granted.

f. Waiver: From Section 300-31K(1), which requires an average of 0.5 foot-candles throughout parking lots, while the applicant has proposed an average of 0.6 and 0.7 foot-candles.

Waiver granted: The parking lot lighting has been designed to provide lighting in key areas to illuminate the sidewalks and to provide overall lighting to the parking lots. The applicant has reduced the lighting intensity as much as possible consistent with this goal. Given this, and given that the foot-candle overage is not dramatic, the waiver is reasonable. The intent and purpose of the ordinance provision has been satisfied in that the lighting intensity in the

parking lots in no greater than necessary. Literal enforcement of the ordinance provision would work an undue hardship on the applicant by requiring it to reduce the lighting intensity to a point where the lighting system for the parking lots and sidewalk lighting program will not be as effective as it should be.

For the foregoing reasons, the waiver request is granted.

g. Waiver: From Section 200-31K(2), which requires 3.0 foot candles at intersections, while the applicant has proposed an average of 2.3 foot-candles at the intersection at Loetscher Place and Wheeler Way/ Canal Pointe Blvd. and 1.7 foot candles at the intersection of Emmons Drive and Wheeler Way.

Waiver granted: The applicant has increased the lighting at the intersections as much as possible, with maximum intensities of 17.3 foot candles at the Loetscher-Wheeler/ Canal Pointe intersection and 4.3 foot-candles at the Emmons-Wheeler intersection. The lighting levels for each section meet NJDOT requirements for intersections. Since the applicant has maximized the lighting at the intersections, literal enforcement of the ordinance provision would work an undue hardship upon it, since the development cannot be approved.

For the foregoing reasons, the waiver request is granted.

h. Waiver: From Section 200-31K(3), which provides for a maximum foot-candle at property lines of 1.0, while the applicant proposes a maximum of 4.5 foot-candles at the property line within the Loetscher Place-Wheeler Way/Canal Pointe Blvd. intersection.

Waiver granted: The lighting design includes light levels over 1.0 foot-candles within the intersections, with the remainder of the site in compliance with the requirement. Since the ordinance requires a greater lighting intensity at the intersection, it of necessity follows that the 1.0 foot-candle standard cannot be complied with when a property line is within an intersection. As indicated above, the foot-candle level at two intersections is appropriate. Given this, the waiver is reasonable. It comes within the intent and purpose of the ordinance provision in that a foot-candle of below 1.0 is provided all along the property lines except at the points of intersection, where they need to be higher. Literal enforcement of the ordinance provision would be impracticable in that one of the ordinance standards, either the one applying to foot-candles at intersections or the one applying to foot-candles at property lines, cannot be complied with.

For the foregoing reasons, the waiver request is granted.

i. Waiver: From Section 200-91P(4)(A)[1][a], which requires that storm water management areas be designed to blend into the surrounding landscape and afford a dual function beyond storm water management such as aesthetic, recreation, or environmental enhancement, while the proposed storm water basin does not meet this standard.

Waiver granted: The basin was placed in its proposed location so as to maximize the distance of the development from Colonnade Point. At the same time, the applicant attempted to minimize the amount of tree removal necessary, the location being in a wooded area, by using a linear form. While the basin is much more linear than is usually permitted by the Board, it does have landscaping. Given this, the waiver request is reasonable. It comes within the intent and purpose of the ordinance provision in that it serves an aesthetic function to the extent it can, given its location. Literal enforcement of the ordinance provision would work an undue hardship on the applicant by requiring site redesign and probable loss of units, including affordable units, or the relocation of the basin and buildings being much closer to Colonnade Point.

The waiver request is therefore granted.

j. Waiver: From Section 200-91P, which specifies landscape planting quantities.

Waiver granted: The Board is satisfied that the landscaping is sufficient, being cognizant of the dual facts that more extensive landscaped areas could conceivably result in affordable unit reduction and the necessity of eliminating cost-generating requirements to the extent appropriate in light of the fact that this is an inclusionary development. Given this, the waiver request is reasonable. It comes within the intent and purpose of the ordinance provision in that substantial landscaping has nevertheless been provided, the applicant having worked extensively with the Township Landscape Architect. Literal enforcement of the ordinance provision would work an undue hardship on the applicant by requiring more landscaping than need be mandated in these circumstances.

The waiver request is therefore granted.

k. Waiver: From Section 200-36.1, which requires that impervious surfaces be used for all drives and parking areas and pervious surfaces shall be used for all other paved areas,

including sidewalks, trails, courtyards, and other site amenities, while the applicant has not provided for any pervious surfaces other than around the swimming pool.

Waiver granted in part: The applicant contends that impervious surfaces are easier to maintain and that it proposed only impervious surfaces as cost saving measures in an inclusionary project. The Board is not convinced that the maintenance argument is a sound one, the Township's experience being that pervious surfaces have held up as well or better elsewhere in the Township. The applicant was willing to provide pervious surfaces for the driveways serving the garages incorporated into Buildings 3, 4, 5, and 6, as suggested by the Board, to break up the monotony of the drive aisle and driveways that had been proposed in this prominent location. Condition 23z so provides. In addition, the applicant pointed out that pervious surfaces on many of the paths are unnecessary because landscape is on both sides of the paths and they are crowned slightly so that water flows into the green areas, thereby serving the same purpose as pervious surfaces, but providing for rain water discharge rather than having rain water flow into a storm drainage system. The Board is willing to grant the waiver for the remaining surfaces which as per code are required to be pervious given these circumstances. The waiver request is reasonable, and the agreement for pervious surfaces in the driveways identified in particular furthers the intent and purpose of the ordinance. Given this, the Board finds that literal enforcement of the ordinance provision would work an undue hardship on the applicant.

The waiver request, accordingly, is granted in part.

RECOMMENDATIONS TO TOWNSHIP COUNCIL

20. The Board recommends to Township Council that it enter into an agreement with the applicant providing that 10% of the affordable units, or nine units, be reserved for veterans, provided that the Township keeps a separate list of veterans seeking affordable housing in the Township.

21. The Board recommends that the Township ask Mercer County that residents of and visitors to the development be given access through the Princeton Country Club Golf Course to the bridge over the Delaware and Raritan Canal, using the path at the north end of the Golf Course adjacent to holes 17 and 18. Mercer County should be advised that the applicant supports this.

22. The Board recommends that the township vacate the existing easements over Farber Road between Wheeler Way and Loetscher Place, which land area is being incorporated into the development and will no longer be used as a roadway.

CONDITIONS REQUIRED

23. The Board finds that, in order to address the concerns expressed during the course of the hearing and to limit the relief to that reasonably necessary to satisfy the applicant's legitimate requirements, the relief granted is subject to the following conditions:

Affordable Housing

- a. The affordable households shall have full access to all of the amenities.
- b. The affordable households shall also have the option of using the concierge trash removal services.
- c. No fee for any of the amenities or services offered to market rate household shall be charged to the affordable households.
- d. If amenable to the Township Council, the applicant shall reserve 10% of the affordable units, or nine units, for veterans, pursuant to *N.J.S.A. 52:27D-311j*, provided that the Township keeps a separate list of veterans on its list of households seeking affordable housing in the Township. The Board, as noted above, recommends that the Township enter into an agreement with the applicant so providing.
- e. The applicant shall submit a plan as part of the final architectural plans showing the number and location of all affordable units in each building.
- f. The applicant shall comply with all terms set forth in the Affordable Housing Statement submitted to the Board on June 13, 2018.
- g. All affordable units shall meet all requirements set forth in Uniform Housing Affordability Control (UHAC), *N.J.S.A. 5:80-26.1 et. seq.*, and applicable requirements of the Council on Affordable Housing and of any court having jurisdiction over the matter.

h. 13% of the affordable units shall be for very low income households as defined by the Fair Housing Act and UHAC.

Building Construction

i. The buildings shall be constructed in a manner consistent with the renderings in the exhibits.

j. The windows in the walls on the south side of Building 1 and the north side of Building 2 shall be staggered so that the windows do not face each other, except that bathroom windows, which shall be made of opaque glass material, need not be staggered.

k. Bike storage shall be provided in each building, and the bike storage area shall be marked and shall be labeled on the plans. There shall be no fee for bike storage.

Parking

l. The applicant shall provide a Parking Management Plan to the Township Engineer three times during construction so as to ensure that parking is sufficient, the first after completion of the first four residential buildings, the second after the completion of the next four residential buildings, and the third upon project completion. It shall be submitted annually thereafter. It shall be subject to review of the Township Engineer and the Township Traffic Consultant. The Parking Management Plan shall identify parking-driven parameters and time lines. Such parameters shall include number of buildings constructed, number of occupied units, and number of each bedroom type.

m. Parking spaces may be installed in banked spaces by the applicant in its discretion without returning to the Board and shall be installed by the applicant at the request of the Township Engineer.

n. The applicant shall remove from the plans the six Emmons Drive spaces indicated on the first plan after the text of Mr. Mosely's June 5, 2018 letter, and the curb shall be adjusted so that individuals cannot park in the area of the removed spaces.

o. The applicant shall enter into an agreement with the Seminary as to the sharing of thirty three existing parking spaces on Loetscher Place. Such agreement shall be subject to the review and approval of the Board Attorney.

p. Snow shall not be stored in parking spaces to the extent practicable.

q. The applicant shall designate two parking spaces by the refuse area for residents dropping off garbage.

Vehicular Circulation

r. The Emmons Drive-Wheeler Way intersection has stop signs on Wheeler Way. At the start of construction, it shall be converted into a four-way stop sign intersection. 90 days thereafter, the stop signs on Wheeler Way shall be removed.

s. The applicant shall comply with all terms of Mr. Mosely's June 5, 2018 letter, including the assessment of Emmons Drive-Wheeler Way intersection performance after the stop sign conversion for the potential construction of additional remediation work as per Condition ddd.

t. The applicant shall take such steps as are necessary so as to ensure that Title 39 can be enforced on the project and shall secure the consent of the Seminary with respect thereto. In conjunction therewith, the applicant shall submit a plan identifying all traffic regulations to be enforced and in which areas of the site such regulations will apply. This is particularly important to further the enforcement of the No Parking areas.

u. The applicant shall be responsible for the design and construction of the modified Canal Pointe-Meadow Road signalized intersection to include the new Loetscher Place extension. This work will require the applicant to install a cross-walk across Loetscher Place by Meadow Road. Its location shall be subject to the review and approval of the Township Traffic Consultant and Township Engineer.

v. The applicant shall submit, subject to review and approval of the Township Engineer, a cross-access easement permitting vehicular and pedestrian access from Lots A to B and Lots B to A.

w. The sight triangle for Emmons Drive looking to the north along Wheeler Way shall be increased to a length of 390 feet.

Sustainability

x. The applicant shall provide conduit for solar panels. In doing so, it must provide sufficient room for mounting and for breakers, switches, and such other hardware as are necessary for the installation of solar panels.

y. The applicant shall install conduits to provide 220 volt lines for two charging stations serving four parking spaces. The locations are to be determined by the applicant. The charging stations shall be installed depending on tenant demand.

z. The driveways in front of Buildings 3, 4, 5, and 6 shall be made of pervious pavers, with a color contrast to the roadway and consistent treatment. They shall be subject to the review and approval of the Township Landscape Architect.

aa. The applicant shall consider environmentally-friendly ways of heating the pool.

Landscape

bb. The applicant shall install pervious pavers around the clubhouse. They shall be subject to the review and approval of the Township Landscape Architect.

cc. The applicant may increase the playground equipment if it decides that the proposed equipment is insufficient. In doing so, it need not return to the Board for approval.

dd. The final landscape plan shall be subject to the review and approval of the Township Landscape Architect.

ee. As the plans are finalized, the location of light poles as well as utility meters, control panels, and similar elements shall be shown on the landscape plans to enable appropriate adjustments to avoid conflicts and provide screening.

ff. One of the specified plant species proposed for the unit planting, *Pyrus Calleryana*, presents concern due to invasive tendencies. An alternative selection, subject to the review and approval of the Township Landscape Architect, shall be implemented.

gg. A chain link fence and guiderail are proposed to top the retaining wall near proposed Building 1. This shall be changed to an aluminum picket fence similar to the pool enclosure, with bollards instead of guiderails on the south side along the proposed retaining wall.

hh. The pedestrian areas associated with the community building entrance and pool deck shall be enhanced by more decorative pedestrian scale pavement design. The applicant has added a note requiring further review regarding this aspect of the design as the plans are refined and prior to submission of building permits. The final design with respect to these matters shall be subject to the review and approval of the Township Landscape Architect.

ii. The applicant shall limit the number of trees in close proximity to the buildings so as to not restrict access by the Fire Department. This shall be subject to the review of the Township Landscape Architect and Director of Fire and Emergency Services.

Signage

jj. The monument signs shall not be internally illuminate and shall be lit from the ground up.

kk. The two monument signs shall be located outside of the sight triangles.

Subdivision

ll. Limits of new access and utility easements have been shown on the plans, and legal descriptions defining their boundaries have been provided. The language of the easement documents shall set forth the required rights to Lots A and B as to these easements and drainage easements and be subject to the review and approval of the Board Attorney.

mm. Block and lot numbers to be utilized for the new lots shall be as assigned by the Township Engineer.

Site Plan

nn. The applicant shall provide easements over Loetscher Place similar to those that were in Farber Road and revised utility routings that will service Lot A. The easements shall be subject to the review and approval of the Township Engineer and Board Attorney.

Storm Water Management

oo. The State storm water regulations under *N.J.A.C. 7:8-5.8* require that the storm water management system have an operation and maintenance manual in compliance with Chapter 8 of the NJDEP Stormwater BMP Manual. A draft manual has been submitted for review, and technical comments have been submitted to the design engineer under separate cover. The applicant shall comply with those comments and shall submit for final approval by the Township Engineer and Board Attorney a document as part of a storm water BMP easement or some other deed restriction on Lot B that prevents the alteration, removal, or neglect to any storm water management features. The instrument shall be recorded by the Board Attorney.

pp. In accordance with Ordinance section 200-105.1, the applicant shall enter into an agreement with the Township in a form satisfactory to the Board Attorney requiring the installation and maintenance by the applicant and the applicant's successors in interest of all such storm water management improvements proposed by the applicant and approved by the Board.

qq. The following technical comment on the site storm water features shall be addressed:

The outfall piping from OS 70 to FES 76 is shown on the grading detail on Sheet 10 and the storm sewer profile on Sheet 16 as being covered via a ten foot wide, two to four foot high berm for a length of approximately 400 feet. The high side of the berm is extremely flat along this length and will obstruct natural drainage patterns and impound water behind it. The applicant indicates that the location and elevation of this pipe reflect the full build-out of the site including future improvements on the Seminary property. However, until the full build-out of the site is complete, a temporary solution to the drainage problem this creates must be provided. Solutions shall be subject to the review and approval of the Township Engineer.

Lighting

rr. Ordinance Section 200-31D states that, where lighting is visible to adjacent residents, lights shall be appropriately shielded. With the Seminary buildings to the west and Colonnade Pointe residential development to the north, shields shall be provided on lights installed along Loetscher Place, including its extension to Meadow Road. Note 8 on Sheet 21 indicates that house side shields are to be installed on the lights along Loetscher Place, including its extension to Meadow Road, as well as all proposed lights adjacent to the proposed residential buildings. The plans shall be revised to provide a discrete symbol for a fixture with a house-side shield and identify each such light on the plan rather than relying on a generic note that could be easily overlooked or misinterpreted.

ss. At least 30 days prior to construction of the pool, a plan showing decorative lighting shall be submitted for review and approval by the Township Engineer.

Utilities

tt. The existing drainage trunk line that runs along Emmons Drive to the Canal within the property limits shall be cleaned and televised by the applicant prior to the construction of the proposed improvements. Any defects found are to be corrected prior the introduction of additional flows into the system. Since the trunk line to the Canal remains within the overall development tract, the applicant will be required to clean, televise, assess, and repair defects

found on the trunk line within the development tract in consultation with the Township Engineer. The applicant shall secure the consent of the Seminary with respect thereto.

uu. Any at-grade features (sidewalks, street lights, landscaping, etc.) that are installed in the easement are at the applicant's risk as the Township will not be responsible to repair or replace same any time the system requires maintenance or repair. A separate easement agreement modification shall be obtained by the applicant through Township Council to permit any permanent improvements within the easement area.

vv. This property previously contained numerous apartment buildings that were demolished. There is concern that the proposed construction will damage numerous sewer lateral connections that were capped and abandoned when the buildings were demolished, which will lead to excessive, uncontrolled infiltration of ground and surface water into the collection system. The applicant shall televise the sewer mains within Proposed Lot B and plug each abandoned lateral connection at the main.

ww. The applicant shall request reservation for wastewater flows in the municipal collection system and authorization for execution of the required NJDEP Treatment Works Approval permit applications for extension of the collection system, which will all require approval by the Township Council.

xx. The applicant is required to participate in the D&R Canal Sewer Interceptor District in accordance with Code section 200-89. The Township is required to collect a payment towards reimbursement to downstream developers that installed portions of the system. The EIS submitted includes a preliminary estimate based on an assumed flow. A final estimate shall be determined based on actual approved occupancy. The applicant shall pay the required fee as calculated by the Township.

yy. The final location of all fire hydrants shall be subject to the review and approval by the Director of Fire and Emergency Services.

Other

zz. The applicant shall annually provide a report to the Township Land Use Manager as to the number of school children in the development.

aaa. The following notices shall be provided in leases:

- (1) With respect to the units adjacent to bank parking areas, that there is a possibility that such areas will be paved.
- (2) As to units adjacent to and facing the Princeton Golf Course, that such units are adjacent to the Golf Course and that there is a potential for errant shots.
- (3) That lofts may not be used as bedrooms.
- (4) That no household may have more than two vehicles.
- (5) That if the unit is a two bedroom unit, no more than four individuals shall reside therein, and if the unit is a three bedroom unit, no more than six individuals shall reside therein.

The lease notices shall be subject to the review and approval of the Board Attorney.

bbb. Lofts shall not be used as bedrooms. No closet shall be constructed in them, and the space shall be open and not enclosed, with a knee wall no higher than 36 inches.

ccc. No more than four people shall reside in a two bedroom unit, and no more than six people shall reside in a three bedroom unit.

ddd. The applicant shall pay its off-tract street improvements assessment fee as calculated in accordance with Section 200-88. It shall perform an assessment of the performance of the Emmons Drive-Wheeler Way intersection as per Condition 23s, and, if necessary based on the findings of the assessment and the determination of Mr. Kochenour, construct the Emmons Drive-Wheeler Way intersection improvements shown on the attachment to Mr. Kochenour's May 18, 2018 memorandum. The assessment shall include an updated traffic count, a Level of Service analysis and a queue analysis and shall consider police input and accident reports. Such an analysis shall be conducted within 90 days to 180 days after the completion of the reversal of the stop sign locations. The applicant's engineer shall cost out and certify the costs of such improvements, and the actual incurred costs of such improvements accepted by the Township Engineer shall be a credit against the applicant's off-tract assessment fee. If the credit is greater

than the fee, the applicant shall be reimbursed out of the Township's Off-Tract Assessment Fund as funds become available.

eee. Separate metes and bounds descriptions, along with closure calculations for all proposed lots, easements and dedications were submitted for review and approval. The area for Lot A in the description should read "44.617 acres," not 44.167 acres.

fff. The applicant is to submit an Engineer's construction cost estimate for review. The applicant shall post performance guarantees and inspection fees for both on-site and off-site improvements in accordance with the Municipal Land Use Law.

ggg. As per Ordinance section 200-81.1, the applicant shall provide, via both hard copy and in electronic format, approved site plans being submitted for signature and as-built surveys upon project completion. The applicant shall submit to the Township PDF copies of the Stormwater Management Report and the Stormwater Operation and Maintenance Manual and all related mapping once same are approved by the Township Engineer.

hhh. Copies of all outside agency approvals shall be submitted to the Township. The following outside agencies approvals are anticipated:

1. Mercer County Planning Board
2. Mercer County Soil Conservation District
3. Delaware and Raritan Canal Commission
4. NJDEP (TWA Permit)

iii. A lock box to allow immediate access by the Fire Department shall be installed on the front of each building.

jjj. The position of the Fire Department connections that support the fire sprinkler system shall be at the front of the building.

kkk. Fire Department standpipes shall be installed in each stair tower with 2 ½ inch national standard thread hose outlets at each stair tower floor landing. The standpipes shall be tied into the fire sprinkler system so that there will be only one Fire Department connection.

lll. The applicant shall execute a developer's agreement setting forth its obligation as to off-tract improvements and assessments and its obligation to downstream developers of the Delaware and Raritan Canal Interceptor/Duck Pond Run Interceptor.

mmm. The applicant shall in accordance with the Municipal Land Use Law execute a land development performance guarantee agreement in a form satisfactory to the Township Council and shall post such performance and maintenance guarantees as are required.

nnn. All construction details shall be subject to the review and approval of the Township Engineer.

ooo. All real estate taxes and escrow and inspection fees and required deposits therefor must be paid and maintained as current, and no zoning permits or certificates of occupancy shall be issued if property taxes and escrow and inspection fees and required deposits therefor are not current.

ppp. All marked exhibits shall be transferred to the Division of Land Use Office prior to issuance of a building permit.

qqq. All plan revisions shall be subject to the review and approval of such Township professionals as are designated by the Manager of Land Use unless otherwise designated herein.

rrr. An easement acceptable to the Board Attorney shall be recorded for each easement shown on the plat or plan.

sss. All instruments required to be recorded hereby shall be provided to the Planning Board Attorney for recordation.

CONCLUSION

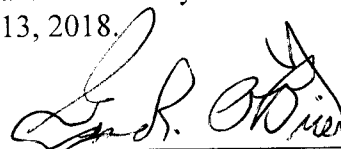
Based on the foregoing, the Board at its June 13, 2018 meeting voted to approve the plans with revisions made therein and as supplemented and modified by the exhibits and to

grant the relief identified above subject to the conditions and to be revised in accordance with the conditions set forth herein.

This resolution of memorialization was adopted on July 11, 2018 by a vote of who voted to grant the relief sought by the applicant.

The date of decision shall be June 13, 2018 except that the date of the adoption of this memorializing resolution is the date of decision for purposes of (1) mailing a copy of the decision to the applicant within 10 days of the date of the decision; (2) filing a copy of the decision with the administrative officer; and (3) publication of a notice of this decision. The date of the publication of the notice of decision shall be the date of the commencement of the vesting protection period.

We do hereby certify that the foregoing resolution was adopted by the Planning Board at its regular meeting held July 11, 2018. This resolution memorializes formal action taken by the Board at its regular meeting held June 13, 2018.

 7/13/18
Gene R. O'Brien, Chair

 7/13/18
Lisa Komjati, Secretary

Gene R. O'Brien, Chair – Yea
Michael Karp, Vice-Chair – Yea
Sue Appelget – Absent
Linda Geevers – Yea
Curtis Hoberman – Yea
Michael Huey – Yea
Andrea Mandel – Yea
Hemant Marathe – Absent
Simon Pankove – Absent

Allen Schectel, Alternate I – Yea
Anis Baig, Alternative II – Absent

WW Planning Board - Woodstone.doc

Appendix AA:
400 Steps Redevelopment Agreement



WEST WINDSOR TOWNSHIP

DEPARTMENT OF COMMUNITY DEVELOPMENT
DIVISION OF LAND USE

Mike McCloskey
400 Steps LLC
3499 Route 9 North
Suite 1-F
Freehold, NJ 07728

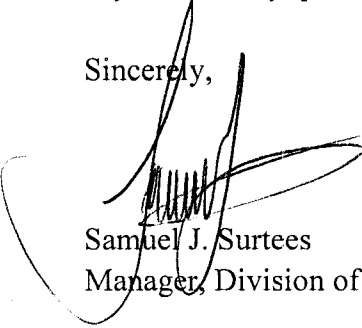
RE: Redevelopment Agreement for:
400 Steps LLC
Block 5, Lot 19

Dear Mr. McCloskey:

Attached for your records please find one (1) original executed Redeveloper's Agreement between 400 Steps LLC and West Windsor Township.

If you have any questions, please contact this office.

Sincerely,



Samuel J. Surtees
Manager, Division of Land Use

SJS/dh
Attachment
c: B/L
PB17-03 w/attachment
S. Benner, WWT Tax Assessor w/attachment
J. Louth, WWT Chief Financial Officer

o:\planning\pb-2017\pb17-03 everest realty group llc\redevagree.doc

RESOLUTION

- WHEREAS, by resolution adopted on December 19, 2005, the Township Council (the "Township Council") of the Township of West Windsor (the "Township") designated a series of properties in Blocks 5, 6, 6.2, 12.04, 13, 57, 59 and 64 on the Township's tax maps (collectively, together with the Additional Parcels (defined below), the "Redevelopment Area") as an area in need of redevelopment in accordance with the Local Redevelopment and Housing Law, *N.J.S.A. 40A:12A-1 et. seq.* (the "Redevelopment Law"); and
- WHEREAS, by ordinance adopted on March 23, 2009, the Township Council approved and adopted a redevelopment plan for the Redevelopment Area, entitled "Township of West Windsor Redevelopment Plan for Princeton Junction" (the "Redevelopment Plan"); and
- WHEREAS, on December 22, 2014, the Township Council, after appropriate review by, and at the recommendation of the Planning Board, adopted a resolution designating the area consisting of Block 5, Lots 62 and 76 (the "Additional Parcels") as an area in need of redevelopment; and
- WHEREAS, on February 27, 2017, the Township Council, after appropriate review by, and at the recommendation of the Planning Board, adopted an ordinance approving and adopting an amendment to the Redevelopment Plan to include therein the Additional Parcels; and
- WHEREAS, 400 Steps, LLC (the "Redeveloper") has expressed an interest in redeveloping the portion of the Redevelopment Area consisting of Block 5, Lot 19 on the Township's tax map (collectively, the "Project Area"); and
- WHEREAS, the Redeveloper proposes to construct, on the Project Area, up to 100 rental housing units, 20% of which will be set aside for households of low and/or moderate income (the "Redevelopment Project"); and
- WHEREAS, the Township has determined that the Redevelopment Project is in the best interests of the Township; and
- WHEREAS, the Township engaged in preliminary discussions with representatives of the Redeveloper regarding the potential redevelopment of the Project Area, including the discussion of terms and provisions of an agreement governing the Redevelopment Project; and

WHEREAS, the Township now desires to designate the Redeveloper as the redeveloper of the Project Area and to approve a form of a redevelopment agreement by and between the Township and the Redeveloper (the "Redeveloper Agreement").

NOW, THEREFORE, BE AND IT IS HEREBY RESOLVED by the Township Council of West Windsor, County of Mercer, State of New Jersey, that the Redeveloper is hereby designated as the redeveloper of the Project Area, subject to the execution of the Redevelopment Agreement.

