



Appendices to the 2024 Amendment to the 2020 Amended Third Round Housing Element and Fair Share Plan

South Brunswick Township, Middlesex County, New Jersey

Prepared by:

Clarke Caton Hintz | 100 BARRACK STREET | TRENTON, N.J. | 08608



A. 2024 FSHC SETTLEMENT AGREEMENT AND AUTHORIZING RESOLUTION



Authorizing Settlement Agreement in the Matter of the Township of South Brunswick, County of Middlesex Under Docket No. MID-L-4433-17

WHEREAS, in accordance with Mount Laurel IV, on July 8, 2015, South Brunswick filed a complaint seeking a declaration of its compliance with the Mount Laurel doctrine and the Fair Housing Act of 1985, N.J.S.A. 52:27D-301, et seq., and

WHEREAS, the Trial Court rejected the relief sought by the Township in the 2015 Declaratory Judgment Action, revoked the Township's immunity and imposed a new construction fair share obligation for the Gap and Third Round periods, with additional phasing for the Fourth and Fifth Rounds, in excess of 2,251 affordable units on the Township, with at least 1,417 affordable units allocated for the Third Round, 417 affordable units for the Fourth Round, and 417 affordable units for the Fifth Round (the "Wolfson Decision"); and

WHEREAS, the Appellate Division, while affirming most of the trial court's decisions including the revocation of immunity and imposition of builder's remedies, reversed and remanded the Litigation to the Trial Court as to one issue, for the express purpose of requiring the Township to seek approval of a revised Third-Round Housing Element and Fair Share Plan (HEFSP) that is capped at one thousand (1,000) affordable housing units, in accordance with the Appellate Division Decision as to the application of the 1,000-Unit Cap Statute codified at N.J.S.A. 52:27D-307e (the "1,000-Unit Cap Statute" or the "1,000-Unit Cap"); and

WHEREAS, the Township and Fair Share Housing Center, Inc. ("FSHC" or "Fair Share Housing Center"), Township Planning Board (the "Board"), and various other intervening parties including developers that are parties to the Litigation, have filed Petitions and Cross-Petitions for Certification with the New Jersey Supreme Court (collectively the or those "Petitions" and "Cross-Petitions") to review various aspects of the Appellate Division Decision, including and not limited to the issue of whether the Appellate Division Decision as to the application of the 1,000-Unit Cap should be reversed. Those Petitions and Cross-Petitions remain pending for consideration before the New Jersey Supreme Court as of the date of execution of this Agreement; and

WHEREAS, while the matter was pending at the trial court and after case management conferences on March 13, 2024 and March 27, 2024 the trial court entered an Order For Further Proceedings dated April 9, 2024 wherein Hon. Michael V. Cresitello, J.S.C. retained the jurisdiction for the parties to negotiate a resolution and settlement to the Township's Third Round and Fourth Round fair share plans, including a determination of the Third Round and Fourth Round fair share obligations and the mechanisms that will be utilized to address those obligations. This order was followed by orders signed and entered by the Court on May 9, 2024, July 2, 2024, and the order efiled on July 30, 2024, which all specified an intention by the parties and the court to negotiate and resolve and globally settle the Township's Third Round and Fourth Round fair share obligations and all litigation and in the consolidated cases; and

WHEREAS, the Township, FSHC, and the various intervening parties agree to settle the litigation and to present this Agreement to the trial court with jurisdiction over this matter to review, recognizing that the settlement of Mount Laurel litigation is favored because it ends delays and the expense of further litigation and results more quickly in the construction of homes for very-low-, low- and moderate-income households.

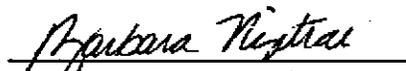
WHEREAS, the Agreement supersedes all prior writings between the parties and, once implemented, will create a realistic opportunity for the construction of a substantial number of new affordable homes for very-low-, low-, and moderate-income households;

NOW THEREFORE BE IT RESOLVED on this 4th day of September, 2024, by the Township Council of the Township of South Brunswick, County of Middlesex, State of New Jersey, that:

1. The Mayor and Township Clerk shall be and are hereby authorized to execute the Settlement Agreement reached between declaratory judgment plaintiff the Township of South Brunswick and Fair Share Housing Center in the Matter of the Township of South Brunswick, County of Middlesex Under Docket No. MID-L-4433-17.

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Ken Bierman, Deputy Mayor
SECONDER:	Joseph Camarota, Councilman
AYES:	Bierman, Camarota, Grover, Hochman, Carley

This is to certify that the foregoing is a true copy of a resolution adopted at the South Brunswick Township Council meeting held on September 4, 2024.



 Barbara Nyitrai, Township Clerk



Adam M. Gordon, Esq.
Laura Smith-Denker, Esq.
Joshua D. Bauers, Esq.
Ashley J. Lee, Esq.
Esmé Devenney, Esq.
Will Fairhurst, Esq.

September 12, 2024

Francis M. Womack, Esq.
Township of South Brunswick
Municipal Building
P.O. Box 190
Monmouth Junction, N.J. 0885-0190

**Re: In the Matter of the Township of South Brunswick, County of Middlesex,
Docket No. MID-L-4433-17**

Dear Mr. Womack:

This letter agreement memorializes the terms of a Settlement Agreement (“Agreement”) reached between declaratory judgment plaintiff the Township of South Brunswick (the “Township” or “South Brunswick”) and Fair Share Housing Center (“FSHC”), a Supreme Court-designated interested party and intervenor in the within declaratory judgment action filed by South Brunswick.

Background

In accordance with Mount Laurel IV, on July 8, 2015, South Brunswick filed a complaint seeking a declaration of its compliance with the Mount Laurel doctrine and the Fair Housing Act of 1985, N.J.S.A. 52:27D-301, et seq.,

The Trial Court rejected the relief sought by the Township in the 2015 DJ Action, revoked the Township’s immunity and imposed a new construction fair share obligation for the Gap and Third Round periods, with additional phasing for the Fourth and Fifth Rounds, in excess of 2,251 affordable units on the Township, with at least 1,417 affordable units allocated for the Third Round, 417 affordable units for the Fourth Round, and 417 affordable units for the Fifth Round (the “Wolfson Decision”).

The Appellate Division, while affirming most of the trial court’s decisions including the revocation of immunity and imposition of builder’s remedies, reversed and remanded the Litigation to the Trial Court as to one issue, for the express purpose of requiring the Township to seek approval of a revised Third-Round HEFSP that is capped at one thousand (1,000) affordable housing units, in accordance with the Appellate Division Decision as to the application of the 1,000-Unit Cap Statute codified at N.J.S.A. 52:27D-307e (the “1,000-Unit Cap Statute” or the 1,000-Unit Cap”).

The Township and Fair Share Housing Center, Inc. (“FSHC” or “Fair Share Housing Center”), Township Planning Board (the “Board”), and various other intervening parties including developers that are parties to the Litigation, have filed Petitions and Cross-Petitions for Certification with the New Jersey Supreme Court (collectively the or those “Petitions” and “Cross-Petitions”) to review various aspects of the Appellate Division Decision, including and not limited to the issue of whether the Appellate Division Decision as to the application of the 1,000-Unit Cap should be reversed. Those Petitions and Cross-Petitions remain pending for consideration before the New Jersey Supreme Court as of the date of execution of this Agreement.

While the matter was pending at the trial court and after case management conferences on March 13, 2024 and March 27, 2024 the trial court entered an Order For Further Proceedings dated April 9, 2024 wherein Hon. Michael V. Cresitello, J.S.C. retained the jurisdiction for the parties to negotiate a resolution and settlement to the Township's Third Round and Fourth Round fair share plans, including a determination of the Third Round and Fourth Round fair share obligations and the mechanisms that will be utilized to address those obligations. This order was followed by orders signed and entered by the Court on May 9, 2024, July 2, 2024, and the order efiled on July 30, 2024, which all specified an intention by the parties and the court to negotiate and resolve and globally settle the Township's Third Round and Fourth Round fair share obligations and all litigation and in the consolidated cases.

The Township, FSHC, and the various intervening parties agree to settle the litigation and to present this Agreement to the trial court with jurisdiction over this matter to review, recognizing that the settlement of Mount Laurel litigation is favored because it ends delays and the expense of further litigation and results more quickly in the construction of homes for very-low-, low- and moderate-income households.

This Agreement supersedes all prior writings between the parties and, once implemented, will create a realistic opportunity for the construction of a substantial number of new affordable homes for very-low-, low-, and moderate-income households.

Agreement Terms

The Township and FSHC hereby agree to the following terms:

1. The parties recognize that this Settlement Agreement occurs after the main trial in this matter, after the Appellate Division has issued a decision, and while the issues contained in that appeal are pending for potential certification before the New Jersey Supreme Court. The parties recognize that, at this juncture, certain issues remain pending before the trial court and the Supreme Court, and also that the parties, absent entering into this Agreement, may assert certain rights to appeal aspects of the trial court's adjudication and/or pursue a Petition for Certification before the Supreme Court. By entering into this Agreement and subject to the trial court approving this Agreement at a duly noticed fairness hearing as specified herein and entering a final judgment of compliance and repose ("JOR") in accordance with the terms specified in this Agreement, the parties (a) agree to abide by the trial court's orders and decisions to this point, including prior determinations by the trial court appointed Special Hearing Officer(s) ("SHO") except as specifically modified herein; (b) agree to resolve the outstanding issues before the trial court, including but not limited to the matters remanded by the Appellate Division decision, in the manner specified herein, and agree that the unpublished Appellate Division decision's interpretation of the 1,000 unit cap shall not bind any party given that the issue was the subject of pending petitions before the Supreme Court at the time of this settlement and that the parties have agreed to settle this issue in a manner that differs from both the trial court's original decision and the Appellate Division decision based upon mutual agreement of the parties; (c) agree to not appeal, and to relinquish and waive all rights to appeal, any and all aspect of the trial court's adjudication since the filing of the declaratory judgment action, and (d) agree to withdraw with prejudice any appeals, petitions for certification, or motions that may be pending as specified further herein. This Agreement contemplates that the SHO may (and in some cases shall) be required to continue to act in lieu of the Planning Board for current parties to the litigation. Such action by the SHO shall not be a basis for the parties not abiding by the terms of this

paragraph. Non-parties to the litigation shall make application to and appear before the Planning Board.

2. The parties agree to act in good faith, with candor, and with all continuity of purpose to ensure the full and swift implementation of the terms of this Agreement and the expeditious provision of the affordable housing agreed to herein, including but not limited to cooperating with efforts of any builders remedy plaintiff or settling developer to construct affordable housing as further provided for in this Agreement. The parties shall work to avoid all delays and to promptly and amicably resolve any disagreements that may arise. Where the parties are unable to reach a prompt accord and/or where disputes arise, the parties agree and accept that the ultimate authority and power to resolve all issues and to take/order all required action and to enforce this Agreement rests with the Superior Court of New Jersey based upon input from the Special Adjudicator and the SHO. Such issues include, but are not limited to, requiring the adoption of or amendment to zoning ordinances, approving site plan applications, requiring the issuance of permits, terminating immunity from exclusionary zoning suits in the event of a material violation of this Agreement, and/or issuing orders of contempt. The Parties agree that, where appropriate, the court may delegate appropriate tasks to the Special Adjudicator and/or SHO subject to the final decision of the court. As an essential term of this Agreement, the Parties accept and agree that where the court takes such actions as the court deems necessary hereunder to ensure the full and swift implementation of this Agreement, including resolving disagreements and/or disputes amongst the parties or ordering appropriate relief, that the parties shall abide by that decision and shall not thereafter challenge nor appeal such a decision. As discussed above, non-parties to the litigation shall make application to and appear before the Planning Board.
3. FSHC agrees that the Township, through adoption of a Housing Element and Fair Share Plan ("HEFSP") consistent with the terms of this Agreement and through the implementation of the HEFSP satisfies its obligations under the Mount Laurel doctrine and Fair Housing Act of 1985, N.J.S.A. 52:27D-301, *et seq.*, for the Prior Round (1987-1999), Third Round (1999-2025), and Fourth Round (2025-2035).
4. FSHC and South Brunswick hereby agree for purposes of settlement that South Brunswick's affordable housing obligations are as follows:

Third Round Present Need (per 2016 Kinsey Report); Fourth Round Present Need to be determined pursuant to paragraph 6	109
Prior Round Obligation (pursuant to <u>N.J.A.C. 5:93</u>)	841
Third Round (1999-2025) New Construction Obligation	1,450
Fourth Round (2025-2035) New Construction Obligation	1,070 including 70-unit non-profit development program (see para 13(l))

5. For purposes of this Agreement, the unadjusted Third Round Obligation of 1,450 shall be deemed to include the Gap Period present need for new construction to address the affordable housing needs of households formed from 1999-2015, a need that was recognized by the Supreme Court in In re Declaratory Judgment Actions Filed By Various Municipalities, 227 N.J. 508 (2017), and the Prospective Need, which is a measure of the affordable housing need anticipated to be generated between July 1, 2015 and June 30, 2025. The parties recognize that the prior trial court decision in this matter identified a Third Round Prospective Need of more than 2,251 including an allocation from the "Gap Period (1999-2015)," and that the trial court previously allocated some elements of this obligation

to the Fourth Round (2025-2035) and Fifth Round (2035-2045). The parties also recognize that this configuration was rejected by the Appellate Division in an unpublished opinion which found that the Township's obligation for the Third Round should be capped at 1,000 units, inclusive of the Gap Period obligation. FSHC and other parties have petitioned for certification of this decision to the New Jersey Supreme Court which petition is currently pending, but undecided. The parties agree to seek approval from the trial court as set forth herein of this final resolution of disputed issues from both the pending petitions for certification and disputed interpretations between the parties of the Appellate Division decision through the Township's acceptance of a Third Round New Construction obligation of 1,450 units and a Fourth Round New Construction obligation of 1,070 units including a 70-unit non-profit development program (see para 13(l)), which obligations shall cumulatively satisfy all new construction need for the 1999-2015 Gap Period and the 2015-2025 and 2025-2035 prospective need periods, with the mechanisms for satisfying these obligations as set forth in this Agreement. The parties agree to a total 1,070 obligation for the Fourth Round, which the parties anticipate will include a total of 802 units and 268 bonuses as specified further in paragraphs 11 and 12, provided that the Township can demonstrate they are eligible for 268 bonuses pursuant to the new bonus standards set forth by P.L. 2024, c. 2. The parties agree that included in those 802 units will be a 70-unit non-profit program, further described in paragraph 13(l) below, which at the time of the Fourth Round approval is not anticipated to provide a realistic opportunity but will provide a realistic opportunity throughout the Fourth Round as set forth therein. The parties agree that allowing the timing established by paragraph 13(l) is a fair and reasonable resolution of pending issues regarding the 1000-unit cap that, as of the date of this settlement, remained pending in petitions for certification before the Supreme Court. The parties agree that no further obligation from the so-called "Gap Period" shall be met in excess of this and that no additional obligation deriving from the "Gap Period" beyond those obligations set forth in this Agreement shall be required in the Third, Fourth, or Fifth Rounds.

6. The Township's actions to meet its Third Round Present Need consist of continued participation in the Middlesex County Home Improvement Program as well as the municipally sponsored South Brunswick Home Improvement Program, which is consistent with the provisions of N.J.A.C. 5:93-5.2. These actions are sufficient to satisfy the Township's Third Round Present Need obligation of 109 units. The parties also recognize that the Township's Fourth Round Rehabilitation Share has not yet been definitively determined. The parties recognize that recent legislation has now codified a methodology for calculating Present Need and both parties agree that South Brunswick's Present Need for the Fourth Round shall be calculated in accordance with the standards set forth in N.J.S.A. 52:27D-304.2 and -304.3. The parties also agree that South Brunswick shall present a plan to address its Fourth Round Present Need when it presents its Fourth Round plan to court in accordance with the terms outlined below. Given the unique circumstances of this case involving disputed issues resulting from a case still pending as of the date of execution of this settlement of the trial court Third Round determinations that included obligations assigned to the Fourth and Fifth Rounds, the parties agree that it is appropriate for the Township's Fourth Round present need and new construction obligation to be determined through the trial court's review of this settlement and that the Township shall not be required to submit an adopted resolution by Jan 31, 2025 to the Affordable Housing Dispute Resolution Program regarding Fourth Round obligation determinations.
7. As stated above, the Township has a Prior Round (new construction) Obligation of 841 units. The Township's Prior Round obligations were previously deemed satisfied by the trial court in an August 8, 2016 order of the trial court finding that South Brunswick had fully-satisfied

its Prior Round obligation. The parties have agreed for the purposes of settlement and subject to approval by the court that South Brunswick's Prior Round obligations shall be calculated to be 841 units and satisfied via the mechanisms approved by Judge Wolfson as modified by this Agreement and listed in the chart below.

Name of Development	Type of AH Unit	# of AH Units	Rental Bonuses	Comment/ Notes
Deans Apartments/Woodhaven Terr.	Family Rentals	40		Prior Cycle
Charleston Place I	Senior Rentals	54		Prior Cycle
Regal Point	Family Sales	5		Inclusionary
Monmouth Walk	Family Sales	43		Inclusionary
Nassau Square	Family Sales	49		Inclusionary
Summerfield	Family Sales	69		Inclusionary
Deans Pond Crossing	Family Sales	20		Inclusionary
Southridge/Southridge Woods	Family Rentals	124	124	Inclusionary
Woodhaven	Family Rentals	80	80	100%
Charleston Place II	Senior Rentals	30		100%
Oak Woods	Senior Rentals	73		100%
Wheeler Rd - Bedrooms	Special Needs	3	3	Group Home
Major Road - Bedrooms	Special Needs	3	3	Group Home
CIL Woods	Special Needs	16	1, cap	
CIL Wynwood	Special Needs	7		
Dungarvin, 30 Cranston – Bedrooms	Special Needs	4		Group Home
Dungarvin - Bedrooms	Special Needs	8		Group Homes
Triple C - 1 of 6 Bedrooms	Special Needs	2		Group Home
		630	211	841

8. As noted above, it is agreed for purposes of this Settlement Agreement, that the Township has a Third Round (new construction) Obligation of 1,450 units, which will be satisfied as follows:

Name of Development	Type of AH Unit	# of AH Units	Rental Bonuses	Comments/ Status
Princeton Orchards	Family Rentals	46	46	Inclusionary
PPF/Matrix – 83 Rentals, 15 Sales	Family	98	83	Inclusionary
SBC – 336 Family, 24 Seniors	Rentals	360	234, cap	Inclusionary
KHov – 30 Fam. Sales, 4 Sp.Nd	Sales/Sp Need	34		Inclus., Gr. Home
American Properties	Family Sales	72		Inclusionary
Pulte/Avalon - 27 Fam.Sale, 5 Sp.Nd	Sales/Sp Need	32		Inclus., Gr. Home
Windsor	Family Rentals	13		Inclusionary
Jaynar/Wilson Farm – 151 of 210	Senior Rentals	151		Inclusionary
Buckingham Pl. Assist. Living	Senior Rentals	23		Inclusionary
Deans Apts/Woodhaven Terr	Family Rentals	40		Ext. of Controls
Charleston Place I and II	Senior Rentals	84		Ext. of Controls
Regal Pt/Monm. Walk/Nassau Sq. 97 (91 Third Rd; 6 Fourth Rd.)	Family Sales	91		Ext. of Controls
Gr. Homes (Wheeler/Major/Dungar.)	Special Needs	10		Ext. of Controls
Triple C - 4 Bal. Bedrooms	Special Needs	4		Group Homes
Comm Opt – BR 13 comp/ 1 fund	Special Needs	14		Group Homes
ARC of Middlesex - Bedrooms	Special Needs	15		Group Homes

Name of Development	Type of AH Unit	# of AH Units	Rental Bonuses	Comments/ Status
RDG/MMHP/TG Acq.	Family Rentals	32		Inclusionary
		1,119*	+ 363	= 1,482*

*The Parties recognize and agree that the chart above provides for the Township to address its Third Round obligation of 1,450 units with a 32-unit family rental surplus which shall be applied to the Fourth Round obligation.

9. While the Township’s declaratory judgment action proceeded through the trial court a number of parties were awarded builder’s remedies and proceeded through a SHO process established by the court and/or were included in the Township’s fair share plan that was previously approved by the trial court. Those parties are in various stages of SHO/Court approval /and resolution compliance, but all will have their affordable housing units counted toward the Township’s Third Round obligations. They are as follows:

- a. Pulte Homes/AvalonBay Communities (hereinafter “Pulte/AVB”) site located at Block 86, Lots 63, 65, and 67 through 71. Pulte/AVB was granted a builder’s remedy and its builder’s remedy site plan was recommended for approval by the SHO on November 20, 2020, as modified on January 19, 2021. That approval recommendation was reviewed and approved by the court in an order dated February 16, 2021. Pulte/AVB has secured all necessary outside agency approvals to begin construction, with the exception of approval for public water service, which approval remains the subject of the Township’s resolution compliance process. The Township agrees that upon approval of this agreement by the trial court that it withdraws all objections to the builder’s remedy, zoning, site plan approval, and development plans of the Pulte/AVB site that were previously approved by the SHO and trial court. The Township further agrees to expedite all outstanding items of resolution compliance for the Pulte/AVB project.
- b. Princeton Orchards (hereinafter “PO”) site located at Block 31, Lots 30.012 and 35.09. PO was granted a builder’s remedy and PO ultimately entered into a settlement agreement with South Brunswick on March 19, 2018, which was approved by the Court after a Fairness Hearing in an order dated May 22, 2018 and its settlement site plan was approved by the Board on February 5, 2020. PO has secured all necessary approvals to begin construction.
- c. PPF/Matrix (hereinafter “PPF”) site located at Block 6, Lots 15.021 and 15.022 and Block 11, Lots 13.02 and 15.03. PPF was granted a builder’s remedy and PPF ultimately entered into a settlement agreement with South Brunswick on October 8, 2020, which was approved by the Court after a Fairness Hearing in an order dated January 28, 2021 and its settlement site plan was approved by the Board. PPF has secured many, but not all necessary approvals to begin construction.
- d. South Brunswick Center (hereinafter “SBC”) site located at intersection of Route 1 and Northumberland Way, Block 86, Lots 22.041, 89.13 and 89.023. SBC was granted a builder’s remedy and its builder’s remedy site plan was recommended for approval by the SHO on February 13, 2020. That approval recommendation was reviewed and approved by the court in an order dated September 8, 2020. SBC has begun construction. The Township agrees that upon approval of this agreement by the trial court that it withdraws all objections to the builder’s remedy, zoning, site plan approval, and development plans, and building permits applied for, or issued, for the SBC site.
- e. K. Hovnanian/ Bellemead (hereinafter “KHov”) site located at Block 80, Lot 3.024. KHov was granted a builder’s remedy and its builder’s remedy site plan was

recommended for approval by the SHO on July 23, 2020. That approval recommendation was reviewed and approved by the court in an order dated December 9, 2020. KHov has secured all necessary approvals to begin construction. The Township agrees that upon approval of this agreement by the trial court that it withdraws all objections to the builder's remedy, zoning, site plan approval, and development plans of the KHov site.

- f. American Properties (hereinafter "American Prop") site located at Block 79, Lots 1.06, 11 and 12. American Prop was granted a builder's remedy and its builder's remedy site plan was recommended for approval by the SHO on March 7, 2022. That approval recommendation was reviewed and approved by the court in an order dated July 21, 2022. American Prop has secured all necessary approvals to begin construction. The Township agrees that upon approval of this agreement by the trial court that it withdraws all objections to the builder's remedy, zoning, site plan approval, and development plans of the American Prop site.
- g. Windsor Associates (hereinafter "Windsor") site located at Block 85, Lot 17.014. Windsor was granted a builder's remedy and its builder's remedy plan is under review by the SHO. The Township agrees that upon approval of this agreement by the trial court that it withdraws all objections to the builder's remedy, zoning, and, at such time the SHO recommends approval of and the trial court approves the development plans of the Windsor site, the Township agrees to withdraw all objections to the development plans.
- h. RDG/MMHP/TG Acq. (hereinafter "TG Acq.") site located at Block 95, Lots 48.011, 49, 50.02, 50.03, 50.04, 50.06, and 50.07. TG Acq. was granted a builder's remedy and its builder's remedy plan is under review by the SHO. The Township agrees that upon approval of this agreement by the trial court that it withdraws all objections to the builder's remedy, zoning, and at such time the SHO recommends approval of and the trial court approves the development plans of the TG Acq. site, the Township agrees to withdraw all objections to the development plans..
- i. Jaynar/Wilson Farm (hereinafter "Jaynar") is a site located at Block 96.24, Lot 24.002. On June 26, 2019 the Township entered into a redeveloper's agreement with Jaynar for the construction of 210 age-restricted affordable units. In 2019, the redeveloper received preliminary site plan approval and in 2024, it is anticipated the redeveloper will receive final site plan approval.
- j. Ridge Road Properties, LLC ("Ridge Road") is the owner of real property located at Block 79, Lots 4.02, 4.031, 4.032, 4.04, 6.01 and 6.03 ("Ridge Road Site"). Ridge Road was granted a builder's remedy to construct an inclusionary development consisting of 264 affordable units. After Ridge Road was granted its builder's remedy, it entered into a settlement agreement dated April 26, 2022, with the Township and Township Planning Board that allows for the construction of a warehouse/light industrial development on the Ridge Road Site ("Ridge Road Settlement"). The Township and Township Planning Board each reaffirm and agree to be bound by their respective obligations required by the Ridge Road Settlement including but not limited to the requirement of Ridge Road to pay \$8,065,000 towards the production of affordable housing in the Township or the 2.5 percent non-residential development fee, whichever is greater, which shall be used towards the mechanisms in the Township's Fourth Round Housing Element and Fair Share Plan with the process for determining the use of those funds and specific mechanisms as set forth in this settlement and which shall not be used for administrative costs. The parties acknowledge that the Ridge Road Settlement requires by its own terms review at a fairness hearing which has not occurred and will need to be scheduled by the trial court in order for the agreement to take effect.

The parties acknowledge that FSHC is not a party to the Ridge Road Settlement and is not bound by it or under any obligation to defend it, and FSHC reserves all rights to ensure an adequate plan is in place to ensure appropriate buffering and circulation between the proposed warehousing uses on the Ridge Road site and any neighboring proposed inclusionary affordable housing developments, which may include an objection to the settlement agreement between Ridge Road Partners and the Township and Planning Board at the fairness hearing to be scheduled on that settlement in accordance with that agreement. In the event that any legal challenge invalidates the Ridge Road Settlement, Ridge Road shall construct the inclusionary development it was granted as a builder's remedy which the Township may count towards its Fourth Round Obligation or any future obligation. In the event Ridge Road proceeds with its inclusionary residential development, the development application shall proceed before and be reviewed by a Special Hearing Officer appointed by the court.

10. The process for approval of the settlement agreement is as follows:
 - a. Upon execution of the settlement agreement the parties agree to jointly request a joint fairness/compliance hearing from the court which the parties expect to take place in October/November 2024.
 - b. By October 1, 2024 the Township shall provide a draft/proposed Third Round HEFSP consistent with the terms of this Agreement to FSHC and the Special Adjudicator. FSHC and the Special Adjudicator shall provide any comments to the Draft/Proposed Third Round HEFSP by October 4, 2024. The Township shall adopt and endorse a final Third Round HEFSP and all Third Round implementing ordinances consistent with the terms of this Agreement before the compliance hearing.
 - c. Through the hearing to take place in November 2024 the parties anticipate requesting approval of the settlement agreement including the obligations set forth in paragraph 4 as to Third Round Present Need and Third and Fourth Round New Construction Obligation, which obligations represent a comprehensive and final settlement of the disputed issues around the trial court and Appellate Division's decisions on fair share obligations for the Gap Period (1999-2015), Third Round (2015-2025), and Fourth Round (2025-2035).
 - d. Through the same November hearing, the parties anticipate requesting a finding of compliance with the settlement agreement and the Mount Laurel doctrine as to the Township's Third Round affordable housing obligations such that the Township shall be eligible for a Third Round judgment of repose. The parties agree to jointly request that the court enter an amended final judgment as to the Township's Third Round fair share obligations subsequent to the hearing to take place in November. The final judgment will replace, in full, the final judgment of repose entered by the trial court on June 6, 2021. The final Third Round judgment shall be appealable as of the date of that judgment by parties other than the parties to this agreement, who waive their right of appeal pursuant to paragraph 1., except with respect to the builders remedies awarded to the parties hereto in the June 6, 2021 Judgment and Orders of Site Plan approval issued on recommendations of the SHOs affirmed by the Appellate Division in its July 2023 decision, which builders remedy awards and site plan approval orders shall remain final and non-appealable in all respects as to all parties, interested persons, and objectors.
 - e. The parties also agree to request that the court continue to retain jurisdiction as to the Township's Fourth Round fair share plan as contemplated in the April 9, 2024 order and to approve a Fourth Round fair share obligation of 1,070 units including a 70-unit non-profit program as described above. The parties agree to jointly

request the court provide a schedule for the finalization of the Township's Fourth Round fair share plan to create a realistic opportunity to address the 1,070-unit, including 70-unit non-profit program, Fourth Round fair share obligations by March 31, 2025. All parties agree to request a Fourth Round fairness and compliance hearing, requesting entry of a final judgment of compliance and repose for the Fourth Round to take place on or before May 31, 2025. The present need obligation and compliance for the Fourth Round will also be determined as part of this hearing, consistent with the present need standards set forth in N.J.S.A. 52:27D-304.2 and -304.3. Given the unique circumstances of this case involving disputed issues resulting from a case still pending as of the date of execution of this settlement of the trial court Third Round determinations that included obligations assigned to the Fourth and Fifth Rounds, the parties agree that it is appropriate for the Township's Fourth Round present need and new construction obligation to be determined through the trial court's review of this settlement and that the Township shall not be required to submit an adopted resolution by Jan 31, 2025 to the Affordable Housing Dispute Resolution Program regarding Fourth Round obligation determinations.

- f. The parties agree that if the Township is not able to adopt/endorse a final fair share plan and adopt implementing ordinances and resolutions that create a realistic opportunity to address the 1,070-unit obligation, including 70-unit non-profit program as provided for in paragraph 13(l) by March 31, 2025, the Township will submit its Fourth Round Housing Element and Fair Share Plan to the Affordable Housing Dispute Resolution Program as set forth in paragraph 12 below.
- g. Upon the entry of an Order by the Trial Court that confirms that this agreement is fair and reasonable, the Township and FSHC shall withdraw their petition and cross-petition for Certification within 7 days.

11. As noted above, it is agreed for purposes of this Settlement Agreement, that the Township has a Fourth Round (new construction) Obligation of 1,070 units, which the Township proposes will be satisfied as follows, including a 70-unit obligation for non-profit development referenced in paragraph 13(l):

Name of Development	Type of AH Unit	# of AH Units	Bonus	Comments/Status
Third Rd Surplus - TG/RDG	Family Rentals	32		Inclusionary
Menowitz/KHov Cam Cross	Family Sales	8		Inclusionary
East Meadow	Family Sales	6		Inclusionary Off-Site
Sassman	Family Sale	1		Inclusionary
Harbor Assisted Living	Senior Rentals	15	12*	Inclusionary
Jaynar/Wilson Farm – bal.	Senior Rentals	59		Inclusionary
RPM Mixed Use – Ph I	Family Rentals	63	63**	Tax Credit Mixed Income
RPM Family/Supp – Ph II	44FRent, 26SN	70	70**	100%
Days Inn Redevelopment	Family Rentals	30	15***	Inclus./Reconstruction
4126 Route 1 Redev	Family	24		Inclusionary
New Windsor	Family Rentals	3		Inclusionary
Sonesta Redevelopment	Family Rentals	40	20***	Inclus./Reconstruction
Site(s) TBD	Senior Rentals	50		Inclusionary
Site(s) TBD	Family Rentals	19		Inclusionary
REACH New	Family	34	34****	Market-to-Affordable
REACH Comp 29 Fam, 1Sen	Sales	30	30****	Market-to-Affordable
Summerfield (69), Deans Pond Crossing (20) Mon Walk (6)	Family Sales	95		Ext. of Controls
New Senior Site (2 phases)	Senior Rentals	115		100%
New Road, 5 or 24	Family Rental	5		
Dungarvin - agreement	Special Needs	3	3*****	Group Home
New Group Homes	Special Needs	30	21*****	Group Homes
Non-profit program	Family	70		See paragraph 13(l)
		802	268	1,070

* N.J.S.A. 52:27D-311(k)(4) - Max Senior Bonus = $240 \times 10\% = 24 \times 0.5$ bonus = 12.

** N.J.S.A. 52:27D-311(k)(8)(b) – 100% Bonus on RPM site $(63 + 70) \times 1.0$ bonus = 63 + 70

*** N.J.S.A. 52:27D-311(k)(6) – Bonus on prior commercial space $(30 + 40) \times 0.5$ bonus = 15 + 20

**** N.J.S.A. 52:27D-311(k) (10) – Bonus on REACH $(30 + 34) \times 1.0$ bonus = 30 + 34. In order to receive this bonus, the Township will have to demonstrate as part of the review of its Housing Element and Fair Share Plan compliance with the statutory requirement that "A municipality may only rely on this bonus credit as part of its fair share plan and housing element if the municipality demonstrates that a commitment to follow through with this market to affordable agreement has been made and: (a) this agreement has been signed by the property owner; or (b) the municipality has obtained ownership of the property." If such requirements cannot be demonstrated, the municipality shall demonstrate compliance with alternative bonuses or units as part of its Housing Element and Fair Share Plan.

***** N.J.S.A. 52:27D-311(k) (1) – Bonus on Special Needs units $(3 + 30) \times 1.0$ bonus = 33, capped at 24

12. The parties recognize that some portions of South Brunswick's Fourth Round Fair Share Plan are not definitively determined, including on sites that have been identified and sites listed as TBD, and require additional preparation on behalf of South Brunswick, as more specifically described in paragraph 13 below. The Township agrees that it shall provide updates to FSHC at least once per month until these items are resolved. The parties agree and recognize that these elements of the HEFSP necessarily cannot be approved by the court at a hearing until sites are specifically identified.

The Township agrees that it shall identify all necessary information to demonstrate a realistic opportunity for the remainder of its Fourth Round fair share obligations by March 31, 2025. The parties shall jointly request a fairness and compliance hearing as to the remaining elements of the Fourth Round fair share plan to take place by May 31, 2025. If all elements of the Fourth Round plan are approved by the court at the fairness and compliance hearing, the Township agrees to prepare and present a submission of the final judgment of compliance and repose to the Affordable Housing Dispute Resolution Program (the "Program") by June 30, 2025 which the parties agree will be a submission for informational purposes.

The parties agree that any element of the Township's fair share plan that is not sufficiently documented through adopted ordinances and resolutions to demonstrate a realistic opportunity or crediting documentation for constructed units by March 31, 2025 and/or are rejected at the fairness and compliance hearing to take place by May 31, 2025 shall be presented to the Program pursuant to P.L. 2024, c. 2 in accordance with the timeframes set forth therein, and that in that instance the Township shall submit the orders entered by the court approving mechanisms within the Fourth Round plan with any remaining elements not approved by the court as part of an updated HEFSP to the Program by June 30, 2025. The parties recognize and agree that amendments to this agreement may be necessary to ensure and demonstrate a realistic opportunity on the remaining sites necessary to address the Township's Fourth Round obligation. The parties agree to work in good faith to reach these as potential amended agreements, as necessary, before March 31, 2025.

13. The Township's plan for each individual site utilized to address the Fourth Round, other than the TBD sites, that is not yet built or described above is further described below:
 - a. 4112-4126 Route 1 Redevelopment – Block 84/Lot 4.05, Route 1. A Redevelopment Plan was approved by the Township for the redevelopment of Block 84/Lot 4.05 for a total of 118 multi-family housing units with 20% or 24 affordable family rental units to be provided on-site. The Township shall provide a redeveloper's agreement for this site demonstrating the owner's agreement to the rezoning within sixty (60) days of the court's approval at the fairness hearing.
 - b. Sonesta Hotel/ Avia NJ Deerpark Redevelopment – Block 97/Lot 13.012. There is a fully executed Redeveloper's Agreement, dated April 22, 2024, between the Township and Avia NJ Deerpark for the redevelopment and reconstruction of the former Sonesta hotel into a total of 200 housing units including a 20% set-aside or 40 affordable family rental units.
 - c. Days Inn Redevelopment – The Township proposes to prepare an Area In Need or Redevelopment Study for the possible redevelopment and reconstruction of the former

Days Inn hotel into a total of 150+/- housing units including a 20% set-aside or 30 affordable family rental units. If the site is found to be an Area In Need of Redevelopment, the Township shall provide a draft redevelopment plan and a letter from the owner supporting redevelopment of the site as part of its HEFSP adopted by March 31, 2025. If the site is not found to be an Area in Need of Redevelopment the Township shall otherwise demonstrate how this site creates a realistic opportunity for the construction of 30 affordable housing units by March 31, 2025.

- d. Windsor Site expansion - Family Inclusionary Zoning - Block 85, Lot 17.014; Northumberland Way. Proposed Inclusionary Zoning site for a total of 15 additional multi-family housing units with 20% or 3 affordable family rental units to be provided on-site. The Township shall provide the adopted zoning ordinance within sixty (60) days of the court's approval at the fairness hearing.
- e. New Road – Block 95, Lot 46.051 – the Township proposes to rezone the site for either a small, DCA-funded 100% development of up to 24 total affordable family rental units (the Township shall address the funding and development timetable requirements in N.J.A.C. 5:93-5.5) or for an inclusionary development of 24 total housing units with a 20% set-aside to produce five (5) affordable family rental units.
- f. Extension of Expiring Controls – Summerfield (70 existing affordable family sale units) and Deans Pond Crossing (20 existing affordable family sale units) have controls that are scheduled to expire in the Fourth Round time period (July 1, 2025 to June 30, 2035). The Township will extend these controls in accordance with COAH's extensions of control regulations at N.J.A.C. 5:97-6.14 which are incorporated by reference pursuant to N.J.S.A. 52:27D-311(m).
- g. Future Senior Affordable Housing Site – As part of its Fourth Round plan the Township agrees to create a realistic opportunity by March 31, 2025 for the construction of a 108-unit, up to two-phased 100% Affordable Housing development.
 - i. The parties agree that this development may be, but is not required to be, age-restricted. The development may also include supportive and/or special needs housing units as may be required to receive the maximum score under the Qualified Allocation Plan by the New Jersey Housing and Mortgage Financing Agency.
 - ii. By March 31, 2025, the Township and FSHC shall agree upon an "available," "approvable," "developable," and "suitable" location, as those terms are defined in N.J.A.C. 5:93-1.3, whereon a 100% senior affordable development may be constructed.
 - iii. The parties agree to work in good faith between now and March 31, 2025 to identify an agreeable location and shall amend this agreement, as needed, to include the identified location for the 108-unit, 100 percent affordable housing development. In the event the parties cannot agree upon an "available," "approvable," "developable," and "suitable" site the Township shall present this site to the "Program" as described above pursuant to N.J.S.A. 52:27D-304.1.
 - iv. In accordance with N.J.A.C. 5:93-5.5, the Township recognizes that it must provide evidence that the municipality has adequate and stable funding for any non-inclusionary development. The Township is required to provide a pro forma of both total construction costs and sources of funds and documentation of the funding available to the municipality and/or project

- sponsor, and any applications still pending. In the case where an outside application is still pending the municipality shall provide a stable alternative source, such as municipal bonding, in the event the funding request is not approved. As a condition of any judgment in this matter the Township agrees to meet these obligations by adopting a resolution of intent to bond for any shortfalls.
- v. In accordance with N.J.A.C. 5:93-5.5, for non-inclusionary developments, a construction or implementation schedule, or timetable shall be submitted for each step in the development process: including preparation of a site plan, granting of municipal approvals, applications for State and Federal permits, selection of a contractor and construction. The schedule shall provide for construction to begin within no more than two (2) years of the approval of the Township's Fourth Round HEFSP. Once a site is selected the Township shall work with the developer to produce the construction schedule which shall be submitted to FSHC and the court prior to final judgment.
- h. REACH program – The Township will continue the implementation of its successful REACH Program (a market-to-affordable program) for a total of 34 affordable family sale units at a rate of 4 per year over the Fourth Round until the program is completed. The Township will address COAH's market-to-affordable program regulations at N.J.A.C. 5:97-6.9 as incorporated by reference pursuant to N.J.S.A. 52:27D-311(m).
- i. Supportive Housing/Group Home program – During the period between now and July 1, 2030 the Township shall facilitate the construction of 30 more additional supportive housing and/or group home units/bedrooms.
- i. On or before March 31, 2025 the Township shall provide a detailed and specific plan to create a realistic opportunity to construct and/or convert dwellings into at least 30 additional supportive housing units. The plan document shall include an outline of which providers and locations the Township is targeting to construct these units.
 - ii. The Township shall provide annual reports outlining its progress in meeting the goals specified in the plan.
 - iii. The Township shall be required to bond and/or utilize the affordable housing trust fund as needed in order to facilitate the construction of the 30 group home bedrooms.
 - iv. The parties agree that this program will need to be reviewed and approved by the court at a fairness hearing in the Spring of 2025 as described above.
- j. Non-profit Affordable Housing Development Program - During the period between now and July 1, 2035, South Brunswick shall facilitate the construction of 70 new rental/ownership affordable units for families within the Township in 100% scattered site affordable housing developments, subject to the following parameters.
- i. The 70 units shall be constructed via agreements between the Township and non-profit affordable housing developers which may include a variety of roles for the Township in supporting the development.
 - ii. South Brunswick shall not be required to facilitate construction of a single, 70-unit all-affordable development.
 - iii. The parties agree that these seventy family affordable units shall be pro-rated to ten units per year in the first seven years of the

- Fourth Round. The Township agrees that it will annually provide a report to FSHC and the Special Adjudicator that demonstrates how it has created a realistic opportunity for the construction of the previous year's ten units and how it plans to create a realistic opportunity for the construction of the following year's ten units, in accordance with the standards for 100% affordable developments set forth in N.J.A.C. 5:93-5.5. The first report shall be due on July 1, 2026 with the Township providing a report annually on July 1st thereafter through July 1, 2033.
- iv. In furtherance of engaging the non-profit development community, the Township agrees that it shall conduct an annual meeting noticed to non-profit developers of its Mount Laurel subcommittee. The notice for this meeting shall solicit proposals from non-profit developers for how they can contribute to the Township's non-profit affordable housing program.
 - v. The parties agree that it is appropriate to allow the construction of the units at a 10-unit per year pace during the first seven years of the Fourth Round due to the unique circumstances and history of this matter and aspects that have been disputed by the parties throughout of the original trial court ruling about deferring certain obligations over time.
14. The Township agrees to adopt an ordinance requiring a mandatory affordable housing set aside for all new multi-family residential developments of five (5) units or more at a density of at least six (6) units per acre that becomes permissible through either a use variance, a density variance increasing the permissible density at the site, a rezoning permitting multi-family residential housing where not previously permitted, or new redevelopment plan. The set aside of affordable units for all developments will be 20%. The provisions of the ordinance shall not apply to residential expansions, additions, renovations, replacement, or any other type of residential development that does not result in a net increase in the number of dwellings of five or more. The form of the Ordinance shall be finalized and the ordinance adopted prior to the Third Round final judgment being issued in this matter through collaboration between FSHC, the Special Adjudicator, and representatives of the Township. Neither this mandatory set-aside ordinance nor this Settlement Agreement gives any developer the right to any such rezoning, variance or other relief, or establish any obligation on the part of the Township to grant such rezoning, variance or other relief.
15. The Township will address its Third Round Obligations in accordance with the following standards as agreed to by the Parties and reflected in the HEFSP:
- a. Third Round bonuses will be applied consistent with former N.J.A.C. 5:93-5.15(d).
 - b. At least 50 percent of the units addressing the Third Round Obligation will be affordable to very-low-income and low-income households with the remainder being affordable to moderate-income households.
 - c. At least 25 percent of the Third Round Obligation will be met through rental units, including at least half in rental units available to families.
 - d. At least half of the units addressing the Third Round Obligation in total must be available to families.

- e. The HEFSP will be consistent with the current Third Round age-restricted cap of 25% and will not include a claimed credit toward the Township's current fair share obligation for age-restricted units that exceed 25% of all units developed or planned to meet the cumulative Prior Round and Third Round fair share obligation. Any such "excess" age-restricted affordable housing units may be credited against any future obligation.
 - f. Thirteen percent (13%) of all affordable units referenced in this Agreement, excepting those units that were constructed or granted preliminary or final site plan approval prior to July 1, 2008, shall be very-low-income units for households earning thirty percent (30%) or less of the median income pursuant to the Fair Housing Act, N.J.S.A. 52:27D-301, et seq. ("FHA"), with half of the very low income units being available to families.
 - g. All new construction units shall be adaptable in conformance with P.L.2005, c.350/N.J.S.A. 52:27D-311a and -311b and all other applicable law.
16. The Township will address its Fourth Round Obligation in accordance with the standards set forth in P.L. 2024, c. 2, including but not limited to with respect to:
- a. Fourth Round Bonuses shall be consistent with P.L. 2024, c. 2 such that rental bonuses are no longer permitted and only those bonuses listed in N.J.S.A. 52:27D-311(k)(1) through (10) may be applied toward a Fourth Round obligation. The bonus cap remains at 25 percent of the Fourth Round obligation.
 - b. The Township agrees that it shall not exceed the age-restricted cap found in N.J.S.A. 52:27D-311(l), which requires age-restricted units to be capped at 30 percent of the overall Fourth Round affordable housing units which is applied to the Fourth Round obligation exclusive of bonuses or to the total of Fourth Round affordable housing units, i.e. a maximum of 240 units.
 - c. Family units – pursuant to N.J.S.A. 52:27D-311(l), the municipality shall satisfy a minimum of 50 percent of the actual affordable housing units, exclusive of any bonus credits, i.e. a minimum of 401 units, created to address its Fourth Round affordable housing obligation through the creation of housing available to families with children and otherwise in compliance with the requirements and controls established pursuant to section 21 of P.L.1985, c.222 (C.52:27D-321).
 - d. Rental and family rental units - pursuant to N.J.S.A. 52:27D-311(l), at least 25 percent of the affordable housing units, exclusive of any bonus credits, i.e. a minimum of 201 units, shall be addressed through rental housing, including at least half as available to families with children.
 - e. Very Low-Income Units – pursuant to N.J.S.A. 52:27D-329.1, thirteen percent (13%) of all affordable units referenced in this Agreement shall be very-low-income units for households earning thirty percent (30%) or less of the median income, with half of the very low income units being available to families.
 - f. All new construction units shall be adaptable in conformance with P.L.2005, c.350/N.J.S.A. 52:27D-311a and -311b and all other applicable law.

17. In all developments that produce affordable housing, the Township agrees that unless varied by a prior court order of the trial court or the SHO, the below terms shall apply. In the event that any of the following terms are inconsistent with a prior order of the trial court or SHO for an approved development, the terms of that prior order of the trial court or SHO shall control:
- a. All of the affordable units shall fully comply with the Uniform Housing Affordability Controls, N.J.A.C. 5:80-26.1, et seq. ("UHAC"), including but not limited to the required bedroom and income distribution, with the sole exception that thirteen percent (13%) of the affordable units within each bedroom distribution shall be required to be for very low income households earning thirty percent (30%) or less of median income pursuant to the Fair Housing Act, and controls on affordability. Affordability controls shall remain on affordable units unless and until the Township, in its sole discretion, takes action to extend or release the unit from such controls after the applicable deed restriction time period. If the Township acts to release the unit from such controls, affordability controls shall remain in effect until the date on which a rental unit shall become vacant due the voluntary departure of the income-eligible occupant household in accordance with N.J.A.C. 5:80-26.11(b). All of the affordable units approved prior to the passage of P.L. 2024, c. 2 shall be subject to the requirements of UHAC as modified by this paragraph it was written at the time of the approval. All affordable units approved after the passage of P.L. 2024, c. 2 and not part of a site previously approved as part of the Township's Judgment of Compliance and Repose of July 6, 2021, and that are subject to the revisions to UHAC required pursuant to N.J.S.A. 52:27D-313.3(b) shall be subject to affordability controls of at least forty (40) years for rental units and at least thirty (30) years for for-sale units from the date of initial occupancy and affordable deed restrictions and otherwise governed by the revised form of UHAC.
 - b. The parties recognize that the Housing and Mortgage Financing Agency ("HMFA") is required to adopt updated UHAC regulations before the end of the year. The Township agrees to review its Affordable Housing Ordinance and other ordinances to ensure that it complies with the most up to date requirements of UHAC per the timing required per N.J.S.A. 52:27D-313.3(b) and revise those ordinances accordingly as part of its Fourth Round Housing Element and Fair Share Plan and implementing ordinances.
 - c. In inclusionary developments, to the extent practical and cognizant of differing unit type and tenure, the affordable units shall be integrated with the market-rate units, and the affordable units shall not be concentrated in separate building(s) or in separate area(s) or floor(s) from the market-rate units. In buildings with multiple dwelling units of similar tenure, this shall mean that the affordable units shall be generally distributed within each building with market units. The residents of the affordable units shall have full and equal access to all of the amenities, common areas, and recreation areas and facilities as the residents of the market-rate units.
 - d. Construction of the affordable units in inclusionary developments shall be phased in compliance with N.J.A.C. 5:93-5.6(d).
 - e. The affordable units shall be affirmatively marketed in accordance with UHAC and applicable law. The affirmative marketing shall include the community and regional organizations identified in this agreement, and it shall also include posting of all affordable units on the New Jersey Housing Resource Center website in accordance with applicable law.

18. The Township and/or its Administrative Agent shall add the following entities to the list of community and regional organizations in its affirmative marketing plan, pursuant to N.J.A.C. 5:80-26.15(f)(5):
 - a. Fair Share Housing Center, Inc. (510 Park Boulevard, Cherry Hill, New Jersey 08002); the New Jersey State Conference of the NAACP, the Latino Action Network, the New Brunswick, Plainfield Area, Perth Amboy, and Metuchen/Edison branches of the NAACP, the Central Jersey Housing Resource Center, and Supportive Housing Association and other appropriate non-profits and Civil Rights organizations that request to be notified of available units, and shall, as part of its regional affirmative marketing strategies during its implementation of any affirmative marketing plan, provide direct notice to those organizations of all available affordable housing units, along with copies of application forms. The Township also agrees to require any other entities, including developers, persons or companies retained to do affirmative marketing, to comply with these notice requirements.
 - b. As part of its regional affirmative marketing strategies during implementation of its fair share plan, the Township and/or its Administrative Agent shall also provide notice of all available affordable housing units to the above-referenced organizations and shall ensure all affordable units are posted on the New Jersey Housing Resource Center website in accordance with applicable law.
19. Income limits for all units that are part of the HEFSP and for which income limits are not already established through a federal program exempted from the Uniform Housing Affordability Controls pursuant to N.J.A.C. 5:80-26.1 will be consistent with the table of 2024 Affordable Housing Regional Income Limits by Household Size prepared by the Affordable Housing Professionals of New Jersey, dated April 12, 2024, a copy of which is attached hereto as **Exhibit I**, as may be updated or superseded by similar calculations consistent with former COAH regulations and UHAC.
20. The previously approved Township Third Round Spending Plan which was adopted in accordance with the prior rulings of the trial court in this matter is deemed to be appropriate, and FSHC agrees to cooperate with and support South Brunswick's request for approval of any needed Spending Plan amendment by the Court consistent with those prior rulings, including an express judicial determination that expenditures of funds contemplated under the Spending Plan constitute a "commitment" for expenditure pursuant to N.J.S.A. 52:27D-329.2 and 329.3, with the four-year time period for expenditure designated pursuant to those provisions beginning to run with the entry of an amended final judgment in this matter that includes approval of an Amended Third Round Spending Plan in accordance with the provisions of In re Tp. of Monroe, 442 N.J. Super. 565 (Law Div. 2015) *aff'd* 442 N.J. Super. 563. Any future trust fund reporting shall address P.L. 2024, c. 2. The Department of Community Affairs is now required to review and update the regulations regarding affordable housing trust funds and spending plans. Those updated regulations are required to be adopted by December 2024. The Township agrees that it shall prepare a Fourth Round Spending Plan in accordance with those regulations and present that Fourth Round Spending Plan along with its Fourth Round HEFSP on March 31, 2025 pursuant to the process set forth in paragraph 12.
21. On February 15, 2025, and every anniversary thereafter, the Township shall address the unit monitoring and trust fund reporting requirements of N.J.S.A. 52:27D-329.2(a)(3), N.J.S.A. 52:27D-329.4(b)(2), and N.J.S.A. 40:55D-8.4(c)(4).

22. For the midpoint realistic opportunity review, the Township shall address the requirements of N.J.S.A. 52:27D-313.
23. The parties agree that due to the unique circumstances of this case and litigation over obligations across multiple affordable housing rounds, upon the trial court entering an order approving this Agreement following a duly noticed Fairness Hearing, any binding legal determination by the Judiciary, the Legislature, or any administrative subdivision of the Executive Branch that, if applied, would result in a lower or higher affordable housing obligation for the Township for the Third or Fourth Round shall be inapplicable and the Township shall neither have a reduced or increased affordable housing obligation for the Third and Fourth Rounds. Rather the terms of this Agreement shall continue to control and no subsequently enacted, binding legal determination by the Judiciary, the Legislature, or any administrative subdivision of the Executive Branch shall provide a basis for seeking leave to amend any provision of this Agreement or to amend an order or judgment pursuant to R. 4:50-1. Regardless of any such legal determination, South Brunswick shall be obligated to implement the Third and Fourth Round HEFSPs prepared, adopted and endorsed as a result of this Agreement, including adopting and/or leaving in place any site-specific zoning adopted or relied upon in connection with the HEFSP approved pursuant to this Agreement; and otherwise fulfilling fully the fair share obligations as established herein.
24. This Agreement must be approved by the Court following fairness hearings for the Third Round and Fourth Round as described above and as required by Morris Cty. Fair Hous. Council v. Boonton Twp., 197 N.J. Super. 359, 367-69 (Law Div. 1984), aff'd o.b., 209 N.J. Super. 108 (App. Div. 1986); East/West Venture v. Borough of Fort Lee, 286 N.J. Super. 311, 328-29 (App. Div. 1996). The Township will present its planner as a witness at these hearings. FSHC agrees to support this Agreement at the fairness hearings. If the Third Round plan and/or the fair share numbers set forth in this Agreement is rejected by the Court at the initial fairness hearing the agreement shall be null and void; if any portion of the Fourth Round Housing Element and Fair Share Plan is rejected by the Court at a fairness hearing, the procedures set forth in paragraph 12 shall apply. In the event the Court approves this Agreement, subject to the provision of Paragraph 10(d) regarding continued finality and non-appealability of the builders remedy awards and site plan approval orders affirmed by the Appellate Division, the parties contemplate the municipality will receive a comprehensive adjudication of the Township's fair share obligations as set forth above and a final judgment of compliance and repose as to its Third Round Housing Element and Fair Share Plan that will supersede the prior Third Round judgment of compliance and repose entered by the trial court on July 6, 2021, as well as a Fourth Round final judgment of compliance and repose pursuant to the process specified in paragraph 12 of this Agreement.
25. As part of the earlier Third Round judgment of repose, the Township of South Brunswick was required to pay attorney's fees and costs of FSHC in the amount of \$602,259, which already has been fully paid. FSHC asserts the Township already waived any right to further contest, and the Township agrees as part of this agreement to waive any claim it may have to further contest. In light of the additional time and resources expended since then by FSHC, including to review compliance documents, negotiate and enter into this agreement, and to conduct a fairness and an additional compliance hearing, the Township agrees to pay FSHC's additional attorney's fees and costs of an additional \$75,000 to be used at the discretion of FSHC for the provision of affordable housing opportunities/assistance within sixty (60) days after entry by the Court of an Order approving this Agreement pursuant to a duly-noticed fairness hearing and such Order becoming final and unappealable as part of

the entry of a Third Round final judgment. The Parties agree that neither shall request or otherwise make a claim against the other for payment or reimbursement of any further legal fees and/or costs incurred in connection with the within Declaratory Judgment Action and/or any related actions or proceedings, other than a motion to enforce litigant's rights or separate action pursuant to paragraph 27 of this Agreement.

26. If an appeal is filed of the Court's approval or rejection of this Agreement, the Parties agree to defend the Agreement on appeal, including in proceedings before the Superior Court, Appellate Division and New Jersey Supreme Court, provided, however, that each Party shall be responsible for its own legal fees for any such proceedings and shall have the sole discretion as to litigation strategy and the extent of resources devoted thereto. The Parties agree to continue to implement the terms of this Agreement if the Agreement is approved before the trial court, unless and until an appeal of the trial court's approval is successful, the Parties each reserve their right to return to the *status quo ante*.
27. This Agreement may be enforced through a motion to enforce litigant's rights or a separate action filed in Superior Court, Middlesex County.
28. Unless otherwise specified, it is intended that the provisions of this Agreement are to be severable. The validity of any article, section, clause or provision of this Agreement shall not affect the validity of the remaining articles, sections, clauses or provisions hereof. If any section of this Agreement shall be adjudged by a court to be invalid, illegal, or unenforceable in any respect, such determination shall not affect the remaining sections.
29. This Agreement shall be governed by and construed by the laws of the State of New Jersey.
30. This Agreement may not be modified, amended or altered in any way except by a writing signed by each of the Parties.
31. This Agreement may be executed in any number of counterparts, each of which shall be an original and all of which together shall constitute but one and the same Agreement.
32. The Parties acknowledge that each has entered into this Agreement on its own volition without coercion or duress after consulting with its counsel, that each party is the proper person and possess the authority to sign the Agreement, that this Agreement contains the entire understanding of the Parties and that there are no representations, warranties, covenants or undertakings other than those expressly set forth herein.
33. Each of the Parties hereto acknowledges that this Agreement was not drafted by any one of the Parties, but was drafted, negotiated and reviewed by all Parties and, therefore, the presumption of resolving ambiguities against the drafter shall not apply. Each of the Parties expressly represents to the other Parties that: (i) it has been represented by counsel in connection with negotiating the terms of this Agreement; and (ii) it has conferred due authority for execution of this Agreement upon the persons executing it.
34. This Agreement constitutes the entire Agreement between the Parties hereto and supersedes all prior oral and written agreements between the Parties with respect to the subject matter hereof except as otherwise provided herein.

35. No member, official or employee of the Township has or will have any direct or indirect interest in this Agreement, nor participate in any decision relating to the Agreement which is prohibited by law, absent the need to invoke the rule of necessity.
36. Anything herein contained to the contrary notwithstanding, the effective date of this Agreement shall be the date upon which all of the Parties hereto have executed and delivered this Agreement.
37. All Notices required under this Agreement ("Notice[s]") shall be written and shall be served upon the respective Parties by certified mail, return receipt requested, or by a recognized overnight carrier or by a personal carrier. In addition, where feasible (for example, transmittals of less than fifty pages) Notices shall be served by facsimile or e-mail. All Notices shall be deemed received upon the date of delivery. Delivery shall be effected as follows, subject to change as to the person(s) to be notified and/or their respective addresses upon ten (10) day notice as provided herein:

TO FSHC: Adam M. Gordon, Esquire
Fair Share Housing Center
510 Park Boulevard
Cherry Hill, NJ 08002
Phone: (856) 665-5444
Telecopier: (856) 663-8182
Email: adamgordon@fairsharehousing.org

TO THE TOWNSHIP: Barbara Nyitrai, Township Clerk
Township of South Brunswick
Municipal Building
P.O. Box 190
Monmouth Junction, N.J. 0885-0190
Phone: (732) 329-4000 x 7352
Telecopier: (732) 329-9026
Email: bnyitrai@sbtnj.net

**WITH A COPY TO THE
TOWNSHIP ATTORNEY:** Francis M. Womack, Esq.
Township of South Brunswick
Municipal Building
P.O. Box 190
Monmouth Junction, N.J. 0885-0190
Phone: (732) 329-4000 x 7311
Telecopier: (732) 329-9026
Email: mwomack@sbtnj.net

IN WITNESS WHEREOF, the Parties hereto have caused this Settlement Agreement to be properly executed, their corporate seals affixed and attested and this Settlement Agreement to be effective as of the Effective Date.

Sincerely,

Adam M. Gordon, Esq.
Executive Director of Fair Share Housing Center

Witness: _____

Dated: _____

On behalf of the Township of South Brunswick, with the authorization of the governing body:

Witness/ Attest:

TOWNSHIP OF SOUTH BRUNSWICK

Norma Carlin

Charles Carley
Charles Carley, Mayor

Dated: 9/18/2024

IN WITNESS WHEREOF, the Parties hereto have caused this Settlement Agreement to be properly executed, their corporate seals affixed and attested and this Settlement Agreement to be effective as of the Effective Date.