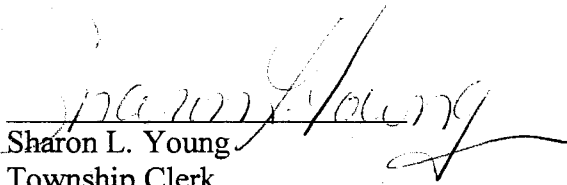
BE IT FURTHER RESOLVED that the Mayor is hereby authorized to execute the Redevelopment Agreement by and between the Township and the Redeveloper, in a form substantially similar to that on file with the Township Clerk with such additions, deletions and modifications as may be deemed necessary and appropriate, and the Township Clerk is hereby authorized and directed to attest the Mayor's execution of the Redevelopment Agreement.

BE IT FURTHER RESOLVED that the Mayor is further authorized to execute any and all documents necessary to effectuate the intent of this resolution and the implementation of the Redevelopment Agreement.

BE IT FURTHER RESOLVED that the Chief Financial Officer of the Township is hereby authorized to open, administer and/or close, as applicable, such accounts as may be required from time to time in order to implement the Redevelopment Agreement, and to, as necessary, resolve disputes over charges to be paid therefrom.

ADOPTED: December 18, 2017

I hereby certify that the above resolution was adopted by the West Windsor Township Council at their meeting on the 18th day of December, 2017.


Sharon L. Young
Township Clerk
West Windsor Township

THIS AGREEMENT (the "Agreement" or "Redevelopment Agreement") dated this 17 day of December, 2017 entered into by and between THE TOWNSHIP OF WEST WINDSOR (the "Township"), a municipal corporation of the State of New Jersey (the "State") with offices at 271 Clarksville Road, West Windsor Township, Mercer County, New Jersey, acting in its capacity as redevelopment entity pursuant to N.J.S.A. 40A: 12A-4(c), and 400 Steps LLC, a New Jersey limited liability company organized and existing under the laws of the State having its offices at 3499 Route 9 North, Suite 1-F, Freehold, New Jersey 07728 (the "Redeveloper") (collectively, the "Parties").

WHEREAS, the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq., as it is amended from time to time ("LRHL" or the "Redevelopment Law"), authorizes municipalities to determine whether certain parcels of land in the municipality constitute "areas in need of redevelopment," as defined in the Redevelopment Law; and

WHEREAS, pursuant to the Redevelopment Law, the Township is authorized to arrange or contract with redevelopers for the planning, re-planning, construction, acquisition or undertaking of any redevelopment project; and

WHEREAS, the Township has declared, pursuant to the Redevelopment Law, the "Property" or "Project Area" identified as Block 5, Lot 19 on the Township's tax map, more commonly known as 19 Cranbury Road, and which consists of approximately 3.85 acres of land, along with other parcels identified below, to be, or to be included within, an Area in Need of Redevelopment; and

WHEREAS, the Township subsequently adopted a redevelopment plan entitled "Township of West Windsor Redevelopment Plan for Princeton Junction", by ordinance adopted on March 23, 2009, for the area including Block 5, Lots 8.03, 19, 20 & 78, Block 6, Lots 6, 8, 9, 10, 11, 12, 14, 16.01, 16.02, 17, 18, 32, 33, 41, 44, 48, 54, 55.01, 57, 60, 64, 65, 66, 67, 68, 69, 70, 76, 78.01, 79.01, 84.01, 84.02, 84.03 & 88, Block 6.2, Lots 20, 21, 22, 49, 73, 74 & 83, Block 12.04, Lots 2, 10, 17, 18, 25, 26 & 27, Block 13, Lots 1, 9, 10, 11, 12 & 13, Block 57, Lot 1, Block 59, Lots 1, 2 & 3, including the Property, as subsequently amended (the "Redevelopment Plan") on February 27, 2017 to include therein Block 5, Lots 62 & 76, and any other subsequent amendments; and

WHEREAS, pursuant to the LRHL, the Township has determined to act as the "Redevelopment Entity" (as such term is defined at N.J.S.A. 40A:12A-3) for the redevelopment of the Property in accordance with the Redevelopment Plan; and

WHEREAS, pursuant to the Redevelopment Law, the Township in its capacity as the Redevelopment Entity for the Property, with full authority to exercise the powers contained in the Redevelopment Law, desires to facilitate and implement the development of the Property in accordance with the Redevelopment Plan; and

WHEREAS, the Redeveloper proposes to redevelop the Property by constructing thereon a project consisting of up to 100 rental housing units, 20% of which will be set aside for households of low and/or moderate income, generally consistent with the Concept Plan attached hereto as **Exhibit A** (the "Project"); and

WHEREAS, the Project is in conformance with the Redevelopment Plan; and

WHEREAS, the Township believes the Project to be in the vital and best interests of the Township, and that it promotes the health, safety, and welfare of the Township's residents; and

WHEREAS, the Redeveloper submitted information outlining its financial capabilities, experience, and expertise and requested designation by the Township as the redeveloper for the Property; and

WHEREAS, the Township has determined that Redeveloper(s) meets all necessary criteria, including financial capabilities, experience, and expertise, and, as a result, has determined to designate Redeveloper as the redeveloper of the Property; and

WHEREAS, in order to implement the development, financing, construction, operation and management of the Project, and to enable conveyance of the Property to the Redeveloper after ownership of the Property is acquired by the Township, whether by negotiated purchase or by eminent domain; and

WHEREAS, in order to set forth the terms and conditions under which the Parties shall carry out their respective obligations with respect to the construction of the Project, and to ensure that the redevelopment occurs in a timely manner and in a manner that corrects the conditions of the

Project Area that led to the determination by the Township that the Project Area met the criteria for designation as an area in need of redevelopment, the Parties have determined to execute this Redevelopment Agreement pursuant to the provisions of the Redevelopment Plan and Redevelopment Law authorizing and directing the execution of such Redevelopment Agreement; and

WHEREAS, the Township has determined to enter into this Agreement with the Redeveloper, which Agreement specifies the rights and responsibilities of the Parties with respect to the Property and the Project.

NOW, THEREFORE, for and in consideration of the mutual promises, covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each of the Parties, and for the benefit of the Parties hereto and general public and to implement the purposes of the LRHL and the Redevelopment Plan, the Parties do hereby covenant and agree each with the other as follows:

1. DEFINITIONS

1.1. **Defined Terms.** The Parties agree that the defined capitalized terms used in this Agreement shall have the meaning specified in the recitals above (each of which is hereby incorporated into and made part of this Agreement) or as set forth in the list below, or as may be expressly ascribed to such capitalized terms elsewhere in this Agreement, such definitions to be applicable equally to the singular and plural forms of such terms. As used or referenced to, and unless the context clearly indicates a different meaning or use, in this Agreement:

“Affiliate” means any individual or entity that controls, is controlled by or is under common control with the Redeveloper, (b) each individual or entity that, directly or indirectly, owns or controls, whether beneficially or as a trustee, guardian or other fiduciary, any of the Stock or

other equity interest of the Redeveloper, and (c) each of the Redeveloper's officers, directors, members, joint venturers and partners. The term "control" as used with respect to any Party, means the ownership, directly or indirectly of more than 50% of the voting stock of such corporation (or its equivalent for a limited liability company or partnership), or the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such corporation, partnership, association or other entity or organization, or to receive, directly or indirectly, more than 50% of the profits of such corporation, partnership, association or other entity or organization (whether through the ownership or voting stock, by contracts or otherwise).

"Applicable Laws" shall mean all federal, state and local laws, ordinances, approvals, rules, regulations statutes, permits, resolutions, judgments, orders, decrees, directives, interpretations, standards, licenses and other similar requirements applicable thereto, or similarly binding authority which, in any case, shall be enacted, adopted, promulgated, issued or enforced by any governmental authority, and/or court of competent jurisdiction that relates to or affects the Parties or either of them, the Project Area, the Project, the performance by the Parties of their respective obligations or the exercise by the Parties of their respective rights under this Redevelopment Agreement including but not limited to, the LRHL; the Municipal Land Use Law, N.J.S.A. 40:55D -1 et seq.; the Eminent Domain Act, N.J.S.A. 20:3-1 et. seq.; the Zoning Ordinances of the Township of West Windsor, as and to the extent applicable pursuant to the terms of the Redevelopment Plan; relevant construction codes including construction codes governing access for people with disabilities; and all other applicable federal, state or local zoning, land use, environmental, health and safety laws, ordinances, rules and regulations.

"Application" means any application for Governmental Approval submitted by or on behalf of the Redeveloper, including all plans, drawings, documentation and presentations necessary and appropriate for the purpose of obtaining any and all Governmental Approvals required to implement and complete the Project.

“Certificate of Completion” means written acknowledgment by the Township in recordable form that the Redeveloper has completed construction of the Project in accordance with the requirements of this Redevelopment Agreement.

“Certificate of Occupancy” shall be as defined in the Township’s Municipal Code and in the applicable provisions of the Uniform Construction Code.

“Closing” means the conveyance of title to the Property to Redeveloper by the Township.

“Closing Date” means the date on which title to the Property is conveyed by the Township to the Redeveloper.

“Commence Construction”, “Commencement of Construction”, or “Commencement Date” shall mean the date on which the construction force and machinery is mobilized for construction of the Project in accordance with Governmental Approvals.

“Completion of Construction”, “Complete Construction” or “Completion Date” means the date on which the Redeveloper has substantially completed construction of the Project.

“Completion Notice” or “Notice of Completion” means a written notification of Completion of Construction and request by the Redeveloper for the issuance by the Township of a Certificate of Completion.

“Construction Period” means the period beginning on the Commencement Date and ending on the Completion Date.

“Concept Plan” means the Concept Site Plan attached hereto as **Exhibit A**, which attachment does not constitute, per se, approval by the Township’s Planning Board.

“Construction Schedule” means the timetable and performance milestones for design, obtaining Governmental Approvals, environmental remediation, site preparation, and Completion of Construction the Project as contained in the Certified Site Plan, as may be modified or adjusted from time to time in accordance with the provisions of this Agreement.

“Days” shall mean calendar days.

“Default” means a condition or event which constitutes or would constitute, after notice and a right to cure or lapse of time or both, an Event of Default as more particularly defined in this Agreement.

“Due Diligence Period” shall have the meaning set forth within Section 6.3 of this Agreement.

“Effective Date” means the date upon which this Redevelopment Agreement is executed by both Parties or such other date as may be agreed to by the Parties in writing.

“Eminent Domain” means the utilization of condemnation by the Township pursuant to the Eminent Domain Act, N.J.S.A. 20:3-1 et. seq.

“Environmental Laws” means any and all federal, state, regional, and local laws, statutes, ordinances, regulations, rules, codes, consent decrees, judicial or administrative orders or decrees, directives or judgments relating to environmental contamination, damage to or protection of the environment, environmental conditions, or the use, handling, processing, distribution, generation, treatment, storage, disposal, manufacture or transport of Hazardous Substances materials or wastes, presently in effect or hereafter amended, modified, or adopted including, but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act (“CERCLA”), 42 U.S.C. sect. 9601-9675; the Resource Conservation and Recovery Act of 1976 (“RCRA”), 42 U.S.C. sect. 6901, et seq.; the Clean Water Act, 33 U.S.C. sect. 1251, et seq.; the New Jersey Spill Compensation and Control Act (the “Spill Act”), N.J.S.A. 58:10-23.11, et seq.; the Industrial Site Recovery Act, as amended (“ISRA”), N.J.S.A. 13:1K-6, et seq.; the New Jersey Underground Storage of Hazardous Substances Act, N.J.S.A. 58:10A-21, et seq.; the New Jersey Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq.; the New Jersey Environmental Rights Act, N.J.S.A. 2A:35A-1, et seq.; and the rules and regulations promulgated thereunder, as now in force or as may hereinafter be modified or amended.

“Force Majeure Event” means causes beyond the reasonable control and not substantially due to the fault or negligence of the Party seeking to excuse delay or failure of performance of an obligation hereunder by reason thereof, including, but not limited to, declarations of public emergency; acts of nature (as to weather-related events, limited to severe and unusual events or natural occurrences such as hurricanes, tornadoes, earthquakes, and floods not reasonably foreseeable at the time the Construction Schedule); acts of the public enemy; acts of war; fire; epidemics; quarantine restrictions; blackouts; power failures or energy shortages; governmental embargoes; strikes or similar labor action by equipment or material suppliers or transporters; or unavailability of necessary building materials. During any Force Majeure Event that affects only a portion of the Project, the Redeveloper shall to the maximum extent feasible continue to perform its obligations for the balance of the Project unaffected by the Force Majeure Event.

“Governmental Approvals” means all (or such elements as Redeveloper deems sufficient) final and unappealable local, state and federal governmental approvals necessary or appropriate for implementation and completion of the Project in accordance with the terms of this Agreement, including without limitation preliminary and final site plan approval; preliminary and final subdivision approval, if and as applicable; environmental permits, including but not limited to wetlands and storm water drainage permits; permits, consents, permissions or approvals relating to historic preservation matters; utilities-related permits, including permits related to water supply and sewer service; and all other necessary permits, licenses, consents, permissions or approvals from or required by governmental agencies.

“Inclusionary Residential Project” shall mean a development consisting of up to 100 housing units, of which 20% shall be set aside for deed restriction as “affordable” rental units in accordance with all relevant provisions of the New Jersey Municipal Land Use Law (N.J.S.A. 40:55D-1 et seq.), the New Jersey Fair Housing Act (N.J.S.A. 52:27D-301 et seq.), applicable Substantive and Procedural Rules of the New Jersey Council on Affordable Housing, and New Jersey’s Uniform Housing Affordability Controls (N.J.A.C. 5:80-26.1 et seq.), thereby entitling the Redeveloper to all benefits conferred by law in New Jersey as a provider of affordable housing, including without limitation the provisions of N.J.A.C. 5:93-10.1 et seq. “SUBCHAPTER 10 COST GENERATION”.

“Parties” means the Township and the Redeveloper.

“Permitted Exceptions” shall have the meaning set forth within Section 3.4(d) of this Agreement.

“Plans and Specifications” mean all plans, drawings, specifications and related documents needed to implement and to Complete Construction of the Project in accordance with this Agreement and all applicable Governmental Approvals.

“Preliminary Assessment” shall mean a preliminary environmental investigation of the Property to determine what environmental conditions exist on the Property in accordance with Applicable Laws, which may include, but not be limited to, the Comprehensive Environmental Response, Compensation and Liability Act (“CERCLA”), 42 U.S.C. §§ 9601-9675; the Resource Conservation and Recovery Act of 1976 (“RCRA”), 42 U.S.C. §§ 6901 et seq.; the Clean Water Act, 33 U.S.C. §§ 1251 et seq.; the New Jersey Spill Compensation and Control Act (the “Spill Act”), N.J.S.A. 58:10-23.11 et seq.; the Industrial Site Recovery Act (“ISRA”), N.J.S.A. 13:1K-6 et seq., as amended; the New Jersey Underground Storage of Hazardous Substances Act, N.J.S.A. 58:10A-21 et seq.; the New Jersey Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq.; the New Jersey Environmental Rights Act, N.J.S.A. 2A:35A-1 et seq.; and the rules and regulations promulgated thereunder.

“Project” shall mean the redevelopment of the Property, including as of right, up to 100 multi-family residential units as an “Inclusionary Residential Project” as herein defined and all such other uses as shall be necessary to the Project’s realization in compliance with the terms and conditions set forth in the Redevelopment Plan, Applicable Laws, Governmental Approvals and this Agreement. The Project shall be designed and constructed in accordance and conformance with the Concept Plan, the Redevelopment Plan and Applicable Law.

“Project Costs” shall mean all costs incurred in relation to and attributable to the Project.

“Project Schedule” shall be as set forth in **Exhibit B** hereto.

“Property” shall mean the land upon which Redeveloper will construct the Project identified on the Official Tax Map of the Township as Block 5, Lot 19, commonly known as 19 Cranbury Road

“Redeveloper” shall mean 400 Steps LLC, 3499 Route 9 North, Suite 1-F, Freehold, New Jersey 07728.

“Redevelopment Agreement” shall mean this Agreement by and between the Township and Redeveloper.

“Redevelopment Entity” means the Township, acting in the capacity of “redevelopment entity” for purposes of the LRHL.

“Remediation” or “Remediate” means all necessary actions required under Environmental Laws or any other Applicable Law to investigate and clean up, remove, or otherwise respond to the known or suspected presence or threatened discharge of hazardous substances or hazardous wastes on or migrating from the Property, including, as necessary, preliminary assessment, site investigation, remedial investigation, and remedial action.

“Termination Notice” shall have the meaning set forth within Section 6.3 of this Agreement.

“Township” means the Township of West Windsor, New Jersey, County of Mercer, and State of New Jersey.

“Transfer” shall have the meaning set forth within Section 7.1(e) of this Agreement.

“Mount Laurel” and “Mount Laurel obligations” shall mean the Township’s Constitutional obligation to provide, through its land use procedures and actions, a realistic opportunity for the

construction of housing to address the Township's fair share of the unmet regional need for housing affordable to households of low or moderate income, as more particularly defined and described in the applicable laws and regulations comprising the "Mt. Laurel" doctrine.

2. REDEVELOPER DESIGNATION; TERM OF AGREEMENT; THE PROJECT

2.1 Redeveloper Designation. The Township hereby designates and appoints the Redeveloper as the exclusive redeveloper of the Property. In connection with such designation and appointment, the Redeveloper has the exclusive right and obligation to perform development and redevelopment activities on the Property, under the framework and in accordance with the terms of this Agreement, the Redevelopment Plan, as amended, and Applicable Laws.

2.2 Redeveloper's Scope of Undertaking. The services and responsibilities undertaken by the Redeveloper, as more particularly set forth in this Agreement, shall include all aspects of the design, development, obtaining of financing, environmental remediation (if necessary), site preparation, construction and operation of the Project, including, without limitation, engineering, permitting and administrative aspects, the performance of or contracting for and administration and supervision of all construction required in connection with the Project, arrangement for interim and final inspections, agreement or easements for vehicular and other access to the Property, and any other actions required to satisfy the requirements of all Governmental Approvals necessary to develop the Property, and all aspects of the funding of the Project, including equity funding and construction, interim and permanent financing.

2.3 Term of Agreement. This Agreement shall commence on the Effective Date and shall expire upon the issuance of a Certificate of Completion for the Project, except with regard to those provisions which expressly survive the issuance of a Certificate of Completion. The

Redeveloper shall commence and complete the Project by the dates set forth in the Project Schedule attached hereto as **Exhibit B**.

2.4 The Project. The Project shall consist of the construction of an Inclusionary Residential Project, consisting of up to 100 multi-family residential units, 20% of which shall be set aside for deed restriction as “affordable” rental units, and all such other uses as shall be necessary to the Project’s realization in compliance with the terms and conditions set forth in the Redevelopment Plan (as amended), Applicable Laws, Governmental Approvals and this Agreement.

2.5 Mt. Laurel / affordable inclusion elements:

(a) The Parties contemplate and intend that the Project shall contain affordable units so as to contribute to satisfying the Township’s Constitutional obligation to provide, through its land use procedures and actions, a realistic opportunity for the construction of housing to address the Township’s fair share of the unmet regional need for housing affordable to households of low or moderate income, as more particularly defined and described in the applicable laws and regulations comprising the “Mt. Laurel” doctrine.

(b) The actual rental rates of the affordable living units shall satisfy set-aside criteria such that the affordable rental unit portion of the Project shall include, at a minimum, a 20% set-aside of the total Project residential units for households earning an average of 52% of the applicable Area Median Income. The Redeveloper shall execute, and the Township shall record, such documents as are necessary to effectuate the implementation of the affordability controls described herein, for the period of time described in Section 2.5(d) hereof. The balance of the living units in the Project shall not be restricted for rent or sale to any particular income group, nor shall the Township or any of its agencies or Boards require any age-restricted to persons aged 55 and older.

(c) The affordable living units shall be a mix of studio, one-, two- and three-bedroom units, which mix shall be as determined by the Redeveloper.

(d) The income restrictions shall be in effect for a minimum of 30 years and thereafter until terminated by the Township.

(e) In furtherance of the municipal obligations conferred under New Jersey law upon a provider of affordable housing, including without limitation the provisions of N.J.A.C. 5:93-10.1 et seq., the Township will perform all acts necessary to meet its obligations thereunder, including, without limitation, directing its municipal planning staff to work with the Redeveloper via expedited informal review on all matters legally eligible for such review, including without limitation technical review, "completeness" review per the applicable sections of the MLUL, and all other reviews without limitation but especially any such as may request or require plan alterations, redesign, reprinting of drawings or documents, or other avoidable expense or delay. The Township further covenants as to Planning Board review, and sewer and other utility and infrastructure availability and reservation, as set forth below.

(f) Upon execution of this Agreement, the Township shall undertake the process necessary, under N.J.S.A. 40A:12A-7, to amend the Redevelopment Plan to permit the construction of the Project consistent with the Concept Plan. In the event the Township does not so adopt the necessary Redevelopment Plan amendments in a timely fashion for whatever reason, the Township acknowledges and agrees that the Redeveloper has the right to terminate this Agreement. Both Parties retain any other rights and remedies available under applicable law.

(g) Prior to the "Closing" date, the Township shall have confirmed, either via application to a Court having or retaining jurisdiction over the Township's Mt. Laurel compliance, or

otherwise as such Court may in the interim provide, the suitability of the site for affordable housing in accordance with applicable law. To the extent as may be required by law, the Parties shall make application to the Superior Court, Law Division, Mercer County, for review of a Revised Housing Element and Fair Share Plan prepared by the Township which includes the affordable units contained in the Redevelopment Plan, seeking a determination of Constitutional Compliance for purposes of the Council on Affordable Housing ("COAH") Round III rules and New Jersey Supreme Court interpretative rulings in connection therewith.

3. ACQUISITION AND CONVEYANCE OF PROPERTY

3.1. Acquisition of Property by the Redeveloper. The Redeveloper represents and warrants that it has engaged in good faith efforts to acquire the Property from the current owner thereof (the "Property Owner"), but has been unable to successfully negotiate an agreement with the Property Owner.

3.2. Preliminary Real Property Appraisal Reports. The Township has commissioned the preparation of a preliminary real property appraisal for Property ("Preliminary Real Property Appraisal Report"). Prior to the date hereof, the Township provided a copy of the Preliminary Real Property Appraisal Report to the Redeveloper for its review and approval. The Redeveloper hereby acknowledges that the Preliminary Real Property Appraisal Report is acceptable and the Redeveloper shall not have the right to terminate this Agreement based on the valuation set forth therein.

3.3. Property Notice. After the Redeveloper's review of the Preliminary Real Property Appraisal Report, in the event the Redeveloper desires to request the Township to acquire the Property, the Redeveloper will provide written notice to the Township of same ("Property Notice"). The Property Notice will also include the Condemnation Cost Funds required by Section 3.6(a) hereof, the Acquisition Funds required by Section 3.6(b) hereof, and copies of any title work, surveys, appraisals for the subject property and an estimate of Clean-up Costs in the Redeveloper's possession at that time. With respect to estimated Clean-up Costs, the Redeveloper's inclusion of such costs in the Property Notice shall not relieve the Redeveloper from compliance with Section 6.1(i) hereof.

3.4. Condemnation Procedures. (a) In the event the Redeveloper does not reject the Preliminary Real Property Appraisal Report in accordance with Section 3.2, and provided that the Redeveloper is otherwise in compliance with this Agreement, the Township agrees to exercise its power of condemnation in connection with the Property, in accordance with the Redevelopment Law and the Eminent Domain Act. The Township will be responsible for the conduct of bona-fide good faith negotiations to acquire the Property from the Property Owner. The fair market value of the Property set forth in the Preliminary Real Property Appraisal report shall be the amount initially offered to the Property Owner (the "Offer Price").

(b) Pursuant to Section 3.4(a), if the Township's bona-fide good faith negotiations to acquire the subject property from the Property Owner are unsuccessful, then the Township shall commence condemnation proceedings to acquire Property by Eminent Domain. Any condemnation complaint shall include appropriate reservation of rights clauses with respect to the Township's recovery of clean-up costs pursuant to Environmental Laws. After a consultation with the Redeveloper, the Township shall institute any action to recover such clean-up costs that the Township deems necessary and appropriate. In no event shall the Township file and record a Declaration of Taking as to any contaminated portion of the Property requiring Remediation until the estimated environmental costs are determined in accordance with Section 5.05 hereof. Simultaneously with the filing of a Declaration of Taking, or as soon thereafter as possible, the Township shall deposit into court the estimated fair market value of the Property as if Remediated. Upon motion of any condemnee to withdraw the funds on deposit, the Township shall object to the withdrawal of any amount that leaves a balance less than or equal to the estimated environmental costs, and shall request an order allowing the court to hold such estimated environmental costs in escrow or in trust as potential cost recovery damages.

(c) With respect to any condemnation proceedings instituted by the Township and with respect to any other legal work required by the Township relating to the Project, the Redeveloper agrees that the Township will be entitled to appoint an attorney or attorneys to act as special counsel to conduct said condemnation proceedings and to perform such other work for the Township ("Condemnation Counsel"). The Redeveloper further agrees to reimburse the Township for the services provided to the Township by Condemnation Counsel in accordance with the terms of the engagement by the Township of Condemnation Counsel, including but not limited to reimbursement for customary out-of-pocket disbursements. In addition, at the Redeveloper's expense, the Township will have the right to hire appraisers, surveyors and such other professionals as may reasonably be required in connection with such condemnation proceedings. The selection of appraisers, surveyors and such other professionals shall be at the Township's discretion; however, prior to retaining such professional(s), the Township shall use reasonable efforts to consult with the Redeveloper to solicit their opinion and/or recommendation with respect to the professional(s) being consulted.

(d) The Property acquired by the Township under this Article 3 will be conveyed to the Redeveloper. Title to such property shall be good and marketable and insurable at regular rates and without special premium by a reputable Title Insurer doing business within the State, subject only to permitted title exceptions, namely title exceptions that do not adversely affect the construction, financing, marketing or use of the Project ("Permitted Exceptions"). The Redeveloper agrees that it will be responsible for premiums incurred for any title insurance policy or policies, obtained or requested by the Redeveloper, insuring its interest in the Property. The Redeveloper specifically acknowledges that the Township makes no representation or warranty, expressed or implied or otherwise, as to the Property's fitness for use for any particular purpose, condition, durability thereof, or that it will be suitable for the Redeveloper's purposes.

(e) The Township will promptly file and record in the Office of the Mercer County Clerk, the deed to the Property if acquired by negotiated purchase or a Declaration of Taking if acquired by condemnation proceedings. If the Township has not designated the Redeveloper as grantee on any such instrument, the Township will then immediately convey the property interest acquired to the Redeveloper by proper instrument and subject to payment of all outstanding financial obligations of the Redeveloper in accordance with this Agreement.

(f) The Closing Date will be no later than thirty (30) days after the Township acquires fee simple, insurable title to the Property. The Closing Date may be such earlier or later date as may be mutually acceptable to the Parties.

(g) Upon conveyance as described in this Section, the Redeveloper will acquire such property in an "AS IS" condition and, as such, the Redeveloper will assume all responsibility and liability for complying with Applicable Laws and Governmental Authorities and bear all costs of remediating such property. Redeveloper is intended to be an Innocent Purchaser (or equivalent) under the provisions of applicable New Jersey State, and U.S. federal, environmental law, rules, and regulations.

3.5. Condemnation Costs. The Redeveloper will pay, through the Condemnation Costs Escrow Account, the Acquisition Funds Escrow Account or otherwise, those reasonable costs, expenses and fees incurred by the Township in acquiring the Property, whether acquired by negotiated sale or by condemnation. These costs are hereinafter referred to as the "Condemnation Costs" and include, but are not limited to:

(a) The Offer Price or the ultimate price paid or to be paid to Property Owner, which will be the just compensation value determined by the condemnation process either in bona-fide negotiations with the Property Owner or as a result of condemnation proceedings;

(b) The amount paid in compromise or settlement of any claim for just compensation (as to which the Township agrees it will not settle or compromise any claim without the Redeveloper's consent, which consent will not be unreasonably denied or delayed);

(c) Any Relocation Costs, as defined in Section 3.7;

(d) Fees and disbursements of the Township's Condemnation Counsel incurred in connection with representation of the Township's interests in the bona-fide negotiations and, if necessary, the condemnation action and any appeals arising out of the Eminent Domain action;

(e) Title search and/or title insurance costs;

(f) Liability and property insurance premiums and costs; and

(g) All reasonable out-of-pocket costs and fees incurred in complying with N.J.S.A. 40A:12A-8(c) and N.J.S.A. 20:3-18, including, but not limited to, professional services, attorneys' fees, expert fees, inspections, appraisals, all building, sewer and water connection fees, environmental investigations, court deposit (required by N.J.S.A. 20:3-18) and court costs and fees associated with bona-fide negotiations, commissioners' hearings, court proceedings and challenges to the condemnation.

3.6. Deposit of Funds. (a) Simultaneously with the execution of this Agreement, the Redeveloper has deposited with the Township the amount of Thirty-Five Thousand Dollars (\$35,000.00) (the "Condemnation Cost Funds"). The Condemnation Cost Funds will be held by the Township in an escrow account (the "Condemnation Cost Escrow Account") and will be used to pay the Condemnation Costs as set forth in Section 3.5, except for the Offer Price. Within ten (10) days of the receipt by the Redeveloper of a written notice from the Township that the amount of the Condemnation Funds (excluding the Acquisition Funds) has decreased to Five Thousand Dollars (\$5,000.00), the Redeveloper will replenish the Condemnation Funds to the amount of Thirty-Five Thousand Dollars (\$35,000.00). Should the Condemnation Costs incurred by the Township exceed the amount in the Condemnation Funds, the Redeveloper will

pay the full amount of those costs within seven (7) business days of the receipt of written notice from the Township that such costs are due.

(b) Within thirty (30) days of the execution of this Agreement, and as a condition precedent to the Township's commencement of condemnation proceedings, the Redeveloper will also deposit with the Township the amount equal to one hundred fifteen percent (115%) of the Offer Price (the "Acquisition Funds"), which shall be held by the Township in a separate escrow account (the "Acquisition Funds Escrow Account"). Should the Township be required to deposit funds into court or make payment to the Property Owner for the acquisition of the Property, and there are insufficient funds in the Acquisition Funds Escrow Account to cover those costs, the Redeveloper will pay the full amount of such excess to the Township within seven (7) business days of the receipt of written notice from the Township that such costs are due (it being agreed that the Township shall not be required to advance any such funds), such costs to be deemed a lien on the Property in favor of the Township until paid unless other reasonably satisfactory security is posted. The Redeveloper will take all necessary steps and make all necessary payments to or on behalf of the Township in a timely fashion to meet this obligation of this Agreement.

3.7. Relocation. In connection with the acquisition of the Property through the exercise of its powers of condemnation, the Township or such entity designated by the Township (the "Relocation Entity") will remove and relocate any displaced tenants, licensees or other occupants thereof in full compliance with the requirements of the Relocation Assistance Law of 1967, N.J.S.A. 52:31B-1 *et seq.* (the "Relocation Assistance Law") and the Relocation Assistance Act of 1971, N.J.S.A. 20:4-1 *et seq.* (the "Relocation Act"), the regulations promulgated thereunder. All costs of compliance, including preparation of a State-approved Workable Relocation Assistance Plan ("WRAP") for the Property, reasonable Township administrative costs associated with implementing same, including the salary of a relocation officer, shall be referred to as "Relocation Costs".

3.8 Miscellaneous Provisions Regarding the Conveyance of the Property.

(a) Physical Condition of the Property. The Township represents and warrants that any and all conditions with respect to the property, of which the Township is aware, have been disclosed by the Township to the Redeveloper.

(b) Building and Zoning Laws. The Property is being conveyed subject to the Redevelopment Plan, as amended, and all other Applicable Laws.

(c) Intentionally omitted.

(d) Brokerage Fees. The Redeveloper and the Township each represent that they have not dealt with or transacted any business with any broker concerning the acquisition of the Property, and each agrees to hold the other harmless from any claim of any broker.

(e) Non-Foreign Affidavit. The Township shall provide to the Redeveloper at Closing an adequate Non-Foreign Affidavit stating the inapplicability of 26 U.S.C. Section 1445 to the sale of the Property.

(f) Form 1099-B Filing. In compliance with the requirements of the Internal Revenue Code, the Redeveloper's attorney is responsible for collecting certain information from the Township necessary to complete and file Form 1099-B with the Internal Revenue Service. The Township agrees to supply all necessary information to the Redeveloper's attorney in order to facilitate such filing.

(g) Responsibility for Taxes. The Redeveloper shall be responsible for the payment of any real estate taxes assessed on the Property after conveyance of title in the Property to the Redeveloper.

4. IMPLEMENTATION OF PROJECT

4.1 Implementation of the Project. For so long as this Agreement and Redeveloper's designation as Redeveloper hereunder shall remain in effect, Redeveloper shall have the exclusive right and obligation to redevelop the Property. The Redeveloper agrees to redevelop the Property in accordance with the terms and conditions of this Agreement, the Redevelopment Plan, Applicable Laws, and all Governmental Approvals applicable thereto.

4.2 Pre-Development and Government Approvals

(a) The Parties recognize the need for the Township to amend the Redevelopment Plan to permit the undertaking of the Project. In the event the Township fails to so amend the Redevelopment Plan within 90 days of the Effective Date, the Redeveloper shall have the right to terminate this Agreement, after which the Parties shall have no further rights or obligations hereunder, other than those that expressly survive the termination of this Agreement.

(b) Governmental Approvals. The Redeveloper shall take the following actions within the time periods set forth herein:

(i) Within 90 Days of the adoption, by the Township, of an ordinance approving necessary amendments to the Redevelopment Plan, the Redeveloper shall file all applications for Governmental Approvals necessary to commence construction of the Project, if such applications have not already been filed and/or such Governmental Approvals have not already been granted;

(ii) Within 180 Days of the issuance of final site plan approval, the Redeveloper shall have applied for and shall thereafter diligently pursue all building and construction permits necessary to construct the Project;

(c) **Scope of Governmental Approvals** The Redeveloper represents that it will cause to be prepared and filed (or has already caused to be prepared and filed), at Redeveloper's sole cost and expense, all applications necessary and appropriate for obtaining all Governmental Approvals required to construct the Project consistent with the Construction Schedule. All of the Governmental Applications shall be in conformity with the Redevelopment Plan, the Concept Plan, this Redevelopment Agreement and Applicable Laws. Redeveloper shall provide the Township with a copy of each Governmental Application at the same time those applications are submitted to the governmental agency having jurisdiction over the same and shall have a continuing obligation to promptly provide the Township with copies of all correspondence to and from each governmental agency relating to these applications.

(d) **Diligent Pursuit of Governmental Approvals.** Redeveloper agrees to prosecute all of Redeveloper's applications for Governmental Approvals diligently and in good faith. Subject to the requirements of Applicable Laws and unless expressly provided otherwise in this Agreement, Redeveloper shall determine when and in what order to file each specific application. At Redeveloper's request, the Township will promptly sign consents or other documents required in connection with the Redeveloper's applications for Governmental Approvals and will promptly supply information which is in the Township's possession. The Township will otherwise cooperate with and support the Redeveloper in connection with the applications for Governmental Approvals as the Redeveloper and the Redeveloper's counsel may request.

(e) **Appeals.** If (i) one or more of the Redeveloper's Applications for Governmental Approvals is denied, or approved with conditions that the Redeveloper in its commercially reasonable judgment deems unacceptable, or (ii) anyone contests or challenges the grant of such Governmental Approval to the Redeveloper, then the Redeveloper shall at its discretion appeal or defend against such action, or terminate this Agreement, and during the pendency of any such appeal proceeding may at its discretion otherwise continue as the Redeveloper deems appropriate to seek the remaining Governmental Approvals.

(f) Application for "Building Permits". The Redeveloper shall in a commercially reasonable manner submit applications for building permits and use commercially reasonable efforts to diligently pursue the applications to conclusion.

(g) Design concepts for the Project may be modified by Redeveloper from time to time, to reflect additional detail and information, as such detail and information becomes available, or to reflect or accommodate the requirements of any Applicable Law, or to take into account engineering/construction considerations which render the then-existing design concepts physically or economically impractical. Any modification which triggers the need to amend any site plan and/or subdivision approval secured by Redeveloper shall be consistent with the Redevelopment Plan, including as the Redevelopment Plan may be amended by the Township, if necessitated thereby and with agreement of the Redeveloper.

(h) The Redeveloper will comply with Section 200-88 of the Township's Land Use Ordinance regarding payment of an off-tract road improvement fee (the "Off-Track Improvements Payment"). Such fee will be calculated, when possible, under Section 200-88, and will be due as follows: (A) 10% upon the issuance of the building permit for the Project and (B) 90% upon the issuance of a Certificate of Occupancy of the Project. As of the date of each payment provided in this Section, the calculated amount of each payment shall be adjusted by multiplying it by a fraction, the numerator of which is the Index as of the date each payment is made and the denominator of which is the Index as of the date the Off-Tract Improvements Payment calculation was made. As used herein, "the Index" means the highway bid price index for the State of New Jersey as published by McGraw Hill Publishing Co. in the "Dodge Building Cost Indexes for United States and Canadian Cities" and shall be the average of the Philadelphia area and the New York Metropolitan area. If, as of any relevant date, the Index is no longer published or issued, the Federal Highway Administration's bid price index or other such index as accurately reflects the cost of constructing road improvements in New Jersey shall be used and employed in the place and stead thereof.

4.3 Evidence of Financing. Within 180 Days of the Effective Date, the Redeveloper shall provide the Township with proof that the Redeveloper has secured adequate financing to construct the Project which shall include documentation from the holder of such funds as to the availability of the funds and the terms and conditions placed upon such financing.

4.4 Commencement and Completion of Construction. The Redeveloper shall Commence and Complete Construction of this Project in accordance with the Project Schedule. Redeveloper agrees to simultaneously provide to the Township copies of all construction schedules and project budgets that Redeveloper submits to potential lenders or investors in connection with the financing of the Project.

4.5 Work to be Performed by Redeveloper. The Redeveloper at its sole cost and expense shall perform all demolition, site preparation, construction, operation, administration and management of the Project. In addition, all performance or completion bonds provided by the Redeveloper's contractors shall name the Township as an intended beneficiary thereof, as its interests may appear.

4.6 Certificate of Occupancy and Certificate of Completion. Redeveloper shall apply to the appropriate governmental officer or body for a Certificate of Occupancy, as required under Applicable Laws. Following the issuance of all required Certificates of Occupancy and the satisfaction of the terms and conditions of this Redevelopment Agreement with respect to the Project by Redeveloper, and upon receipt of a Notice of Completion from Redeveloper, the Township agrees to issue a Certificate of Completion, in proper form for recording, which shall acknowledge that the Redeveloper has performed all of its duties and obligations under this Redevelopment Agreement and has completed construction of the Project in accordance with the requirements of this Redevelopment Agreement. Within thirty (30) Days after receipt of the Notice of Completion from the Redeveloper, the Township shall provide the Redeveloper with the Certificate of Completion or a written statement setting forth in detail the reasons why it

believes that the Redeveloper has failed to complete the Project in accordance with the provisions of this Redevelopment Agreement or is otherwise in Default under this Agreement, and what reasonable measures or acts will be necessary in the opinion of the Township in order for the Redeveloper to be entitled to the Certificate of Completion. Upon either completion of such noticed items, or agreement among the Parties as to their satisfaction, the Township shall issue the Certificate of Completion as herein provided. When issued, the Certificate of Completion shall constitute a recordable, conclusive determination of the satisfaction and termination of the agreements and covenants (as limited herein) in this Redevelopment Agreement and the Redevelopment Plan with respect to the obligations of the Redeveloper to construct the Project. Unless otherwise required by a related Financial Agreement, Governmental Approval or Applicable Law, upon the issuance of the Certificate of Completion, the provisions of this Agreement shall no longer encumber the Project or the Property; provided, however, that any other documents theretofore delivered pursuant to this Agreement that by their terms are intended to survive Completion of Construction (including, without limitation and by of example only, any Deed restrictions) shall not be affected by delivery of the Certificate of Completion except as otherwise expressly provided therein.

4.7 Estoppel Certificates (Prior to Issuance of Certificate of Completion). At any time and from time to time prior to the issuance of a Certificate of Completion, the Township shall, within 30 Days of its receipt of a written request by the Redeveloper, execute and deliver to (a) the Redeveloper, or (b) a third party (e.g., a prospective lender, purchaser, investor, tenant, etc.) designated by the Redeveloper, an instrument in which the Township (i) certifies that this Agreement is unmodified and in full force and effect as to the Project (excepting only modifications which shall be set forth), (ii) states whether to the best knowledge of the Township the Redeveloper is in Default under this Agreement, and, if so, specifying each such Default of which the Township shall assert; and (iii) confirms such other factual matters within the Township's knowledge or control pertinent to this Agreement, as the same relate to, or might affect, the Project or the Property. The Township shall not be required to issue more than one (1) Estoppel Certificate per month under this Section.

4.8 Escrow. In the event that the Township requires any payments to be made in advance, then, at least annually during the term of the Redevelopment Agreement, or as reasonably requested by the Redeveloper, Township shall prepare and send to the Redeveloper a statement which shall include an accounting of funds listing all deposits, interest earnings, disbursements and the cumulative balance of the Escrow. Upon the completion of the Project, or upon the termination of the Agreement, any funds remaining in the Escrow shall be promptly returned by the Township to the Redeveloper. Upon the issuance of a Certificate of Completion for the Project, the Redeveloper shall send written notice by certified mail to the Township requesting that the remaining balance of the Escrow be refunded or otherwise applied in accordance with the provisions of the Redevelopment Agreement. After receipt of such notice, the Township shall render a written final accounting to the Redeveloper along with a check for any unexpended funds remaining in the Escrow. If a dispute over a charge is resolved in Redeveloper's favor after having been paid, the Township shall reimburse the Escrow in the amount determined to be properly disputed.

5. REDEVELOPER'S FINANCIAL COMMITMENT

5.1 Redeveloper's Financial Commitment. Redeveloper represents that it has obtained or can obtain, and will commit the requisite equity and debt financing in an amount necessary to purchase the Property on the terms and conditions set forth herein, and to perform all of the Redeveloper's obligations hereunder in order to Commence Construction and to Complete Construction of the Project within the time periods required under this Agreement.

6. REPRESENTATIONS AND WARRANTIES

6.1 Representations and Warranties by the Redeveloper: The Redeveloper hereby represents and warrants the following to the Township for the purpose of inducing the Township to enter into this Redevelopment Agreement and to consummate the transactions contemplated hereby, all of which shall be true as of the date hereof (such representations and warranties to survive the termination or expiration of the term of this Redevelopment Agreement):

(a) The Redeveloper is a limited liability company, organized and existing in good standing under the laws of the State, and has all requisite power and authority to carry on its business as now and whenever conducted, and to enter into and perform its obligations under this Redevelopment Agreement.

(b) The Redeveloper has the legal power, right and authority to enter into this Redevelopment Agreement and the instruments and documents referenced herein to which the Redeveloper is a party, to consummate the transactions contemplated hereby, to take any steps or actions contemplated hereby, and to perform their obligations hereunder.

(c) This Redevelopment Agreement has been duly authorized, executed and delivered by the Redeveloper; and is valid and legally binding upon the Redeveloper and enforceable in accordance with its terms. The execution and delivery thereof shall not constitute a default under or violate the terms of any indenture, agreement or other instrument to which the Redeveloper is a party.

(d) No receiver, liquidator, custodian or trustee of the Redeveloper shall have been appointed as of the Effective Date, and no petition to reorganize the Redeveloper pursuant to the United States Bankruptcy Code or any similar statute that is applicable to the Redeveloper shall have been filed as of the Effective Date.

(e) No adjudication of bankruptcy of the Redeveloper or a filing for voluntary bankruptcy by the Redeveloper under the provisions of the United States Bankruptcy Code or any other similar statute that is applicable to the Redeveloper shall have been filed.

(f) No indictment has been returned against any official of the Redeveloper with respect to any transaction related to the transactions contemplated by the terms of this Redevelopment Agreement or otherwise.

(g) There is no pending or, to the best of the Redeveloper's knowledge, threatened litigation that would prevent the Redeveloper from performing its duties and obligations hereunder.

(h) There are no suits, other proceedings or investigations pending or, to the best of the Redeveloper's knowledge, threatened against the Redeveloper that would have a material adverse effect on the financial condition of the Redeveloper.

(i) The Redeveloper agrees that the cost and financing of the Project is the responsibility of the Redeveloper, pursuant to the Redevelopment Plan and this Redevelopment Agreement.

(j) The Redeveloper is financially and technically capable of developing, designing, financing and constructing the Project, including but not limited to any environmental remediation on or under the Property.

6.2 Representations and Warranties by the Township. The Township hereby represents and warrants the following to the Redeveloper for the purpose of inducing the Redeveloper to enter into this Redevelopment Agreement and to consummate the transactions contemplated hereby, all of which shall be true as of the date hereof (such representations and warranties to survive the termination or expiration of the term of this Redevelopment Agreement):

(a) The Township has the legal power, right and authority to enter into this Redevelopment Agreement and the instruments and documents referenced herein to which the Township is a party, to consummate the transactions contemplated hereby, and to perform its obligations hereunder.

(b) This Redevelopment Agreement has been duly authorized, executed and delivered by the Township and is valid and legally binding upon the Township and enforceable in accordance with its terms on the basis of laws presently in effect and the execution and delivery thereof shall not, with due notice or the passage of time, constitute a default under or violate the terms of any indenture, agreement or other instrument to which the Township is a party.

(c) There is no pending or, to the best of the Township's knowledge, threatened litigation that would in any way (i) contest or seek to invalidate the Redeveloper's ability to commence performance of its obligations under the Redevelopment Agreement, or (ii) prevent the Township from performing its duties and obligations hereunder.

(d) There are no suits, other proceedings or investigations pending or, to the best of the Township's knowledge, threatened against the Township that would have a material adverse effect on the Township's financial condition.

(e) To the best of the Township's knowledge there is no pending litigation which affects the title to the Property, the Redevelopment Area designation, the Redevelopment Plan or the Township's ability to convey the Property to Redeveloper.

(f) To the best of the Township's knowledge the Township is not in violation of any term of any judgment, decree, injunction or order affecting the Property.

(g) To the best of the Township's knowledge the Township has not received any notice of violation issued by any federal, state or other public authority with regard to the Property, and the Township has no reason to believe that any such notice will be issued after the date hereof.

(h) The Township will attempt to obtain through purchase or condemnation the fee simple ownership of the Property in preparation for the transfer of ownership to the Redeveloper in accordance with the provisions of the applicable laws and of this Agreement.

(i) All bulk, height, density, parking and other land use and zoning limitations governing and/or controlling the Project shall be as set forth in the final Redevelopment Plan, as amended to permit the construction of the Project consistent with the Concept Plan.

(j) Sufficient sewerage and sewer / sewage-conveyance and sewage-treatment capacity exists and shall be reserved by the Township and all applicable utility providers to serve the Project. The same is warranted by the Township as to any other utility or "scarce resource" as that term is understood in connection with the "Mt. Laurel" doctrine, reasonably necessary for the market-realistic construction, operation, leasing, and/or sale of the Project, without limitation as to electric, gas, cable, internet, and road/traffic/circulation/pedestrian access and infrastructure.

6.3 Preliminary Assessment. The Township has commissioned the preparation of a Preliminary Assessment of the Property, to be paid for out of an escrow account funded by the Redeveloper. The Township has provided a copy of such Preliminary Assessment to the Redeveloper, who hereby acknowledges its receipt of same. The Redeveloper shall have a period of 180 days from the full execution of this Agreement, or the date by which the Redeveloper delivers the Property Notice under Section 3.3 hereunder, whichever is earlier (the "Due Diligence Period"), to review such Preliminary Assessment to determine whether the Property is suitable for the Project. During such review period, the Redeveloper shall have the right to terminate this Agreement if it determines the results of such Preliminary Assessment are unsatisfactory. In order to do so, the Redeveloper must deliver written notice to the Township (a "Termination Notice"), during the Due Diligence Period, of its election to so terminate this Agreement. If the Redeveloper fails to terminate this Agreement by the end of the Due Diligence Period, it will be deemed to have waived the right to do so thereafter.

6.4 Utility and Easement Review Contingency period: During the Due Diligence Period, the Redeveloper may conduct examination and research in order to assess the impact or effect,

including without limitation, any and all impacts as to suitability, title, or in any other respect, of i) utility service availability access and easements; ii) access by the Property to dedicated public right(s)-of-way sufficient to accommodate the expected traffic circulation and trip generation; iii) the Property's proximity to such four-track local and high-speed commuter rail lines as are adjacent to the Property immediately to the north and collectively known as the "Northeast Corridor," including also the New Jersey Transit branch rail line to Princeton, and all appurtenant structures and easements to all such rail line(s). During such Due Diligence Period, the Redeveloper shall have the right to terminate this Agreement if it determines the results of such examination and research are unsatisfactory by delivering a Termination notice to the Township within the Due Diligence Period. If the Redeveloper fails to terminate this Agreement by the end of the Due Diligence Period, it will be deemed to have waived the right to do so thereafter.

7. COVENANTS AND RESTRICTIONS

7.1 Description of Redeveloper Covenants. The Redeveloper covenants and agrees:

(a) The Redeveloper shall use diligent efforts to obtain all Government Approvals necessary for the construction and development of the Project. The Redeveloper shall construct, improve, operate and maintain the Project in compliance with all Governmental Approvals and Applicable Law. The Redeveloper shall provide evidence reasonably satisfactory to the Township that the Project is in compliance with Applicable Law.

(b) The Redeveloper shall (i) obtain financing of the Project, (ii) construct and develop the Project with due diligence and (iii) shall begin and complete construction of each item within the time frame set forth herein. All activities performed under this Redevelopment Agreement shall be performed in accordance with the level of skill and care ordinarily exercised by

reputable developers of similar developments of the character, scope and composition of the Project.

(c) The Redeveloper shall construct the Project in accordance with this Redevelopment Agreement, the Redevelopment Law, the Redevelopment Plan, and all other Applicable Law.

(d) The covenants shall cease and terminate when a Certificate of Completion for such improvements has been issued.

(e) Except as otherwise set forth herein, the Redeveloper shall not, without the prior written consent of the Township, which shall not be unreasonably withheld or delayed, effectuate a "Transfer", which shall mean any: (i) change, directly or indirectly, in the ownership or control of the Property prior to the issuance of the final certificate of occupancy for the Project, (ii) assignment or attempted assignment of this Redevelopment Agreement or any rights herein, or (iii) total or partial sale, transfer, or conveyance of the whole or any part of its interest in the Project. Notwithstanding the foregoing, the Redeveloper may, after providing written notice to the Township, (x) effectuate a transfer of ownership interest in the Redeveloper among members of the Redeveloper and/or trustees and family members for their benefit and/or for estate planning purposes or (y) mortgage the Property for purposes of securing financing relating to the construction of the Project.

7.2 Declaration of Covenants and Restrictions. Upon the full execution of this Redevelopment Agreement, the Redeveloper shall execute and record, in the office of the Mercer County Clerk, a document imposing on the Project and the Property the covenants and restrictions set forth in Section 7.1, and Redeveloper will submit evidence to the Township of the recording of such document.

8. DEFAULT

8.1 Intentionally omitted.

8.2 Events of Default. Any one or more of the following shall constitute an Event of Default hereunder, subject to Force Majeure Extension and tolling as provided elsewhere in this Agreement:

(a) Failure of the Redeveloper or the Township to observe or perform any covenant, condition, representation, warranty or agreement hereunder, and any act or omission of the Redeveloper characterized elsewhere in this Agreement as a Default, including without limitation any failure by the Township to abide by the requirements of municipal cooperation with this "Mt. Laurel" inclusionary project under all Applicable Laws and regulations including without limitation as described and set forth with particularity in this Agreement, and the continuance of such failure, act or omission for a period of ten (10) Days after receipt by the defaulting party of written notice from the non-defaulting party specifying the nature of such failure and requesting that such failure, act or omission be remedied (a "Notice of Default"); provided, however, that if the Default is one that cannot be completely cured within ten (10) Days after receipt of the Notice of Default, it shall not be an Event of Default as long as the defaulting party promptly begins to take actions to correct the Default upon its receipt of notice thereof and is proceeding with due diligence to remedy the Default as soon as practicable, but in no event longer than 90 days unless the non-defaulting party consents, in writing, to an extension of time to cure.

(b) Redeveloper (i) fails to perform its obligations with respect to the construction of the Project in accordance with this Agreement and the Construction Schedule, the Redevelopment Plan, Governmental Approvals or Applicable Laws, including but not limited to

failure to Commence Construction or Complete Construction in accordance with the Construction Schedule; or (ii) abandons the Project or substantially suspends construction work without the prior knowledge and consent of the Township (unless such suspension arises out of a Force Majeure Event), and any such failure, abandonment or suspension shall not be cured, ended, or remedied within forty-five (45) Days after receipt by the Redeveloper of a Notice of Default; provided, however, that if the Default is one that cannot be completely cured within forty-five (45) Days after receipt of the Notice of Default, it shall not be an Event of Default as long as the Redeveloper promptly began to take actions to correct the Default upon its receipt of notice thereof and is proceeding with due diligence to remedy the Default as soon as practicable, but in no event longer than one hundred twenty (120) Days unless the Township consents in writing to an extension of time.

(c) There is a prohibited Transfer, as defined in Section 7.1(e).

(d) Material breach of any warranty or representation made by either Party.

8.3 Remedies Upon Event of Default. Whenever any Event of Default shall have occurred, the defaulting Party, after issuance of a Termination Notice to the defaulting Party, may take whatever action at law or in equity as may appear necessary or desirable to enforce the performance or observance of any rights, remedies, obligations, agreements, or covenants of the Redeveloper under this Agreement, including, without limitation, mandatory return of deposit and escrow monies or advance, and liquidated damages.