Sincerely,



Adam M. Gordon, Esq.
Executive Director of Fair Share Housing Center

Witness:  _____

Dated: 9/12/24 _____

On behalf of the Township of South Brunswick, with the authorization of the governing body:

Witness/ Attest:

TOWNSHIP OF SOUTH BRUNSWICK

Dated: _____

2024 AFFORDABLE HOUSING REGIONAL INCOME LIMITS BY HOUSEHOLD SIZE

Income limits not officially adopted by the State of New Jersey. Contact your municipality to see if applicable in your jurisdiction. Additional information about AHPNJ income limits is posted on AHPNJ.org

		Max Increase										Regional Asset Limit****	
		1 Person	*1.5 Person	2 Person	*3 Person	4 Person	*4.5 Person	5 Person	6 Person	7 Person	8+ Person		Rents**
Region 1	Median	\$84,288	\$90,309	\$96,329	\$108,371	\$120,412	\$125,228	\$130,045	\$139,678	\$149,311	\$158,944		
	Moderate	\$67,431	\$72,247	\$77,064	\$86,697	\$96,329	\$100,183	\$104,036	\$111,742	\$119,449	\$127,155		0.00%
	Low	\$42,144	\$45,154	\$48,165	\$54,185	\$60,206	\$62,614	\$65,022	\$69,839	\$74,655	\$79,472		
	Very Low	\$25,286	\$27,093	\$28,899	\$32,511	\$36,124	\$37,568	\$39,013	\$41,903	\$44,793	\$47,683		
Region 2	Median	\$90,591	\$97,062	\$103,533	\$116,475	\$129,416	\$134,593	\$139,769	\$150,123	\$160,476	\$170,829		
	Moderate	\$72,473	\$77,650	\$82,826	\$93,180	\$103,533	\$107,674	\$111,816	\$120,098	\$128,381	\$136,663		
	Low	\$45,296	\$48,531	\$51,766	\$58,237	\$64,708	\$67,296	\$69,885	\$75,061	\$80,238	\$85,415		4.51%
	Very Low	\$27,177	\$29,119	\$31,060	\$34,942	\$38,825	\$40,378	\$41,931	\$45,037	\$48,143	\$51,249		
Region 3	Median	\$102,340	\$109,650	\$116,960	\$131,580	\$146,200	\$152,048	\$157,896	\$169,592	\$181,288	\$192,984		
	Moderate	\$81,872	\$87,720	\$93,568	\$105,264	\$116,960	\$121,638	\$126,317	\$135,674	\$145,030	\$154,387		
	Low	\$51,170	\$54,825	\$58,480	\$65,790	\$73,100	\$76,024	\$78,948	\$84,796	\$90,644	\$96,492		2.31%
	Very Low	\$30,702	\$32,895	\$35,088	\$39,474	\$43,860	\$45,614	\$47,369	\$50,878	\$54,386	\$57,895		
Region 4	Median	\$91,038	\$97,540	\$104,043	\$117,048	\$130,054	\$135,256	\$140,458	\$150,862	\$161,267	\$171,671		
	Moderate	\$72,830	\$78,032	\$83,234	\$93,639	\$104,043	\$108,205	\$112,367	\$120,690	\$129,013	\$137,337		
	Low	\$45,519	\$48,770	\$52,022	\$58,524	\$65,027	\$67,628	\$70,229	\$75,431	\$80,633	\$85,836		0.00%
	Very Low	\$27,311	\$29,262	\$31,213	\$35,115	\$39,016	\$40,577	\$42,137	\$45,259	\$48,380	\$51,501		
Region 5	Median	\$80,290	\$86,025	\$91,760	\$103,230	\$114,700	\$119,288	\$123,876	\$133,052	\$142,228	\$151,404		
	Moderate	\$64,232	\$68,820	\$73,408	\$82,584	\$91,760	\$95,430	\$99,101	\$106,442	\$113,782	\$121,123		
	Low	\$40,145	\$43,013	\$45,880	\$51,615	\$57,350	\$59,644	\$61,938	\$66,526	\$71,114	\$75,702		0.26%
	Very Low	\$24,087	\$25,808	\$27,528	\$30,969	\$34,410	\$35,786	\$37,163	\$39,916	\$42,668	\$45,421		
Region 6	Median	\$68,852	\$73,770	\$78,688	\$88,524	\$98,360	\$102,294	\$106,228	\$114,097	\$121,966	\$129,835		
	Moderate	\$55,081	\$59,016	\$62,950	\$70,819	\$78,688	\$81,835	\$84,983	\$91,278	\$97,573	\$103,868		
	Low	\$34,426	\$36,885	\$39,344	\$44,262	\$49,180	\$51,147	\$53,114	\$57,049	\$60,983	\$64,917		2.61%
	Very Low	\$20,655	\$22,131	\$23,606	\$26,557	\$29,508	\$30,688	\$31,868	\$34,229	\$36,590	\$38,950		

Moderate income is between 80 and 50 percent of the median income. Low income is 50 percent or less of median income. Very low income is 30 percent or less of median income.

* These columns are for calculating the pricing for one, two and three bedroom sale and rental units as per N.J.A.C. 5:80-26.4(a).

**This column is used for calculating the pricing for rent increases for units (as previously calculated under N.J.A.C. 5:97-9.3 (Consumer price Index for All Urban Consumers (CPI-U): Regions by expenditure category and commodity and service group). Landlords who did not increase rents between 2015 through 2023 because of the lack of authority to do so, may increase rent by up to the applicable combined percentage including 2024 or 9.0% whichever is less in accordance with N.J.A.C. 5:97-9.3(c). In no case can rent for any particular apartment be increased more than one time per year.

*** This column is used for calculating the pricing for resale increases for units (as previously calculated under N.J.A.C. 5:97-9.3). The price of owner-occupied low and moderate income units may increase annually based on the percentage increase in the regional median income limit for each housing region. In no event shall the maximum resale price established by the administrative agent be lower than the last recorded purchase price.

Low income tax credit developments may increase based on the low income tax credit regulations.

**** The Regional Asset Limit is used in determining an applicant's eligibility for affordable housing pursuant to N.J.A.C. 5:80-26.16(b)3.



B. PPF MATRIX ADDITIONAL DOCUMENTATION

1. SETTLEMENT AGREEMENT
2. FAIRNESS ORDER
3. ZONING ORDINANCE
4. PLANNING BOARD RESOLUTION OF
PRELIMINARY SITE PLAN APPROVAL

Record & Return to:
Thomas F. Carroll, III, Esq.
Hill Wallack, LLP
21 Roszel Road
P.O. Box 5226
Princeton, NJ 08543

Prepared by: Thomas F. Carroll, III, Esq.

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT (“Agreement”) made this 8th day of October, 2020, by and between:

TOWNSHIP OF SOUTH BRUNSWICK, a municipal corporation of the State of New Jersey, County of Middlesex, having an address at 540 Ridge Road, Monmouth Junction, New Jersey 08852 (hereinafter the “**Township**”);

TOWNSHIP OF SOUTH BRUNSWICK PLANNING BOARD, a land use board constituted under the authority of the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq., having an address at 540 Ridge Road, Monmouth Junction, New Jersey 08852 (hereinafter the “**Planning Board**”);

And

PPF INDUSTRIAL- ROUTE 130/EXIT 8A LLC, a limited liability company organized under the laws of the State of Delaware, with its principal place of business located at Forsgate Drive, CN 4000, Cranbury, New Jersey, 08512 (hereinafter “**PPF**”);

Collectively, the Township, Planning Board and PPF shall be referred to as the “**Parties.**”

WHEREAS, PPF is the owner of the real property located adjacent to or near the intersection of NJ State Route 130 and Friendship Road, and designated as Block 6, Lot 15.021 (approximately 15.72 acres) and Lot 15.022 (approximately 54.6 acres), and Block 11, Lot 13.02 (approximately 63.4 acres) and Lot 15.03 (approximately 13.653 acres), on the tax map of the Township of South Brunswick (the “**PPF Property**”), consisting of a total of approximately 147.37 acres, with the parcels being currently wooded or vacant and located within three different zones: the C-5 Commercial zone, the C-6 Commercial zone, and the RR Rural Residential zone; and

WHEREAS, the Township is the owner of real property adjacent to the PPF Property, designated as Block 11, Lot 15.05 (approximately 6.142 acres), on the tax map of the Township of South Brunswick (the “**Township Property**”); and

WHEREAS, on July 1, 2015, the Township filed a declaratory judgment action seeking a Judgment of Compliance and Repose approving its Affordable Housing Plan (as defined herein), in addition to related relief, entitled In the Matter of the Application of the Township of South Brunswick, County of Middlesex, Docket No. MID-3878-15, transferred to Mercer County under Docket No. MER-L-0810-17 by Order dated April 20, 2017, and transferred back to Middlesex County by Order dated July 26, 2017, subsequently being assigned Docket No. MID-L-4433-17 (the “**DJ Action**”); and

WHEREAS, on July 7, 2015, the Court granted, among other things, temporary immunity to the Township from builder's remedy actions in the DJ Action; and

WHEREAS, subsequently the Court revoked the Township's immunity, permitting the filing of various builder's remedy actions under separate docket numbers, which were consolidated with the DJ Action, including a builder's remedy Complaint filed on July 7, 2017 by PPF entitled, PPF Industrial – Route 130/Exit 8A, L.L.C., a limited liability company organized under the laws of the State of Delaware v. Township of South Brunswick, et al., Docket No. MID-L-4094-17 (the "Builder's Remedy Action"); and

WHEREAS, the Court rendered Opinions and Orders dated July 21, 2016, October 6, 2016, and October 21, 2016, following multiple dates of trial and briefing concerning the Township's regional fair share obligations for the period from 1999 through 2025, with the Court thereafter entering additional Orders concerning fair share obligation issues and other issues, including Orders dated December 5, 2018 and March 8, 2019, and notwithstanding the Township's and Planning Board's potential appeal of the above referenced Opinions and Orders, the Township and Planning Board have agreed to proceed with this settlement; and

WHEREAS, the Parties have reached an agreement whereby PPF will (1) develop (A) the portion of the PPF Property excluding the Dedication Parcel, and (B) the Township Property (together referred to as the "**Development Property**") for an inclusionary project generally consistent with the Concept Plan attached hereto as **Exhibit A**, consisting of a maximum of 326 dwelling units, including a 30% affordable housing set aside, resulting in the creation of a maximum level of development on the Development Property consisting of 98 two-story townhomes on fee simple lots, 130 three-story townhomes on fee simple lots, 83 affordable family rental units and one (1) office unit in three-story apartment buildings, and 15 affordable family "for sale" units in three-story stacked townhomes (the "**Inclusionary Development**"), (2) develop for commercial use a portion of the PPF Property located at Block 11, Lot 15.03 (nearest to the northwest corner of the intersection of Friendship Road and Route 130) (the "**Commercial Lot**") with a use allowed in the Commercial Subzone of the PRD VII Zoning Ordinance defined below, and (3) dedicate an approximately 34-acre portion of the PPF Property located at Block 11, Lot 13.02, to the Township for general municipal purposes (the "**Dedication Parcel**"); and

WHEREAS, as part of the Inclusionary Development, 13% of the affordable units will be set-aside for very low income households (as per N.J.S.A. 52:27D-329.1), 37% of the affordable units will be set-aside for low income households, and 50% of the affordable units will be set-aside for moderate income households; and

WHEREAS, the units PPF will set aside for very low income households will be in the form of rental units (not for-sale units) in its Inclusionary Development, located where shown on **Exhibit A**; and

WHEREAS, PPF is amenable to fully and finally resolving the PPF Builder's Remedy Action premised upon PPF securing the right to construct the Inclusionary Development contemplated herein on the Development Property pursuant to the standards set forth in Sections 62-886 through 62-897 of Article IV of the Township Code (the "PRD VII Zoning Ordinance"), a copy of which is attached as **Exhibit B**; and

WHEREAS, the Planning Board is a party to this Settlement Agreement and will abide by the terms of this Agreement as set forth below for the purpose of facilitating a resolution of PPF’s objection to the Township’s Affordable Housing Plan and the ultimate production of the affordable housing that is part of the Inclusionary Development as set forth herein; and

WHEREAS, the Parties will seek the Court’s approval of this Settlement Agreement in connection with the DJ Action, and the Parties intend to be bound by this Agreement, provided this Agreement is approved by the Court; and

WHEREAS, to ensure that the Inclusionary Development contemplated by this Agreement generates affordable housing credits to be applied to the Township’s Gap (1999-2015) and Round 3 (2015-2025) affordable housing obligations, the affordable units within the Inclusionary Development shall be developed in accordance with the COAH Prior Round regulations, the Uniform Housing Affordability Controls, N.J.A.C. 5:80-26.1 et seq. (“UHAC”), with the one exception to UHAC regarding very-low income housing noted herein, and all other applicable law, and the affordable units within said Inclusionary Development shall be deed restricted for a period of at least 30 years from the initial occupancy of the affordable units; and

WHEREAS, the Parties wish to enter into this Agreement, setting forth the terms, conditions, responsibilities and obligations of the Parties, and seek the Court’s approval of this Agreement;

NOW, THEREFORE, in consideration of the promises, the mutual obligations contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each of the Parties, the Parties hereto, each binding itself, its successors and assigns, do hereby covenant and agree, each with the other, as follows:

**ARTICLE I – “PRD VII
ZONE”**

1.1 Purpose The purpose of this Agreement is to settle the PPF Builder’s Remedy Action and to create a realistic opportunity for the construction of the Inclusionary Development, and to generate affordable housing credits for the Township to apply to its Gap (1999-2015) and Prospective Need (2015-2025) affordable housing obligations. The Inclusionary Development shall be substantially consistent with the Concept Plan attached hereto and made a part hereof as **Exhibit A** and zoning standards included in PRD VII Zoning Ordinance, a copy of which is attached hereto and made a part hereof as **Exhibit B**, which have generally been reviewed and approved by the Township and the Township’s professionals. The Inclusionary Development and the Commercial Lot depicted on the Concept Plan shall be governed by “a PRD VII Mixed Development Zone” (the “PRD VII Zone”) established pursuant to the PRD VII Zoning Ordinance, adopted as part of Township Zoning Ordinances in accordance with the timeframes and standards set forth herein.

1.2 Standards The PRD VII Zone shall incorporate the following requirements:

1.2.1 Density. The Development Property shall be developed with a maximum residential unit yield of 326 total residential units, inclusive of the affordable housing component that is described in greater detail in Section 3.1 herein.

1.2.2 Setbacks. The development of the Development Property shall comply with the building setbacks set forth in the PRD VII Zoning Ordinance, a copy of which is attached as **Exhibit B**, which standards shall be adopted as part of the PRD VII Zone that are part of Township Zoning Ordinances.

1.2.3 Height Limitations. No structure in the area designated for 2-story townhomes in the Friendship Road North Inclusionary Housing Subzone (as defined in the PRD VII Zoning Ordinance), as shown on the attached **Exhibit A**, shall be greater than 41 feet in height. No other structures in any of the remaining areas of the Development Property shall be greater than 45 feet in height.

1.2.4 Commercial Lot. The Commercial Lot shall include an approximately three (3) contiguous acre parcel fronting on both Route 130 and Friendship Road, as shown on the attached **Exhibit A**. The Commercial Lot shall be zoned so as to permit the variety of uses allowed in the Commercial Subzone of the PRD VII Zoning Ordinance, including, without limitation, convenience retail with vehicle fuel sales. The commercial development of the Commercial Lot will pay any Non-Residential Development Fee that may be in force at the time of site plan approval pursuant to N.J.S.A. 40:55D-8.1 et seq.

1.2.5 Amenities. There shall be at least two active recreational areas in the Inclusionary Development, (i) one located within the Route 130 Affordable Housing Subzone (as defined in the PRD VII Zoning Ordinance), dedicated for use exclusively by the residents of the 83 rental affordable apartments therein (the “Apartments Recreation Area”) and (ii) a recreational area or areas within the Friendship Road North Inclusionary Housing Subzone (as defined in the PRD VII Zoning Ordinance) and/or the Friendship Road South Inclusionary Housing Subzone (as defined in the PRD VII Zoning Ordinance), or both (dedicated for use exclusively by the residents of the 98 2-story market rate townhomes, the 130 3-story market rate townhomes, and the 15 3-story stacked townhomes therein), an example of which is shown on the Concept Plan (the “Townhomes Recreation Area”).

1.2.5.1 Apartments Recreation Area and Townhomes Recreation Area. Supplementing the foregoing Section 1.2.5, the Apartments Recreation Area shall be substantially similar to, and shall be substantially of the same design and quality as, the Townhomes Recreation Area. By way of example, it is agreed that an Apartments Recreation Area consisting of 1 tennis court, 1 basketball court, and a play area is substantially similar to a Townhomes Recreation Area consisting of 2 tennis courts, a clubhouse, and a play area. The Parties further agree that the provision of the recreational areas, and the dedicated use thereof, satisfies the requirement set forth in Section 62-1997.3.b of the Affordable Housing Ordinance of the Township set forth in Sections 62-1990 through 62-2015 of Article IV of the Township Code (the “Township Affordable Housing Ordinance”), because (a) the residents of the 83 affordable rental apartments will have access to the recreational area to be provided for the rental apartment portion of the Inclusionary Development, and (b) the residents of the 15 3-story affordable “for sale” stacked townhomes will have access to

the recreational area to be provided for the “for sale” townhome portion of the Inclusionary Development. Notwithstanding anything to the contrary set forth herein, the Apartments Recreation Area and the Townhomes Recreation Area may vary from that depicted on the Concept Plan (provided that the Apartments Recreation Area shall, as set forth above, be substantially similar to, and shall be substantially of the same design and quality as, the Townhomes Recreation Area), and if the Townhomes Recreation Area includes a swimming pool, the tenants of the 83 affordable rental apartments in the Route 130 Affordable Housing Subzone will have use of such swimming pool equal to that of residents of the Friendship Road North Inclusionary Housing Subzone and the Friendship Road South Inclusionary Housing Subzone. PPF shall maintain the Apartment Recreation Area so that the amenities contained therein remain in a safe and suitable condition for play, which maintenance shall include, without limitation, replacing torn or dilapidated tennis nets and basketball nets and backboards, sealing and/or resurfacing the tennis and basketball courts, re-painting lines, and repairing or replacing any damaged or broken equipment.

1.2.5.2 Sidewalks To the extent that the following described sidewalk network may be located exclusively within the Development Property or within public right-of-ways, PPF shall also install a network of sidewalks for the use and benefit of all residents of the Inclusionary Development to create an interconnected, walkable community. Said sidewalk shall be internal to the affordable rental portion of the development, connecting it to the Commercial Lot which, in turn, will have sidewalk leading out to Friendship Road and along its Friendship Road frontage, connecting to the existing sidewalk in front of the Oaks at Cranbury development. PPF shall also install sidewalk internal to both townhouse developments, including sidewalk on the south side of Friendship Road (along the frontage of the 3-story townhouse development on Lot 15.021, Block 6) and along the north side of Friendship Road from the easterly terminus of the existing Oaks at Cranbury sidewalk, along the frontage of the two intervening residential out-parcels (Lots 16 and 18, Block 11) and along the frontage of the 2-story townhouse development (portion of Lot 13.02, Block 11).

1.2.6 RSIS. The Parties agree that the residential portion of the Inclusionary Development shall be governed by the Residential Site Improvement Standards (“RSIS”) as to all matters covered by the RSIS, subject to such relief therefrom as may be granted in accordance with law.

1.2.7 Buffer. Buffering shall be provided in accord with the standards of the PRD VII Zone on the PPF Property (a) along Friendship Road, (b) along Route 130 in front of the affordable rental apartments, (c) between the Commercial Lot and the affordable rental apartments, and (d) between the Commercial Lot and the existing residential development known as the Oaks at Cranbury.

1.2.8 Impervious Cover. All impervious coverage associated with any new development or improvements shall comply with current RSIS and NJDEP storm water regulations.

1.2.9 Cost Generation. The Parties agree that the standards and requirements set forth in Section 4.5 satisfy the requirement to limit cost generation.

ARTICLE II - BASIC TERMS AND CONDITIONS

2.1 Fairness Hearing. This Agreement shall be subject to Court approval at a Fairness Hearing to be scheduled at a date determined by the Court. The Parties will work together to ensure that the Court approves this Agreement.

2.2 Legal Challenges. In the event of any legal challenges to the Court's approval of this Agreement pursuant to the East West Venture v. Ft Lee fairness procedure, or any appeal of any Required Approvals (defined in Section 4.4 hereof), the Parties shall diligently defend any such challenge and shall cooperate with each other regarding said defense. In addition, if any such challenge results in a modification of this Agreement or the Inclusionary Development, the Parties shall negotiate in good faith with the intent to draft a mutually-acceptable amended Agreement, provided that no such modification requires an increase or decrease in density from that agreed upon and reflected in the within Agreement. Each Party shall be responsible for their own legal fees and costs associated with any legal challenge.

2.3 Continuation of DJ Action. This Agreement does not purport to resolve all of the issues before the Court raised in the DJ Action. The Township and Planning Board may continue to prosecute the DJ Action, however, such continued prosecution shall not affect this Agreement and the Inclusionary Development that is authorized herein. In no event shall any of the terms of, or rights of the parties under, this Agreement be affected by any trials, or other compliance or fairness hearings, involving claims of third parties and the Township with respect to the Township's affordable housing obligations.

ARTICLE III – PPF'S OBLIGATIONS

3.1 Affordable Housing Set-Aside. PPF shall have an obligation to deed-restrict Ninety-Eight (98) of the residential units in the Inclusionary Development as very low, low and moderate income affordable family units. The affordable units shall consist of 83 rental units within the apartment buildings depicted on the attached **Exhibit A**, and 15 "for sale" units provided within the townhouse area as depicted on the attached **Exhibit A**. The units PPF will set-aside for very low-income households will be in the form of rental units (not for-sale units) in its Inclusionary Development, located where shown on **Exhibit A**. One-half of the 15 "for sale" affordable units shall be for moderate income households, and one-half shall be for low income households. The Parties agree that the Inclusionary Development satisfies the requirement for integration of the Inclusionary Development's affordable units with its market units, as such requirement is set forth in Section 62-1997.3.a of the Township Affordable Housing Ordinance.

All of the affordable units shall comply with UHAC, applicable COAH affordable housing regulations (N.J.A.C. 5:93-1), any applicable order of the Court, and other applicable laws, including the 13% very low income requirement (a minimum of 13% very low income units, very low income being defined as 30% or less of the regional median income) embodied in the Fair Housing Act at N.J.S.A. 52:27D-329.1, et seq., in lieu of the UHAC requirement as to very low income of 10% at 35% or less of the regional median income.

3.1.1 The affordable units shall remain affordable units for a period of at least thirty (30) years from the date of their initial occupancy ("Deed-Restriction Period") consistent with UHAC regulations or the then applicable regulation, so that the Township may count the units against its obligations to provide family affordable housing. This obligation

includes, but is not limited to, PPF's obligation to comply with the following with respect to the affordable units:

- (1) bedroom distribution requirements,
- (2) income split requirements,
- (3) pricing requirements pursuant to the income limits in place at the time the affordable units are marketed,
- (4) affirmative marketing requirements,
- (5) candidate qualification and screening requirements, and
- (6) deed restriction and monitoring requirements.

3.1.2 PPF shall contract with either the Township's affordable housing administrative agent or such third party qualified affordable housing administrative agent as PPF may reasonably determine, subject to the approval of the Township which shall not be unreasonably withheld or delayed ("Administrative Agent") for the administration of the affordable units and shall have the obligation to pay all costs associated with properly deed restricting and the long-term administration of the affordable units pursuant to Section 3.1.1 above in accordance with UHAC and other applicable laws for the Deed-Restriction Period. PPF shall work with the Township and the Administrative Agent regarding any affordable housing monitoring requirements imposed by COAH or the Court.

3.1.3 The Parties agree that the affordable units are to be included in the Affordable Housing Plan to be approved and credited by the Court in the DJ Action, and that the credits will be applied against the Township's Gap (1999-2015) and Prospective Need (2015-2025) obligations.

3.1.4 Within thirty (30) days of receipt of written request from the Township or the Township's Administrative Agent, PPF shall provide detailed information requested by the Township, or the Township's Administrative Agent, concerning PPF's compliance with UHAC and other applicable laws.

3.1.5 The Township has reviewed the proposed floorplans for the one (1) bedroom affordable family units, two (2) bedroom affordable family units and three (3) bedroom affordable family units and agrees that the affordable unit bedroom allocations are reasonably dispersed within the buildings.

3.1.6 Each affordable unit shall contain at least one bedroom with an area of at least 140 square feet, and no bedroom shall have an area of less than 100 square feet. Square footages of each bedroom in an affordable unit shall not include closet space.

3.1.7 The minimum area of each affordable unit shall be as follows:

- a. One (1) bedroom – 650 square feet.
- b(1). Two (2) bedroom for sale – 800 square feet.
- b(2). Two (2) bedroom rental – 875 square feet
- c. Three (3) bedroom – 1,150 square feet.

The square footages of each affordable unit shall include conditioned space (i.e., heated and air conditioned space), but shall not include closets.

3.1.8 Residential Development Fee. The Parties agree that the Inclusionary Development qualifies as an “affordable housing development” pursuant to Section 62-1993 and Section 62-2013.3.B.1 of the Township Affordable Housing Ordinance, so that the entirety of the Inclusionary Development is exempt from imposition of the Residential Development Fee pursuant to Section 62-2013.3.A.1 Township Affordable Housing Ordinance.

3.2 Site Remediation. PPF shall perform a (i) Preliminary Assessment and (ii) Site Investigation if applicable pursuant to the Preliminary Assessment (collectively, “PA/SI”) in accordance with the Technical Requirements for Site Remediation set forth at N.J.A.C. 7:26E-1 et seq. (“Technical Regulations”) for the Development Property and the Dedication Property and provide copies of the resulting reports to the Township. In the event the PA/SIs identify the presence of any hazardous substances requiring remediation pursuant to the Technical Regulations for any Area of Concern, as such term is defined in the Technical Regulations, at the Development Property or the Dedication Property, PPF shall undertake remediation as required by environmental laws at PPF’s sole cost and provide the Township and the Planning Board with a Response Action Outcome letter (RAO) from a Licensed Site Remediation Professional (LSRP) demonstrating that any environmental remediation required for such Area(s) of Concern on the Development Property and/or the Dedication Property has been completed. The completion of such remediation as required by environmental laws may be a condition set forth in the Required Approvals.

3.3 On-Tract/Off-Tract/Off-Site Improvements. Subject to the limitations set forth in Section 4.5 hereof, as a condition of the Required Approvals, PPF shall be obligated to perform or contribute to any On-Tract, Off-Tract and Off-Site improvements as required by the MLUL (as defined in Section 5.1), including, but not limited to, the following, and provided that PPF’s obligation to improve Friendship Road is limited to the improvements specified below in this Section 3.3:

- 3.3.1 Half-width widening of Friendship Road along frontage adjoining Block 11, Lots 16 and 18, including full depth pavement pursuant to the RSIS for collector roads, curb, sidewalk, storm sewers and any necessary property acquisition associated therewith;
- 3.3.2 Half-width widening of Friendship Road, including full depth pavement pursuant to the RSIS for collector roads, curb, sidewalk, storm sewers and any necessary property acquisition associated therewith, along the road frontage of (i) the portion of Lot 13.02 in Block 11 located within the Development Property, (ii) Block 11, Lot 15.05, in each case immediately adjacent to the proposed 98 two-story townhouse development area, (iii) Block 6, Lot 15.021, and (iv) the NJ DOT property on Friendship Road, between Lot 15.021 and Route 130; and
- 3.3.3 If traffic warrants are met, traffic signalization of the proposed four-way intersection on Friendship Road at the entrance to the existing Oaks at

Cranbury community and the entrance to the 130 three-story townhome community along Friendship Road.

3.4 Dedication Parcel. Within forty-five (45) days after receipt of the Required Approvals (as defined in Section 4.4 hereof), PPF shall dedicate the Dedication Parcel to the Township by way of Bargain and Sale Deed with Covenant Against Grantor's Acts and appropriate metes and bounds description, for nominal consideration of One Dollar (\$1.00). The parties shall execute and deliver such documentation as is customary to perfect such conveyance of title such as Seller's Affidavit of Title, affidavits of consideration, a FIRPTA affidavit, a Statement of Closing Title (reflecting customary adjustments), Township resolution and ordinance authorizing acceptance of conveyance. Said dedication shall be for general municipal purposes, and be unencumbered by any mortgage or judgment liens. If any site remediation is required for any Area of Concern on the Dedication Parcel pursuant to the PA/SI referenced in Section 3.2 hereof, PPF shall complete all such remediation prior to dedication. The Township shall not be obligated to accept dedication of the Dedication Parcel until all site remediation for any such Area(s) of Concern is completed in compliance with environmental laws and a RAO is issued by PPF's LSRP for any such Area of Concern. Remediation pursuant to Section 3.2 and this Section 3.4 may include the use of institutional controls and engineering controls as those terms are defined under applicable environmental laws ("Controls"). Upon dedication of the Dedication Parcel, the Township shall accept the Dedication Parcel in its "as-is" condition and accept transfer of, and comply with, the Controls, if any, and shall release and waive any claims or causes of action against PPF and its members, directors, and affiliates, known or unknown, arising from or related to the condition of the Dedication Parcel, including, without limitation, any environmental conditions.

3.5 Obligation Not To Oppose Township's Application for Approval of its Affordable Housing Plan. As it pertains to the Township's application for approval of its Affordable Housing Plan, PPF shall not directly or indirectly oppose or undertake any further action to interfere with the Court's adjudication of the Township's affordable housing obligations and compliance standards. PPF shall also not directly or indirectly oppose or undertake any further action to interfere with the Court's approval and/or implementation of the Affordable Housing Plan, as it may be amended in any form, unless the Affordable Housing Plan deprives PPF of any rights created hereunder, or unless any other defendants or interested parties undertake any action to obstruct or impede PPF from securing such approvals as it needs to develop the Inclusionary Development on the Development Property.

3.6 Obligation Concerning The Township's Affordable Housing Plan and Obligation to Dismiss Complaint. Upon approval of this Settlement Agreement by the Court and the Parties to this Agreement and the period to appeal or challenge the adoption of the PRD VII Zoning Ordinance having passed without any appeal having been filed, PPF agrees that it (a) will not file an objection to the Township's Affordable Housing Plan, (b) will dismiss with prejudice its Builder's Remedy Action entitled PPF Industrial – Route 130/Exit 8A, L.L.C., a limited liability company organized under the laws of the State of Delaware v. Township of South Brunswick, et al., Docket No. MID-L-4094-17, by filing a Stipulation of Dismissal with Prejudice substantially similar to that shown in **Exhibit C**, and (c) will not object further to the Township's Affordable Housing Plan, as may be amended. However, nothing herein shall preclude either party from seeking enforcement of this Settlement Agreement by Motion to

Enforce Litigants Rights, and in the event such a Motion is filed, the prevailing party shall be entitled to legal fees.

ARTICLE IV - OBLIGATIONS OF THE TOWNSHIP

4.1 Obligation To Adopt Zoning Ordinance. The Township shall, by October 31, 2020, adopt the PRD VII Zoning Ordinance, a copy of which is attached hereto as “**Exhibit B**”. The PRD VII Zoning Ordinance shall be subject to Court approval at a Fairness Hearing. The Parties shall use reasonable good faith efforts to obtain Court approval of the PRD VII Zoning Ordinance prior to November 30, 2020. The Parties hereby agree that in the event the Court has not approved the adopted PRD VII Zoning Ordinance by November 30, 2020, PPF shall be entitled to the rights set forth in Section 6.4 hereof. In connection with the above actions, the Township shall comply with all applicable procedural requirements set forth in the Municipal Land Use Law and the case law interpreting same, including, but not limited to, legal notice requirements. Notwithstanding the foregoing, the time period set forth in this Section 4.1 may be extended by mutual consent of the Parties confirmed in writing; provided, however, that if the Parties cannot agree to such extension prior to the expiration of such time period, the provisions of Section 6.4 hereof shall apply.

4.2 Obligation To Preserve The Zoning Ordinance. The PRD VII Zoning Ordinance shall not be amended or rescinded for a period of ten (10) years, except upon the application of PPF and consented to by the Township, or by Order of the Court.

4.3 Representation regarding Sufficiency of Water and Sewer. The Township agrees that as of the Effective Date of this Agreement, it has sufficient potable water capacity to service the proposed Inclusionary Development and development of the Commercial Lot (collectively, the “Project”), pursuant to the requirements of Township Code Sections 62-153, et seq. The parties acknowledge that the Township has experienced problems with sanitary sewer capacity due to the presence of infiltration and inflow (“I&I”) in the portion of the existing sanitary sewer system into which the Project will discharge. Any on-site water, sewer, or any other utility infrastructure or improvements required for the development of the Project shall be at the sole cost and expense of PPF. Subject to any upgrades and enhancements that may be reasonably necessary and attributable only to the Inclusionary Development and the Commercial Lot (which, if necessary shall be made, at the expense of PPF), the Township agrees to allow the Project to interconnect with (through, without limitation, the granting of easements), and utilize the sanitary sewer pump station and all related infrastructure that was constructed in conjunction with, the Oaks at Cranbury residential community, which sanitary sewer pump station and related infrastructure is defined as the “Parcel E Sanitary Sewer Facilities” in that certain Declaration of Easements, Covenants and Restrictions made as of January 9, 2014 by PPF and recorded in the Middlesex County Clerk’s Office on January 14, 2014 in Deed Book 6536, Page 21, as amended by that certain Amendment to Declaration of Easements, Covenants and Restrictions made as of October 31, 2014 by PPF and recorded in the Middlesex County Clerk’s Office on November 12, 2014 in Deed Book 6633, Page 227 (as amended, the “Declaration”). Supplementing the foregoing, the Parcel E Sanitary Sewer Facilities are comprised of the Pump Station Facilities as defined in that certain Deed of Easement dated October 10, 2017 and recorded in the Middlesex County Clerk’s Office on November 2, 2017 in Deed Book 17002, Page 90, pursuant to which (i) PPF granted an easement to the Township for the right to access, operate and maintain such Pump Station Facilities on Block 6, Lot 15.021, (ii) the Township accepted ownership of the

Pump Station Facilities, and (iii) the Township is obligated to maintain the Pump Station Facilities. Notwithstanding the limitation set forth in Section 11 of the Declaration, or anything to the contrary set forth in this Agreement or in any other documentation, the Township acknowledges and agrees that PPF may exceed the limitation set forth in Section 11 of the Declaration and utilize such portion of the Parcel E Sanitary Sewer Facilities' sewer capacity as may be required to service the Project.

4.4 Obligation to Cooperate. The Township acknowledges that in order for PPF to construct the Project, PPF will be required to obtain any and all necessary and applicable agreements, approvals, and permits for development of the Project from all relevant public entities and utilities; such as, by way of example only, the Township, the Planning Board, the County of Middlesex, the Middlesex County Planning Board, the New Jersey Department of Environmental Protection ("NJDEP"), the New Jersey Department of Transportation, Freehold Soil Conservation District and the like, including the Township's ordinance requirements as to site plan and subdivision approval, which shall be deemed obtained only upon expiration of their respective appeal periods, without any appeal being pending therefrom (the "**Required Approvals**"). The Township agrees, upon execution of the Agreement, to use all reasonable efforts to assist PPF in its undertakings to obtain the Required Approvals, including providing (a) the Township's authorization to make applications, such as wetlands, LOI and flood hazard area applications, that may be required as to the Township Property (Lot 15.05, Block 11), (b) the Township's endorsement of all required Treatment Works Approval applications to the NJDEP for the installation of sewer improvements, and (c) the Township's signature on any such applications, with the costs of said applications to be borne by PPF. The parties agree that the residential portion of the Inclusionary Development shall be governed by the RSIS as to all matters covered by the RSIS, including the right to seek de minimis exceptions or other RSIS relief.

4.5 Obligation to Refrain From Imposing Cost-Generative Requirements. The Township and Planning Board recognize that the Required Approvals and this Agreement contemplate the development of an "Inclusionary Development" within the meaning of the Mount Laurel doctrine. Therefore, the Township and Planning Board will not impose development standards and/or requirements that have not been agreed to by the parties, and would otherwise be considered to be "cost generative." The Township and Planning Board, and their various departments and professional staff, shall consider an application to the Township Planning Board in a manner that eliminates unnecessary cost generating features, consistent with N.J.A.C. 5:93-10.1 and 10.2. Moreover, the Parties agree that, as the Project described herein is providing a 30% affordable housing set-aside, the following cost controls shall apply to it:

a. All Township professional review escrow fees for review of the Project application from the Effective Date of the within Agreement to the date of the Required Approvals shall be capped at an amount not to exceed \$350,000.

b. PPF's total cost (including all hard and soft costs) of performing all Township required off-tract and off-site improvements related to traffic impacts associated with the Inclusionary Development and development of the Commercial Lot, and any Township imposed monetary exactions for same, shall be capped at \$550,000 (which does not, however, apply to any off-tract or off-site improvements required by any outside agencies or any costs associated with any required traffic signalization as per Section 3.3.3 herein), it being agreed that (i) the improvements

described in Sections 3.3.1 and 3.3.2 (iv) are off-tract improvements, the cost of which is subject to said \$550,000 cost cap, and (ii) the improvements described in Section 3.3.2(i)-(iii) are on-tract improvements to be performed within the half of the Friendship Road right-of-way adjoining the Development Property, the cost of which is not subject to said \$550,000 cost cap.

c. The Planning Board will allow a comprehensive storm water management system for the entire Inclusionary Development and development of the Commercial Lot, regardless of internal lot configuration. Stormwater basin design standards shall adhere to RSIS and NJDEP requirements. The design standards in the ordinances shall not apply if said standards are in addition to or exceed NJDEP and RSIS design standards.

d. All monetary obligations associated with the Tree Replacement Ordinance, Section 62-121 to 133, for the Inclusionary Development and development of the Commercial Lot shall be capped at \$8,000.00 pursuant to the calculations shown in Exhibit D. During the course of design and/or construction, PPF may elect to reduce this contribution by planting additional trees within the proposed development. In such event, the replacement value of \$8,000.00 will be reduced based upon the number of additional trees planted in excess of sixty (60).

e. PPF agrees to perform mitigation of the I&I by installing, prior to occupancy of any portion of the Project, a Cured In Place Liner (“CIPL”), in accordance with the CIPL Specification annexed hereto as **Exhibit E** (which specification is subject to revision in connection with bidding for, and installation of, the CIPL, including bypass pumping and any other measures reasonably necessary to complete the CIPL work to the satisfaction of the Township Engineer), inside approximately eight hundred and twenty-five (825) linear feet of the existing sanitary sewer main, running from Manhole #8 to Manhole #9, and thence to Manhole #10, located between Revere Drive and Deans Rhode Hall Road in the Township (the “CIPL Installation”) which is intended to mitigate at least 93,525 gallons per day (“gpd”) of I&I, thereby freeing up sufficient capacity in the existing sanitary sewer system to accommodate the sanitary sewer flows originating from the Project (which are projected to be 93,525 gpd). Upon completion of the CIPL Installation:

(i) PPF shall conduct a post-completion analysis and investigation to verify the extent of I&I eliminated by the CIPL Installation (the “Total Mitigation” or “TM”);

(ii) PPF shall confirm to the Township the total cost of the CIPL Installation including, without limitation, costs of the I&I studies completed before and after undertaking the CIPL Installation, the CIPL Installation work, sewer line cleaning, video inspection, bypass pumping, permitting, inspection, and engineering fees, and other ancillary costs directly attributable to the CIPL Project (the “CIPL Cost”); and

(iii) The Township shall, to the extent that the Total Mitigation exceeds 93,525 gpd, reimburse PPF for the Township’s proportionate share of the CIPL Cost (the “Township Share”), said Township Share being a portion of the CIPL Cost equal to $((TM - 93,525 \text{ gpd})/TM) \times \text{CIPL Cost}$, so that, for example, if Total Mitigation is 116,906.25 gpd, then the Township shall reimburse PPF for twenty percent (20%) of the CIPL Cost $(= (116,906.25 \text{ gpd} - 93,525 \text{ gpd})/116,906.25 \text{ gpd} = .20)$. Said reimbursement by the Township to PPF shall be paid within forty-five (45) days after PPF’s presentment to the Township of notice advising the Township of the amount of its reimbursement due hereunder, it being agreed that PPF shall, at its option, also have the right to obtain reimbursement by taking a credit, for all or part of the reimbursement owed

to it, against any future amounts owed by PPF to the Township such as for application fees, escrow deposits, and inspection fees.

Given PPFs agreement to complete the CIPL Installation prior to Project occupancy, and in accordance with the CIPL Specification annexed hereto as **Exhibit E**, and assuming that at least 93,525 gpd of I&I has been eliminated as a result of the CIPL, the Township agrees that:

(x) PPF shall, upon its completion of the CIPL Installation, have no further off-site or off-tract utility obligations, pursuant to N.J.S.A. 40:55D-42 and any applicable ordinances, either in-kind or for the contribution to the cost thereof, other than for any pump station upgrade required pursuant to Section 4.3 hereof, and PPF shall have no obligation to perform any other off-site or off-tract utility obligations, or to contribute to the cost of same, in connection with the Project;
and

(y) Timing of the CIPL Installation shall not affect the Township's obligations under Section 4.4 hereof, including, without limitation, the obligation to endorse any NJDEP application for a Treatment Works Approval.

4.6 Conveyance of Township Property. Within forty-five (45) days after PPF's receipt of all Required Approvals, the Township shall convey the Township Property to PPF by way of Bargain and Sale Deed with Covenant Against Grantor's Acts and appropriate metes and bounds description, for nominal consideration of One Dollar (\$1.00). The parties shall execute and deliver such documentation as is customary to perfect such conveyance of title such as Seller's Affidavit of Title, affidavits of consideration, a FIRPTA affidavit, a Statement of Closing Title (reflecting customary adjustments), Township resolution and ordinance authorizing such conveyance, and other documentation reasonably requested by grantee's title insurance company. The Township Property shall be conveyed in "as is" condition, free of all liens and encumbrances (other than any which encumbered the Township Property at the time of its conveyance by PPF to the Township pursuant to Deed recorded on March 7, 2014 in the Middlesex County Clerk's Office in Deed Book 6550, Page 246), and with no obligation on the part of the Township for any site remediation. PPF specifically agrees to accept said conveyance under these terms. PPF shall release and waive any claims or causes of action against the Township, known or unknown, arising from or related to the condition of the Township Property, including, without limitation, any environmental conditions. Notwithstanding the foregoing, the Township represents and warrants that it has not undertaken any actions affecting the Township Property that would in any manner render the Township Property unsuitable for the purposes set forth in this Agreement. The Township grants PPF access to the Township Property for purposes of environmental evaluation and preparation of application(s) for an LOI. Township agrees to cooperate with PPF, including by signing applications as owner of the Township Property.

4.7 Obligation Regarding Revocable Emergency Access Agreement.

(a) The Township and the New Jersey Turnpike Authority (the "**Turnpike Authority**") have entered, or will enter, into a certain Revocable Emergency Access Agreement (the "**Access Agreement**"), in form substantially similar to that annexed hereto as **Exhibit F**, pursuant to which the Turnpike Authority grants to the Township a revocable right of entry for emergency access across certain land of the Turnpike Authority located adjacent to a portion of the Inclusionary Development, as more particularly described in the Access Agreement. The Township hereby acknowledges that the Access Agreement shall be entered into for the benefit of, and for the

purpose of providing emergency access to, the portion of the Inclusionary Development situated on Block 6, Lots 15.021 and 15.022. The Township shall allow PPF to exercise the access rights granted to the Township pursuant to the Access Agreement, and shall not (i) agree to any amendments to the Access Agreement, or (ii) terminate the Access Agreement, without the prior written consent of PPF, which consent shall not be unreasonably withheld, conditioned or delayed, it being understood, however, that the Access Agreement is terminable by the Turnpike Authority, and in the event of such termination, the Access Agreement provides that the parties thereto shall work together to find a reasonable solution.

(b) In the event of the Township's receipt of notice from the Turnpike Authority of the Turnpike Authority's termination of the Access Agreement:

(i) The Township shall provide written notice to PPF of said termination;

(ii) The Township shall (x) exercise its rights under the Access Agreement to enter into a reasonable alternative to the Access Agreement, (y) keep PPF fully informed of the status of any and all alternatives to the Access Agreement and cooperate with PPF in determining and entering into a reasonable alternative to the Access Agreement, and (z) provide PPF with copies of all material documents, instruments, correspondence, plans, reports and any other information with respect thereto generated by or on behalf of the Township or received by the Township in connection with same.

(c) In no event shall any such termination or modification of the Access Agreement by the Turnpike Authority, or termination, or modification, of any subsequent reasonable alternative to the Access Agreement, impair any of PPF's Required Approvals for the Inclusionary Development.

(d) In the event the Access Agreement is executed by the Township and Turnpike Authority, PPF may utilize such rights conferred upon the Township pursuant to the Access Agreement. If the Township and Turnpike Authority do not enter into the Access Agreement within ninety (90) days of the date hereof, PPF agrees to reasonably cooperate with the Township and the Turnpike Authority to secure emergency access to the Project, provided, however, that PPF shall have the right, instead of, or in addition to, relying on the emergency access rights to be afforded to it pursuant to the Access Agreement and this Section 4.7, to include in its Concept Plan, and in its site plan application for the Project, a divided boulevard roadway to and from the development within Block 6, Lots 15.021 and 15.022 which, the parties agree, will satisfy any emergency access requirements for that portion of the Project.

ARTICLE V – OBLIGATIONS OF THE PLANNING BOARD

5.1 Obligation to Process PPF's Development Applications with Reasonable Diligence. The Planning Board shall expedite the processing of PPF's development applications following PPF's filing of a complete application(s) and within the time limits imposed by the Municipal Land Use Law, N.J.S.A. 40:55D-1, et seq., ("MLUL"). In the event of any appeal of the Required Approvals or of the Court approval of this Agreement, the Planning Board shall nevertheless process and make a decision on any development application by PPF for the Development Property, which decision may, as appropriate, be conditioned upon the outcome of any pending appeal. Provided that PPF files a substantially complete preliminary site plan application with the Planning Board by September 30, 2020, and subject to approval of this Agreement by the court after the Fairness Hearing described in Section 2.1 hereof, if the Planning

Board does not schedule the initial hearing on such application by December 31, 2020, then PPF shall, notwithstanding any of the other terms hereof, have the right to terminate this Agreement on notice to the Township and Planning Board, in which event the Parties shall be restored to the status quo ante to the date hereof (including, without limitation, the Township's return of any unused portion of professional review escrow fees posted by PPF in accordance with Section 4.5.a), and all claims and defenses available now shall be available to the Parties. In the event that PPF decides that the Parties shall be restored to the status quo ante to the date hereof and all claims and defenses available now shall be available to the Parties, no Party shall be entitled to use this Agreement, or negotiations in conjunction therewith, as the basis for any claim against any other Party. The parties may extend the December 31, 2020, deadline upon mutual agreement, and the December 31, 2020, deadline shall be deemed extended in the event the scheduling of the initial hearing by the Planning Board is delayed for reasons beyond the control of the Township or Planning Board.

5.2 Obligation to Refrain From Imposing Cost-Generative Requirements. The Planning Board recognizes that the Required Approvals and this Agreement all contemplate the development of an "Inclusionary Development" within the meaning of the Mount Laurel doctrine. The Planning Board agrees to adhere to the specific requirements of Section 4.5 above related to specific cost generation requirements associated with the Inclusionary Development as this inclusionary development is significantly exceeding the typical affordable housing set-asides as generally approved in court and COAH matters by providing a 30% affordable family set-aside. Except as to the standards and requirements set forth in this Agreement, nothing shall prevent PPF from applying for a waiver or bulk variance from any standard imposed by the Township's Land Use and Development Ordinance, as applicable, and the standards set forth in the MLUL, as applicable. Notwithstanding the above, the Township Council and the Planning Board are under no obligation to grant or approve any request for a bulk variance, waiver or de minimus exception, but shall address any such request in accordance with law.

ARTICLE VI – MUTUAL OBLIGATIONS

6.1 Escrow Agreement. On the Effective Date (as this term is defined in Section 10.12 hereof), PPF shall deposit the amount of \$50,000.00 with the Township, said amount comprising a portion of the escrow monies to be utilized by the Township to tender payment of reasonable fees for professional services, including legal, engineering, and planning services being provided in conjunction with the Court's approval of this Agreement, Fairness Hearing specifically on this Agreement, and the Required Approvals. In addition, each time the amount of said escrow monies deposited with the Township falls below \$10,000.00, PPF shall replenish the amount of said escrow monies after reasonable request from the Township by depositing with the Township additional escrow monies in \$50,000.00 increments; provided, however, that PPF's obligation to deposit escrow monies with the Township pursuant to this Section 6.1 shall be subject to the \$350,000 cap set forth in Section 4.5.a hereof. Upon receipt of all Required Approvals in final and unappealable form, PPF shall deposit all necessary escrow monies with the Township to be utilized to tender payment of reasonable fees for professional services, including legal, engineering, building subcode and planning services for construction inspection of the Inclusionary Development and Commercial Lot.

6.2 Obligation To Comply with State Regulations. The Parties shall comply with any and all Federal, State, County and local laws, rules, regulations, statutes, ordinances, permits, resolutions, judgments, orders, decrees, directives, interpretations, standards, licenses, approvals, and similarly binding authority, applicable to the Inclusionary Development or the performance by the Parties of their respective obligations or the exercise by the Parties of their respective rights in connection with this Agreement.

6.3 Mutual Good Faith, Cooperation and Assistance. The Parties shall exercise good faith, cooperate, and assist each other in fulfilling the intent and purpose of this Agreement, including, but not limited to, the approval of this Agreement by the Court, the procurement of the Required Approvals, the development of the Development Property consistent with the terms hereof, and the defense of any challenge with regard to any of the foregoing.

6.4 Court's Failure to Approve PRD VII Ordinance. If the Court does not approve the adopted PRD VII Zoning Ordinance by the deadline set forth in Section 4.1, then, at the option of PPF, in its sole discretion and by prior written notice to the Township and Planning Board in accordance with Article IX of this Agreement, this Agreement shall terminate and the Parties shall be restored to the status quo ante to the date hereof (including, without limitation, the Township's return of any unused portion of professional review escrow fees posted by PPF in accordance with Section 4.5.a), and all claims and defenses available now shall be available to the Parties. In the event that PPF decides that the Parties shall be restored to the status quo ante to the date hereof and all claims and defenses available now shall be available to the Parties, no Party shall be entitled to use this Agreement, or negotiations in conjunction therewith, as the basis for any claim against any other Party.

6.5 Defense of Agreement. Except as otherwise provided in this Agreement, each party exclusively shall be responsible for all costs that it may incur in obtaining Court approval of this Agreement and in defending any appeal therefrom, or in obtaining the Required Approvals or the approval of the Affordable Housing Plan or any part thereof except as is otherwise provided in this Agreement. The Parties shall diligently defend any such challenge.

ARTICLE VII - AFFORDABLE HOUSING CREDITS

7.1 Demonstration of Creditworthiness of Units. Within thirty (30) days of receipt of request, PPF agrees to supply the Township and the Township's Administrative Agent with all documents within its possession that may be reasonably necessary to demonstrate to the Court or any other reviewing agency, entity or body, the creditworthiness of the affordable units.

ARTICLE VIII - COOPERATION AND COMPLIANCE

8.1 Implementation And Enforcement Of Agreement. The Parties agree to cooperate with each other, provide all reasonable and necessary documentation, and take all actions reasonably necessary to satisfy the terms and conditions hereof and assure compliance with the terms of this Agreement, subject to prior written agreement between the Parties on payment by the requesting party of the requested party's direct costs and expenses in connection with such assistance. The Township's obligation to cooperate shall be further conditioned upon PPF paying and maintaining current real estate taxes and all other municipal assessments.

ARTICLE IX - NOTICES

9.1 Notices. Any notice or transmittal of any document required, permitted or appropriate hereunder and/or any transmittal between the Parties relating to the Property (herein “Notice[s]”) shall be written and shall be served upon the respective Parties by facsimile or by certified mail, return receipt requested, or recognized overnight or personal carrier such as, for example, Federal Express, with proof of receipt; and for any transmittal by certified mail or recognized overnight or personal carrier of less than fifty (50) pages, a facsimile delivery shall also be provided. All Notices shall be deemed received upon the date of delivery set forth in such certified proof, and all times for performance based upon notice shall be from the date set forth therein. Delivery shall be effected as follows, subject to change as to the person(s) to be notified and/or their respective addresses upon ten (10) days’ written notice as provided herein:

TO PPF:

PPF Industrial – Route 130/Exit 8A, LLC
c/o Matrix Development Group
Attn: Joseph S. Taylor, President
Forsgate Drive, CN 4000
Cranbury, NJ 08512
Fax: (609) 395-8289

WITH COPIES TO:

Hill Wallack LLP
Attention: Thomas F. Carroll, III, Esq.
21 Roszel Road
P.O. Box 5226
Princeton, New Jersey 08543-5226
Fax: (609) 452-1888
Email: tc Carroll@hillwallack.com

And

Faegre Drinker Biddle & Reath LLP
Attention: Glenn S. Pantel, Esq.
600 Campus Drive
Florham Park
NJ 07932
Email: glenn.pantel@faegredrinker.com
Fax: (973) 360-9831

TO THE TOWNSHIP OF SOUTH BRUNSWICK:

Clerk of Township of South Brunswick
540 Ridge Road
P.O. Box 190
Monmouth Junction, New Jersey 08852
Fax: (732) 329-0926

WITH COPIES TO:

Law Department, Township of South Brunswick

540 Ridge Road
P.O. Box 190
Monmouth Junction, New Jersey 08852
Attn: Donald J. Sears, Director of Law
Phone:(732) 329-4000 ext. 7311
Email: dsears@sbtnj.net
Fax: (732) 329-0926

TO THE SOUTH BRUNSWICK PLANNING BOARD:

South Brunswick Planning Board
Township of South Brunswick
540 Ridge Road
Monmouth Junction, New Jersey 08852
Attn: Director of Planning
Phone: (732) 329-4000 ext. 7239
Fax: (732) 329-0926

WITH COPIES TO:

Thomas F. Collins, Jr., Esq.
Thomas J. Molica, Jr., Esq.
Vogel, Chait, Collins & Schneider, P.C.
25 Lindsley Drive, Suite 200
Morristown, New Jersey 07960-4454
Phone: (908) 538-3800
Email: tcollins@vccslaw.com
tmolica@vccslaw.com
Fax: (973)538-3002

In the event any of the individuals identified above has a successor, the individual identified shall, in writing, name the successor and notify all others identified of their successor. Counsel for a party may give notice to another party with the same effect as if given by a party.

ARTICLE X - MISCELLANEOUS

10.1 Severability. Unless otherwise specified, it is intended that the provisions of this Agreement are to be severable. The validity of any article, section, clause or provisions of this Agreement shall not affect the validity of the remaining articles, sections, clauses or provisions hereof. If any section of this Agreement shall be adjudged by a court to be invalid, illegal, or unenforceable in any respect, such determination shall not affect the remaining sections.

10.2 Successors Bound. The provisions of this Agreement shall run with the land, and the obligations and benefits hereunder shall be binding upon and inure to the benefit of the Parties, their successors and assigns, including any person, corporation, partnership or other legal entity which at any particular time may have a fee title interest in all or part of the Property which is

the subject of this Agreement. By way of example, PPF shall have no obligations hereunder with respect to any portion of the Property conveyed to a grantee, and any such grantee shall be deemed to have assumed the obligations of PPF with respect to the portion of the Property conveyed to it; and PPF may assign, in whole or in part, any of its rights hereunder to such grantee. This Agreement may be enforced by any of the Parties, and their successors and assigns, as herein set forth.

10.3 Recording of Agreement; Discharge. This Agreement shall be recorded in the office of the Middlesex County Clerk. Within forty-five (45) days after completion of the construction of the Inclusionary Development, the Parties shall execute a discharge of this Agreement and shall thereafter cause said discharge to be recorded in the office of the Middlesex County Clerk, provided that the appropriate documents have been properly executed and recorded with the Middlesex County Clerk to establish the Deed-Restriction Period (as defined in Section 62-896(2) of the PRD VII Zoning Ordinance) upon all affordable housing units within the Inclusionary Development.

10.4 No Modification. This Agreement may not be modified, amended or altered in any way except by a writing signed by each of the Parties.

10.5 Effect of Counterparts. This Agreement may be executed simultaneously in one (1) or more facsimile or pdf counterparts, each of which shall be deemed an original and be fully enforceable as if bearing original signatures. Any facsimile or pdf counterpart forthwith shall be supplemented by the delivery of an original counterpart pursuant to the terms for notice set forth herein.

10.6 Voluntary Agreement. The Parties acknowledge that each has entered into this Agreement on its own volition without coercion or duress after consulting with its counsel, that each party is the proper person and possesses the authority to sign the Agreement, that this Agreement contains the entire understanding of the Parties and that there are no representations, warranties, covenants or undertakings other than those expressly set forth herein.

10.7 Interpretation. Each of the Parties hereto acknowledges that this Agreement was not drafted by any one of the Parties, but was drafted, negotiated and reviewed by all Parties, and, therefore, the presumption of resolving ambiguities against the drafter shall not apply. Each of the Parties expressly represents to the other Parties that: (a) it has been represented by counsel in connection with negotiating the terms of this Agreement; and (b) it has conferred due authority for execution of this Agreement upon the person(s) executing it.

10.8 Necessity of Required Approvals and Eminent Domain. The Parties recognize that the site plans and subdivision required to implement the Inclusionary Development and the development of the Commercial Lot provided in this Agreement, and such other actions as may be required of the Planning Board or Township under this Agreement, cannot be approved except on the basis of the independent reasonable judgment by the Planning Board and the Township Council, as appropriate, and in accordance with the procedures established by law. Nothing in this Agreement is intended to constrain that judgment or to authorize any action not taken in accordance with procedures established by law. Similarly, nothing herein is intended to preclude PPF from appealing any denials of or conditions imposed by the Planning Board in accordance with the MLUL or taking any other action permitted by law,

subject to PPF's compliance with the terms of this Agreement. The Parties further recognize that (i) the acquisition of certain easements (temporary and permanent) within properties owned by third parties and (ii) permanent acquisitions in fee of properties owned by third parties, may be necessary for the development of the Commercial Lot and for the construction of the Inclusionary Development and all related improvements contemplated by this Agreement, including, without limitation, for the construction of road improvements, utilities, stormwater management, sidewalks, and bike paths. Given the public importance of the Inclusionary Development, to ensure the uninterrupted development of the Inclusionary Development, the Township shall, upon the request of and at the sole expense of PPF, and after PPF has attempted in good faith to acquire any easements, right-of-way agreements and/or permanent acquisitions in fee of third party property, undertake the expeditious acquisition of all such property interests held by third parties through negotiation with any such third parties. The Township may, but is not obligated to, acquire such third party properties through exercise of its powers of eminent domain. In the event the third party properties cannot be acquired through negotiation, and the Township does not acquire same through its powers of eminent domain, construction of the improvements intended for said third party properties shall be deferred until such time as the properties can be acquired.

10.9 Schedules. Any and all Exhibits and Schedules annexed to this Agreement are hereby made a part of this Agreement by this reference thereto. Any and all Exhibits and Schedules now and/or in the future are hereby made or will be made a part of this Agreement only upon the prior written approval of all Parties.

10.10 Entire Agreement; Supersession/Modification of Prior Settlement Agreement. This Agreement constitutes the entire agreement between the Parties and supersedes and/or modifies all prior oral and written agreements between the Parties with respect to the Property and the subject matter hereof, except as otherwise provided herein, including that certain Settlement Agreement between PPF and the Township approved as of August 24, 2010.

10.11 Conflict Of Interest. No member, official or employee of the Township or the Planning Board shall have any direct or indirect interest in this Agreement, nor participate in any decision relating to the Agreement which is prohibited by law, absent the need to invoke the rule of necessity.

10.12 Effective Date. Anything herein contained to the contrary notwithstanding, the effective date ("Effective Date") of this Agreement shall be the date upon which the last of the Parties to execute this Agreement has executed and delivered this Agreement.

10.13 Waiver. The Parties agree that this Agreement is enforceable. Each of the Parties waives all rights to challenge the validity or the ability to enforce this Agreement. Failure to enforce any of the provisions of this Agreement by any of the Parties shall not be construed as a waiver of these or other provisions.

10.14 Captions. The captions and titles to this Agreement and the several sections and subsections are inserted for purposes of convenience of reference only and are in no way to be construed as limiting or modifying the scope and intent of the various provisions of this Agreement.

10.15 Default. In the event that any of the Parties shall fail to perform any material obligation on its part to be performed pursuant to the terms and conditions of this Agreement, unless such obligation is waived by all of the other Parties for whose benefit such obligation is intended, or by the Court, such failure to perform shall constitute a default of this Agreement. Upon the occurrence of any default, the non-defaulting Party shall provide notice of the default, and the defaulting Party shall have the opportunity to cure the default within forty-five (45) days therefrom, unless such default cannot with due diligence be wholly cured within such forty-five (45) day period, in which case the defaulting Party shall have such longer period as shall be necessary to cure such default, so long as said defaulting Party proceeds promptly to cure such default within such forty-five (45) day period, prosecutes such cure to completion within sixty (60) days and advises the non-defaulting party of the actions which the defaulting Party is taking and the progress being made. In the event the defaulting Party fails to cure the default within such forty-five (45) or sixty (60) day period, as the case may be, the Party(ies) for whose benefit such obligation is intended shall be entitled to exercise any and all rights and remedies that may be available in equity or under the laws of the State of New Jersey, including the right of specific performance to the extent available. Further, the Parties may apply to the Court for relief, by way of a motion for enforcement of litigant's rights.

10.16 Notice of Actions. The Parties and their respective counsel agree immediately to provide each other with notice of any lawsuits, actions or governmental declarations threatened or pending by third parties of which they are actually aware which may affect the provisions of this Agreement.

10.17 Governing Law, Construction, Resolution of Disputes. This Agreement has been entered into and shall be construed, governed and enforced in accordance with the laws of the State of New Jersey without giving effect to provisions relating to the conflicts of law. Jurisdiction of any litigation ensuing with regard to this Agreement exclusively shall be in the Superior Court of New Jersey, with venue in Middlesex County.

10.18 DJ Action. The Parties acknowledge that this Agreement cannot be modified by the DJ Action or any amendments to the Township's Affordable Housing Plan or Land Use and Development Ordinances, and this Agreement shall control with respect to those matters as applied to the Development Property. Upon the entry of a Judgment of Compliance and Repose in the Township's DJ Action, and after the DJ Action is concluded, the Court shall retain jurisdiction to ensure compliance with the terms and conditions of this Agreement. As to any inconsistencies between the Required Approvals and this Agreement, the Required Approvals shall control. In the event of an appeal of the DJ Action, the terms and conditions of this Agreement shall control and shall not be affected by the outcome of any such appeal.

10.19 Recitals. The recitals of this Agreement are incorporated herein and made a part hereof.

THE REMAINDER OF THIS PAGE IS PURPOSEFULLY BLANK

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be properly executed, their corporate seals affixed and attested and this Agreement to be effective as of the Effective Date.

Witness/Attest:

PPF INDUSTRIAL – ROUTE 130/
EXIT 8A, LLC

By: Matrix/PPF ROUTE 130/ EXIT
8A, Industrial Fund, LLC,

By: Matrix Industrial Partners, LLC
Its Administrative Member

By: Taylor/Epstein Investment Fund,
LLC,


Name: WILLIAM STAPLETON
Title:

By: 
Name: Donald M. Epstein
Title: Manager

Dated: 9-22-2020

Witness/Attest:

TOWNSHIP OF SOUTH BRUNSWICK
By: Charlie Carley,
as its MAYOR

Barbara Nyitrai, Township Clerk

By: _____
Charlie Carley, Mayor

Dated: _____

Witness/Attest:

TOWNSHIP OF SOUTH BRUNSWICK
PLANNING BOARD
By:

Tammy Scimone, Secretary

By: _____
Paul Prodromo, Chair

Dated: _____

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be properly executed, their corporate seals affixed and attested and this Agreement to be effective as of the Effective Date.