8.4 Force Majeure Extension. For the purposes of this Agreement, neither the Township nor the Redeveloper shall be considered in breach or in Default with respect to its obligations hereunder because of a delay in performance arising from a Force Majeure Event. It is the purpose and intent of this provision that in the event of the occurrence of any such delay, the

time or times for performance of obligations by either Party shall be extended, and the time for completion of any specified obligation hereunder shall be tolled, for the period of the delay including a commercially reasonable period thereafter. To invoke the tolling provisions hereunder, the party invoking the provisions hereof must give written notice to the other Party of the occurrence of a Force Majeure Event as soon as practicable but in no event more than sixty (60) Days or such longer period as is reasonably necessary after the occurrence thereof.

8.5 Impossibility of Performance; Changed Market Conditions; Third Party Litigation. Redeveloper's failure or refusal to develop the Project shall not constitute a Default by Redeveloper in the performance of its obligations hereunder if such failure or refusal is for the following reasons and on the following terms and conditions:

(a) Physical Impossibility or Economic Infeasibility as a Result of Property-Specific Matters. Subject to the provisions of Section 8.5(c) below, Redeveloper's failure or refusal to develop Project shall not constitute a default hereunder if due to physical impossibility of performance or economic infeasibility due to the condition of the Property or to regulatory restrictions relating to the condition of the Property.

By way of example, "physical impossibility of performance" would be an irremediable environmental condition. An example of "economic infeasibility" would be a cost of Remediation of an environmental condition that would significantly and adversely affect the anticipated return of the Project as reflected on the Project pro forma, such that redevelopment of the Project on the terms and conditions set forth herein becomes economically irrational or infeasible.

(b) Changed Market Conditions. Subject to the provisions of Section 8.5(c) below, Redeveloper's failure or refusal to develop the Project shall not constitute a Default if

such failure or refusal is the result of changed market conditions encompassing market or economic phenomena or conditions that are not unique to the Project, which changed market conditions render the development and marketing of the Project based upon the product type and financial assumptions currently proposed by Redeveloper economically infeasible or remote.

(c) Applicable Procedures; Ramifications for Redevelopment Plan Amendments. In order to invoke the protections of Section 8.5(a) or (b), Redeveloper shall provide Notice to the Township of Redeveloper's intention to invoke such protections, which Notice shall include a detailed description of the facts and circumstances relied upon by Redeveloper in support of its position, as well as the commercially reasonable steps Redeveloper has taken to overcome or mitigate the impacts of those facts and circumstances.

(i) If Redeveloper's failure or refusal to develop the Project in accordance with the terms and conditions of this Agreement is excused by reason of physical impossibility of performance as provided in Section 8.5(a) above, then Redeveloper may, without penalty, relinquish its designation as redeveloper for the Project and shall be free of further liability or obligation. In such case, the Township shall have the right (but not the obligation) to amend the Redevelopment Plan to facilitate redevelopment by a third party redeveloper.

(ii) If Redeveloper's failure or refusal to develop the Project is excused by reason of economic infeasibility or changed market conditions as provided in Section 8.5(b) above, then such failure or refusal shall not constitute a Default hereunder if Redeveloper by Notice to the Township requests to renegotiate, in good faith and within the time periods hereinafter set forth, with the objective of redefining a mutually acceptable and economically feasible project. Such negotiations could

include, by way of example, consideration of modifications to this Agreement or to the use and density requirements under the Redevelopment Plan.

The Township agrees that Redeveloper's obligations hereunder with respect to the Commencement or Completion of Construction as to the Project shall be tolled during a period of up to twelve (12) months from the date of the Notice, and that the Parties shall renegotiate in good faith with the objective of redefining a mutually acceptable and economically feasible project.

During the tolling/renegotiation period, Redeveloper and the Township will attempt in good faith to renegotiate a revised redevelopment proposal that would overcome the economic barriers or adverse market conditions inhibiting the redevelopment effort. If at the end of such period the Parties do not agree, then either the Township or Redeveloper by Notice to the other may terminate Redeveloper's rights with respect to the Project and Redeveloper would have no further obligation to develop the Project under the terms of this Agreement. Upon such termination, the Township shall have the right (but not the obligation): (i) if the impossibility becomes manifest after closing of title to the Property, to purchase the Property from Redeveloper for an amount equal to the fair market value at the time, to be determined in accordance with Section 8.6 hereof; and (ii) to seek proposals from other developers and to amend the Redevelopment Plan if necessary or desirable to do so (which amendments might include changes in use, density or other plan provisions affecting the redevelopment of the parcels); provided, however, that any such amendments or terms agreed to by the Township shall not be as or more favorable to the new developer than terms Redeveloper proposed during the tolling/renegotiation period but which the Township rejected. Nothing herein shall prohibit the Redeveloper from conveying the Project to another developer acceptable to the Township.

8.6 In the event the Township serves upon the Redeveloper a Notice under the prior Section that the Township is terminating the Redeveloper's rights with respect to the Project hereunder and is exercising its right to acquire the Property from the Redeveloper, each Party may obtain an appraisal report, from an appraiser of each Party's choosing, determining the fair market value of the Property as of the date of such Notice. Each Party shall have sixty (60) days from the date of such Notice to submit its appraisal report to the other Party. If the difference between the estimated fair market values in such appraisal reports is less than 10% of the higher of the two values, then the amount to be paid for the Property shall be the average of such two appraised values. Otherwise, a third appraiser, mutually agreeable to the appraisers engaged by each Party, shall prepare an appraisal report estimating the fair market value of the Property as of the date of such Notice (the "Independent Appraisal"). The Parties agree that the amount to be paid for the Property shall be the average of: (x) the estimated value in the Independent Appraisal and (y) the amount of the Party's appraised value nearest to the value in the Independent Appraisal. The Parties shall split the costs associated with such third appraiser equally.

8.7 Remedies Cumulative. No remedy conferred by any of the provisions of this Redevelopment Agreement is intended to be exclusive of any other remedy and each and every remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. The election of any one or more remedies shall not constitute a waiver of the right to pursue other available remedies.

8.8 Failure or Delay by Either Party. Except as otherwise expressly provided in this Redevelopment Agreement, any failure or delay by either party in asserting any of its rights or remedies as to any Default, shall not operate as a waiver of any Default, or any such rights or remedies, or deprive either such party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies as established by this Agreement.

8.9 Termination Rights Related to Litigation. If third party litigation is commenced challenging the validity of (i) the designation of the Redevelopment Area, (ii) the Redevelopment Plan, or (iii) the execution of this Agreement by the Township, the commencement of such litigation shall be a Force Majeure Event effective as of the date of the filing of the summons and complaint if Redeveloper invokes the Force Majeure provisions of Section 8.4; provided, however, that (a) if such litigation, is finally determined in favor of the plaintiff with no further opportunity for appeal, then either Party may terminate this Agreement by written notice to the other, and (b) if such litigation is not finally determined (inclusive of the expiration of any applicable appeal period) but the Force Majeure Extension has been in effect for at least eighteen (18) months from the date the complaint was filed, Redeveloper may elect to terminate this Agreement by Notice under the above provisions.

8.10 Limitation of Liability. The Parties agree that if an Event of Default occurs, the Parties shall look solely to the Parties hereto and/or their respective property interest in the Project for the recovery of any judgment or damages, and agree that no member, manager, officer, principal, employee, representative or other person affiliated with such party shall be personally liable for any such judgment or damages. In no event shall either Party be responsible for any consequential or punitive damages.

9. INDEMNITY

9.1 Obligation to Indemnify. Redeveloper and the Township (collectively the "Parties") agree to indemnify and hold each other and their respective officials, members, agents, servants, employees and consultants (collectively, the "Indemnified Parties") harmless from and against any and all demands, suits, causes of action, recoveries, judgments, losses, and costs and expenses in connection therewith of any kind or nature, however arising, imposed by law or otherwise (including reasonable attorneys' fees and expenses and experts' fees and expenses) (collectively, "Claims") which the Indemnified Parties may sustain, be subjected to or be caused to incur, by reason of personal injury, death or damage to property, arising from or in connection with the condition, use, possession, conduct, management, planning, design, financing, implementation, construction, inspection, or maintenance of the Project, marketing, leasing or

sale of the Project or any activities of or on behalf of Redeveloper or Township within the Property, except that to the extent that any such claim or suit arises from the intentional or willful wrongful acts or omissions of the Indemnified Parties. The Redeveloper or Township shall provide notice to the other Party of the subject Claims as soon as reasonably possible after their occurrence but in any case within ten (10) Days of the Party receiving actual notice of the subject Claims, provided, however, that in the event such notice is not timely received, Party to be notified shall only be excused of its obligations hereunder to the extent it is prejudiced by the failure to timely receive said notice.

9.2 Notice of Claims. In any situation in which an Indemnified Party is entitled to receive and desired defense and/or indemnification, the Indemnified Party shall give prompt notice of such situation to the Indemnifying Party. Failure to give prompt notice shall not relieve the Indemnifying Party (whether Redeveloper or Township) of any liability to indemnify the Indemnified Party, unless such failure to give prompt notice materially impairs the Indemnified Party's ability to defend. Upon receipt of such notice, the Indemnifying Party shall resist and defend any action or proceeding on behalf of the Indemnified Party, including through the employment of counsel reasonably acceptable to the Indemnified Party, the payment of all expenses of the Indemnified Party and the right of the Indemnified Party to negotiate and consent to settlement. The Redeveloper and Township shall have the right to employ separate counsel in any such action and to participate in the defense thereof, but the fees and expenses of such separate counsel shall be at the sole expense of the entity initiating the employment of such separate counsel, unless the employment of such counsel is specifically authorized by the other Party, which authorization shall not be unreasonably withheld or delayed, provided, however, that if the defense of such action is assumed by either Party's insurance carrier, employment of such separate counsel shall be at the sole discretion of such carrier. Neither the Redeveloper nor the Township shall be liable for any settlement of any such action effected without their respective consent, but if settled with the consent of the Redeveloper and the Township, or if there is a final judgment against either the Redeveloper or the Township in any such action, Redeveloper or the Township, as the case may be, shall indemnify and hold harmless the

Indemnified Parties from and against any loss or liability by reason of such settlement or judgment for which the Indemnified Parties are entitled to indemnification hereunder.

9.3 Survival of Indemnity. The provisions of this Article 9 shall survive the termination of this Redevelopment Agreement due to an Event of Default and shall run with the land and be referenced in the Declaration until such time as the Declaration is discharged as a result of the recording of a Certificate of Completion, provided, however, that such indemnity shall be binding on each successor in interest to the Project, or any part thereof, and each party in possession or occupancy, respectively, only for such period as the Redeveloper or such successor or party shall have title to, or an interest in, or possession or occupancy of the Project or any part thereof.

10. MISCELLANEOUS

10.1 Cooperation. The Parties hereto agree to cooperate with each other and to provide all necessary and reasonable documentation, certificates, consents in order to satisfy the terms and conditions hereof and the terms and conditions of this Agreement. The Township further agrees to cooperate as may be reasonably requested by any mortgagee of the Redeveloper in connection with obtaining financing for the Project. The Township will comply with Section 200-48 of the Township's Land Use Ordinance regarding the expedited review of low and moderate income residential projects, and to use its best efforts to assure that other municipal bodies of the Township do, likewise.

10.2 Conflict of Interest. No member, official or employee of the Township shall have any direct or indirect interest in this Redevelopment Agreement or the Project, nor participate in any decision relating to the Redevelopment Agreement or the Project which is prohibited by law.

10.3 No Consideration For Agreement. The Redeveloper warrants it has not paid or given, and will not pay or give, any third person any money or other consideration for obtaining this Redevelopment Agreement, other than normal costs of conducting business and costs of professional services such as architects, engineers, financial consultants and attorneys. The Redeveloper further warrants it has not paid or incurred any obligation to pay any officer or official of the Township any money or other consideration for or in connection with this Redevelopment Agreement.

10.4 Non-Liability of Partners, Members, Officers and Employees of the Redeveloper. Unless otherwise obligated hereunder as a Guarantor, no member, officer, shareholders, director, partner or employee of the Redeveloper, and no member, officer, shareholders, director, partner or employee of the members of the Redeveloper shall be personally liable to the Township, or any successor in interest, in the event of any Default or breach by the Redeveloper or for any amount which may become due to the Township, or their successors, on any obligation under the terms of this Redevelopment Agreement.

10.5 Modification of Agreement. This Agreement represents the entire agreement by and between the Parties with respect to the development of the Project, the construction of the Project and the conveyance of the Property. No amendment to this Agreement shall be considered binding on either of the Parties unless such amendment is in writing and specifically recites that it is being entered into by and between the Township and Redeveloper with the specific intention to modify the terms of this Agreement. In the event that any such amendment is agreed to by the Parties, such amendment shall not modify, change or amend any portion of this Agreement except those specific portions that are recited in such amendment as being modified by such amendment. All other portions of this Agreement not so specifically amended in writing shall remain in full force and effect. No waiver by the Township or the Redeveloper of any covenant, agreement, term, provision or condition of this agreement shall be deemed to have been made unless expressed in writing and signed by an appropriate official on behalf of both the Township and the Redeveloper.

10.6 Notices and Demands. A notice, demand or other communication under this Redevelopment Agreement by any Party to the other shall be sufficiently given or delivered if dispatched by United States Registered or Certified Mail, postage prepaid and return receipt requested, or delivered by overnight courier or delivered personally (with receipt acknowledged), or by facsimile transmission (with receipt acknowledged) to the Parties at their respective addresses set forth below, or at such other address or addresses with respect to the Parties or their counsel as any Party may, from time to time, designate in writing and forward to the others as provided in this Section.

If to the Township:

Township of West Windsor
271 Clarksville Road, PO Box 38
West Windsor, New Jersey 08550
Attention: Township Clerk
Phone: (609) 799-2400, ext. 383

With a copy to:

Kevin McManimon, Esq.
McManimon, Scotland & Baumann, LLC
75 Livingston Avenue
Roseland, New Jersey 07068
Phone: (973) 622-4869
E-mail: kmcmanimon@msbnj.com

If to the Redeveloper:

400 Steps LLC
Attn: Michael McCloskey
3499 Route 9 North, Suite 1-F
Freehold, New Jersey 07728

With a copy to:

Anne L.H. Studholme, Esq.

Post, Polak, Goodsell & Strauchler, P.A.
425 Eagle Rock Avenue, Unit #200
Roseland, New Jersey 07068
Phone: (973) 228-9900, ext. 252
E-mail: astudholme@postpolak.com

10.7 Designation. From time to time either Party may designate a different person or address for all the purposes of this Notice provision by giving the other Party no less than ten (10) Days' notice in advance of such change of address in accordance with the provisions hereof.

10.8 Titles of Articles and Sections. The titles of the several Articles and Sections of this Redevelopment Agreement, as set forth at the heads of said Articles and Sections, are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.

10.9 Severability. The validity of any Articles and Sections, clauses or provisions of this Redevelopment Agreement shall not affect the validity of the remaining Articles and Sections, clauses or provisions hereof.

10.10 Successors Bound. This Redevelopment Agreement shall be binding upon the respective Parties hereto and their permitted successors and assigns.

10.11 Governing Law; Jurisdiction and Venue. This Redevelopment Agreement shall be governed by and construed and enforced pursuant to the laws of the State of New Jersey, without regard to its conflict of laws principles. Any action hereunder shall be brought exclusively in a court of the State of New Jersey, Mercer County Vicinage or in a United States Court having jurisdiction in the District of New Jersey, Trenton Vicinage. Notwithstanding the above, the

Parties may, upon mutual written consent, pursue alternate dispute resolution (such as mediation or binding arbitration) to attempt to resolve any issues or disputes arising from this Agreement.

10.12 Counterparts. This Redevelopment Agreement may be executed in counterparts. All such counterparts shall be deemed to be originals and together shall constitute but one and the same instrument.

10.13 Exhibits. Any and all Exhibits annexed to this Redevelopment Agreement are hereby made a part of this Redevelopment Agreement by this reference thereto.

10.14 Entire Agreement. This Redevelopment 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 herein otherwise specifically provided, no subsequent alterations, amendments, or changes to this Redevelopment Agreement shall be binding upon either party unless reduced to writing and signed by each party.

10.15 Waiver. No waiver made by any party with respect to any obligation of any other party under this Redevelopment Agreement shall be considered a waiver of any other rights of the party making the waiver beyond those expressly waived in writing and to the extent thereof.

10.16 Non-Merger. None of the provisions of this Agreement are intended to or shall be merged with any of the terms and conditions of any Deed transferring title to the Property from the Township to the Redeveloper or any successor in interests, and any such Deed shall not be deemed to affect or impair the provisions and covenants of this Agreement.

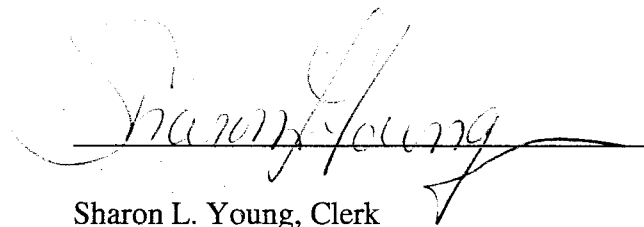
10.17. Binding. All the terms, covenants, and conditions herein contained shall be for and shall inure to the benefit of and shall be binding upon the respective parties hereto and their successors and assigns.

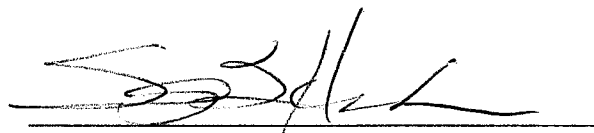
IN WITNESS WHEREOF, the parties hereto have caused this document to be signed as of the date appearing on Page 1.

[SEAL]

ATTEST:

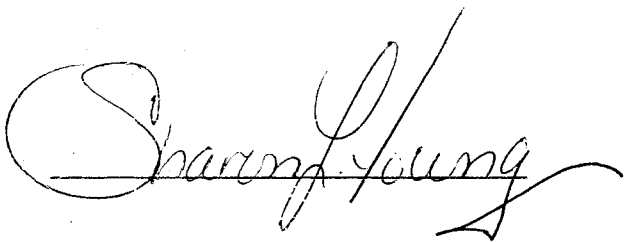
Township Of West Windsor


Sharon L. Young, Clerk


Shing-Fu Hsueh, Mayor

ATTEST

400 STEPS LLC



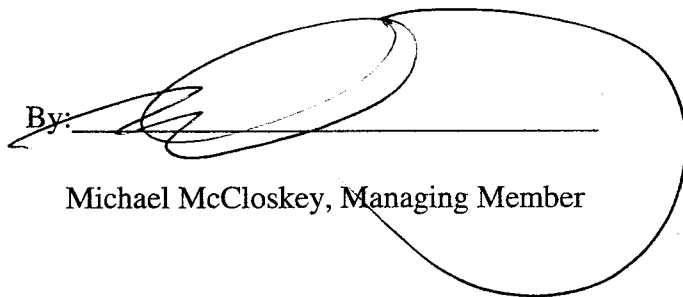
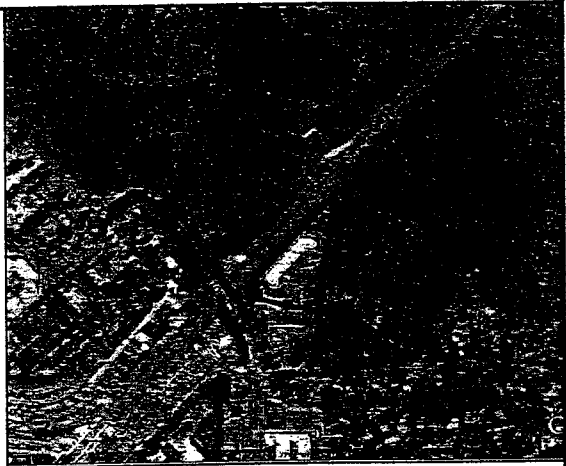
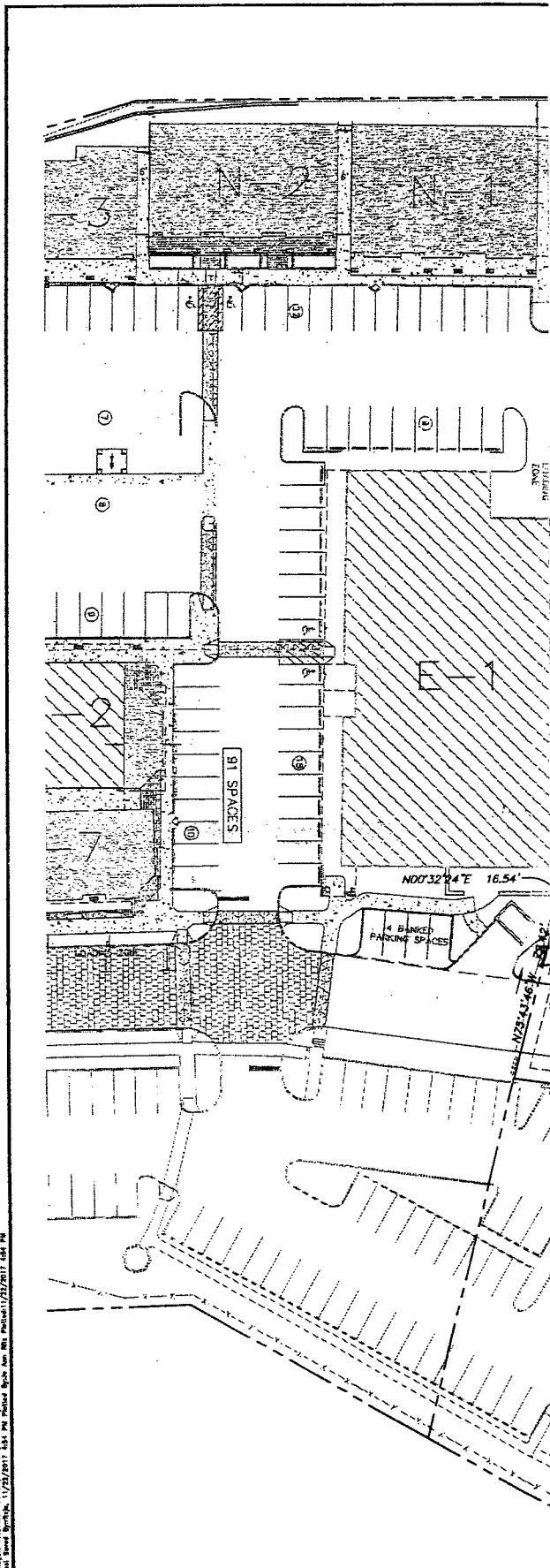
By: 
Michael McCloskey, Managing Member

EXHIBIT A Concept Site Plan

EXH



KEY MAP
SCALE: 1"=500'

ZONE RP-7 (REDEVELOPMENT ZONE)

YARDS:		PROPOSED:
BUILD TO LINE :		N.A.
SIDE YARD:		5' MIN.
BUILDING HEIGHT : MIN. & MAX. HEIGHT		3 STORY PLUS LOFT
F.A.R. (MAXIMUM) :		0.85
IMPERVIOUS COVERAGE (MAXIMUM) :		80%

RESIDENTIAL	
MARKET RATE	80 DU
1 BR/ 1 BATH	40 DU
2 BR/ 2 BATH	40 DU
AFFORDABLE	
1 BR/ 1 BATH	5 DU
2 BR/ 1 BATH	10 DU
3 BR/ 1-BATH	5 DU
TOTAL	100 DU

PARKING	
GARAGES	54 SPACES
ON GRADE	94 SPACES
TOTAL:	148 SPACES
TOTAL @ 1.5/DU	

DATE: 11/27/17
 DRAWN BY: [Name]
 CHECKED BY: [Name]
 PROJECT NO.: 170201-00
 SHEET NO.: 1 OF 1
 ACT ENGINEERS, INC.

NO.	DATE	REVISION	DRAWN	CHK	REL

**REDEVELOPMENT EXHIBIT
FOR
LOT 19 BLOCK 5**

SITUATED IN
MERCER COUNTY
NEW JERSEY

PROJECT FILE	PROJECT NO.
R-EXHIBIT	170201-00
DRAWN BY	CHECKED BY
JR	RR
SCALE	DATE
1"=30'	11/27/17
ACT ENGINEERS, INC.	
SHEET	
1 OF 1	

EXHIBIT B Project Schedule

PROJECT SCHEDULE

The project implementation tasks and completion dates set forth below shall be adhered to by the Redeveloper in accordance with the terms and conditions of the Redevelopment Agreement.

	<u>Task</u>	<u>Date</u>
	Redeveloper to submit complete Planning Board application for preliminary and final site plan	90 Days
	Redeveloper to obtain all other Governmental Approvals	180 Days or use commercially reasonable efforts to diligently pursue the applications to conclusion
	Redeveloper to commence construction of Project ("Commencement of Construction")	120 Days
	Complete construction of Project ("Completion of Construction")	365 Days

Appendix BB:
Princeton Ascend Resolution



WEST WINDSOR TOWNSHIP

DEPARTMENT OF COMMUNITY DEVELOPMENT
DIVISION OF LAND USE

May 1, 2017

Gary Forshner, Esq.
Stark & Stark
PO Box 5315
Princeton, NJ 08543-5315

RE: PB16-05
Princeton Ascend LLC
Preliminary/Final Site Plan
Block 12.04, Lot 25; 43 Princeton-Hightstown Road
Property Zoned: RP-7 District

Dear Mr. Forshner:

The West Windsor Township Planning Board adopted a Resolution of Memorialization regarding the above-referenced application at its meeting on April 26, 2017.

A copy is attached for your records.

Sincerely,


Diane Hurlburt
Planning Board Secretary

SJS/dh

Attachment

c: PB16-05

Samuel J. Surtees, Manager, Division of Land Use
Gerald Muller, Planning Board Attorney
Marvin Gardner, Planning Board Chair
Joe Valeri, Construction Official *via email*
Steve Benner, Tax Assessor *via email*
Joe Burgis, Planning Consultant *via email*
Francis Guzik, Township Engineer *via email*
Dan Dobromilsky, Landscape Architect *via email*
Jim Kochenour, Traffic Consultant *via email*
Chris Jepson, Environmental Consultant *via email*
Jim Yates, Fire Marshall *via email*

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THE APPLICANT

5. The applicant is the owner of the property.

NOTICE

6. The applicant obtained a list of all property owners within 200 feet of the property that is the subject of this application from the West Windsor Township tax office.

7. The applicant filed an affidavit stating that notice of the hearing was given at least ten days in advance of the hearing date to the surrounding property owners and to the public entities required to be noticed. The applicant has also filed a proof of publication confirming that newspaper publication for the hearing was made in accordance with legal requirements. Proper notice was given.

8. The notice and publication stated that the hearing would be held at the meeting of the Board scheduled for November 2, 2016.

THE HEARING

9. The public hearing on the application was heard on the date for which it was noticed and continued on January 18, 2017, for which notice was also provided. At the hearing, the applicant and all other interested parties were given the opportunity to present evidence and to be heard.

PLANS PRESENTED

10. At the hearing, the Board reviewed the following plans:
 - Plans entitled "Preliminary/Final Major Site Plan For Princeton Ascend, LLC, Lot 25, Block 12.04, Township of West Windsor, Mercer County, New Jersey," 15 sheets total, prepared by Maser Consulting, P.A. (Michael F. Gallagher, P.E.), dated May 23, 2016, revised through December 16, 2016.
 - Architectural Plans consisting of Floor Plans and Elevations, 10 sheets total, prepared by Woolley Morris Architects (Ross N. Woolley, R.A.), dated December 6, 2016.

- Plan entitled "Utility Survey for Princeton Ascend Properties, LLC Block 12.04, Lot 25, Township of West Windsor, Mercer County, New Jersey," prepared by Maser Consulting, P.A. (Eric V. Wilde, P.L.S.) consisting of one sheet, dated August 28, 2015.

TOWNSHIP REPORTS

11. At the hearing, the Board considered the following reports presented by Township officials and bodies and consultants to the Board:

- Memoranda from Francis A. Guzik, P.E. to the Board dated October 26, 2016 and January 11, 2017
- Memoranda from Joseph H. Burgis, P.P. and John Szabo, P.P. to the Board dated October 25, 2016 and January 9, 2017
- Memoranda from Dan Dobromilsky, L.L.A. to the Board dated October 26, 2016 and January 10, 2017
- Memoranda from James L. Kochenour, P.E. to the Board dated October 26, 2016, January 11, 2017, and January 12, 2017
- Memoranda from Christopher B. Jepson, P.E. to the Board dated October 26, 2016 and January 11, 2017
- Memoranda from James V.C. Yates dated October 24, 2016 and January 9, 2017
- Memorandum from Jean Jacobsohn, Affordable Housing Committee Chair, to Sam Surtees dated September 12, 2016
- Memorandum from SPRAB to the Board, undated
- E-mail from Jen Pin Wang to Sam Surtees dated January 11, 2017

EXHIBITS AND APPLICANT'S REPORTS

12. At the hearing, the Board considered the following reports prepared by the applicant's consultants and advisors and the following exhibits that were introduced as evidence during the course of the hearing:

- Exhibit A-1 – Princeton Ascend Landscape Exhibit (colorized version of landscape plan superimposed over aerial photograph)
- Exhibit A-2 – First floor plan of L-shape building
- Exhibit A-3 – Second floor plan of L-shaped building
- Exhibit A-4 – Ground floor plan of rear portion of L-shaped building
- Exhibit A-5 – Floor plan of individual live/work unit, showing three levels with two bedrooms and two baths on third floor
- Exhibit A-6 – Live/work unit second floor plan and two and half story plan
- Exhibit A-7 – Floor plan for basement of L-shaped building
- Exhibit A-8 – Elevations for L-shape building – west elevation, south elevations, and part of east elevations
- Exhibit A-9 – Building sections
- Exhibit A-10 – Additional elevations of L-shape building, including north elevation
- Exhibit A-11 – Front, rear, and side elevations of live/work units
- Exhibit A-12 – Materials board
- Exhibit A-13 – Undated letter from Princeton 55 Associates LLC to Michael F. Gallagher, P.E. re easement improvements

- October 12, 2016 letter from Matthew F. Gallagher, P.E. to Sam Surtees responding to earlier Township professional reports
- December 20, 2016 letter from Matthew F. Gallagher, P.E. to Sam Surtees submitting revised plans and summarizing changes
- Report entitled "Preliminary Report of Subsurface Exploration and Foundation Evaluation — Mixed Use Development for Princeton Ascend, LLC — Block 1204 (sic), Lot 25, 43 Princeton-Hightstown Road, West Windsor, Mercer County, New Jersey", prepared by Maser Consulting, P.A. (Michael Carnivale, III, P.E.), dated September 29, 2015.
- Report entitled "Traffic Impact Study — Proposed Mixed-Use Development — Block 12.04, Lot 25, Township of West Windsor, Mercer County, New Jersey" prepared by Maser Consulting, P.A. (S. Maurice Rached, P.E., P.T.O.E. and Jeffrey M. Fiore, P.E.), dated November 13, 2015.
- Report entitled "Environmental Impact Statement — Princeton Ascend Properties, LLC — Block 12.04, Lot 25, West Windsor Township, Mercer County, New Jersey" prepared by Maser Consulting, P.A. (Michael F. Gallagher, P.E.), dated July 8, 2016.
- Report entitled "Engineering Report for Stormwater Management — Mixed Use Development for Princeton Ascend, LLC, Block 12.04, Lot 25, Township of West Windsor, Mercer County, New Jersey" prepared by Maser Consulting, P.A. (Michael F. Gallagher, P.E.), dated October 15, 2015, revised to December 20, 2016.
- Document entitled "Operations and Maintenance Manual — Mixed Use Development for Princeton Ascend, LLC - Block 12.04, Lot 25, Township of West Windsor, Mercer County, New Jersey" prepared by Maser Consulting, P.A. (Michael F. Gallagher, P.E.), dated September 2, 2016.
- Copy of deed dated March 14, 1977 between Bohren's Moving and Storage and VP Realty (Deed Book 2038, Page 134, *et seq.*) that describes the metes and bounds as well as the rights and restrictions of the access easement situated along the easterly frontage of the tract, south of Carlton Place.

TESTIMONY AND PUBLIC INPUT

13. The testimony presented by and on behalf of the applicant and advice by Board consultants were given by the following persons:

Gary S. Forshner, Esq. represented the applicant. Michael F. Gallagher, P.E., its civil engineer; Ross Wooley, its architect; and Nicholas Aiello, P.E., its traffic engineer, testified on the applicant's behalf.

The following Township staff and professionals gave advice to the Board at the hearing: Francis A. Guzik, P.E.; Joseph H. Burgis, P.P.; Dan Dobromilsky, L.L.A.; James L. Kochenour, P.E.; Christopher B. Jepson, P.E. and Gerald J. Muller.

14. The statements of the members of the public made during the course of the hearing may be summarized as follows:

Neighbors living on Berkshire Drive behind the proposed development expressed concern about traffic on Carlton Place; the heights of the back buildings; intensity of use; the live/work units being so close to Carlton Place, with little vegetation between the units and Carlton Place; lighting on Carlton Place; noise from the loading area; and the visual relationship to the proposed development to other buildings along Princeton-Hightstown Road.

FINDINGS AND CONCLUSIONS RE: PRELIMINARY AND FINAL SITE PLAN APPROVAL

15. Nature of application. The property in question is a 1.69 acre lot with an existing commercial building that is proposed to be demolished. On the first day of the hearing, the Board considered the applicant's proposed development, consisting of 12,803 square feet of commercial space, 348 square feet of mechanical space, and 1,249 square feet of residential entryways on the ground floor of a two story L-shaped building with second floor apartments, including apartments over a breezeway separating the two first floor commercial components. Seventeen apartments, including five affordable units, were proposed. In addition seven two and a half story live/work units with garages with access from Carlton Place were proposed at the rear of the property. Ancillary site improvements, including access, parking, storm water management, and landscaping, were also proposed. Two variances and a number of waivers were requested.

16. After extended discussion on November 2, 2016, the applicant revised its plan. The following changes were made:

- One live/work unit was removed from the plans.

- The commercial square footage of the mixed use building was reduced from 12,803 SF to 12,248 SF.
- The parking count for the site was reduced from 63 surface spaces, 7 driveways, and 7 garages to 60 surface spaces, 6 driveways, and 6 garages (72 total provided, 66 required).
- The driveway to Carlton Place was shifted to the south to comply with the 10-foot separation required by Ordinance, eliminating the need for a design waiver.
- The driveway to Carlton Place was widened to 30 feet, eliminating the need for a design waiver.
- The parking areas and building locations were modified to provide the minimum 12 foot separation between buildings and parking areas required by Ordinance, eliminating the need for a variance.
- The site plan was revised to provide a second loading area, eliminating the need for a variance.
- The proposed bike rack will be covered, eliminating the need for a variance.
- An internal driveway connection to Lot 18 to the south was proposed, eliminating the need for a design waiver.
- The location and grading of the Princeton-Hightstown Road driveway was revised to eliminate sight line issues raised by the Board consultants.
- The monument sign will comply with ordinance requirements.
- The ground-mounted AC units for the live-work units were relocated away from the Carlton Place frontage.
- Impervious surfaces were further reduced by 3%, though the storm water management system remains as previously proposed, resulting in greater runoff reductions.
- Grading, landscaping, lighting, and other plan elements were adjusted in accordance with the other plan changes.

17. The plan modifications reduced substantially the number of site plan issues and the variances and waivers necessary. The primary issue addressed on January 18, 2017 related to access between the property in question and the lot immediately to the south, Lot 18. That was resolved by Condition 21i. The conditions also address the other site plan questions raised.

18. Conclusion re site plan approval. With the waivers granted and conditions imposed, the applicant has satisfied all Township site plan standards. Preliminary and final site plan approval is, accordingly, granted.

FINDINGS AND CONCLUSIONS RE: VARIANCE

19. The application as amended necessitates one variance. The variance request and the Board's action on it are as follows:

a. Variance: From Section 200-266B(8)(b), which requires cross-easements with adjacent commercial lots, while none is proposed with the adjacent lot to the north, Lot 17.

Variance granted: Cross access between Lot 17 and the subject property is impracticable given the change in grade. Given this topographical condition, not granting the variance would result in an undue hardship on the applicant, since cross access cannot be provided and the project would be unbuildable. The positive (c)1 criterion has therefore been satisfied.

The negative criteria have been satisfied as well. There will not be substantial detriment to the public good in that both lots can still be accessed, the subject lot having access points on both Princeton-Hightstown Road and Carlton Place. Nor is there a substantial impairment of the intent and purpose of the zone plan and zoning ordinance. The proposed development represents, as to the property in question, the realization of the vision in the Redevelopment Plan and RP-District regulations for a mixed use development with retail and residential, including affordable housing, that will, along with other developments on Princeton-Hightstown Road that come in over time, create the sense of a village Main Street that the Plan envisions. The lack of cross access with the lot to the north is only a minor diversion from the Plan's vision being realized on this lot.

The variance, accordingly, is granted.

FINDINGS AND CONCLUSIONS RE: WAIVERS

20. The application as amended necessitates two waivers. The waivers and the Board's action on them are as follows:

a. Waiver: From Section 200-31K(3), which requires a maximum light intensity level of 1.0 foot candles at property lines, while a maximum of 4.3 foot candles is proposed along Princeton-Hightstown Road.

Waiver granted with condition: The greater foot candle level is necessary to maintain safe illumination for pedestrians using the sidewalk along the frontage. Given that, the waiver request is reasonable. It comes within the intent and purpose of the ordinance lighting provision, which are to provide sufficient lighting, but at an illumination level no greater than necessary. Literal enforcement of the ordinance provision would be impracticable because the applicant would be unable to provide sufficient illumination for pedestrians walking past or into its site. The waiver request, accordingly, is granted. This waiver, however is conditioned upon the applicant providing information on lighting on the Rite Aid site and reducing the lighting intensity as appropriate in light of that information. See Condition 21x.

b. Waiver: From Section 200-31K(1), which requires that the lighting design of parking lots average 0.5 foot candles and residential areas average 0.6 foot candles, while the proposed design for the parking area, which is located within a mixed-use residential area, averages 2.8 foot candles.

Waiver granted: The lighting intensity is necessitated by the mixed-use nature of the project, since retail uses will be accessed after dark. Because two fixtures will be turned off after hours and the live/work units will screen the bulk of the parking lot from the residences to the east, the waiver request is reasonable. It comes within the intent and purpose of the lighting provisions of the ordinance, which are to provide an appropriate level of lighting, but no more than is necessary. In light of this, literal enforcement of the ordinance provision would be impracticable. The waiver request is therefore granted.

CONDITIONS REQUIRED

21. The Board finds that, in order to address the concerns expressed during the course of the hearing and to limit the relief to that reasonably necessary to satisfy the applicant's legitimate requirements, the relief granted is subject to the following conditions:

Site plan

- a. Exhibit A-13, which relates to improvements in the Carlton Place easement, shall be put in agreement form indicating that the terms are accepted by the applicant. The agreement shall be subject to the review and approval of the Board Attorney.
- b. If the development is condominiumized, the Master Deed and any other pertinent condominium documents shall identify the common elements and how they will be maintained. The documents shall be subject to the review and approval of the Township Engineer and Board Attorney.

Affordable housing

- c. Five of the seventeen apartments above the retail shall be affordable units complying with the Uniform Housing Affordability Controls, *N.J.A.C. 5:80-26.1, et. seq.*, the New Jersey Council on Affordable Housing Rules as applicable and such requirements as may be established by a court of competent jurisdiction. The units shall be comprised as follows:
 - 1 one bedroom low
 - 1 two bedroom very-low at 30%
 - 1 two bedroom low
 - 1 two bedroom moderate
 - 1 three bedroom moderate
- d. The applicant shall pay the non-residential development fee in accordance with the Statewide Non-residential Fee Act for the commercial space, including the commercial space in the live/work units.

Landscaping and site amenities

- e. During the construction permitting process, the final details for all street furnishings and finishes shall be subject to the review and approval of the Township Landscape Architect to ensure consistency with Township standards.
- f. The final landscape plan shall be subject to the review and approval of the Township Landscape Architect.

Signage

- g. The applicant, having withdrawn its variance requests with respect to proposed monument and ground mounted project/tenant identification signs, shall submit a complying signage package subject to the review and approval of the Township Landscape Architect and the Board Planner. The signage package shall include signs indicating the location of the bicycle parking.

Access and circulation

- h. All widening work and details for the proposed frontage improvements along Princeton-Hightstown Road shall be subject to the review and approval of Mercer County.
- i. The applicant is proposing a 24-foot wide driveway connection with Lot 18 to the south in accordance with the requirements of Section 200-266B8(b). This will require providing a cross-access easement agreement with the owner of Lot 18. The applicant shall execute a cross-access easement with the owner of Lot 18. If the owner does not agree to one, the applicant shall provide for an access easement on its property benefitting Lot 18. If the owner of Lot 18 is required by subsequent action of this Board or of the Zoning Board of Adjustment to execute a cross-access easement with the subject property, the unilateral access easement provided for herein shall be terminated, and the terms of such easement shall provide for same. Until a cross-access easement is executed, the access driveway construction to Lot 18 shall end just short of the common property line, and the existing chain link

fence along the property line shall be left in place as a temporary barrier. Once a cross access easement is executed, the access shall be open, and the fence in the area of the access shall be removed. A note to this effect shall be added to the Plan. All easements shall be subject to the review and approval of the Board Attorney.

- j. The applicant's submission letter indicates that the proposed bicycle rack is now provided with cover pursuant to Ordinance Section 200-258.A.5. However, the detail for the bike rack does not indicate an integrated cover, nor does its proposed location appear to be under any sort of architectural cover according to the architectural sections and elevations. The applicant shall revise the plans to show that it complies with these requirements. The revisions shall be subject to the review and approval of the Township Engineer.
- k. The bike rack shall be sufficient to accommodate seven bicycles.
- l. The ADA-accessible route along Princeton-Hightstown Road has been provided; however, the plans require additional spot grade data on the privately-owned portion of the site. Additional spot grades shall be provided along the rear of the live/work units as well as at the crosswalk and sidewalk leading to the retail uses and the walkways and ramps along the front of the townhomes. Enlargements at a scale to provide sufficient detail shall be added, as necessary. Each ramp shall also be identified on the plan by type.
- m. A truck circulation plan shall be provided for each of the three vehicle types. Three vehicle classes are shown on Sheet 14 of 15, but only one template has been provided.
- n. The fire truck template that was provided shows encroachment of three spaces within the northerly parking row of 14. This shall be corrected to the satisfaction of the Board Traffic Engineer and Township Engineer.

- o. The Dimension Plan (Sheet 3 of 15) contains a note that the road improvements to Carlton Place are to meet existing pavement at their southern end. A detail of this tie-in has been provided that includes a W5-1 (Road Narrows) sign, 30 inches x 30 inches in size, and a W13-1 (Advisory Speed) plaque, 18 inches x 18 inches in size, accompanied by appropriate pavement markings to help delineate this area and guide traffic through it. Such detail information shall be revised as follows:
- (1) The Advisory Speed Plaque shall be designated as W13-1P, showing a speed of 15 mph, and the diagonal cross-hatching along the east side of Carlton Place is to be white in color instead of yellow.
 - (2) The above-referenced sign/plaque shall be shown on Sheet 12 of 15 along with a detail for the cross-hatched pavement markings.
 - (3) The proposed cross-hatching within the loading area shall be white.
- p. The Dimension Plan and Typical Parking Stall Detail on Construction Details (Sheet 12 of 15) shall be modified to show the on-center dimension as 18 inches, not between inside lines. The Accessible Park Stalls detail shall also show this revision.
- q. With respect to the Construction Detail Sheets, Sheets 12 of 15 and 13 of 15:
- (1) The stem of the arrow of the Penalty Plate shall be removed from the call-out.
 - (2) The on-center dimension on the Accessible Parking Stalls detail shall be shown as 18 inches so that the outside-line-to-outside-line dimension becomes 22 inches.
- r. The proposed crosswalk across the Princeton-Hightstown Road driveway shall be shown with a six foot width.

- s. The handicap parking sign in front of the proposed mixed-use building shall be located behind the curb, and the Accessible Parking Stalls detail on Sheet 12 of 15 (Construction Details) is to show the handicap-accessible signs before the curb.

Storm water management

- t. The following shall be incorporated into the site storm water management plan:
 - (1) Sizing calculations for roof leader piping, which shall be subject to the review and approval of the Township Engineer, shall be submitted prior to the issuance of building permits. A note so providing shall be added to the plans.
 - (2) The layout of the underground detention system includes two 8 foot diameter manholes in the southwesterly corner of the system. There appear to be several conflicts with these manholes and the proposed 48 inch piping. The applicant shall relocate the manholes as necessary to eliminate these conflicts.
 - (3) A standard ADS detail for the riser tees has been provided, but contains the caveat that the structural design for the concrete collars is left to others. A note shall be added indicating that this design is to be provided at the time of shop drawing review.
 - (4) Infiltration testing in accordance with Appendix E of the NJBMP Manual shall be undertaken during construction and must demonstrate adequate permeability in the proposed basin bottom. The testing must be witnessed by a representative of the Township Engineer's office.
 - (5) The plans shall demonstrate how the soils in the basin area will be protected from sediment and clogging during construction.
 - (6) The proposed top soil stockpile is located in conflict with the underground detention system when the drainage installation comes after the site clearing and grading operation. It shall be relocated to a location acceptable to the Township Engineer. In addition, the proposed stabilized construction entrance shall be moved to coincide with the relocated Carlton Place access driveway.

(7) The Operation and Maintenance Manual shall be revised as follows, and a deed notice acceptable to the Board Attorney about the document, once approved, shall be filed.

- (a) The Manual must be updated to include the NJDEP Major Development Stormwater Summary.
- (b) The narrative describing the system references a 2.0 inch Reg- U-Flow device and 7 inch and 8 inch orifices when the current design utilizes a 6 inch orifice and a 12 inch wide weir. The indicated elevations are incorrect as well. The information shall be updated to be consistent with the current design.
- (c) The Manual shall be revised to include direction to the ultimate end user that he or she is required to submit all inspection reports for the previous year to the Township Tier A Municipal Storm Water Management Coordinator by April 1st.
- (d) A BMP Location Plan showing and identifying all individual components of the storm water management system shall be added to the Manual.

u. The applicant shall execute an instrument requiring the installation and maintenance by it and its successors in interest of all storm water management improvements approved by the Board. The instruments shall be in accordance with Section 200-205.1 and shall be subject to the review and approval of the Township Engineer and Board Attorney and be recorded by the Board Attorney.

Lighting

- v. A note shall be added to the plans stating that the information showing conformance of the fixtures to the Section 200-31C requirement that all lights be shielded to restrict the maximum apex angle of the cone of illumination to 150 degrees will be provided at the time of shop drawing review.
- w. A note shall be added to the plans indicating that the design that will be used to control lighting so that all but two of the lighting fixtures will remain on from dusk until dawn for

security purposes, such as switches, timers, or sensors, will be provided at the time shop drawing review.

- x. The applicant shall provide to the Township Engineer lighting information for the adjacent Rite Aid site and shall reduce the number or intensity of proposed lighting fixtures to the extent appropriate in light of that information. The applicant's actions in this regard shall be subject to the review and approval of the Township Engineer.
- y. The applicant shall use a different fixture more in keeping with other fixtures in the Redevelopment Area if identified by the Township Landscape Architect.

General

- z. The applicant shall consider using more of the green building techniques set forth the on the Green Development Practices Checklist that the applicant has not agreed to use.
- aa. The applicant shall execute a Redeveloper's Agreement with the Township.
- bb. The applicant shall contribute its off-tract road assessment in accordance with Section 200-88. Such assessment shall factor in the commercial area of the live/work units. The applicant's *pro rata* share of County improvements on Princeton-Hightstown Road shall also be included in the assessment. No separate payment to the County shall be made.
- cc. Metes and bounds descriptions for all proposed easements and dedications, with closure calculations for same, shall be submitted for review and approval of the Township Engineer. The forms of any easements and dedications shall be subject to the review and approval of the Board Attorney.
- dd. The following changes to the details shall be made:
 - (1) The detail for the Outlet Control Structure shows a Campbell 1203B cover and frame access resting on top of the 5 feet wide by 7 feet long structure. The 1203B is a round

flanged casting with a diameter of 39 inches and will not be appropriate for this structure by itself. The detail shall be revised to indicate a reinforced concrete slab cover designed for highway traffic loading.

(2) Access via manhole cover and stairs shall be provided to the Outlet Control Structure on both sides of the orifice plate, and sufficient room shall be provided on the outlet side to conform to OSHA standards for confined space entry.

ee. The applicant shall request reservation for wastewater flows in the municipal collection system and authorization for execution of the required NJDEP Treatment Works Approval permit applications for increase inflows to the collection system, which will require approval by the Township Council.

ff. The applicant shall execute a developer's agreement setting forth its obligation as to off-tract improvements and affordable housing impact fee.

gg. The applicant shall, to the extent required, secure approval of the NJDEP, Mercer County Planning Board, Delaware & Raritan Canal Commission, Mercer County Soil Conservation Service, and other governmental entities with jurisdiction over the development of the subject property.

hh. A construction cost estimate shall be submitted by the applicant's engineer for review and approval by the Township Engineer for determination of performance guarantee and inspection fee amounts. The applicant shall post performance guarantees and inspection fees in an amount as determined by the Township Engineer.

ii. The applicant shall execute a land development performance guarantee agreement in a form satisfactory to the Township Council and shall post such performance and maintenance guarantees as are required.

- jj. All real estate taxes and escrow and inspection fees and required deposits therefor must be paid and maintained as current, and no zoning permits or certificates of occupancy shall be issued if property taxes and escrow and inspection fees and required deposits therefor are not current.
- kk. All marked exhibits shall be transferred to the Division of Land Use Office prior to issuance of a building permit.
- ll. All plan revisions shall be subject to the review and approval of such Township professionals as are designated by the Manager of Land Use unless otherwise designated herein.
- mm. In accordance with Section 200-81.1, approved site plans and subdivision plats being submitted for signature by Planning Board officials and as-builts upon project completion but prior to release of bond shall be submitted electronically and by hard copy. All electronic submissions shall be formatted using AutoCAD for plans and, for text, using either MS Word or Adobe Portable Document Format (PDF).

CONCLUSION

Based on the foregoing, the Board at its January 18, 2017 meeting voted to approve the plans with revisions made therein and as supplemented and modified by the exhibits and to grant the relief identified above subject to the conditions and to be revised in accordance with the conditions set forth herein.

This resolution of memorialization was adopted on April 26, 2017 by a vote of who voted to grant the relief sought by the applicant.

The date of decision shall be January 18, 2017 except that the date of the adoption of this memorializing resolution is the date of decision for purposes of (1) mailing a copy of the decision to the applicant within 10 days of the date of the decision; (2) filing a copy of the decision with the administrative officer; and (3) publication of a notice of this decision. The date

of the publication of the notice of decision shall be the date of the commencement of the vesting protection period.

We do hereby certify that the foregoing resolution was adopted by the Planning Board at its regular meeting held April 26, 2017. This resolution memorializes formal action taken by the Board at its regular meeting held January 18, 2017.



Marvin Gardner, Chair



Diane Hurlburt, Secretary

Marvin Gardner, Chair – Yea
Michael Karp, Vice-Chair – Absent
Sue Appelget – Yea
Ayesha Hamilton – Abstained; was not a member of the Board during the first day of
testimony and did not hear it
Shing-Fu Hsueh – Yea
Michael Huey – Yea
Andrew Kulley – Yea
Robert Loverro – Yea
Simon Pankove – Yea
Eric Payne, Alternate 1 – Yea
Anis Baig, Alternate 2 – Absent

Princeton Ascend 4/19/17

Appendix CC:
Sun Bank Property Resolution of Approval

**RESOLUTION OF MEMORIALIZATION
WEST WINDSOR TOWNSHIP ZONING BOARD OF ADJUSTMENT**

In the Matter of the Application by VCC Princeton Junction, LLC for a d-1 Use Variance for a Child Care Center, 47 Princeton-Hightstown Road; Block 12.04, Lot 18 West Windsor Township Tax Map.

Resolution in File No. ZB 18-05

BE IT RESOLVED by the West Windsor Township Zoning Board of Adjustment (hereinafter referred to as the “Board”) that the following findings of fact and basis for the decision approving the above-referenced application by the Board on January 3, 2019 is hereby memorialized.

FINDINGS

FINDINGS REGARDING THE APPLICANT:

1. VCC Princeton Junction, LLC (hereinafter referred to as the “Applicant”) is the owner of 47 Princeton-Hightstown Road, also designated as Block 12.04, Lot 18 on the West Windsor Township Tax Map (hereinafter referred to as the “Property”).

FINDINGS REGARDING THE NATURE OF THE APPLICATION AND RELIEF SOUGHT:

2. The Applicant proposes constructing a mixed-use development within the RP-7 Princeton Junction Redevelopment Zoning District. The development proposed by the Applicant involves the construction of a two-story building consisting of 10,890 square feet of commercial space on the first floor and 12 apartment units on the second floor. This building is located on the northside of the Property. On the southside of the Property, the Applicant proposes constructing a 12,870 square foot one-story building which will be used for child care and early childhood development. For the child care and early childhood development center, the Applicant seeks the following relief:
 - A. Section 200-266. A. (2) Land Use Ordinance (“LUO”) sets forth the permitted principal uses in the RP-7 Zoning District. Child care and early childhood development centers are not permitted principal uses within the district. The Applicant therefore requires a d-1 use variance for the proposed child care and early childhood development center.

FINDINGS REGARDING THE BOARD'S JURISDICTION:

3. As indicated above, the Applicant requires a d-1 use variance for the proposed child care and early childhood development center. The Board has jurisdiction over this application pursuant to N.J.S.A. 40:55D-70d(1) of the New Jersey Municipal Land Use Law.