Witness/Attest:

PPF INDUSTRIAL – ROUTE 130/
EXIT 8A, LLC

By: Matrix/PPF ROUTE 130/ EXIT
8A, Industrial Fund, LLC

By: Matrix Industrial Partners, LLC
Its Administrative Member

By: Taylor/Epstein Investment Fund,
LLC

Name:

Title:

Dated: _____

Witness/Attest:

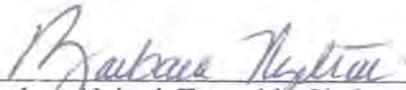
By: _____

Name:

Title:

TOWNSHIP OF SOUTH BRUNSWICK

By: Charlie Carley,
as its MAYOR



Barbara Nyitrai, Township Clerk

Dated: 9/28/2020

By: 

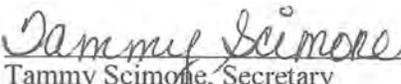
Charlie Carley, Mayor

Witness/Attest:

TOWNSHIP OF SOUTH BRUNSWICK

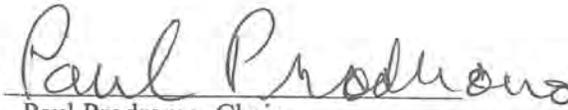
PLANNING BOARD

By:



Tammy Scimone, Secretary

Dated: 10/8/20

By: 

Paul Prodomo, Chair

STATE OF NEW JERSEY :

SS

COUNTY OF Middlesex :

I CERTIFY that on September 22, 2020, Donald M. Epstein personally came before me and he acknowledged under oath, to my satisfaction, that:

- (a) he is the Manager of Taylor/Epstein Investment Fund, LLC, the Manager of Matrix Industrial Partners, LLC, the Administrative Member of Matrix/PPF Route 130/Exit 8A Industrial Fund LLC, the Sole Member of PPF Industrial-Route 130/Exit 8A LLC, the limited liability company named in this document;
- (b) he is authorized to execute the attached Agreement as the Manager of Taylor/Epstein Investment Fund, LLC, the Manager of Matrix Industrial Partners, LLC, the Administrative Member of Matrix/PPF Route 130/Exit 8A Industrial Fund LLC, the Sole Member of PPF Industrial-Route 130/Exit 8A LLC;
- (c) he executed the attached Agreement on behalf of and as the act of PPF Industrial-Route 130/Exit 8A LLC; and
- (d) the attached Agreement was signed and made by the PPF Industrial-Route 130/Exit 8A LLC as its duly authorized and voluntary act.

Signed and sworn to before me
On September 22, 2020

Donna M. Parkin



STATE OF NEW JERSEY:
SS
COUNTY OF MIDDLESEX:

I CERTIFY that on Sept. 28, 2020, BARBARA NYITRAI, personally came before me and she acknowledged under oath, to my satisfaction, that:

- (a) she is the Township Clerk of the Township of South Brunswick, the municipal corporation named in this document;
- (b) she is the attesting witness to the signing of this document by Charlie Carley, who is the Mayor of the Township of South Brunswick;
- (c) this document was signed and delivered by the Township of South Brunswick as its voluntary act duly authorized by a proper resolution of the Township Council;
- (d) she knows the proper seal of the Township of South Brunswick which was affixed to this document; and
- (e) she signed this proof to attest to the truth of these facts.

Signed and sworn to before me
On September 28, 2020


Donald J. Sears
An Attorney At Law
In the State of New Jersey


Barbara Nyitrai, Township Clerk

STATE OF NEW JERSEY:

SS

COUNTY OF MIDDLESEX:

I CERTIFY that on October 8, 2020, TAMMY SCIMONE, personally came before me and she acknowledged under oath, to my satisfaction, that:

(a) she is the Secretary of the South Brunswick Planning Board, the municipal corporation named in this document;

(b) she is the attesting witness to the signing of this document by Paul Prodomo, who is the Chairperson of the South Brunswick Planning Board;

(c) this document was signed and delivered by the South Brunswick Planning Board as its voluntary act duly authorized by a proper resolution of the Board;

(d) she knows the proper seal of the Board (if any) which was affixed to this document; and

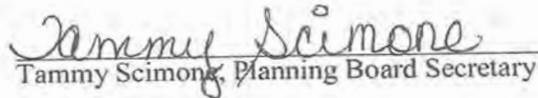
(e) she signed this proof to attest to the truth of these facts.

Signed and sworn to before me

On October 8, 2020



Donald J. Sears
An Attorney at Law
In the State of New Jersey



Tammy Scimone
Planning Board Secretary

EXHIBIT A

**CONCEPT PLAN FOR INCLUSIONARY DEVELOPMENT AND
COMMERCIAL LOT**

**On file with the hard copy of the Court-Approved
PPF Matrix Settlement Agreement**

EXHIBIT B
PRD VII ZONING ORDINANCE



South Brunswick Township
540 Ridge Road
Monmouth Junction, NJ 08852

ORDINANCE 2020-31

Amending the Zoning Map to Reflect the Rezoning of Certain Property Located in the Area of Route 130 and Friendship Road

WHEREAS, the Township contains several areas located adjacent to or near the intersection of N.J. State Route 130 and Friendship Road that have been zoned as C-5 and C-6 (Commercial) and RR (Rural Residential) for many years, but have remained undeveloped; and

WHEREAS, the Township Council believes that it is in the best interests of the residents of the Township of South Brunswick to create and establish zoning to rezone these areas for a mixed use development, including a commercial development and a residential inclusionary project with affordable housing, in satisfaction of a portion of the Township's Third Round Affordable Housing Fair Share Obligation; and

WHEREAS, concurrently with the adoption of this ordinance, the Township Council is adopting Township Ordinance No. 2020-32 amending the PRD VII Mixed Development Zone containing commercial and residential subzones as set forth therein, so as to produce the opportunity for certain commercial development and residential development with affordable housing; and

WHEREAS, the Planning Board has considered this proposal and has recommended that the Township Council rezone the property at this time; and

WHEREAS, it is appropriate to amend the Township Zoning Map to reflect said rezoning;

NOW THEREFORE BE IT ORDAINED, by the Township Council of the Township of South Brunswick, County of Middlesex, State of New Jersey, that:

1. The zoning map of the Township of South Brunswick shall be and is hereby amended to reflect the rezoning of the following properties located adjacent to or near the intersection of Route 130 and Friendship Road, and to the north and south of Friendship Road, into the PRD VII Mixed Development Zone and the following subzones contained therein:

- (a) Block 11, a portion of Lot 15.03 from C-5 (Commercial District) to the PRD VII Route 130 Affordable Housing Subzone;
- (b) Block 11, a portion of Lot 15.03 from C-5 (Commercial District) to the PRD VII Commercial Subzone;
- (c) Block 11, Lot 15.05 from MF (Multiple Dwelling/Garden Apartments District) to the PRD VII Friendship Road North Inclusionary Housing Subzone;

- (d) Block 11, Lot 13.02 from RR (Rural Residential) to the PRD VII Friendship Road North Inclusionary Housing Subzone;
 - (e) Block 6, Lot 15.021 from C-5 (Commercial District) to the PRD VII Friendship Road South Inclusionary Housing Subzone; and
 - (f) Block 6, Lot 15.022 from C-6 (Commercial District) to the PRD VII Friendship Road South Inclusionary Housing Subzone,
- all as shown on the zone plan attached hereto as Exhibit A.

2. A copy of the zoning map is available for public inspection in the office of the Township Clerk during normal business hours.

3. The Township Clerk is hereby directed to give notice at least ten (10) days prior to the hearing on the adoption of this ordinance to the Middlesex County Planning Board and to all other persons entitled thereto pursuant to N.J.S.A. 40:55D-15 and N.J.S.A. 40:55D-63 (if required). Upon the adoption of this ordinance after public hearing thereon, the Township Clerk is further directed to publish notice of the passage thereof and to file a copy of the ordinance as finally adopted with the Middlesex County Planning Board as required by N.J.S.A. 40:55D-16 and with the Township Tax Assessor as required by N.J.S.A. 40:49-2.1.

4. If any clause, sentence, paragraph, section or part of this ordinance or any other codes or ordinances incorporated herein shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder hereof, but shall be confined in its operation to the clause, sentence, paragraph, section or part thereof directly involved in the controversy in which said judgment shall have been rendered.

5. This ordinance shall become effective twenty (20) days after its final passage, subject to approval by the New Jersey Superior Court, and upon filing with the Middlesex County Planning Board.

The above ordinance was introduced and passed on first reading at a meeting of the Township Council of the Township of South Brunswick held on September 22, 2020. It will be considered on second reading and final passage at a meeting of the Township Council of the Township of South Brunswick to be held either: (1) at the Municipal Building, 540 Ridge Road, Monmouth Junction, New Jersey; or, if that is not possible, (2) via video conference, at 6:00 p.m. on October 27, 2020. If the meeting is held via video conference, an electronic link to the meeting will be made available to the public at www.sbtnj.net no later than noon on the day of the meeting. In either case, at the time of second reading and final passage any person having an interest therein will be given an opportunity to be heard.

This is to certify that the foregoing is a true copy of an ordinance at the South Brunswick Township Council meeting held on September 22, 2020.

Barbara Nyitrai, Township Clerk

EXHIBIT A





South Brunswick Township

540 Ridge Road
Monmouth Junction, NJ 08852

ORDINANCE 2020-32

**Amending and Supplementing Chapter 62, Land Use, by
Amending the PRD VII Mixed Development Zone Standards**

WHEREAS, on July 1, 2015, the Township filed a declaratory judgment action seeking a Judgment of Compliance and Repose approving its Affordable Housing Plan and seeking related relief in a matter entitled In the Matter of the Application of the Township of South Brunswick, County of Middlesex, Docket No. MID-3878-15, transferred to Mercer County under Docket No. MER-L-0810-17 by order of April 20, 2017, and transferred back to Middlesex County by order of July 26, 2017, subsequently given Docket No. MID-L-4433-17 (DJ Action); and

WHEREAS, on February 19, 2016, the Superior Court revoked the Township's immunity and permitted the filing of various builder's remedy lawsuits, which were consolidated with the DJ Action, including a builder's remedy complaint filed on July 7, 2017, by PPF Industrial - Route 130/Exit 8A, LLC (PPF) entitled, PPF Industrial - Route 130/Exit 8A, L.L.C., a limited liability company organized under the laws of the State of Delaware v. Township of South Brunswick, et al., Docket No. MID-L-4094-17 (Builder's Remedy Action); and

WHEREAS, PPF is the owner of the real property located adjacent to or near the intersection of N.J. State Route 130 and Friendship Road, and designated as Block 6, Lots 15.021 and 15.022 and Block 11, Lot 13.02 and Lot 15.03 on the tax map of the Township of South Brunswick (PPF Property), consisting of approximately 147.37 acres; and

WHEREAS, the Township had previously acquired title to certain property adjoining the existing PPF Property for affordable housing designated as Block 11, Lot 15.05, being approximately 6.15 acres in area (Township Property); and

WHEREAS, the Township and PPF have reached an agreement to settle the Builder's Remedy Action that will involve conveyance of the Township Property to PPF as an adjoining property owner in consideration of PPF's agreement to modify its proposed development to redistribute a portion of the proposed inclusionary housing development onto the Township Property and dedicate a portion of the PPF Property to the Township for general municipal purposes; and

WHEREAS, the settlement of the Builder's Remedy Action further requires the Township to rezone the PPF Property and the Township Property for a mixed use development, and PPF to develop the PPF Property and the Township Property for a subdivided commercial lot consisting of approximately three contiguous acres on the northwest corner of the intersection of Route 130 and Friendship Road, and a residential inclusionary project consisting of a total of 326 housing units, with a 30% affordable housing set aside, consisting of 98 two-story townhomes on fee simple lots, 130 three-story townhomes on fee simple lots, 83 affordable family rental apartments, and 15 affordable family "for sale" units in stacked townhomes, resulting in the creation of a total of 98 affordable family units; and

WHEREAS, at least 13% of the affordable units will be set-aside for very-low income households, at least 37% for low income households and up to 50% for moderate income households, in satisfaction of a portion of the Township's Third Round Affordable Housing Fair Share Obligation; and

WHEREAS, the Township previously adopted Ordinance 2020-14 on June 23, 2020, creating the PRD VII Mixed Development Zone (the "PRD VII Zone") standards and applying same to the PPF Property and Township Property so as to consummate the terms of the settlement and produce the affordable housing units contemplated by the settlement; and

WHEREAS, the Township and PPF have agreed upon certain revisions to the terms of the

settlement necessitating revisions to the standards established in the PRD VII Zone; and

WHEREAS, the settlement and this ordinance are both subject to approval of the settlement at a duly noticed Fairness Hearing to be held by the N.J. Superior Court, at which time the court must find that the proposed settlement and rezoning of the PPF Property and Township Property is fair to low and moderate income persons for whom the affordable housing units were intended, thereafter remanding the matter to the Township and the Township Planning Board to take such actions as are required to process PPF's application for subdivision and site plan approval; and

WHEREAS, it is appropriate to amend the PRD VII Zone standards, to be applied to the PPF Property and Township Property, so as to reflect the revised terms of the settlement and produce the affordable housing units contemplated by the settlement;

NOW THEREFORE BE IT ORDAINED, by the Township Council of the Township of South Brunswick, County of Middlesex, State of New Jersey, that:

I. Chapter 62, Article IV, Division 3, Subdivision XV(C), PRD VII Mixed Development Zone, of the South Brunswick Township Code, shall be and is hereby amended and supplemented by the deletion of the existing Subdivision XV(C) in its entirety and addition of the following:

Article IV. Zoning.

Subdivision XV(C) PRD VII Mixed Development Zone

Section 62-886 - Purpose

The PRD VII Zone includes Block 6, Lots 15.021 and 15.022 and Block 11, Lots 13.02 (portion), 15.03 and 15.05 (hereafter, "the Tract") containing approximately 120 acres. The purposes of the PRD VII Zone are to create an integrated mixed use zone for a combination of commercial and residential development; to permit approximately three (3) acres of commercial development at the northwest corner of the intersection of Route 130 and Friendship Road (excluding any future right-of-way dedications or vacations)(the "Commercial Subzone"); and permit the construction of housing units on the remaining undeveloped acres (the "Residential Subzones"). The Residential Subzones and the Commercial Subzone are depicted on a revised zoning map which shall be adopted by Township. The PRD VII Zone shall permit within the Residential Subzones up to 326 total units, of which 30% shall be set-aside for, and shall be affordable to, very-low, low and moderate income households, consisting of 98 two-story townhomes on fee simple lots, 130 three-story townhomes on fee simple lots, 83 affordable family rental apartments, and 15 affordable family "for sale" units in stacked townhomes. The Residential Subzones are as follows:

- (1) Friendship Road North Inclusionary Housing Subzone
- (2) Friendship Road South Inclusionary Housing Subzone
- (3) Route 130 Affordable Housing Subzone

Section 62-887 - Uses Permitted

The following uses are permitted in the PRD VII Zone:

- (1) Multifamily residential units and townhouse attached dwellings, but, in each case, only within the Residential Subzones.
- (2) Within the Commercial Subzone:
 - a. Communitywide and area-wide retail establishments, including department and variety stores, supermarkets, clothing stores, furniture and appliance stores, drugstores and liquor stores, but excluding warehouse/discount clubs.

- b. Communitywide and area-wide service activities, excluding movie theaters, but including banks, restaurants, fast food restaurants, exercise and dance schools, taverns, travel agencies, indoor recreation facilities and fitness centers and other such ancillary supermarket services.
- c. Convenience retail store with vehicle fuel sales. The regulations in Section 62-1921 shall not be applicable to this use.
- d. Offices for physicians, dentists, engineers, lawyers, architects, public accountants, real estate and insurance brokers, city planners and similar professions.
- e. Medical HMO facilities and medical laboratories.
- f. Educational facilities for learning and training.
- g. Health Clubs.
- h. Dance studios.
- i. Medical service and retail medical supply.
- j. Duplicating or office supply service.
- k. Product demonstration, display or showroom facilities.
- l. Conference or training centers.
- m. Family recreation facilities.
- n. Nursing homes.
- o. Child care centers.
- p. Assisted living facilities, with an affordable housing component.
- q. Laboratory or research facilities.

Section 62-888 - Uses permitted as conditional uses.

Uses permitted as conditional uses in the PRD VII Zone shall be subject to planning board approval under N.J.S.A. 40:55D-67. Provisions and performance standards for conditional uses shall apply, as specified in this chapter. The following uses shall be permitted as conditional uses:

- (1) Community buildings or activities of a quasi-public, social or fraternal character.

Section 62-889 - Accessory uses permitted.

Accessory uses permitted in the PRD VII Zone:

- (1) Parking lots and private garages.
- (2) Community swimming pools, tennis courts, basketball courts, tot lots, volleyball courts and other recreational facilities.
- (3) Gazebos, trellises, arbors, pergolas, decks, patios, gardens and landscaped areas including fountains, ponds and other water features.
- (4) A clubhouse, which may include facilities such as the following: a fitness center; multi-purpose rooms, wellness center; leasing office; entertainment center; meeting rooms; resident food and beverage area; and business center.
- (5) Maintenance and storage buildings.
- (6) Signs, as regulated in this chapter. The installation of signs shall comply with regulations contained in Article IV, Division 7, §62-1816 thru 1823 in existence as of October 27, 2020, which is the date of the adoption of Ordinance 2020-32 amending the PRD VII Zone, with the signage for the Commercial Subzone being regulated in the same manner as signage for the C-2 and C-3 zones in said §62-1816 thru 1823. Signage for the Commercial Subzone development may be located in the Route 130 Affordable Housing Subzone; and signage for the Route 130 Affordable Housing Subzone may be located in the Commercial Subzone development, and the actual location of such signage is, subject to revision as may be required by PPF, set forth on the Concept Plan annexed as Exhibit A to the settlement agreement entered into between the Township and PPF to settle the Builder's Remedy Action (the "Settlement Agreement").
- (7) Fences and walls, as regulated in this chapter.
- (8) Electric vehicle charging stations.

- (9) Home occupations and home professional offices, as defined and regulated by the provisions in this chapter.

Section 62-890 - Tract and open space requirements.

- (1) It is recognized that the Tract may be subdivided. The Tract bulk standards associated within the PRD VII Zone shall apply to the overall Tract. In the event there are subdivided lots within the Tract, there may be easements for vehicular and pedestrian circulation, shared parking and storm water management facilities for use on a Tract wide basis, so as to permit the development of the PRD VII Zone as a comprehensive mixed use project.
- (2) The maximum building coverage shall be 25 percent of the total land area of the Tract.
- (3) The minimum open space standard shall be 30 percent of the Tract.
- (4) **Residential Subzones buffers.** Buffer areas shall be provided in the Residential Subzones with a landscaped berm along that portion of the property that abuts a roadway or existing land use. Below are the minimum buffer widths for the various subzones:
- a. Friendship Road North Inclusionary Housing Subzone: 50 feet wide, except for emergency access roadways and cul-de-sacs.
 - b. Friendship Road South Inclusionary Housing Subzone: 40 feet wide, except for areas where (a) head-in parking (including driveways and parking spaces) is provided, and (b) a basin is provided, in which cases the buffer shall be no less than 15 feet in width.
 - c. Route 130 Affordable Housing Subzone: 50 feet wide along Route 130 frontage as measured from the existing right-of-way line of Route 130, except for areas where a driveway or an internal roadway is provided, in which case the buffer shall be no less than 15 feet in width.
- (5) **Commercial Subzone buffers.** Commercial Subzone buffers shall be as follows:
- a. 50 feet wide along the southern and eastern property lines, adjacent to Friendship Road and Route 130 frontages (as measured from the existing right-of-way line of Route 130 prior to any dedication of the right-of-way along Route 130), except for areas where parking is provided, in which case the buffer shall be no less than 10 feet in width.
- (6) The following encroachments into the Tract buffers are permitted:
- a. Pedestrian trails, sidewalks, signs, retaining walls, and landscaped areas are permitted in all buffer areas.
 - b. New stormwater basins shall not be located within 20 feet of the Tract boundary line, but this limitation shall not be applicable to other stormwater facilities, including, but not limited to, pipes, headwalls, swales, and riprap.
 - c. Driveways and access roadways are permitted within the Tract buffer adjacent to Route 130 and Friendship Road.
 - d. Emergency access if required by Township
- (7) Existing roads, existing stormwater facilities, existing parking areas and related improvements are exempt from all Tract buffer requirements.
- (8) All residential development must be served by public water and sanitary sewer service.

Section 62- 891 - Area, Yard, and Density Tract Requirements

- (1) Overall Tract
- a. The maximum residential yield shall be 326 units.
 - b. The maximum impervious coverage shall be 70%.
 - c. Multiple principal buildings and multiple principal uses shall be allowed on a single lot.
 - d. Residential buildings shall be set back at least:
 - (i) 15 feet from any street or driveway.
 - (ii) 10 feet from any parking area.

- e. The following minimum distance between buildings is required: 50 feet between residential and nonresidential buildings within the Tract, irrespective of a subdivision of the Tract.
 - f. In measuring building separation distances set forth herein, covered and uncovered stairs and stoops, stairways, balconies, decks, cornices, eaves, gutters, bay windows, chimneys and other projections from buildings shall be excluded from the measurements.
 - g. Additional requirements for residential use:
 - (i) Maximum number of attached units per townhouse dwelling: 7
 - (ii) No building intended for residential occupancy shall be located within 20 feet of the Tract boundary line.
 - (iii) Common area property may contain certain improvements, such as underground utility lines, stormwater management features, decks/patios, landscaping, signage, walking paths and sidewalks.
 - (iv) All provisions of the Residential Site Improvement Standards (RSIS) shall be applicable within the PRD VII Zone.
- (2) Friendship Road North Inclusionary Housing Subzone
- a. The maximum residential yield shall be 98 market-rate units.
 - b. For townhouse dwellings constructed on fee-simple lots, the following area and dimensional requirements shall apply:
 - (i) Minimum Lot Area: 2,100 square feet
 - (ii) Minimum Lot Width: 24 feet
 - (iii) Minimum Lot Depth: 90 feet
 - (iv) Building separation, front to front: 60 feet
 - (v) Building separation, side to side: 25 feet
 - (vi) Building separation, all other: 30 feet
 - (vii) No residential building or structure shall exceed 41 feet or 2.5 stories in height, except as regulated by the height exception provisions of this chapter
- (3) Friendship Road South Inclusionary Housing Subzone
- a. The maximum residential yield shall be 145 units, including 130 townhomes (market rate) and 15 stacked townhomes (affordable).
 - b. For townhouse dwellings constructed on fee-simple lots, the following area and dimensional requirements shall apply:
 - (i) Minimum Lot Area: 1,920 square feet
 - (ii) Minimum Lot Width (130 townhomes (market rate)): 24 feet
 - (iii) Minimum Unit Width (15 stacked townhomes (affordable)): 24 feet (except that 50%, i.e., up to five (5), of the 2-bedroom stacked townhome affordable units shall have a minimum width of 18 feet)
 - (iv) Minimum Lot Depth: 80 feet
 - (v) Building Separation, front to front: 60 feet
 - (vi) Building Separation, side to side: 25 feet
 - (vii) Building Separation, all other: 30 feet
 - (viii) No residential building or structure shall exceed 45 feet or 3 stories in height, except as regulated by the height exception provisions of this chapter
 - c. For the stacked townhomes to be offered for sale as low or moderate-income condominium units, the following area and dimensional requirements shall apply:
 - (i) Building setback from Friendship Road frontage: 60 feet
 - (ii) Building setback from other property boundaries: 20 feet
 - (iii) Building setback from roadway: 20 feet
 - (iv) Building setback from parking: 10 feet
 - (v) Minimum distance between buildings: 35 feet
 - (vi) No residential building or structure shall exceed 45 feet or 3 stories in height, except as regulated by the height exception provisions of this chapter
- (4) Route 130 Affordable Housing Subzone
- a. The maximum residential yield shall be 83 rental units.

- b. The following area and dimensional requirements shall apply:
 - (i) Building setback from Route 130 frontage: 125 feet
 - (ii) Building setback from other property boundaries: 50 feet
 - (iii) Building setback from internal roadways and driveways: 10 feet
 - (iv) Building setback from parking: 10 feet
 - (v) Minimum distance between buildings: 30 feet
 - (vi) No residential building or structure shall exceed 45 feet or 3 stories in height, except as regulated by the height exception provisions of this chapter
 - (vii) Minimum lot area: 10 acres
- (5) Commercial Subzone
- a. Minimum lot area: 40,000 square feet.
 - b. Minimum lot frontage: 200 feet.
 - c. Minimum commercial building setbacks shall be as follows:
 - (i) 100 feet from Friendship Road and Route 130.
 - (ii) 40 feet from all other property lines.
 - (iii) 10 feet from any street or driveway (other than Friendship Road and Route 130).
 - (iv) 5 feet from any parking area.
 - d. Maximum building coverage: 25%
 - e. Maximum lot coverage: 70%
 - f. The maximum building height shall be 35 feet.

Section 62-892 - Off-street parking requirements and loading requirements.

- (1) Off-street parking for residential uses shall be provided as follows: All off-street parking shall be designed to comply with the standards set forth in the New Jersey Residential Site Improvements Standard (RSIS). The parking requirement for a clubhouse shall be 2.5 spaces per 1,000 square feet of gross floor area.
- (2) The parking requirement for non-residential development shall be four (4) parking spaces per 1,000 square feet. Shared parking arrangements are encouraged.
- (3) Parking and parking setbacks are as follows:
 - a. Parking and drive aisles shall be permitted in all building setback areas.
 - b. All nonresidential parking shall be set back a minimum of 40 feet from Route 130 cartway and Friendship Road right-of-way, and 10 feet from all other Tract boundaries.
- (4) All nonresidential buildings shall face the public roadways or entrance boulevard. Any service or loading areas facing public roadways shall be sufficiently screened from view from the public road.
- (5) Parking Stall and Aisle dimensions:
 - a. Parking stall dimensions shall be nine (9') feet wide and eighteen (18') feet deep.
 - b. Parking aisle width shall be twenty four (24') feet.

Section 62-893 - Lighting.

Lighting shall be provided in accordance with Section 62-208, with the exception that Section 62-208(g)(4) regarding lighting of sidewalks and pedestrian walkways may be accomplished by ambient lighting from buildings and parking areas and such lighting as may be required to ensure pedestrian safety. No lighting is required for pedestrian trails located within buffer areas, except for such lighting as may be required to ensure pedestrian safety.

Section 62-894 - Trash and Recycling Enclosures.

- (1) There shall be one enclosure (18' X 24') for every three (3) residential buildings for trash and recycling.
- (2) Trash and recycling enclosures shall be completely surrounded by a six-foot-high solid architectural fence and solid gate. All outside trash shall be stored in this area and shall not be

in public view over the fence height. All similar accessory appurtenances, such as propane tanks, must be similarly enclosed.

Section 62-895 - Design Standards. These design standards are intended to be applied with flexibility to accommodate the construction of inclusionary and affordable development consistent with the bulk standards of the PRD VII Zone. Section 62-206 shall not apply to the PRD VII Zone.

- (1) Recreation areas shall be provided for the development in the Friendship Road South Inclusionary Housing Subzone, the Friendship Road North Inclusionary Housing Subzone, and the Route 130 Affordable Housing Subzone which (i) may be located in the Friendship Road South Inclusionary Housing Subzone, the Friendship Road North Inclusionary Housing Subzone, and/or the Route 130 Affordable Housing Subzone, and (ii) may contain facilities such as a clubhouse, tennis court, basketball court, tot lot, and/or swimming pool area, and (iii) shall contain a minimum of eighty (80) square feet per unit, provided, however, that (x) not all of the residents of all of the units shall be required to have access to all of the recreation areas (except that if the recreation area in the Friendship Road South Inclusionary Housing Subzone or the Friendship Road North Inclusionary Housing Subzone includes a swimming pool, the tenants of the affordable rental apartments in the Route 130 Affordable Housing Subzone will have use of such swimming pool equal to that of residents of the Friendship Road North Inclusionary Housing Subzone and the Friendship Road South Inclusionary Housing Subzone), and (y) the recreation area within the Route 130 Affordable Housing Subzone shall include a tennis court and a basketball court.
- (2) The second floor and third floor affordable, stacked townhomes, which shall be located in the Friendship Road South Inclusionary Housing Subzone, shall each have a 1-car garage. The multi-story, market-rate townhomes, located in the Friendship Road South Inclusionary Housing Subzone and the Friendship Road North Inclusionary Housing Subzone, shall each have a 1-car or 2-car garage.
- (3) Bicycle racks shall be provided in reasonable proximity to the stacked townhome units in the Friendship Road South Inclusionary Housing Subzone and to the apartment buildings in the Route 130 Affordable Housing Subzone.
- (4) In the Route 130 Affordable Housing Subzone, each apartment unit shall have the use of a storage locker containing a minimum of 50 cubic feet, located on the ground floor of the same building in which such apartment unit is located.
- (5) The individual apartment units in the apartment buildings in the Route 130 Affordable Housing Subzone shall each be equipped with a clothes washer and dryer. The affordable stacked townhome units, in the Friendship Road South Inclusionary Housing Subzone, shall each be equipped with clothes washer and dryer hook-ups.
- (6) Development of the apartment buildings in the Route 130 Affordable Housing Subzone shall include a package delivery area which may be provided in an exterior facility or by other reasonable measures.
- (7) The apartment buildings in the Route 130 Affordable Housing Subzone shall be surrounded by an open area extending a minimum distance of 10 feet from its perimeter, except that sidewalks, directional and building identification signage, package delivery facilities, bicycle racks, lighting improvements, landscaping features, and the like shall be allowed within that perimeter area.
- (8) Architectural design standards for the Friendship Road North Inclusionary Housing Subzone and the Friendship Road South Inclusionary Housing Subzone.

a. Architectural Variety.

- (i) The architectural style of the townhomes should emphasize colonial and traditional architectural themes, incorporating a mix of features, some of which may be included in the different buildings such as gable roof-lines, front entries with porches, door and window trim, 1-car and 2-car garages, and a variety of siding, stone veneer, or brick veneer materials.
- (ii) A given building may employ a single color application, provided, however, that all of the buildings should not employ the exact same color application.
- (iii) Each building should employ more than a single material application.
- (iv) No more than two different building types shall be required, with building types being differentiated through variations in building materials, color, rooflines, and/or the use

of architectural features such as porch overhangs, pent roofs, dormers, window variations, and other features.

b. Pedestrian-friendly Façades

- (i) Stoops or front porches should be provided at the ground floor unit entrances that face a street or other public space, except for the stacked townhome units that do not have a ground floor entrance or direct access to the street.
- (ii) Ground floor residential entrances should be sheltered from the rain and snow. Sheltering may be accomplished by recessing the entry a minimum of three feet, or with the construction of a roof or overhead architectural element.

c. Massing, Articulation and Proportion

- (i) Upper stories should not project beyond the ground floor footprint, except for bays no wider than 50% of the primary façade of the building.
- (ii) Horizontal eaves, along the front of a building face, longer than 40 feet should be broken up by features such as gables, building projections, or other roof-line articulation.

d. Architectural Detailing and Character

All sides of a building should include architectural detailing, although generally the front and, in some cases, the sides will reflect more detailing than the rear of the building. Architectural detailing may include a range of features, such as trim, cornices, box bays, pent roof, dormers, vertical breaks, horizontal band boards, and material changes.

e. Exterior Materials

- (i) Acceptable exterior cladding materials should, for each building, include at least two of the following: standard sized brick or brick veneer; natural stone veneers; vinyl siding; synthetic trim elements; or other similar materials. Trim materials may include architecturally-appropriate synthetic options to enhance durability or reduce maintenance.
- (ii) Acceptable roofing materials include asphalt composition shingles and, for accent roof elements, asphalt composition shingles or standing-seam metal material.
- (iii) Exterior classic or traditional details and elements, such as brackets, cornices, window trim and wall corner boards, may also be utilized.

(9) Architectural design standards for the Route 130 Affordable Housing Subzone.

a. Architectural Variety.

- (i) The apartment buildings may incorporate a mix of compatible architectural features and design elements such as gable and hip roofs, covered entries, cornices, friezes, door and window accent trim, and a blend of exterior finish material options.
- (ii) A given apartment building may employ a single-color application, provided, however, that adjacent buildings should not employ the exact same color application. Generally, a common accent trim color may serve as a unifying design element among the apartment buildings.
- (iii) Each apartment building should employ more than a single material application. Use of more than three exterior finish materials (excluding architectural trim) is discouraged to avoid visual clutter.
- (iv) No more than two different building massing types shall be required.

b. Pedestrian-friendly Façades

- (i) Accessible building entrances should be provided on each side of a building facing a street.

- (ii) Entrances should be sheltered from the rain and snow. Sheltering may be accomplished by recessing the entry a minimum of three feet, or with the construction of a roof or overhead architectural element.

c. Massing, Articulation and Proportion

- (i) Upper stories should not project more than one foot beyond the ground floor footprint, except for roof projections and accommodation of covered entrances.
- (ii) Horizontal eaves along the building face longer than 50 feet should be broken up by features such as gables, roof/soffit projections, or other roof-line articulation.

d. Architectural Detailing and Character

All sides of a building should include architectural detailing. Architectural detailing may include a range of features, such as door/window casings, corner boards, horizontal accent banding, frieze and cornices, dormers, vertical breaks, façade offsets for volumetric effect, and material changes.

e. Exterior Materials

- (i) Acceptable exterior cladding materials for each building shall include at least two of the following: standard sized brick or brick veneer; natural stone veneers; vinyl siding or other similar materials. Trim materials may include architecturally-appropriate synthetic options to enhance durability or reduce maintenance.
- (ii) Acceptable roofing materials includes asphalt composition shingles.
- (iii) Exterior classic or traditional details and elements, such as brackets, cornices, window trim and wall corner boards, may also be utilized.

Section 62-896 - Affordable Housing

- (1) Ninety-eight (98) affordable housing units shall be provided which equates to 30% of the 326 residential units.
- (2) Pursuant to the Uniform Housing Affordability Controls (“UHAC”), the affordable units shall be restricted for at least thirty (30) years from the date of their initial occupancy (“Deed-Restriction Period”) to eligible very-low, low and moderate income households (with one exception that very-low income units shall be provided (as noted in 62-896(3) below) for households at 30% or less of median income and pursuant to N.J.S.A. 52:27D-329.1). Thereafter the municipality’s decision as to when and whether to extinguish affordability controls shall be governed by the applicable UHAC provisions.
- (3) At least 13 units, or 13% of the affordable units, shall be affordable to very-low income households, defined as those households earning 30 percent or less of the regional median income, all of which shall be located in the rental portion of the Inclusionary Development; at least 36 units, or 37% of the affordable units, shall be affordable to low-income households, defined as those households earning between 30 percent and 50 percent of the regional median income; and up to 49 units, or 50% of the affordable units, shall be affordable to moderate-income households, defined as those households earning between 50 percent and 80 percent of the regional median income.
- (4) The affordable units shall comply with the UHAC bedroom distribution requirements set forth in N.J.A.C. 5:80-26.3(b), as follows. For each bedroom type, the units shall be proportionally distributed between very-low-income households, low-income households, and moderate-income households in accordance with the percentages of such units in the overall number of affordable units referenced above, and as follows:
 - a. The combined number of efficiency and one-bedroom units shall be no greater than 20 percent of the total low- and moderate-income units;
 - b. At least 30 percent of all low- and moderate-income units shall be two bedroom units;
 - c. At least 20 percent of all low- and moderate-income units shall be three bedroom units; and

- d. The remainder, if any, may be allocated at the discretion of the developer as two or three bedroom units.

Therefore, the bedroom mixes for the very-low, low and moderate income units shall be in accordance with the following table:

Unit Type	Total	Maximum One bedroom	Minimum Two bedroom	Minimum Three bedroom	Remainder
Very low income	13	2	4	3	4
Low income	36	7	11	8	10
Moderate income	49	9	15	10	15
Total	98	18	30	21	29

The number of units in the Remainder column set forth in the above chart will be allocated at the discretion of the developer as two or three bedroom units, in accordance with this Section 62-896(4)d..

- (5) The affordable units shall comply with the UHAC regulations with regards to the pricing of rents or sale prices associated with very-low, low and moderate income units pursuant to N.J.A.C. 5:80-26.3(d) (with one exception that very-low income units shall be provided (as noted in 62-896(3) above) for households at 30% or less of median income and pursuant to N.J.S.A. 52:27D-329.1).
- (6) The affordable units shall comply with the phasing of market housing and affordable housing pursuant to N.J.A.C. 5:93-5.6(d), and in accordance with the following schedule:

<u>Minimum Percentage of Low and Moderate Income Units Completed</u>	<u>Percentage of Market Rate Housing Units Completed</u>
0	25
10	25 + 1 unit
50	50
75	75
100	<u>90</u>
	100

- (7) The Settlement Agreement shall address minimum area of units, minimum bedroom size, and floor area inclusions and exclusions.
- (8) The affordable units shall utilize the same heating sources as the market units within the inclusionary development.
- (9) With regard to ADA compliance, all low and moderate-income housing provided as townhouses or multistory dwelling units shall comply with N.J.A.C. 5:97-3.14.
- (10) The developer shall contract with either the Township’s administrative agent or such third party experienced administrative agent as PPF may reasonably determine, subject to the Township’s approval which shall not be unreasonably withheld or delayed, in accordance with the UHAC regulations (N.J.A.C. 5:80-26.14).
- (11) The affordable units shall comply with the UHAC regulations with regard to affirmative marketing per N.J.A.C. 5:80-26.15 and the Township’s Housing Element and Fair Share Plan.

Section 62-897 - Conflicts in Standards

RSIS standards and the PRD VII Zone standards shall supersede any conflicting standards within this

chapter.

Section 62-898 - 62-900. Reserved.

II. If any clause, sentence, paragraph, section or part of this ordinance or any other codes or ordinances incorporated herein shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder hereof, but shall be confined in its operation to the clause, sentence, paragraph, section or part thereof directly involved in the controversy in which said judgment shall have been rendered.

III. This ordinance shall become effective twenty (20) days after its final passage and approval after a duly noticed Fairness Hearing to be held by the N.J. Superior Court.

The above ordinance was introduced and passed on first reading at a meeting of the Township Council of the Township of South Brunswick held on September 22, 2020. It will be considered on second and final reading and final passage at a meeting of the Township Council of the Township of South Brunswick to be held either: (1) at the Municipal Building, 540 Ridge Road, Monmouth Junction, New Jersey; or, if that is not possible, (2) via video conference, at 6:00 p.m. on October 27, 2020. If the meeting is held via video conference, an electronic link to the meeting will be made available to the public at www.sbtnj.net no later than noon on the day of the meeting. In either case, at the time of second reading and final passage any person having an interest therein will be given an opportunity to be heard.

This is to certify that the foregoing is a true copy of an ordinance at the South Brunswick Township Council meeting held on September 22, 2020.

Barbara Nyitrai, Township Clerk

EXHIBIT C

FORM OF STIPULATION OF DISMISSAL

Hill Wallack LLP
Thomas F. Carroll, III, Esq.
(Attorney ID #-022051983)
21 Roszel Road
P.O. Box 5226
Princeton, New Jersey 08543-5226
(609) 924-0808
Attorneys for Plaintiff,
PPF Industrial – Route 130/Exhibit 8A, LLC

IN THE MATTER OF THE APPLICATION
OF THE TOWNSHIP OF SOUTH
BRUNSWICK, COUNTY OF MIDDLESEX

SOUTH BRUNSWICK CENTER, LLC,
Plaintiff,

v.
TOWNSHIP OF SOUTH BRUNSWICK, and
the PLANNING BOARD OF THE
TOWNSHIP OF SOUTH BRUNSWICK,
Defendants.

AVALON BAY COMMUNITIES, INC.,
Plaintiff,

SUPERIOR COURT OF NEW JERSEY
MIDDLESEX COUNTY – LAW DIVISION
DOCKET NO. MID-L-004433-17

v.
TOWNSHIP OF SOUTH BRUNSWICK,
and the PLANNING BOARD OF THE
TOWNSHIP OF SOUTH BRUNSWICK,
Defendants.
RICHARDSON FRESH PONDS, LLC &
PRINCETON ORCHARDS
ASSOCIATES, LLC
Plaintiff,

SUPERIOR COURT OF NEW JERSEY
MIDDLESEX COUNTY – LAW DIVISION
DOCKET NO. MID-L-004432-17

SUPERIOR COURT OF NEW JERSEY
MIDDLESEX COUNTY – LAW DIVISION
DOCKET NO. MID-L-004436-17

SUPERIOR COURT OF NEW JERSEY
MIDDLESEX COUNTY – LAW DIVISION
DOCKET NO. MID-L-004435-17

v.

TOWNSHIP OF SOUTH BRUNSWICK,
Defendant.

WINDSOR ASSOCIATES,
Plaintiff,

v.

TOWNSHIP OF SOUTH BRUNSWICK, and
the PLANNING BOARD OF THE
TOWNSHIP OF SOUTH BRUNSWICK,
Defendants.

SUPERIOR COURT OF NEW JERSEY
MIDDLESEX COUNTY – LAW DIVISION
DOCKET NO. MID-L-004434-17

<p>STANTON GIRARD, LLC, Plaintiff,</p> <p>v.</p> <p>TOWNSHIP OF SOUTH BRUNSWICK, and the PLANNING BOARD OF THE TOWNSHIP OF SOUTH BRUNSWICK, Defendants.</p>	<p>SUPERIOR COURT OF NEW JERSEY MIDDLESEX COUNTY – LAW DIVISION DOCKET NO. MID-L-004433-17</p>
<p>AMERICAN PROPERTIES AT SOUTH BRUNSWICK, LLC, Plaintiff,</p> <p>v.</p> <p>TOWNSHIP OF SOUTH BRUNSWICK, TOWNSHIP COUNCIL OF THE TOWNSHIP OF SOUTH BRUNSWICK, and the PLANNING BOARD OF THE TOWNSHIP OF SOUTH BRUNSWICK, Defendants.</p>	<p>SUPERIOR COURT OF NEW JERSEY MIDDLESEX COUNTY – LAW DIVISION DOCKET NO. MID-L-004437-17</p>
<p>PPF INDUSTRIAL – ROUTE 130/EXIT 8A, L.L.C., a limited liability company organized under the laws of the State of Delaware, Plaintiff,</p> <p>v.</p> <p>TOWNSHIP OF SOUTH BRUNSWICK, TOWNSHIP COUNCIL OF THE TOWNSHIP OF SOUTH BRUNSWICK, and the PLANNING BOARD OF THE TOWNSHIP OF SOUTH BRUNSWICK,</p>	<p>SUPERIOR COURT OF NEW JERSEY MIDDLESEX COUNTY – LAW DIVISION DOCKET NO. MID-L-004094-17</p> <p>Defendants.</p> <p>K HOVNANIAN SHORE ACQUISITIONS, LLC,</p> <p>Plaintiff,</p>

SUPERIOR COURT OF NEW JERSEY
MIDDLESEX COUNTY – LAW DIVISION
DOCKET NO. MID-L-001194-17

v.
TOWNSHIP OF SOUTH BRUNSWICK
AND PLANNING BOARD OF THE
TOWNSHIP OF SOUTH BRUNSWICK,
Defendants.

STIPULATION AND
ORDER OF DISMISSAL

Pursuant to applicable Rules Governing the Courts of the State of New Jersey, Plaintiff PPF Industrial – Route 130/Exhibit 8A, LLC (hereinafter "PPF") and Defendants Township of South Brunswick, Township Council of the Township of South Brunswick, and Planning Board of the Township of South Brunswick ("Defendants"), by and through their respective undersigned counsel, do hereby **STIPULATE** and **AGREE** the action docketed in the Superior Court of New Jersey, Law Division, Middlesex County as MID-L-004094-17 and part of the above-captioned consolidated actions be and is hereby dismissed with prejudice, with each party to bear its own costs.

VOGEL, CHAIT, COLLINS AND SCHNEIDER
Attorneys for South Brunswick Township
Planning Board

By: _____
THOMAS F. COLLINS, JR.

Dated: _____

TOWNSHIP OF SOUTH BRUNSWICK
Attorney for the Township of South Brunswick and
the Township Council of the Township of South
Brunswick

By: _____
DONALD J. SEARS

Dated: _____

HILL WALLACK, LLP
Attorneys for PPF Industrial – Route 130/Exhibit 8A,
LLC

By: _____
THOMAS F. CARROLL, III

Dated: _____

EXHIBIT D

TREE REPLACEMENT CALCULATION

- a. Percentage of Trees to be Removed (*see* Ordinance Section 118-126(b)(1)a) = **100%**
- b. Total Number of Trees to be Removed = **371** (70 trees (per acre) x 5.3 acres)
- c. Percentage of Removed Trees to be Replaced (*see* Ordinance Section 118-126(b)(1)a) = **80%**
- d. Total Number of Removed Trees to be Replaced = **300** (= (.80)(371) (*see* item c. and item b.))
- e. Total Number of New Street Trees to be Planted = **200**
- f. Total Number of Removed Trees to be Replaced less Credit for Total Number of New Street Trees to be Planted (*see* Ordinance Section 118-126(b)(1)b) = **100** (= 300 (item d.) minus 200 (item e.))
- g. Percentage of Trees to be Replaced for Which Developer will Pay Contribution in Lieu of Planting (*see* Ordinance Section 118-126(b)(3)) = **40%**
- h. Total Number of Trees to be Replaced for Which Developer will Pay in Lieu of Planting = **40** (= (.4)(100) (*see* item g. and item f.))
- i. Amount of Cap of Payment in Lieu of Planting (*see* Ordinance Section 118-126(b)(3)) = **\$8000** (= 40 trees (item h.) x \$200 per tree)
- j. Total Number of Removed Trees to be Replaced less Amount of Trees for Which Developer will Pay Contribution in Lieu of Planting = **60** (= 100 (item f.) minus 40 (item h.))
- k. Net Result:
 - (1) 300 trees to be removed

- (2) 200 street trees to be planted
- (3) 60 additional replacement trees to be planted
- (4) \$8,000 payment in lieu of replacing 40 trees

EXHIBIT E
CURED IN PLACE LINER (“CIPL”) SPECIFICATION



July 10, 2020

Raymond J. Wheaton, Jr., PE
Project Manager
Taylor Wiseman & Taylor
124 Gaither Drive, Suite 150
Mt. Laurel, NJ 08054
P: 856.235.7200 ext. 1116
F: 856.722.9250
Email: Wheaton@taylorwiseman.com

PROPOSAL NUMBER: USP008807102020-Budget Estimate

RE: MATRIX DEVELOPMENT SOUTH BRUNSWICK SANITARY MAIN RESTORATION PROJECT

US Pipelining, LLC., (Contractor), (USP), proposes to furnish all necessary materials, labor, tools, equipment, supplies and the supervision necessary to perform the work outlined in the DESCRIPTION and the SCOPE OF WORK with the exception of those items that have been specifically addressed in the TERMS AND CONDITIONS of this proposal.

PROJECT LOCATION: SOUTH BRUNSWICK NEW JERSEY

Scope of Work:

- **Project Overview:** Mobilize all necessary equipment, tools, materials, labor etc., for the purpose of "Cured-In-Place-Pipe" (CIPP) lining installation using ASTM Standards municipal qualified felt and Polyester resin materials. The Project includes pre & post CCTV, pre-cleaning & debris removal, and the structural CIPP restoration of 36-inch RCP sanitary sewer mainline segments per Pricing/Unit Schedule below. Lining material and resin for the above referenced project will be of the highest municipal quality, manufactured under ISO 9001 requirements in accordance with specifications of USP and will comply with the guidelines of ASTM F-1216, ASTM D-5813, ASTM F-1743, ASTM D-5199, ASTM D-5035, and ASTM D-790. The CIPP system shall be continuous and joint-less from access to access, designed for a life of 50 years or greater, and shall have a long term (50 year) corrosion resistance to the typical chemicals found in domestic sewage as tested to ASTM F1216/D5813 Chemical Resistance Standard. All active branch lines shall be reinstated by mechanical means per ASTM F1216.
- **Methods & Materials:** All methods and materials shall conform to the applicable ASTM F-1216 *Standard Practice for Rehabilitation of Existing Pipelines and Conduits by the Inversion and Curing of a Resin-Impregnated Tube*. All materials shall be manufactured in the USA under ISO 9001 requirements in accordance with these specifications.



PRICING SCHEDULE – BUDGET ESTIMATE

	Unit Price	Estimated Total
<u>CIPP Lining (420' /LF):</u>		
Furnish & Install 36-Inch		
CIPP Including CCTV,		
Cleaning and related items.....	\$270.00/LF.....	\$113,400.00
 <u>CIPP Lining (825' /LF):</u>		
Furnish & Install 36-Inch		
CIPP Including CCTV,		
Cleaning and related items.....	.\$235.00/LF.....	.\$193,875.00

Contractor Notes:

1. This proposal is for budgetary purposes only.
2. The Owner shall procure all necessary road opening permits, municipal permits, licenses, inspection fees, bonds or similar items which may be required by any governmental or township agency for the construction outlined herein.
3. This budget proposal is provided under project site "unseen". Variations in actual site conditions and/or unforeseen conditions may result in additional cost to Owner.
4. Price excludes traffic control other than cones and/or signage.
5. Excludes any and all excavation. Excavation is an extra pay item as is to be performed by others.
6. Excludes Site Work, Matting, Grubbing, Clearing/Restoration.
7. Excludes bypass pumping, dewatering of lines, flow control, and system dewatering.
8. Proposal assumes the Owner or Prime Contractor will provide vehicular access to the mouth of all pipes being lined (including but not limited to a tractor trailer and refrigerator truck).
9. Proposal assumes the work will be completed during dry weather conditions.
10. Proposal assumes water will be provided at no charge with access to and use of fire hydrants and/or sufficient water supply (within 500 ft. of the installation site). No provision is made for the trucking of water.

EXHIBIT F
REVOCABLE EMERGENCY ACCESS AGREEMENT

NEW JERSEY TURNPIKE AUTHORITY

Record and Return to:

Prepared by: Joseph Michael. DeCotiis, Esq.

Donald J. Sears, Esq.
Director of Law
Township of South Brunswick
540 Ridge Road
P.O. Box 190
Monmouth Junction, NJ 08852

NEW JERSEY TURNPIKE AUTHORITY

Agreement No.: _____

REVOCABLE EMERGENCY ACCESS AGREEMENT

THIS AGREEMENT made this ____ day of _____, 2020 (the “Effective Date”), by and between NEW JERSEY TURNPIKE AUTHORITY, located at 1 Turnpike Plaza, Woodbridge, New Jersey 07095, PO BOX 5042, Woodbridge, NJ 07095-5042 (hereinafter called “Grantor”), and the TOWNSHIP OF SOUTH BRUNSWICK, located at 540 Ridge Rd, Monmouth Junction, NJ 08852 (hereinafter called “Grantee”).

WHEREAS, Grantor owns certain real property situated in the Township of South Brunswick, in the County of Middlesex and State of New Jersey, as described in **Exhibit A**, known and designated on the Tax Map of the Township of South Brunswick as Block 6, Lot 130.32 (Qual X) (hereinafter “Grantor’s Property”); and

WHEREAS, Grantor agrees to convey a revocable access area on and across Grantor’s Property containing approximately 1.15 acres for the limited use of Grantee, its licensees, successors in interest and assigns, in connection with emergency access for emergency response vehicles only as shown on the plans attached hereto and made a part hereof as **Exhibit A** (the “Temporary Access Area”);

NOW THEREFORE, WITNESSETH: In consideration of these premises and the sum of One DOLLAR paid to Grantor by Grantee, the receipt of which is hereby acknowledged, and in further consideration of the mutual conditions, covenants, promises and terms hereinafter contained, it is agreed that:

1. Grantor does hereby grant and convey unto Grantee a revocable right of entry on and across Grantor’s Property for emergency access as depicted on **Exhibit A** for a period of ninety-nine (99) years, beginning on the Effective Date and terminating on the day immediately preceding the ninety-ninth (99th) anniversary of the Effective Date. Grantee will have access to, egress and ingress in, from the driveway entrance of the Temporary Access Area, as depicted on sheet “SK-2” of the plans attached hereto as **Exhibit A**.
2. Grantor does further grant and convey unto Grantee, its agents, servants, contractors and/or employees, the right, privilege and authority to trim, cut and remove such tree branches, roots, shrubs, plants, trees and vegetation which might, within the exclusive discretion and sole judgment of Grantee, be necessary for the use of the Temporary Access Area. Grantee, its agents, servants, contractors and/or employees, shall also have the right to make any improvements to said Temporary Access Area as Grantee deems necessary, in its sole discretion, for installation and maintenance of an emergency access road to the development located on certain adjacent property

NEW JERSEY TURNPIKE AUTHORITY

designated on the Township of South Brunswick tax map as Block 6, Lot 15.022 (“Adjacent Property”).

3. Grantor reserves the right, privilege and authority to sign any permit or approval applications as may be needed for approval of the emergency access road in the Temporary Access Area by governmental authorities and/or state agencies. Grantee shall provide Grantor with copies of any applications filed, and it shall provide Grantor with any other information related to those applications, permits or approvals that Grantor reasonably requests.

4. Grantee, its agents, servants, contractors and/or employees, shall perform all work in connection with the rights, privileges and authority herein granted and conveyed in a workmanlike manner and with minimum inconvenience to the Grantor, and any damage done to the Temporary Access Area shall be promptly removed, repaired and restored to as near its condition immediately prior to being damaged as is reasonably possible, at the sole cost and expense of Grantee. For the avoidance of all doubt, Grantee, its agents, servants, contractors and/or employees, shall be solely responsible for plowing and maintaining the Temporary Access Area as well as any gates and access points leading thereto. Grantee shall have the right to contract with third parties to perform such plowing and maintenance responsibilities.

5. Grantee and/or its third party contractor shall construct and install an access gate to the Temporary Access Area as depicted on sheets “SK-1”, “SK-2” and “SK-3” of the plans attached hereto as **Exhibit A**. Grantee shall cause to be provided to Grantor keys necessary to access the gates securing the Temporary Access Area. Prior to executing this Agreement, Grantee shall provide Grantor with a drawing demonstrating that Grantee’s emergency vehicles can properly and safely access the Temporary Access Area, which drawing is shown on sheet “SK-4” of the plans attached hereto as **Exhibit A**.

6. Grantee shall defend and indemnify Grantor against, and shall save Grantor harmless from, and shall reimburse Grantor with respect to any and all claims, demands, actions, causes of action, injuries, orders, losses, liabilities (statutory or otherwise), obligations, damages, fines, penalties, costs and expenses (including without limitation reasonable attorneys’ fees and expenses) incurred by, imposed upon or asserted against Grantor by reason of any accident, injury (including death at any time resulting therefrom) or damage to any person or property arising out of or resulting from its use and enjoyment of the Temporary Access Area, including without limitation, Grantee’s construction, installation and maintenance of the Temporary Access Area. Grantee also agrees to reimburse the Grantor for any damages to the Grantor’s facilities that were caused by Grantee or any contractor/agent of the Grantee.

7. **Insurance**

- 1) Prior to the commencement of any activity pursuant to this Agreement, the Grantee shall procure and maintain at its own expense, the following insurance coverages:
 - a. Commercial general liability insurance (CGL) with a primary coverage limit of not less than \$2,000,000 each occurrence. CGL insurance shall be written on the latest ISO occurrence form without any added restrictions or diminution in coverage (or a substitute form providing at least equivalent coverage) and shall cover liability for bodily injury and property damage arising from premises, operations, independent contractors, products-completed operations and for liability arising from personal injury and advertising injury, and liability assumed under contract. “The New Jersey Turnpike Authority and its members, commissioners, officers, agents, employees, guests, consultants and volunteers”

NEW JERSEY TURNPIKE AUTHORITY

shall be included as additional insureds. This insurance shall be endorsed to apply as primary insurance and not contribute with any other insurance or self-insurance programs afforded to the Grantor. This insurance shall be endorsed to waive the insurance carrier's right of subrogation against The New Jersey Turnpike Authority and its members, commissioners, officers, agents, employees, guests, consultants and volunteers. This insurance shall not contain any provision under which claims made by the Grantor against the Grantee would not be covered due to the operation of an insured versus insured exclusion.

- b. Grantee shall maintain commercial automobile liability insurance covering all vehicles owned or used by Grantee with a primary coverage limit of not less than \$2,000,000 each occurrence. Auto insurance shall be written on the latest ISO form without any added restrictions or diminution in coverage (or a substitute form providing at least equivalent coverage) and shall cover liability for bodily injury and property damage. "The New Jersey Turnpike Authority and its members, commissioners, officers, agents, employees, guests, consultants and volunteers" shall be included as additional insureds. This insurance shall apply as primary insurance and not contribute with any other insurance or self-insurance programs afforded to the Grantor. Such insurance shall be endorsed to waive the insurance carrier's right of subrogation against Grantor and its members, commissioners, officers, agents, employees, guests, consultants and volunteers.
 - c. Grantee shall maintain workers' compensation and employers' liability insurance. Employers' liability coverage shall be in a limit not less than \$1,000,000 Bodily Injury by Disease Each Employee, \$1,000,000 Bodily Injury by Accident- Each Accident, \$1,000,000 Bodily Injury by Disease – Policy Limit. Workers' Compensation Insurance shall be provided in accordance with the requirements of the laws of the State of New Jersey and shall include all-states insurance to extend coverage to any state which may be interpreted to have legal jurisdiction.
- 2) All insurance policies shall specify that the territorial limits shall be on a worldwide basis or as otherwise agreed with the Grantor. All insurance policies shall provide that not less than 30 days advance written notice of cancellation or material change of any insurance referred to therein shall be given by registered mail to the Law Department, New Jersey Turnpike Authority at P.O. Box 5042, One Turnpike Plaza, Woodbridge, New Jersey 07095. All insurance companies providing coverage shall be authorized to do business in the State of New Jersey and maintain an A.M. Best rating of A-VII or better. Simultaneous with executing this agreement, thereafter upon the Grantor's request, Grantee shall furnish the Grantor with a certificate(s) of insurance satisfactory to the Grantor.
- a. "The New Jersey Turnpike Authority and its members, commissioners, officers, agents, employees, guests, consultants and volunteers" shall be included as additional insureds." This statement is not required for the workers' compensation and employers' liability insurance carried by any contractor or subcontractor of Grantee.
 - b. Thirty (30) days' notice of cancellation or material change in coverage shall be given by registered mail to the Grantor as specified above.
 - c. All policies shall contain a waiver of subrogation clause in favor of the Grantor and its members, commissioners, officers, agents, employees, guests, consultants and volunteers.

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- d. With respect to all policies, the other insurance clause under each policy shall be amended to read as follows: "This policy will act as primary insurance and not contribute with policies issued to or self-insurance programs afforded to the New Jersey Turnpike Authority and its members, commissioners, officers, agents, employees, guests, consultants and volunteers."
 - e. All certificate(s) shall be mailed to: Director of Law, Law Department, New Jersey Turnpike Authority, P.O. Box 5042, Woodbridge, New Jersey 07095.
- 3) In the event that Grantee utilizes any contractors or subcontractors with respect to any of its obligations pursuant to this Agreement, Grantee shall, except as noted above in Section 7(2)(a) above, require such contractor or subcontractor to comply with all of the above insurance requirements as if the contractor's or subcontractor's name were substituted for any reference to Grantee. If any contractor or subcontractor cannot comply with this requirement, then such contractor or subcontractor shall be added under the Grantee's policies as an additional insured.
- 4) Due to future changes in economic, financial, risk and/or insurance market conditions the Grantor at its discretion may modify the above stated insurance requirements

NOTWITHSTANDING THAT MINIMUM AMOUNTS OF INSURANCE COVERAGE CARRIED OR REQUIRED TO BE CARRIED BY THE GRANTEE ARE SPECIFIED HEREIN, THE LIABILITY OF THE GRANTEE SHALL NOT BE LIMITED TO THE AMOUNTS SO SPECIFIED AND SHALL EXTEND TO ANY AND ALL LIABILITY IN EXCESS OF THE INSURANCE COVERAGES SO PROVIDED NOR SHALL THESE MINIMUM LIMITS PRECLUDE THE GRANTOR FROM TAKING ANY ACTION AVAILABLE TO IT UNDER THE PROVISIONS OF THE CONTRACT OR OTHERWISE IN LAW.

Terms and Deductibles. The Grantee shall be responsible for any deductible or self-insured retention, exclusions or lack of coverage in the insurance policies described above. Any deductible or self-insured retention greater than \$5,000 per occurrence must be disclosed to the Grantor.

- 8.** Grantor covenants and binds itself, its successors and assigns to warrant and forever defend the title to this Agreement to Grantee, its successors and assigns, against the lawful claims of all persons for the term of this Agreement.
- 9.** This Temporary Access Agreement shall be governed by and construed in accordance with the laws of the State of New Jersey. The provisions of this Temporary Access Agreement shall inure to the benefit of and be obligatory upon the respective parties hereto and their successors and assigns.
- 10.** Grantor holds the authority to revoke access to this Temporary Access Agreement at any time if revocation is reasonably necessary for Grantor's use of Grantor's Property. In the event that the Grantor determines to revoke access, it shall provide Grantor with at least thirty (30) days advance written notice of the proposed revocation, and shall thereafter work with the Grantee to find a reasonable solution.
- 11.** This Agreement may be renewed for additional terms upon mutual consent of the parties.

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12. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

13. The section headings in this Agreement are for reference purposes only and shall not define, limit or affect the meaning or interpretation of this Agreement.

14. This Agreement contains the entire agreement of the parties hereto with respect to the subject matter hereof and supersedes all prior negotiations and understandings with respect to such subject matter, and there are no other agreements between the parties hereto with respect to the subject matter hereof.

[signature page follows]

NEW JERSEY TURNPIKE AUTHORITY

IN WITNESS WHEREOF, Grantor has duly signed these presents the day and year first above written.

GRANTOR:

NEW JERSEY TURNPIKE AUTHORITY

WITNESS:

By:

Name:

Title:

GRANTEE:

THE TOWNSHIP OF SOUTH BRUNSWICK

WITNESS:

Barbara Nyitrai, Township Clerk

By:

Name: Charles Carley

Title: Mayor

NEW JERSEY TURNPIKE AUTHORITY

STATE OF NEW JERSEY:

SS

COUNTY OF MIDDLESEX:

I CERTIFY that on _____, 2020, _____ personally came before me and he/she acknowledged under oath, to my satisfaction, that:

(a) he/she is the _____ of the New Jersey Turnpike Authority, the corporation named in this document;

(b) he/she is the attesting witness to the signing of this document by _____, who is the _____;

(c) this document was signed and delivered by the Corporation as its voluntary act duly authorized by a proper resolution;

(d) he/she knows the proper seal of the Corporation, which was affixed to this document; and

(e) he/she signed this proof to attest to the truth of these facts.

Signed and sworn to before me

On _____, 2020

NEW JERSEY TURNPIKE AUTHORITY

STATE OF NEW JERSEY:

SS

COUNTY OF MIDDLESEX:

I CERTIFY that on _____, 2020, BARBARA NYITRAI personally came before me and she acknowledged under oath, to my satisfaction, that:

- (a) she is the Township Clerk of the Township of South Brunswick, the municipal corporation named in this document;
- (b) she is the attesting witness to the signing of this document by Charles Carley, who is the Mayor of the Township of South Brunswick;
- (c) this document was signed and delivered by the Township of South Brunswick as its voluntary act duly authorized by a proper resolution of the Township Council;
- (d) she knows the proper seal of the Township of South Brunswick which was affixed to this document; and
- (e) she signed this proof to attest to the truth of these facts.

Signed and sworn to before me

On _____, 2020

Donald J. Sears
An Attorney at Law
In the State of New Jersey

Barbara Nyitrai, Township Clerk

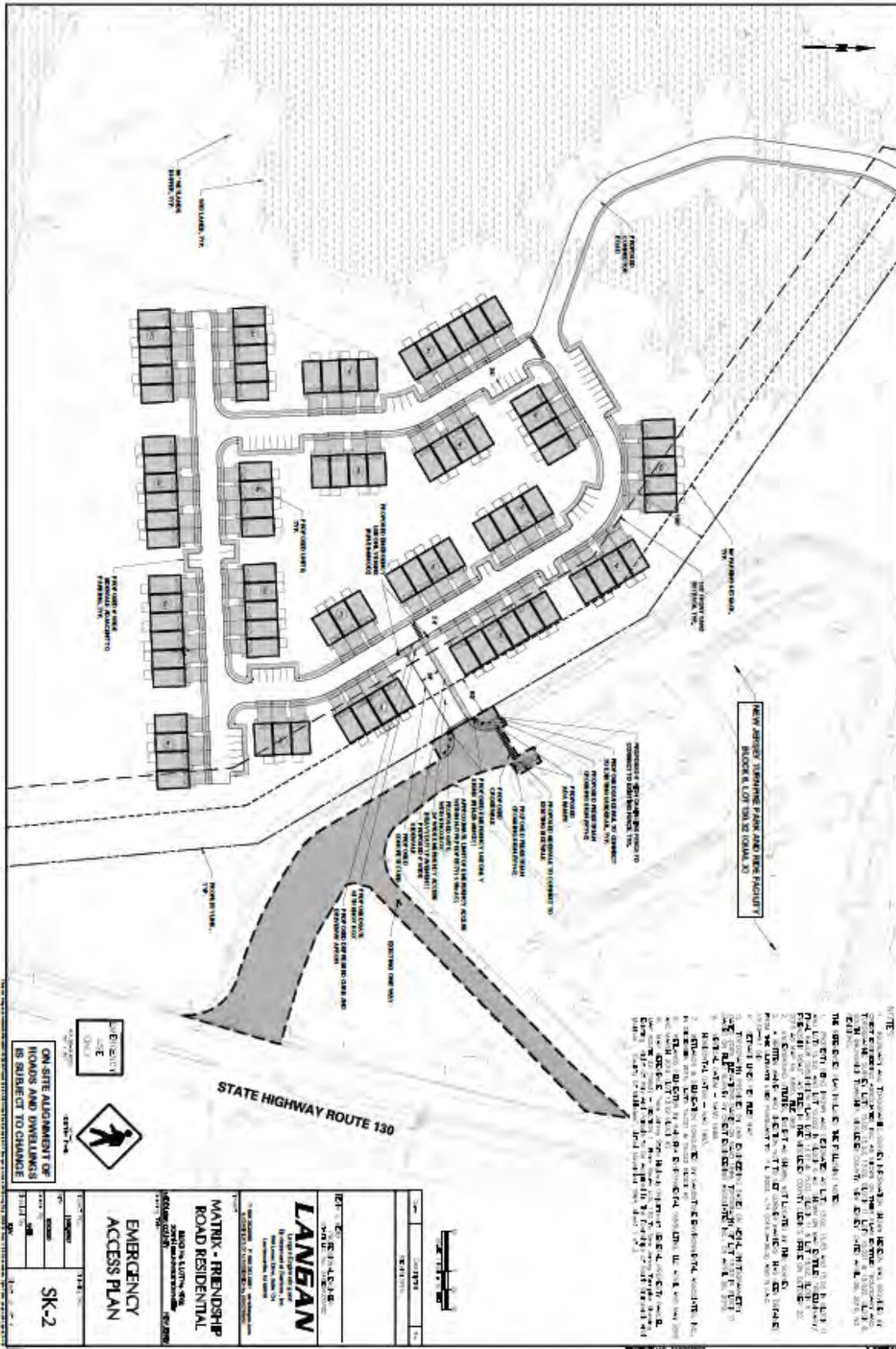
NEW JERSEY TURNPIKE AUTHORITY

EXHIBIT A

(Temporary Access Area, Access Gate and Drawings regarding Safe Access to Temporary Access Area)

[see attached]

NEW JERSEY TURNPIKE AUTHORITY



Donald J. Sears, Esq. – Attorney ID# 020031986
 Township of South Brunswick
 540 Ridge Road
 P.O. Box 190
 Monmouth Junction, NJ 08852
 Phone No.: (732) 329-4000

FILED
 January 28, 2021
 Hon. Michael V. Cresitello, Jr., J.S.C.

Attorney for Township of South Brunswick

<p>IN THE MATTER OF THE APPLICATION OF THE TOWNSHIP OF SOUTH BRUNSWICK FOR A JUDGMENT OF COMPLIANCE AND REPOSE AND IMMUNITY FROM <u>MOUNT LAUREL</u> LAWSUITS</p>	<p>SUPERIOR COURT OF NEW JERSEY LAW DIVISION MIDDLESEX COUNTY DOCKET NO.: MID-L-4433-17 CIVIL ACTION – <i>MOUNT LAUREL</i></p>
<p>PPF INDUSTRIAL-ROUTE 130/EXIT 8A, LLC, a limited liability company organized under the laws of the State of Delaware, Plaintiff, v. TOWNSHIP OF SOUTH BRUNSWICK, TOWNSHIP COUNCIL OF THE TOWNSHIP OF SOUTH BRUNSWICK and PLANNING BOARD OF THE TOWNSHIP OF SOUTH BRUNSWICK, Defendants.</p>	<p>SUPERIOR COURT OF NEW JERSEY LAW DIVISION MIDDLESEX COUNTY DOCKET NO.: MID-L-4094-17 CIVIL ACTION – <i>MOUNT LAUREL</i> ORDER APPROVING SETTLEMENT AGREEMENT AS FAIR TO LOW AND MODERATE INCOME HOUSEHOLDS</p>

THIS MATTER having been opened to the Court on joint application of the Township of South Brunswick (“Township”), the Planning Board of the Township of South Brunswick (“Planning Board”) and PPF Industrial-Route 130/Exit 8A, LLC (“PPF”), on notice to the Special Master, Christine Nazzaro-Cofone, PP, AICP, and all other builder’s remedy plaintiffs and/or intervenors consolidated into this matter and/or interested parties included in the eCourts

notice list for this matter, that PPF, the Township and the Planning Board have reached a settlement of the issues between them, and

WHEREAS, on notice to all Counsel of record in the consolidated Declaratory Judgment Action, as well as in accord with all notice requirements to the public and interested parties as specified by this Court’s Order of November 5, 2020, and the Court having conducted a Fairness Hearing on December 16, 2020, in accordance with East/West Venture v. Borough of Fort Lee, 286 N.J. Super. 311 (App. Div. 1996) and Morris County Fair Housing Council v. Township of Boonton, 197 N.J. Super. 359 (Law Div. 1984), and

WHEREAS, the court heard the testimony of Mary Beth Lonergan, PP, AICP, on behalf of the Township and the Planning Board, Andrew Janiw, PE, PP, AICP, on behalf of PPF, and the Court-appointed Special Master Christine Nazzaro-Cofone, PP, AICP, and the Court having considered the testimony and exhibits marked into evidence, including the Settlement Agreement, planning reports, master’s report and site plan documents for the proposed development, and

WHEREAS, the court having further considered the objections and/or comments from members of the public related to the proposed settlement, for the reasons set forth on the record on December 16, 2020, and otherwise for good cause shown;

IT IS on this 28th day of January, 2021, ~~2020~~, **ORDERED:**

1. The Court finds and determines pursuant to the standards prescribed by the Appellate Division in East/West Venture v. Bor. of Fort Lee, 286 N.J. Super. 311 (App. Div. 1996), that the settlement between PPF, the Township and the Planning Board is fair, reasonable and adequately protects the interests of low and moderate income households, and the Court hereby approves the documents implementing the settlement, specifically the

Settlement Agreement, the terms and conditions of which are hereby incorporated by reference, together with the exhibits marked and entered into evidence at the Fairness Hearing on December 16, 2020.

2. The terms of the Settlement Agreement provide for the:
 - (a) development of up to approximately 3 acres of commercial development at the northwest corner of the intersection of Route 130 and Friendship Road;
 - (b) construction of up to 326 housing units on the remaining undeveloped area, of which 30% shall be set-aside for, and shall be affordable to, very-low, low and moderate income households, consisting of:
 - i. 98 two-story townhomes on fee simple lots,
 - ii. 130 three-story townhomes on fee simple lots,
 - iii. 83 affordable family rental apartments, and
 - iv. 15 affordable family “for sale” units in stacked townhomes; and
 - (c) dedication of approximately 34 acres of vacant land to the Township.
3. The Court Special Master has determined, and this Court finds, that the Property is suitable for the proposed project.
4. All other terms and conditions in the Settlement Agreement requiring action by PPF, the Township and/or the Planning Board, or any other municipal agency of the Township, shall be adhered to, and all such terms and conditions are hereby incorporated by reference to the extent applicable to these parties. Pursuant to Section 3.6 of the parties’ Settlement Agreement, the parties remain obligated to execute and file the Stipulation and Order of Dismissal as described in said Section 3.6, at which time the PPF builder’s remedy case, Docket No. MID-L-4094-17, shall be considered dismissed with prejudice

and, upon being dismissed, said PPF builder's case shall also be considered deconsolidated from the Township's declaratory judgment case and the cases with which that declaratory judgment case has been consolidated.

5. Notwithstanding the foregoing, the parties may, pursuant to Section 3.6 of the parties' Settlement Agreement, seek enforcement of the terms of the settlement by way of motion to enforce litigant's rights.
6. The Court's posting of this Order on eCourts shall constitute service upon all counsel and interested parties of record. The Court has provided a copy of this Order to the Special Master via email. The Township shall serve any other interested parties or pro se litigants on eCourts, via regular and certified mail within seven (7) days of the posting of this Order on eCourts.

Hon. Michael V. Cresitello, Jr.
Hon. Michael V. Cresitello, Jr., J.S.C.

OPPOSED

Based upon the totality of the record established during the Fairness Hearing conducted on December 16, 2020 and for the reasons set forth by the Court at the conclusion of same.



South Brunswick Township

540 Ridge Road
Monmouth Junction, NJ 08852

ORDINANCE 2020-14

**Amending and Supplementing Chapter 62, Land Use, by the
Creation of the PRD VII Mixed Development Zone Standards
and Rezoning Certain Property to be Consistent with Said
Standards**

WHEREAS, on July 1, 2015, the Township filed a declaratory judgment action seeking a Judgment of Compliance and Repeal approving its Affordable Housing Plan and seeking related relief in a matter entitled In the Matter of the Application of the Township of South Brunswick, County of Middlesex, Docket No. MID-3878-15, transferred to Mercer County under Docket No. MER-L-0810-17 by order of April 20, 2017, and transferred back to Middlesex County by order of July 26, 2017, subsequently given Docket No. MID-L-4433-17 (DJ Action); and

WHEREAS, on February 19, 2016, the Superior Court revoked the Township's immunity and permitted the filing of various builder's remedy lawsuits, which were consolidated with the DJ Action, including a builder's remedy complaint filed on July 7, 2017, by PPF Industrial - Route 130/Exit 8A, LLC (PPF) entitled, PPF Industrial - Route 130/Exit 8A, L.L.C., a limited liability company organized under the laws of the State of Delaware v. Township of South Brunswick, et al., Docket No. MID-L-4094-17 (Builder's Remedy Action); and

WHEREAS, PPF is the owner of the real property located adjacent to or near the intersection of N.J. State Route 130 and Friendship Road, and designated as Block 6, Lots 15.021 and 15.022 and Block 11, Lot 13.02 and Lot 15.03 on the tax map of the Township of South Brunswick (PPF Property), consisting of approximately 147.37 acres; and

WHEREAS, the Township had previously acquired title to certain property adjoining the existing PPF Property for affordable housing designated as Block 11, Lot 15.05, being approximately 6.15 acres in area (Township Property); and

WHEREAS, the Township and PPF have reached an agreement to settle the Builder's Remedy Action that will involve conveyance of the Township Property to PPF as an adjoining property owner in consideration of PPF's agreement to modify its proposed development to redistribute a portion of the proposed inclusionary housing development onto the Township Property and dedicate a portion of the PPF Property to the Township for general municipal purposes; and

WHEREAS, the settlement of the Builder's Remedy Action further requires the Township to rezone the PPF Property and the Township Property for a mixed use development, and PPF to develop the PPF Property and the Township Property for a subdivided commercial lot consisting of approximately three contiguous acres on the northwest corner of the intersection of Route 130 and Friendship Road, and a residential inclusionary project consisting of a total of 326 housing units, with a 30% affordable housing set aside, consisting of 98 two-story townhomes on fee simple lots, 130 three-story townhomes on fee simple lots, 83 affordable family rental apartments, and 15 affordable family "for sale" units in stacked townhomes, resulting in the creation of a total of 98 affordable family units; and

WHEREAS, at least 13% of the affordable units will be set-aside for very-low income households, at least 37% for low income households and up to 50% for moderate income households, in satisfaction of a portion of the Township's Third Round Affordable Housing Fair Share Obligation; and

WHEREAS, the settlement and this ordinance are both subject to approval of the settlement at a duly noticed Fairness Hearing to be held by the N.J. Superior Court, at which time the court found must find that the proposed settlement and rezoning of the PPF Property and Township Tract is fair to low and moderate income persons for whom the affordable housing units were intended, thereafter remanding the matter to the Township and

Planning Board to take such actions as are required to process PPF's application for subdivision and site plan approval; and

WHEREAS, it is appropriate to create the PRD VII Mixed Development Zone (the "PRD VII Zone") standards, to be applied to the PPF Property and Township Property, so as to consummate the terms of the settlement and produce the affordable housing units contemplated by the court-approved settlement;

NOW THEREFORE BE IT ORDAINED, by the Township Council of the Township of South Brunswick, County of Middlesex, State of New Jersey, that:

I. Chapter 62, Land Use, of the South Brunswick Township Code, shall be and is hereby amended and supplemented with the addition of the following:

Article IV. Zoning.

Section 62-879 - 62-~~900~~885.

Reserved.

Subdivision XV(C) PRD VII Mixed Development Zone

Section 62-886 - Purpose

The PRD VII Zone includes Block 6, Lots 15.021 and 15.022 and Block 11, Lots 13.02 (portion), 15.03 and 15.05 (hereafter, "the Tract") containing approximately 120 acres. The purposes of the PRD VII Zone are to create an integrated mixed use zone for a combination of commercial and residential development; to permit approximately three (3) acres of commercial development at the northwest corner of the intersection of Route 130 and Friendship Road (excluding any future right-of-way dedications or vacations) (the "Commercial Subzone"); and permit the construction of housing units on the remaining undeveloped acres (the "Residential Subzones"). The Residential Subzones and the Commercial Subzone are depicted on a revised zoning map which shall be adopted by the Township. The PRD VII Zone shall permit within the Residential Subzones up to 326 total units, of which 30% shall be set-aside for, and shall be, and affordable to very-low, low and moderate income households, consisting of 98 two-story townhomes on fee simple lots, 130 three-story townhomes on fee simple lots, 83 affordable family rental apartments, and 15 affordable family "for sale" units in stacked townhomes. The Residential Subzones are as follows:

- Friendship Road North Inclusionary Housing Subzone
- Friendship Road South Inclusionary Housing Subzone
- Route 130 Affordable Housing Subzone

Section 62-887 - Uses Permitted

The following uses are permitted in the PRD VII Zone:

- (1) Multifamily residential units and townhouse attached dwellings, but, in each case, only within the Residential Subzones.
- (2) Within the Commercial Subzone:
 - a. Communitywide and area-wide retail establishments, including department and variety stores, supermarkets, clothing stores, furniture and appliance stores, drugstores and liquor stores, but excluding warehouse/discount clubs.
 - b. Communitywide and area-wide service activities, excluding movie theaters, but including banks,

- restaurants, fast food restaurants, exercise and dance schools, taverns, travel agencies, indoor recreation facilities and fitness centers and other such ancillary supermarket services.
- c. Convenience retail store with vehicle fuel sales. The regulations in Section 62-1921 shall not be applicable to this use.
 - d. Offices for physicians, dentists, engineers, lawyers, architects, public accountants, real estate and insurance brokers, city planners and similar professions.
 - e. Medical HMO facilities and medical laboratories.
 - f. Educational facilities for learning and training.
 - g. Health Clubs.
 - h. Dance studios.
 - i. Medical service and retail medical supply.
 - j. Duplicating or office supply service.
 - k. Product demonstration, display or showroom facilities.
 - l. Conference or training centers.
 - m. Family recreation facilities.
 - n. Nursing homes.
 - o. Child care centers.
 - p. Assisted living facilities, with an affordable housing component.
 - q. Laboratory or research facilities.

Section 62-888 - Uses permitted as conditional uses.

Uses permitted as conditional uses in the PRD VII Zone shall be subject to planning board approval under N.J.S.A. 40:55D-67. Provisions and performance standards for conditional uses shall apply, as specified in this chapter. The following uses shall be permitted as conditional uses:

- (1) Community buildings or activities of a quasi-public, social or fraternal character.

Section 62-889 - Accessory uses permitted.

Accessory uses permitted in the PRD VII Zone:

- (1) Parking lots and private garages.
- (2) Community swimming pools, tennis courts, basketball courts, tot lots, volleyball courts and other recreational facilities.
- (3) Gazebos, trellises, arbors, pergolas, decks, patios, gardens and landscaped areas including fountains, ponds and other water features.
- (4) A clubhouse, including, but not limited to: a fitness center; multi-purpose rooms, wellness center; leasing office; entertainment center; meeting rooms; resident food and beverage area; and business center.
- (5) Maintenance and storage buildings.
- (6) Signs, as regulated in this chapter. The installation of signs shall comply with regulations contained in Article IV, Division 7, §62-1816 thru 1823; and signage for the Commercial Subzone development may be located in the Route 130 Affordable Housing Subzone, with the actual location set forth in the settlement agreement.
- (7) Fences and walls, as regulated in this chapter.
- (8) Electric vehicle charging stations.
- (9) Home occupations and home professional offices, as defined and regulated by the provisions in this chapter.

Section 62-890 - Tract and open space requirements.

- (1) It is recognized that the Tract may be subdivided. The Tract bulk standards associated within the PRD

VII Zone shall apply to the overall Tract. In the event there are subdivided lots within the Tract, there may be easements for vehicular and pedestrian circulation, shared parking and storm water management facilities for use on a Tract wide basis, so as to permit the development of the PRD VII Zone as a comprehensive mixed use project.

- (2) The maximum building coverage shall be 25 percent of the total land area of the Tract.
- (3) The minimum open space standard shall be 30 percent of the Tract.
- (4) **Residential Subzones buffers.** Buffer areas shall be provided in the Residential Subzones with a landscaped berm along that portion of the property that abuts a roadway or existing land use. Below are the minimum buffer widths for the various subzones:
 - a. Friendship Road North Inclusionary Housing Subzone: 50 feet wide, except for emergency access roadways and cul-de-sacs.
 - b. Friendship Road South Inclusionary Housing Subzone: 40 feet wide, except for areas where head-in parking (including driveways and parking spaces) is provided, in which case (i) the buffer shall be no less than 15 feet in width, and (ii) no buffer shall be required for any driveway turnaround or cul-de-sac serving parking areas.
 - c. Route 130 Affordable Housing Subzone: 50 feet wide along Route 130 frontage as measured from the existing right-of-way line of Route 130, except for areas where a driveway or an internal roadway is provided, in which case the buffer shall be no less than 15 feet in width.
- (5) **Commercial Subzone buffers.** Commercial Subzone buffers shall be as follows:
 - a. 50 feet wide along the southern and eastern property lines, adjacent to Friendship Road and Route 130 frontages (as measured from the existing right-of-way line of Route 130 prior to any dedication of the right-of-way along Route 130), except for areas where parking is provided, in which case the buffer shall be no less than 10 feet in width.
- (6) The following encroachments into the Tract buffers are permitted:
 - a. Pedestrian trails, sidewalks, signs, retaining walls, and landscaped areas are permitted in all buffer areas.
 - b. New stormwater basins shall not be located within 20 feet of the Tract boundary line, but this limitation shall not be applicable to other stormwater facilities, including, but not limited to, pipes, headwalls, swales, and riprap.
 - c. Driveways and access roadways are permitted within the Tract buffer adjacent to Route 130 and Friendship Road.
 - d. Emergency access if required by Township
- (7) Existing roads, existing stormwater facilities, existing parking areas and related improvements are exempt from all Tract buffer requirements.
- (8) All residential development must be served by public water and sanitary sewer service.

Section 62- 891 - Area, Yard, and Density Tract Requirements

- (1) **Overall Tract**
 - a. The maximum residential yield shall be 326 units.
 - b. The maximum impervious coverage shall be 70%.
 - c. Multiple principal buildings and multiple principal uses shall be allowed on a single lot.
 - d. Residential buildings shall be setback at least:
 1. 15 feet from any street or driveway.
 2. 8 feet from any parking area.
 - e. The following minimum distance between buildings is required: 50 feet between residential and nonresidential buildings within the Tract, irrespective of a subdivision of the Tract.
 - f. In measuring building separation distances set forth herein, covered and uncovered stairs and stoops, stairways, balconies, decks, cornices, eaves, gutters, bay windows, chimneys and other projections from buildings shall be excluded from the measurements.
 - g. Additional requirements for residential use:
 1. Maximum number of attached units per townhouse dwelling: 7

2. No building intended for residential occupancy shall be located within 20 feet of the Tract boundary line.
3. Common area property may contain certain improvements, such as underground utility lines, stormwater management features, decks/patios, landscaping, signage, walking paths and sidewalks.
4. All provisions of the Residential Site Improvement Standards (RSIS) shall be applicable within the PRD VII Zone.

(2) **Friendship Road North Inclusionary Housing Subzone**

- a. The maximum residential yield shall be 98 market-rate units.
- b. For townhouse dwellings constructed on fee-simple lots, the following area and dimensional requirements shall apply:
 - (i) Minimum Lot Area: 2,340 square feet
 - (ii) Minimum Lot Width: 26 feet
 - (iii) Minimum Lot Depth: 90 feet
 - (iv) Building separation, front to front: 60 feet
 - (v) Building separation, side to side: 25 feet
 - (vi) Building separation, all other: 30 feet
 - (vii) No residential building or structure shall exceed 41 feet or 2.5-stories in height, except as regulated by the height exception provisions of this chapter

(3) **Friendship Road South Inclusionary Housing Subzone**

- a. The maximum residential yield shall be 145 units, including 130 townhomes (market rate) and 15 stacked townhomes (affordable).
- b. For townhouse dwellings constructed on fee-simple lots, the following area and dimensional requirements shall apply:
 - Minimum Lot Area: 1,920 square feet
 - Minimum Lot Width: 24 feet
 - Minimum Lot Depth: 80 feet
 - Building separation, front to front: 60 feet
 - Building separation, side to side: 25 feet
 - Building separation, all other: 30 feet
 - No residential building or structure shall exceed 45 feet or 3-stories in height, except as regulated by the height exception provisions of this chapter
- c. For the stacked townhomes to be offered for sale as low or moderate-income condominium units, the following area and dimensional requirements shall apply:
 - Building setback from Friendship Road frontage: 60 feet
 - Building setback from other property boundaries: 20 feet
 - Building setback from roadway: 20 feet
 - Building setback from parking: 10 feet
 - Minimum distance between buildings: 35 feet
 - No residential building or structure shall exceed 45 feet or 3-stories in height, except as regulated by the height exception provisions of this chapter

(4) **Route 130 Affordable Housing Subzone**

- a. The maximum residential yield shall be 83 rental units.
- b. The following area and dimensional requirements shall apply:
 - Building setback from Route 130 frontage: 125 feet
 - Building setback from other property boundaries: 50 feet
 - Building setback from internal roadways and driveways: 10 feet
 - Building setback from parking: 6 feet
 - Minimum distance between buildings: 30 feet

- No residential building or structure shall exceed 45 feet or 3-stories in height, except as regulated by the height exception provisions of this chapter

(5) **Commercial Subzone**

- a. Minimum lot area: 40,000 square feet.
- b. Minimum lot frontage: 200 feet.
- c. Minimum commercial building setbacks shall be as follows:
 1. 100 feet from Friendship Road and Route 130.
 2. 40 feet from all other property lines.
 3. 10 feet from any street or driveway (other than Friendship Road and Route 130).
 4. 5 feet from any parking area.
- d. Maximum building coverage: 25%
- e. Maximum lot coverage: 70%
- f. The maximum building height shall be 35 feet.

Section 62-892 - Off-street parking requirements and loading requirements.

- (1) Off-street parking for residential uses shall be provided as follows: All off-street parking shall be designed to comply with the standards set forth in the New Jersey Residential Site Improvements Standard (RSIS). The parking requirement for a clubhouse shall be 2.5 spaces per 1,000 square feet of gross floor area.
- (2) The parking requirement for non-residential development shall be four (4) parking spaces per 1,000 square feet. Shared parking arrangements are encouraged.
- (3) Parking and parking setbacks are as follows:
 - a. Parking and drive aisles shall be permitted in all building setback areas.
 - b. All nonresidential parking shall be set back a minimum of 40 feet from Route 130 cartway and Friendship Road right-of-way, and 10 feet from all other Tract boundaries.
- (4) All nonresidential buildings shall face the public roadways or entrance boulevard. Any service or loading areas facing public roadways shall be sufficiently screened from view from the public road.
- (5) Parking Stall and Aisle dimensions:
 - a. Parking stall dimensions shall be nine (9') feet wide and eighteen (18') feet deep.
 - b. Parking aisle width shall be twenty four (24') feet.

Section 62-893 - Lighting.

Lighting shall be provided in accordance with Section 62-208, with the exception that Section 62-208(g)(4) regarding lighting of sidewalks and pedestrian walkways may be accomplished by ambient lighting from buildings and parking areas and such lighting as may be required to ensure pedestrian safety. No lighting is required for pedestrian trails located within buffer areas, except for such lighting as may be required to ensure pedestrian safety.

Section 62-894 - Trash and Recycling Enclosures.

- (1) There shall be one enclosure (18' X 24') for every three (3) residential buildings for trash and recycling.
- (2) Trash and recycling enclosures shall be completely surrounded by a six-foot-high solid architectural fence and solid gate. All outside trash shall be stored in this area and shall not be in public view over the fence height. All similar accessory appurtenances, such as propane tanks, must be similarly enclosed.

Sec. 62-895 - Recreational facilities.

Sec. 62-206(5)e shall not apply to the PRD VII Zone. All recreational facilities shall be agreed to by the Township and set forth in a Settlement Agreement that shall address all active and passive recreational amenity requirements.

Section 62-896 - Affordable Housing

- (1) Ninety-eight (98) affordable housing units shall be provided which equates to 30% of the 326 residential units.
- (2) Pursuant to the Uniform Housing Affordability Controls (“UHAC”), the affordable units shall be restricted for at least thirty (30) years from the date of their initial occupancy (“Deed- Restriction Period”) to eligible very-low, low and moderate income households (with one exception that very-low income units shall be provided (as noted in 62-896(3) below) for households at 30% or less of median income and pursuant to N.J.S.A. 52:27D-329.1).
- (3) At least 13 units, or 13% of the affordable units, shall be affordable to very-low income households, defined as those households earning 30 percent or less of the regional median income; at least 36 units, or 37% of the affordable units, shall be affordable to low-income households, defined as those households earning between 30 percent and 50 percent of the regional median income; and up to 49 units, or 50% of the affordable units, shall be affordable to moderate-income households, defined as those households earning between 50 percent and 80 percent of the regional median income.
- (4) The affordable units shall comply with the UHAC bedroom distribution requirements set forth in N.J.A.C. 5:80-26.3(b), as follows:
 - a. The combined number of efficiency and one-bedroom units shall be no greater than 20 percent of the total low- and moderate-income units;
 - b. At least 30 percent of all low- and moderate-income units shall be two bedroom units;
 - c. At least 20 percent of all low- and moderate-income units shall be three bedroom units; and
 - d. The remainder, if any, may be allocated at the discretion of the developer as two or three bedroom units.
- (5) The affordable units shall comply with the UHAC regulations with regards to the pricing of rents or sale prices associated with very-low, low and moderate income units pursuant to N.J.A.C. 5:80-26.3(d) (with one exception that very-low income units shall be provided (as noted in 62-896(3) above) for households at 30% or less of median income and pursuant to N.J.S.A. 52:27D-329.1).
- (6) The affordable units shall comply with the phasing of market housing and affordable housing pursuant to N.J.A.C. 5:93-5.6(d), and in accordance with the following schedule:

<u>Minimum Percentage of Low and Moderate Income Units Completed</u>	<u>Percentage of Market Rate Housing Units Completed</u>
0	25
10	25 + 1 unit
50	50
75	75
100	<u>90</u>
	100

- (7) The Settlement Agreement shall address minimum area of units, minimum bedroom size, and floor area inclusions and exclusions.
- (8) The affordable units shall utilize the same heating sources as the market units within the inclusionary development.
- (9) With regard to ADA compliance, all low and moderate-income housing provided as townhouses or multistory dwelling units shall comply with N.J.A.C. 5:97-3.14.
- (10) The developer shall contract with an experienced administrative agent as per the UHAC regulations (N.J.A.C. 5:80-26.14).
- (11) The affordable units shall comply with the UHAC regulations with regard to affirmative marketing per N.J.A.C. 5:80-26.15 and the Township’s Housing Element and Fair Share Plan.

Sec. 62-897 - Conflicts in Standards

RSIS standards and the PRD VII Zone standards shall supersede any conflicting standards within this chapter.

Section 62-898 - 62-900. Reserved.

II. If any clause, sentence, paragraph, section or part of this ordinance or any other codes or ordinances incorporated herein shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder hereof, but shall be confined in its operation to the clause, sentence, paragraph, section or part thereof directly involved in the controversy in which said judgment shall have been rendered.

III. This ordinance shall become effective twenty (20) days after its final passage and approval after a duly noticed Fairness Hearing to be held by the N.J. Superior Court.

The above ordinance was introduced and passed on first reading at a meeting of the Township Council of the Township of South Brunswick held on February 25, 2020, and will be considered on second and final reading and final passage at a meeting of the Township Council of the Township of South Brunswick to be held at the Municipal Building, 540 Ridge Road, Monmouth Junction, New Jersey, at 6:00 p.m. on March 24, 2020, at which time and place any person having an interest therein will be given an opportunity to be heard.

History:
02/11/20 Township Council MOVE FORWARD Next: 02/25/20

RESULT:	INTRODUCED [UNANIMOUS]	Next: 3/24/2020 6:00 PM
MOVER:	Ken Bierman, Councilman	
SECONDER:	Josephine "Jo" Hochman, Councilwoman	
AYES:	Ken Bierman, Joseph Camarota, Archana "Ann" Grover, Josephine "Jo" Hochman	
ABSENT:	Charlie Carley	

This is to certify that the foregoing is a true copy of an ordinance Introduced at the South Brunswick Township Council meeting held on February 25, 2020.

Barbara Nyitrai, Township Clerk

MEMORANDUM

TO: Professional Staff

FROM: Tammy Scimone, Board Secretary

DATE: May 22, 2023

RE: Distribution of Resolution – **ADOPTED on May 17, 2023**

Attached herewith, please find the executed Resolution approving the following.

File # 20-045

Applicant: PPF INDUSTRIAL-ROUTE 130/EXIT 8A, LLC,

Block: 11 Lot: 15.03

Address: Route 130/Friendship Road

Application for preliminary site plan and preliminary major subdivision to construct 83 affordable family dwelling units, and one office unit on a 13.65-acre site known as Route 130/Friendship Road in the PRD VII Zone.

c: Applicant/Attorney
Board Attorney
Board of Education
Engineer
Health Dept.
Planning Consultants
Public Works Director
Sewer/Water Supervisor
Yearly Resolution file
Jim Lentino, MCPB
Subject file – 2 copies

RESOLUTION

SOUTH BRUNSWICK PLANNING BOARD

WHEREAS, PPF INDUSTRIAL-ROUTE 130/EXIT 8A, LLC, has made an application to the South Brunswick Planning Board, File No. 20-045, for preliminary site plan and preliminary major subdivision to construct 83 affordable family dwelling units, and one office unit on a 13.65-acre site known as Route 130/Friendship Road in the PRD VII Zone and designated on the Tax Map of the Township of South Brunswick as Block 11, Lot 15.03; and

WHEREAS, a public hearing was held on this matter on March 15, 2023; and,

WHEREAS, the Applicant submitted the following documents in support of the application:

- **Preliminary Major Site Plan and Subdivision Plan:** dated March 25, 2022, consisting of twenty-eight (28) sheets, prepared by Langan Engineering;
- **Preliminary Major Subdivision Plan:** dated March 29, 2022, consisting of two (2) sheets, *ibid.*;
- **Partial Site Layout (Development Area 3):** dated March 25, 2022, consisting of two (2) sheets, *ibid.*;
- **Environmental Impact Statement:** dated April 18, 2022, *ibid.*;
- **Recycling Plan:** dated June 27, 2022, *ibid.*;
- **Traffic Impact Statement:** dated April 1, 2022, *ibid.*;
- **Settlement Agreement:** dated October 8, 2020, signed by the SB Township Clerk;

- **First Amendment to Settlement Agreement:** dated April 28, 2022, signed by SB Township Clerk;

WHEREAS, the Applicant presented the following witnesses to testify in support of the application; and

1. Chris Cirrotti, the Applicant's site engineer, and;
2. Chris Zehnder, the Applicant's licensed architect, and;
3. Karl Pehnke, the Applicant's traffic consultant.

WHEREAS, after considering the evidence presented in support of the application, no comments from the public, and after considering the reports and comments from the Board's professionals, the South Brunswick Planning Board made the following findings:

1. The subject property involves lot current 15.03, which is an existing, 13.65 acre, irregular lot on the west (southbound) side of Route 130. This parcel was previously identified as "Development Area 2" in previous versions of this application.
2. This lot is located on the east side of the greater PPF Industrial site (PPF Industrial-Route 130/Exit 8A, LLC) at this location which was formerly shown as lot 15.02.
3. This portion of the development tract is a vacant, irregular parcel of land approximately 260 ft. deep and 1,800 ft. wide.
4. The Applicant previously proposed a commercial development on this lot including a drive-through bank, a drive-through/fast-food restaurant, a 16,000 sq. ft. retail strip mall, and a drive-through pharmacy. That application was preliminarily approved. Lot 15.03 was created through subdivision approval connected to the previous application.

5. Note that Block 11, Lots 13.02 and 15.05 abut each other and are located on the north side of Friendship Road. This tract contains approximately 69 acres. This is also known as Development Area 1 and/or the Friendship Road North Inclusionary Housing Subzone. This version of the application does not include these lots.
6. The Applicant proposes a subdivision of lot 15.03. A new lot line is proposed and will run east-west and will create two (2) new lots. A north lot is proposed containing approximately 10.5 acres and is shown as lot 15.06.
7. Residential development is proposed on lot 15.06. This lot aligns with the “Route 130 Affordable Housing Subzone” shown in the settlement agreement.
8. A south lot is proposed containing approximately 3.08 acres and is shown as Lot 15.07. Lot 15.07 will be a corner lot at the corner of Route 130 and Friendship Road and will be available for future development. This lot aligns with the “Commercial Subzone” shown in the settlement agreement and Ordinance 2020-32.
9. The Applicant proposes to develop Lot 15.06 into a residential development containing 83 garden apartment units in four (4) residential buildings. The buildings will be 3-story buildings with ±12-24 units in each building.
10. The units will be a mix of 1, 2, and 3-bedroom units. The unit distribution is shown as (18) 1-bedroom, (49) 2-bedroom and (16) 3-bedroom units, plus (1) management office unit.
11. The buildings will all be located on the north portion of current lot 15.03 and will be oriented toward Route 130.
12. The October 8, 2020, Settlement Agreement, which governs this site, requires these units to be 83 affordable family rental units in 3-story apartment buildings.

13. The buildings will be surrounded by paved parking lots with 168 parking spaces.
14. A tennis court is proposed at the north end of the site. A tot lot and basketball court with connecting sidewalks are also proposed. All throughout the amenity areas there will be sidewalks connecting with the existing sidewalks and with the frontage at Friendship Road.
15. Lot 15.07 (the south parcel) will contain an entrance driveway for the residential development.
16. No other development is proposed at this time for lot 15.07. However, commercial development is permitted and will likely be proposed in the future at this location.
17. Two (2) separate new driveway connections are proposed to connect to Route 130 and Friendship Road.
18. Christopher Zehnder, the Applicant's professional architect testified as to the architectural aspects of the project, including the schematic design of the floor plans as well as the architectural elevations.
19. Mr. Zehnder, with the aid of Exhibit A-1, the Colored Site Plan Rendering, first testified regarding the overall site plan. The site will consist of four (4) buildings, three (3) of which will be full-sized (each containing 24 apartments) and a fourth one that is smaller containing eleven (11) apartments and one office unit. There will be parking spaces on both sides of the buildings.
20. Mr. Zehnder further testified that the leasing office will be located on the ground floor of the smaller building. Across the street will be recreational amenities including athletic courts and a playground. There is a stormwater management area and a package delivery area.

21. With regard to a quick overview of the site, Mr. Zehnder testified that the Applicant will provide landscape buffering around the parking areas and to buffer the project from the highways and roads. There will be landscaping in the form of street trees in the parking area as well.
22. Regarding the residential units themselves, Mr. Zehnder testified that all units comply with the applicable minimum floor area requirements as set forth in the ordinance. They also comply with the minimum bedroom guidelines for affordable housing and the minimum requirements regarding the number of bedrooms for the various units.
23. Mr. Zehnder explained that the smaller building, to the north of the site, would have eleven (11) apartments and the one management office. All other buildings would each have twenty-four (24) apartments. All ground level apartments are convertible to accessible units.
24. Mr. Zehnder further testified that all units have a ground floor locker that either meets or exceeds the amount of storage space specified in Section 62-895(4) of the PRD VII Ordinance. The lockers are accessible from the downstairs hallway so that things such as bicycles need not be transported upstairs.
25. Mr. Zehnder testified that each ground floor consists of eight (8) units. There are two (2) on each end and there are four (4) situated towards the core of the building. The end units include three-bedroom units with living space and entry space, storage, kitchen, convertible access and convertible access bathroom. The four (4) central units are two-bedroom units. Every unit has a separate washer and dryer in the unit.
26. Mr. Chris Cirrotti, the Applicant's professional engineer, testified regarding the overall site plan and the engineering aspects of the proposed project.

27. By use of Exhibit A-5, the Development Area Two Aerial exhibit, Mr. Cirrotti depicted the site location, size, and general layout.
28. Mr. Cirrotti further testified that the development proposal is for 83 affordable units in four (4) three-story buildings, as described by the architect. Surrounding the building area was surface parking containing a total of 168 parking spaces. Included in that total are eight (8) accessible spaces including two (2) van accessible spaces to meet the RSIS standards for accessibility parking. Further, they have proposed to provide five (5) electric-vehicle parking spaces. All parking spaces are 9 ft. x 18 ft. with 24 ft. drive aisles.
29. Further, Mr. Cirrotti explained that the existing curb cuts on both Friendship Road and Route 130 will provide vehicular access to the site. Access to the development is via one full movement driveway along Friendship Road. The Route 130 movement is a right-in and right-out onto the southbound Route 130 lanes of the state highway.
30. Further, Mr. Cirrotti testified that there will be an array of sidewalks proposed around the residential buildings connecting them to the surface parking and connecting them to pedestrian routes to the amenities.
31. A tennis court is proposed at the north end of the site. A tot lot and basketball court with connecting sidewalks are also proposed. All throughout the amenity areas there will be sidewalks connecting with the existing sidewalks and with the frontage at Friendship Road.
32. Mr. Cirrotti further explained that there is a stormwater management basin located adjacent to those recreational areas. There will be trash enclosures in the southeasterly corner of the parking field as well as one in the center of the easterly parking field, which

trash enclosures are fenced with a solid board fence six (6) ft. in height and screened from view on all four sides.

33. Regarding the buildings, Mr. Zehnder testified that the ground floor level apartments are convertible to accessible units for a physically disadvantaged person. Further, Mr. Cirrotti testified that all of the units have a ground floor locker that meets or exceeds the amount of storage space in Section 62-895(4) of the PRD VII Ordinance, which lockers are accessible from the downstairs hallway.
34. In the form of security, Mr. Zehnder testified that there will be security cameras to monitor the mailbox and package lockers in the lobby. The residents would need to have either a keypad combination or a specific key to obtain access to the building. Each unit would have a separate keyed or combination-lock door for individual access. Further, security cameras will be provided at each building entry as well as each lobby floor. There will also be external cameras providing security for the parking lots.
35. The Applicant's intention, as testified by Mr. Zehnder, is to contract with a property management company who will be responsible for providing the security services you would expect to find in this type of facility.
36. Mr. Zehnder, with the assistance of Exhibit A-2, the Color Rendering, detailed the architectural elevation design of the building. It will be a neo-colonial architectural style, with each building consisting of a three-story symmetrical façade with single hung, divided-light windows regularly spaced. There will be entrances located a distance of approximately one-third of the length of the building, from the north and south elevations, to provide efficient loading to the apartments. The ground levels will include a brick façade for durability as well as aesthetic quality. The upper level will provide a

contrasting vinyl siding. The architectural trim will be white and the vinyl siding will be neutral colors providing low maintenance for the building. There being no end building elevations submitted with the application, Mr. Cirrotti, on behalf of the Applicant, agreed to provide same as a condition of final approval.

37. Further, Mr. Zehnder testified that each building will have a ground level mechanical room in a corner. The room will house fire sprinkler equipment as well as alarm systems with internet and phone service infrastructure. Natural gas and electric meters will be located based upon final recommendations of the utility authorities.
38. Mr. Zehnder testified that the buildings comply with all the applicable provisions of the ordinance including the location and height of the buildings and that the project requires no bulk variances because it meets all the bulk requirements, including height.
39. In response to Board questioning, Mr. Zehnder explained that the stairwell areas are four (4) ft. wide, the buildings contain fire sprinklers, all the exterior windows are egress windows, there are interconnected fire and smoke detectors in each building, and each building meets all applicable fire and Township code requirements.
40. Further, Mr. Cirrotti testified that the existing stormwater basin was designed to accommodate the development and that the additional attenuation and groundwater recharge meets all the requisite requirements for the development. Further the stormwater management design has been previously approved by the DEP.
41. Moving to utilities, Mr. Cirrotti testified that the site will be served by public water already on the site with public sewer flowing by gravity to the Township pumping station that is southwest of the site along Friendship Road. The other utilities will be routed underground.

42. Regarding proposed site lighting, the parking light area will be lit by LED post-style street lights and lights along the internal roadways. There is no proposed lighting on the recreational amenities since they are not proposed for use after dark.
43. Mr. Cirrotti testified regarding the proposed plantings on all sides of the building. There will be foundation plantings and landscaping proposed around each of the buildings on all four sides. Shade trees and other plantings within the field provide shade to the paved areas. The landscaping along Route 130 will be enhanced to add additional screening.
44. Further, Mr. Cirrotti, on behalf of the Applicant, agreed to comply, except as noted herein, with the conditions and recommendations of the Bidlack memorandum dated January 24, 2023, noting that some of the comments refer to the commercial adjoining lot and are not a part of the application.
45. With regard to the Bignell Planning Consultants memorandum dated January 20, 2023, Mr. Cirrotti, on behalf of the Applicant, agreed to comply with the comments and recommendations contained therein noting that there was no crosswalk between the recreation area and an adjoining recreation area because there is no intention for the site recreation area to be used after dark. He further noted that any environmental issues had been closed by the DEP prior to the application.
46. Further, on the Bignell report, Mr. Cirrotti testified that the bike racks proposed will not be covered because there is no requirement to do so. Regarding the dumpster enclosure, Mr. Cirrotti testified that they will be fenced with a solid board fence with a height of six (6) ft. and further screened by additional landscaping.

47. The Applicant, through its attorney, agreed to abide by the Settlement Agreement regarding off-tract improvements, so as to eliminate the recommendation of entering into a Developers Agreement as a condition of approval.
48. Further, the Applicant proposes no variance issues and agreed to submission of revised plans to the Planning Board as a condition of final approval.
49. Mr. Glenn Pantel, Esq., attorney for the Applicant, agreed to abide by the comments and recommendations set forth in the CME memorandum dated January 21, 2023, on behalf of the Applicant.
50. Further, Mr. Pantel, on behalf of the Applicant, submitted that the size of the buildings, their orientation on the property, and the requirement to develop 83 affordable housing units, are all consistent with the Settlement Agreement entered into between the Township of South Brunswick and the Planning Board.
51. Upon Board questioning, Mr. Pantel agreed that the Applicant will pay any applicable rollback real estate taxes.
52. The Applicant agreed, by way of Board questioning, through its attorney, Glenn Pantel, that, as a condition of final site plan approval, before construction there be a physical assessment of Friendship Road to assure that post-construction there would be no damage as a result of construction activity. The Applicant agreed to restore the road to pre-construction condition, should it become necessary as a result of all damage caused by construction of the project. Further, upon Board questioning, the Applicant agreed to provide some type of natural or artificial barrier between the recreation area and the retention basin to protect the health and wellbeing of children utilizing the playground area.

53. The Applicant testified, through its engineer, Mr. Chris Cirrotti, that the access driveway connecting between Route 130 and Friendship Road will likely be utilized by the commercial operation on the subdivided commercial lot with appropriate cross access easements being created as necessary when the application is made.
54. Further, upon Board questioning, Mr. Pantel, on behalf of the Applicant, reported that there already exists a cross-drainage easement between the site and the adjoining Oaks Development with regard to the maintenance of the stormwater management system.
55. Karl Pehnke, the Applicant's traffic engineer, testified with respect to a traffic impact study he prepared dated April of 2022 which was submitted and reviewed by CME Engineering, the Township's engineer.
56. Mr. Pehnke testified that for a previous approval on the site, the Applicant obtained permitting with the Department of Transportation for the higher traffic volumes associated with the previously proposed shopping center and that those approvals included the establishment of the right-in, right-out driveway along Route 130 southbound and the driveway on Friendship Road.
57. Mr. Pehnke further testified that the Applicant previously reconstructed the shoulder along Route 130 and constructed curbing pursuant to DOT requirements. Further, Friendship Road was widened to change the radius at Friendship Road at its intersection with Route 130. Finally, pedestrian accommodations were made to the intersection, all pursuant to NJDOT requirements.
58. Further, Mr. Pehnke stated that from a traffic standpoint, the proposed residential multi-family development is less impactful than the prior approved retail plaza.

59. Mr. Pehnke projected that the site will generate 1,200 fewer daily trips than the prior approval for the retail project. Again, less than the prior approved retail project on the site and less peak-hour traffic to the adjacent roadways.
60. In terms of on-site circulation, Mr. Pehnke testified that it is a straight-forward design, it meets residential site improvement standards, and it will provide safe and efficient access to the residents of the new community.
61. Further, with respect to traffic volumes, Mr. Pehnke testified that while there may be a minor increase in traffic flow on the adjacent roadways, there is really no change to the operating conditions, particularly at Friendship Road and Route 130.
62. Regarding the adjacent property owned by the New Jersey Turnpike Authority, Mr. Pehnke reported that the New Jersey Turnpike Authority and the NJDEP have no plans for design changes at the intersection.
63. Finally, in response to Board questioning, Mr. Pehnke testified that the driveways are designed to DOT standards, and the sight triangles fall within the public right-of-way with regards to both points of ingress and egress from the site. Further there is no impairment in sight distance from the Route 130 access driveway and the acceleration lanes from Georges Road. The acceleration lane from Georges Road is approximately 800 ft. long, and Georges Road is well over 2,000 ft. from the proposed driveway.
64. Finally, in response to Board questioning, Mr. Pehnke testified that there is no impact on sight triangles or the safety exiting onto Route 130 as a result of the design of the acceleration lane from Georges Road.

65. The Applicant, in response to Board questioning, explained that the driveway on Route 130 was reconstructed and the shoulder slightly widened to Department of Transportation standards in accordance with the previously issued DOT access permit.
66. Upon further Board questioning, Mr. Pehnke agreed, on behalf of the Applicant, to place a barrier along the curve of the driveway near the end of the tennis court, for the safety of individuals utilizing the play area.

WHEREAS, after making the above findings of fact, the South Brunswick Township Planning Board made the following conclusions:

1. The Application is straight forward and did not require extensive discussion.
2. Board members find from the testimony presented, subject to the conditions agreed upon, that the Application advanced the general welfare of the community by promoting the availability of affordable housing.
3. Board members find from the testimony presented, subject to the conditions agreed upon, that the Application promoted the creation of affordable housing within the Township and is consistent with the Township's court-approved affordable housing settlement.
4. The Applicant agreed, as a condition of approval, to comply with the recommendations contained in the Bignell report dated January 20, 2023, unless modified herein.
5. The Applicant agreed, as a condition of approval, to comply with the recommendations contained in the Bidlack memo dated January 24, 2023, unless modified herein.
6. The Applicant agreed, as a condition of approval, to comply with the recommendations contained in the CME reports dated October 10, 2022, November 21, 2022, and January 21, 2023, unless modified herein.

7. The Applicant has agreed, as a condition of approval, to recalculate and correct the water gallon per day usage for the proposed project, as testified.
8. The Applicant agreed, as a condition of approval, to make a pre-construction assessment of the condition of the pavement on Friendship Road and to restore the pavement to its pre-construction condition should construction result in any damage thereto.
9. The Applicant agreed, as a condition of approval, to provide a safety barrier between the playground amenities and the new and existing stormwater basin, to the satisfaction of the Board professionals.
10. The Applicant has agreed, in lieu of the recommendations to plantings and screenings advanced by the Board professionals, to provide planting and screening as set forth in their Exhibit A-1 rendering before the Board.
11. The Applicant has agreed, as a condition of final approval, to provide end elevations of all buildings.
12. The Applicant has agreed, as a condition of final approval, to revise all plans in conformance with this preliminary approval.
13. The Board finds from the testimony presented, subject to the conditions agreed upon by the Applicant and those imposed by the Board, that the site plan is in substantial compliance with N.J.S.A. 40:55D-38, 39, 41 and 50 and the applicable Township Ordinances, and advances sound land use principles. The Board adopts the testimony given by the Applicant's witnesses, specifically that of the Applicant's architect and engineer in this regard.
14. The Board found, for reasons noted herein and on the record, that because of the existing lot area, the site can be subdivided and continue to independently and functionally

operate. Furthermore, the Board found that the subdivision plan allows for potential direct street access, adequate vehicle circulation, and provides sufficient parking.

15. Board members took note of the professionals' comments and recognized that, in accordance with both the Board planners and engineer's recommendations, additional information, data, and studies will be required prior to the Applicant seeking final site plan approval. Board members opined that they were presented adequate information to afford preliminary site plan approval.
16. Board members noted that the Applicant worked closely with Board professionals to develop an efficient building, layout, recreational amenities, landscaping, lighting, and parking area circulation plan.
17. Board members further find from the testimony presented, subject to the conditions agreed upon, that the proposed application is consistent with the character of the neighborhood.

NOW, THEREFORE, BE IT RESOLVED by the South Brunswick Township Planning Board that the application by PPF Industrial-Route 130/Exit 8A, LLC, File No. 20-045, for preliminary site plan and preliminary major subdivision to construct 83 affordable family dwelling units, and one office unit on a 13.65-acre site located in the PRD VII zone known as Route 130/Friendship Road and designated on the Tax Map of the Township of South Brunswick as Block 11, Lot 15.03, be and is hereby granted, subject to the following conditions subsequent:

1. Granting of the requested relief or subdivision approval or the preliminary site plan approval shall not be construed to eliminate any other requirements of the zoning ordinance and/or other requirements of the Board and authorities of the Township of South Brunswick, County of Middlesex, in the State of New Jersey.

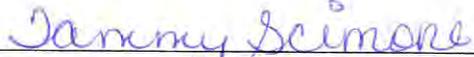
2. Any and all fees properly due and owing the Township and/or Planning Board for hearing the application must be paid in advance of building permits being issued.
3. All conditions contained in the Resolution and in the record of the proceedings in this matter, including any agreements made by the Applicant, were essential to the Board's decision to grant the approvals set forth herein. A breach of any such condition or failure by the Applicant to adhere to the terms of any agreement within the time required may result in the Township exercising such rights as it may have under law and equity.
4. The subdivision of this parcel shall be perfected and implemented in accordance with the requirements of Municipal Land Use Law and as directed by the Planning Board's engineer in connection with the hearing process, unless herein modified.
5. The Applicant shall comply with the recommendations contained in the Bignell report dated January 20, 2023, unless modified herein.
6. The Applicant shall comply with the recommendations contained in the Bidlack memorandum dated January 24, 2023, unless modified herein.
7. The Applicant agreed to comply with the recommendations contained in the CME reports dated October 10, 2022, November 21, 2022, and January 21, 2023, unless modified herein.
8. The Applicant will be exempt from obtaining any LSRP report, since the environmental issue has been closed out by the DEP with the submission of a *No Further Action* letter.
9. The Applicant shall be exempt from the requirements, items 1 through 10, of the Bidlack memorandum regarding milling and paving of Route 130.

10. The Applicant will make a pre-construction report of the condition of Friendship Road and return and/or restore Friendship Road to its pre-construction condition should construction result in damage to said road.
11. The Applicant will provide a safety barrier between the playground amenities and the new and existing stormwater basin to the satisfaction of the Board professionals.
12. The Applicant will be relieved of the obligation under Item (k) of the Bidlack report to provide a crosswalk that crosses Friendship Road at Sullivan Road.
13. The Applicant shall be relieved of any obligation to light the proposed amenities, the tennis courts, basketball courts, and other play areas and the pathway connecting these areas.
14. The Applicant shall be relieved under the Bignell report, memorandum number 11, Item (d) to provide a cover to the bicycle rack.
15. The Applicant shall provide plantings, landscaping, and screening as demonstrated in Exhibit A-1 rendering and be relieved of any obligation to provide other plantings, as contained in the Bignell report.
16. The Applicant shall be relieved of complying with Item (f) of the Bignell report and relieved of the obligation to provide lighting of the sports court.
17. The Applicant shall confirm the safety of the sight triangles at the ingress and egress point of Route 130 to the satisfaction of the Board engineer.
18. The Applicant shall provide a safety barrier between the Route 130 driveway and recreation area to the satisfaction of the Board engineer.
19. The Applicant shall be relieved of Item (l) of the Bignell report to provide heavy buffering and landscaping around the trash enclosures. However, the Applicant will,

for the trash enclosures, provide screening in the nature of board-on-board fencing and landscaping immediately adjacent to that fencing, to the satisfaction of the Board professionals.

20. The Applicant will provide a corrected water gallon per day usage figure, revised plans demonstrating elevations of the end of the buildings and further revised plans to the satisfaction of the Board's professionals.
21. The Applicant shall be exempt from entering into a Developers Agreement as a result of the Applicant having entered into a Settlement Agreement with the Township of South Brunswick and the Planning Board regarding the affordable housing units. The Applicant will pay all rollback taxes and provide off tract contributions in accordance with the Settlement Agreement.
22. The Applicant shall return to the Board for final site plan approval and final subdivision approval upon satisfying the requirements of the preliminary site plan approval.

I DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE COPY OF A RESOLUTION PASSED BY THE PLANNING BOARD FOR THE TOWNSHIP OF SOUTH BRUNSWICK AT A MEETING HELD ON THE 17th DAY OF MAY, 2023.



Tammy Scimone
Planning Board Secretary

NAME	VOTE FOR	VOTE AGAINST	ABSENT	NO VOTE
BAIG			X	
BIERMAN	X			
PATEL, T			X	
PATEL, K			X	
LUTIN		X		
NATHANSON			X	
PRODROMO	X			
SALVI	X			
WEITZ	X			



C. SBC ADDITIONAL DOCUMENTATION

1. SHO FINDINGS AND RECOMMENDATION
2. COURT APPROVAL

PROPOSED RESOLUTION AND ORDER OF THE SUPERIOR COURT OF THE
STATE OF NEW JERSEY, COUNTY OF MIDDLESEX APPROVING PRELIMINARY
AND FINAL SITE PLAN APPROVAL

FEBRUARY 13, 2020

SUBMITTED TO THE HONORABLE MICHAEL V. CRESITELLO, Jr., J.S.C., OF
THE MIDDLESEX COUNTY SUPERIOR COURT/LAW DIVISION

IN THE MATTER OF SOUTH BRUNSWICK CENTER, LLC. v. THE TOWNSHIP OF
SOUTH BRUNSWICK AND THE PLANNING BOARD OF THE TOWNSHIP OF
SOUTH BRUNSWICK.

DOCKET NO.: L-4433-17

DECIDED:

WHEREAS, the South Brunswick Center, LLC (hereinafter referred to as "SBC") is the owner of approximately a 428 acre tract of land situated on Route 1 in the Township of South Brunswick Township ("Township"), County of Middlesex, State of New Jersey, currently known as Block 86, Lots 22.041, 89.013 and 89.023 (hereinafter referred to as "The Site"); and

WHEREAS, the current zoning for the Site is Office/Research and Conference District ("OR") on the official Township Zoning Map; and

WHEREAS, on June 15, 1994 the defendants, Planning Board of South Brunswick Township and the Township of South Brunswick (hereinafter referred to as the "Township") granted preliminary subdivision approval to develop the subject property with waivers and design exceptions to the predecessor developers. When developed, the property would incorporate commercial office space. In 1998, plaintiff acquired Jersey Center's interest in the property. See South Brunswick Center, LLC v. Twp. of South Brunswick, A-181307 (App. Div. December 28, 2009).

WHEREAS, noted by SBC, "due to the changing market and cancellation of a planned rail stop, the office research-park and train station concept was revised by SBC in favor of residential housing." SBC Brief, p.1, dated September 30, 2019; See Site History reflected in South Brunswick Center, LLC v. Twp. of South Brunswick, A-1813-07 (App. Div. December 28, 2009); and

WHEREAS, commencing in 2011, SBC has sought to develop the site for residential housing and filed a prerogative writs action in 2014 for review of the Township's denial of rezoning; and

WHEREAS, SBC initiated a prerogative writs action contesting the denial of rezoning which evolved into a Builder's Remedy action, ultimately consolidated into the Township's Declaratory Judgment Action ("DJ Action"), pursuant to In re: N.J.A.C. 5:96 & 5:97, 221 N.J. 1 (2015) ("Mount Laurel IV"); and

WHEREAS, the DJ Action filed by the Township was tried before Judge Wolfson, J.S.C., for a period of eight days in April 2016; and

WHEREAS, on July 21, 2016, Judge Wolfson issued an opinion I/M/O Township of South Brunswick, 448 N.J. Super. 441 (Law Div. 2016); and

WHEREAS, the trial court held the Township of South Brunswick did not meet its "affordable housing obligation." I/M/O Township of South Brunswick, as noted above, the trial court held "some municipalities might not embrace, in full, their affordable housing obligation, but instead may pursue a path of resistance, resulting in loss of immunity. Regrettably, because South Brunswick failed to heed this warning, the elements of its

affordable housing plan will not be those selected by its elected and appointed representatives, but instead, will be those designed and implemented by third parties, the Special Master, and the Court." Id. at 468; and

WHEREAS, on September 30, 2016 and October 14, 2016, Judge Wolfson held Case Management Conferences with counsel for each of the seven Builders; and

WHEREAS, the Court having considered the status of the Township's Declaratory Judgment action filed pursuant to In re N.J.A.C. 5:96 & 5:97, 221 N.J. 1 (2015) and the builder's remedy suits named in the above caption, and for good cause shown; and

WHEREAS, on October 21, 2016, Judge Douglas K. Wolfson entered an Order appointing; (1) Linda R. Feinberg, A.J.S.C. (Ret.), as Special Hearing Officer for the purpose of reviewing and making recommendations to the court regarding the site plan proposal of the Builder, South Brunswick Center, in accordance with the procedures set forth in Cranford Development Associates, LLC. v. Township of Cranford, 2016 N.J. Super. Unpub. LEXIS 955, certif. denied 227 N.J. 237, 266 (2016); and (2) Christine Nazzaro-Cofone, Special Master; and

WHEREAS, the Case Management Order, in part, provides:

The Builder site plan application shall be deemed a fully conforming "as of right" application in accordance with proposed zoning regulations the Builder shall submit with its site plan submission, which shall be deemed to be the standards applicable to the Builder's proposed site plan. The Builder's are encouraged to incorporate existing

Township standards for similar types of housing as is reasonable practicable.

[Case Management Order, dated 10/21/2016.]

WHEREAS, SBC is the successor developer of a four hundred and twenty-eight acre (428) tract of land located on Route One in South Brunswick Township, County of Middlesex, State of New Jersey, currently known as Block 86, Lots 22.041, 89.013 and 89.023 ("The Site."). See November 8, 2017 Environmental Impact Statement.

WHEREAS, as noted in the Intervener's brief, "since 2011 SBC has been working to develop the site for residential housing." See SBC Brief, p.2.

WHEREAS, SBC filed a prerogative writs action in 2014 for review of the Township's denial of rezoning, which eventually evolved into a Builder's Remedy action, which was consolidated into the Township's Declaratory Judgment Action, filed on July 5, 2015. See In re: N.J.A.C. 5:96 & 5:97 ("Mount Laurel IV"), 221 N.J. 1 (2015).

WHEREAS, on November 17, 2017, Builder's Remedy Plaintiff, South Brunswick Center, LLC ("hereinafter referred to as SBC") located at 90 Woodbridge Center Drive, Suite 600, Woodbridge, New Jersey ("Builder's Remedy Plaintiff" or "SBC") filed an application for preliminary and final site plan approval consistent with the Case Management Order entered by Judge Douglas K. Wolfson, J.S.C. (Ret.) on October 21, 2016.

WHEREAS, the applicant's Site Plan submission sought approval of a 1,800 unit residential rental housing development, on approximately 480 acres owned by the applicant. The property is located at Block 86, Lots

22.041, 89.13 and 89.023, as shown on the Tax Maps of the Township of South Brunswick; and

WHEREAS, the conceptual Site Plan reviewed by the Special Master, with the SBC Site having been found suitable by the Trial Court for inclusionary housing development consistent with the concept plan, subject to site planning review as set forth in the Case Management Order; and

WHEREAS, the matter was heard at public hearings at the Middlesex County Courthouse before Special Hearing Officer Linda Feinberg, A.J.S.C. (Ret.) ("Hearing Officer") on May 4, 2018, June 12, 2018, June 13, 2018, October 15, 2018, November 27, 2018, December 13, 2018, December 18, 2018, and July 1, 2019; and

WHEREAS, the Site Plan provides for 360 units of housing for low and moderate income housing, or 20% of the development which helps to defray the Township's long-deferred affordable housing obligation of 1,417 units. See Site Plan; page CS110, revised August 30, 2018.

WHEREAS, the applicant and the Township have complied with all of the procedural requirements set by the Special Hearing Officer and have filed all documents in a timely manner; and

WHEREAS, hearings commenced on May 4, 2018 and continued on June 12, 2018 and June 13, 2018. At the recommendation of the Special Master and, with the approval of the Special Hearing Officer, the Special Master met with professionals from SBC, the Township and the Planning Board on June 19, 2018, June 20, 2018 and on August 10, 2018.