NOTICE OF PUBLICATION:

- A. The Applicant obtained a list of all property owners within 200 feet of the Property from West Windsor Township.
- B. The Applicant served notice of the application upon all of said owners at least 10 days prior to the hearing on January 3, 2019 and also published notice of the hearing in a newspaper of general circulation within the Township of West Windsor, both of which as required by law.
- C. The Applicant has filed with the Board Secretary Proof of Notice and Proof of Publication indicating that Notice was provided to the aforementioned property owners and all required utilities at least 10 days in advance of the January 3, 2019 hearing on the application.

HEARING:

4. A public hearing was held on the application by the Board on January 3, 2019. The Applicant and all other interested parties were given an opportunity to present evidence and to be heard.

WITNESSES:

5. At the hearing, the Board considered testimony from the following witnesses:
 - A. Brian Birks, Learning Care Group.
 - B. Julia G. Algeo, PE, Maser Consulting, PA, Applicant's Civil Engineer.
 - C. Karl A. Pehnke, PE, Langan Engineering and Environmental Services, Inc., Applicant's Traffic Consultant.
 - D. Paul Grygiel, PP, Phillips Preiss Grygiel Lenehy Hughes, Applicant's Planning Consultant.
 - E. Samuel J. Surtees, Manager, West Windsor Township, Land Use Division.
 - F. James L. Kochenour, PE, Arora & Associates, PC, Board Traffic Consultant.
 - G. David Novak, PP/AICP, Burgis Associates, Inc., Board Planning Consultant.
 - H. Anthony W. Catana, AIA, Spiezle Architectural Group, Inc., Applicant's Architect.

- I. Daniel Dobromilsky, LLA/PP/LTE, West Windsor Township Landscape Architect.
- J. Ian L. Hill, PE, Van Cleef Engineering Associates, LLC, Board's Civil Engineer.
- K. Thomas Calabria, Chairman, West Windsor Township Affordable Housing Committee.

STAFF AND BOARD REPORTS:

6. The Board also considered the following staff reports:

- A. Burgis Associates, Inc. memorandum dated December 18, 2018.
- B. Arora & Associates, PC report dated December 21, 2018.
- C. Van Cleef Engineering Associates, LLC report dated December 18, 2018.
- D. Daniel Dobromilsky, LLA/PP/LTE report dated December 19, 2018.
- E. Mason, Griffin & Pierson, PC report dated December 17, 2018.

EXHIBITS:

7. The Board considered the following exhibits:

Exhibit A-1: Aerial photograph dated January 3, 2019 of Block 12.04, Lot 18 West Windsor Township Tax Map prepared by Maser Consulting, PA.

Exhibit A-2: Plan entitled: "Use Variance Plan for 47 Princeton-Hightstown Road, Block 12.04, Lot 18 West Windsor Township, Mercer County, New Jersey: Dimension Plan Exhibit" prepared by Maser Consulting, PA dated January 3, 2019.

Exhibit A-3: Rendering of Child Care and Early Childhood Development Center West Facade prepared by Spiezle Architectural Group, Inc. (undated).

Exhibit A-4: Material Board of facade treatment of Child Care and Early Childhood Development center building.

Exhibit A-5: Color rendering of Child Care and Early Childhood Development Center facade prepared by Spiezle Architectural Group, Inc. (undated).

Exhibit A-6: Plans entitled: "Use Variance Plan for 47 Princeton-Hightstown Road, West Windsor Township: Floor Plan – Daycare Center" prepared by Spiezle Architectural Group, Inc. dated November 16, 2018 (Drawing No. A1.2).

Exhibit A-7: Color Rendered Entrance Approach prepared by Spiezle Architectural Group, Inc. (undated).

Exhibit A-8: Color Rendered Child Care and Early Childhood Development Center Entry prepared by Spiezle Architectural Group, Inc. (undated).

Exhibit A-9: Color Rendered Commercial/Residential West Facade prepared by Spiezle Architectural Group, Inc. (undated).

Exhibit A-10: Plans Entitled: “Use Variance Plan for 47 Princeton-Hightstown Road, West Windsor Township: Floor Plans Commercial/Residential” prepared by Spiezle Architectural Group, Inc. dated November 16, 2018 (Drawing No.: A1.1).

Exhibit A-11: Colored Rendered Commercial/Residential Facade prepared by Spiezle Architectural Group, Inc. (undated).

Exhibit A-12: E-mail message dated October 30, 2018 confirming all three affordable units to be built on the Property are to be one-bedroom units.

Exhibit A-13: Colored Rendered Building Facade Analysis prepared by Spiezle Architectural Group, Inc. (undated).

Exhibit A-14: Plan Entitled: “Use Variance Plan for 47 Princeton-Hightstown Road, West Windsor Township: Elevations-Commercial Building” prepared by Spiezle Architectural Group, Inc. dated November 16, 2018 (Drawing No. A1.3).

Exhibit B-1: Rendering of proposed development on adjacent Princeton Ascend Development (Block 12.04, Lot 25 West Windsor Township Tax Map).

FINDINGS BASED ON THE HEARING AND TESTIMONY:

8. Based upon all of the testimony presented, a review of the application materials, a review of the staff reports, consideration of the exhibits presented, the Board makes the following findings:
 - A. The Applicant was represented by Kevin J. Moore, Esq., Sills, Cummis & Gross, PC.
 - B. The Applicant is the owner of the Property.
 - C. The Property is located in the RP-7 Redevelopment Zoning District.
 - D. The Property is located in the northerly portion of the Township near the intersection of Princeton-Hightstown Road and Cranbury Road. The Property has a total area of 95,072 square feet and is generally rectangular in shape. The Property has frontage on Princeton-Hightstown Road. The Property was previously developed with a one-story bank building which has been razed. Within the RP-7 Zone wherein the Property is located, the Property is surrounded by commercial uses to the west; a mixed-use project (Princeton Ascend) consisting of commercial space and residential

units to the north near the existing Rite-Aid Building; office uses to the south; and a private access road to Carlton Plan to the east.

- E. The Applicant is proposing to construct a mixed-use building which will be located within the northerly half of the site. The first floor of this building would contain 10,890 square feet of commercial space. The second floor would have 12 residential apartments, three of which would be deed restricted affordable housing units. These units are all one-bedroom. The Applicant proposes a second building located on the southerly half of the site. This building would be a one-story, 12,870 square foot building and would be occupied by a child care and early childhood development. It is this building that is the subject of the d-1 use variance.

- F. In support of the Applicant's d-1 use variance, the Applicant presented to the Board its "Concept Plan" for the development of the Property. The Property will be improved with two new buildings. One building containing 10,890 square feet of space will be a mixed-use retail and residential building. The building for which the Applicant seeks d-1 use variance approval is a 12,870 square foot building which will be occupied by a child care and early childhood development facility. The Applicant has submitted a bifurcated application first seeking the d-1 use variance approval and then returning to the Board for formal site plan approval for both buildings. The facility will be licensed by the New Jersey Department of Human Services. The building will contain several classrooms for infants, toddlers, two-year old's, pre-kindergarten youngsters, preschool and school age children. An enclosed outdoor play area will be located to the rear of the building. The main access to the building will be by a driveway connected to Princeton-Hightstown Road. A second driveway is proposed along the northerly property line and will connect to the recently approved Princeton Ascend Development. 83 parking spaces are proposed on the Property. The maximum number of students will be 158. There will be a total of 23 staff for the child care and early childhood development center at peak staffing hours. The peak drop-off time for the youngsters utilizing the center will be from 6:30 a.m. to 9:30 a.m. The peak pick-up time will be from 3:30 p.m. to 6:30 p.m. There will be eight parking spaces near the entry to the building designated for peak-hour child care drop-off and pick-up.

FINDING REGARDING THE LEGAL STANDARD TO BE APPLIED:

- 9. In evaluating this application, the Board applied the following legal standard:
 - A. Use Variance: d-1. The Board recognized that the proposed child care and early childhood development center is a defined "inherently beneficial use" under the New Jersey Municipal Land Use Law ("MLUL") at

N.J.S.A. 40:55D-4. See Burbridge v. Mine Hill Township, 117 N.J. 376 (1990).

- B. The Board then evaluated the “negative criteria” as instructed by Sica v. Board of Adjustment of the Township of Wall, 127 N.J. 152 (1992). This analysis involved: (i) having the Board identify the public interest at stake and confirming that it is an inherently beneficial use for the West Windsor Township Community; (ii) the Board then identified any detrimental effect that would ensue if the use variance was granted permitting a child care and early childhood development center building in the RP-7 Zone; (iii) the Board then considered any appropriate conditions on an approval in order to mitigate any potential detrimental effect if the child care and early childhood development center use was permitted; and (iv) finally, the Board weighed the positive and negative criteria to determine whether, on balance with appropriate conditions, the use variance as requested could be granted.

FINDINGS AND DECISIONS:

The Board having applied the above-referenced standards, voted six in favor (Abbey, Van Dyke, Church, Hoberman, Roeder and Marks) and one opposed (Jacobsohn) to grant the Applicant the requested d-1 use variance to permit the above-referenced child care and early childhood development use in the RP-7 Zoning District. The Board granted approval for the following reasons:

- A. The Board agreed that the proposed child care and early childhood development center operation did, in fact, constitute an “inherently beneficial use” within the RP-7 Zoning District. The Board then evaluated whether or not there would be any substantial negative impact on the District for the remaining development on the Property if the child care and early childhood development use was permitted. The Board concluded that there would be no substantial negative impact and that the conditions noted hereinbelow would be appropriate and would ensure that the child care and early childhood development use would operate appropriately within the RP-7 Zone. The Board is satisfied that the child care and early childhood development use, with its limited hours and being closed on weekends is actually a less intense use than the uses otherwise permitted in the zone under Section 200-266 of the LUO. The child care and early childhood development use fits well into the mixed-use objective of the RP-7 Zone. Accordingly, the Board determined that the balance of the positive and negative criteria indicated that the variance as requested could be granted.
- B. This approval is granted, however, subject to the following conditions:

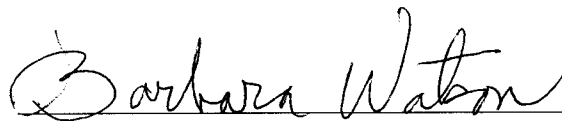
- i. The maximum number of children that can be enrolled in the child care and early childhood development center shall not exceed 158.
- ii. The Applicant shall construct both the mixed-use building and the child care and early childhood development building at the same time.
- iii. The affordable housing unit to be constructed on the Property shall be mixed and blended into the overall 12 apartments.
- iv. When the Applicant returns to the Board for site plan approval, the parking on the Property shall be situated in a fashion so as to facilitate either access to Carlton Place through the adjacent Princeton Ascend Property or otherwise.
- v. The Applicant shall bring current all taxes, sewer charges and other municipal charges including land development application and escrow fees for the Property within 30 days of the date of the adoption of this Memorializing Resolution.

CONCLUSION

Based upon the foregoing findings of fact and for the reasons set forth hereinabove and subject to the conditions also set forth hereinabove, the Board at its meeting on January 3, 2019, approved this application by a vote of six in favor and one opposed. This Resolution of Memorialization was adopted on January 24, 2019. The date of decision, however, shall be January 3, 2019, except for the purposes of (1) mailing a copy of the decision to the Applicant within ten (10) days of the date of decision; (2) filing a copy of the decision with the Administrative Officer; and (3) publishing notice of this decision.

CERTIFICATION

I, Barbara Watson, Administrative Secretary, to the West Windsor Township Zoning Board of Adjustment do hereby certify that the above Resolution of Memorialization was adopted by the Board at its regular meeting held on January 24, 2019. This Resolution memorializes the Board's approval of this matter at its meeting on January 3, 2019.



Barbara Watson, Administrative Secretary
West Windsor Township Zoning Board of Adjustment

Appendix DD:
Bear Creek Senior Living 2005 Resolution

WEST WINDSOR TOWNSHIP PLANNING BOARD

In the Matter of the Application of	)	FINDINGS OF FACT
	)	AND
Bear Creek Senior Housing, LLC	)	CONCLUSIONS OF
	)	LAW
(formerly, <u>The Esplanade</u>) for Amended)	
	)	File No. PB00-05 Amended
Preliminary and Final Site Plan Approval	)	Block 33, Lot 1.02
)	
	)	Approval Granted:
	)	March 23, 2005

Be it resolved by the Planning Board of the Township of West Windsor that the action of this Board on March 23, 2005 in this matter is hereby memorialized by the adoption of this written decision setting forth the Board's findings and conclusions.

RELIEF SOUGHT AND JURISDICTION

1. The applicant filed an application with the Township seeking to amend its prior approval for The Esplanade by reducing the size of the community building and reconfiguring the independent living buildings. Waivers were also sought.
2. The subject of this application is within the jurisdiction of this Board. The Board acted within the time required by law.
3. The street address of the property is Old Trenton Road and Village Road East.
4. The property is located in an area designated on the West Windsor Township Zoning Map as the PRRC zoning district.

THE APPLICANT

5. The applicant is the owner of the property.

NOTICE

6. The applicant obtained a list of all property owners within 200 feet of the property that is the subject of this application from the West Windsor Township tax office.

7. The applicant filed an affidavit stating that the notice was given at least ten days in advance of the hearing date to the surrounding property owners and to the public entities required to be noticed. The applicant has also filed a proof of publication confirming that newspaper publication was made in accordance with legal requirements. Proper notice was given.

8. The notice and publication stated that the hearing would be held at the meeting of the Board scheduled for March 23, 2005.

THE HEARING

9. The public hearing on the application was heard on the date for which it was noticed. At the hearing, the applicant and all other interested parties were given the opportunity to present evidence and to be heard.

PLANS PRESENTED

10. At the hearing, the Board reviewed the following plans:

Amended Preliminary and Final Major Site Plan, prepared by Schoor Depalma and revised through December 14, 2004 unless otherwise indicated:

- Sheet 1 of 16 Cover Sheet
- Sheet 2 of 16 General Notes and Zoning Information
- Sheet 3 of 16 Existing Conditions/Demolition Plan
- Sheet 4 of 16 Overall Plan, dated November 11, 2004
- Sheet 5 of 16 Site Layout Plan
- Sheet 6 of 16 Grading, Drainage and Utility Plan
- Sheet 7 of 16 Soil Erosion and Sediment Control Plan

- Sheet 8 of 16 Soil Erosion and Sediment Details
- Sheet 9 of 16 Landscape Plan
- Sheet 10 of 16 Lighting Plan
- Sheet 11 of 16 Landscaping Details
- Sheet 12 of 16 Profiles
- Sheet 13 of 16 Profiles
- Sheet 15 of 16 Construction Details
- Sheet 16 of 16 Construction Details

Architectural Plans, prepared by Ecoplan and dated September 8, 2004

- Drawing A-1 First Floor Building Plans Building D
- Drawing A-2 Second Floor Building Plans Building D
- Drawing A-3 Third Floor Building Plans Building D
- Drawing A-4 First Floor Building Plans Building E
- Drawing A-5 Second Floor Building Plans Building E
- Drawing A-6 Third Floor Building Plans Building E
- Drawing A-7 Partial Elevations
- Drawing A-8 Partial Elevations
- Drawing A-9 Community Building
- Drawing A-10 Community Building Elevations
- Drawing A-11 Typical Unit Plans

TOWNSHIP REPORTS

11. At the hearing, the Board considered the following reports presented by Township officials and bodies and consultants to the Board:

- Memorandum from John Madden to the Board dated March 16, 2005
- Memorandum from James F. Parvesse, P.E. to the Board dated March 16, 2005
- Memorandum from Dan Dobromilsky to the Board dated March 16, 2005

- Memorandum from Guy Olsen, P.E. to the Board dated March 11, 2005
- Memorandum from James V.C. Yates to Chairperson, Planning Board dated March 3, 2005
- Memorandum from Lynn Thornton to the Board dated March 9, 2005
- Memorandum from the Affordable Housing Committee to the Board dated March 16, 2005

EXHIBITS AND APPLICANT'S REPORTS

12. At the hearing, the Board considered the following reports prepared by the applicant's consultants and advisors and the following exhibits that were introduced as evidence during the course of the hearing:

- Exhibit A-1 -- Rendered site plan
- Exhibit A-2 -- Building E rendering from berm in Village Road East
- Exhibit A-3 -- Rendering portion of building near entry portico
- Exhibit A-4 -- Rendering of community building
- Exhibit A-5 -- Partially-rendered sign plan
- Exhibit A-6 -- Typical unit architectural drawing

TESTIMONY AND PUBLIC INPUT

13. The testimony presented by and on behalf of the applicant and advice by Board consultants were given by the following persons:

Daniel L. Haggerty, Esq. represented the applicant. Martin Santini, F.A.I.A., its architect; Joseph Hanrahan, P.E., its civil engineer; Karl Pehnke, P.E., its traffic engineer; and Glenn Kaplan, a principal with the applicant, testified on the applicant's behalf.

The following Township staff and professionals gave advice to the Board: Marcia Shiffman, Dan Dobromilsky, James F. Parvesse, P.E., Guy Olsen, P.E., and Gerald J. Muller.

14. The statements of the members of the public made during the course of the hearing may be summarized as follows:

Alison Miller testified on behalf of the Affordable Housing Committee. Residents of the Village Grande raised concerns about the development's traffic impacts, particularly as to vehicles entering Village Road East during the a.m. peak hour; the relationship architecturally of the proposed redesigned buildings to the existing assisted living facilities; access by emergency responders to and within the buildings; and notice to the public of the hearing. In addition, a question was raised as to whether the speed limit on Village Road East could be reduced.

FINDINGS AND CONCLUSIONS RE: AMENDED PRELIMINARY AND FINAL SITE PLAN APPROVAL

15. Nature of application. On March 17, 1999, the Planning Board granted preliminary and final site plan approval for a 5-building complex then known as The Esplanade, to consist of two assisted living buildings, including a dementia unit, Buildings A and B, two independent living buildings, Buildings D and E, and a community building, Building C. Buildings A and B, totalling 81,139 square feet, have been constructed, as have associated parking, the loop road, and storm water management facilities. Buildings D and E are proposed to be reconfigured in the shape of asymmetrical "Ts" with the community building between them. The community building is to be reduced to 23,604 square feet and from two stories to one story. Buildings D and E will each be 133,329 square feet and contain 110 independent dwelling units. The entire complex is required to provide 61 affordable units, 27 of which will be in building D and 24 in Building E. The remaining ten have been provided as Medicaid units in the assisted living facilities and float. The buildings have been redesigned to make them function more efficiently and so that they are more residential in character. 327 parking spaces and outdoor recreation activities, including a bocce court, putting green, horseshoe pit, and walking paths, are proposed. The redesign has resulted in a 0.7 acres reduction in impervious cover.

16. The applicant's consultants addressed a number of issues raised by the application. The Board had been concerned about the increase in traffic in the area as Bear Creek has been built out, the surrounding area becomes increasingly developed, with more development proposed, and pass through traffic increases. The Board is satisfied, however, by Mr. Pehnke's testimony that the removal of the surgi-center will reduce a.m. peak hour traffic by a modest amount and that the access points have good levels of service. The Board is also satisfied that, while the buildings are sizeable in mass, the scale has been broken down by the breaks in the building facades and roof lines and the use of residential design elements and materials to avoid the appearance of large institutional structures.

17. The signage package was discussed at length, particularly as to whether the proposed sign on Old Trenton Road west of the site was necessary. The Board agrees with the applicant's consultants that it is necessary to alert drivers coming east on Old Trenton Road, who cannot see the sign at the entry drive because of the way it is sited, and to publicize the project.

18. The Board also discussed at length the question raised by the Affordable Housing Committee as to access by residents of The Hamlet to the fitness center and pool. The Board recognizes that, while the approval of the Village Grande provides for access by Hamlet residents to the Village Grande community facility, including the recreational amenities, in practice the arrangement has not worked well and that an alternative venue for recreational opportunities for residents of The Hamlet and community interaction is necessary. The applicant agreed to condition 15-2, which addresses this matter.

19. Findings and conclusions re: amended preliminary and final site plan approval. The Board finds that, with the waivers granted and conditions imposed, the applicant has satisfied all Township site plan standards. Amended preliminary and final site plan approval, accordingly, is granted.

FINDINGS AND CONCLUSIONS RE: WAIVERS

20. The application necessitates five waivers. The waivers and the Board's action on them are as follows.

a. Waiver: From Section 200-27D(2), which requires in this instance that the applicant provide five loading berths, two each for Buildings D and E and one for Building C, while the applicant is proposing three loading berths, two along the westerly side of Building D and one along the southerly side of Building C.

Waiver granted: Three waivers were approved in the original preliminary and final site plan, and a waiver for the other two loading berths was granted in 1999. The Board grants the same waiver for the redesign plan for the same reason. The loading berths proposed are more than sufficient for each building, given the limited amount of deliveries that will be provided to them. In light of this, literal enforcement of the ordinance provision will work an undue hardship on the applicant. The waiver request, accordingly, is granted.

b. Waiver: From Section 200-31D, which requires that all site lighting, other than that required for security purposes, be shut off by 11:00 p.m., while the applicant proposes to leave the site lighting on after 11:00 p.m. Sheet 2 of the plan states that the applicant will supply a plan to the Township Landscape Architect and Township Engineer that will provide details of proposed nighttime lighting.

Waiver conditionally granted: Security lighting alone will not provide sufficient light after 11:00 p.m., as this is a residential development, and it could reasonably be expected that people will be entering and exiting the buildings after that time. Enough light must be provided for them. Therefore, literal enforcement of the ordinance provision will be impracticable. The Board, however, has conditioned this waiver upon the installation of a time

clock that will operate to turn off the lights at a reasonable time. Such time will be determined by the Board Landscape Architect and Township Engineer, as more fully set forth in condition _____. The waiver request, accordingly, is conditionally granted.

c. Waiver: From Section 200-32A(1)(a), which permits one identification sign with a maximum area of 16 square feet, while the applicant is proposing three identification signs, two at 11 square feet and one at 16 square feet.

Waiver granted: As discussed above, the Board found that the third sign, west of the site of Old Trenton Road, was important for project identification and access reasons. The other two signs are appropriately placed to serve the same purposes. Limiting the project to the one sign would work an undue hardship on the applicant because project identification and access will be less than optimal. The waiver request therefore is granted.

d. Waiver: From Section 200-60, which requires that sidewalks be installed on both sides of the street, while the applicant is not proposing a complete sidewalk on one or both sides of the loop road.

Waiver conditionally granted: In 1999 a waiver was granted so that sidewalks needed to be provided only on one side of the loop road. The Board believes that the waiver was appropriately granted then and that a similar waiver should be granted now. The applicant has agreed to install a sidewalk on the inner side of the loop road, and condition _____ so provides. The second sidewalk on the other side is unnecessary, and installing it would simply result in more impervious cover and less green space. Literal enforcement of the ordinance provision would therefore would a hardship on the applicant. The waiver request, accordingly, is conditionally granted.

e. Waiver: From Section 200-194E, which provides a parking schedule for the PRRC zone and in this instance requires 296 parking spaces, while the applicant is proposing 327 spaces.

Waiver granted: A waiver for 327 spaces was granted in 1999 so that there would be sufficient parking on the site for visitors. Most of the excess parking spaces are in front of the community building and have been placed in this location so that there is sufficient parking for family functions. The Board finds that the excess parking spaces at the location specified makes sense, as it did in 1999, and determines that requiring no more than 296 spaces would be impracticable. The waiver request is therefore granted.

CONDITIONS REQUIRED

15. The Board finds that, in order to address the concerns expressed during the

course of the hearing and to limit the relief to that reasonably necessary to satisfy the applicant's legitimate requirements, the relief granted is subject to the following conditions:

Affordable housing

1. The applicant shall provide 61 affordable units that meet all Township and Council on Affordable Housing regulations.
2. The fitness center and pool shall be available to residents of The Hamlet on a reasonable fee basis established in consultation with the West Windsor Manager of Senior and Social Services. The personal services facilities in the community center shall also be open to residents of The Hamlet.
3. The applicant shall provide additional counter space, as described by Mr. Santini at the hearing (enclose the kitchen and add approximately 3 to 4 feet of counter space), for each affordable unit kitchen.

Landscape and site amenities

4. The applicant shall install a pedestrian path around the site, along the inner side of the loop road and on the southeast side of the parking lot behind Building E. The applicant shall also install connections from this loop pedestrian path to the buildings, to the existing sidewalk on Village Road East, and to a crosswalk to The Hamlet, which the applicant shall also install. The location and design of these pedestrian ways and crosswalk shall be subject to the review and approval of the Township Landscape Architect.
5. The applicant shall use colored concrete with scoring patterns at the entrances to the buildings. The color, design, and scope of these decorative pavements shall be subject to the review and approval of the Township Landscape Architect.
6. The applicant shall add benches with appropriate landscaping between Building D and the community building and between Building E and the community building.
7. The applicant shall plant street trees along the internal drives and along Village Road East in the manner set forth in the original approval.
8. The applicant shall add berming in the open areas by the parking lots; screening for the parking area behind Building E; and trees in the area where the maintenance building had been proposed. These landscape elements shall be subject to the review and approval of the Township Landscape Architect.

9. Low plantings subject to the review and approval of the Township Landscape Architect shall be installed around the signs.

10. The applicant shall increase the number of planting species so as to further the goal of achieving a desirable level of seasonal interest and residential aesthetic. The number and species selected shall be subject to the review and approval of the Township Landscape Architect.

11. An automatic irrigation system shall be installed for foundation plantings, sitting areas, shrubbery areas, and the area along Village Road East.

12. A note shall be added to the plans setting forth a process to properly repair all of the deficient landscape in Phase 1 as soon as practicable. The note shall be subject to the review and approval of the Township Landscape Architect.

13. Typical details shall be provided at a larger scale to depict coordination between the unit landscape plantings and the architectural design. The enlarged plans shall also clearly depict the intended design for sitting areas and recreational spaces. These details shall address windows, doors, walks, patios, fencing/railing, site furnishings, fire standpipes, and bed lines.

14. Perennial flowers shall be added to the unit planting. The species, number, and location shall be subject to the review and approval of the Township Landscape Architect.

15. The existing and proposed refuse storage areas shall be screened with board on board fencing. Additional screening shall also be added at their rear. The design of the screening shall be subject to the review of the Township Landscape Architects as to consistency with building architecture and all other design elements.

16. The construction details for the bocce courts, putting green, and horseshoe pits shall conform to accepted national association standards for these games to assure that the facilities are appropriately designed and implemented.

17. All HVAC, utility, and irrigation equipment shall be detailed and shall be screened in the manner acceptable to the Township Landscape Architect.

18. No road salt or mulch shall be stockpiled on site without the approval of the Township Landscape Architect as to the location and manner of stockpiling.

19. Shrubs shall be added around the gazebo by Building D in a manner acceptable to the Township Landscape Architect.

20. The final landscape plan shall be subject to the review and approval of the Township Landscape Architect.

Access, circulation, and parking

21. The existing sight triangle easements for the intersection of the loop road and Village Road East shall be shown and labelled on the plans.