WHEREAS, in the second round of hearing dates the trial continued on October 15, 2018, November 27, 2018, December 13, 2018, December 18, 2018 and July 1, 2019; and

WHEREAS, the revised August 30, 2018 Site Plan addressed the comments of the Special Master, and in support of the revised Site Plan. See Table 3, entitled "Documents submitted by SBC in Support of Site Plan Revision"; and

WHEREAS, on October 12, 2018 the Township served documents responses to SBC's revised Site Plan; and

WHEREAS, the Special Hearing Officer held a hearing to determine whether a witness qualified as an "expert" in their field. Fourteen witnesses testified as experts in their respective fields. See N.J.R.E. 104. Preliminary Questions; and N.J.R.E. 702. Testimony by Experts; and

WHEREAS, the applicant, South Brunswick Center, presented expert testimony by William Iafe, PE, PP; Christian Roche, PE LEED AP; David Avery, PLS; Robert S. Larsen, PA, PP, John Chadwick, PP and Jay S. Troutman, PE; and

WHEREAS, the Township of South Brunswick presented expert testimony by Kenneth P. Zielinski, PE, PP, CME; Kevin Chen, PE, PTOE; Henry D. Bignell, PP; and Wayne Simpson, PE, BCEE, an expert in waste water and waste water facilities engineering; Emily R. Goldman, PP, AICP; Mary Beth Lonegran, PP, AICP; and Bryan Bidlack, PP.

WHEREAS, Section 2(I), of the Case Management Order signed by Judge Wolfson, provides, "in the event the Special Hearing Officers require

additional expertise by separate expert review of a Builder's site plan, the Special Hearing Officers may engage such additional experts as the Special Hearing Officers deem appropriate." See CMO, paragraph 2(I), dated October 21, 2016, signed by Judge Wolfson, J.S.C.

WHEREAS, at the end of the November 27, 2018 hearing, based on conflicting testimony offered by the traffic engineers on behalf of SBC and the Township, and with the input of the parties and the Special Master, the Special Hearing Officer entered an Order naming Matthew Seckler of Stonefield Engineering and Design, as the court appointed traffic expert; and

WHEREAS, the applicant's witness has agreed to revise the plans to provide landscaping and amenities as recommended by the Special Master. As noted by the Township, in their brief, "after the June 13, 2018 hearing, the applicant's engineer, Christian Roche did revise the plans to address some of these recommendations. Township Proposed Resolution, p. 10.

WHEREAS, the Special Hearing Officer has reviewed and considered the following: (1) the transcripts of the proceedings (T1 to T8); (2) reports, exhibits, maps, diagrams and pictures provided by SBC professionals (SBC-1 to SBC-78) and reports, exhibits, maps, diagrams and pictures provided by the Township and the Planning Board (T-1 to T-58); and (3) the testimony of a resident who resides in the Township of South Brunswick.

WHEREAS, the Site has been deemed suitable for inclusionary housing by the Special Master, Christine Nazzaro Cofone and by the Trial Court, and subject to Site Plan review, the Special Hearing Officer accepts these suitability determinations; and

WHEREAS, as noted by SBC, "construction of the development is to convert approximately 121.5 acres of upland forest, successional woodlands, and successional field for residential use." See November 8, 2017 Environmental Impact Statement ("EIS"). Approximately 307 acres of the site will remain natural. See November 8, EIS as page 30; and

WHEREAS, as noted in the record, "technical meetings were held with the Special Master and the Parties' respective planning and engineering professionals on June 19, June 20, and August 10, 2018; and

WHEREAS, in a memorandum dated October 2, 2019, from Jessica Almeida, Esq., on behalf of SBC, copies were sent to the Special Hearing Officer, the Special Master and to all Counsel of Record. The memorandum is twelve pages and includes "Specific Revisions To Individual Development Areas 1 through 12. The Special Hearing Officer has attached the August 30, 2018 Revisions to the Site Plan; and

WHEREAS, the applicant has agreed to, and is directed to comply with the conditions of final approval set forth in the August 30, 2018 Revisions to the Site Plan; and

WHEREAS, SBC shall contribute its proportionate share of the I&I study, the connection charges and pay its pro-rate share; and

WHEREAS, wastewater from the project is to be conveyed to the Middlesex County Utilities Authority ("MCUA") sewage treatment plant for treatment; and

WHEREAS, the Hearing Officer has reviewed the following exhibits submitted by or on behalf of the Applicant. See Exhibits SBC-1 to SBC-77 and Tables 1-5 submitted with SBC's Proposed Resolution and Order; and

WHEREAS, the Hearing Officer has reviewed the following exhibits submitted by or on behalf of the Township. See Exhibits T-1 to T-58 and the Township's Proposed Findings of Fact and Conditions of Approval, pp. 2 to 9; and

WHEREAS, all of the exhibits listed in the preceding two paragraphs, were admitted into evidence, without objection, by the parties; and

WHEREAS, the Hearing Officer, the Special Master and counsel for the parties were each provided with a copy of Mr. Seckler's independent traffic reports. See Reports issued by Matthew J. Seckler, PE, PTOE, PP, of Stonefield Engineering; the Hearing Officer's independent traffic expert. See Exhibits C-1 to C-4; and

WHEREAS, C-2, identified as "Revised June 11, 2019, is the Final Report of Mr. Seckler; and

WHEREAS, attached to the Proposed Resolution and Order are the following: (1) Documents submitted by SBC in support of Original Site Plan (November and December 2017); (2) Documents submitted by the Township in Response to SBC's Original Site Plan; (3) Documents submitted by SBC in Support of Site Plan Revision (August 2018); (4) Documents submitted by the Township in Response to SBC's Revised Site Plan; (5) Documents prepared by the independent traffic engineer (C-1 to C-4); C-2 representing

the final report by Mr. Seckler; (6) List of Licenses, permits and other approvals required for the proposed development application; and

WHEREAS, the Site has been deemed suitable for inclusionary housing by the Special Master and by the Trial Court; and

WHEREAS, based on the testimony of the fourteen expert witnesses and the 140 exhibits admitted into evidence, the Special Hearing Officer finds the Site Plan Application represents sound land use planning principles; and

WHEREAS, the Special Hearing Officer has simultaneously issued the Proposed Findings of Fact and Recommendations along with a Proposed Resolution and Order.

A.

GENERAL COMMENTS AND FINAL APPROVALS

1. An Engineer's Bond Estimate for the proposed site improvements should be submitted for the project.
2. The applicant shall obtain and forward to the Township and Township Engineer final approvals or letters of no interest from the following Government Agencies.
 - (A). Freehold Soil Conservation District;
 - (B). South Brunswick Township Soil Placement or Removal Permit;
 - (C). Middlesex County Planning Board;
 - (D). NJDOT - Highway Access Permits;
 - (E). NJDEP -Treatment Works Approval;
 - (F). NJDEP - Bureau of Safe Drinking Water,
 - (G). NJDEP - Letter of Interpretation
 - (H). NJDEP - Wetlands Transition Area Average Plan;
 - (I). NJDEP - Flood Hazard Area Verification;
 - (J) NJDEP - Flood Hazard Area Individual Permit (outfall);
 - (K) NJPDES - Construction Activity Storm-Water Discharge Authorization;
 - (L) Township Storm-Water Maintenance Agreement (Recorded Copy);
 - (M) Storm-Water Management Maintenance Plan (Recorded Copy).

[See SBC-77, Langan Report, p. 2, number 8, dated August 30, 2019.]

3. In accordance with the requirements detailed in the Township Land Ordinance for final site plan approval the following certifications from the Township agencies and posted guarantees shall be submitted.

- (A). Tax Collector,
- (B). Township Engineer,
- (C) Building Inspector,
- (D) Township Clerk,
- (E) Department of Public Works,
- (F) Maintenance and Performance Guarantees.

B.

UNITS AND OVERALL DEVELOPMENT

The Site Plans and Subdivision Plans propose 1,800 residential units. The 360 Affordable Units (20%) are distributed throughout the development. The units range from one to three bedrooms. Moreover, 120 units will be age restricted and 24 (20%) of these 120 units will be affordable.

ROAD GEOMETRY

As noted by SBC, the August 30, 2018 Revisions on site geometry was revised to meet RSIS requirements throughout the project.

All curb radii on road intersecting with Northumberland Way were revised to be 35'.

All curb radii intersecting major collectors were revised to 35'.

All curb radii intersecting residential access were revised to 25'.

Minimum centerline radius on major collectors was revised to be 300'.

Minimum tangent on major collectors were revised to be 150'.

Minimum centerline radii on residential access roads were revised to be 100'. Minimum tangents on residential access roads were revised to a 50' minimum; and

The plans were revised to eliminate courts exceeding 300' in length.

[See August 30, 2018 Revisions to Site Plan]

MAJOR ROAD AND NORTHUMBERLAND WAY

The internal roads connecting to Major Road on Northumberland Way on Site (Roads H and G) were reconfigured to be a single continuous RSIS compliant "Major Collector" between Northumberland Way and Major Road. See August 30, 2018 Revisions to Site Plan.

DEVELOPMENT AREAS 10 AND 11

Development Areas 10 and 11 were revised in concert with the collector road layout to add an intervening parking lot, a 3:1 maximum slope landscaped berm planted with two rows of evergreen trees ten feet (10') on center, with each row offset five feet (5') from the other row so that trees will appear to be 5' on center between the railroad and buildings on SBC property between the proposed public street (ROAD G) and its parking lot, the aforesaid intervening public street (ROAD G), and an 8' tall vinyl fence. See August 30, 2018 Revisions to Site Plan.

ARCHITECTURE AND PRODUCTS USED IN THE SBC SITE

The testimony of SBC's architects and civil engineers explained a variety of building types used throughout the Site. These include Type "A", Type "B", Type "C", and "D". As noted in the record, "there was testimony as to the location of building styles within 12 development "Areas", in

accordance with professional architectural and planning judgments. The Special Hearing Officer adopts the various architectural designs. (See SBC Proposed Resolution and Order, pages 20 to 25.)

DEVELOPMENT AREAS
1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11 AND 12

The Special Hearing Officer adopts the description of each of Development Areas, set forth in the Intervener's Proposed Resolution and Order. See SBC Proposed Resolution pages 25 to 53. The description, as it relates to each development area is consistent with the testimony offered during the hearing.

This includes: the total number of buildings for each development area, the Type of building for each development area, the number of parking spaces, RSIS compliance, phasing schedules amenities, storm-water management (See Updated Storm Water Management Report by Langan, dated August 30, 2018), detention basins, recreational facilities, affordable housing units are included in each development area with units on the ground floor, green space is provided, parking spaces are adequate in each development area and ADA compliant parking is met, the planned development has taken advantage of natural buffers of the heavily wooded property.

The Special Hearing Officer finds that each of the Development Areas is "soundly planned", and is in full compliance with RSIS.

De MINIMIS EXCEPTIONS

The independent engineer's recommendations do not call for a complete reengineering and design of the plans. The de minimis exceptions

are limited to the Internal Roadways (Driveways and Aisles). With these very minor exceptions, the Special Hearing Officer and the Special Master agree that the Site, as now designed is materially RSIS compliant.

The Special Hearing Officer finds that SBC's Proposed Resolution and Order, is consistent with record: (1) the internal roadways are associated with relatively low traffic volumes and that for such low volume areas, a redesign to impose uniform offsets or "clear zones" is not warranted; (2) in certain low-volume areas, consistent with the recommendations of Mr. Seckler, SBC rather than redesign to meet the Township's interpretation of RSIS, will tailor these low-volume roadways to a 22 foot width, either through conforming striping, marking and/or other devices, or through actual width adjustment.

INTERIOR VEHICLE CIRCULATION

The interior vehicle circulation, parking areas, parking aisles, and driveways, are soundly planned, and subject to implementation of the Independent Traffic Engineer's suggestions, as set forth in SBC's letter submission, dated June 25, 2019 (Table 3, Item 9) accepting the Independent Engineer's recommendations, further refined at the Hearing, which shall not involve redesigns or re-planning, with any remaining deviations from RSIS being regarded as "de minimis" under RSIS. See the analysis of de minimis analysis, in the Proposed Findings and Recommendations, pp. 85 to 103.

DEVELOPMENT AREAS & AMENITIES

Specific Revisions to the individual Development Areas are set forth on pages 4 to 12 of the August 30, 2018 Revisions to the Site Plan.

In lieu of listing each Development Area, items added/increased or revised include the following: (1) added dog runs; (2) added community gardens; (3) added dumpsters; (4) increased distance between basins and the nearest buildings; (5) added tennis courts; (6) added sidewalks; (7) added striping to Cornwall Road; (8) increased curb radii at intersections with Cornwall Drive to 35'; (9) added fitness park; (10) added a general purpose field (80' X 120'); (11). added parking; (12) added package lockers; (13) added picnic areas; (14) revised to provide for building separation (30'); (15) revised the intersection of Road G with the new extension of Northumberland Way to Major Road; (16) added walkways through lawn areas between buildings; (17) revised the road centerline radii to be 100' minimum; (18) added a pool house; (19) added a 30' x 40' maintenance building in a fenced enclosure with direct access to a proposed Road "G"; (20) revised the intersection of Road "G" with the new extension of Northumberland Way to Major Road; (21) increased the distance from the nearest building to the cemetery to 98 feet; and (22) increased the distance between the train tracks and nearest buildings from 164 feet to 256 feet.

The Site has been deemed suitable for inclusionary family housing by the Special Master and the Trial Court, and subject to Site Plan review as referenced herein.

BASIN AND BUILDING SEPARATION

As noted in the August 30, 2018 revisions to the Site Plan, the chart identifies the distance between each basin and the nearest dwelling. This includes: (1) 5 Basins from 66 feet to 75 feet; (2) 3 Basins from 75 feet to 100 feet and (3) 7 Basins greater than 100 feet.

The August 30, 2018 Revisions to the Site Plan, is attached to the October 2, 2019 memorandum from Jessica Almeida, Esq., on behalf of SBC. The Special Hearing Officer agrees with the changes. The document, attached to the October 2, 2019 memorandum, lists the specific revisions to each of the twelve Development Areas.

The representations made by SBC, as set forth in the August 30, 2018 revision to the Site Plan for Development Areas 1 through 12, are binding and shall become conditions of final approval.

SANITARY SEWAGE

Mr. Simpson testified as an expert witness in wastewater and wastewater facilities engineering. See Proposed Findings of Facts, pp. 66 to 71. As noted by the witness:

(1) In accordance with the NJDEP regulations, specifically N.J.A.C. 7:14A-23.5, before the SBC development can discharge any additional sewerage flow into the system, the source of the leaks must be pinpointed, repaired and an equivalent amount of I&I (inflow and infiltration) must be removed so that there is sufficient capacity in the system; and

(2) To meet the requirements of the New Jersey Administrative Code, the developer/applicant is responsible for elimination of extraneous flows (i.e., I&I) in an amount equal to the contribution to the sewer system by the development."

[Simpson Reports: T-31, T-32 and T-33 (dated April 19 2018 and Revised October 19, 2018)].

SBC has stipulated "it will pay its fairly allocated share of connection charges and any necessary line extensions needed to tie into the Township system." Proposed Resolution and Order, p. 12. However, the Special Hearing Officer agrees with the Township that "in any event post repair I&I testing will be needed to verify that the required I&I reduction has been achieved to meet permitting conditions."

As stated by Mr. Simpson, "to meet the requirements of the N.J.A.C. 7:14A-23.5, the developer/applicant is responsible for elimination of extraneous flows (i.e., I&I), in an amount equal to the contribution to the sewer system by the development." See T-33 (2017 Sewer Capacity & Flow Study, dated April 19, 2018 and Revised October 19, 2018).

Regarding the proposed private sanitary pump station, construction level details and specifications for the pump station shall be provided within sixty-days of the issuance of the Special Hearing Officer's Report and Proposed Resolution and Order. Finally, the application will require both a Treatment Works Approval (TWA) and a Bureau of Water System Engineering (BWSE) permit. These permits will be obtained prior to construction.

POTABLE WATER SUPPLY

Potable water for the proposed development will be provided through connection to existing public utility facilities located within Northumberland Way, Cornwall Road and Major Road. See November 8, 2017, Environmental

Impact Statement at page 4-5; (see Updated Water System Engineer's Report, submitted by Langan, updated on August 30, 2018).

STORMWATER MANAGEMENT FACILITIES

As noted by SBC's civil engineers, "stormwater from the developed portions of the site will be collected by a stormwater management system, consisting of a series of catch basins and inlets and subsurface piping that will convey stormwater to 15 wet ponds and extended detention basins located throughout the site." SBC Proposed Resolution and Order, p. 13. The record establishes that the system has been designed in compliance with the requirements of the New Jersey Department of Environmental Protection's ("DEP") Stormwater Management Rules for runoff volume, groundwater recharge, and water quality. See Updated Stormwater Management and Report, submitted by Langan, revised August 30, 2018.

NON-LOCAL PERMITS

During the trial, testimony was offered regarding non-local permits. Moreover, in SBC's Proposed Resolution and Order, the intervenor represents:

There was testimony that SBC is prosecuting applications for non-local permits.

On April 4, 2018, a DEP Multi-Permit Application for Flood Hazard Area Verification: Flood Hazard Individual Permit; Freshwater Wetlands General Permit Nos. 6, 6A, 10A, and 11; and Freshwater Wetland Transition Area Averaging Plan Waiver was submitted to DEP., according to Langan Engineering Testimony.

[SBC Proposed Resolution and Order, ¶ 17.]

Table 6 is entitled "List of Licenses, Permits and other Approvals." Set forth below includes the name of the Granting Authority and the License, Permit or Approval.

- (1) Middlesex County Planning Board Preliminary Major Site Plan Approval;
- (2) Freehold Soil Conservation District - Soil Erosion and Sediment Control Plan Certification; Letter of Interpretation (LOI) Extension (Block 86, Lots 89.013 and 89.023);
- (3) New Jersey Department of Environmental Protection - (A) Letter of Interpretation ("LOI") Extension Block 86, Lots 89.013 and 89.023; (B) Statewide General Permit Number 2; (C) Statewide General Permit Number 11; (D) Transition Area Waiver-Averaging Plan; (E) Steam Encroachment Permits; (F) Statewide General Permits; (G) Transition Area Waiver; (H) LOI Block 86, Lot 22.041; (I) Flood Hazard Area Verification; (J) Flood Hazard Area Individual Permit; (K) Treatment Works Approval; (L) Bureau of Safe Drinking Water;
- (4) New Jersey Department of Transportation Street Intersection Permit;
- (5) South Brunswick Water Division Water Main Extension Permit; and
- (6) South Brunswick Sewer Division Sewer Extension Permit

[Table 6; Tables in Support of SBC Proposed Resolution and Order.]

SBC represents "an existing access plan, was submitted December 7, 2018, DOT Permit #S-1-3-12-84, which SBC's traffic engineer described, "accommodates the first 650,000 square feet of development. The permit will require additional improvements, for later phases of development." Id. ¶ 14.

PHASING AND UNIT BREAKDOWN PLAN

The Intervenor has included a Phasing and Unit Breakdown Plan that includes nine phases. See Submission of Closing Statement, Exhibit H, Tables and Attachments. See also

<u>PHASE</u>	<u>AREAS</u>	<u>UNITS</u>	<u>AFFORDABLE</u>	<u>RUNNING TOTAL</u>
1	1	155	31	155/31
2	3 partial	180	36	335/67
3	3 partial; 5; 6	65	13	400/80
4	3 partial; 4	215	53	614/133
5	2	120	24	735/157
6	7	205	41	940/198
7	8; 9	360	62	1300/260
8	10; 11	345	69	1645/329
9	12	155	31	1800/360

AMENITIES

At the recommendation of the Special Master and with the approval of the Special Hearing Officer, the hearings were temporarily suspended to provide the Township and the SBC professionals the opportunity to meet off the record. Technical meetings were held with the Special Master and the Parties' engineering and planning representatives on June 19, June 20 and August 10, 2018.

Subsequent to the meetings, on August 30, 2018, SBC submitted revised site plans, bearing revision date August 30, 2018. SBC has added amenities in each of the twelve development areas. See Memorandum, dated October 2, 2019 from Jessica Almeida, Esq. with an attachment entitled "South Brunswick Center August 30, 2018 Revisions to Site Plan."

AFFORDABLE UNITS

The project consists of 1,800 residential units and 139 buildings. Three hundred and sixty units (representing 20%) will be affordable units. The construction of the development will convert approximately 121 acres of upland forest to residential use and approximately 307 acres of the site will remain natural. See November 8, 2017, EIS.

WETLAND LOCATIONS & LETTER OF INTERPRETATION

SBC has a Letter of Interpretation ("LOI"), documenting the wetland locations from New Jersey Department of Environmental Protection ("NJDEP"). T1, p.22, lines 2-11.

DEVELOPMENT AREAS

The project will consist of 13 Development Areas, ten of which will provide residential units. The project also includes a clubhouse with a pool and two additional large recreational areas.

LOW AND MODERATE INCOME HOUSING

Twenty-percent of the units in the project are low and moderate income housing that will be built in accordance with all the federal regulations, Uniform Housing Affordability Controls and any and all state regulations.

RESIDENTIAL CLUSTER ZONE

SBC selected the mixed residential cluster development zone.

FINAL GRADING WITH A 2% SLOPE

SBC, consistent with the recommendation of Mr. Simpson, will provide the final grading with a two percent (2%) slope.

MAJOR ROAD AND ROAD H

Road H shall be redesigned as a higher order roadway, converting it from Residential Access road to a Minor Collector road under RSIS requirements" (3T, p. 376, lines 3 to 23), but then later conceding that this road should be classified as a Major Collector road under RSIS standards. (5T, p. 11, line 18 to 5T, p. 12, line 1); 5T, p. 25, lines 24 to p. 26, line 2.).

1985 NJDOT PERMIT

In 1985 NJDOT issued a permit for the approval of 650,000 square feet of office development on the SBC property. While the permit was located, it is impossible to ascertain the status of the permit. Therefore, within 30 days from the issuance of this opinion, unless the NJDOT permit has been reissued, SBC shall apply for a NJDOT permit and provide a copy to the Special Hearing Officer, the Special Master and the Township.

IMPACT OF TRAFFIC FROM OTHER DEVELOPMENTS

There is insufficient information, in the record, to make any determination regarding this issue.

CONNECTING DEANS POND LANE WEST TO NORTHUMBERLAND WAY

Mr. Bellizio testified that "the former owner of the SBC property agreed to convey an easement in order to continue an existing road, Deans Pond Lane West so it would connect with Northumberland Way, providing a means of egress and ingress to residents who live adjacent to the SBC site." 5T, p. 125, line 17 to p. 126, line 10. There is insufficient evidence to support this request.

OPEN SPACE BUFFERS

The layout of the development consists of ten separate development Areas ("DA"). These include DA1, DA2, DA3, DA4, DA5, DA6, DA7, DA8, DA9, DA10, DA11 and DA12. The development areas are not visible from adjoining properties and, for the most part, the subject properties abut environmentally sensitive and/or undeveloped land. Revisions to the Site Plan dated August 30, 2018.

PRINCIPAL BUILDING HEIGHT

The Township 's Affordable Housing district, SB Code Section 62-103(f), "permits a maximum height of three stories or forty feet. In addition, in a mixed residential cluster development, no more than 75 percent of the dwellings shall be three stories. Township Brief, p. 62. The main objection raised by the Township is the height makes "this development wildly out of character with the rest of the Township and is a very poor design in light of the surrounding neighborhoods." Ibid.

First, this is an inclusionary project and the building heights are acceptable as designed. Second, the only building prototype in excess of three stories is the senior building located in Development Area 2.¹ Third, "the building sits significantly away from adjacent property lines and is surrounded by mature forest. As a result the additional building height allows for architectural interest to be incorporated into the buildings.

¹ The senior building is the only building with four stories.

ACCESSORY BUILDING HEIGHT

Accessory Building height is set forth in SB Code Section 62-1763 and provides, " No other accessory building in a residential or mixed-use district shall exceed 16 feet in height..." Township Brief, p. 63. It is undisputed that SBC is proposing the following accessory building heights: (1) Clubhouse: 1 story, 39 feet; (2) Maintenance Building: 1 story, 28.83 feet; (3) Pool Building: 1 story, 15.375 feet; and (4) Parcel Kiosk: 1 story, 14.17 feet.

The accessory building height is acceptable as proposed. Oftentimes, excess building height for accessory structures allow for equipment, otherwise to be stored outdoors, to be kept inside to provide for an overall neat appearance.

As noted by the Township, "the plan for the Clubhouse identifies a set of stairs, but it does not indicate if the stairs lead to a basement or a second floor." Township Brief, p. 63. I agree with the Township. "In either case (whether to a basement or a second floor), if there are public spaces on two levels within the building, then an elevator is needed within the building."

OPEN SPACE AND RECREATION AREAS

The recreational areas have been substantially increased since the initial submission in November 17, 2017. On the recommendation of the Special Master to the Special Hearing Officer, the proceedings were suspended to provide SBC's planning and engineering professionals to meet off the record. The technical meetings were held with the Special Master and the Parties' respective planning and engineering representatives on June 19, June 20, and August 20, 2018. The "Recreational Enhancements" are listed

with in each Development Area. (Emphasis added). See South Brunswick Center August 30, 2018 Revisions to the Site Plan, consisting of 12 pages and a Memorandum from Jessica ALMEIDA, Esq., dated October 2, 2019, to the Special Master Christine Nazzaro-Cofone.

Each of the items listed in the Memorandum shall be made part of the record and incorporated into the design as a condition of preliminary and final site plan approval.

BUILDING PERIMETER BUFFERS

The building perimeter buffers are sufficient as designed and are appropriate for an efficient inclusionary development.

MINIMUM DISTANCE FROM BUILDING TO STREET

Building distance setbacks are sufficient as designed and are appropriate for an efficient inclusionary development.

ARCHITECTURAL DESIGN

Variable different building elevations are proposed and create a desirable visual environment as proposed. Moreover, SBC has proposed various rooflines, projections, texture and material consistent with SB Code Section 62-206(5)(c2).

BUILDING MATERIALS

Building materials shall be identified as a condition of final site plan approval.

FIRE AND EMERGENCY ACCESS

Adequate Fire and Emergency Access lanes shall be provided as a condition of final approval and to the satisfaction of the Fire Official.

TELECOMMUNICATIONS EQUIPMENT

Telecommunication equipment shall be provided and depicted on the plan as a condition of final approval.

REFUSE AREA ENCLOSURE

Refuse area enclosure shall be provided and depicted on the plan as a condition of final approval.

STORAGE SPACE

Submit a plan to provide storage on the ground floor for all of the architectural product types as a condition of final approval.

DWELLING STORAGE SPACE

The plans should be revised to meet the Department of Housing and Urban Development minimum property standards in each housing unit as a condition of final approval.

PLAY LOT AND PLANTINGS

SBC shall identify the location and size of each of the ten play lots on the final plans. Based on the Special Master's recommendation, the play lots do not need to be designed to the specific standards set forth in SB Code Section 62-206(5e). SBC shall also identify the play equipment to be installed and the shade trees proposed for each of the play lots as a condition of final approval.

ACCESS AND ADAPTABILITY

The plans shall comply with the accessibility and adaptability requirements of the International Building Code, NJ Edition 2015. Moreover,

the affordable housing units shall comply with COAH's rules, including, but not limited to N.J.A.C. 5:97-3.14, as a condition of final approval.

STREET HIERARCHY

The Development Areas will have relatively low traffic generation. Therefore, the proposed street hierarchy is acceptable as proposed for the inclusionary development.

BUILDING ORIENTATION

The building orientation is acceptable as proposed. While not facing Northumberland Way, a desirable feature, is the many buildings have been designed to overlook open space areas.

BUILDING SETBACKS

The proposed building setbacks are accepted as designed. In response to the recommendations of the Special Master, SBC agreed to "flip" the design and locate the parking fields behind the buildings along Northumberland Way. Making this change creates a desirable streetscape.

COMMUNITY SPACE

The community/recreational areas have been substantially increased since the initial submission. The October 2, 2019 memorandum from Jessica Almeida, to the Special Master, outlines all the increases in the recreational amenities. All the representations shall be made a part of the record and incorporated into the design as a condition of final site plan approval.

PARKING ISLANDS

The plan provides sufficient plantings.

PERIMETER PATHWAYS AND SIDEWALKS

A perimeter pathway is a desirable community component and shall be added to the plan as a condition of final approval. The material need not be asphalt.

BIKE SHELTERS/STORAGE AREAS

Bike shelters shall be provided and depicted on the plan as a condition of final approval.

CLUBHOUSE OFF-STREET PARKING

SBC has proposed a clubhouse of 15,570 square feet and has proposed a minimum parking requirement of one (1) space per 175 square feet of gross floor area of the clubhouse. While the Clubhouse parking may be adequate, however, as a condition of final approval SBC shall provide a maximum load for the clubhouse. The square footage of the building and the maximum number of people authorized to occupy the building shall be the basis to determine the number of parking spaces.

NON-OWNED CEMETERY ACCOMODATIONS

As noted by SBC, "a pre-existing historic cemetery is located in Area 10. The area has been revised to include a 93-foot buffer around the cemetery. T5, p. 152, line 20 to p. 153, line 3. The site is now designed to include 4 parking spaces (not counted toward the RSIS compliant total in Area 10: for any visitors to the cemetery. (See Site Plan, p. CS110, revised August 30, 2018).

RETAINING WALL

Given the height of the retaining walls, a minimum of 42 inch high guardrail or safety fencing shall be added to the top of any retaining wall that is greater than 30 inches in height. This shall be added to the plan as a condition of final approval.

FENCE HEIGHT

The plan shall comply with the fencing standards, set forth, in SB Code 62-1871 as a condition of final approval.

FENCE MATERIAL

Provide details and materials as a condition of final approval.

PARKING LOT WALKWAYS

The parking lot walkways are adequate, as designed, and provide a well-connected efficient community.

TREE REPLACEMENT & TREE PROTECTION PLAN

A tree protection plan shall be provided as a condition of final approval. SBC shall provide a tree protection plan consistent with the current Standards for Soil Erosion and Sediment Control established through N.J.S.A. 4:24-42.

PROPERTY BUFFER

In Development Area 10, as a condition of final approval, SBC shall include additional evergreen plantings, as suggested by the Township, to provide screening of the rail line.

ROAD BUFFER

As noted by the Township, many of the buildings within the development are located near Northumberland Way. SBC shall comply with the recommendations set forth on page seventy-six of the Township's summation as a condition of final approval.

STREET TREES

As a condition of final approval, the plan shall be revised to include street trees provided in accordance with the size and spacing requirements in the South Brunswick Township code.

PARKING AREA PLANTINGS

In order to create a more efficient development layout, the parking lot planting layout is adequate as proposed.

REFUSE DISPOSAL AREA SCREENING

As a condition of final approval, the plan shall be revised to provide refuse disposal area screening. SB Code Section 94-41(b)(7).

PLAY LOT PLANTINGS

This area will be a flexible design and the fencing and shrubbery shall not be mandated.

FOUNDATION PLANTINGS

SBC shall work with the Special Master, to provide the size and variety of proposed foundation plantings, and shall depict the plantings on the plan as a condition of final approval.

PLANT LIST

SBC shall work with the Special Master to determine the plant list for the development and shall submit the plan as a condition of final approval.

PLANTING DETAILS AND NOTES

Unless it can be demonstrated otherwise and that the survivability of the plantings will not be impacted, the plan shall be required to comply with SB Code 62-1794(2)(c.6) regarding minimum topsoil depth as a condition of final approval.

POOL AREA SCREENING

SBC shall provide for a decorative fence along with plantings as a condition of final approval.

ENERGY EFFICIENT PLANTINGS

SBC shall work with the Special Master to provide the most energy efficient layout as a condition of approval.

LAWN AREAS

Denied, not required. In order to balance future common area maintenance costs, the "No-Mow" grass seed planting is acceptable as proposed.

LIGHTING STANDARDS

Unless it can be demonstrated that it is overly burdensome and/or unnecessarily cost generative, the lighting plan shall be revised per the Township's comments as a condition of final site plan approval.

NOISE ATTENUATION/BUILDINGS CLOSEST TO THE RR TRACKS

SBC has relocated units in Area 10 to be over 263 feet away from the railroad tracks and the noise source and over 130 feet from the property line. T4, p. 190, lines 4 to 16; T4, p. 101, line 4 to p. 102, line 4.

As noted by SBC, Area 10 units are now planned to be over 200 feet away from the source of sound and constructed with appropriate building materials and measures to minimize any impacts from the proximity of the railroad." See SBC Proposed Resolution, p. 50, number 147.

OFF STREET RESIDENTIAL PARKING SPACES

A. DEVELOPMENT AREA 2

As noted by the Township, "the Architectural Plans and the Site Plans are inconsistent in the bedroom distribution of the age-restricted building. SBC shall correct, confirm and apply the appropriate number of parking spaces as a condition of final approval.

B. DEVELOPMENT AREAS 8 AND 9 PRODUCT D UNITS

Development Areas 8 and 9 (Product D Units) should be revised to identify an 18 foot long driveway between the garage door and the driveway apron to permit safe pedestrian access along the roadways as a condition of final approval.

C. PRODUCT D AND E BUILDINGS

SBC shall provide which units, in Product D and E buildings, will be entitled to a garage space within the building as a condition of approval.

D. ACCESSIBLE PARKING (LOCATION)

Section 1106.6 of the 2015 International Building Code of New Jersey requires "accessible parking spaces to be located on the shortest accessible route of travel from adjacent parking to an accessible building entrance." SBC shall revise its plan as a condition of final approval.

OFF-STREET RESIDENTIAL PARKING SPACES

Parking in accordance with RSIS shall be provided as a condition of final approval.

SIDEWALK AT THE END OF THE CARPORT

Based on the testimony of Mr. Seckler, a sidewalk is not required.

IMPROVEMENTS TO SURROUNDING INTERSECTIONS/JOURNEY TO
WORK DATA

For the reasons set forth in the Proposed Findings and Recommendations, the Special Hearing Officer adopts the findings of Mr. Chen and rejects the testimony of Mr. Troutman regarding the journey to work data. "The traffic signals are considered off-tract improvements, for which SBC shall pay or build a proportionate share based on the NJ DOT formula in existence at the time of issuance of the first building permit. See Township Joint Written Summation, pp. 52 to 54; 4T, p. 230 line 6 to 4T, line 232; 6T, p. 196, lines 3 to 23.

FRESHWATER WETLANDS

SBC shall comply with NJDEP requirements regarding freshwater wetlands as a condition of final approval.

FLOOD HAZARD AND RIPARIAN ZONES

SBC shall comply with the Flood Hazard Area Control Act as a condition of final approval.

STORMWATER MANAGEMENT

SBC shall revise the storm-water management plan prior to approval. As the engineer for SBC testified a 2 percent slope results in better runoff than a 1% slope. This shall be a condition of final approval.

AFFORDABLE HOUSING REQUIREMENTS

SBC shall comply with all affordable housing requirements as a condition of final approval. (Section Eleven: 11.1 through 11.17 (See below))

1. AFFORDABLE HOUSING STANDARDS
2. SENIOR AFFORDABLE UNITS
3. UNIT TENURE
4. BEDROOM DISTRIBUTION
5. BEDROOM DISTRIBUTION -SENIOR AFFORDABLE UNITS
6. VERY-LOW INCOME REQUIREMENT & OVERALL LOW/MOD SPLIT
7. UNIT INTEGRATION
8. INCOME DISTRIBUTION
9. PHASINGS
10. HOUSEHOLD SIZE, UNIT PRICING, UTILITY AND ALLOWANCE
11. THREE BEDROOM UNIT MODELS
12. DEED RESTRICTIONS; LENGTH OF CONTROLS
13. HEATING SOURCE
14. ACCESSIBILITY & ADAPTABILITY
15. AMENITIES
16. ADMINISTRATIVE AGENT
17. AFFIRMATIVE MARKETING

COMPLIANCE WITH ALL REMAINING TECHNICAL REVIEW COMMENTS

SBC shall provide a list of any remaining technical review comments that have not been addressed by the Special Hearing Officer. A list shall be provided to the Special Hearing Officer and the Special Master no later than 45 days from receipt of the Special Hearing Officer's Report.

OUTSIDE AGENCY APPROVALS

Compliance with outside agencies will be required as a condition of final approval. These include:

1. NJDEP DIVISION OF WATER QUALITY

SBC shall identify the correct bedroom distribution for Development Area 2, update the submitted application and provide same to the Special Master and the Special Hearing Officer; and revise the plan to indicate the maximum capacity of the clubhouse in order to determine the anticipated wastewater flows to be generated from the clubhouse. Township Brief, p. 105.

2. NJDEP DIVISION OF WATER SUPPLY AND GEOSCIENCE

"The bedroom distribution identified in the Architectural Plans and the Water System Engineer's Report are inconsistent for Development Area 2. SBC shall identify the correct bedroom distribution and update the submitted application materials." Township Brief, p. 105.

3. NJ DEPARTMENT OF TRANSPORTATION

As noted heretofore, prior to obtaining a new NJDOT permit, if necessary, SBC shall provide a copy of a valid NJDOT approval for Northumberland Way and U.S. Route 1 intersection. Township Brief, p. 106.

4. MIDDLESEX COUNTY PLANNING BOARD

The County Planning Board oversees and reviews all development proposals within the County to determine whether County roads/property and/or drainage facilities would be adversely affected. SBC shall provide proof of County approval for the proposed development.

5. FREEHOLD SOIL CONSERVATION DISTRICT

SBC shall demonstrate compliance with N.J.S.A. 4:24-39 and provide evidence of approval from the Freehold Soil Conservation District.

6. DELAWARE AND RARITAN CANAL COMMISSION

Major projects, in which this qualifies, must submit compliance with any "DRCC" requirements that may be applicable.

The Special Hearing Officer recommends to the Trial Judge that the intervener, SBC, be granted Preliminary and Final Site Plan approval subject to the conditions set forth herein.


Hon. Linda R. Feinberg, (Ret.)
Special Hearing Officer

FILED

September 8, 2020

Hon. Michael V. Cresitello, Jr., J.S.C.

IN THE MATTER OF THE APPLICATION
OF THE TOWNSHIP OF SOUTH
BRUNSWICK, COUNTY OF MIDDLESEX.

**SUPERIOR COURT OF NEW JERSEY
MIDDLESEX COUNTY-LAW DIVISION
CIVIL**

DOCKET NO.: MID-L-4433-17
(and consolidated cases)

**Order Granting Intervener
South Brunswick Center, LLC
Conditional Preliminary and
Final Site Plan and
Preliminary and Final Major
Subdivision Approval on
Recommendation of Special
Hearing Officer**

This matter having been brought before the Court on Notice of Motion by Intervener South Brunswick Center, LLC ("SBC"), renewing SBC's earlier motion, seeking an Order conditionally approving SBC's inclusionary housing Site Plan and accompanying Subdivision, in accordance with the process established in the Trial Court's October 21, 2016 Case Management Order ("October 21, 2016 CMO"), entered in the Township of South Brunswick's Declaratory Judgment Action ("Action") awarding Builder's Remedy Relief to specified Interveners in the Action,

And, SBC's earlier motion having been denied without prejudice, pending the Court's receipt of a report of the Special Master, Christine Cofone, P.P., ("the Special Master"), providing the Court with the Special Master's comments and recommendations regarding the proposed Findings and Recommendations and the

proposed Resolution and Order Approving Preliminary and Final Site Plan Approval, issued on February 13, 2020 (together, "Findings and Approval") by Special Hearing Officer, the Hon. Linda R. Feinberg, J.S.C. (ret.) ("the Special Hearing Officer"), pursuant to Section 2.B. of the October 21, 2016 CMO;

And the Special Master having provided recommendations and comment regarding the Special Hearing Officer's Findings and Approval by letter dated April 9, 2020 ("Special Master's Report"),

And on August 21, 2020, the Court having conferred telephonically with counsel for: Intervener-Movant SBC (Waters, McPherson, McNeill, P.C., Kenneth D. McPherson, Jr., Esq. and Jessica CM Almeida, Esq. appearing); respondent Township (Donald J. Sears, Esq. appearing); Planning Board of the Township (Vogel, Chait, Collins, & Schneider, Thomas J. Molica, Jr., Esq. appearing); and Intervener Fair Share Housing Center (Bassam F. Gergi, Esq. appearing), with disposition of the SBC motion as referenced herein having been effectuated through conference obviating argument;

Based on the foregoing, on this 8th day of ~~August~~ ^{September}, 2020,

IT IS HEREBY ORDERED AND ADJUDGED:

1. The recommended conditions of site plan approval, set forth in both the Findings and Approval of the Special Hearing Officer and in the Special Master's Report, are hereby approved

and adopted, and incorporated herein by reference, as conditions of the instant Order ("Site Plan Approval Conditions").

2. Consistent with Section 2.H. of the October 21, 2016 CMO, "all other federal, state, and ancillary governmental permits and approvals that are required for the builder's project and the satisfaction of these ancillary permit requirements" are hereby made a condition of the within order approving SBC's application;

3. SBC's Preliminary and Final Major Subdivision Plat (the "Subdivision") that was admitted into evidence before the Special Hearing Officer as Exhibit SBCR-76, shall be finalized pursuant to any and all applicable conditions of approval, including and not limited to the Site Plan Approval Conditions, all of which are incorporated herein by reference, as well as the requirements of the Municipal Land Use Law ("MLUL"), N.J.S.A. 40:55D-1, et seq., and shall conform in all respects to the Recordation Act, N.J.S.A. 46:26B-1, et seq., prior to submission to the Planning Board Chairperson, Planning Board Secretary and the Township Clerk for execution in accordance with N.J.S.A. 40:55D-54;

4. The Township staff and/or its professionals shall perform all post-approval reviews and inspections pursuant to the requirements of the MLUL and the New Jersey State Uniform Construction Code, N.J.A.C. 5:23-1 to -12A.6 ("UCC"). Any dispute between the Township and SBC regarding post-approval reviews or inspections; SBC's satisfaction of conditions of approval

hereunder; conformance of construction plans with the Site Plan conditionally approved hereunder; or conformance of SBC construction plans to State Uniform Construction Codes and sub-codes and regulations, shall be referred to the Special Master in the manner provided within Section 2.F. of the October 21, 2016 CMO with respect to site plans. In the event the Special Master is unable to resolve the dispute, either party may file an application with this court.

5. SBC shall comply with all requirements of the MLUL regarding post-approval procedures and requirements, including but not limited to the submission of all reasonable and regular performance and maintenance bonds, or equivalent surety, authorized by the MLUL, and subject to provisions of the MLUL regarding the calculation and furnishing of performance guarantees pursuant to N.J.S.A. 40:55D-53 to -53.6.

6. SBC shall be responsible for payment of reasonable and regular permitting, inspection and escrow fees as may be assessed by the Township consistent with the MLUL and regulations of the UCC;

7. SBC shall pay any and all outstanding escrow fees no later than thirty (30) days of the date of this Order.

8. Subject to the terms hereof, and pursuant to Section 2.L. of the October 21, 2016 CMO, this Order shall be considered a conditional preliminary and final site plan and preliminary and

final major subdivision approval for purposes of the issuance of construction code and subcode permitting;

9. The posting of this Order on eCourts shall constitute service upon all counsel of record; and

10. SBC shall provide copies hereof to the Special Master and Special Hearing Officer within three (3) days of receipt hereof.

/s/ Michael V. Cresitello, Jr.

Michael V. Cresitello, J.S.C.

The current form of Order as set forth above has been agreed to by the parties.

1195485.2



D. KHOVNANIAN/BELLEMEAD

ADDITIONAL DOCUMENTATION

1. SHO FINDINGS AND RECOMMENDATION
2. COURT APPROVAL



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July 23, 2020

File No. 30346-1 SPG

SENT VIA EMAIL

Hon. Michael V. Cresitello, Jr., J.S.C.
Middlesex County Courthouse
P.O. Box 964
3rd Fl, Chambers 303
New Brunswick, NJ 08903-0964
E: shellie.sovak@njcourts.gov

Re: K. Hovnanian Shore Acquisition, LLC v. Township of South Brunswick, et al.
Docket No. 1194-17
In the Matter of the Application of the Township of South Brunswick,
County of Middlesex
Docket No. 4433-17

Dear Judge Cresitello:

I am writing to report that we have completed the first phase of the hearing process in the above matter. Enclosed is the document entitled "Special Hearing Officer's Proposed Resolution Granting Preliminary Major Site Plan and Preliminary Major Subdivision Approval, with Conditions" with attached Appendices. Those Appendices include, among other things, the "Special Hearing Officer's Report Resolving Disputed Issues" (Appendix A).

As required by Judge Wolfson's October 21, 2016 order, the Proposed Resolution is designed to "set forth such findings of fact and conclusions necessary to appropriately summarize the evidence presented, so as to enable the Court to enter judgment." Paragraph 2L.

The Special Hearing Officer's Report (Appendix A) sets forth the legal and factual basis for my recommended resolution of the various issues that remained in dispute between the parties throughout the hearing process.

COUNSEL WHEN IT MATTERS.SM

Mount Laurel, New Jersey | Hamilton, New Jersey | Atlantic City, New Jersey

The remaining Appendices provide the professional reports and stipulations that are referenced in the Resolution and which will guide the parties as they work toward final approvals. For ready reference, these are the Special Hearing Officer's conclusions, memorialized in the Proposed Resolution at page 23:

1. The Special Hearing Officer concludes that the application conforms to the requirements of the proposed CTRAH-III ordinance.
2. The application is not clearly contrary to the principles of sound land use planning or environmental concerns. The application complies with all residential design elements governed by the RSIS.
3. The application promotes the general welfare by providing for affordable housing in an inclusionary development.
4. Adequate information has been presented by the parties to grant preliminary major site plan and preliminary major subdivision approval.
5. This preliminary approval is subject to and limited by the Findings of Facts set forth above; the Special Hearing Officer's Report (Appendix A); and the Conditions set forth below.
6. Any dispute over the interpretation or requirements of this Resolution shall be referred to the Special Master. If the Special Master does not resolve the dispute to the satisfaction of the parties, it shall be referred to the Special Hearing Officer.
7. The Special Hearing Officer retains jurisdiction over the application for final major site plan and subdivision approval.

In accordance with the October 21, 2016 Order, "any comments or objections to the Special Hearing Officer's recommendations set forth in the resolution shall be filed with the Court no later than ten days from the date of the recommendation." Paragraph 2L.

Please let me know if you require anything further.

Respectfully submitted,



Steven P. Goodell, Esq.
Special Hearing Officer

cc: Henry Kent-Smith, Esq.
Kimberly Bennett, Esq.
Donald J. Sears, Esq.
Thomas J. Molica, Jr., Esq.
Thomas F. Collins, Jr., Esq.
Christine Nazzaro-Cofone, PP, AICP

K. Hovnanian Shore Acquisitions, LLC v.
Township of South Brunswick and the Planning
Board of the Township of South Brunswick
Superior Court of New Jersey
Law Division--Middlesex County
Docket No. 1194-17

Consolidated with other Mount Laurel Builder's
Remedy Lawsuits as:

In the Matter of the Application of the Township
of South Brunswick, County of Middlesex
Superior Court of New Jersey
Law Division--Middlesex County
Docket No. 4433-17

**Special Hearing Officer's Proposed Resolution Granting
Preliminary Major Site Plan and Preliminary Major Subdivision
Approval, with Conditions**

July 23, 2020

WHEREAS, K. Hovnanian Shore Acquisitions, LLC ("the Applicant") filed an application with the Township of South Brunswick to build an inclusionary residential development on property designated as Block 80, Lot 3.024 on the Tax Map of the Township of South Brunswick; and

WHEREAS, the Hon. Michael V. Cresitello, Jr., J.S.C. appointed Steven P. Goodell, Esq. as Special Hearing Officer to hear the application and provide the Court, the Township and the builder with his recommendation as to whether the application should be approved, denied, or approved with conditions; and

WHEREAS, hearings on the application were conducted at the Middlesex County Courthouse on December 3, 2019, December 13, 2019, January 16, 2020, and January 30, 2020; and

WHEREAS, the Special Hearing Officer has considered the evidence elicited at trial, the stipulations of the parties, the arguments of counsel, and the briefs and proposed resolutions submitted by the parties; and

WHEREAS, the Special Hearing Officer has determined that the application for Preliminary Major Site Plan and Preliminary Major Subdivision Approval should be granted, with conditions; and

WHEREAS, this Proposed Resolution is intended to memorialize the Special Hearing Officer's determination in accordance with N.J.S.A. 40:55D-10(g), and to "set forth such findings of fact and conclusions necessary to appropriately summarize the evidence presented, so as to enable the Court to enter judgment" (October 21, 2016 Case Management Order, ¶ L).

NOW, THEREFORE, BE IT RESOLVED that the application of K. Hovnanian Shore Acquisitions, LLC for Preliminary Major Site Plan and Preliminary Major Subdivision Approval to build an inclusionary residential development on property designated as Block 80, Lot 3.024 on the Tax Map of the Township of South Brunswick, be and hereby is **RECOMMENDED TO THE COURT FOR APPROVAL, WITH CONDITIONS**, as set forth herein.

BACKGROUND

1. On July 1, 2015, the Township of South Brunswick ("Township") filed a declaratory judgment action entitled In the Matter of the Application of the Township of South Brunswick,

County of Middlesex, Docket No. MID-3878-15, seeking, among other things, a Judgment of Compliance and Repose approving its Affordable Housing Plan.

2. The Hon. Douglas K. Wolfson, J.S.C., revoked the Township’s immunity against exclusionary zoning challenges and permitted the filing of builder’s remedy lawsuits.

3. On October 21, 2016 Judge Wolfson entered an Order (the “October 21, 2016 Court Order”) establishing a process for the review of each builder’s application for development.

4. Judge Wolfson appointed Special Hearing Officers “for purposes of reviewing and making recommendations to this court as to each of the site plan proposals of the Builders, in accord with the procedures set forth in Cranford Development Associates, LLC, et al. v. the Township of Cranford et al., 445 N.J. Super. 220 (App. Div. 2016). cert. denied 2016 WL 5335282 (September 12, 2016).” (October 21, 2016 Court Order, ¶ 1).

5. On February 28, 2017, the Applicant filed a builder’s remedy lawsuit entitled K. Hovnanian Shore Acquisitions LLC v. Township of South Brunswick, et al., Docket No. MID-L-1194-17.

6. On or about July 26, 2017, the Applicant’s lawsuit was consolidated with other builder’s remedy lawsuits and the Township’s declaratory judgement action under Docket No. MID-L-443617.

7. On June 12, 2019, the court-appointed Special Master, Christine Nazzaro-Cofone, PP, AICP, found that the K. Hovnanian site was “available, approvable, developable, and suitable for the proposed inclusionary development.” The Special Master’s Report is attached as **Appendix B**.

8. On July 3, 2019, the Hon. Michael V. Cresitello Jr., J.S.C. appointed Steven P. Goodell, Esq. as a Special Hearing Officer and on July 23, 2019, appointed him to hear the instant application.

9. On February 28, 2019, May 24, 2019 and October 14, 2019, the Applicant submitted its proposal to construct an inclusionary development on the property located at 913-927 Ridge Road a/k/a Block 80 Lot 3.024. See Applicant’s Trial Exhibits A-2, A-3, and A-4.

10. The Applicant requested preliminary major site plan and preliminary major subdivision approval to construct 129 townhouse units on a 19.35-acre site located in the existing OR - Office Research zone.

11. The Applicant proposed rezoning the tract for inclusionary development pursuant standards set forth in its “CTRAH-III zone,” attached to this Resolution as **Appendix D**.

12. The October 21, 2016 Court Order required that the “site plan application shall be deemed a fully conforming ‘as of right’ application in accordance with proposed zoning regulations the Builder shall submit with its site plan submission, which shall be deemed to be the standards applicable to the Builder’s proposed site plan.” ¶ 2B.

HEARING

13. The hearing was conducted at the Middlesex County Courthouse, during regular business hours, over four days: December 3, 2019, December 13, 2019, January 16, 2020, and January 30, 2020. See October 21, 2016 Court Order, ¶ 2J.

14. The Special Master, Ms. Nazzaro-Cofone, attended and participated in the hearing. See id. at ¶ 2H.

15. The hearing was properly noticed as required by N.J.S.A. 40:55D-12 and the October 21, 2016 Court Order, ¶ 2G.

16. Prior to the hearing, the Applicant submitted its plans, reports, and supporting documentation to the Township and posted its review fee escrow. The Township conducted its substantive review of the application and issued responsive reports, all as required by the October 21, 2016 Court Order, at ¶¶ 2D to 2F.

17. The hearing was conducted in accord with the requirements of the Municipal Land Use Law, N.J.S.A. 40:55D-10 and the October 21, 2016 Court Order, ¶ 2H:

- a. Testimony was taken under oath and subject to cross-examination. A certified shorthand reporter recorded the proceedings.
- b. The Applicant presented fact and expert testimony in support of its plan, and as it deemed necessary to demonstrate that its proposal met sound land use planning principles and satisfied applicable environmental regulations.
- c. The Township presented expert testimony in response.
- d. The public and all interested parties were allowed to comment and present evidence and testimony in favor of or opposed to the application.
- e. The parties submitted their summations by way of brief and proposed resolutions to the Special Hearing Officer.

18. The Township, the Planning Board, and their professionals participated in the Special Hearing Process under protest. They nevertheless participated fully and cooperated with the Special Hearing Officer.

APPEARANCES OF COUNSEL

19. The Applicant was represented by Henry Kent-Smith, Esq. and Kimberly Bennett, Esq., of Fox Rothschild, LLP, Princeton Pike Corporate Center, 997 Lenox Drive, Lawrenceville, New Jersey.

20. The Township was represented by Donald J. Sears, Esq., Township of South Brunswick, 540 Ridge Road, Monmouth Junction, New Jersey.

21. The Planning Board was represented by Thomas J. Molica, Jr., Esq., of Vogel, Chait, Collins and Schneider, PC, 25 Lindsley Drive, Suite 200, Morristown, New Jersey.

22. The Pointe at Turnbury Commons Condominium Association, an interested party, was represented by Brian McIntyre, Esq. and Samuel McNulty, Esq., of Hueston McNulty, PC, 256 Columbia Turnpike, Suite 207, Florham Park, New Jersey. Mr. McIntyre cross-examined witnesses on December 3, 2019. Mr. McNulty cross-examined witnesses on December 13, 2019. Neither presented testimony or evidence. Their client was concerned that the buffering between the Pointe at Turnbury Commons and the subject property was inadequate.

23. NEC Corporation of America (“NEC”), an interested party, was represented by Thomas M. Letizia, Esq., of Pepper Hamilton, 301 Carnegie Center, Suite 400, Princeton, New Jersey. Mr. Letizia cross-examined witnesses on December 3, 2019. He did not present testimony or evidence. His client was concerned that the buffering between the NEC property and the subject property was inadequate.

MEMBERS OF THE PUBLIC

24. Lisa Rodgers, a Township resident, was present on all four hearing dates, questioned the witnesses and offered her own comments. Among other things, she argued that the plan was not

suitable for the location; the Applicant's traffic study was insufficient; the Route 1 corridor should support office and research buildings, not residential developments; inclusionary developments would require construction of a new school and would lead to unsafe bussing routes; and the plan had inadequate buffering from adjacent land uses and could result in air quality issues for the residents

25. The following members of the public also appeared and questioned witnesses:

- a. Saba Shams, Township resident;
- b. Azra Baig, Township resident;
- c. Vijay Naringrekar, Township resident;
- d. David Shultz, Township resident;
- e. Lynda Woods Cleary, Township resident; and
- f. Oscar Aiello, Township resident.

EXHIBITS

26. The Applicant moved Exhibits A-1 through A-39 into evidence. A list of those exhibits is attached as **Appendix C** to this Resolution.

27. The South Brunswick parties moved Exhibits SB-1 through SB-24 into evidence. A list of those exhibits is attached as Appendix C to this Resolution.

WITNESSES

28. The Applicant presented the following witnesses to testify in support of the application:

- a. David B. Fisher, PP, AICP, K. Hovnanian Shore Acquisitions, LLC. Mr. Fisher is the Applicant's on-site planner. He testified as a fact witness.

- b. Peter Ciliberto, PE, Najarian Associates. Mr. Ciliberto is a licensed professional engineer. He was qualified as an expert in site planning and design.
- c. Art Bernard, PP, Art Bernard and Associates. Mr. Bernard is a licensed professional planner. He was qualified as an expert in planning, particularly with regard to affordable housing.
- d. Richard Culp, AIA, K. Hovnanian Companies. Mr. Culp is licensed architect. As the project architect, he testified as a fact witness. He was also qualified as an expert with knowledge of the relevant building codes and regulations applicable to the project, as well as the Americans with Disabilities Act.
- e. John Rea, PTOE, McDonough & Rea Associates. Mr. Rea is a licensed professional engineer. He was qualified as an expert in traffic engineering.

29. South Brunswick presented the following witnesses:

- a. Henry A. Bignell, PP, Bignell Planning Consultants, Inc. Mr. Bignell was qualified as an expert in land use planning. He is the consulting planner for South Brunswick.
- b. Mary Beth Lonergan, PP, AICP, Clarke Caton Hintz. Ms. Lonergan was qualified as an expert in land use planning and specifically affordable housing planning in Mount Laurel-related matters
- c. Kenneth Zielinski, PE, PP, CME, CME Associates. Mr. Zielinski is a professional engineer. He was qualified as an expert in civil engineering. He serves as the South Brunswick Planning Board engineer.
- d. Bryan Bidlack, PP, AICP. Mr. Bidlack is the director of planning for South Brunswick. He was qualified as an expert in land use planning.

- e. Wayne D. Simpson, PE, BCEE, Alaimo Associates. Mr. Simpson was qualified as an expert in civil engineering and sanitary engineering.

SOUTH BRUNSWICK PROFESSIONAL REPORTS

30. Over the course of the review process, the South Brunswick professionals issued a series of expert reports responsive to the application. Those reports are attached as **Appendix E** and listed as follows:

- a. Richard A. Alaimo Associates, August 7, 2019 Review Memorandum (Wayne D. Simpson, PE) (Trial Exhibit SB-10);
- b. CME Associates, September 9, 2019 First Review (David J. Samuel, P.E.), with September 9, 2019 Technical Engineering Review (Trial Exhibit SB-2);
- c. Bignell Planning Consultants, September 10, 2019 Memorandum (Henry Bignell, PP) (Trial Exhibit SB-5);
- d. Clarke Caton Hintz, September 10, 2019 Memorandum (Mary Beth Lonergan, PP, AICP; Emily Goldman, PP, AICP) (Trial Exhibit SB-8);
- e. CME Associates, September 11, 2019 Second Review (David J. Samuel, P.E.) (Trial Exhibit SB-3);
- f. Township Planning Review, September 26, 2019 (Bryan B. Bidlack) (Trial Exhibit SB-13);
- g. In addition, the Township and Planning Board introduced “Township of South Brunswick 2017 Sanitary Sewer System Capacity and Flow Study,” dated April 19, 2018, revised October 19, 2019, which was reviewed by Mr. Simpson at trial (Trial Exhibit SB-14).

APPLICANT'S STIPULATIONS

31. Each professional evaluated the application and raised issues of concern. The Applicant and its professionals reviewed those issues, and stipulated as to how the Applicant would or would not comply. The Applicant's position on each of those issues was memorialized in a document entitled "Stipulations of K. Hovnanian Shore Acquisitions, LLC, last revised January 30, 2020," which is attached as **Appendix F**.

SPECIAL HEARING OFFICER'S REPORT

32. Much of the testimony at the hearing focused on the issues that could not be resolved by the parties. The Special Hearing Officer's findings related to those unresolved issues are set forth below and are more fully discussed in the document entitled "Special Hearing Officer Report and Resolution of Disputed Issues," attached as **Appendix A**.

FINDINGS OF FACT

Property Description

33. The subject property is a 19.35 acre vacant, primarily wooded, parcel of land (the "Property") with frontage on Ridge Road to the north and Independence Way along the western edge of the Property. 1T118-19 to 25.

34. There are no designated wetlands on the Property and there are no current environmental hazards or restrictions. 1T24-8 to 25-7.

Zoning

35. The Property is currently zoned as OR – Office Research. It is entitled to be rezoned for inclusionary development as a result of the Applicant's builder's remedy.

36. The Property will now be subject to the standards of the proposed CTRAH-III zone, Appendix D. The proposed CTRAH-III ordinance was prepared and submitted in accordance with Judge Wolfson's October 21, 2016 Order.

37. As conditioned by the terms of this Resolution, the application will conform to the CTRAH-III zone standards. 1T27-8 to 11.

Development Proposal

38. The Applicant proposes to develop a total of 25 buildings containing 99 market rate and 30 affordable two-story townhomes on-site, for a total of 129 total townhomes.

39. The Applicant seeks subdivision approval to provide for individual fee simple lots for each of the 129 townhome units as well as common lots to include basins, buffering, the recreational tot lot, and community garden, to be owned and maintained by a homeowners' association. 1T121-10 to 21; 1T32-16 to 25; 1T33-2 to 17.

40. The permitted density is 6.7 dwelling units per acre (1T33-23 to 25) and is restricted so that no more than 129 units may be built on the Property. 1T34-20 to 35- 4.

Affordable Housing - General

41. The affordable townhomes are designed to be sold to buyers who meet the income qualifications for low and moderate income households. 2T284-13 to 19.

42. The 30 on-site affordable units include 11 low income units and 19 moderate income units. The Applicant has also agreed to fund the production of four very low income units through a group home on an alternate site in the Township. Thus, this application will create a total of 34 affordable housing units within the Township. 2T290-22 to 291-15.

43. The 30 on-site affordable units and the four group home units shall be deed restricted to remain affordable to low and moderate income households consistent with the Uniform Housing Affordability Controls (“UHAC”) Regulations, § 5:80-26.11.

44. The 30 on-site affordable units are incorporated into the same buildings as market rate units and are appropriately disbursed throughout the site. 1T40-16 to 24.

45. All affordable units shall comply with bedroom distribution requirements (six three-bedroom units on site, 24 two-bedroom units on site, and four one-bedroom units in the group home project).

46. The income distribution (four very low-income group home beds, 11 low-income for sale units, and 19 moderate-income for sale units) meets the spirit of the COAH unit income distribution requirements, and the four additional group home beds proposed are appropriate for satisfying the very low-income requirements, and that the shift of four on-site units from low-income to moderate-income is appropriate in light of the difficulty in finding qualified low-income households to purchase for sale affordable units. 2T292-9 to 14.

47. The UHAC Regulations require a developer to phase the delivery of affordable and market-rate units so that the developer is ultimately required to complete all affordable units prior to completion of all the market rate units. 2T362-18 to 21. The Applicant will abide by these UHAC regulations which requires that the affordable units be produced as follows:

Maximum Percentage of Market Rate Units Completed	Minimum Percentage of Low and Moderate Income Units Completed
25%	0
25% +1 Unit	10%
50%	50%
75%	75%
90%	100%

Affordable Housing – Very Low-Income Units

48. The Applicant’s professional planner, Art Bernard, PP, provided testimony regarding the benefits of affordable housing on site. Mr. Bernard was accepted as an expert in professional planning without objection.

49. The low- and moderate-income units are affordable to residents making anywhere from less than 80% to 30% of the regional median income. 2T284-13 to 19.

50. The units are priced so that a household within the various low and moderate income groups would not be paying more than 28% of their income on mortgage principal, interest, taxes, insurance, and condominium fees. 2T286-17 to 21.

51. The income limits are determined by household size and the region within the state where the Property is located. In Middlesex County, a three person household can earn between \$31,900 and \$85,175 and qualify for affordable housing. 2T287-288.

52. With respect to the production of very low-income units, the Applicant and the Township have agreed that instead of building the four (4) very low-income units onsite, the Applicant will make a contribution, in the amount of \$20,000 per unit for a total sum not to exceed \$80,000.00, to the Township to work with a group-home provider to create very low-income in a group-home

type of facility that caters to very low-income households. In addition to that, the Applicant will still build eleven low income units as originally proposed, and nineteen moderate-income units onsite which Mr. Bernard found complies with COAH standards and is appropriate given the for sale units and the difficulty in finding qualified low and very low-income homebuyers. As a result of this agreement, the Applicant will be making contribution for thirty-four very low, low, and moderate-income units as opposed to 30, which constitutes a 26% set-aside. 2T290-22 to 291-15.

Affordable Housing – Minimum Bedroom Size

53. The project will have 30 affordable units. Twenty-four of those units will have two second-floor bedrooms and six will have a third room on the ground floor that can be configured as a home office or third bedroom. The third bedroom is 82.5 square feet. The two upstairs bedrooms are 147.2 and 145.5 square feet, respectively.

54. The Township’s planner, Mary Beth Lonergan, testified that she believes the bedrooms in the affordable units are undersized. Specifically, she testified that the ground floor bedroom was too small. She acknowledged, however, that COAH does not have minimum bedroom size requirements for inclusionary developments. 3T533-10 to 18.

55. As discussed more fully in the Special Hearing Officer’s Report (Appendix A, § VII), the Applicant may build the affordable housing units as proposed, without changing the size of the first-floor bedroom.

Site Improvements – Sewer and Water

56. The proposed development’s site improvements will include: a sewer pump station that will handle the wastewater flows from the development and pump them to a nearby gravity sewer main, (1T29-13 to 19); and a stormwater infiltration basin to be located in the northeastern

corner of the Property that is designed to handle the stormwater runoff from the development.
1T29-2 to 6.

57. Mr. Simpson testified that the Township is the permittee of all Township owned sewer conveyance lines. 4T114-16 to 21. Mr. Simpson confirmed that if the Township elects not to endorse a Treatment Works Approval permit, it must specify the reasons for its decision and cannot fail to endorse the permit without a stated reason. 4T121-7 to 25.

58. Mr. Simpson testified that, based upon the sewer capacity study performed by his firm, he found that the sewer lines that this project will contribute to have a capacity issue. The Township's position, confirmed through Mr. Simpson's testimony, is that the Applicant is responsible for performing an infiltration and inflow ("I&I") study and repairing any identified problems as set forth in Ordinances 2018-28 and 2018-30. 4T107-15 to 23.

59. The Applicant objected to the application of Ordinances 2018-28 and 2018-30, alleging that they do not comply with the requirements for a developer's contribution to an off-tract improvement pursuant to the Municipal Land Use Law at N.J.S.A. 40:55D-42.

60. The Applicant's development will result in approximately 35,175 gallons per day of new flow into the system. It will connect to the system at a sewer main located at the intersection of Ridge Road and Schalks Crossing Road, and the sewage will flow into the system's Ridge Road interceptor, or trunk line, within the Stony Brook Regional Sewerage Authority drainage basin.

61. The South Brunswick sewer system is currently at or near capacity. Despite regular maintenance, it is "seeing its age" (4T156-4 to 10). In 2017 the Township studied the system, including the Ridge Road interceptor, and concluded that:

[W]hen we studied the flows in the interceptor in 2017, what was shown that during normal dry weather flow, this line has capacity. When a storm of the magnitude of a 24-hour storm over two-year interval is considered – that's about three-and-a-half

inches of rainfall, and it could be expected every two-years – this line is almost at one hundred percent capacity.

[4T97-12 to 16.]

62. As a result, “if the Township allows additional development into this . . . interceptor, without corrections, . . . they will be experiencing more overflows than they currently have.” (4T98–13 to 16).

63. In 2016 the Township experienced an overflow along the Ridge Road interceptor that they reported to DEP. (4T98-17 to 19).

64. As discussed more fully in the Special Hearing Officer’s Report (Appendix A, § I), the Applicant shall find and eliminate I&I in an amount consistent with Applicant’s anticipated discharge into the system, before connecting to the system, as required by the Township’s ordinances.

65. The ordinances are consistent with the utility element of the municipality’s Master Plan (see 4T62-1 to 64-23) and are based on a comprehensive engineering study of the system undertaken in 2017. They limit a developer’s contribution for off-tract improvements to its pro rata share — that is, a share consistent with the development’s impact on the system.

66. If the developer eliminates more I&I than its anticipated flow, it is entitled to a pro-rata reimbursement for its overspending. The Applicant is also entitled to have the I&I found and eliminated in the most cost-effective manner possible.

Site Improvements – Detention Basin

67. The Applicant’s stormwater basin will be located at the north end of the property, 25 feet from the property line and 25 feet from the closest residential structures. Township Ordinance 62-2576(b)(8) requires that the basin’s high-water mark be set back 100 feet from dwellings

while the top of the outflow be set back 25 feet from nonresidential property lines and 50 feet from residential property lines. See, CME Storm Drainage Comments 11 and 15 (Trial Exhibit SB-2).

68. The Township's proposed setbacks are not required by RSIS or state law (1T146-24 to 25).

69. The Township's engineer, Kenneth Zielinski, agreed that with proper maintenance the basin would not be a health and safety problem (3T587-16 to 588-13).

70. David B. Fisher, the Applicant's onsite planner, testified that the development would be governed by a homeowners' association, which would be responsible to maintain common elements such as the basin. Mr. Fisher also noted that the Township would retain the ability to access the basin (1T32-16 to 33-6).

71. As discussed more fully in the Special Hearing Officer's Report (Appendix A, § III), the Township's setback requirements relating to the stormwater basin are unenforceable, and the basin may be located as designed by the Applicant, provided that a homeowners' association be responsible for maintenance of the basin, with the Township retaining the ability to access the basin.

72. Mr. Zielinski agreed to grant a waiver from the requirement for the Applicant to provide groundwater mounding calculations, as long as the Applicant performs post-construction infiltration testing and addresses any identified concerns. 3T575-16 to 23; 3T582-8 to 11.

Site Improvements – Recreation

73. The proposed development's site improvements will have recreational amenities, including dedicated open space, a community garden, and a tot lot and a walking path.

74. During the course of the hearings and based upon comments of adjoining neighbors, the Applicant revised the proposed development to eliminate the perimeter walking path. The Applicant instead proposed a sidewalk connecting Road D and Road E to encourage pedestrian circulation throughout the site. Mr. Bignell confirmed that he found this revision acceptable from a planning perspective. 3T481-11 to 3T482-7.

75. Mr. Bignell testified that the development would generate a significant number of young people. 2T435-16. There is no opportunity for active recreation within walking distance of the development; all must be accessed by motor vehicle. See 3T495-10 to 15; 3T496-13 to 22; and 3T522-22 to 523-26.

76. As discussed more fully in the Special Hearing Officer's Report (Appendix A, § V), the lack of additional recreational space for this development, which is likely to generate many young people and which is isolated from other recreational areas, is clearly contrary to sound land-use planning principles.

77. The Applicant shall provide additional space for active recreation to supplement that which it has already provided, such that the total recreational space is not less than one-half acre. The location and type of recreational offering must be acceptable to the Special Master. The recreation plan must not reduce the number of market rate or affordable units on the site.

Perimeter Buffer

78. The CTRAH-III zone requires a perimeter buffer of 50 feet with specific exceptions for certain site features including drainage swales, portions of patios or decks at the rear of the structure, and hammerhead style pavement turnaround areas at the end of certain streets. The proposed and permitted intrusions into the buffer are minimal, and the Applicant and adjoining Pointe at Turnbury development have agreed to a contribution by the Applicant to the Pointe at

Turnbury's homeowners' association to allow the HOA to supplement plantings and/or fencing along the common property line with the proposed development, at their discretion. 1T35-20 to 36-17.

79. The site contains plantings that are focused on the perimeter buffer area as well as around the basin. Plantings primarily include ornamental trees, evergreen trees, and shrubs. 1T156-8 to 25.

80. The Applicant's planner, Mr. Bignell, was concerned that encroachments into the buffer compromised the buffer's integrity. See Trial Exhibit SB-5, Comment 10J.

81. Mr. Bignell testified that he was comfortable with the amount of perimeter buffering being proposed between two residential uses. 2T440-3 to 4. Specifically, Mr. Bignell agreed that he prefers the proposed design of the hammerhead turnarounds rather than additional buffering with "dead-end" streets. 2T452-2 to 15. Mr. Bignell also found that the proposed perimeter buffer to the adjacent commercial use is adequate. 3T506-4 to 9.

82. As discussed more fully in the Special Hearing Officer's Report (Appendix A, § IV), the perimeter buffer proposed by the Applicant is reasonable and can be developed as planned.

Site Improvements – Lighting

83. The plans call for street lighting to use high-pressure sodium lights, similar to what the Applicant has used in other developments.

84. Mr. Bignell testified that "LED is more efficient, brighter in areas that need to be brighter, cheaper to operate, low-cost in that regard." 2T443-14 to 16.

85. As discussed more fully in the Special Hearing Officer's Report (Appendix A, § VIII), the Applicant shall provide LED lighting.

Traffic Engineering and Roadway Improvements

86. The development will have two access driveways on Independence Way. 1T28-13 to 25. Independence Way has a signalized intersection with Route 1 on its southern end and an unsignalized intersection with Route 1 on the north of the site. 2T242-23 to 243-5.

87. There will be an emergency access roadway to Ridge Road. The Ridge Road emergency access will be closed except to emergency response vehicles. 1T31-17 to 22; 1T32-6 to 15.

88. There will be four-foot-wide concrete sidewalk on both sides of all internal residential streets. 1T128-2 to 8.

89. The Applicant's traffic engineer, John Rea, PTOE, provided testimony related to traffic impacts of the proposed development.

90. Mr. Rea's traffic impact analysis of the proposed development showed that the peak hour of traffic in the AM would generate 62 total new trips and the peak hour in the PM would generate 75 total new trips. 2T235-15 to 23. According to the New Jersey Department of Transportation ("NJDOT") criteria, this does not constitute a significant increase in traffic. 2T236-13 to 17.

91. No off-tract improvement to the intersections of Independence Way and Route 1 are required under NJDOT Access Code standards. 2T237-20 to 24.

92. The proposed development generates less traffic than what would be generated if the Property was developed in accordance with the existing OR zoning. 2T239-5 to 7.

93. No mitigation is required for the traffic signal as the traffic signal directive received from NJDOT for the intersection allows for additional traffic to be processed without making changes to the existing traffic signal timing. 2T237-20 to 24.

94. Access onto Ridge Road from the Property is not necessary for the safe and efficient function of this site. 2T239-14 to 24.

95. As discussed more fully in the Special Hearing Officer's Report (Appendix A, § II) the Applicant is not responsible for widening Ridge Road, installing curbing and sidewalks, or improving the drainage at the intersection of Ridge Road and Route 1.

96. On the other hand, the Applicant shall dedicate the right-of-way along the property's border with Ridge Road to facilitate future improvements that may be undertaken by the municipality. The right-of-way dedication must not result in a loss of market or affordable units, and therefore any impact to the bulk standards for the project (e.g. lot coverage and setbacks) will be deemed acceptable in order to effectuate the right-of-way dedication.

Architecture

97. The Applicant's architect, Richard Culp, AIA, testified regarding details of the elevations of the proposed buildings and the floorplans of the available various unit types. Mr. Culp was accepted as an expert in architecture without objection.

98. The proposed buildings will be wood frame construction with horizontal siding and asphalt shingles. The building facades have some stone elements for design interest. The end units in the integrated affordable/market-rate buildings will be constructed with basements.
2T369-6 to 12.

99. The affordable units will not have garages, but will have a driveway in front of each unit.
2T370-2 to 9.

100. Each building will have market rate units and some buildings will have a combination of market rate and affordable units. None of the buildings will contain only affordable units.
2T370-14 to 16.

101. The primary differences between the market rate units and the affordable units are the affordable units have less square footage overall, less bedrooms, and no basements. The

affordable units were designed to comply with certain ADA requirements which make the units “adaptable” in the event that a resident’s needs would require a fully accessible unit. 2T372-14 to 323-24.

102. The affordable units will be a mix of two bedroom and three bedroom units. The bedrooms will be sized as follows: first bedroom will be 145.5 square feet; second bedroom will be 147.2 square feet; third bedroom (or office/den in two bedroom units) will be 82.5 square feet. 2T383-2 to 16.

Parking

103. The Applicant’s parking plan includes a driveway parking space for each affordable unit, and a driveway and garage parking for market-rate units. It originally called for 68 undesignated on-street parking spaces, but after consulting with the Township professionals, the Applicant amended its plan and added 30 additional undesignated on-street parking spaces, for a total of 98 – 30 more than were required. 1T42-17 to 43-5.

104. The Township’s professional planner, Henry Bignell, PP confirmed that the number of parking spaces provided complies with the requirements of the RSIS. 2T431-8 to 11; 2T432-12 to 16.

105. Mr. Bignell testified that he believed some of the parking should be specifically designated to the units. He confirmed that neither COAH, HMFA, or the RSIS have any requirement to designate more than one parking stall to specific affordable units. 3T480-13 to 18.

106. As discussed more fully in the Special Hearing Officer’s Report (Appendix A, § VI), the Applicant is not required to designate an on-street parking space for each affordable unit.

CONCLUSIONS

107. The Special Hearing Officer concludes that the application conforms to the requirements of the proposed CTRAH-III ordinance.

108. The application is not clearly contrary to the principles of sound land use planning or environmental concerns. The application complies with all residential design elements governed by the RSIS.

109. The application promotes the general welfare by providing for affordable housing in an inclusionary development.

110. Adequate information has been presented by the parties to grant preliminary major site plan and preliminary major subdivision approval.

111. This preliminary approval is subject to and limited by the Findings of Facts set forth above; the Special Hearing Officer's Report (Appendix A); and the Conditions set forth below.

112. Any dispute over the interpretation or requirements of this Resolution shall be referred to the Special Master. If the Special Master does not resolve the dispute to the satisfaction of the parties, it shall be referred to the Special Hearing Officer.

113. The Special Hearing Officer retains jurisdiction over the application for final major site plan and subdivision approval.

CONDITIONS

1. The Applicant shall comply with the requirements and conditions of the South Brunswick Professional Reports (Appendix E), as specifically agreed to in the Applicant's Stipulations (Appendix F), and as required by the Special Hearing Officer's Report Resolving Disputed Issues (Appendix A).

2. Any and all fees due and owing the Township, the Planning Board, the Special Hearing Officer or Special Master shall be promptly paid in full. The Special Master shall resolve any and all disputes as to the supplemental escrow requests (October 26, 2016 Court Order, ¶ 2E). Any further complaints about escrow charges shall be referred to the Superior Court.

3. All conditions contained in this Resolution and in the record of the proceedings, including any agreements made by the Applicant, were essential to the Special Hearing Officer's decision to grant the approvals set forth herein. A breach of any such condition or failure by either party to adhere to the terms of any agreement within the time required may result in the need to return to the Special Hearing Officer.

4. The subdivision of the Property shall be implemented in accordance with the requirements of Municipal Land Use Law and Map Filing Law.

5. The subdivision of the Property shall be implemented in accordance with the subdivision plan prepared by prepared by Najarian Associates dated February 4, 2019, last revised through May 17, 2019, as well as any subsequent revisions thereto as directed by the Planning Board's engineer in connection with the Special Hearing Officer process, unless herein modified.

6. The Applicant shall provide the Township for review, and subsequently file with the Clerk of Middlesex County, Deed Restrictions in accordance with such form required by UHAC and/or HMFA regulations, subject to review by the Township Attorney, Engineer, Planner, and Planning Board Attorney. Said Deed restriction shall indicate that the Property shall be developed to provide affordable housing. The restriction shall conform to the standard requirements of UHAC and HMFA.

7. The development shall not contain more than 129 housing units. The Applicant shall provide a minimum of 30 affordable housing units, pursuant to the requirements of the CTRAH-III Zone.

8. The Applicant shall obtain any and all Other Governmental Approvals required for the application.

SPECIAL HEARING OFFICER

/s/ Steven P. Goodell
Steven P. Goodell, Esq.

Date: July 23, 2020

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APPENDIX A

App001

K. Hovnanian Shore Acquisitions, LLC v.
Township of South Brunswick and the Planning
Board of the Township of South Brunswick
Superior Court of New Jersey
Law Division--Middlesex County
Docket No. 1194-17

Consolidated with other Mount Laurel Builder's
Remedy Lawsuits as:

In the Matter of the Application of the Township
of South Brunswick, County of Middlesex
Superior Court of New Jersey
Law Division--Middlesex County
Docket No. 4433-17

Special Hearing Officer's Report Resolving Disputed Issues

Steven P. Goodell, Esq.
July 23, 2020

Both before and during the hearing, the parties¹ worked diligently to resolve issues. This Report presents the Special Hearing Officer's decisions on matters that the parties could not resolve, and which remained in dispute throughout the process.

I. Responsibility for Off-Tract Improvements to the Sewer System

The Court has determined that the subject site is suitable for affordable housing: it is available, approvable and developable. See Special Master's Report, Appendix B. A suitable site

¹ The parties include the Township of South Brunswick (Township), the South Brunswick Planning Board (Planning Board) and the Township and the Planning Board are sometimes collectively referred to as "South Brunswick." Plaintiff/Intervener K. Hovnanian Shore Acquisitions, LLC is referred to as "the Applicant" or "the developer."

is one in which “adequate sewer... capacity... shall be available to the site.” See, e.g., N.J.A.C. 5:93-1.3.

South Brunswick Township owns and operates a sewage collection system that routes flow from developments in South Brunswick to treatment plants operated by the Stony Brook Regional Sewerage Authority or the Middlesex County Utilities Authority, depending on the drainage basin. The Applicant’s development will result in approximately 35,175 gallons per day of new flow into that system. It will connect at a sewer main located at the intersection of Ridge Road and Schalks Crossing Road, and the sewage will flow into the Ridge Road interceptor, or trunk line, within the Stony Brook Regional Sewerage Authority drainage basin.

The South Brunswick sewer system is currently at or near capacity. Despite regular maintenance, it is “seeing its age” (4T156-4 to 10). In 2017 the Township studied the system, including the Ridge Road interceptor, and concluded that:

[W]hen we studied the flows in the interceptor in 2017, what was shown that during normal dry weather flow, this line has capacity. When a storm of the magnitude of a 24-hour storm over two-year interval is considered – that’s about three-and-a-half inches of rainfall, and it could be expected every two-years – this line is almost at one hundred percent capacity.

[4T97-12 to 16.]

As a result, “if the Township allows additional development into this...interceptor, without corrections, ...they will be experiencing more overflows than they currently have.” (4T98–13 to 16). Indeed, in 2016 the Township experienced an overflow along the Ridge Road interceptor that they reported to DEP. (4T98-17 to 19).

The Township and Planning Board, citing two land-use ordinances adopted in 2018, argue that the applicant is responsible first, to find and remedy leaks in the system (infiltration and inflow, or “I&I”) sufficient to allow 35,175 gallons per day of new flow to enter the system without causing further upset; and second, to pay its pro-rata share of other off-site

improvements to the system. They argue that the two land-use ordinances are justified by the RSIS (by incorporating NJDEP regulations); that they are justified by the MLUL; and that the Township has the legal right to put this burden on the developer because, among other things, repairing the system itself would be too costly (approximately \$30 million) and the repairs would take too long to complete.

The Applicant counters that the two ordinances are not authorized by the MLUL or NJDEP regulations, and that requiring the developer to search for and remedy I&I impermissibly transfers the Township's obligation to maintain the system to developers and is cost generative.

The Special Hearing Officer finds that the Applicant is responsible for complying with the provisions of the two land-use ordinances because they are consistent with requirements of the MLUL.

Under the MLUL, a municipal site plan ordinance must contain provisions ensuring adequate sewerage facilities for the new development (N.J.S.A. 40:55D-38b(3)), and may contain provisions for off-tract sewer improvements which are necessitated by the development (N.J.S.A. 40:55D-39a). Requirements for off-tract improvements are subject to the provisions of N.J.S.A. 40:55D-42, which states:

The governing body may by ordinance adopt regulations requiring a developer, as a condition for approval of a subdivision or site plan, to pay the pro-rata share of the cost of providing only reasonable and necessary street improvements and water, sewerage and drainage facilities, and easements therefor, located off-tract but necessitated or required by construction or improvements within such subdivision or development. Such regulations shall be based on circulation and comprehensive utility service plans pursuant to subsections 19b.(4) and 19b.(5) of this act, respectively, and shall establish fair and reasonable standards to determine the proportionate or pro-rata amount of the cost of such facilities that shall be borne by each developer or owner within a related and common area, which standards shall not be altered subsequent to preliminary approval. Where a developer pays the amount determined as his pro-rata share under protest he shall institute legal action within one year of such payment in

order to preserve the right to a judicial determination as to the fairness and reasonableness of such amount.

According to the New Jersey Supreme Court, any off-tract improvement imposed by a municipality must be “necessitated by the development,” and the developer cannot be required to pay “more than its pro-rata share of the cost” of the improvement:

Under the MLUL, a planning board may only impose off-tract improvements on a developer if they are necessitated by the development. Concomitantly, a developer cannot be compelled to shoulder more than its pro-rata share of the cost of such improvements. N.J.S.A. 40:55D-42; Holmdel Builders Ass’n v. Twp. of Holmdel, 121 N.J. 550, 570–71, 583 A.2d 277 (1990). It follows that a planning board violates the MLUL when a condition unrelated to the needs generated by a development is imposed or, if related, places on the developer an exaction in excess of its proportional share.

[Toll Bros., Inc. v. Bd. of Chosen Freeholders of Cnty. of Burlington, 194 N.J. 223, 229-230 (2008).]

Finally, a municipality may require that the off-tract improvement be completed at the expense of the developer:

The third course is to require that the work be done at the expense of the developer either with or without a formula providing for partial or total reimbursement. Recourse to this third alternative, as to which there has hitherto existed some question, may be had only where appropriate local legislation permits the imposition and when it is fair and equitable that this be done.

[Toll Bros., Inc. v. Bd. of Chosen Freeholders of Cnty. of Burlington, 194 N.J. 223, 245 (2008).]

Here, the municipality’s ordinances require a developer to find and eliminate I&I, in an amount consistent with the applicant’s anticipated discharge into the system, before connecting to the system. The ordinances are consistent with the utility element of the municipality’s Master Plan (see 4T62-1 to 64-23) and are based on a comprehensive engineering study of the system undertaken in 2017. They limit a developer’s contribution for off-tract improvements to its pro rata share — that is, a share consistent with the development’s impact on the system. The sewer

system is already at or near capacity. A requirement that the Applicant find and eliminate I&I in an amount equal to its new flow is narrowly tailored to address the Applicant's own impact on the system. The Applicant is not being "compelled to shoulder more than its pro rata share of the cost" of the improvement. Id.

When questioned on direct, the Applicant's engineer testified that the requirement appeared "reasonable":

Q. You are aware the township has an applicant to do offsite sewer and propose mitigation of that off-site sewer lines with regard to this project. Have you any issue or concern from a design and engineering perspective as to the adequacy of the service lines that services this project?

A. On our site?

Q. And into the system where it leaves our site.

A. I'm aware that there is an Alaimo report that specified certain issues with the downstream sewer capacity, the downstream system. And there was a report or inceptor showing how they would fix the flow capacity and line, \$12,874 that would be contributed to this site to fix the downstream sewer flow.

Q. As a design engineer, are you accustomed to fair-share calculation to onsite improvement?

A. Yes.

Q. As the off-tract, does that appear reasonable to you?

A. It appears reasonable, but without other information I couldn't say whether the calculation was correct.

Q. As a professional engineer, have you ever been contracted by an applicant who was required to do any off-tract investigation of sewer lines off of their property?

A. Sorry, misunderstood the question. Have we ever been on another project?

Q. Yes.

A. We have analyzed downstream sewers for other projects.

[1T152-20 to 154-7.]

The Special Hearing Officer does not find persuasive the Township's and Planning Board's argument that there is a "clear mandate" in the RSIS and NJDEP regulations "plac[ing] this obligation squarely on the developer and not on the municipality." (Db45). None of the cited regulations² requires the Applicant, as opposed to the Township, to make the required improvements.

The Special Hearing Officer also rejects the Applicant's arguments that requiring the developer to search for and remedy I&I impermissibly transfers the Township's obligation to maintain the system to developers, and is cost generative. Connection fees are designed to help recapture sunk capital costs from new users. That is not the case here. Moreover, there is no evidence that the Township failed to properly maintain the system, or that the I&I was a result of anything other than the system's "age." 4T156-4 to 10.

Finally, the ordinances are not cost-generative. They are essential to protect the public welfare (N.J.A.C. 5:93-10.1(a)). As noted above, they are narrowly tailored to free space in the system for the Applicant's anticipated flow, and are necessitated by the development. Of course, if the developer eliminates more I&I than its anticipated flow, it is entitled to a pro-rata reimbursement for its overspending. The Applicant is also entitled to have the I&I found and eliminated in the most cost-effective manner possible.³

² N.J.A.C. 5:21-6.2 (System planning, design, and placement); N.J.A.C. 7:14A-22.8 (Application requirements for construction, installation, or modification of treatment works--Stage II); and N.J.A.C. 7:14A-23.5 (Engineering design reports to be submitted to the Department with treatment works approval applications).

³ For example, there was testimony that utilizing flow meters to determine the before-and-after capacity of the pipes might be less expensive, but take more time.

II. Improvements to Ridge Road

The property is bordered to the north by Ridge Road, a primary collector that intersects Route 1 at the property's northwest corner. Although the property borders Ridge Road, no traffic from the development will be routed onto Ridge Road. Instead, all traffic from the development will be routed onto Independence Way, which borders the property on its southwest quarter. From Independence Way, traffic can access Route 1 at two separate intersections. According to testimony of the Applicant's traffic expert, John Rea, traffic from the development is insufficient to require off-tract improvements to either of the Independence Way-Route 1 intersections or to Ridge Road itself.

Citing its CME traffic report (Trial Exhibit SB-3), the Township and Planning Board argue that the Applicant must dedicate the right-of-way along the property's Ridge Road border, widen the road, and install curbing and sidewalks (Db53). They also argue that the Applicant must improve the drainage at the Route 1-Ridge Road intersection to remedy flooding at the intersection (Db57).

The Special Hearing Officer finds that the Applicant is not responsible for widening Ridge Road, installing curbing and sidewalks, or improving the drainage. On the other hand, the Applicant shall dedicate the right-of-way along the property's border with Ridge Road to facilitate future improvements that may be undertaken by the municipality. The right-of-way dedication must not result in a loss of market or affordable units, and therefore any impact to the bulk standards for the project (e.g. lot coverage and setbacks) will be deemed acceptable in order to effectuate the right-of-way dedication.

Off-tract improvements must bear a rational nexus to the development. Here, access onto Ridge Road is not necessary for the safe and efficient functioning of the site (2T239-14 to 24).

The project does not result in a significant increase in traffic under the New Jersey Department of Transportation's criteria (2T236-13 to 17), and will generate less traffic than what would have been generated if it were developed in accordance with the existing zoning (2T239-5 to 7).

Widening Ridge Road is not necessary to protect the public health, safety, or welfare (2T416-35 to 417-4).

To the extent that these improvements could be considered on-site improvements (because the property borders Ridge Road), there is still no obligation for the Applicant to make the improvements. Simply put, the improvements cannot "be justified on the basis of public safety relating to the effect of a large increase of road traffic resulting directly from the development of the land." Cox & Koenig, New Jersey Zoning and Land Use Administration (GANN, 2020) at 522, Sec. 24-6.2).

The Special Hearing Officer recognizes that planning boards often require a developer to widen and pave the one-half portion of a street immediately abutting the development, id., but here such a requirement would be unnecessarily cost-generative. The traffic flow does not require it.

Finally, any flooding at the intersection of Route 1 and Ridge Road is and remains the responsibility of the appropriate public entity that controls the intersection, and is not the responsibility of the Applicant.

III. Detention Basin Setbacks

The Applicant's stormwater basin will be located at the north end of the property, 25 feet from the property line and 25 feet from the closest residential structures. Township Ordinance 62-2576(b)(8) requires that the basin's high-water mark be set back 100 feet from dwellings

while the top of the outflow be set back 25 feet from nonresidential property lines and 50 feet from residential property lines. See, CME Storm Drainage Comments 11 and 15 (Trial Exhibit SB-2). The Ordinance is predicated on the practical concern that basins collect pollution and are often not maintained, and should therefore be located farther away from residential uses (3T584-4 to 585-20).

Nevertheless, the Township's proposed setbacks are not required by RSIS or state law (1T146-24 to 25). Mr. Ciliberto, the Applicant's engineer, testified that he had designed many basins with similar or smaller setbacks, and that there was no scientific basis for the Ordinance requirements (1T146-25 to 147-23). In fact, the Township's engineer, Mr. Zielinski, agreed that with proper maintenance the basin would not be a health and safety problem (3T587-16 to 588-13), and Mr. Fisher, the Applicant's onsite planner, testified that the development would be governed by a homeowners' association, which would be responsible to maintain common elements such as the basin. Mr. Fisher also noted that the Township would retain the ability to access the basin (1T32-16 to 33-6).

Importantly, complying with the Ordinance would result in the loss of eight or nine houses, including two affordable units (1T180-13 to 23), and would therefore be unnecessarily cost-generative.

Accordingly, the Special Hearing Officer finds that the Township's setback requirements relating to the stormwater basin are unenforceable, and that the basin may be located as designed by the Applicant, provided that a homeowners' association be responsible for maintenance of the basin, with the Township retaining the ability to access the basin.

IV. Perimeter Buffer

The Applicant's plan incorporates a 50-foot perimeter buffer, "so that no structures can be within 50 feet of the property boundary" (1T35-22 to 24). According to Mr. Fisher, "there are some features that we thought were necessary to have within that buffer, such as drainage swales, portions of patio or deck at the rear of the structure." Also, two "hammerhead" turnaround areas extend into the buffer, as do a walkway and landscaping (1T36-3 to 17).

The Township believes that "no roadways or rear yards should be located in this buffer area.... These encroachments compromise the integrity of the buffer" (Trial Exhibit SB-5, comment 10.J).

The Special Hearing Officer finds that the perimeter buffer proposed by the Applicant can be developed as planned.

First, the Township's preferred buffer is not required by any state code or planning imperative.

Second, the Applicant has enhanced the buffer with landscaping. (1T156-8 to 25).

Third, buffers are generally utilized to separate land uses. To the east the development borders a residential development, The Oaks. The Township's planner, Mr. Bignell, was satisfied with the buffer between those two residential uses. (1T439-22 to 440-4). To the south, the project borders the NEC office complex and a location which is wooded and largely undeveloped.⁴

Fourth, all witnesses agreed that on balance, any harm coming from the minimal intrusion into the buffer area by the two "hammerhead" turnarounds was outweighed by the

⁴ An attorney for NEC appeared at the first day of the hearing. The Applicant reached an out-of-court agreement with NEC.

benefit those features provided. They allow traffic to turn around and not have to back out of a dead-end street. See, e.g., 1T163-19 to 164-2.

Finally, and most importantly, due to the size and shape of the lot, a wider buffer would result in the loss of housing, which would be unduly cost-generative.

V. Recreational Opportunities

The property is 19.35 acres. The Applicant plans to build 129 residential units. For recreational opportunities, the Applicant proposes developing a tot lot (1,250 sq. ft.), a community garden (2,600 sq. ft.), and a walking path (1T170-24 to 172-16). During the hearing the Applicant agreed to add additional recreational open space near the cell tower and hotel property (3T480-19 to 481-9; see also, Applicant’s Trial Exhibit 18A “Stipulations of K. Hovnanian Shore Acquisitions, LLC, last revised January 30, 2020,” Appendix F.

Mr. Bignell, the Township’s planner, estimated that a development of that size could include 130 to 155 young people (2T435-16). Even if that number is high (although it was not disputed), there will be a significant number of young people at the development in need of recreational opportunities. The nearest park in South Brunswick is a 4.8 mile drive, the high school is about 1.9 miles, and a park in Plainsboro is about 3 miles away. None of these are within walking distance from the development; all must be accessed by motor vehicle.

Mr. Bignell testified that “I don’t believe that’s sound planning.... I looked at this over the years. If it was close to the regional parks, I may have a different opinion. But it’s not. It’s five miles, a long distance” (2T437-16 to 21). He said:

I think we are going to generate a lot of children here and they need something to do...We need to keep them busy in the summertime. It's an isolated place in terms of getting to other places.

* * *

I would point out too, the recreational has changed because of the type of different cultures living here how. Maybe a swimming pool won't be needed . . . but . . . [t]he people like to walk and having those connected foot paths and things like that are very, very important. That's for the adults that live here. As to young people, they need a place to blow off steam.

[3T495-10 to 15 and 496-13 to 22.]

Ms. Lonergan, another township planner, testified that:

This is important to have recreation areas, especially this truly will be an isolated residential community in the sense of to access the community you have to go onto Independence Way which takes you through an office park out to Route 1. That's it; that is the end of means of access. There's truly limited residential access.

[3T522-22 to 3T523-26.]

The Special Hearing Officer finds that the lack of additional recreational space for this development, which is likely to generate many young people and which is isolated from other recreational areas, is clearly contrary to sound land-use planning principles.

Accordingly, the Applicant shall provide additional space for active recreation to supplement that which it has already provided, such that the total recreational space is not less than one-half acre. The location and type of recreational offering must be acceptable to the Special Master. The recreation plan must not reduce the number of market rate or affordable units on the site.

VI. Designation of On-Street Parking Spaces

The Township and Planning Board argue that an on-street space should be specifically designated for each affordable unit, and to do otherwise would deprive affordable housing owners of convenient parking close to their units (3T479-19 to 480-11).

The Applicant's parking plan meets RSIS requirements. The plan includes a driveway parking space for each affordable unit, and a driveway and garage parking for market-rate units. In addition to the driveway and garage parking, it called for 68 undesignated on-street parking spaces, but after consulting with the Township professionals, the Applicant amended its plan and added 30 additional undesignated on-street parking spaces, for a total of 98 – 30 more than were required (1T42-17 to 43-5).

The Applicant's on-site planner, Mr. Fisher, explained that the Applicant did not want to reserve on-street spaces for the affordable units because of concerns that the spaces would be left empty; there was sufficient parking provided; and designating the spaces for affordable units would stigmatize those spaces:

Our concern was if we dedicated 30 more parking spaces and reserved them for just affordable buyers with affordable residents, many of them would just be empty and they wouldn't be available for the balance of the community. And I think really the RSIS in creating guest parking at a rate of half a space per home was to have additional parking for everyone. And we didn't necessarily want to stigmatize parking spaces based on affordable units.

[1T73-7 to 17.]

Mr. Ciliberto, the Applicant's engineer, elaborated:

Q. Have you ever designated, as a professional, parking spaces directly associated with a homeowner?

A. I have not.

Q. Why, in your opinion, did you never do that?

A. I guess for the same reason Dave talked about. You are assigning a space to be a unit that that unit may not even need that space. I mean, you have got – you have 29 affordable units on here that may not need two spaces, probably not need two spaces. We have designated one spot. Each of these affordable units does have a driveway, so they did have a dedicated spot.

I think at most in any development that K. Hovnanian ever had to do, they only designated one spot more than that. Since they have the designated driver's spot, I don't see the need to designate an additional spot to possibly take away from the parking from someone else.

[1T133-6 to 134-3.]

The Special Hearing Officer finds that the Applicant is not required to designate an on-street parking space for each affordable unit. The plan provides sufficient parking. It meets and exceeds RSIS requirements. Each affordable unit has parking in its driveway, and owners have access to any of the undesignated on-street spaces. Designating specific on-street spaces for affordable units calls undue attention to those spaces, and may result in them being under-utilized if not needed by the affordable housing residents.

VII. Minimum Bedroom Size

The project will have 30 affordable units. Twenty-four of those units will have two second-floor bedrooms and six will have a third room on the ground floor that can be configured as a home office or third bedroom. The third bedroom is 82.5 square feet. The two upstairs bedrooms are 147.2 and 145.5 square feet, respectively.

The Township and Planning Board argue that the ground floor bedroom is too small. Ms. Lonergan, a Township planner, testified that while COAH did not have minimum bedroom size requirements, other state agencies, such as the Department of Community Affairs (DCA) and the Housing and Mortgage Finance Agency (HMFA), did. Those agencies provide funding or tax

credits for 100%-affordable housing developments, as opposed to inclusionary developments like this one. DCA requires a first-floor bedroom to be at least 150 square feet and the remaining bedrooms to be at least 100 square feet. HMFA requires all bedrooms to be at least 100 square feet. (See 3T532-16 to 533-5 and Exhibit SB-8, paragraph 8.14). Ms. Lonergan also noted that first floor units must be ADA compliant and handicap accessible pursuant to N.J.A.C. 5:97-3.14 (Trial Exhibit SB-8, ¶ 8.10), and that it would be “problematic” to maneuver a wheelchair with a bed in the room (3T537-18 to 538-3).

While it would be nice to have a larger ground-floor bedroom, the Special Hearing Officer does not find that there is any COAH requirement to do so. Ms. Lonergan acknowledged this, saying, “COAH does not have minimum size requirements for bedrooms” (3T533-11 to 12). She also agreed that the 82.5 square foot bedroom was larger than bedrooms found at another inclusionary development in South Brunswick called Cambridge Crossing, and that affordable housing is being built around the state with room sizes of 82.5 square feet (3T550-12 to 15).

Furthermore, Mr. Fisher testified that the Applicant was aware of the accessibility requirements for a first-floor bedroom, and that the plans met ADA requirements (1T88-4 to 20). All affordable units must meet Uniform Housing Affordability Controls requirements.

Accordingly, the Applicant may build the affordable housing units as proposed, without changing the size of the first-floor bedroom.

VIII. Lighting

The Township and Planning Board argue that the development should be lit by LED lights, arguing that they are more modern, brighter, and efficient than the alternative. The

Applicant would like to use high-pressure sodium lights, similar to what they have used in other developments, arguing that LED lighting is unnecessarily cost-generative.

No code or regulation specifies the type of lighting a developer must use. Codes only address that amount of lighting that must be provided.

According to Mr. Bignell, the Township planner, LED lighting is “more modern, brighter lighting” (2T441-12). “LED is more efficient, brighter in areas that need to be brighter, cheaper to operate, low-cost in that regard” (2T443-14 to 16).

There was no evidence regarding the actual cost differential between LED and high-pressure sodium lighting.

The Special Hearing Officer finds that the Applicant shall provide LED lighting. According to the proofs, it is brighter, more efficient, and less expensive over the long-term than the alternative.

SPECIAL HEARING OFFICER

/s/ Steven P. Goodell
Steven P. Goodell, Esq.

Date: July 23, 2020

APPENDIX B



CHRISTINE A. COFONE, PP, AICP
Principal

COFONE CONSULTING GROUP, LLC

June 12, 2019

Honorable Michael V. Cresitello, Jr., J.S.C.
Superior Court of New Jersey
Middlesex County Courthouse
56 Paterson Street
P.O. Box 964
New Brunswick, NJ 08903-0964

**RE: I/M/O Township of South Brunswick
Docket No. MID-L-4433-17**

Dear Judge Cresitello:

In my capacity as the South Brunswick Township ("Township") Special Master, the purpose of this letter is to provide the Court with my opinion relative to the suitability of the K. Hovnanian Companies, L.L.C. ("KHOV") inclusionary development proposal.

REQUEST FROM KHOV

KHOV seeks to develop 131 housing units, of which 30 (22.9%) are proposed for low and moderate income households, on a 19 acre property within the OR Office Research Zone at the corner of Ridge Road and Route 1 (known as Block 80, Lot 3.024).

Art Bernard, PP, the author of the Defendant-Intervenor's site suitability analysis¹, has found that the site satisfies the Council on Affordable Housing site suitability criteria in that it is "available, suitable, developable, and approvable." Specifically, according to Bernard: *The site has clear title, is "relatively" free of constraints which preclude development of multi-family housing with an inclusionary affordable component, is suitable, and is available for such use.*

AP'S SITE SUITABILITY REPORT

¹ "Builder's Remedy Report", prepared for K. Hovnanian Companies, L.L.C., prepared by Art Bernard, P.P. of Art Bernard and Associates, LLC, dated November 2017.

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CHRISTINE A. COFONE, PP, AICP
Principal

COFONE CONSULTING GROUP, LLC

in accordance with the Council on Affordable Housing's site suitability criteria found at N.J.A.C. 5:93-1.3, all sites to be used for affordable housing purposes must be "available, approvable, developable, and suitable," as follows:

- The site has clear title and is free of encumbrances which preclude development of multi-family housing with an inclusionary affordable component and is available for such use.
- The site is adjacent to compatible land uses and has access to appropriate streets.
- The site is developable as it has access to appropriate water and sewer infrastructure and is consistent with the applicable areawide water quality management plan.
- The site is approvable as it may be developed for low and moderate income housing in a manner consistent with the rules and regulations of all agencies with jurisdiction over the site.

Bernard's analysis found that the site is:

- Available: No title or deed restriction encumbrances or other hindrances that would preclude an inclusionary development.
 - Response: I take no exception to this statement.
- Approvable: The site is approvable as it may be developed for low and moderate income housing in a manner consistent with the rules and regulations of all agencies with jurisdiction over the site. Bernard cites that the site is within Planning Area 2 (in which the state encourages inclusionary development). Bernard cites that COAH regulations allow a site to be developed for affordable housing if the site can be developed based on DEP regulations. He states that environmental reports have found that the site is not impacted by flooding issues, does not have steep slopes, nor is there evidence of wetlands on the site. The latter was confirmed by a DEP letter of interpretation indicating no wetlands present. Bernard notes that some site remediation is required but states that "none of these development issues are unusual and none require extraordinary remediation efforts." He concludes that it is approvable.
 - Response: I take no exception to this statement.

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Principal

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- Developable: Bernard cites that the site is developable as it has access to appropriate water and sewer infrastructure.
 - Response: I take no exception to this statement.
- Suitable: Bernard cites that the property is “very consistent and compatible” with the surrounding land uses, has access to appropriate streets, and provides access to employment, recreational, and shopping destinations. He also cites that the residential use’s height of 35 feet is less than the permitted height of 54 feet in the OR Zone, and the building and impervious coverages are similarly less than the maximum allowed in the zone.
 - Response: I take no exception to this statement.

In addition to the application of the site suitability criteria, Bernard also provided concept plans and supporting documentation in the report’s appendix that I deem as evidence in support of the request.

CONCLUSION

Accordingly, based on Bernard’s analysis, I find that the KHOV Site is “available, approvable, developable, and suitable” for the proposed inclusionary development.

As always, I would be happy to discuss this matter further if the Court desires.

Very truly yours,

Christine A. Nazzaro-Cofone, PP/AICP
South Brunswick Special Master

cc: MID-L-4433-17 distribution list

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APPENDIX C

Applicant's Trial Exhibits

Exhibit A-1: Affidavit of Service/Notice of Hearing dated November 26, 2019

Exhibit A-2: Initial Subdivision Application Package dated February 28, 2019

Exhibit A-3: Second Submission of Application Package (inclusive of application for Site Plan approval), dated May 24, 2019

Exhibit A-4: Third Submission of Application Package, dated October 14, 2019

Exhibit A-5: Aerial Photo of Overall Site/Existing Condition (large exhibit board)

Exhibit A-6: Proposed Zoning Ordinance for Site, bearing a last revision date of 10/24/19

Exhibit A-6(A): Revised and Final Proposed Zoning Ordinance for Site, bearing a last revision date of 1/7/20

Exhibit A-7: Rendered Site Plan (large exhibit board)

Exhibit A-8: Rendered Elevation of five (5) unit Market Rate Building (large exhibit board);

Exhibit A-9: Rendered Elevation of 4 Unit Integrated Market Rate and Affordable Unit Building (large exhibit board)

Exhibit A-10: Floorplan of Howard model (large architectural exhibit board)

Exhibit A-11: Floorplan of Haverford model (large architectural exhibit board)

Exhibit A-12: Floorplan of Bryn Mawr model (large architectural exhibit board)

Exhibit A-13: Floorplan of Lilly 1 & Lilly 2 (affordable units). This exhibit has been omitted for clarity, Applicant refers to Exhibit A-38, *infra*

Exhibit A-14: Elevation and Floorplan of 4 unit and 5-unit building strings

Exhibit A-15: Dimensioned floorplan of affordable units

Exhibit A-16: Written dimensions of affordable units

Exhibit A-17: Phasing plan for COAH Units (large exhibit board)

Exhibit A-18: Stipulations of K. Hovnanian Shore Acquisitions, LLC

Exhibit A-18(A): Revised & Final Stipulations of K. Hovnanian Shore Acquisitions, LLC, dated January 30, 2020 (inclusive of Stipulated Affordable Housing Standards)

Exhibit A-19: Resume/CV of Peter Ciliberto, PE, Applicant Site Plan Engineer

Exhibit A-20: Truck Turning Plan (large exhibit board)

Exhibit A-21: Parking Plan, inclusive of the provision of thirty (30) additional spaces from original submission (large exhibit board)

Exhibit A-22: Subdivision Plat Set, consisting of three (3) sheets dated 2/4/19 (large exhibit board)

Exhibit A-23: Site Grading Plan, Sheet 3, last revised 5/17/19 (large exhibit board)

Exhibit A-24: Landscape Plan Set consisting of five (5) sheets and bearing a last revised date of 5/17/19 (large exhibit board)

Exhibit A-25: Open Space Plan, dated 10/23/19 (large exhibit board)

Exhibit A-26: Issues to be Resolved by Special Hearing Officer, dated 10/25/19 (For Identification Purposes Only)

Exhibit A-27: Certification of Kimberly Bennett, Esq., Counsel for Applicant, dated December 12, 2019

Exhibit A-28: Letter from Henry Kent-Smith, Esq., Counsel for Applicant, to Donald J. Sears, Esq., Township Counsel, dated December 12, 2019 demanding that Township cease and desist from conducting any bussing of members of the public (Township residents) to Middlesex County Courthouse so that said members of the public could participate in the Hearing per their statutory rights

Exhibit A-29: McDonough & Rea Traffic analysis

Exhibit A-30: McDonough & Rea Point by Point Response dated May 23, 2019

Exhibit A-31: McDonough & Rea Response to Township Engineer's Traffic Impact Report, dated October 8, 2019

Exhibit A-32: New Jersey Council on Affordable Housing ("COAH") Income Limit Guidelines for qualification for purchase of affordable units

Exhibit A-33: Builder's Remedy Report, prepared by Art Bernard, PP, Art Bernard and Associates, L.L.C. for Applicant, dated November 2017

Exhibit A-34: Truck Turning Plan at Emergency Access location to Site, dated December 13, 2019

Exhibit A-35: Aerial Photo of Overall Site

Exhibit A-36: Photo Location (street view depicting location of where the photograph marked as Exhibit A-35, *supra*, was taken); mm.

Exhibit A-37: Aerial Zoom-in photograph of overall Site

Exhibit A-38: Detailed Floorplan of Lilly & Lilly 2 models (affordable units) Sheet 4 of 5, dated 10/28/19

Exhibit A-39: Alaimo Sanitary Sewer Flow Study Report, dated April 2018 (Initial report, not inclusive of October 2018 Update)

South Brunswick's Trial Exhibits

Exhibit SB-1: Resume of Township Engineer Kenneth Zielinski, PE, CME Associates

Exhibit SB-2: Township Engineer's Report

Exhibit SB-3: Township Engineer's Traffic Impact Assessment

Exhibit SB-4: Resume of Township Land Use Planner Henry A. Bignell, PP, Bignell Planning Consultants, Inc.,

Exhibit SB-5: Township Land Use Planner's Report

Exhibit SB-6: Resume of Township Affordable Housing Planner Mary Beth Lonergan, PP, AICP, Clarke Caton Hintz

Exhibit SB-7: Resume of Township Affordable Housing Planner Emily Goldman, PP, AICP, Clarke Caton Hintz

Exhibit SB-8: Township Affordable Housing Planners' Report

Exhibit SB-9: Resume of Township Water Sewer Engineer Wayne D. Simpson, Alaimo Group

Exhibit SB-10: Township Water Sewer Engineer's Report

Exhibit SB-11: Township Water Sewer Engineer's Notations to Applicant's Subdivision Plan

Exhibit SB-12: Resume of Township Planning Director, Bryan Bidlack, PP

Exhibit SB-13: Township Planning Director's Report

Exhibit SB-14: Township Sewer Capacity and Flow Study

Exhibit SB-15: New Jersey Department of Environmental Protection ("NJDEP") Treatment Works Approval Permit Application ("TWA Application")

Exhibit SB-16: NJDEP Statements of Consent

Exhibit SB-17: NJDEP Engineer's Report for Domestic TWA Applications

Exhibit SB-18: Township Ordinance No. 2018-28

Exhibit SB-19: Township Ordinance No. 2018-30

Exhibit SB-20: Township Master Plan Reexamination Report, dated January 2018

Exhibit SB-21: Township Affordable Housing Administrative Agent Denise Brown memorandum to David B. Fisher, P.P., AICP, Vice President, K. Hovnanian Shore Acquisitions, LLC, dated October 28, 2019

Exhibit SB-22: Ridge Road Improvement Plan, prepared by Township Engineer CME Associates, undated

Exhibit SB-23: Map of Kingston and Ridge Road Infiltration and Inflow Study, prepared by Alaimo Group, dated February 2018

Exhibit SB-24: Aerial photograph of Ridge Road, prepared by Township Engineer CME Associates, undated

APPENDIX D

DRAFT ZONING ORDINANCE
May 2019,
Last Revised January 7, 2020
CARNEGIE CROSSING INCLUSIONARY DEVELOPMENT



PROPOSED
DRAFT
(revised 1/7/2020)

ORDINANCE 2019-_____

**Amending and Supplementing Chapter 62, Land Use,
Creating the AH-2, Affordable Housing Overlay Development District**

WHEREAS, the Code of the Township of South Brunswick contains a Land Use section in Chapter 62 which, among other things, defines and outlines various zone districts in the Township; and

WHEREAS, it is in the best interest of the health, safety and welfare of the residents of the Township to establish a new zone district that will permit a mix of market-rate townhomes that includes an integrated affordable housing component; and

WHEREAS, the Township Council has reviewed the proposed AH-2 Affordable Housing Overlay Development District, and believes that it is in the best interests of the health, safety and welfare of the residents of the Township to create such a zone district pursuant to sound planning principles and in accordance with the requirements of the Municipal Land Use Law (N.J.S.A. 40:55D-1, et seq.) and the Land Use Element of the South Brunswick Master Plan;

WHEREAS,

WHEREAS,

NOW THEREFORE BE IT ORDAINED by the Township Council of the Township of South Brunswick, County of Middlesex, State of New Jersey, that:

1. Chapter 62, Land Use, shall be and is hereby amended and supplemented as follows, with additions in underline and deletions in strikethrough:

Secs. 62-1728 - 62 ~~1730~~ 1729. Reserved.

Subdivision XXXXII AH-2 Affordable Housing Overlay Development District

Sec. 62-1730.1. Purpose.

The intent of the AH-O Affordable Housing Overlay District is to establish a suitable location within the township for the development of low- and moderate-income housing uses in the form of an inclusionary development. This zoning district will provide realistic opportunities for the construction of low- and moderate-income housing to implement the township housing element and Third Round (1999-2025) fair share plan, which Fair Share Plan has been approved by the

Superior Court following the resolution of the Township's declaratory judgment action (In the Matter of the Application of South Brunswick Township, Middlesex County, Docket No. MID-L-4433-17) which action follows the directive of the Supreme Court's decision in the matter of In re Adoption of N.J.A.C. 5:96 & N.J.A.C. 5:97, 221 N.J. 1 (2015).

The residential gross density shall be guided by the area requirements and bulk standards contained herein, subject to the inclusion of a specified percentage of affordable homes. All development shall further comply with the rules and regulations of the township affordable housing office and the regulations, as applicable, of the COAH (N.J.A.C. 5:91, 5:92, 5:93 and 5:97, et seq.) and the Uniform Housing Affordability Controls (UHAC) (N.J.A.C. 5:80-26.1, et seq.).

Sec. 62-1730.2. Applicability.

The Affordable Housing Overlay Zone shall be applied to Block 80, Lot 3.024, which is shown on the Official Tax Map of the Township of South Brunswick. The Official Zoning Map of the Township of South Brunswick is hereby amended in accordance with the foregoing and is incorporated by reference. For the purpose of permitting the development of a multi-family inclusionary development, the provisions and requirements of the Affordable Housing Overlay Zone shall supersede the provisions and restrictions of the underlying OR (Office Research/Laboratory) Zone district. *The underlying OR Zone District will remain applicable to any use other than a multi-family inclusionary development.* In the event of a conflict between the provisions of this section and other sections of the Township development regulations with respect to the development of market-rate townhouses and affordable housing, the provisions of this Affordable Housing Overlay Zone shall govern.

Sec. 62-1730.2.A. Affordable Housing Requirements.

1. *Pursuant to the Uniform Housing Affordability Controls ("UHAC"), the affordable units on site shall be restricted to eligible low-income and moderate-income households for a minimum of thirty (30) years from the date of their initial occupancy ("Deed - Restriction Period"). Thereafter the municipality's decision as to when and whether to extinguish affordability controls shall be governed by the applicable UHAC provisions.*
2. *The affordable units shall comply with the phasing of market housing and affordable housing pursuant to N.J.A.C. 5:93-5.6(d), and in accordance with the following schedule:*

<u>Minimum Percentage of Low and Moderate Income Units Completed</u>	<u>Percentage of Market Rate Housing Units Completed</u>
0	25
10	25 + 1 unit
50	50
75	75
100	90
	100

3. *The affordable units shall comply with the UHAC bedroom distribution requirements, N.J.A.C. 5:80-26.3(b), as follows. For each bedroom type, the units shall be proportionally distributed between low-income households and moderate-income households in accordance*

with the percentages of such units in the overall number of affordable units referenced above.

- a. At least 30 percent of all low- and moderate-income units are two bedroom units;
- b. At least 20 percent of all low-income and moderate-income units are three bedroom units;
- c. The remainder, if any, may be allocated at the discretion of the developer as two or three bedroom units.

4. The affordable units shall otherwise comply with the Township's proposed affordable housing ordinance submitted to the Middlesex County Superior Court as part of its March 12, 2019 Housing Element and Fair Share Plan.

5. Instead of providing very-low income units on site, a contribution may be made in an amount between \$17,500.00 to no more than \$20,000.00 per bedroom, said amount to be determined by the Township and ARC of Middlesex, to subsidize the construction of a four (4) bedroom group home proposed by ARC, for a total contribution not to exceed \$80,000. The contribution shall be due upon the issuance of the 50th Certificate of Occupancy and shall be paid into the Township's affordable housing Trust Fund for specific use by ARC to create the four bedroom group home. The four (4) bedroom group home shall be in addition to the twenty-three (23) percent of units produced on site required to be affordable. Including those units, a total of thirty-four (34) affordable units will be created or assisted in financing as a result of this development, of which four (4) will be very-low-income provided through the ARC of Middlesex, eleven (11) will be low-income on-site units, and nineteen (19) will be moderate-income on-site units. The thirty (30) on-site units will be required to comply with the affordability average required pursuant to N.J.A.C. 5:80-26.1 et. seq.

Sec. 62-1730.3. Uses permitted.

- (1) The following uses are permitted in the AH-2 Affordable Housing Overlay Development District:
 - (a) _____ Townhouse attached dwellings.
- (2) A "townhouse attached dwelling" shall be defined as a residential structure with common walls, without common ceilings or floors, consisting of three or more dwellings.

Sec. 62-1730.4. Accessory uses and structures permitted.

The following accessory uses and structures are permitted in the AH-2 Affordable Housing Overlay Development District:

- (1) Home occupations and home professional offices, as defined and regulated by the provisions in this chapter.

- (2) Signs, as regulated in this chapter.
- (3) Fences, as regulated in this chapter.
- (4) Patios and decks, as regulated by this chapter.
- (5) Certain authorized improvements on common area property, as described in 62-1145 (10) below.

Sec. 62-1730.5. Minimum tract size and open space requirements.

- (1) The minimum tract size for a development in the AH-2 Affordable Housing Overlay Development District shall be 15 acres.
- (2) The property owner shall provide for the establishment of an organization for the ownership and maintenance of any common property and such organization shall be established and regulated by all applicable statutory standards and conditions.
- (3) A perimeter tract buffer shall be required at a minimum width of 50 feet, within which no building improvements shall be permitted, except as provided for in §62-1730.7 below.
- (4) *“Open Space” shall include the stormwater basin and the entirety of the buffer area with the total area of any encroachments and individual lot areas deducted from the total area of the buffer. A minimum of 25% Open Space shall be maintained for the entire tract.*

Sec. 62-1730.6. Area, yard, density and locational requirements for residential development.

- (1) For the purpose of determining gross residential density, the total tract of land shall be considered.
- (2) The gross residential density shall not exceed seven (7) units per acre, *with no more than 129 total units being permitted in the zone.*
- (3) Twenty-three (23) percent of the units produced shall be set aside for low- and moderate-income housing and shall comply with all other applicable provisions of N.J.A.C. 5-97 and the Uniform Housing Affordability Controls (N.J.A.C. 5:80-26-1 et seq.).

(4) If townhouse dwellings are to be constructed and sold on fee-simple lots, the following area and dimensional requirements shall apply:

Market-Rate Units

(a) <u>Minimum Lot Area:</u>	<u>2,340 square feet</u>
(b) <u>Minimum Lot Width:</u>	<u>26 feet</u>
(c) <u>Minimum Lot Depth:</u>	<u>90 feet</u>

Low- and Moderate-Income Units

(a) <u>Minimum Lot Area:</u>	<u>1,260 square feet</u>
(b) <u>Minimum Lot Width:</u>	<u>14 feet</u>
(c) <u>Minimum Lot Depth:</u>	<u>90 feet</u>

(5) Setback and additional requirements for residential use:

(a) Minimum building separation:

<u>Front to Front:</u>	<u>60 feet</u>
<u>Rear to Rear:</u>	<u>40 feet</u>
<u>All other building to building:</u>	<u>25 feet</u>

(b) Minimum Setbacks:

<u>From a street line:</u>	<u>15 feet</u>
<u>From a parking area:</u>	<u>8 feet</u>

(c) Maximum number of attached units per building: 8

(6) No building intended for residential occupancy shall be located within 50 feet of the tract boundary line, however, building lot lines may extend into the perimeter tract buffer area provided that no building improvements are located therein.

(7) Common area property may contain certain improvements, such as underground utility lines, stormwater management features, decks/patios, landscaping, signage, walking paths and sidewalks.

(8) No residential building or structure shall exceed 40 feet or 2 1/2 stories in height, except as regulated by the height exception provisions of this chapter.

(9) All provisions of the Residential Site Improvement Standards (RSIS) shall be applicable within the AH-2 Affordable Housing Overlay District.

(10) Impervious Coverage. A maximum of 50% impervious coverage shall be permitted for the entirety of the tract.

(11) Building Coverage. A maximum of 25% building coverage shall be permitted for the entirety of the tract.

Sec. 62-1730.7. Miscellaneous requirements.

(1) The installation of signs shall comply with regulations contained in Article IV, Division 7, §62-1816 thru 1823

APPENDIX E

● **Richard A. Alaimo Associates** ●

200 High Street, Mt. Holly, NJ 08060 Tel: (609) 267-8310 Fax: (609) 845-0300
2 Market Street, Paterson, NJ 07501 Tel: (973) 523-6200 Fax: (973) 523-1765

REVIEW MEMORANDUM

TO: Bryan Bidlack, Director of Planning and Community Development
Township of South Brunswick

FROM: Wayne D. Simpson, P.E., Senior Associate

RE: Township of South Brunswick
Carnegie Crossing
(*South Brunswick Township, Block 80, Lot 3.024*)
Our File No. M-301-076

DATE: August 7, 2019

This review is performed under protest, as permitted by the New Jersey Supreme Court in So. Burlington County N.A.A.C.P. v. Mount Laurel Twp., 92 N.J. 158 (1983) (Mount Laurel II). It is done only to comply with the court's order of November 17, 2017, in In the Matter of the Application of the Township of South Brunswick, County of Middlesex, and the associated Builder's Remedy suits/claims, consolidated for purposes of handling under Docket No. MID-L-4433-17. The Township of South Brunswick and the Planning Board of the Township of South Brunswick continue to assert their on-going objection to the court's finding of bad faith, revocation of temporary immunity, determination of the Township's fair share obligation, the grant of Builder's Remedy suit/claims as well as the process outlined in the court's November 17, 2017 order on how such suits/claims must be handled. The Township and Planning Board reserve all rights they may have to contest any and all rulings by the court as well as all such suits/claims for Builder's Remedy relief by way of further motion and/or appeal, and nothing contained herein is intended to nor shall it be construed to waive any and all such rights.

As requested, we have reviewed the following revised plans, prepared by Najarian Associates, Job No. 7310, for approval:

- Cover Sheet, Sheet No. 1 of 18, revised May 17, 2019.
- General Notes, Sheet No. 2 of 18, revised May 17, 2019.
- Utility Plan-1, Sheet No. 6 of 18, revised May 17, 2019.

Page 1 of 4

● **CONSULTING ENGINEERS** ●

Civil • Structural • Mechanical • Electrical • Environmental • Planners

● **Richard A. Alaimo Associates** ●

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- Utility Plan-2, Sheet No. 7 of 18, revised May 17, 2019.
- Utility Plan-3, Sheet No. 8 of 18, revised May 17, 2019.
- Road A Profile, Sheet No. 9 of 18, revised May 17, 2019.
- Road B Profile-1, Sheet No. 10 of 18, revised May 17, 2019.
- Road B Profile-2, Sheet No. 11 of 18, revised May 17, 2019.
- Road C & D & E Profile, Sheet No. 12 of 18, revised May 17, 2019.
- Construction Details-3, Sheet No. 15 of 18, revised May 17, 2019.
- Construction Details-4, Sheet No. 16 of 18, revised May 17, 2019.
- Construction Details-5, Sheet No. 17 of 18, revised May 17, 2019.