22. There is a 70 foot wide access easement on the loop road to provide The Hamlet at Bear Creek access to Village Road East. This access shall be shown and labelled on the plans.

23. All of the sections of the existing center island to be removed shall be indicated to be replaced with pavement. In addition, any proposed grading in the new cut-through areas shall be provided on the plans.

24. "Keep Right" signs shall be added at the median openings and termini on the loop road.

25. The dark line shown on the most easterly side of the loop road shall be identified and labeled.

26. The existing curbed island adjacent to the berm in front of Building C, which is to be shortened because the access road to the community building will be extended to the loop road, shall be shown and identified on the demolition plan.

27. All of the proposed curb that will meet the existing curb shall be designed and labeled to match the existing curb grades.

28. Details for center lines, stop bars, and crosswalks shall be added to the Construction Details sheets.

29. Crosswalks at internal driveways shall have some form of decorative pavement acceptable to the Township Landscape Architect and Township Engineer shall consist of painted stripes.

30. The proposed community center access road shall be converted into a full two way loop, and, with respect thereto, the following shall be added:

- a. A center line.
- b. A stop sign/bar at the loop road.

- c. A "no right turn" sign facing approaching vehicles.
- 31. All curb radii shall be labeled on the plans.
- 32. All of the depressed curb and handicap accessible curb ramps shall be clearly labeled and identified in the legend.
- 33. The applicant shall provide traffic volumes for the intersection of the loop road with itself south of Village Road East.
- 34. A sight triangle shall be added at the intersection of the loop road and the existing driveway west of Building D that provides access to a parking lot and loading areas.
- 35. The orientation and location of the sight triangle at the intersection of the loop road with itself south of Village Road East is erroneous and shall be corrected.
- 36. The tree plantings proposed within the sight triangle of the access road serving the proposed community center shall be relocated to a location acceptable to the Township Landscape Architect.
- 37. The use of handicapped spaces that are longer than standard spaces has resulted in jogs in the curblin. In order to reduce the possibility of tire damage, outside right-angle curb corners shall be replaced with two-foot curb radii.
- 38. The applicant shall, when requested by the Administration, work with the Administration and other age-restricted communities in West Windsor as to the feasibility of the creation and operation of a unitary transportation system serving them.

Grading and drainage

- 39. All of the existing drainage easements, including the detention basin easements, shall be clearly shown and labeled on the plans.
- 40. Additional top and bottom of curb elevations at the curb radii, corners, and high and low points shall be provided to demonstrate storm water flow in the parking areas.
- 41. Additional spot elevations at all building corners, entrances, and high and low points around the buildings shall be provided to demonstrate adequate drainage away from the buildings.

Storm water management

42. The as-built condition of the existing basin shall be confirmed prior to the release of the performance guarantees for the site to ensure that it has been built in accordance with the approved design.

Sanitary Sewer

43. The inverts of the existing sanitary sewer manholes at the proposed connections shall be labeled on the grading and utility plans. In addition, the as-built condition of the sanitary sewer lines shall be confirmed prior to the release of the performance guarantees for the site to ensure that they have been built in accordance with the approved design.

44. The invert out of Building D is mislabeled and provides a back-pitched pipe. The invert shall be confirmed and corrected.

Lighting

45. The architectural elements shall show the lights proposed under and adjacent to the porte cocheres.

46. The ordinance requires a total average illumination of 0.5 foot-candles throughout parking areas and 3.0 foot-candles at driveway intersections with main roads. The site lighting shall be adjusted to satisfy these requirements and ensure that adequate shielding and buffering is provided to the Hamlet residents.

47. All lighting other than security lighting shall be on a timer and shall be turned off at a reasonable time.

Emergency services

48. The applicant shall improve emergency service access to Buildings D and E by providing grass paver tails serving the backs of the building. The location and design shall be acceptable to the Township Manager of Emergency Services.

49. A detail for a grass paver fire lane is provided. The location of the fire lanes is not shown on the plans. Specification of the location of fire lane shall be provided consistent with condition 15-50.

50. Two fire hydrants are shown on the entrance driveway to Building C. The more northerly fire hydrant shall be relocated on the driveway to the intersection with the loop

roadway.

51. The Township Engineer shall confirm the roadway turning radii conforms to the WB-50 standard for the drives serving Buildings C and D.

52. A lock box to allow immediate access by the Fire Department shall be installed on the front of Buildings C, D, and E.

53. Fire Department standpipes shall be installed in each stair tower in Buildings D and E. The standpipes shall have 2 1/2 national standard thread hose outlets on each stair tower floor landing. The standpipes shall be tied into the fire sprinkler piping so that there will be only one fire department connection.

54. An additional fire hydrant shall be installed at the intersection of the access driveway to Building E and the loop road.

Other

55. A typical plan legend shall be provided on the plans for such things as contours, manholes, utility poles, etc.

56. The typical drive detail references a pavement width of 25 from station 9+00 to end. However, it is not clear where this is on the site, since the plans do not provide any stationing. This shall be clarified.

57. The proposed pavement box design should assume a poor subgrade unless testing has been conducted determining otherwise. The pavement box detail shall be revised accordingly. Even with an excellent subgrade, the minimum pavement box would be 1.5 inches of top course and 3 inches of base course pavement.

58. The plans identify a detail for a 6 foot wide bituminous sidewalk. The location of these sidewalks is not clear. Clarification to the location of the bituminous sidewalks shall be provided.

59. Sheet 2 shall be corrected as follows:

a. The Building Unit and Description chart is misleading as it indicates only the area of the first floor rather than the total floor area of each building. The chart shall be corrected to reflect the total floor area.

b. The design waiver request table, item 5, is repeated and should be

corrected accordingly.

60. The applicant shall eliminate the rental banner upon adoption of this resolution.

61. The location and screening of the construction trailer and the construction staging shall be subject to the review and approval of the Township Engineer and Township Landscape Architect.

62. The applicant shall, to the extent required, secure approval of the Mercer County Planning Board, Delaware & Raritan Canal Commission, Mercer County Soil Conservation Service, and other governmental entities.

63. A construction cost estimate shall be submitted by the applicant's engineer for review and approval by the Township Engineer for determination of performance guarantee and inspection fee amounts. The applicant shall post performance guarantees and inspection fees in an amount as determined by the Township Engineer. All site work that needs to be done under this amended approval, all improvements under the original approval that need to be fixed, and all improvements to be used by the proposed development shall be bonded.

64. The applicant shall execute a land development performance guarantee agreement in a form satisfactory to the Township Council.

65. All construction details shall be subject to the review and approval of the Township Engineer.

66. All real estate taxes and escrow and inspection fees and required deposits therefor must be paid and maintained as current, and no zoning permits or certificates of occupancy shall be issued if property taxes and escrow and inspection fees and required deposits therefor are not current.

67. All marked exhibits shall be transferred to the Division of Land Use Office prior to issuance of a building permit.

68. All plan revisions shall be subject to the review and approval of such Township professionals as are designated by the Manager of Land Use unless otherwise designated herein.

69. All conditions set forth herein shall be the responsibility of each developer of one or more unimproved lots, even if such developers own fewer than all of the remaining vacant lots.

of one or more unimproved lots, even if such developers own fewer than all of the remaining vacant lots.

70. An easement acceptable to the Board Attorney shall be recorded for each easement shown on the plat or plan.

71. All instruments required to be recorded hereby shall be provided to the Planning Board Attorney for recordation.

72. The applicant shall confirm that the current reservation of sanitary sewer capacity is adequate for the proposed use.

CONCLUSION

Based on the foregoing, the Board at its March 23, 2005 meeting voted to approve the plans with revisions made therein and as supplemented and modified by the exhibits and to grant the relief identified above subject to the conditions and to be revised in accordance with the conditions set forth herein.

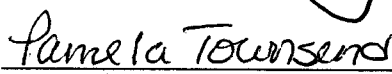
This resolution of memorialization was adopted on June 15, 2005 by a vote of the majority of the members present who voted to grant the relief sought by the applicant.

The date of decision shall be March 23, 2005 except that the date of the adoption of this memorializing resolution is the date of decision for purposes of (1) mailing a copy of the decision to the applicant within 10 days of the date of the decision; (2) filing a copy of the decision with the administrative officer; and (3) publication of a notice of this decision. The date of the publication of the notice of decision shall be the date of the commencement of the vesting protection period.

We do hereby certify that the foregoing resolution was adopted by the Planning Board at its regular meeting held June 15, 2005. This resolution memorializes formal action taken by the Board at its regular meeting held March 23, 2005.



Steve Jany, Vice-Chair



Pamela Townsend, Secretary

Marvin Gardner, Chair - Recused himself
Steve Jany, Vice-Chair - Yea
Chuck Chang - Absent
Steve Decter - Yea
Shing-Fu Hsueh - Yea
Heidi Kleiman - Yea
Charles Morgan -
Simon Pankove - Yea
Martin Rosen - Yea
Richard Eland, Alternate #1 - Absent
Bradley Walters, Alternate #2 - Absent

Appendix EE:
Bear Brook Homes LLC Resolution

WEST WINDSOR TOWNSHIP PLANNING BOARD

In the Matter of the Application of	)	FINDINGS OF FACT
	)	AND
<u>Bear Brook Homes</u> for Preliminary and Final Major	)	CONCLUSIONS OF LAW
Subdivision Approval, Variances, and Waivers)	
	)	File No. PB16-12
	)	Block 9, Lots 55 and 56
)	
	)	Approval Granted: April 4, 2018
)	
)	
)	
)	

Be it resolved by the Planning Board of the Township of West Windsor that the action of this Board on April 4, 2018 in this matter is hereby memorialized by the adoption of this written decision setting forth the Board's findings and conclusions.

RELIEF SOUGHT AND JURISDICTION

1. The applicant filed an application with the Township to subdivide its parcel into 10 buildable lots, seven for zero lot line homes and three for townhouses, including two affordable units, and two open space lots. Variances and submission waivers were also sought.
2. The subject of this application is within the jurisdiction of this Board. The Board acted within the time required by law.
3. The street address of the property is 106 and 110 Bear Brook Road.

4. The property is located in an area designated on the West Windsor Township Zoning Map as the R-3A zoning district.

THE APPLICANT

5. The applicant is the contract purchaser of the property.

NOTICE

6. The applicant obtained a list of all property owners within 200 feet of the property that is the subject of this application from the West Windsor Township tax office.

7. The applicant filed an affidavit stating that notice of the hearing was given at least ten days in advance of the hearing date to the surrounding property owners and to the public entities required to be noticed. The applicant has also filed a proof of publication confirming that newspaper publication for the hearing was made in accordance with legal requirements. Proper notice was given.

8. The notice and publication stated that the hearing would be held at the meeting of the Board scheduled for February 7, 2018. The application was heard on that date and was continued to April 4, 2018.

THE HEARING

9. The public hearing on the application was heard on the date for which it was noticed. At the hearing, the applicant and all other interested parties were given the opportunity to present evidence and to be heard.

PLANS PRESENTED

10. At the hearing, the Board reviewed the following plans:

- Plans entitled “Preliminary Major Subdivision – Block 9, Lots 55 & 56 – (Tax Map Sheets 8.03 & 8.04), Township of West Windsor, Mercer

County, New Jersey”, 8 sheets total, prepared by Page-Mueller Engineering Consultants, P.C., dated December 14, 2016, last revised December 28, 2017

- Map entitled “Final Plat – Major Subdivision of Block 9: Lots 55 & 56, Township of West Windsor, Mercer County, New Jersey”, 1 sheet, prepared by Kennon Surveying Services, Inc., dated December 22, 2017
- Exhibit entitled “Schematic Home Designs”, prepared by Steven DeRochi, A.A., dated October 15, 2017

TOWNSHIP REPORTS

11. At the hearing, the Board considered the following reports presented by Township officials and bodies and consultants to the Board:

- January 15, 2018 memorandum from Joseph H. Burgis, P.P. and David Novak, P.P. to the Board and Planning Department.
- January 16, 2018 memorandum from Francis A. Guzik, P.E. to the Board.
- January 12, 2018 memorandum from Dan Dobromilsky, P.L.A. to the Board.
- January 10, 2018 memorandum from James L. Kochenour, P.E. to the Board.
- January 16, 2018 memorandum from Christopher B. Jepson, P.E. to the Board.
- January 4, 2018 memorandum from James V. C. Yates to Chairperson, Planning Board.
- Memorandum from Site Plan Review Advisory Board to the Board, undated.
- February 5, 2017 Memorandum from Affordable Housing Committee to Gene R. O’Brien.

EXHIBITS AND APPLICANT'S REPORTS

12. At the hearing, the Board considered the following reports prepared by the applicant's consultants and advisors and the following exhibits that were introduced as evidence during the course of the hearing:

- Exhibit A-1 – Sitaline study prepared by Steven DeRochi dated March 30, 2017.
- Exhibit A-2 – Electronically-prepared flyover.
- Exhibit A-3 – Sheet showing fences, third fence from the top being the fence to be used (“Chesterfield Smooth finish in Almond”).
- Exhibit A-4 – Sheet O-1, with driveways marked in blue.
- Exhibit A-5 – Hard copy package of changed designs for affordable units, 2 bedroom unit being 800 square feet and 3 bedroom unit being 1,000 square feet
- Report entitled “Stormwater Management Report for proposed Major Subdivision – Block 9, Lots 55 & 56, Township of West Windsor, Mercer County, New Jersey” prepared by Page-Mueller Consultants, P.C., dated December 2016, last revised October 2017.
- Report entitled “Stormwater Management System Test Pit Report for Lots 55 & 56, Block 9, Township of West Windsor, Mercer County, New Jersey” prepared by Page-Mueller Engineering Consultants, P.C., dated December 2016.
- Letter of Interpretation-Line Verification issued by NJDEP dated July 6, 2016.
- Document entitled “Maintenance Manual for the Stormwater Facilities for Proposed Bear Brook Lane Subdivision Block 9, Lots 55 & 56 West Windsor Township, Mercer County, New Jersey” preparer unattributed, dated December 2017.
- Development Application Package Including
 - Development Application
 - Subdivision Checklist
 - West Windsor Township Environmental Impact Statement Worksheet
 - West Windsor Township Green Development Practices Checklist

- Exhibit O-1 – Submission by Farrell Delman consisting of 11 pages with text and photographs
- Exhibit O-2 – 3-page submission of text by Farrell Delman
- Exhibit O-3 – Report by Robert Korkuch, P.E., the second page also being on presentation board.

TESTIMONY AND PUBLIC INPUT

13. The testimony presented by and on behalf of the applicant and advice by Board consultants were given by the following persons:

Christopher S. Tarr, Esq. represented the applicant. Steven DiRochi, an architect and principal with the applicant, and Catherine Mueller, P.E., its civil engineer, testified on the applicant's behalf.

The following Township staff and professionals gave advice to the Board at the hearing: Francis A. Guzik, P.E.; Joseph H. Burgis, P.P.; Dan Dobromilsky, P.L.A.; James L. Kochenour, P.E.; Christopher B. Jepson, P.E.; Samuel J. Surtees, and Gerald J. Muller.

14. The statements of the members of the public made during the course of the hearing may be summarized as follows: Farrell Delman testified in opposition to the application. He argued that it could be better designed so that what he described as a lengthy wall consisting of the back of the 3 townhouses could be eliminated by shifting the townhouses to the other side of the entry road, which would also have the advantage of eliminating conflicts when vehicles backed out of the townhouse driveways near the entry.

FINDINGS AND CONCLUSIONS RE: PRELIMINARY AND FINAL SUBDIVISION APPROVAL

15. Nature of application. The applicant proposes to consolidate its two lots, Block 9, Lots 55 and 56, comprising 9.3 acres and subdivide them into 10 building lots, a 6.472 acre open space lot that will contain the environmentally constrained areas to the rear of the property and that the applicant proposes to dedicate to the Township, and a 0.099 acre open

space lot fronting on the cul-de-sac to be owned by a future homeowners' association. The smaller open space lot will contain storm water management facilities and provide access to the larger open space lot to the rear. Several of the proposed lots utilize the zero lot line provision in the R-3A zone and will vary in size from just under ¼ of an acre to just over 1/3 of an acre. The three unit townhouse building will consist of a 3 bedroom market rate unit, a 3 bedroom moderate income affordable unit, and a 2 bedroom low income affordable unit.

16. Two primary issues were raised. The first is the location of the townhouses closest to the entry point off Bear Brook Road and adjacent to the Delman property. The Board discussed whether conflicts were created by turning movements into the cul-de-sac from Bear Brook and vehicles being backed out of the driveways of the town houses, from which, unlike the seven zero lotline houses, there are no turnarounds on site. The Board's traffic engineer, Mr. Kochenour, opined that this did not represent a dangerous condition because of the low levels of traffic and the fact that vehicles turning into the cul-de-sac would be moving at a slow rate of speed.

17. The second issue, as indicated above, related to the townhouses and their impact upon the Delman property. A redesign proposed by Mr. Delman's engineer, Mr. Korkuch, moved the townhouses to deeper lots on the other side of the drive. The Board found, however, that this presented its own problems particularly in terms of aligning the entry drive with Greylynne Drive across the street; loss of three parking spaces; and the question of whether the unit on the lot closest to Bear Brook Road could be built given the skewing of the lot line. The Board found that, with more landscaping, the impact of the townhouses on the Delman property could be ameliorated. In addition, they do not present a uniform wall as two affordable housing units are set back farther from their rear property lines than the market unit is and have varying heights, thereby reducing the scale and massing.

18. Conclusion Re: subdivision approval. The Board finds that, with the conditions imposed, the application meets all Township subdivision standards. Preliminary and final major subdivision approval, accordingly, is granted.

FINDINGS AND CONCLUSION RE: VARIANCES

19. The application necessitates five variances. The variances and the Board's action are as follows.

a. Variance: From Section 200-177B, which requires that the minimum lot frontage be 50 feet, while the lot frontage for Lot 55.11 is zero.

Variance granted: Frontage is unnecessary for this open space lot, as municipal vehicles can access it from the cul-de-sac through the smaller open space lot. Granting the variance furthers Municipal Land Use Laws purposes “a,” which is to promote the appropriate development of land, and “g,” which is to provide for open space in appropriate locations. Preserving the open space lot in its natural state furthers these goals. The benefits of advancing these goals are substantial, as the open space lot will in perpetuity remain in its natural state and, if the Township Council accepts the offer of dedication, will add to the Townships growing open space inventory. There are no detriments to granting the variance. The benefits therefore outweigh the detriments. The positive flexible “c” criteria have therefore been satisfied.

The negative criteria are satisfied as well. There is no substantial detriment to the public good. Indeed, it is advanced for the reasons given above. In addition, there is no impairment of the intent and purpose of the zone plan and zoning ordinance in that the purpose of the frontage requirement is to provide for access to buildable lots and have frontage consistent with the character of the neighborhood, and that purpose is satisfied.

For the forgoing reasons, the variance request is granted.

b. Variance: Section 200-177B, which requires a minimum lot size of 5,000 feet, while 4,312 square feet is proposed to Lot 55.12, the second open space lot.

c. Variance: From Section 200-177B, which requires a minimum lot frontage of 50 feet, while 12.94 feet is proposed for Lot 55.12.

d. Variance: From Section 200-177B, which requires a minimum lot width of 50 feet, while 22.56 feet is proposed for Lot 55.12.

b-d. Variances granted: These variances are granted for the same reason that the frontage variance for Lot 55.11 is granted. Lot 55.12 is an adjunct to Lot 55.11, which will not

function as accessible open space without Lot 55.12, as it will be landlocked. In addition, Lot 55.12 standing alone satisfies the Municipal Land Use Law goals of promoting the appropriate development of land and conserving open space. Since there are no detriments to granting these variances, the flexible criteria are satisfied.

The negative criteria are also satisfied for the same reasons given with respect to the lot frontage variance for the larger open space lot.

For the forgoing reasons, the three Lot 55.12 variances are granted.

e. Variance: From Section 200-227C, which provides that no fence or wall forward of the front yard setback line in residential districts may exceed 4 feet in height, while the applicant proposes to install a 6 foot privacy fence within the front yards of proposed Lots 55.01 and 55.10.

Variance granted: Granting the variance furthers Municipal Land Use Law purpose “a” by providing for the appropriate development of land in that the two lots abut Bear Brook Road, and, while the yards between the houses and road are technically considered front yards, they actually function as side yards. Fences are appropriate along Bear Brook Road so as to provide privacy for the residents of the two lots. As Exhibit A-3 shows, the fences will be attractively designed and, with pickets at the top, will not be a solid six foot fence. There are substantial benefits in providing privacy for the residents of the two lots, and the detriments will be minimal. The benefits, therefore, outweigh the detriments. The flexible “c” criteria are, accordingly, satisfied.

The negative criteria are also satisfied. There is no substantial detriment to the public good for the reasons given above. Nor is there substantial impairment of the intent and purpose of the zone plan and zoning ordinance, since the fences function as fences along the side property lines rather than in the front yards.

For the foregoing reasons, the variance request is granted.

FINDINGS AND CONCLUSIONS RE: WAIVERS

20. The application necessitates eight waivers, six design waivers and two submission waivers. The waiver requests and the Boards action on them are as follows.

a. Waiver: From Section 200-91(P)(4), which requires that storm water management areas be integrated as aesthetic landscape features, while the two basins do not meet this standard.

Waiver granted: The basins are located on both sides of the entryway, where there is limited room for them. Since they cannot be integrated into the landscape as the ordinance requires, the waiver request is reasonable. The intent and purpose of the ordinance provision is satisfied by proposed landscape improvements on all sides of the basins. Literal enforcement of the ordinance provision would be impracticable because of the limited area available for the basins, a limitation that is offset by the very substantial amount of land reserved for permanent open space.

Accordingly, the waiver request is granted.

b. Waiver: From Section 200-91P(4), which requires plantings around basin perimeters to be aesthetic features, while the basin perimeter plantings do not serve this purpose.

Waiver granted: The landscape plan specifies about 102 shrubs and two evergreen trees around the basins and has been amended so as to include landscape improvements on all sides. The unique placement of the storm water management basins for the proposed development is not conducive to planting strictly in accordance with the ordinance standard, as the available land does not make additional planting feasible. The waiver request, therefore, is reasonable. The intent and purpose of the ordinance provision is furthered because, while the ordinance is not strictly complied with, the basins do not have the spare, utilitarian look many of the storm water management basins around the state have. Literal enforcement of the ordinance provision is impracticable in that further plantings are really not feasible.

The waiver request, accordingly, is granted.

c. Waiver: From Section 200-36C3(c)(4), which requires that a playground be provided, while the applicant is not providing one.

Waiver granted: Given the size of the development, a playground is not necessary. For this reason, the waiver request is reasonable. The intent and purpose of the ordinance provision is furthered in that preserved open space available for passive recreation is provided. Literal enforcement of the ordinance provision would be impracticable in that it would require a substantial amount of land in an inclusionary development be devoted to improvements that will add to the costs of the development, while the *Mt. Laurel* doctrine requires that costs be kept as limited as feasible.

The waiver request, accordingly, is granted.

d. Waiver: From Section 200-91P(3), which requires a landscape island within the cul-de-sac, while a portion of the island is proposed to be utilized for on-street parking.

Waiver granted: The waiver request is reasonable in that the addition of the on-street parking will help ensure that there is not an overflow parking problem. In addition, a very substantial green space is provided by virtue of the two open space lots. The intent and purpose of the ordinance provision requiring the green space in the cul-de-sac island is satisfied. Green space is provided, and compensating green space at a much larger scale is provided elsewhere in the development. Requiring the 36 foot landscape island would work an undue hardship on the applicant in that it would preclude it from providing more parking.

For these reasons, the waiver request is granted. Landscaping of the entire island is not required. Only the portion of the island for which landscaping is proposed shall be landscaped as per the plans.

e. Waiver: From Section 200-62B, which requires that turnarounds for vehicles on all residential lots be provided, while there are no turnarounds on the three townhouse lots.

Waiver granted: The waiver request is reasonable in that there is no room on the townhouse lot for turnarounds, and requiring turnarounds on all of the lots would necessitate a redesign that may result in fewer units, including possibly fewer affordable units. The intent and purpose of the ordinance provision is satisfied in that turnarounds are provided for seven of the 10 lots. Literal enforcement of the ordinance provision would work an undue hardship on the applicant by requiring a complete redesign of the project, with increased costs inconsistent with the *Mt. Laurel* doctrine and possibly fewer affordable units.

The waiver request is therefore granted.

f. Waiver: From Section 200-36B(4)(b), which requires that an outdoor private living space for each dwelling unit be provided, while the applicant is proposing as an option a 10' long privacy fence running back from the house.

Waiver granted: Giving the owners of the zero lot line homes the option of having the privacy fence, but not requiring it, is reasonable. The option furthers the intent and purpose of the ordinance provision in that it gives the homeowner the opportunity to have such a fence if desired. Literal enforcement of the ordinance provision would work an undue hardship on the applicant by requiring the installation of privacy fences that homeowners may not want.

The waiver request, accordingly, is granted.

g. Waiver: From Section 200-53C(4), which requires identification of the establishment of at least two permanent benchmarks on opposite sides of the development, with all pertinent information about the same being provided, while the applicant is providing one permanent benchmark with the provision that an additional control would be provided on-site prior to construction.

Interim waiver granted: Due to the limited size of the project and the fact that it is an inclusionary development, the Board defers the establishment of the second control until the time of construction. Condition 22n so provides.

h. Waiver: From Section 200-53C(8), which requires the submission of information related to proposed utility layouts, while the plans did not provide the size and location of the existing water or sewer gas mains in Bear Brook Road to which the development will connect.

Interim waiver granted: Again, because of the size of the project and the fact that it is an inclusionary development, the provision of this information and the subsequent pavement repair dimensions are deferred until the time of construction. Condition 22o so provides.

RECOMMENDATION WITH RESPECT TO DEDICATION OF LOT 55.11 AND OF CARTWAY

21. Condition 22f requires that the applicant offer to dedicate Lot 55.11 to the Township. The Planning Board recommends that the dedication be accepted. While the applicant proposes to dedicate the roadway to the Township, the Planning Board makes no recommendation as to whether or not that offer of dedication be accepted.

FINDINGS AND CONCLUSIONS RE: CONDITIONS

22. The Board finds that, in order to address the concerns expressed during the course of the hearing and to limit the relief to that reasonably necessary to satisfy the applicant's legitimate requirements, the relief granted is subject to the following conditions:

Affordable Housing

- a. The affordable units shall have central air conditioning.
- b. The applicant, working with the staff, shall make a good faith effort to make the second floor bedroom in the two-bedroom affordable unit bigger.

- c. There shall be one homeowners' association for all ten dwelling units with a provision in the HOA documents indicating that there will be a sinking fund for outside capital repairs of the town house units.
- d. The same siding material, including color, shall be used for all of the townhouse units.
- e. The sizes of the affordable units shall be shown on the plans.