The applicant is still proposing to construct and connect 105 three-bedroom units and twenty-four two-bedroom units for a total of 129 townhouse units into the Township's water and sanitary sewer systems.

The project still consists of a proposed on-site gravity sanitary sewer system, which will flow into an on-site pumping station. The proposed pumping station has been shifted on-site and is now proposing to direct the flows into the existing sanitary sewer main, located at the intersection of Ridge Road and Schalks Crossing Road. A doghouse manhole is proposed for this connection. ***The sewage will eventually flow into the Ridge Road Interceptor within the Stony Brook Sewerage Authority drainage basin.***

The applicant is proposing to extend the water distribution system through the site to service the townhomes. There are two sources proposed, one from the twelve inch water main within Independence Way and the other from twelve inch water main within Ridge Road. The majority of the proposed system shall be looped with the exception of four small dead-ends. The dead-end mains will serve fewer than twenty residential connections. They are therefore in compliance with the RSIS requirements.

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Civil • Structural • Mechanical • Electrical • Environmental • Planners

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The applicant has acknowledged and will perform the requested downstream sanitary sewer system capacity study to determine the inflow/infiltration deficiencies. However, they have not agreed to a form of compensation for the downstream connections. They propose to evaluate their options once the study is completed. This will be acceptable so long as the form of compensation is in compliance with Township Ordinance 2018-28.

It must be considered that the water system's available source capacity can only be determined at the time application is made to the Bureau of Water System Engineering. Also, for the downstream sewage collection system, it must be noted that the Ridge Road Interceptor has had overflows reported and that capacity will need to be made available for the expected sewage flows in accordance with South Brunswick Township Ordinance 2018-28.

The proposed water distribution system will be located within the roadways, except for approximately 100 feet of water main, which is proposed to connect into Ridge Road. The sanitary sewer system will remain within the roadways, except for the force main, which appears to be located within the Ridge Road right-of-way. These on-site roads are proposed to be private roads, but the applicant is proposing a blanket easement to cover all the utilities. If the blanket easement is only to cover the utilities located within the private roadways, then dedicated easements will be required for the water main noted above and the force main, if they are found to be outside the Ridge Road right-of-way.

The plans have been stamped "***Not Approved, Revise & Resubmit***". Therefore, we do not recommend approvals at this time. The applicant should revise the plans to conform to the comments noted on the attached marked-up plans and submit six (6) copies of the above listed sheets for approval.

A TWA permit will be required for this application and has been acknowledged by the applicant. The TWA application package should be included with the revised plans.

A BWSE permit will be required for this application and has been acknowledged by the applicant. The BWSE application package should be included with the revised plans.

The applicant will be required to provide the legal descriptions and exhibit plans for all the water and sanitary sewer easements, including the blanket easement, prior to our recommending final approvals.

● **CONSULTING ENGINEERS** ●

Civil • Structural • Mechanical • Electrical • Environmental • Planners

● **Richard A. Alaimo Associates** ●

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Estimated Water and Sewer Flows

Water:

- Townhomes:
 - Three-bedroom units:
105 units @ 210 gpd/unit 22,050 gpd
 - Two-bedroom units:
24 units @ 150 gpd/unit 3,600 gpd
- Water Flows 25,650 gpd**

Sewer:

- Townhomes:
 - Three-bedroom units:
105 units @ 300 gpd/unit 31,500 gpd
 - Two-bedroom units:
24 units @ 225 gpd/unit 5,400 gpd
- Sewer Flows 36,900 gpd**

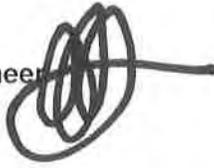
Performance bond and connection fee estimates will be calculated after plan approval is recommended.

WDS/CFC/das
Enclosures

cc/enc: Richard A. Alaimo, Jr., P.E., C.M.E., Associate, RAAA
Craig F. Connolly, Senior Project Manager, RAAA



MEMO TO: Bryan Bidlack – Director of Planning

FROM: David J. Samuel, P.E. – Township Engineer 

DATE: September 9, 2019

SUBJECT: K. Hovnanian Shore Acquisitions, LLC
Preliminary and Final Major Subdivision (1st Review)
Block 80; Lot 3.024
South Brunswick File No.: 19-021
Our File No.: PSOP0080.05/600.01/02

In accordance with your authorization, our office has reviewed the following plans and reports submitted in support of the above referenced project:

- Preliminary and Final Subdivision Plans, as prepared by Najarian Associates, Raymond R. Papa, P.E., dated February 4, 2019 and last revised May 17, 2019,
- RSIS Compliance Summary, as prepared by Najarian Associates, Raymond R. Papa, P.E., dated May 21, 2019,
- Tree Removal Plan, as prepared by Najarian Associates, Raymond R. Papa, P.E., dated February 4, 2019 and last revised May 17, 2019,
- Narrative Summary of proposed development, as prepared by K. Hovnanian, David B. Fisher, V.P., dated February, 2019 and last revised July 10, 2019,
- Architectural Plan Exhibit for Carnegie Crossing, as prepared by K. Hovnanian, dated January, 2019,
- Architectural Plans for Carnegie Crossing (Bryn Mawr model, last revised June 20, 2017; Howard/Haverford model, last revised June 20, 2017; Lily (Coah) model, last revised August 28, 2017), as prepared by K. Hovnanian, Dawn B. Korbek, RA, AIA,
- Environmental Impact Statement, as prepared by Najarian Associates, Georgia Marino, Sr. Environmental Scientist, dated February, 2019,
- Stormwater Management Report, as prepared by Najarian Associates, Peter A. Ciliberto, P.E., dated February 4, 2019 and last revised May 17, 2019,
- Sanitary Sewer and Potable Water Summary, as prepared by Najarian Associates, Raymond R. Papa, P.E., dated February 15, 2019,
- Sanitary Sewer and Potable Water Summary, as prepared by Najarian Associates, Raymond R. Papa, P.E., dated May 20, 2019,
- Recycling Plan, as prepared by K. Hovnanian, David B. Fisher, V.P., dated January, 2019,
- Preliminary Subsurface Investigation, as prepared by Melick-Tully and Associates, P.C., Kimberly A. Tully, P.E. and Mark R. Denno, P.E., dated December 7, 2016,
- Supplemental Subsurface Investigation, as prepared by Melick-Tully and Associates, P.C., Kimberly A. Tully, P.E. and Mark R. Denno, P.E., dated May 15, 2019,
- Phase I Environmental Site Assessment/Preliminary Assessment Report/Limited Phase II Site Investigation Report, as prepared by Ransom Environmental, dated December 19, 2016,



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- Results of Subsurface Investigation, as prepared by Ransom Environmental, dated March 22, 2019,
- Traffic Impact Assessment Report, as prepared by McDonough & Rea Associates, John H. Rea, P.E., dated February 11, 2019,
- Boundary Survey, as prepared by Najarian Associates, dated February 15, 2019,
- Firetruck Turn Radius Plan, as prepared by Najarian Associates, Raymond R. Papa, P.E., dated May 20, 2019,
- Site Plan, as prepared by Najarian Associates, Peter A. Ciliberto, P.E., dated February 4, 2019 and last revised May 17, 2019,
- NJDEP Letter of Interpretation: Presence/Absence Determination, dated May 6, 2015,
- RSIS Interpretation Letter, as prepared by NJ Department of Community Affairs, John R. Lago, dated April 9, 2019,
- Response to Review Comments, as prepared by K. Hovnanian, David B. Fisher, V.P., dated May 23, 2019,
- Response to CME Associates Engineering Review Comments, as prepared by Najarian Associates, Raymond R. Papa, P.E., dated May 21, 2019,
- Response to CME Associates Traffic Review Comments, as prepared by McDonough & Rea Associates, dated May 23, 2019,
- Response to South Brunswick Planning Department Review Memo, as prepared by K. Hovnanian/Najarian Associates, dated May 21, 2019,

Based on our review of the aforementioned plans and documents, we offer the following comments:

1. This review is performed under protest, as permitted by the New Jersey Supreme Court in So. Burlington County N.A.A.C.P. v. Mount Laurel Twp., 92 N.J. 158 (1983) (Mount Laurel II). It is done only to comply with the court's order of October 21, 2016, in In the Matter of the Application of the Township of South Brunswick, County of Middlesex, and the associated Builder's Remedy suits/claims, consolidated for purposes of handling under Docket No. MID-L-3878-15. The Township of South Brunswick and the Planning Board of the Township of South Brunswick continue to assert their on-going objection to the court's finding of bad faith, revocation of temporary immunity, determination of the Township's fair share obligation, the grant of Builder's Remedy suit/claims as well as the process outlined in the court's October 21, 2016 order on how such suits/claims must be handled. The Township and Planning Board reserve all rights they may have to contest any and all rulings by the court as well as all such suits/claims for Builder's Remedy relief by way of further motion and/or appeal, and nothing contained herein is intended to nor shall it be construed to waive any and all such rights.
2. Our office has prepared the attached "Technical Engineering Review" based upon the plans and reports submitted and listed above. The comments contained in this review should be addressed by the Applicant's engineer in the form of an itemized response letter, revised plans, and reports.



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3. This Technical Engineering Review includes, but is not limited to, comments that are based on the requirements set forth in N.J.A.C 5:21, known as the "New Jersey Residential Site Improvement Standards", herein referred to as the "RSIS".
4. Nearly all of the comments contained in this review concerning the stormwater management measures proposed for the subject site are based on the requirements set forth in N.J.A.C 7:8, known as the "NJDEP Stormwater Management Rules". The RSIS requires full compliance with N.J.A.C. 7:8 by reference. In addition, many of the stormwater management comments are based on the guidelines provided in the New Jersey Stormwater Best Management Practices Manual, herein referred to as the "BMP Manual". It should be noted that the stormwater management measures on the subject site should be designed in accordance with the BMP Manual in order to meet N.J.A.C. 7:8 minimum requirements for stormwater quantity control, groundwater recharge, and stormwater quality treatment. Alternative stormwater management measures may be utilized, but the design engineer must demonstrate that the alternative measures and design will provide all stormwater management performance standards set forth in N.J.A.C. 7:8.
5. A number of comments contained in this review are based on requirements of the Township of South Brunswick Land Use Ordinance. These comments concern site improvement requirements that are not addressed by the RSIS, NJDEP Stormwater Management Rules, or BMP Manual Guidelines, such as requirements for site lighting and requirements for the locations of stormwater management basins. It should be noted that RSIS Section 5:21-1.5(d)(1) states that the RSIS does not limit the powers of the Township to establish requirements for the "layout, arrangement, and location of improvements, shade trees, landscaping, or reservation of areas for public use, pursuant to N.J.S.A 40:55D-38". Accordingly, the Township Ordinance requirements for site lighting and for the locations of stormwater management basins are applicable to this section of the RSIS, and are intended to promote public health and safety for the residents of the proposed development.

Upon receipt of revised plans and reports that address the aforementioned comments, our office will proceed with our review of same.

Should have any questions concerning this matter, please do not hesitate to contact this office.

JBC/KZ
Enclosure

cc: Township File



**TOWNSHIP OF SOUTH BRUNSWICK
K. HOVNANIAN SHORE ACQUISITIONS, LLC**

– TECHNICAL ENGINEERING REVIEW –

September 9, 2019

Our File No.: PSOP0080.05/600.01/02

A. SITE GRADING AND GENERAL COMMENTS

1. An Engineer's Bond Estimate for the proposed site improvements should be submitted for the project.
2. The Applicant will be required to obtain and forward to the Township and our office final approvals or letters of no interest from the following Government Agencies:
 - a. Freehold Soil Conservation District,
 - b. South Brunswick Township Soil Placement or Removal Permit,
 - c. Middlesex County Planning Board,
 - d. Delaware and Raritan Canal Commission,
 - e. NJDEP – Treatment Works Approval,
 - f. NJDEP – Bureau of Safe Drinking Water,
 - g. NJPDES – Construction Activity Stormwater Discharge Authorization,
 - h. Township Stormwater Maintenance Agreement (Recorded Copy),
 - i. Stormwater Management Maintenance Plan (Recorded Copy).
3. In accordance with the requirements detailed in the Township Land Use Ordinance for final major subdivision approval, the following certifications from Township agencies should be submitted:
 - a. Tax Collector,
 - b. Township Engineer,
 - c. Township Clerk,
 - d. Tax Assessor.
4. The Applicant should arrange with all applicable utility companies for the installation of their underground supply lines and service connections. A written instrument from each serving utility company should be submitted to our office, which shall evidence full compliance with Township Ordinance requirements.
5. Dimensional Plans should be submitted for the project. The dimensional plans should include, but not limited to the following items:
 - a. Front, side, and rear setback lines,
 - b. Offset dimensions from proposed buildings to all property lines,
 - c. Offset dimensions from proposed buildings to adjacent street and parking area curb lines,
 - d. Offset dimensions from street curb lines and property lines to retaining walls,



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- e. Width dimensions for sidewalks and parking lot islands,
 - f. Cartway width dimensions for all proposed streets,
 - g. Intersection curb radii,
 - h. Traffic control signage, striping, etc.
6. All existing and proposed easements should be shown on the plans and legal descriptions of proposed easements should be forwarded to our office for review.
 7. Our office would defer to the report of the Township Planner for the review of the Zoning Ordinance requirements for the proposed project.
 8. The grading plans should be revised to provide additional proposed spot elevations at the following locations in order to document compliance with grading standards and to document positive drainage patterns:
 - a. Along the top of all proposed landscaped berms,
 - b. Between contours with the same elevation,
 - c. At all building corners,
 - d. Along the top and bottom of all retaining walls,
 - e. At the corners and walkway intersections for the proposed community garden.
 9. The grading plans should be revised to indicate additional proposed contour lines in order to provide one (1') foot contour intervals for slopes that are less than ten (10%) percent. Proposed contour lines are missing at a significant number of locations.
 10. Additional elevations should be provided for both proposed and existing contours throughout the site.
 11. The proposed grading within a significant number of lawn areas and drainage swales result in slopes that are less than the Township Ordinance minimum 2% for lawn areas and should be revised.
 12. The proposed grading along the tract boundary to the northwest of building #1 appears to create a low point in drainage and should be further reviewed.
 13. The proposed spot and contour elevations along the front and rear of building #20 are inconsistent with the proposed garage floor and top of block elevations indicated for the building and should be further reviewed.
 14. The proposed spot and contour elevations along the front and rear of building #12 are inconsistent with the proposed garage floor and top of block elevations indicated for the building and should be further reviewed.



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15. There are a number of locations where proposed elevations are obscured by linework, symbols, etc., that need to be made legible.
16. The proposed grading of the grass swale along the Ridge Road site frontage results in a slope that is less than the minimum 2% required and should be revised.
17. The proposed grading within the Road "E" cartway should be further reviewed for consistency between the grading plan and roadway profile for same.
18. The proposed grading within several paved areas result in slopes that are less than the RSIS required minimum 0.5% for paved areas and should be revised.
19. Intersection sight triangles and horizontal curve sight triangles should be indicated on the plan in accordance with current AASHTO requirements, as referenced in the RSIS.
20. A pipe crossing schedule should be provided on the utility plans which indicates the locations and elevations where sanitary sewers/laterals, water mains/services, storm sewers/leader drains cross. Corresponding vertical clearance dimensions should also be indicated for each pipe crossing. Pipe encasements, cradles or support blocks should be provided where vertical clearance between pipes is less than 18".
21. Based on the number of proposed dwelling units (129 townhomes), the following RSIS street classifications should be assigned based on average daily traffic for townhomes of 5.9 trips per dwelling unit:
 - a. Road A – Residential Access (<1500 ADT), High Intensity Development (>8 D.U./Acre), with non-parallel parking,
 - b. Road B (stations 0+00 to 4+50) – Residential Access (<1500 ADT), High Intensity of Development (>8D.U./Acre), with non-parallel parking,
 - c. Road B (stations 4+50 to 15+50) – Multifamily Access Cul-de-Sac (<1000 ADT), High Intensity Development (>8D.U./Acre), with non-parallel parking,
 - d. Road C – Residential Access (<1500 ADT), High Intensity Development (>8 D.U./Acre), with non-parallel parking,
 - e. Road D – Multifamily Court (<300 ft. long), High Intensity Development (>8D.U./Acre), with no parking,
 - f. Road E (stations 0+00 to 1+50) – Residential Access (<1500 ADT), High Intensity of Development (>8D.U./Acre), with non-parallel parking,
 - g. Road E (stations 1+50 to 3+99) – Multifamily Court (<300 ft. long), High Intensity Development (>8D.U./Acre), with non-parallel parking.

Accordingly, the design of the aforementioned roadways, including cartway widths, curbs, sidewalks, horizontal and vertical geometry, and pavement structures should meet RSIS requirements based on the indicated street classification.



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22. The proposed thirty (30) affordable townhouse units require 1.8 or 1.9 parking spaces, exclusive of the 0.5 required guest parking spaces. However, only one (1) dedicated parking space is provided for each affordable unit. The Applicant's engineer has responded that *"Each affordable unit is only required to have one dedicated parking space, additional spaces are available that are not dedicated."* Accordingly, the Applicant's engineer should provide the applicable rule or regulation indicating same. Our office recommends that additional on-street parking spaces be provided in order to meet the resident parking demands of the affordable units.

B. SANITARY SEWER SYSTEM

1. A NJDEP Treatment Works Approval will be required for the proposed improvements.
2. The sanitary sewer report should be revised to include calculations that demonstrate the adequacy of the existing sanitary sewer downstream of the proposed site improvements to accept the increased sewage flows. It should be noted that verification of downstream sewer system capacity is required by the NJDEP for issuance of a sanitary sewer extension permit. Our office will defer the review of the required downstream capacity calculations to the Township Sewer Department Supervisor and Township Sewer Consulting Engineer.
3. An enlarged plan, details, and calculations should be provided for the proposed sanitary pump station.
4. The utility plans should be revised to include required information for all proposed sanitary sewer laterals from each building, including pipe diameter, material, slope and upper/lower invert elevations. In addition, all required clean-out locations should be provided, including rim and invert elevations for same.

C. WATER DISTRIBUTION SYSTEM

1. The potable water system report should be revised to include the results of a hydrant flow test and hydraulic calculations verifying that the proposed water system will be capable of providing the needed fire flow (NFF) plus the required maximum daily residential demand simultaneously, in accordance with RSIS requirements. The hydrant flow test and hydraulic calculations shall be required in order to verify that the simultaneous NFF and maximum domestic flows are available from the Township water distribution system at each proposed building location and with a minimum 20 psig residual pressure.
2. The potable water report should be revised to include projected domestic water demand calculations, based on the NJDEP gpd flow/unit values for townhouses, as provided in the RSIS.



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D. STORM DRAINAGE SYSTEM

1. The maintenance responsibility of the stormwater control structures and detention/infiltration facilities relative to the project shall be outlined in a Two-Party Maintenance Agreement between the Township and the Applicant.
2. The onsite drainage areas on the Pre-development Drainage Area Map have been revised to model existing conditions accurately. However, the revised drainage map now shows 0.78 acres of impervious and 2.91 acres of pervious surface draining from "The Point" to the existing 18" culvert on Ridge Road. These drainage areas drain to an existing recharge trench (11' wide x 4' deep with 2 – 30" perforated pipes) along the north and eastern property line of the adjacent property. Revise pre-development calculations accordingly.
3. In accordance with N.J.A.C. 7:8:5-6(a)3, when computing pre-construction stormwater runoff, the design engineer shall account for all significant land features and structures such as depressions, culverts, etc. that may reduce pre-construction stormwater runoff rates and volumes. The pre-development analysis should be revised to eliminate offsite runoff from the adjacent property (The Point).
4. As per RSIS requirements, groundwater mounding impacts must be assessed as required by N.J.A.C. 7:8-5.4(a)2.iv, and must include an analysis of the reduction in permeability rate when groundwater mounding is present. The groundwater analysis should assess the impact on the groundwater recharge BMP on the adjacent property (The Point). The mounding impact analysis should be revised accordingly.
5. Based on the soil permeability rates obtained in test TP-3, the infiltration basin has been designed based on a permeability rate of 4.3 in/hr. Test pit 102 shows the soil horizon from 54"-72" (elev. 85.64 – 84.14) with a permeability rate of 0.96 in/hr. This soil horizon will need to be removed down to elevation 84.14 and replaced with K4 material. A note indicating this requirement should be provided on the typical infiltration basin detail.
6. The estimated seasonal high groundwater table elevation and bottom of test pit elevation should be provided on the plans for all test pit locations as shown Plate 2 of the Melick-Tully Supplemental Investigation. Tp-3, TP-4, MW-A, B-1 and B-3 are not located on the plans.
7. The Applicant's engineer should provide a certification signed and sealed by a Professional Engineer, licensed in the state of NJ, stating that the infiltration basin has been designed in accordance with N.J.A.C. 7:20.
8. As per RSIS requirements, all major projects must address standards for soil erosion control. The Applicant's engineer should provide an off-site stability analysis to document stability downstream of the discharge point.



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9. The drainage report should be revised to include calculations to demonstrate that the proposed 12" gate valve will empty the volume of stored stormwater in the infiltration basin / dam from the maximum design storm within 72 hours. In addition, the invert of the valve is noted as elevation 86.00 but the bottom of the infiltration basin is elevation 87.00. Revise the outlet structure detail accordingly.
10. The infiltration basin detail on sheet 14 should be revised to specify the maximum percentage of fines (15%) in the sand, the minimum required tested permeability of the sand (20 in/hr), filter fabric along the sides of the basin and the elevation of the bottom of the soil to be replaced with sand. In addition, the high groundwater elevation and the 2-yr, 10-yr, 100-yr and emergency spillway maximum water elevations should be shown on the detail.
11. As required by the Township Ordinance, the edge of the design high water for infiltration basins shall be set back 100 ft. from existing or proposed dwelling units. The proposed infiltration basin is not in accordance and should be revised accordingly.
12. The grading plan (sheet 5) should be revised to note that the fifteen (15) foot wide top of bank surrounding the basins and the eighteen (18) foot access road should be stabilized with grass pavers.
13. The emergency spillway construction detail provided on sheet 14 should be revised to show the length of spillway, invert elevation, maximum water surface elevation, top of berm elevation and freeboard provided.
14. In accordance with the Township Ordinance, the basement floor elevations for all structures must be one (1) ft. above the 100-year water surface elevation in the basin. All adjacent proposed structures should be further reviewed to ensure this requirement is met.
15. As per the requirements of the Township Ordinance, the top of the excavation or toe of the outside slope of an infiltration basin shall be set back a minimum of twenty-five (25') feet from adjoining nonresidential property lines and fifty (50') feet from an adjoining residential property line. The setback lines should be dimensioned on the plans. The proposed infiltration basin is not in accordance and should be revised accordingly. The Applicant is requesting a waiver from this requirement. Our office does not recommend the granting of this waiver request.
16. Construction details of the overflow grate should be provided to document compliance with design criteria (spacing between bars, material requirements, loads requirements, removability, etc.), N.J.A.C. 7:8-6.2.
17. In accordance with RSIS requirements, to the maximum extent possible, stormwater quantity control, water quality and groundwater recharge standards shall be met by incorporating nonstructural stormwater management strategies into the design. The Applicant's engineer states that the plan proposes the use of porous pavement for driveways and parking spaces,



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and bioswales along Ridge Road with an underdrain. Bioretention swales are considered structural measures and the use of porous pavement should be evaluated to document soil conditions to support the use of porous pavement. The plans should indicate proposed areas for porous pavement and testing should be conducted. The Applicant's engineer should further review this issue.

18. The utility plans should be revised to indicate the pipe slopes consistent with the pipe calculations for the following pipe reaches:
 - a. Inlet 1-8 to Inlet 1-7,
 - b. MH 2-1 to FES 2-0,
 - c. Inlet 1-1 to FES 1-0,
 - d. OCS to DB 1-1.
19. The capacity analysis of the existing 18" diameter culvert on Ridge Road was modeled in the pre-development analysis but it was not included in the post-development analysis. The post-development analysis should be revised accordingly to demonstrate that the existing culvert has adequate capacity to convey the proposed 100-yr outflow from the infiltration basin.
20. The rip-rap conduit outlet protection detail should be revised to indicate grouted rip-rap in accordance with Township design standards.
21. A 24" diameter RCP pipe is proposed from the OCS to inlet DB 1-1, but the 100-yr outflow from the basin is only 2.69 cfs. The downstream culvert consists of an 18" diameter pipe, therefore the applicant should consider using an 18" diameter pipe, which will provide enough capacity for the peak flow. Revise plans and report accordingly.
22. Structural calculations for any oversized drainage structures and the outlet structures should be provided. A note should be added to the plan indicating same.
23. The proposed building roof leader drain for Building 10 on sheet 7 shows an 8" PVC pipe at a 0.1% slope but the roof leader calculations show an 8" pipe at a 1.0% slope. Revise plans for consistency with calculations. A note should be included in the utility plans stating that all roof drains should be a minimum 8" PVC pipe at a 1.0%.
24. The existing catch basin at the intersection of Independence Way and Road E will be converted to an E inlet. A new catch basin should be provided at the low point between the PC and PT along the curb line of Independence Way.
25. The Outlet Control Structure detail provided on sheet 14 should be revised for consistency with the information provided in the drainage report.



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26. In accordance with the BMP Manual, the maximum design volume to be infiltrated is the volume generated by the water quality design storm. The proposed infiltration basin is not in accordance and should be revised accordingly.
27. In accordance with the BMP Manual, the vertical distance between an infiltration basin bottom and the water surface elevation for the water quality storm must be no greater than 2 ft. The proposed infiltration basin is not in accordance and should be revised accordingly.
28. In accordance with RSIS requirements, a stormwater maintenance plan (SWMP) should be prepared for the BMPs included in the stormwater management plan. The maintenance plan should be prepared in accordance with N.J.A.C. 7:8-5.8 and should include the following:
 - a. The SWMP should include a site map showing the location of all BMPs and labeled.
 - b. The SWMP should include a note requiring that the SWMP and any future revisions must be recorded upon the deed of record of Block 80, Lot 3.024.
 - c. The SWMP should include hydrologic design targets (pre-construction subsoil permeability rate, post-construction permeability rate, design detention time, design drain time, elevation of the seasonal high water table and design TSS removal rate); hydraulic design targets (rainfall depth, runoff volume, peak flow rate, water surface elevation for the WQ, 2-yr, 10-yr, 100-yr, and the emergency spillway storm events); and size and invert elevation for each outflow device for the proposed infiltration basin.
 - d. The SWMP should include an inspection checklist, a checklist of preventive maintenance actions and a checklist of corrective maintenance actions.

E. LANDSCAPING AND LIGHTING

1. In accordance with the Township Ordinance, a maximum of 0.5 foot-candle lighting intensity shall be provided along all property lines. Additional point to point lighting values should be indicated on the plans in order to verify compliance with this requirement.
2. In accordance with the Township Ordinance, a minimum of 1.0 foot-candle lighting intensity shall be provided along the entire length of sidewalks and pedestrian walkways. Additional point to point lighting values should be indicated on the plans in order to verify compliance with this requirement.
3. The lighting within the proposed cul-de-sac bulb should be revised to provide a minimum 0.5 foot-candle lighting intensity.
4. Lighting should be provided for the proposed pedestrian walkway around the perimeter of the site.



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5. The quantities and plant key identifications of typical building unit plantings are inconsistent between the various building planting plans and planting schedules for same and should be further reviewed.
6. Plant key identifications are missing from the 108 ft. wide building planting schedule and should be provided.
7. The entry sign landscape detail should be revised to indicate the information and quantity for the GC plantings.

F. ROADWAY IMPROVEMENTS AND MISCELLANEOUS

1. In accordance with the Township Circulation Master Plan, Ridge Road is classified as an existing primary collector with a required right of way width of seventy-two (72') feet and a required fifty-two (52') cartway width. The plans should be revised to indicate the required right of way half-width dedication and required half-width road widening, curb and sidewalk along the Ridge Road site frontage.
2. The following addition Township standard detail should be provided on the plans:
 - a. Thrust Block Detail and Schedule.
3. The 3 Rail – Split Gate and Fence with Safety Mesh detail should be revised to identify the type and size of safety mesh proposed.

G. FINAL PLAT – MAJOR SUBDIVISION

1. Confirm all assigned Lot and Block numbers with the South Brunswick Tax Assessor.
2. Provide approved road names for all private roads.
3. Add monument at terminus of course number four. All other found corners are suffice in accordance with "Map Filing Law".
4. Remove conflicts between required dimensions and road centerline stationing.
5. Provide offset distances between proposed buildings and private roads.
6. Detail and dimension sight triangle easements.
7. Label block limits where the block limit is obscured by the match line.



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8. Add block limit on sheet 1 between blocks 80.02 and 80.03.
9. Revise Surveyor's and Municipal Engineer's certification language to current standard.

Bignell Planning Consultants, Inc.

**424 AMBOY AVENUE - SUITE 202
WOODBIDGE, NJ 07095
PHONE: (732) 636 - 0200
FAX: (732) 218 - 5975
MAIL@BIGNELLPLANNING.COM**

September 10, 2019

Bryan B. Bidlack, PP, Township Planner
South Brunswick Township Planning Department
540 Ridge Road
Monmouth Junction, NJ 08852

Re: K. Hovnanian Shore Acquisitions, LLC
Preliminary & Final Major Subdivision
Preliminary and Final Site Plan
Required: Use Variance, Bulk Variances,
Preliminary & Final Site Plan)
Block 80, Lot 3.024
Ridge Road & Route 1
Application #(Concept/Settlement)
2nd Planning Review

Dear Sir:

This office has received a subdivision plan, (±18 sheets) revised through: May 17, 2019, a tree removal plan, revised through: June 20, 2019, a property survey, dated: February 15, 2019, a firetruck turning plan, dated: February 4, 2019, a site plan (1 sheet) revised through: May 17, 2019, architectural sketches, dated: January 2019, an environmental impact report, dated: February 2019, a recycling report, dated: January 2019, a development narrative statement, dated: February 2019, a traffic impact report, dated: February 11, 2019, a Phase I Environmental Site Assessment, dated: December 19, 2016, a letter from the applicants attorney, dated: July 16, 2019, a Response or Review Comments letter, dated: May 23, 2019 relative to this application and offers the following planning comments for your consideration.

This review is performed under protest, as permitted by the New Jersey Supreme Court in So. Burlington County N.A.A.C.P. v. Mount Laurel Twp., 92 N.J. 158 (1983) (Mt. Laurel II). It is done only to comply with the court's order of October 21, 2016, in In the Matter of the Application of the Township of South Brunswick, County of Middlesex, and the associated Builder's Remedy suits/claims, consolidated for purposes of handling under Docket No. MID-L-3878-15. The Township of South Brunswick and the Planning Board of the Township of South Brunswick continue to assert their on-going objection to the court's finding of bad faith, revocation of temporary immunity, determination of the Township's fair share obligation, the grant of Builder's Remedy suits/claims as well as the process outlined in the court's October 21, 2016, order on how such suits/claims must be handled. The Township and Planning Board reserve all rights they may have to contest any and all rulings by the court as well as all such suits/claims for Builder's Remedy relief by way of further motion and/or appeal, and nothing contained herein is intended to nor shall it be construed to waive any and all such rights.

1. Site Description

The subject property is an irregular, 19.35-acre tract of land containing one lot: Lot 3.024. The lot is located on the south side of Ridge Road and has frontage along the east side of Independence Way, near the intersection with US Route 1. The property is situated in the OP Office Professional Zone and abuts hotel and office developments to the west and south. The lot abuts the "Turnbery" multi-family development to the east. The lot is heavily wooded and has frontage on both the South side of Ridge Road and the east side of Independence Way. The applicant has verified that no wetlands exist on the property.

2. Proposed Development

The applicant has submitted a subdivision plan and site plan to create a 129-unit townhouse development at this location. The subdivision plan shows 129 rectangular "qualifier" parcels corresponding with the footprint of each proposed townhouse unit. The remaining open space area will be divided into three (3) association-owned lots. The townhouses are arranged in multi-unit buildings around a network of curvilinear streets with 3-6 units in each building. No clubhouse or pool is proposed, however; a small tot-lot and stormwater basin is shown on the northern section of the site. Two (2) new driveway connections are proposed and will connect to Independence Way. All internal driveways will be private roads owned by the homeowners' association. No driveway connection is proposed for Ridge Road. The unit mix will contain 99 market-rate and 30 affordable units. All units will be 2.5 stories high with 2 levels of living space and a ½ story attic. Some units will have basements. Market units will be 3-bedroom units. Affordable units will be 2-bedroom and 3-bedroom units. Market units will have a 1-car or 2-car garage and 1-2 driveway spaces. Affordable units will not have garages, but will have one driveway parking space along the frontage of the unit. The landscape plan shows a perimeter buffer area and an assortment of street trees and general landscaping throughout the site.

3. Master Plan Review

The 2001 Master Plan for South Brunswick Township recommends this site for office park use. The 2007 Master Plan Re-examination Report does not alter this recommendation. The proposed development does **not** reconcile with the Township Master Plan.

4. Special Master's Report

This site was submitted subsequent to, and therefore not identified within the September 2016 Special Master's Report. It therefore received no overall project ranking.

5. Zoning Review:

A. Use:

1. This property is located in the Township's O-P Office Professional Zone. Multi-family housing is not a permitted use in this zone. This application would require a use variance (or Zoning Ordinance amendment/Redevelopment Plan adoption) under the Land Development Ordinance of the Township, however;
2. This site was the subject of a builders' remedy lawsuit and was thereby consolidated into Judge Wolfson's October 21, 2016 Case Management Order. With that consolidation, that Middlesex County Superior Court Order (Case Management Order: L-3878-15) deems this a fully conforming/as-of-right application and required the builder to submit building zoning regulations which shall apply to the site. It provides:

“The Builder site plan application shall be deemed a fully conforming ‘as of right’ application in accordance with proposed zoning regulations the Builder shall submit with its site plan submission, which shall be deemed to be the standards applicable to the Builder’s proposed site plan. The Builders are encouraged to incorporate existing Township standards for similar types of housing as is reasonably practicable. The Special Master may make such recommendations as to the proposed zoning regulations as she deems appropriate for the protection of the public health, safety, and welfare and in furtherance of sound land use planning principles. ... Compliance with Residential Site Improvement Standards (“RSIS”) shall be dispositive as to all residential design elements governed by the RSIS.”

3. This property was included in the Township’s 2019 Amended Third Round Housing and Fair Share Plan, revised through: March 12, 2019. That plan (page 90-94) discusses the availability and suitability of this property.

B. Bulk:

1. The Case Management Order encourages the developer to “*incorporate existing Township standards for similar types of housing as is reasonably practicable.*” However, the applicant has not submitted any proposed bulk standards for this development. Sheet 2, Item III shows effective bulk conditions, not standards. No bulk compliance table or chart is provided.
2. The Case Management Order encourages the developer to “*incorporate existing Township standards for similar types of housing as is reasonably practicable.*”
3. **This office believes the following bulk standards should be applied to this development and included as conditions of any approval. Several of the standards below come from the Township’s Zoning Ordinance §62-206(5) et. seq.: Architectural Designs for Multi-Family Housing, and from the proposed bulk conditions on the site.**

DESCRIPTION	RECOMMENDED STANDARD:	PROPOSED	CONFORMITY
MINIMUM FRONT SETBACK	10'	>15'	WOULD COMPLY
MINIMUM SIDE YARD	50' (BUFFER) (PRD-AH & AH DISTRICTS)	50' BUFFER	WOULD COMPLY
MINIMUM REAR YARD	50'	50'	WOULD COMPLY
LOW/MOD SET ASIDE REQUIREMENT	20%	23%	WOULD COMPLY
MINIMUM SEPERATION BETWEEN 3.5-STORY BUILDINGS	30' (\$62-206(5))	30'	WOULD COMPLY
MAXIMUM BUILDING COVERAGE	25% (\$62-206(5))	Tract: 22%	WOULD COMPLY
MAXIMUM IMPERVIOUS (LOT) COVERAGE	50% (PRD-AH & RM3/4 DISTRICTS)	<44.9%	WOULD COMPLY
MINIMUM OPEN SPACE ON TRACT	30% (RM3/4)	>30%	WOULD COMPLY
MAXIMUM BUILDING HEIGHT	3.5 STORIES, 40' (PRD-AH DISTRICT)	2.5 STORY	WOULD COMPLY
BUILDING PERIMETER SETBACK TO PARKING	10' (\$62-206(5))	0' (GARAGES) TBD	WOULD NOT COMPLY
PEDESTRIAN PATHWAYS BTWN BUILDINGS EVERY 175'	6' WIDE (\$62-206(5))	SIDEWALKS PROVIDED; NOT DIMENSIONED	MORE INFORMATION REQUIRED

VEHICLE PATHWAYS BTWN BUILDINGS EVERY 300'	25' WIDE (\$62-206(5))	NOT PROVIDED	MORE INFORMATION REQUIRED
TELECOMMUNICATIONS INFRASTRUCUTRE BUILT IN	BUILT IN (\$62-206(5))	NOT CLEARLY SHOWN UTILITIES UNDERGROUND ON SHEET 2	MORE INFORMATION REQUIRED
TRASH & RECYCLING ENCLOSURES	6' HIGH (\$62-206(5))	PRIVATE STORAGE	NOT APPLICABLE
EACH UNIT STORAGE ON GROUND FLOOR FOR BICYCLES, CARRIAGES, ETC.	50 SF ON GROUND FLOOR (\$62-206(5))	NOT CLEARLY PROVIDED	MORE INFORMATION REQUIRED
EACH UNIT STORAGE SPACE TO MEET HUD STANDARDS	(\$62-206(5))	NOT CLEARLY PROVIDED	MORE INFORMATION REQUIRED
SUFFICIENT LAUNDRY PROVIDED IN COMMON AREAS	(\$62-206(5))	PROVIDED	WOULD COMPLY
MINIMUM PLAY LOT AREA	2,500 SF (\$62-206(5))	NOT DIMENSIONED	MORE INFORMATION REQUIRED
ADEQUATE FIRE AND EMERGENCY ACCESS TO FRONT AND REAR OF ALL MULTI-FAMILY STRUCUTRES	(\$62-206(5))	NO ACCESS TO REAR OF SEVERAL BUILDINGS	WOULD NOT COMPLY MORE INFORMATION REQUIRED
ACTIVE RECREATION AREA INCLUDING POOLS, PLAY-LOTS, PATIO'S, ETC	5,000 SF	1 TOT LOT SHOWN	MORE INFORMATION REQUIRED
MINIMUM CLUBHOUSE AREA	4,000 SF	<4,000 SF	WOULD NOT COMPLY

6. Parking Review

A. Number of Spaces Required for each Townhouse Unit:

- Required: (RSIS) 1-bedroom unit (1.8 spaces) x 0 units
- Required: (RSIS) 2-bedroom (affordable) unit (2.3 spaces) x [24] units
- Required: (RSIS) 3-bedroom unit (2.4 spaces) x [99 + 6] units

B. Parking Requirements for individual (fee simple) townhouse units/properties:

1. Proposed: (76) 3-bedroom units w/ a 2-car garage + 2 private driveway spaces (Market Units)
 Required: 2.4 spaces per each unit
 Provided: (76) 3-bedroom units w/ a 2-car garage + 2 driveway spaces
Complies. All 76 3-bedroom lots providing a 2-car garage and 2-space driveway satisfy the minimum parking requirement for this RSIS format.

2. Proposed: (23) 3-bedroom units w/ a 1-car garage + 1 private driveway spaces (Market Units)
 Required: 2.4 spaces per unit = 55.2 total spaces
 Provided: (23) 3-bedroom units w/ a 1-car garage + 1 driveway space = 46 total spaces on sum of all lots
 Provided: 9 allocated from common parking available
Complies. The deficit of 9 spaces on the 3-bedroom units w/ a 1-car garage + 1 private driveway spaces is satisfied when 9 spaces are allocated from the common parking available.

3. Proposed: (30) affordable units w/ 0-garage + 1 driveway space each (Affordable Units)
 (All of these units have a ground floor bedroom with a closet)
 Required: 2.3 spaces per 2-bedroom unit x 24 units = 55.2 spaces
 Required: 2.4 spaces per 3-bedroom unit x 6 units = 14.4 spaces

Total: 69.6 = 70 spaces

Provided: 30 dedicated driveway + 0 garage parking spaces on these lots/units.

Provided: 40 allocated from common spaces

Provided: The deficit of 40 on-site spaces is satisfied by allocating 40 common spaces on the tract

Complies. All (24) 2-bedroom affordable and (6) 3-bedroom affordable units providing no garage + 1 driveway space satisfy the minimum parking requirement for this RSIS format by utilizing on-site parking and via an allocation of 40 common parking areas.

4. Remaining Common Parking Spaces

Remaining: 66 spaces – 9 spaces – 40 spaces = 17 spaces remaining.

5. Visitor Parking

(Visitor parking is included in the total parking requirement however; all visitor spaces must be in common or accessible locations; See RSIS footnote)

Required: minimum of 0.5 spaces per unit x 129 unit = 66 spaces

Provided: **66 spaces common spaces are not provided in common locations. After 49 of the proposed "common" spaces are allocated to satisfy the RSIS townhouse requirements above, only 17 common spaces remain available.**

Violation.

6. Parking Notes:

A. (Townhouse units with 2-car garages and 2 stacked driveway spaces can-not share "extra" driveway spaces with other units in the parking calculation. Each unit requires 2.4 spaces and receives credit for the spaces provided on its own fee simple parcel. Stacked spaces on fee-simple lots can-not be shared among different owners.

B. (Townhouse units with 1-car garages and 1 driveway space need to have a total of (55) dedicated parking spaces, provided for in a combination of on-lot and on-tract spaces. Common spaces dedicated to fulfill this requirement need to become dedicated spaces to serve these units and cannot be "double counted."

C. Driveways and Parking

Required: 9' x 18' parking stalls for residential uses

Proposed: 9' x 18' generally shown

Complies.

Required: minimum 24' wide aisle for two-way traffic and for 90° parking.

Proposed: 24' wide aisles generally shown

Complies.

Required: no parking area within front, side or rear yard setbacks

Provided: setback provided

Complies.

Required: parking area to be contained with curbing and/or well stops

Proposed: design unclear for front driveway spaces

More information required.

Required: parking rows to be separated from access roads by 10' landscape islands
Proposed: parking has been generally designed to be directly accessible from interior access roads in a townhouse format

Violation.

Required: 30 or more parking spaces shall have min 8' parking islands
Proposed: islands generally provided throughout parking lot

Complies.

D. Lighting Compliance

Required: Adequate lighting for the safe movement of vehicles, persons and security, arranged to minimize glare on adjacent properties

Provided: all interior parking areas provide a general plan of compliant lighting

Complies.

Required: maximum light pole height of 25' (30' for street lights)

Proposed: decorative fixture, 16' high

Complies.

7. Sign Review

Permitted: §62-1822(c) (2) permits residential subdivisions or planned development signs to be placed at primary entrances. No sign shall exceed 6' in height or 30 sf in area.

Proposed: 1 entry sign shown, 6' high and 40 sf in area

Height complies. Violation for sign area.

Permitted: §62-1822(c) (3) permits wayfinding signs, maximum 2sf in area, maximum 4' high, and with a minimum 5' property line setback

Proposed: no details

More information required.

8. Landscaping and Buffering

A. Tree Removal and Replacement (§118-121)

(Based on sample area and 14.26 acres of total removal)

Proposed: Removal of 414 trees <16" x 80% replacement = 332 trees

Proposed: Removal of 85trees >16" x replacement factor = 392 trees

Total Required: 724 trees

Provided: 802 trees

Complies.

B. Street Trees

Required: street trees on 50' centers

Proposed: street trees generally provided on the entire development tract on 50' centers

More information required.

C. Stream Corridor Protection (§62-248(b))

More information required.

9. Land Use Inventory

The following land uses are found in the neighborhood:

North: vacant land fronting on Route 1
East: multi-family residential/quad-plex building
South: vacant land, office development
West: office complex

10. Plan Review Comments

- A. The applicant shall submit documentation of approval or exemption from the Middlesex County Planning Board, Freehold Soil Conservation District, NJDEP, Delaware Raritan Canal Commission and all outside agencies having jurisdiction.
- B. A bulk table or chart(s) needs to be provided showing the proposed bulk standards AND the proposed bulk conditions on each proposed lot. (There are 129 + 3 total proposed lots).
- C. The site plan should provide a table to address the *Architectural Designs for Multi-Family Housing*, from the proposed bulk conditions on the site.
- D. This office strongly recommends that this application be considered for Preliminary Subdivision and Preliminary Site Plan approval at this time. With that approval, rights would be vested for the overall layout of the site including; number of units, affordability mix, densities, townhouse format, bedroom mix, road layout, building heights, general layout of development and preservation areas, lot configurations, etc. The applicant could then prepare a final site plan and subdivision plat suitable for filing, which would address all of the outstanding planning and engineering items raised in the staff reports.
- E. The parking calculation for fee simple townhouses is different than an apartment use with shared parking. Parking spaces need to be exclusively counted on each fee simple lot. Spaces dedicated toward each housing type need to be show on the plan via signage or pavement markings.
- F. This site is in need of additional parking. This site plan needs to provide the full "visitor" parking element of the RSIS requirement.
- G. The plan should designate 30 of the 66 common parking spaces for residents of the affordable units.
- H. The applicant is strongly encouraged to not develop every available portion of this site and to preserve a central green space on the "island" between roads A, B and C. Without some open space area, this development format will appear monotonous and the number and proximity of the buildings to each other will create the appearance of overdevelopment. This office is not requesting any reduction in units beyond that plan change.
- I. The planting plan should be drastically enhanced to provide additional plantings on this site. The number of shade/evergreen trees should be doubled. In the most recent revision, the number of specimen trees was only increased from 607 to 661 trees. This site needs at least 800 specimen trees.
- J. The Township Zoning ordinance requires multi-family housing developments to provide a 50' deep site perimeter buffer (found in the RM3/4, PRD-AH, & AH districts.) An uninterrupted, 50' deep landscape buffer should be provided around the perimeter of the site. No roadways or rear yards should be located in this buffer area. This buffer is essential where the site abuts non-compatible uses. These encroachments compromise the integrity of the buffer.
- K. The entirety of the 50' deep buffer must be located on the common lot(s) under association ownership. Individual qualifier parcels should not encroach into the 50' deep buffer area. Dwelling units and rear patios should be fully contained within the boundaries of the qualifier parcel. This exact situation has been a repetitive problem in other townhouse developments in the Township when unit owners seek permits to modify rear yards on their townhouse properties, only to later learn that a portion of their qualifier lot is located in a required buffer. This can and should be avoided by keeping these areas separate from each other.

- L. The area around all detention basins should be enclosed with decorative metal fencing and heavily planted and screened. Metal should be use instead of PVC for durability.
- M. All stand-alone parking areas should be screened by rows of 36" high all-season shrub plantings. Additional shrubs can easily be provided without any hardship.
- N. Preliminary details of the proposed master deeds and/or condominium association rules, procedures, etc. should be provided. No details have been provided. This information needs to be documented during the approval process and should not be deferred until building permit application.
- O. The application should be accompanied by a certification by a NJ Licensed Architect relative to all sub-code regulations including but not limited to the International Building Code, NJ Barrier Free regulations and COAH accessibility and adaptability regulations. This table or list should be provided on plans.
- P. The applicant needs to submit a letter of principal points, report, or table demonstrating compliance with all of the administrative and substantive requirements of the Council on Affordable Housing (COAH) and Uniform Housing Affordability Controls (UHAC) regulations before proceeding with this application. This must include:
 - 1. A bedroom distribution table needs to be provided to show compliance with COAH regulations found in NJAC 5:93-7.3 and Uniform Housing Affordability Regulations found in NJAC 5:80-26.3.
 - 2. The income distribution requirements of NJAC 5:80-26.3 need to be satisfied via a table or statement. (Requiring 50% of all affordable units in each bedroom layout to be available to low-income households.)
 - 3. How long will the units maintain low/moderate status? Will this be accomplished via a deed restriction? This needs to be clearly stated to comply with NJAC 5: 93-9.2(e). This should be for a minimum of 40 years.
 - 4. Compliance with NJAC 5:93-5.6(f) needs to be shown.
 - 5. A household size/affordability compliance table/statement needs to be provided to comply with NJAC 5:93-7.4 and NJAC 5:80-26.3.
 - 6. The applicant needs to provide a lease-up phasing schedule to comply with NJAC 5:93-5.6(d).
 - 7. How will these units be marketed to low/moderate income households? An affirmative marketing plan should be submitted. Who will be the administrative agent for this development? This needs to be clarified before proceeding with this application.
 - 8. All units need to comply with the accessibility and adaptability requirements of COAH rules, including, but not limited to, NJAC 5:97-3.14. The applicant needs to demonstrate that the units will comply with all adaptability and accessibility requirements. This should be shown on the plan.
 - 9. Compliance with heating source regulations found under NJAC 5:80-26.3(f) should be provided.
 - 10. Pursuant to the NJ Fair Housing Act (NJSA 52:27D-329.1) the plan needs to provide that 13% of all affordable units will be for very low-income households. What will be the moderate/low/very low mix? This needs to be clarified before proceeding with this application.
- Q. The interior streets and other improvements shall remain private streets and shall remain the maintenance responsibility of the property owner. This should be a plan note.
- R. Belgian block curbing should be provided around all driveways. This should be shown on the plan.
- S. The minimum distance between residential buildings should be maintained at a minimum of 30.' This should be a condition of approval.
- T. The applicant shall contribute to the Township Tree Fund for all outstanding trees based on the Township's tree replacement cost schedule. This should be a condition of approval.
- U. Buildings should be constructed of high-quality, durable, materials, textures and windows, etc. The facades should provide an attractive and visually interesting appearance on all façades. Brick, stone, hardi-plank, pre-cast concrete materials should be included in the final façade designs.

Vinyl/plastic siding and stucco/EIFS should not be permitted on any front, side, or street-facing façade in this development. Details, materials and color notes should be provided on the elevation sketches. Signed and sealed architectural plans should be submitted.

- V. Are utility transformers, water hotboxes, pump stations or similar utilitarian structures proposed? Details should be shown on the site plan. High-quality developments screen these utilities.
- W. Where/how will snow storage be handled? A specific area(s) should be shown for snow mounding that will not reduce parking on the site. This should be shown on the plan.
- X. The applicant shall enter into a Developer's Agreement with the Township and shall be responsible for its fair share of all off-tract improvements necessitated by this development.
- Y. This development should provide a school bus shelter in a safe, walkable locations. Details should be provided. The applicant should provide for the perpetual maintenance of this shelter.
- Z. This office believes that the procedures and process outlined in the ***New Jersey Municipal Land Use Law, (N.J.S.A. 40:55D—1 et. seq.) Article 6. Subdivision and Site Plan Review and Approval: Residential Site Improvement Standards***, should be the process utilized for a development application of this magnitude at this location, particularly for the review of future preliminary, amended preliminary and/or final site plans: The procedures given to the Township of South Brunswick by the New Jersey Legislature allow for a hearing on public notice, the ability to perform a site plan review, the ability to grant approval with reasonable conditions to mitigate site-related impacts to the public good, the ability to amend plans, and the ability to grant variances and design waivers. This office believes the Township should be afforded the ability to reasonably regulate development on this site via its own duly-adopted bulk and site plan ordinances, which carry a presumption of validity. The township's ordinances must be employed as a framework to review the proposed development. Absent this framework and review process, the developer will have permanently arrogated the authority of municipal governing body.
- AA. The planting table on the landscape plan provides 661, not 802 trees as indicated in the developer's correspondence. If the developer is assuming "bonus" credits for larger tree specimens, trees should be 3.5" -4" caliper to receive a 50% credit.
- BB. The developer has indicated the entirety of units in the development is intended for fee simple sale, and will not be utilized as rental units. The developer should verify this item and this proviso should be a written condition of approval: prohibiting the developer from converting the development into developer-owned rental housing. This should not be construed so as to prevent an individual (future) unit owner from renting his/her unit in accordance with the laws and regulations of the Township or the State of New Jersey.
- CC. Relative to the proposed zoning ordinance: Section §62-1730.5(3) should read, "A perimeter tract buffer shall be required at a minimum depth of 50 feet. The perimeter buffer shall be planted and maintained as a heavily wooded screen wherein no buildings, driveways, parking areas, or accessory structures shall be permitted, except for driveways connecting the development to the street network and ground identifications signs in accordance with Section §62-1730.7 below."

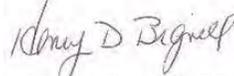
11. Recommendations

From a physical planning perspective, this office recommends that any action taken on this application be subsequent to the applicant submitting the following:

- A. Revised plans addressing the above outstanding planning items to the satisfaction of the Planning Administrator/Planning Board/Special Master/Hearing Officer.
- B. Submission of documentation of approval or exemption from all outside agencies having jurisdiction.
- C. Testimony given at a special hearing relative to the substantial detriment to the public good, should these variances items be granted.

- D. Testimony relative to the substantial impairment of the promulgated land use policies of the municipality should these variances be granted.
- E. Payment of any outstanding taxes, application and/or escrow fees.

Very truly yours,



Henry Bignell, PP
For the Firm

HB/TB

K. Hovnanian Shore Acquisitions., LLC, Applicant
R. Papa, PE, Applicant's Engineer
File #1211/19-2



MEMORANDUM

Clarke Caton Hintz

Architecture
Planning
Landscape Architecture

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To: Bryan Bidlack, Director of Planning and Community Development

From: Mary Beth Lonergan, PP, AICP
Emily Goldman, PP, AICP

Re: **K. Hovnanian Shore Acquisitions, LLC**
Preliminary and Final Major Subdivision and Site Plan Review
913-927 Ridge Road
Block 80, Lot 3.024
OR Office/Research/Conference District

Date: September 10, 2019

This review is performed under protest, as permitted by the New Jersey Supreme Court in So. Burlington County N.A.A.C.P. v. Mount Laurel Twp., 92 N.J. 158 (1983) (Mount Laurel II). It is done only to comply with the court’s order of October 21, 2016, in In the Matter of the Application of the Township of South Brunswick, County of Middlesex, and the associated Builder’s Remedy suits/claims, consolidated for purposes of handling under Docket No. MID-L-3878-15. The Township of South Brunswick and the Planning Board of the Township of South Brunswick continue to assert their on-going objection to the court’s finding of bad faith, revocation of temporary immunity, determination of the Township’s fair share obligation, the grant of Builder’s Remedy suit/claims as well as the process outlined in the court’s October 21, 2016 order on how such suits/claims must be handled. The Township and Planning Board reserve all rights they may have to contest any and all rulings by the court as well as all such suits/claims for Builder’s Remedy relief by way of further motion and/or appeal, and nothing contained herein is intended to nor shall it be construed to waive any and all such rights.

Philip Caton, FAICP
John Hatch, FAIA
George Hibbs, AIA
Brian Slauch, AICP
Michael Sullivan, AICP

On March 21, 2019, Clarke Caton Hintz issued a review of the applicant’s initial site plan application materials. On March 27, 2019, the applicant met with Township staff and professionals to discuss all of the Township’s preliminary review letters including the review from this office. The applicant has submitted updated materials and a response, dated May 23, 2019, to the initial review. This review addresses the applicant’s response memo and updated materials.

Emeriti

John Clarke, FAIA
Carl Hintz, AICP, ASLA

Recently, in a report dated June 12, 2019, the Master Christine Cofone, PP, AICP, found that the proposed site is “‘available, approvable, developable, and suitable’ for the proposed inclusionary development” based on her review and acceptance of the applicant’s planner’s report of 2017.



1. Project & Site Description

- 1.1. The subject property, Block 80, Lot 3.024, is a 19.35-acre tract located off the Ridge Road exit on U.S. Route 1, south of Ridge Road and northeast of Independence Way. The property is bounded on the north by Ridge Road, on the northwest by the ramp from U.S. Route 1 and commercial development, on the west and south by Independence Way and developed areas, and on the east by an existing multi-family residential development. The site is currently wooded, with some open areas and no structures. No freshwater wetlands, State open waters, or transition areas are located on the site as identified in a New Jersey Department of Environmental Protection freshwater Wetlands Presence/Absence determination (NJDEP File #1221-06-0030.1).
- 1.2. The applicant is proposing to construct a 129-unit inclusionary residential apartment complex with a 23.25% affordable set-aside. The proposed development consists of 99 market-rate and 30 affordable townhouse units. As discussed below, we have some concerns with the 129-unit recent proposal from K. Hovnianian Shore Acquisitions, LLC (“K. Hov.”) related to encroachments into the perimeter buffer, screening, lack of architectural plans for the specific project as part of the submission, parking availability, very-low income units, etc.
- 1.3. The applicant has provided its proposed zoning standards as required pursuant to the October 21, 2016 Court Order issued by Judge Wolfson. Pursuant to the October 21, 2016 Court Order, the applicant is “*encouraged to incorporate existing Township standards for similar types of housing as is reasonably practicable.*” The provided zoning standards are generally consistent with existing standards for similar types of housing in South Brunswick, namely, the PRD V Planned Residential Development District. This review will be based on the provided zoning standards with consideration for the Township’s existing PRD V zone and other comparable residential standards. As discussed below, we are recommending revisions to the proposed zoning standards.
- 1.4. All of the market-rate units will have three (3) bedrooms. Six (6) of the affordable units will have three (3) bedrooms with the remaining 24 units having two (2) bedrooms. All of the market-rate units will have garages. Of these, 76 units will have two (2) car garages and the remaining 23 market-rate units will have one (1) car garages. There are no proposed garages for the 30 affordable townhouse units, instead there is a driveway space for one (1) vehicle in front of each



affordable unit. In addition, there will be 66 common parking spaces. A tot lot playground is proposed. Stormwater management will be provided by one (1) combined infiltration/detention basin on the site.

2. Materials Reviewed

- 2.1. *K.Hov Application for Preliminary and Final Site Plan Approval* and related documents, dated May 22, 2019.
- 2.2. *Response to Review Comments*, prepared by K. Hovnianian Shore Acquisitions, LLC, dated May 23, 2019.
- 2.3. *Subdivision Plans*, consisting of 36 sheets, prepared by Najarian Associates, dated February 4, 2019, revised May 17, 2019.
- 2.4. *Architectural Plans*, consisting of 11 sheets, prepared by K. Hovnianian Homes, dated February 20, 2017 and August 28, 2017, revised June 20, 2017 and February 13, 2019, respectively.
- 2.5. *Tree Removal Plan*, consisting of 1 sheet, prepared by Najarian Associates, dated February 4, 2019, revised May 17, 2019.
- 2.6. *Environmental Impact Statement*, prepared by Najarian Associates, dated February 2019.
- 2.7. *Recycling Plan*, prepared by K. Hovnianian Shore Acquisitions, LLC, dated January 2019.
- 2.8. *Stormwater Management Report*, prepared by Najarian Associates, dated February 2019, revised May 17, 2019.
- 2.9. *Sanitary Sewer & Potable Water Summary*, prepared by Najarian Associates, dated May 20, 2019.
- 2.10. *Preliminary Subsurface (Soils) Investigation Report*, prepared by Melick-Tully and Associates, dated December 17, 2019.
- 2.11. *Traffic Impact Assessment Report*, prepared by McDonough & Rea Association, dated February 11, 2019.



3. Applicant / Owner Professionals

- 3.1. **Applicant:** K. Hovnianian Shore Acquisitions, LLC c/o David Fisher. 110 Fieldcrest Avenue, 5th Floor, Edison, NJ 08837. Telephone: 732.623.6927. Facsimile: 732.225.1795. Email: dfisher@khov.com.
- 3.2. **Owner:** Bellemead Development Corporation. 202 Halls Mill Road, Whitehouse Station, NJ 08889. Telephone: 856.354.3047. Email: Andrew.Hopp@chubb.com.
- 3.3. **Attorney:** Henry Kent-Smith, Esq., Fox Rothschild. Princeton Pike Corporate Center, 997 Lenox Drive, Building 3, Lawrenceville, NJ 08648. Telephone: 609.896.4584. Email: hkent-smith@foxrothschild.com.
- 3.4. **Architect:** K. Hovnianian Corporate Architecture Department c/o Dawn Korbela. 90 Matawah Road, 5th Floor, Matawan, NJ 07747. Telephone: 732.383.2630. Email: dkorbela@khov.com.
- 3.5. **Engineer:** Raymond Papa, PE, Najarian Associates. One Industrial Way West, Eatontown, NJ 07724. Telephone: 732.389.0220. Facsimile: 732.389.8546. Email: ray@najarian.com.

4. Use and Area Standards

- 4.1. **Permitted Use.** The subject property is located within the OR Office/Research/Conference District. Permitted uses within the OR district include office center, scientific or high-technology laboratories, assembly of high-technology and electronic equipment, health maintenance organizations, retail commercial and service facilities, and data centers. The applicant is proposing a multifamily townhouse complex. *The Township understands the application, pursuant to Judge Wolfson's opinion, is an 'as of right' project; and therefore, cannot require a use variance.*
- 4.2. **Gross Density.** The site plan is reflective of a gross density of 6.67 dwelling units per acre and the applicant's proposed zoning ordinance permits a gross density of seven (7) units per acre. Although the proposed zoning does not include a density restriction, Section 62-206(4)e7 "Mixed residential cluster



K. HOVNIANIAN SHORE ACQUISITION, LLC
PRELIMINARY AND FINAL MAJOR SUBDIVISION AND SITE PLAN REVIEW

Clarke Caton Hintz

developments” states “no more than eight townhouses shall occupy any one acre in a mixed residential cluster average tract.” The existing inclusionary developments within the Township have gross densities ranging from 4.3 to 7.4 dwelling units per acre. *We would recommend that the proposed ordinance be revised to permit up to a maximum gross density of 6.67 dwelling units per acre subject to confirmation that the site can accommodate the proposed total number of dwelling units.*

- 4.3. **Tract Size.** The subject property is 19.35-acres. The proposed zoning requires a minimum tract size of 15 acres (Section 62-1730.5) which is smaller than the 40-acre minimum tract size in the PRD V zone (Section 62-1131(I)), but reasonable given the size of the parcel. *The proposed tract size standard is acceptable.*
- 4.4. **Tract Frontage.** The subject property has approximately 678 feet of frontage along Ridge Road and approximately 1,029.5 feet of frontage along Independence Way. The proposed zoning standards and the PRD V zone do not include frontage requirements along roads except state highways. However, a similar zone, Section 62-206(4) “Mixed residential cluster development” requires a minimum tract frontage of 350 feet on an approved public street. *The application is in compliance.*
- 4.5. **Lot Coverage.** The applicant is proposing a tract lot coverage of 44.9%. The Township’s residential districts (RM-3 RM-4, MF, PRD-I, PRD-II, PRD-III, PRD-IV/AH, PRD-V, and PRD-VI) that permit townhouse dwellings do not identify a maximum lot coverage standard. *Based on our experience, the maximum lot coverage should be no more than 50%; therefore, the application would be in compliance if the lot coverage standard was 50%.*
- 4.6. **Building Coverage.** The applicant is proposing a tract building coverage of 22.1%. The applicant’s proposed zoning does not limit building coverage. The SB Code Section 62-206(4)e2, “Mixed residential cluster development” permits a maximum building coverage of 20 percent of the total land area of the tract. *To remain generally consistent with the standards of the mixed residential cluster development standards, the applicant should update its proposed zoning to include a maximum building coverage limit of 20%. The applicant should also confirm the tract building coverage after accounting for the reduced size of the affordable units since the initial application.*
- 4.7. **Open Space Reservation.** The applicant does not specify an open space percentage in Section 62-1730.5 “Minimum tract size and open space



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requirements” of the proposed zoning standards. The Township requires a minimum of 30% open space reservation in the RM-3 district, RM-4 district, PRD III district, PRD-IV/AH district, and PRD V district. The remaining residential districts that permit multifamily dwellings require a minimum of 40% or greater open space reservations. *The applicant should update its proposed zoning standards with a 30% open space requirement consistent with existing multifamily zoning districts.*

- 4.8. **Site Perimeter Buffers.** The applicant’s proposed zoning standards require a 50-foot perimeter tract buffer prohibiting building improvements with exceptions for underground utility lines, stormwater management features, decks and patios, landscaping, signage, walking paths, and sidewalks (Section 62-1730.5(3)).