Open Space Preservation

- f. The applicant shall offer to dedicate Lot 55.11 to the Township.
- g. The applicant shall grant an easement to the Township over Lot 55.12 for access by Township personnel and the public to Lot 55.11.
- h. The applicant shall grant an easement to the Township and the public for use of the road if dedication to the Township is not accepted.

Landscape

- i. Smaller trees near the Delman property line shall be replanted in locations acceptable to the Delmans.
- j. A higher berm and more landscaping on the Delman side of the property line shall be installed. The applicant shall work out a solution with the Delmans and give them up to \$10,000.00 so that they can implement the work.
- k. The applicant shall attempt to save four of the five trees to be removed. The Township Landscape Architect shall identify such trees.

- l. The final landscape plan shall be subject to the review and approval of the Township Landscape Architect.
- m. HOA documents shall provide that the HOA and not the individual property owners are responsible for maintaining the buffer vegetation on the perimeter of the project.

Major Subdivision

- n. The second permanent benchmark on the opposite side of the development from where the first permanent benchmark has been installed shall be put in place at the time of construction.
- o. Information as to the size and location of the existing water and gas mains on Bear Brook Road to which the development will connect and the subsequent pavement repair dimensions shall be provided at the time of construction.
- p. As there are no common walls along the zero lot lines, the applicant has indicated on the plans 10 foot wide maintenance easements along the adjoining lots. The formal language of the easements shall be subject to the review and approval of the Board attorney.
- q. Separate metes and bounds descriptions with closure calculations for all lots, including the townhome lots, and for all easements and dedications shall be provided to the Township Engineer for his review and approval. The final major subdivision plat will be reviewed in detail in conjunction with these documents once submitted.

Access and Circulation

- r. The total amount of soil required to be imported for the road fill has been estimated by the applicant's engineer as 10,000 cubic yards. The applicant shall engage the services of a geotechnical engineer to supervise the roadway construction and certify that acceptable compaction and moisture contents are obtained in compliance with NJDOT

specifications. In addition, the source of the material for all purposes, including individual lot fill and not just the roadway, shall be identified, and a certification that the material is clean and meets the requirements for NJDEP residential use shall be submitted to the Township Engineer for review and approval prior to commencing the soil import operation.

- s. The applicants shall take such steps as are necessary so that Title 39 is applicable to the development.

Storm water management

- t. The homeowners' association maintenance responsibility shall also include the section of the structurally reinforced sidewalk, since the storm water is designed to flow from the roadway under the sidewalk into the infiltration basins by way of a 3 foot wide open concrete channel. The sidewalk is thus an integral part of the storm water management design.
- u. A Maintenance Manual for the Storm Water Facilities has been submitted, but it is not in strict compliance with the N.J. BNP Manual and the NJDEP Maintenance Plan Guideline documents located at http://www.nj.gov/dep/stormwater/maintenance_guidance.htm. The Manual must include all of the required information contained therein. Once a draft of the Manual is approved by the Township Engineer, it shall be incorporated into the homeowners' association documents.
- v. The storm water management design for the project was based upon the assumed full build-out of each lot as permitted by the current zoning requirements. Note 8 on the Utility Plan (Sheet 4) indicates that the design was based upon the conceptual improvements plus 500 square feet, and the storm water management design shall be revised to be consistent with Note 8.

- w. Due to the fact that runoff from the rear yards of Lots 55.07 through 55.10 will drain through a common swale from Lot 55.10 toward the open space behind Lot 55.07, a 15 foot wide drainage easement for the benefit of the homeowners' association and the Township is required among these properties over the swale and adjacent landscape berm. It shall among other things require the owners to maintain the area in accordance with the original construction, prevent any modifications to the grading of the areas, prevent installation of any permanent improvements, including fencing, unless an opening is provided at the bottom of the fencing so that flow is not obstructed, and give the Township the right, but not the obligation, to enter into the area as required from time to time for inspections and maintenance, with any costs for same to become a lien against the owners. A similar easement area shall be provided along the rear yards of Lots 55.01 through Lot 55.06. Eight drainage easement instruments consistent with these easement areas shall be subject to the review and approval of the Board Attorney and Township Engineer.

- x. The maintenance of the proposed riprap, basin, swales, and all other storm water management elements on proposed Lot 55.12 shall be the responsibility of the homeowners' association.

- y. Infiltration basins on proposed Lots 55.01 and 55.10 are located on privately-owned lots. Section 7:8-5.8(c) of the State Storm Water Regulations prohibits assigning the responsibility for the maintenance of the development's storm water BMPs to any individual owners. Therefore, even the storm water management facilities on private lots shall be maintained by the homeowners' association. Drainage easement areas shown on the plans shall include the obligation and responsibility and the right of access by the homeowners for maintenance and the Township for emergency repairs if the HOA is not responsive. Such shall be included in the easement instruments, which shall be subject to the review and approval of the Board attorney.

Utilities

- z. The proposed sanitary sewer connection into the municipal collection system is to be made at the existing manhole located within the Bear Brook Road right-of-way. A request for sewer capacity reservation shall be submitted to the Township Engineer for Township Council action. The projected flow is below the amount that triggers an NJDEP Treatment Works Approval.

Other

- aa. The privacy fences to be installed along the frontage shall be the third from the top on Exhibit A-3 and shall be almond colored.
- bb. The roadway, if the offer of dedication for the roadway is not accepted by the Township, shall be the responsibility of the homeowners' association.
- cc. The homeowners' association documents shall be subject to the review and approval of the Board attorney.
- dd. A deed notice shall be provided to all purchasers of the units that organic farming is being undertaken on the Delman property. It shall also refer to the ordinance provision requiring the signing of a form with respect to land uses in the area and must state that the buyers must go to the Municipal Building to review the surrounding land uses and sign a form certifying that they have done so. The deed notice shall also state that the Delman property is a farm and is protected by the New Jersey Right to Farm Act. This would include equipment transport and use; daily and seasonal worker presence; day and night activity; worker lodging; product processing and sales; and educational and promotional activities.
- ee. The New Jersey Flood Hazard Regulations have recently changed allowing owners to request a permit for expansions. A deed notice for the lots whose rear yards are in the flood hazard area shall so indicate, and the plans shall detail what would be permitted. Before any development in such area occurs, the homeowner must secure a DEP permit.

- ff. The applicant shall submit an engineer's construction cost estimate for review. The applicant will be required to post performance guarantees and inspection fees for the public improvements in accordance with the MLUL and the Township ordinance.
- gg. PDF copies of the Stormwater Management Report, as well as the Stormwater Maintenance Manual, and all related mapping shall be provided to the Township once they are approved by the Township Engineer.
- hh. In accordance with Ordinance section 200-105.1, the applicant shall enter into an agreement with the Township, in a form satisfactory to the Board Attorney, requiring the installation and maintenance by the applicant and the applicant's successors in interest of all such stormwater management improvements proposed by the applicant and approved by the Board for this project. This Developer's Agreement shall also provide that the applicant shall pay its *pro rata* off tract assessment.
- ii. All construction details shall be subject to the review and approval of the Township Engineer.
- jj. Outside agency approvals will be required. The following are anticipated at this time:
- Mercer County Planning Board
 - Mercer County Soil Conservation District
 - Delaware and Raritan Canal Commission
- kk. The position of the fire department connections that supports the fire sprinkler systems in the townhomes shall be at the front of each building.
- ll. The applicant shall limit the number of trees in close proximity to the buildings as they restrict access by the fire department.

- mm. The applicant shall execute a land development performance guarantee in a form satisfactory to the Township Council and shall post such performance and maintenance guarantees as are required.
- nn. All real estate taxes and escrow and inspection fees and required deposits therefor must be paid and maintained as current, and no zoning permits or certificates of occupancy shall be issued if property taxes and escrow and inspection fees and required deposits therefore are not current.
- oo. All marked exhibits shall be transferred to the Division of Land Use Office prior to issuance of a building permit.
- pp. All plan revisions shall be subject to the review and approval of such Township professionals as are designated by the Manager of Land Use unless otherwise designated herein.
- qq. An easement acceptable to the Board Attorney shall be recorded for each easement shown on the plat or plan.
- rr. All instruments required to be recorded hereby shall be provided to the Planning Board Attorney for recordation.
- ss. Any open space dedication shall be accomplished by separate deeds of dedication recorded prior to release of performance bonds.

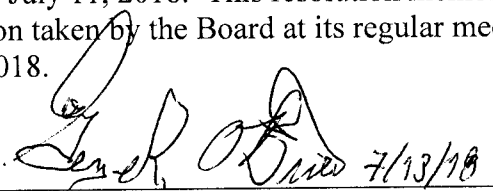
CONCLUSION

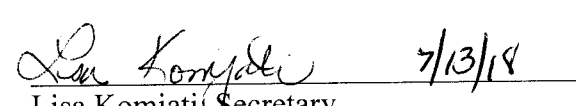
Based on the foregoing, the Board at its April 4, 2018 meeting voted to approve the plans with revisions made therein and as supplemented and modified by the exhibits and to grant the relief identified above subject to the conditions and to be revised in accordance with the conditions set forth herein.

This resolution of memorialization was adopted on July 11, 2018 by a vote of who voted to grant the relief sought by the applicant.

The date of decision shall be April 4, 2018 except that the date of the adoption of this memorializing resolution is the date of decision for purposes of (1) mailing a copy of the decision to the applicant within 10 days of the date of the decision; (2) filing a copy of the decision with the administrative officer; and (3) publication of a notice of this decision. The date of the publication of the notice of decision shall be the date of the commencement of the vesting protection period.

We do hereby certify that the foregoing resolution was adopted by the Planning Board at its regular meeting held July 11, 2018. This resolution memorializes formal action taken by the Board at its regular meeting held April 4, 2018.


Gene R. O'Brien, Chair


Lisa Komjati, Secretary

Gene O'Brien, Chair – Yea
Michael Karp, Vice-Chair – Absent
Sue Appelget – Yea
Linda Geever – Yea
Curtis Hoberman – Yea
Michael Huey – Yea
Andrea Mandel – Yea
Hemant Marathe – Yea
Simon Pankove – Absent
Allen Schectel, Alternate I – Absent
Anis Baig, Alternative II – Absent

Appendix FF:
Spending Plan

2019

Council Endorsement:
February 27, 2019

Township of West Windsor

2019 Affordable Housing Trust Fund
Spending Plan

I. Introduction

The Township of West Windsor has prepared a Housing Element and Fair Share Plan (HE&FSP) which addresses its regional fair share of the affordable housing need in accordance with the Municipal Land Use Law (N.J.S.A. 40:55D-1 et seq.), the Fair Housing Act (N.J.S.A. 52:27D-301) and the March 8, 2018 Order Establishing the Fair Share Obligations of Princeton and West Windsor Township issued by Judge Jacobson. A development fee ordinance creating a dedicated revenue source for affordable housing was approved by the Court in 1993 and adopted by the municipality in the autumn of 1993.

II. Revenues for Certification Period

As of December 31, 2018, the Township of West Windsor has collected \$6,230,935.93 and has expended \$4,596,436.23, resulting in a cash balance of \$1,634,499.70.¹ All development fees, payments in lieu of constructing affordable units on site, funds from the sale of units with extinguished controls, and interest generated by the fees are deposited in a separate interest-bearing affordable housing trust fund in PNC Bank for the purposes of affordable housing. These funds shall be spent in accordance with N.J.A.C. 5:97-8.7-8.9, as described in the sections that follow.

To calculate a projection of revenue anticipated during the period of third round substantive certification, the Township of West Windsor considered the following:

(a) Development fees:

- Residential and non-residential projects that have had development fees imposed upon them at the time of preliminary or final development approvals;
- All projects currently before the planning and zoning boards for development approvals that may apply for building permits and certificates of occupancy; and
- Future development that is likely to occur based on historical rates of development.

(b) Payment in lieu (PIL):

- Actual and committed payments in lieu (PIL) of construction from developers as follows: None.

(c) Other funding sources (i.e. sale of units with extinguished controls, repayment of affordable housing program loans, rent income, proceeds from the sale of affordable units, etc.):

- No funds are anticipated at this time.

(d) Projected interest:

- Interest on the projected revenue in the municipal affordable housing trust fund at the current average interest rate, which for January of 2019 is 1%.

¹ The Township indicated in a monitoring spreadsheet provided to our office that they have a cash balance of \$1,638,620.70 as of December 31, 2018. However, this did not account for \$4,121.00 that had already been spent for the Project Freedom development discussed in the Housing Element and Fair Share Plan. Therefore, this amount was deducted which resulted in an actual cash balance of \$1,634,499.70. Expenditures were calculated by subtracting the cash balance of \$1,634,499.70 from the total receipts of \$6,230,935.93

Table 1: Projected Revenues

Source of Funds	2019	2020	2021	2022	2023	2024	2025	Total
a. Development Fees	\$87,646	\$87,646	\$87,646	\$87,646	\$87,646	\$87,646	\$87,646	\$613,523
b. Payments in Lieu of Construction	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
c. Other Funds	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
d. Interest	\$3,000	\$3,000	\$3,000	\$3,000	\$3,000	\$3,000	\$3,000	\$21,000
Total	\$90,646	\$90,646	\$90,646	\$90,646	\$90,646	\$90,646	\$90,646	\$634,523

** For the purposes of projecting revenue, our office utilized the Township's average development fee receipts. Between 1986 and 2018, the Township received a total of \$2,892,321.22 in development fees. This results in an average of \$87,646 over the course of thirty-three years. In addition, we estimated the projected interest based upon the present interest rate of 1%.*

The Township of West Windsor projects a total of \$634,523 in revenue and interest to be collected between January 1, 2019 and December 31, 2025. This projected amount, when added to the Township of West Windsor's trust fund balance as of December 31, 2018, results in an anticipated total anticipated trust fund balance of \$2,269,022.70. All interest earned on the account shall be used only for the purposes of affordable housing.

III. Administrative Mechanism to Collect and Distribute Funds

The following procedural sequence for the collection and distribution of development fee revenues shall be followed by the Township of West Windsor:

(a) Collection of development fee revenues:

- Collection of development fee revenues shall be consistent with the Township of West Windsor's development fee ordinance for both residential and non-residential developments in accordance with COAH's rules and P.L.2008, c.46, sections 8 (C. 52:27D-329.2) and 32-38 (C. 40:55D-8.1 through 8.7).

(b) Distribution of development fee revenues:

- The Administration forwards a resolution to the governing body recommending the expenditure of development fee revenues as set forth in this spending plan. The governing body reviews the request for consistency with the spending plan and adopts the recommendation by resolution. The release of the funds requires the adoption of the governing body resolution in accordance with the Court-approved spending plan. Once a request is approved by resolution, the Chief Financial Officer releases the requested revenue from the trust fund for the specific use approved in the governing body's resolution.

IV. Description of Anticipated Use of Affordable Housing Funds

(a) Rehabilitation Program (N.J.A.C. 5:93-5.2)

- As established in the Settlement Agreement signed between the Township of West Windsor and the Fair Share Housing Center (FSHC), the Township has a rehabilitation share of twenty-seven (27) units.
- COAH'S rules require municipalities to set aside sufficient funds to address one-third of their rehabilitation obligation within one year of substantive certification of their plan. In addition, municipalities are required to set aside sufficient funds to address one-sixth of their rehabilitation obligation each subsequent year of the substantive certification period.
- As such, the Township will reserve a minimum of \$270,000 to fund a rehabilitation program. At least \$90,000 will be allocated for the first year following substantive certification.

(b) Haven House (N.J.A.C. 5:93-5.8)

- The Township will dedicate up to \$250,000 for renovations to 2 dwelling units which will contain a total of 4 bedrooms. The Princeton Baptist Church will lease the units to Home Front, which will operate the facilities. Haven House will support pregnant young women and young women with children. It will also provide additional support services such as day care and tutoring. The population to be served is aged 18-24 years, as well as their younger children.

(c) Future Affordable Housing Opportunities

- As noted in the Township's HE&FSP, West Windsor will satisfy its remaining affordable housing need through group homes and other special needs housing, as well as through a market to affordable program. Over the years, several affordable housing providers and non-profits have reached out to the Township to construct housing within the community. This program gives West Windsor the flexibility to solicit partners to build affordable housing through the community. This mechanism is also intended to be phased in over the compliance period as part of the Township's settlement with the Fair Share Housing Center (FSHC).
- The proposed phasing is summarized as follows
 - On July 1, 2021 West Windsor will begin to identify sites, solicit sponsors and identify funding to construct the first third of the 32 units of special needs affordable housing. The first third of the 32 units would have to be delivered during the time period July 1, 2022 - June 30, 2023.
 - On July 1, 2022, West Windsor will begin to identify sites, solicit partners, and identify funding for the second third, which must be delivered during the time period July 1, 2023 - June 30, 2024.
 - On July 1, 2023, West Windsor will begin to identify sites, solicit partners, and identify funding to construct the remaining third, which must be delivered during the time period July 1, 2024 - June 30, 2025.
- The Township will dedicate \$617,953.18 toward this program.

- The HE&FSP does establish that West Windsor shall have the right until July 1, 2021 to substitute a site or sites that provides a realistic opportunity through inclusionary zoning in place of some or all of its remaining obligation, provided that the development or developments proposed are otherwise in conformance with the terms of the Settlement Agreement.

(d) Foreclosure and Bankruptcy

- The Township will dedicate up to \$110,000 to ensure units are not lost through the foreclosure and bankruptcy process.

(e) Affordability Assistance

Pursuant to N.J.A.C. 5:93-8.16(c), municipalities are required to spend a minimum of thirty percent (30%) of development fee revenue to render existing affordable units more affordable. Furthermore, one-third of that amount must be dedicated to very low-income households (i.e. households earning less than 30% of the regional median income). The actual affordability assistance minimums will be calculated on an ongoing basis by the Township of West Windsor.

All applications for the following programs can be attained at the Township Municipal Building or through West Windsor's Administrative Agent. All applicants for the following programs will need to provide all required information as specified in the application and they will be required to be income certified by the Township's Administrative Agent to ensure the household's income is at/or under 80% of median income. Assistance cannot and will not be considered to any household that does not meet the criteria or submit all required documentation.

As per the calculation shown on Table 2, the Township has already proactively met its affordability assistance requirement through previous expenditures. The Township has a calculated affordability assistance requirement of \$158,761.52, whereas it has already allocated \$235,398.85 toward affordability assistance as of December 31, 2018.

Irrespective of the above, the Township plans on allocating a total of \$773,490.92 toward future affordability assistance through the following programs:

- **Hot Water & HVAC Program.** West Windsor has set aside \$653,042.80 to replace hot water tanks and HVAC systems in affordable housing units. Thus far, \$80,589.87 has been spent and \$572,182.93 has been encumbered for future spending. Replacing these units with new, energy-efficient units will reduce residents' utility costs and make the units more affordable to live in. Affordable homeowner's applying for this type of assistance will be required to submit three written estimates with detailed information about all costs. All permit fees will need to be included. Homeowner and installer will need to abide by all Township and State Regulations. All new water heaters and HVAC systems will need to be installed by licensed and insured entities that will ensure that the new system will meet all code and safety standards. Assistance will be provided on a first-come, first-serve basis to existing income-eligible homeowners. The Township will provide a maximum amount of \$7,500 per unit in assistance. In addition to homeowners, all owners of 100% affordable developments are also eligible for the program. Assistance will only be provided one-time to the certified applicant household and the home, where the new system is installed. The unit must be the primary residence of the homeowner/applicant. This program is intended for for-sale units

- Energy Efficiency Program – Very-low Income. West Windsor will set aside up to \$201,307.99 to replace hot water tanks and HVAC systems in very-low income affordable housing units.¹ The Township will pay for 100% of the replacement costs of these systems. Replacing these units with new, energy-efficient units will reduce residents’ utility costs and make the units more affordable to live in. This program will also offer the option to place solar panels on the roofs of 100% affordable facilities that house only very-low income residents. The solar panels will reduce the building’s energy costs and make the units more affordable to live in for the affordable residents. Affordable homeowner’s applying for this type of assistance will be required to submit three written estimates with detailed information about all costs. All permit fees will need to be included. Homeowner and installer will need to abide by all Township and State Regulations. All new water heaters/HVAC systems/solar systems will need to be installed by licensed and insured entities that will ensure that the new system will meet all code and safety standards. Assistance will be provided on a first-come, first-serve basis to existing income-eligible homeowners. In addition to homeowners, all owners of 100% affordable developments are also eligible for the program. Assistance will only be provided one-time to the certified applicant household and the home, where the new system is installed. The unit must be the primary residence of the homeowner/applicants (except for 100% affordable developments).

Table 2: Affordability Assistance Calculation

Actual development fees through 12/31/2018		\$	2,892,321.22
Actual interest earned through 12/31/2018	+	\$	312,649.37
Development fees projected 2019-2025	+	\$	613,522.68
Interested projected 2019-2025	+	\$	21,000.00
Less housing activity expenditures through 12/31/2018	-	\$	3,310,288.20
Total	=	\$	529,205.07
Calculate 30 percent	x .30 =	\$	158,761.52
Less affordable assistance expenditures through 12/31/2018	-	\$	\$235,398.85
Projected minimum affordability assistance requirement 1/1/2019 through 12/31/2025	=	\$	0
<i>Projected minimum very-low affordability assistance requirement</i>	<i>÷ 3 =</i>		0

(f) Administrative Expenses

Per N.J.A.C. 5:93-8.16(e), no more than twenty percent (20%) of the revenues collected from development fees shall be expended on administration. As calculated in Table 3 below, the Township projects that a maximum of \$247,528.28 of housing trust funds will be permitted to be used for administrative purposes through 2025. Projected administrative expenditures, subject to the 20% cap, include the salaries and benefits for municipal employees and consultant fees necessary to develop or implement the following:

1. An updated Housing Element and Fair Share Plan;
2. A rehabilitation program;
3. An affirmative marketing program to be administered by Piazza and Associates, and;
4. An affordability assistance program to be administered by Piazza and Associates.

Table 3: Administrative Expense Calculation

Actual development fees and interest through 12/31/2018		\$	3,204,970.59
Project development fees and interest through 12/31/2025	+	\$	634,523.00
Payments-in-lieu of construction and other deposits through 12/31/2018	+	\$	3,025,965.34
Less RCA expenditures through 12/31/2018	-	\$	2,585,000.00
Total	=	\$	4,280,458.61
Calculate 20 percent	x .20 =	\$	856,091.72
Less affordable assistance expenditures through 12/31/2018	-	\$	608,513.44
Projected maximum available for administrative expenses 1/1/2019 through 12/31/2025	=	\$	247,578.28

V. Expenditure Schedule

The Township of West Windsor intends to use affordable housing trust fund revenues for the creation and/or rehabilitation of affordable housing units. It should be noted that the amount spent in a given year for any line item may actually span multiple years in reality. Table 4 provides an estimated timeline for expenditure and does not restrict the Township from spending the money sooner or later in the Third Round period.

Table 4: Expenditure Schedule

Projects/Programs	Number of Credits Projected	2019	2020	2021	2022	2023	2024	2025	Total
Rehabilitation Program		\$90,000.00	\$45,000.00	\$45,000.00	\$45,000.00	\$45,000.00			\$270,000.00
Haven House	4	\$250,000.00							\$250,000.00
Future Affordable Housing	32			\$123,590.64	\$123,590.64	\$123,590.64	\$123,590.63	\$123,590.63	\$617,953.18
Foreclosure and Bankruptcy		\$15,714.29	\$15,714.29	\$15,714.29	\$15,714.29	\$15,714.28	\$15,714.28	\$15,714.28	\$110,000.00
Affordability Assistance		\$110,498.70	\$110,498.70	\$110,498.70	\$110,498.70	\$110,498.70	\$110,498.71	\$110,498.71	\$773,490.92
Administration		\$35,368.33	\$35,368.33	\$35,368.33	\$35,368.33	\$35,368.32	\$35,368.32	\$35,368.32	\$247,578.28
Total		\$251,581.31	\$456,581.31	\$330,171.95	\$330,171.95	\$330,171.95	\$285,171.95	\$285,171.95	\$2,269,022.38

* Note: Table does not include Community Options. As noted in the Township's Housing Element and Fair Share Plan, Community Options purchased a house on 4 West Kincaid Drive in 2017. The Township dedicated \$200,000 to assist Community Options in this purchase and in converting it into an alternative living arrangement. This project was completed in 2018.

VI. Excess or Shortfall of Funds

In the event of any unexpected revenue shortfall, where funds are not sufficient to implement the plan, the Township of West Windsor will approve a resolution of intent to bond. The only mechanism that mandates funding under this Spending Plan is the Rehabilitation Program. In the event that revenues are not as high as expected, the Township reserves the right to adjust its projected expenditures to provide funding for other projects, pursuant to Court approval. The Township will bond, if needed, for any future group home; however, this is not expected.

In the event more funds than anticipated are collected, projected funds exceed the amount necessary to implement the Fair Share Plan, or the Township of West Windsor is reserving funds for affordable housing projects to meet a future affordable housing obligation, these excess funds will be used to make capital repairs to older affordable housing units, provide additional affordability assistance or offer additional group home assistance for new providers within the community.

VII. Barrier free escrow

Collection and distribution of barrier free funds shall be consistent with the Township of West Windsor's Affordable Housing Ordinance in accordance with [N.J.A.C. 5:97-8](#).

VIII. Summary

The Township of West Windsor intends to spend affordable housing trust fund revenues pursuant to N.J.A.C. 5:97-8.7 through 8.9 and consistent with the housing programs outlined in the Housing Plan Element and Fair Share Plan dated February 27, 2018.

The Township of West Windsor has a balance of \$1,634,499.70 as of December 31, 2018 and anticipates an additional \$634,523.00 in revenues and interest through 2025 for a total of \$2,269,022.38. This Spending Plan demonstrates the Township's commitment to expend \$2,269,022.38 through December 31, 2025, including a commitment to expend with respect to the following:

- Commitment to expend up to \$270,000 towards hard costs for a rehabilitation program;
- Commitment to expend up to \$250,000 to assist Haven House/Home Front;
- Commitment to expend up to \$617,953.18 to assist future affordable housing providers;
- Commitment to expend up to \$110,000 to assist with the prevention of foreclosures;
- Commitment to expend up to \$773,490.92 on affordability assistance; and
- Commitment to expend up to \$247,578.28 towards administrative costs.

Table 5: Spending Plan Summary

Balance as of January 31, 2018		\$	1,634,499.70
Projected Revenue 2019-2025			
Development Fees	+	\$	613,522.68
Payment in lieu of construction	+	\$	0.00
Other funds	+	\$	0.00
Interest	+	\$	21,000.00
Total Revenue	=	\$	2,269,022.38
Projected Expenditures 2019-2025			
Rehabilitation	-	\$	270,000.00
Funds used for Projects			
1. Haven House/Home Front	-	\$	250,000.00
2. Future Affordable Housing	-	\$	617,953.18
3. Foreclosure & Bankruptcy	-	\$	110,000.00
Affordability Assistance	-	\$	773,490.92
Administration	-	\$	247,578.28
Total Projected Expenditure	=	\$	2,269,022.38
Remaining Balance	=	\$	0.00

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