The existing RM-3, RM-4, AH, PRD I, PRD II, PRD III, PRD-IV/AH, and PRD V districts all require a minimum site perimeter buffer, or open space buffer, of 50 feet.

The applicant has included the 50-foot site perimeter buffer on the submitted plans. However, the *Subdivision Plan* identifies patios/porches, a pump station, parking, a cul-de-sac, hammerheads, and a stormwater basin within the site perimeter buffer. The relocated pump station is 20 feet from the northern property line and entirely within the 50-foot buffer. The northern hammerhead has been shortened from the previous version but remains within the 50’ buffer.

Pursuant to Buffer Areas contained in Section 62-1846(b), “no driveways, parking areas, loading areas, storage areas, buildings or structures shall be located within the buffer areas. Stormwater management facilities shall not be located within 50 feet of the boundary of a residential or mixed-use district. ... The buffer areas shall be comprised of existing vegetation and/or shall be landscaped in such a manner so as to provide an effective visual screen between uses.”

Additionally, Parking in residential and mixed-use districts, Section 62-1792(3), states “the parking area must comply with all design standards and buffering requirements and must not interfere with the use and/or enjoyment of abutting residential properties.” The applicant has proposed four (4) parking spaces on the southern side of the cul-de-sac which encroach on the required 50-foot site perimeter buffer.



The Township believes the applicant should provide a minimum site perimeter buffer of 50 feet devoid of any structural encroachments. The Township recommends that the proposed zoning standards and subdivision plan be updated to reflect and comply with the existing buffer standards included in Section 62-1846(b).

- 4-9. **Building Height.** Pursuant to the May 23rd Narrative Statement, the applicant is proposing two and one-half (2.5) story townhouse units. The applicant has submitted architectural plans that identify a maximum townhouse height of 33' 3". However, the submitted architectural plans do not indicate building height for all proposed models, or indicate height as defined by the Township Section 62-3: *the vertical distance from the average ground elevation around the foundation to the level of the highest point of the structure.*

The proposed zoning standards include a maximum height restriction of 40' or two and one-half stories. The proposed height regulations match those of the PRD V zone and are similar to the AH, PRD II and PRD-IV/AH districts which permit a maximum height of three (3) stories or 40 feet.

The applicant should submit updated architectural plans that show building heights for all proposed townhouse models. The updated plans should include only the townhouse models to be used in this development and depict the models in their proposed configurations.

- 4-10. **Lot Size.** The applicant is proposing a minimum lot size of 2,470 square feet for the market-rate units and 1,330 square feet for the affordable units which has been reduced from 1,520 square feet in the previous version of the application. These lot sizes are consistent with the proposed zoning standards which set a minimum lot size of 2,340 square feet for market-rate units and 1,260 square feet for affordable units. The proposed standards are similar to those of the PRD V zone (Section 62-1132(5)) which establishes minimum lot sizes of 2,280 square feet for market-rate units and 1,330 square feet for affordable units. *The application is in compliance.*

- 4-11. **Lot Width.** The applicant is proposing a minimum lot width of 26 feet for the market-rate units and 14 feet for the affordable units which has been reduced from 16 feet in the previous version of the application. The lot widths are consistent with the proposed zoning standards which set a minimum lot width of 26 feet for market-rate units and 14 feet for affordable units. The SB Code Section 62-206(4)e3, "Mixed residential cluster development" permits a minimum lot width of 20 feet and does not distinguish between market-rate



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and affordable units. The PRD V zone (Section 62-1132(5)) establishes minimum lot widths of 24 feet for market-rate units and 14 feet for affordable units. *The application is in compliance.*

- 4.12. **Building Width.** The applicant is proposing a minimum building width of 26 feet for the market-rate units and 14 feet for the affordable units which has been reduced from 16 feet in the previous version of the application. The building widths are consistent with the proposed zoning standards which set a minimum lot width of 26 feet for market-rate units and 14 feet for affordable units. The proposed minimum building width for the affordable units is narrower than the SB Code Section 62-206(4)e3, “Mixed residential cluster development” which states “*the width of each townhouse unit shall not be less than 20 feet*”. However, the proposed standards are similar to those of the PRD V zone (Section 62-1132(5)) which establishes minimum lot widths of 24 feet for market-rate units and 14 feet for affordable units. *The application is in compliance.*
- 4.13. **Street Setback.** The applicant is proposing a minimum setback of 15.9 feet from the street line. The proposed zoning standards (Section 62-1730.6(5)) include a street line minimum setback of 15 feet which is equal to that required by the PRD V zone. The SB Code Section 62-206(4)e4, “Mixed residential cluster development” states “*no building shall be closer than ten feet to any street line ...*”. *The application is in compliance.*
- 4.14. **Parking Area Setback.** The applicant is proposing a minimum setback of 13.5 feet from any parking area. The proposed zoning standards (Section 62-1730.6(5)) include a parking area minimum setback of eight (8) feet which is equal to that required by the PRD V zone. The SB Code Section 62-206(4)e4, “Mixed residential cluster development” states “*no building shall be closer than ten feet to any ... parking area*”. *The applicant should amend the proposed zoning ordinance to indicate no building shall be closer than 10 feet to any parking area.*
- 4.15. **Maximum Number of Units per Building.** The applicant is proposing a maximum of six (6) units per building. The proposed zoning standards (Section 62-1730.6(5)) permit a maximum of eight (8) attached units per building which is equal to the standard included in the PRD V zone. Per Section 62-206(4)e5, “Mixed use residential cluster developments”, *no more than eight townhouse homes shall be grouped together. The application is in compliance.*



4.16. **Minimum Distance Between Buildings.** The applicant has stated they are providing a minimum distance between buildings of 30 feet which has been increased from 27 feet in the previous version of this application. The 30-foot separation appears to be true of all buildings except for buildings 23 and 24 which are separated by approximately 25 feet. However, the proposed zoning standards (Section 62-1730.6(5)) require a minimum building separation of 25 feet which is equal to the building separation required in the PRD V zone. Per Section 62-206(4)e5 “Mixed use residential cluster developments”, *groupings shall be separated by a minimum of 25 feet. The application is in compliance.*

5. Design Standards

5.1. **Architectural Character.** The Applicant has clarified that the submitted architectural plans are meant only for depicting elevations, roof design, and floor plans. No working drawings of the proposed buildings have been provided and details including exterior colors of siding, trim, or stone have not been specified. The applicant requested a waiver for providing detailed architectural plans until later in the process when the engineering plans and subdivision have been approved. *The Township does not recommend granting a waiver. The applicant should submit detailed architectural plans including proposed building materials, colors, and heights.*

5.2. **Articulation.** The applicant has submitted architectural plans with generic depictions of the proposed townhouse models. The applicant has requested a waiver for submitting detailed architectural plans prior to receiving subdivision approval. Per the Mixed residential cluster development, Section 62-206(4)c, *“The front façade of any townhouse structure shall not consecutively continue on the same plane for more than two units and shall incorporate architectural features that provide variations in the façade to create a desirable visual environment.” The applicant should provide full Architectural Plans for review that identify the proposed façade for each building type.*

5.3. **Fire and Emergency Access.** Per the Mixed residential cluster development standards, Section 62-206(5)g5, *adequate fire and emergency access must be provided to the front and rear of all multifamily structures.* The applicant has drafted a Fire Truck Circulation Plan and included an emergency access road allowing emergency vehicle access from Ridge Road. *This office defers to the Township’s Fire Marshall regarding the adequacy of fire and emergency access.*



- 5.4. **Screen Planting.** Section 62-1847(b) “Screen Planting” states “screening planting shall consist of staggered rows of evergreen trees at least seven feet high and planted not more than ten feet on center. Trees shall be planted and maintained so as to obscure nonresidential activity from the residential district. In dense naturally wooded areas, the screen planting requirements may be modified by the municipal agency requiring supplemental plantings of evergreen trees to ensure an appropriate four-season screen.” The applicant has provided a planting schedule for each type of building as well as the site perimeter buffer. The applicant has provided screening between the commercial properties to the west. **However, the proposed screening along the western edge of the property should be updated so that all evergreens are planted no more than 10 feet on center and staggered such that the screening is at least 20 feet in width. The applicant should include additional screening around the pump station.**
- 5.5. **Fence Height.** The *Subdivision Plans* include details for a 3-rail white PVC fence with safety mesh that is four (4) feet in height and a black vertical rail aluminum playground fence that is four (4) feet in height. Per Section 62-1871, “no wall or fence more than four feet in height may be erected, except that a wall or fence behind the front yard setback line may be six feet in height.” The applicant has confirmed that no fence is proposed to be greater than six (6) feet in height. **The application is in compliance.**
- 5.6. **Fence Material.** The *Subdivision Plans* include details for a 3-rail white PVC fence with safety mesh and a black vertical rail aluminum playground fence. Section 62-1872 states “no fence shall be erected of barbed wire, topped with metal spikes or constructed of any material or in any manner which may be dangerous to persons or animals...” **The application is in compliance.**
- 5.7. **Primary Entrance Signs.** The applicant is proposing one (1) identification ground (monument) sign at the primary development entrance along Independence Way. Section 62-1822(c)(2) permits identification ground signs at the primary development entrances for residential subdivisions. **The application is in compliance.**
- 5.8. **Primary Entrance Sign (Height).** The proposed ground identification sign has a maximum height of six (6) feet. Section 62-1822(c)(2) indicates “no ground sign shall exceed six (6) feet in height” in a residential subdivision. **The application is in compliance.**



- 5.9. **Primary Entrance Sign (Area).** Pursuant to Section 62-1820, Area Measurements, “*the area of a sign shall be the total square footage of the background upon which the lettering, illustration or display is presented.*” Section 62-1822(c)(2), indicates the maximum sign area in a residential subdivision shall be “*30 square feet in area.*” The applicant has indicated that the ground identification sign will be reduced from 40 square feet to 30 square feet. ***The applicant should submit an updated sign detail demonstrating the reduction in sign area.***

6. Lighting Standards

- 6.1. **Lighting Height.** Section 62-208(b), “*the maximum height of freestanding lights should not exceed the height of the principal building or 25 feet, whichever is less.*” The lighting detail on Sheet LI-4 indicates a proposed light mounting height of 16 feet. ***The application is in compliance.***
- 6.2. **Street Lighting Height.** Section 62-208(c), “*the maximum height of streetlights should not exceed 30 feet.*” The lighting detail on Sheet LI-4 indicates a proposed light mounting height of 16 feet. ***The application is in compliance.***
- 6.3. **Apex Angle.** Section 62-208(d), *all lights shall be shielded to restrict the maximum apex angle of the cone of illumination to 75 degrees from vertical.* The applicant has indicated the lighting fixtures will comply with the apex angle requirement. ***The application is in compliance.***
- 6.4. **Light Shielding.** It appears, per Sheet LI-1 that some light is spilling over the property line into the neighboring age-restricted development. Section 62-208(e), *lights shall be appropriately shielded and directed so that the lighting, to the extent possible, shall not spill over onto adjacent properties.* The light detail indicates that the luminaires will have house side shields. ***The Township recommends the applicant utilize LED lighting fixtures and revise the lighting plan to illuminate any light spillage onto the neighboring properties.***
- 6.5. **Light Intensity.** The applicant provided an illumination schedule for vehicular roadway lighting only. Section 62-208(g), the applicant should provide an illumination schedule identifying the minimum illumination, the average illumination, and the maximum-to-minimum illumination ratio as follows:



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Section 62-208(g) Illumination Standards				
Location	Minimum		Maximum-to-Minimum Ratio	
	Required	Proposed	Required	Proposed
Multi-family residential parking lots	0.5	Unknown	15:1	Unknown
Vehicular Roadway Lighting	0.5	0.5	4:1	2.2:1
Sidewalks and Pedestrian Walkways	1.0	Unknown	N/A	N/A
Maximum at Property Lines	0.5	Unknown	N/A	N/A

The applicant has indicated that parking areas and sidewalks are provided with adequate lighting. However, no additional information has been provided. The applicant should provide the information required for the parking areas, sidewalks, and property lines on the illumination schedule. ***Additional information is required. The applicant should update the illumination schedule to identify the proposed light intensity, both the minimum and the maximum-to-minimum ratio, for sidewalks and pedestrian walkways and at the tract boundary.***

6.6. Wiring. The utility plans, Sheets 6 through 8, do not identify the location of the proposed electrical wires throughout the development. Section 62-208(h) states that *all wiring shall be laid underground and lighting fixtures shall be arranged that the direct source of light is not visible from any adjacent residential area. Glare from bright electric light bulbs shall be eliminated through the use of diffusers or the equivalent.* The applicant has indicated that all wiring will be placed underground. However, the plans should be updated to show the location of the underground wiring. ***Additional information is needed.***

7. Residential Site Improvement Standards (“RSIS”)

7.1. Off-Street Parking Spaces. The *Subdivision Plan* identifies a total of 408 parking spaces. The New Jersey Residential Site Improvement Standards (“RSIS”), N.J.A.C. 5:21-4.14, identifies the required number of parking spaces by unit type and number of bedrooms. As indicated in the table below, the Defendant-Intervenor is required to provide 307 parking spaces; therefore, the applicant is proposing an excess of 101 parking spaces.



RSIS Parking Space Requirement			
Bedroom Size	No. of Units	RSIS Requirement	No. of Spaces Required
Two (2) Bedroom	24	2.3	55.2
Three (3) Bedroom	105	2.4	252
TOTAL	129	-	307.2

The applicant has updated the arrangement of the townhouses and on-street head-in parking spaces in response to the Township's concern that some of the affordable units did not have sufficient nearby parking spaces. The updated design includes a more equitable distribution of on-street parking proximate to the affordable units and addresses the Township's concern about the affordable units' access to parking. However, the number of parking spaces is unchanged. Although the parking provided is compliant with RSIS, the Township remains concerned that the provided on-street parking may not be sufficient for the affordable units and visitors. Each affordable unit has one (1) designated parking space within a driveway; whereas each affordable unit requires a minimum of two (2) parking spaces. *We request that the applicant designate 30 of the 66 on-street parking spaces for the residents of the affordable units.*

- 7.2. **Accessible Parking.** Pursuant to Table 1106.1 of the 2015 International Building Code of New Jersey, with a total of 66 on-street parking spaces proposed, the applicant is required to provide a total of three (3) accessible spaces. The applicant is proposing four (4) accessible parking spaces. *The application is in compliance.*
- 7.3. **Van Accessible Parking.** Pursuant to Section 1106.5 of the 2015 International Building Code of New Jersey, for every six (6) or fraction of six (6) accessible parking spaces, at least one (1) shall be a van-accessible parking space. The applicant is required to provide three (3) accessible parking spaces; therefore, one (1) space is required to be van accessible. The plan indicates that all four (4) accessible parking spaces meet the minimum dimensions for van accessibility. *The application is in compliance.*



- 7.4. **Sidewalks.** The applicant has proposed sidewalks along both sides of the streets. Pursuant to §5:21-4.2, Table 4.3, RSIS requires sidewalks on both sides of the streets. *The application is in compliance.*

8. Affordable Housing Standards

- 8.1. **Reference to COAH's N.J.A.C. 5:93.** The proposed zoning ordinance should be revised to reflect the Council on Affordable Housing's ("COAH") regulations at N.J.A.C. 5:93 instead of references to N.J.A.C. 5:91, 5:92, and 5:97. *The proposed ordinance should be updated.*
- 8.2. **Bedroom Distribution.** Pursuant to the COAH's prior round regulations, N.J.A.C. 5:93-7.3, and the Uniform Housing Affordability Controls ("UHAC"), N.J.A.C. 5:80-26.3(b), *affordable developments that are not age-restricted shall be structured in conjunction with realistic market demands such that:*
- *The combined number of efficiency and one-bedroom units is no greater than 20 percent of the total low- and moderate-income units;*
 - *At least 30 percent of all low- and moderate-income units are two bedroom units;*
 - *At least 20 percent of all low- and moderate-income units are three bedroom units; and*
 - *The remainder, if any, may be allocated at the discretion of the developer.*

The *Architectural Plans* indicate the proposed affordable units' bedroom distribution is as follows:

- Twenty-four (24) two-bedroom units, or 80% of the total affordable units; and
- Six (6) three-bedroom units, or 20% of the total affordable units.

The application is in compliance.

- 8.3. **Very low-income Requirement.** Pursuant to the NJ Fair Housing Act ("FHA"), N.J.S.A. 52:27D-329.1, 13% of the affordable units shall be affordable to very-low-income households. Per UHAC, the balance is as follows: 37% shall be affordable to low-income households, and 50% may be affordable to moderate-income households. The NJ FHA requirement that 13% of the units must be affordable to very low-income households at 30% the regional median income supersedes



the UHAC standard at N.J.A.C. 5:80-26.3(d) which says 10% of the units shall be affordable to households at 35% of the regional median income. The applicant has indicated they are willing to provide 13%, or four (4) units, to very low-income households. *The builder's remedy plan should be revised to confirm that 13% of all affordable units in this plan will be very-low income units, 37% of all affordable units will be low-income units, and the remaining 50% will be moderate-income units. Also, the proposed zoning ordinance should be revised to highlight the very low-income at 30% of regional median income exception to UHAC in both places which reference UHAC.*

- 8.4. **Unit Integration.** The applicant is proposing to integrate the affordable units throughout the development. Pursuant to COAH at N.J.A.C. 5:93-5.6(f), developers of inclusionary developments are encouraged to integrate the low and moderate income units with the market units. *The application is in compliance.*
- 8.5. **Income Distribution.** Pursuant to UHAC at N.J.A.C. 5:80-26.3(a), *in each affordable development, at least 50 percent of the restricted units within each bedroom distribution shall be low-income units and the remainder may be moderate-income units.* The applicant has confirmed they will provide at least 50% of the affordable units to very low- and low-income households.

The applicant must include very low-income units in the unit distribution schedule on the builder's remedy plan as follows:

Unit Distribution by Income Level				
	Very low-income	Low-Income	Moderate-Income	TOTAL
2-bedroom	3 units	9 units	12 units	24 units
3-bedroom	1 unit	2 units	3 units	6 units
TOTAL	4 units	11 units	15 units	30 units

- 8.6. **Phasing.** The affordable units phasing with market units shall comply with COAH rules and Township ordinances. Pursuant to COAH at N.J.A.C. 5:93-5.6(d), affordable housing units within inclusionary developments shall be built in accordance with the following schedule:



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Minimum Percentage of Affordable Units Completed	Percentage of Market Housing Units Completed
0	25
10	25 + 1 unit
50	50
75	75
100	90
	100

The applicant has indicated there is no objection to complying with this requirement. *The applicant should revise the builder's remedy plan to include the affordable housing phasing schedule and a specific breakdown of unit/building construction timing.*

8.7. Household Size, Unit Pricing, Utility Allowance. Pursuant to COAH at N.J.A.C. 5:93-7.4(a) and UHAC at N.J.A.C. 5:80-26.3(d), the affordable units shall be affordable to the following sized households:

- One bedroom units shall be affordable to 1.5 person households;
- Two bedroom units shall be affordable to 3 person households; and
- Three bedroom units shall be affordable to 4.5 person households

The applicant has indicated they have no objection to complying with this requirement. *The applicant should revise the builder's remedy plan to indicate compliance with the establishment of maximum and average sale prices for the affordable units.*

8.8. Deed Restrictions; Length of Controls. COAH at N.J.A.C. 5:93-9.2(e) and UHAC at N.J.A.C. 5:80-26.11(a), states that newly constructed affordable units shall remain affordable to low- and moderate-income households for a period of at least 30 years. The applicant has indicated they have no objection to complying with this requirement. *The builder's remedy plan should be revised to confirm the length of controls on the affordable units.*

8.9. Heating Source. UHAC at N.J.A.C. 5:80-26.3(f) requires that affordable units utilize the same type of heating source as market units within the affordable development. The applicant has indicated that the heating source options (natural gas or electric) will be the same for the market-rate and affordable units. *The builder's remedy plan should be revised to identify the heating source for the market-rate and affordable units within the development.*



- 8.10. Accessibility and Adaptability.** The multifamily affordable and market-rate units shall comply with the accessibility and adaptability requirements of the International Building Code – NJ Edition 2015 (“IBC-NJ 2015”) and the affordable townhouse units shall comply as well with COAH’s rules, including, but not limited to, N.J.A.C. 5:97-3.14. The applicant has indicated in its response memo that the proposed development will comply with all accessibility and adaptability requirements. *The application is in compliance.*
- 8.11. Amenities.** The *Narrative Statement* indicates that “all residents shall have access to all amenities in accord with a homeowner association assessment that meets the requirements of N.J.A.C. 5:93-7.4(g).” The applicant has indicated in its response memo that there will be no additional fees for the use of the amenities by the owners of the affordable units. *The application is in compliance.*
- 8.12. Administrative Agent.** The applicant must have an experienced administrative agent per UHAC at N.J.A.C. 5:80-26.14. The applicant indicated they are willing to use Piazza and Associates or the Township’s in-house services, depending on the recommendation of the Township, for the administration of the affordable units. The Township recommends that Piazza and Associates manage the affirmative marketing of the affordable units while the Township will manage other administrative tasks in-house. This would be similar to an arrangement with another K. Hovnianian development in South Brunswick known as Cambridge Crossing. *The application is in compliance.*
- 8.13. Affirmative Marketing.** COAH at N.J.A.C. 5:93-11 and UHAC at N.J.A.C. 5:80-26.15 requires an affirmative marketing program for the affordable units. The applicant has indicated that an affirmative marketing plan will be provided prior to construction and will be managed by Piazza and Associates. *The application is in compliance.*
- 8.14. New Provision - Minimum Bedroom Sizes.** Although COAH’s rules have no minimum unit size requirements, the Department of Community Affairs (“DCA”) and the NJ Housing and Mortgage Finance Agency (“HMFA”) do have minimum unit (and bedroom) size requirements for affordable housing units that receive DCA funding and/or HMFA tax credit financing. DCA, per N.J.A.C. 5:43-2.4(f), requires at least one (1) bedroom at 150 square feet and other bedrooms to have 100 square feet. The HMFA Qualified Allocation Plan (“QAP”) also requires a minimum bedroom size of 100 square feet. *The revised architectural plans should list the proposed bedroom sizes for all units.*



9. Environmental Standards

- 9.I. **Tree Removal.** The *Environmental Impact Statement* indicates the applicant is proposing to remove approximately 18.8 acres of woodlands from the property; however, the *Tree Removal Plan* indicates 14.26 acres of woodlands are to be removed. The applicant has provided an updated *Tree Removal Plan* and confirmed that 14.26 acres of woodlands will be disturbed.

The Tree Removal Plan includes a calculation of the number of trees to be removed. The plan lists two estimated tree densities, 29 trees per acre and 36 trees per acre. The calculations of tree removal appear to be based off of the 29 trees per acre estimate. *The applicant should ensure that the appropriate estimate of tree density is used in its calculations and ensure that the density is consistent throughout the Tree Removal Plan.*

The Tree Removal Plan indicates the applicant is required to provide 724 replacement trees. The applicant has also requested a 50% credit for planting 3" trees. *This office defers to the Township Planner regarding satisfaction of the tree replacement requirement.*



MEMO TO: Bryan Bidlack – Director of Planning
FROM: David J. Samuel, P.E. – Township Engineer 
DATE: September 11, 2019
SUBJECT: K. Hovnanian Shore Acquisitions, LLC
Traffic Impact Assessment Report (2nd Review)
Block 80; Lot 3.024
South Brunswick File No.: 19-021
Our File No.: PSOP0080.05/600.01/02

In accordance with your authorization, our office has reviewed the Traffic Impact Assessment Report as prepared by McDonough & Rea Associates, John H. Rea, P.E., dated February 11, 2019, the Preliminary and Final Subdivision Plans as prepared by Najarian Associates, Raymond R. Papa, P.E., dated February 4, 2019, last revised May 17, 2019, and the Response to CME Associates Traffic Review Comments as prepared by McDonough & Rea Associates, dated May 23, 2019, and offer the following comments:

1. This review is performed under protest, as permitted by the New Jersey Supreme Court in So. Burlington County N.A.A.C.P. v. Mount Laurel Twp., 92 N.J. 158 (1983) (Mount Laurel II). It is done only to comply with the court's order of October 21, 2016, in In the Matter of the Application of the Township of South Brunswick, County of Middlesex, and the associated Builder's Remedy suits/claims, consolidated for purposes of handling under Docket No. MID-L-3878-15. The Township of South Brunswick and the Planning Board of the Township of South Brunswick continue to assert their on-going objection to the court's finding of bad faith, revocation of temporary immunity, determination of the Township's fair share obligation, the grant of Builder's Remedy suit/claims as well as the process outlined in the court's October 21, 2016 order on how such suits/claims must be handled. The Township and Planning Board reserve all rights they may have to contest any and all rulings by the court as well as all such suits/claims for Builder's Remedy relief by way of further motion and/or appeal, and nothing contained herein is intended to nor shall it be construed to waive any and all such rights.
2. The Applicant shall comply with the requirements as set forth by the New Jersey Department of Transportation (NJDOT) as outlined in the New Jersey State Highway Access Management Code, latest version, relative to the signalized intersection of US Route 1 and Independence Way and the unsignalized US Route 1 Northbound Right-in/Right-out intersection with Independence Way. *The Applicant's traffic engineer has responded that they will comply.*
3. The Applicant shall obtain the necessary permits as required by the New Jersey Department of Transportation, relative to the signalized intersection of US Route 1 and Independence Way and the unsignalized US Route 1 Northbound Right-in/Right-out intersection with Independence Way. *The Applicant's traffic engineer has responded that they will comply.*
4. The Applicant's traffic engineer has indicated in the Traffic Impact Assessment, dated February 11, 2019, that the signalized intersection of US Route 1 and Independence Way is expected to operate



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at an overall level of service C for the no-build and build conditions in both the AM and PM peak hours. In reviewing the individual movements, it should be noted that the Westbound Left Turn improves from 79.5 seconds (Level of Service E) in No-Build Conditions to 69.6 seconds (Level of Service E in Build Conditions during the PM Peak Hour. Similarly, the Westbound Right Turn improves from 58.5 seconds (Level of Service E) in No-Build Conditions to 53.9 seconds (Level of Service D) in Build Conditions during the PM Peak Hour. The Applicant's traffic engineer should explain any mitigation proposed to achieve these improvements in individual delays. *The Applicant's traffic engineer has responded that the NJDOT timing directive for the signalized intersection (#311-14) will allow for adjustments that will improve the individual levels of service and that no mitigation is required. The Applicant's traffic engineer should provide additional information on how the NJDOT timing directive makes the necessary adjustments.*

5. The plans should be revised to indicate intersection sight distance triangles at all intersections in accordance with the AASHTO Requirements for Intersection Sight Distance. *The Applicant's traffic engineer has responded that they will comply.*
6. The design of all proposed curb ramps, sidewalks, warning surfaces, signing, striping, and crosswalks, should meet the latest ADA and MUTCD requirements. Landing areas as required before and after the curb ramps, at the appropriate slopes, and the locations of the proposed detectable warning surfaces should be clearly indicated. This ADA compliance issue shall be reviewed and approved relative to all ramps, sidewalks, crosswalks, etc. that are to be proposed under this project. *The Applicant's traffic engineer has responded that they will comply.*
7. On plan sheets 3, 4, and 5, a pedestrian warning sign is indicated a short distance behind a proposed stop sign in numerous locations. The pedestrian warning sign is inappropriate behind a stop sign and should be relocated. *The Applicant's traffic engineer has responded that they will comply.*
8. On plan sheets 3, 4, and 5, roads are indicated that have only one way in and one way out. Our office recommends that dead end and/or no outlet signs be provided for same. *The Applicant's traffic engineer has responded that they will comply.*
9. On plan sheet 3, a pedestrian warning sign (sign F) is proposed on the southeast corner of the right-stem T-intersection of Road C and Road D, in view of traffic facing northbound on Road C. The crosswalk that impacts northbound vehicles connects the northeast corner and the northwest corner of this intersection. Accordingly, the pedestrian warning sign (sign F) should be relocated to the north side of this intersection. *The Applicant's traffic engineer has responded that they will comply.*
10. On plan sheet 3, near the top north part of the match line along Road C, a proposed sign is indicated. The plan should be revised to provide a label for the sign. *The Applicant's traffic engineer has responded that they will comply.*



Township of South Brunswick
K. Hovnanian Shore Acquisitions, LLC
September 11, 2019
Page 3 of 3

11. On plan sheet 4, a pedestrian warning sign (sign F) is proposed on the southeast corner of the bottom-stem T-intersection of Road C and Road A, in view of traffic facing eastbound on Road A. The crosswalk that impacts eastbound vehicles connects the northeast corner and the southeast corner of this intersection. Accordingly, the pedestrian warning sign (sign F) should be relocated to the east side of this intersection. *The Applicant's traffic engineer has responded that they will comply.*
12. All fire lanes and striping are subject to the approval of the Township Fire Official. *The Applicant's traffic engineer has responded that they will comply.*
13. A site circulation plan should be provided that indicates the travel paths of the design vehicles (garbage/delivery/fire trucks/rescue squad) to verify that the on-site circulation is adequate for the required service and emergency vehicle access throughout the site. *The Applicant's traffic engineer has responded that they will comply.*

Upon receipt of a revised traffic report and subdivision plans that address the aforementioned comments, our office will proceed with our review of same.

Should have any questions concerning this matter, please do not hesitate to contact this office.

JBC/KZ

cc: Township File

MEMORANDUM

TO: Planning Board

FROM: Bryan B. Bidlack, Director of Planning 

DATE: September 26, 2019

RE: File # 19-021
Applicant: K. Hovnanian Shore Acquisitions
Block: 80 Lot: 3.024
Address: 913-927 Ridge Road

“This review is performed under protest, as permitted by the New Jersey Supreme Court in So. Burlington County N.A.A.C.P. v. Mount Laurel Twp., 92 N.J. 158 (1983) (Mt. Laurel II). It is done only to comply with the court’s order of October 21, 2016, In the Matter of the Application of the Township of South Brunswick, County of Middlesex, and the associated Builder’s Remedy suits/claims, consolidated for purposes of handling under Docket No. MID-L-3878-15. The Township of South Brunswick and the Planning Board of the Township of South Brunswick continue to assert their on-going objection to the court’s finding of bad faith, revocation of temporary immunity, determination of the Township’s fair share obligation, the grant of Builder’s Remedy suits/claims as well as the process outlined in the court’s October 21, 2016, order on how such suits/claims must be handled. The Township and Planning Board reserve all rights they may have to contest any and all rulings by the court as well as all such suits/claims for Builder’s Remedy relief by way of further motion and/or appeal, and nothing contained herein is intended to nor shall it be construed to waive any and all such rights.”

- I. This application is for preliminary and final site plan approval to construct 25 buildings of multi-family units on a 19.35 acre site in the OR zone,
- II. The application was received on May 28, 2019. Application fees totaling \$4,100.00 were paid on June 18, 2019. Escrow fees totaling \$6,080.00 were paid on June 18, 2019.
- III. Taxes are current.
- IV. Materials reviewed are as follows:
 - **Preliminary and Final Major Subdivision**: revised through May 17, 2019, consisting of thirty-six (36) sheets, prepared by Najarian Associates;
 - **Stormwater Management Report**: revised through May 2019, *ibid*;
 - **Sanitary Sewer & Potable Water Summary**: dated May 20, 2019, *ibid*;
 - **Fire Truck Turning Plan**: revised through May 17, 2019, *ibid*;
 - **Tree Removal Plan**: revised through May 17, 2019, *ibid*;

- **Boundary Survey:** dated February 15, 2019, *ibid*;
- **Environmental Impact Statement:** dated February 2019, *ibid*;
- **RSIS Compliance:** dated May 21, 2019, *ibid*;
- **Conceptual Architecturals:** dated February, 2017, prepared by K. Hovnanian Homes;
- **Architectural Plans for Carnegie Crossing Models:** dated January 19, 2019, *ibid*
- **Recycling Plan:** dated January 2019, *ibid*;
- **Traffic Analysis:** dated May 23, 2019, prepared by McDonough & Rea Associates, Inc.;
- **Phase I Environmental Site Assessment/Preliminary Assessment Report Limited Phase II Site Investigation (no appendices attached):** dated December 19, 2016, prepared by Ransom Environmental;
- **Results of Subsurface Investigation:** dated March 22, 2019, *ibid*;
- **Preliminary Subsurface Investigation:** dated December 7, 2016, prepared by Melick-Tully and Associates, dated December 7, 2016;
- **Supplemental Subsurface Investigation:** dated May 15, 2019, *ibid*;

V. Staff comments are as follows:

A. **Planning/Zoning –Bignell Planning Consultants**

Please refer to Bignell Planning Consultants letter dated September 10, 2019.

B. **Planning/Zoning – Clark, Canton & Hintz**

Please refer to Clark, Canton & Hintz memorandum dated September 10, 2019.

C. **Engineering –CME ssociates**

Please refer to CME memorandum dated September 9, 2019.

Please refer to CME Traffic memorandum dated September 11, 2019.

D. **Engineering – Richard A. Alaimo Associates**

Please refer to Richard A. Alaimo Associates memorandum dated August 7, 2019.

E. **Water Supervisor – Tim Lesko**

1. The owner of this development will be responsible for the maintenance and repair of all water mains, hydrants and curb-boxes on this property. This will be a private community.
2. Curb-boxes will be installed between the side walk and curb for easy access. No curb boxes will be installed in driveways or sidewalks.
3. Curb-box rods will be made of stainless steel.
4. Water usage for this project is based on the engineering report and is over 12,000 GPD.

5. Any project that uses more than 12,000 GPD will need to apply for a water allocation permit with the Department of Environmental Protection. The engineering firm handling this project will apply for the water allocation.
6. Any water valve cover that is in a grassy area shall have a 12- inch square concrete pad around it for protection from lawn mowers & vehicles.
7. Service lines shall be made of copper.
8. Ball valves shall be installed on both sides of each water meter.
9. There will be no trees, retainer walls or shrubs planted on top of any water mains in this community.
10. The water system plans already has two wet taps on Independence Way. However, I recommend that a wet tap be installed on Ridge Road so if there is a main break on Independence Way the system will still be looped and keep this development in service.
11. Wet taps to all water mains will use stainless steel fittings.
12. Stainless steel, nuts, bolts & fittings will be used in the construction of the distribution system, all this information is on our new water detail sheet.
13. We will need a copy of the Municipal Services Agreement for our records. It is also important that we receive the agreement section under Water & Sewer service agreements. We will need contact information on the management company that will be responsible for maintaining this area.
14. Due to the fact that the Department of Environmental Protection is creating the Water Accountability Act we will now require Longitude & Latitude readings on all fire hydrants and distribution valves within this developed area. This information will be on the as built plans. This information will also be sent via a SHP. File and a disc copy will go to Tim Lesko, South Brunswick Water Division P.O. Box 190 Monmouth Jct NJ 08852.
15. All township easements will be sloped and properly graded for runoff. There will also be locater pipes installed every 400ft.
16. Water usage for this project will be 38,760 GPD
17. ERUs for this project will be 194.
18. Comment numbers 1,2,3,6,7,8,9,12,14,15 will need to be added to the engineering plans. If it's in writing, it's difficult to dispute. It's important that contractors are aware of their responsibility.
19. On the engineering map, page 2 sections X number 15 it states that South Brunswick Township will be responsible for all water mains in this development. Is this a true statement? I will need something in writing for my records of who will be responsible for the water system.

F. Sewer Supervisor – Scott Cevera

1. This project will require a TWA, as the proposed daily sanitary sewer flows will exceed 8,000 gallons per day (gpd).
2. All sanitary sewer facilities on property shall be owned and operated by the Homeowners Association. This includes all sanitary sewer service laterals and

sewer mains and manholes. **This information shall be added to the Sanitary Sewer Notes on Utility plan.**

3. The Township will consider accepting dedication of the sanitary sewer **pump station and force main** provided that the specifications meet the Sewer Department's requirements. All pump station equipment specs and force main specs shall be provided to the Sewer Division and engineer for review.
4. The Township will require a municipal services agreement pertaining to what the Homeowner's Association's responsibilities are with regard to owning and maintaining the sanitary sewer lines and manholes in the development, as well as the Townships ownership of the force main and pump station.
5. If pump station is to remain private, all operator emergency contact information shall be provided to the Utilities Department as well as the Health Department.
6. Sanitary sewer cleanouts shall not be located in sidewalks or driveways. Any cleanouts which must be located in a sidewalk or driveway shall be located in a valve box. There shall be a cleanout installed near building and a cleanout installed near the curb. **This information shall be added to the Sanitary Sewer Notes on Utility plan.**
7. There shall not be any plantings over any sanitary sewer lines. **This information shall be added to the Sanitary Sewer Notes on Utility plan.**
8. All proposed manholes shall be pretreated on the interior with Raven 405 epoxy coating or equivalent and tarred on the exterior. **This information shall be added to the Sanitary Sewer Notes on Utility plan.**
9. During construction, all manholes connecting to the South Brunswick Township sanitary sewer collection system shall be remain plugged using mechanical plugs, isolating all construction site sanitary sewer lines from South Brunswick's sewer system. Prior to plug removal, any water in the manholes or sanitary sewer lines shall be pumped out and properly disposed of at a NJDEP licensed facility. Copies of all invoices for wastewater disposal shall be provided to the Township Utilities Division. Plugs are to remain in place until the Utilities Department approves removal. **This information shall be added to the Sanitary Sewer Notes on Utility plan.**
10. Prior to issuance of C.O. – All sanitary sewer lines are to be cleaned, followed by a professional CCTV inspection. The CCTV inspection shall provide pipe footages and manhole numbers. The camera shall have the ability to pan, showing all pipe joints. A copy of the CCTV inspection shall be provided to the Utilities Department and sewer engineer for review. **This information shall be added to the Sanitary Sewer Notes on Utility plan.**
11. As-Built plans shall be provide to the Utilities Department in paper form and AutoCAD disc.
12. The Utilities Engineering Report states a daily sanitary sewer flow of 37,000 gpd.
13. Sanitary sewer connection fees will be based on 185 ERU's

14. The applicant will be required to demonstrate the ability of the existing downstream sanitary sewer system to handle the increased sanitary sewage flows expected from the proposed project.
15. The sanitary sewer flow generated from this project will be conveyed through the Ridge Road sanitary sewer interceptor, which flows to Stony Brook Regional Sewer Authority for treatment. Results from a recently conducted sanitary sewer capacity and flow study have concluded that this sanitary sewer Interceptor is currently at capacity in some areas. However, it is possible that the sanitary sewer capacity required for this project may be achieved by the applicant performing certain improvements. The applicant will be required to locate areas of infiltration and Inflow (I & I) either by Electro-Scan studies and/or CCTV studies. The applicant will be required to submit a proposal to the Utilities Department outlining all proposed improvements to the interceptors which will ensure additional capacity for the project's proposed daily wastewater flows. This proposal will be subject to review by the Utilities Department and sewer engineer for final approval.

G. Health Officer – Robert Uhrik

The health Department comments are as follows:

1. Historic pesticide testing of soil shall be conducted as all or part of this property was agricultural use in the past.
2. The Health Department discourages placement of residential housing in close proximity to a major highway (US Route 1) without proof that interior sound levels from any traffic noise under all conditions at nighttime hours would be less than 35 dba.
3. The Health Department recommends other activities, such as passive recreation (playground) or open space be located on land closest to US Route 1.

H. Construction Official – James Dowgin

Code Administration has no objections to this application. However all work or change of use will require a construction permit and will have to conform with the latest edition of the New Jersey Uniform Construction Code at the time of construction.

I. Fire Official – John Funcheon

This office has reviewed the application for the purpose of identifying and addressing significant fire safety concerns. The following items need to be completed before approval can be given.

1. The plan does not show the adequate placement of fire hydrants on Roads A and B.

2. Install bollards, NO PARKING FIRE LANE signs on each bollard, and a chain suspended between the bollards at the front of the emergency vehicle turn around. See the attached specification sheet for the sign information.
3. The Fire Truck Turn Radius plan does not show that Monmouth Junction Volunteer Fire Department truck # 201 can be used the dead end turn a rounds at Road D & E.
4. Because this development is residential and for aesthetic reasons, I am hesitant to require fire lane striping and signage on all the road thru out the development. If a vehicle parks on a road, especially in front of a townhouse, the minimum width of 20 feet for fire apparatus access will not be met. Therefore, non-space street parking shall be prohibited. If the parking of vehicles becomes an issue, I will require the entire development to be fire lane striped and signed.

J. Public Works Director - Raymond Olsen

The following are responses from the Public Works Department:

Roads

1. A road-opening permit will be required from Public Works
2. Public Works does not want any responsibility for any easements dedicated for public purposes.
3. Public Works does not want any responsibility for any open space; the homeowners association should own all open space property.
4. All catch basins, curbs, and sidewalks should be the responsibility of the homeowners association.
5. Public Works does not the responsibility of maintaining any roadways, storm water systems, trees, or easements in this development.
6. Snow plowing should be the responsibility of the homeowners association. We have nowhere to put the snow within the development.
7. We have a flooding issue at the intersection of Route 1 and Ridge Road. The retention basin outflow will only add to the problem. We recommend a storm water survey to be done to determine what upgrades needed to an old system before additional water is allowed to enter this area. In addition, the 24" pipe that ties into the basin along Ridge Road that only has an 18" out flow. This could cause flooding along the stretch of Ridge Road.
8. The detention basin spillway is along Ridge Road. Steps need to be taken to ensure there is no flooding issues due to the basin spillway.
9. Because the existing storm sewer will be tied into along Ridge Road, those basins effected will need to be repaired and upgraded to current standards.
10. All trees/shrubs must be planted outside the township right of way.
11. Upon completion of the development, Independence Way must be milled and paved in both directions along the frontage of the property. If any underground utilities are going to be tied into along Ridge Road that area must be milled and paved as well. – Mike Rakes/Roads

Parks

1. Public Works is not responsible for any storm water basin or drainage easement.
2. The removal of snow/ice in all common area, sidewalks within the development and or roadway frontage.
3. The maintenance of grass, trees, shrubs or fencing within the developments common areas, open spaces and/or development roadway frontage.
4. Any recreation field/area, play ground or picnic areas. – Bill Epps/Parks

Recycling

1. Solid waste and recycling material will be collected curbside of property. Once per week for each week.
2. It is recommended to have 50-foot radius cul-de-sacs opposed to the “hammer head” turn around for ample room for collection trucks.
3. Receptacles of refuse shall not be set out for collections before 6pm of the day prior to the collections day on the route along which the receptacle is situated, nor shall empty receptacles be allowed to remain on the curbside on the day after collections.
4. Construction vehicles must not obstruct roadways and areas designed for turn arounds during construction. Collections vehicles must have ability to maneuver throughout the development to collect materials from occupied homes. – Paul Luceri/Recycling

K. Environmental Commission – Dennis Weitz

1. Applicant should provide an overall site plan for review, not just the individual sections.
2. Provide a storm water operation and maintenance manual.
3. E.C. review is still pending

L. Deputy Tax Assessor – Bradley Millman

I have reviewed the application for preliminary and final subdivision for the above referenced property and have no comments at this time.

M. Police Department – TSC. Joseph Charmello

I have reviewed the above listed site plan and traffic report for a proposed major subdivision, of a 19.35 acre lot which lies between Ridge Road and Independence Way, to build 129 townhomes.

Several observations from my previous review have been addressed, the remaining comments appear below:

Parking: More than 100 of the parking spaces are designated as garages; experience shows that garages can be repurposed as storage, if this occurs it could

reduce the amount of available parking, it could eventually negate the extra spaces.

Traffic Bureau prefers “No Stopping or Standing” signs over “No Parking” signs.

I was not able to detect an emergency access way from Ridge Road on the plans. This should be considered if not already, as emergency service resources will be approaching from Ridge Road and this access will allow for faster ingress.

N. Board of Education – David Pawlowski

No comments received as of September 26, 2019.

O. Shade Tree Commission – Jeff Cramer

No comments received as of September 26, 2019.

TOWNSHIP OF SOUTH BRUNSWICK

**2017 SANITARY SEWER SYSTEM CAPACITY AND FLOW
STUDY**

**APRIL 19, 2018
(Revised October 19, 2018)**

OUR FILE NO. M-300-110-000

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EXECUTIVE SUMMARY

The Township of South Brunswick authorized Richard A. Alaimo Associates to conduct a Capacity and Flow Study of the Township's major sanitary sewer interceptors in the spring of 2017. The first step of this study was to perform flow monitoring to identify areas within the sanitary sewer system that have problems with infiltration and inflow (I & I). The flow data were then analyzed and recommendations were made for both further investigations and corrective actions that would help mitigate the problems identified.

The Township is divided into two service areas. The eastern side of the Township's wastewater system flows to the Middlesex County Utilities Authority (MCUA) and the western side flows to the Stony Brook Regional Sewerage Authority (SBRSA). Flow meters were installed at thirteen locations along five interceptors for a two month period starting in early June 2017. Three flow meters each were placed along the Kingston and Ridge Road interceptors, which discharge to the SBRSA. Also, three flow meters each were placed in the Oakeys Brook and Town Center interceptors and one in the Route 130 interceptor. All three of these interceptors discharge into the MCUA system.

Given the age of the Township's sewage collection system and the proximity of some of the sewer mains to water bodies, it was not surprising to see significant I & I flows measured in the interceptors. The most significant I & I was measured in portions of the Oakeys Brook, Town Center and Ridge Road interceptors. Recommendations for further investigation and rehabilitation within these interceptors are presented at the end of this report. The report also addresses the remaining capacity of the interceptors so that there will be a basis for deciding whether sufficient capacity exists to allow for future connections within each drainage basin. Since an overflow event was reported due to Pumping Station No. 10, the Town Center, Oakeys Brook and Route 130 Interceptors must be considered to lack sufficient capacity for new connections. Similarly, an overflow was reported in the Ridge Road interceptor and this interceptor must also be considered to be over capacity. Also, the Kingston interceptor is projected to experience overflows in its downstream runs if all proposed development flows are allowed. The NJDEP's definition of Adequate Conveyance Capacity (N.J.A.C. 7:14A-1.2) includes a provision that "the peak wet weather flow does not result in overflows or discharges from any unpermitted discharge locations." In order to meet this requirement, all developers/applicants must eliminate extraneous flows in an amount equal to their contribution into the system so that additional overflows can be prevented.

I. INTRODUCTION

In accordance with South Brunswick Township Resolutions No. RES-2017-132 and RES-2017-211, Richard A. Alaimo Associates (Alaimo) has conducted a study to determine the magnitude of inflow and infiltration (I & I) in the Township's major sanitary sewer interceptors. The goal of this study is to use flow metering data to identify areas prone to I & I problems, recommend areas for further study and recommend corrective actions.

This study is a follow-up to a previous study performed by Alaimo in 1998 and 1999. A report with recommendations for further investigation and system rehabilitation was presented to the Township dated October 1999. Pipeline inspection and rehabilitation work was performed in 2003 in accordance with the recommendations made in the report.

In May 2017, Alaimo retained the services of CSL Services Incorporated (CSL), to perform flow monitoring and provide an analysis of the flow monitoring results. The flow monitoring was conducted within the Kingston, Ridge Road, Oakeys Brook, Town Center and Route 130 interceptors. A total of thirteen flow meters and two rain gauges were installed and monitored over the two month period. CSL presented the results of their analysis of the data collected during this period in a report dated November 1, 2017. Their report is included as Appendix A of this report.

CSL started collecting data from the flow meters and rain gauges on June 10, 2017 and continued doing so until August 10, 2017. During this period, there were eleven rain events with rainfall ranging from less than 0.2 inches to almost two inches per event. This weather pattern provided a good look at how the collection system is affected by various rainfall amounts. Also, the flow meters were installed at the end of a short period without rain, so the first week of data collection could be used as the dry weather benchmark period.

After the measurement period was completed, CSL presented the raw data to Alaimo along with simple statistical analyses in early September 2017. CSL also conducted further analyses of the data and prepared the November 2017 report that provided estimates of the dry weather flow, wet weather flow and rainfall induced infiltration and inflow (RDII) quantities.

Typically, inflow and infiltration are caused by a combination of the following:

Inflow

- Surface water leakage through manhole covers.
- Discharge from basement sump pumps.

- Roof drain connections to the sanitary system.
- Storm sewer connections.

Infiltration

- Groundwater leakage through cracks or broken seals in sewer pipes and manholes.
- Groundwater leakage through poorly laid or broken private laterals.

II. METHODOLOGY

The Township is divided into two separate service areas with multiple drainage basins based on the direction of flows through the sanitary system to the receiving regional systems. Each drainage basin is served by an interceptor sewer main that conveys sewage to a point where it is transferred to the respective regional system. Manhole locations were identified within five interceptors to isolate the drainage basins and their flows. The manholes that were identified were then inspected to ensure the condition of the system and potential for use in the installation of metering devices.

Figure 1 shows a map of the entire Township with the service areas, drainage basins, and manholes used for metering identified.

The meters used in this study were the area/velocity type. The flow meter consists of sensors that measures depth, which is used for calculating the area of the pipe, and velocity measurements, which are used in determining the flow rate through the pipe. The depth and velocity measurements were taken every five minutes using pressure and/or ultrasonic sensors. Two rain gauges were installed, one in each service area, to record the rain events during the flow metering. The locations of the rain gauges are also shown in Figure 1.

III. SEWER SYSTEM AREA

The Township's sanitary sewer system is divided into two service areas that flow to either Stony Brook Regional Sewerage Authority (SBRSA) in Princeton or the Middlesex County Utilities Authority (MCUA) in Sayreville. Within the two service areas, the major sewer interceptors of concern were identified. In the SBRSA the interceptors investigated were Kingston and Ridge Road. The Oakeys Brook, Town Center, and the Route 130 interceptors were investigated in the MCUA service area.

Each of the interceptors identified were used as the basis in creating drainage basins that were then sub-divided into smaller sub-basins to facilitate ease of monitoring and data collection. Descriptions on the locations of meter installations within the sub-basins are listed below:

- Kingston Interceptor

The Kingston drainage basin was split into three sub-basins. The first meter was installed in a manhole near a baseball field on Quentin Road. The meter was placed in an eighteen inch diameter pipe. The second meter was placed in a twenty-four inch diameter pipe located in the woods off of Ridge Road. The final meter was installed in a thirty inch diameter pipe in the woods off of Ridge Road. Those last two meters were installed in two parallel pipes in order to capture the total flow in the downstream part of the drainage basin. It must be noted, however, that not all of the Kingston drainage basin consists of parallel lines and that approximately 10,000 feet of single twenty-four inch sewers comprise this drainage basin between the K1 and K2, K3 sites. In total the Kingston drainage basin consists of 255,117 linear feet of pipe that includes eight inch through thirty inch diameter pipe.

- Ridge Road Interceptor

The Ridge Road drainage basin was divided into three sub-basins. The first meter was installed in a manhole along Stouts Lane in a twenty inch diameter pipe. The second meter was placed in a twenty-one inch diameter pipe located on the southbound side of Route 1 across from a lake located next to the Kilgore Center. The final meter was installed in a twenty-four inch diameter pipe in the woods off of Ridge Road. In total the Ridge Road drainage basin consists of 191,884 linear feet of pipe that includes eight inch through twenty-four inch diameter pipe.

- Oakeys Brook Interceptor

The Oakeys Brook drainage basin was separated into three sub-basins. The first meter was installed in a manhole along Black Horse Lane in an eighteen inch diameter pipe with flows coming from Black Horse Lane and Finnegan Lane. The second meter was placed in a twelve inch diameter pipe along Black Horse Lane with flows coming from Henderson Road and Deans Lane. The pipes into which the first and second meters were placed join together on Black Horse Lane, from which point flows continue towards Route 130. The final meter was installed in a twenty-one inch diameter pipe across the street from Pump Station No. 10. In total the Oakeys Brook drainage basin includes 142,708 linear feet of pipe that consists of eight inch through twenty-one inch diameter pipe.

- Town Center Interceptor

The Town Center drainage basin was split into three sub-basins. The first meter was installed in a manhole off of Major Road in a twelve inch diameter pipe. The second meter was placed in a twenty-four inch diameter pipe along Deans Pond Lane. This line does not receive flow from the pipe in which the first meter along this drainage basin is located, but it will receive flow from the proposed South Brunswick Center development. The final meter was installed in a thirty-six inch diameter pipe located next to the Teyma building off of Route 130 along the creek. In total the Town Center drainage basin consists of 57,495 linear feet of pipe that includes eight inch through thirty-six inch diameter pipe.

- Route 130 Interceptor

The meter used to measure the Route 130 drainage basin was placed in a thirty-six inch diameter pipe in a manhole near the intersection of Route 130 and Viking Way. In total the Route 130 drainage basin consists of 93,592 linear feet of pipe that includes eight inch through thirty-six inch diameter pipe.

IV. FLOW ANALYSIS

CSL conducted an analysis of the data recorded from June 2017 through August 2017 in the Township's collection system. The results of this analysis are shown in Table 1, which is a copy of Table 3.2 of the CSL report. CSL first separated the data into two time periods. The first is the "dry" period prior to the first rainfall event of the study period. This period ran from June 10 through June 16. Since the previous recorded rainfall for the area occurred on June 6, the "dry" period reflects the system flows over a ten day period with no rain. CSL then estimated the amount of dry weather infiltration (DWI) by assuming eighty-five percent of the minimum flow through the pipes during this period came from seepage of groundwater into the pipes and manholes. This is a good baseline estimate of the constant flow of groundwater into the collection system. These flows will be higher during the late winter/early spring when groundwater levels are higher than they were during this study period.

The second time period was the wet weather period (June 17 – August 11) when flows were analyzed and statistical projections were made to predict the rates of flow in the interceptors after a twenty-four hour rain event with a two-year frequency. This flow rate represents the Rain Derived Infiltration and Inflow (RDII) for each metering location. The RDII was then divided by the total length of sewers upstream from the metering location to obtain the RDII/LF value which can be used to compare the relative integrity of each sewer sub-basin. A ranking of each sub-basin was then generated based upon this comparison and the resulting priority for further investigation and rehabilitation is shown in Table 1.

Table 1
South Brunswick Township
Interceptor Flow Studies
Flow Monitoring Data Analysis

Sub-System Details										Dry Weather Results						Wet Weather Results					
Site	Sewer Service Area	Pipe Diameter (in)	Mini System Size (LF)	Silt Debris, Gravel, Grease	Average			Minimum			Peak			Net RDII 2 yr-24 hour (mgd)	Net RDII per LF (gpd/LF)	Priority	Peak Depth (in)	Peak Depth/Diameter (%)			
					Depth (in)	Depth/Diameter (%)	Velocity (fps)	Flow (mgd)	Min Flow (mgd)	DWI (mgd)	Depth (in)	Depth/Diameter (%)	Velocity (fps)						Net Flow (mgd)		
K1		18	138,720	0	1.77	10%	1.22	0.16	0	0	4.13	23%	3.9	0.693	10.23	6	7.82	43%			
K2	SBRSA	24	118,222	0	6.93	29%	1.68	0.82	0.44	0.38	8.65	36%	2	0.915	14.39	5	20.75	86%			
K3		30	118,222	0	3.43	11%	3.36	0.68	0.43	0.37	4.37	15%	3.9	0.707	6.26	12	7.61	25%			
OBI		18	109,248	0	5.76	32%	1.88	0.6	0.24	0.2	7.69	43%	2.5	1.093	8.88	7	25.8	143%			
OB2	MCUA	12	23,195	0	3.56	30%	1.5	0.16	0.06	0.05	4.47	37%	2.1	0.351	8.19	9	8.06	67%			
OB3		20	10,265	0	5.78	29%	2.58	0.91	0.39	0.33	7.02	35%	3.8	0.056	27.28	2	10.5	52%			
TC1		24	18,216	0	5.38	22%	1.1	0.39	0.1	0.08	7.2	30%	1.7	0.856	7.01	11	12.24	51%			
TC2	MCUA	24	6,246	0	0.54	2%	0.43	0.01	0	0	1.01	4%	0.9	0.024	3.02	13	5.23	22%			
TC3		36	33,033	1.5	13.94	39%	0.69	1.08	0.55	0.47	15.5	51%	1.3	1.697	0.648	3	31.04	86%			
RR1		20	112,110	0	8.36	42%	1.48	0.84	0.37	0.32	10.38	52%	2.2	1.513	0.848	10	44.75	224%			
RR2	SBRSA	21	49,102	0	7.64	36%	1.87	0.97	0.42	0.36	10.5	50%	2.4	0.285	0.824	4	43.47	207%			
RR3		24	30,672	0	11.34	47%	1.67	1.58	0.77	0.65	14.47	60%	2.2	0.966	1.085	1	31.25	130%			
RT130	MCUA	36	93,592	0	9.91	28%	1.19	1.24	0.4	0.34	12.38	34%	1.8	2.214	8.87	8	14.9	41%			
Total			860,843											9,683	199.97						

Note: The metering points K2 and K3 are in parallel sewer mains, allowing for extra capacity. The 24" sewer main directly upstream from the parallel pipes will likely be subject to surcharging.

V. FINDINGS**A. Interceptor Capacity**

The New Jersey Department of Environmental Protection (DEP) requires that existing sanitary sewers be able to convey the peak dry weather flow from the connected properties while flowing no more than eighty percent full. This is to allow for eventual infiltration and inflow during peak storm events. In order to evaluate the remaining capacity of each sewer sub-basin, we started with the Peak Dry Weather Flow from Table 1. The full flow capacity for each pipe diameter was calculated at the minimum allowable slope and a Coefficient of Roughness of 0.013 to reflect the existing pipe material. The Committed Capacity Ratio was then developed by dividing the Peak Dry Weather Connected Flow by the full flow capacity. If the resulting value exceeds eighty percent, then the interceptor has insufficient capacity to receive additional connections. As can be seen on Table 2, none of the studied interceptors currently exceed this threshold. It should be noted, however, that the RR2 location has limited remaining capacity. It is currently flowing at sixty-eight percent capacity and new connections into this interceptor should be limited to approximately 490,000 gpd.

B. Response to Rainfall Events

In addition to having the capacity to transmit sanitary sewage flows in accordance with NJDEP regulations, the collection system must be able to carry infiltration and inflow that would be expected from a periodic rainfall event. CSL used the rainfall expected over a twenty-four hour period with a frequency of every two years based on historic data as its baseline storm (approximately 3.5 inches). The storm data was obtained from the National Oceanographic and Atmospheric Administration (NOAA) Intensity Frequency Curves for South Brunswick, New Jersey.

As shown in the last column on Table 1, all of the Ridge Road interceptor and the Oakeys Brook interceptor at OB1 can be expected to surcharge at least once every two years. Also, since the interceptors at K2 and K3 are parallel lines, the twenty-four inch interceptor immediately upstream from these locations must be evaluated for possible surcharges during storm events. If the combined RDII from K2 and K3 (2.441 MGD) were to flow through the single twenty-four inch upstream sewer, that sewer would flow at 123% of its capacity, thereby surcharging this line during the two year rain event. It should also be noted that flows in the Town Center Interceptor approach the maximum capacity during the selected storm event. This is likely due to insufficient capacity at Pumping Station No. 10 during peak rainfall events) causing backups into this interceptor.

Table 2
South Brunswick Township
Interceptor Flow Studies
Sewer Capacity Analysis

Interceptor	Monitoring MH	Pipe Diameter, in	Peak Dry Weather Flow, MGD	Full Flow, MGD	Committed Capacity Ratio
Kingston	K1	18	0.69	2.35	29%
	K2	24	1.31	4.06	32%
	K3	30	1.01	6.39	16%
Oakeys Brook	OB1	18	1.09	2.35	47%
	OB2	12	0.35	1.08	33%
	OB3	20	1.50	2.84	53%
Town Center	TC1	24	0.86	4.06	21%
	TC2	24	0.02	4.06	1%
	TC3	36	2.58	9.15	28%
Ridge Road	RR1	20	1.51	2.84	53%
	RR2	21	1.80	3.11	58%
	RR3	24	2.76	4.06	68%
Route 130	RT130	36	2.21	9.15	24%

The Township has already experienced surcharges in the Town Center and Ridge Road interceptors during major storm events. As required, the surcharges were reported to the NJDEP emergency hotline. Additionally, these calls were followed up with written reports to the NJDEP (see Appendix A). No enforcement actions were lodged against the Township as a result of timely and appropriate actions taken by the Sewer Utility in response to the surcharges.

C. Base Dry Weather Flows

The analysis performed by CSL on the minimum dry weather flows provides insight into the cost of a leaky collection system to the Township. We have prepared Table 3 to further analyze this relationship. This table separates the interceptors by the regional system to which they discharge and repeats the values for the total feet of sewer mains directly upstream from each measuring site. The estimated volume of dry weather infiltration is also entered for each site. The length of sewer mains within each sub-basin was then used to arrive at a value for the volume of dry weather inflow per linear foot of upstream pipe. This value can be used to help establish priorities for rehabilitation work.

The importance of reducing the volume of dry weather infiltration flow is twofold. First, these flows take up sewer capacity that may be needed for current and future customers. Secondly, the Township must pay for the treatment of this groundwater by the regional sewerage authorities. The magnitude of this flow can be seen for each of the two major collection basins that are totaled on Table 3. These basin totals represent a significant portion of the sewage that is conveyed to the regional treatment authorities each day. For instance, the total flows from South Brunswick to the SBRSA in the months of June and July 2017 averaged 3.31 MGD. Therefore, the estimated total DWI in this basin would represent over forty percent of the total daily flow discharged to SBRSA. While the estimate may be high, it is apparent that DWI significantly increases the amount that the Township must pay to the regional authorities each year. Efforts to reduce the amount of DWI in all sewer mains within the Township should prove cost effective. It will not be possible to eliminate 100% of the DWI, but efforts to do so in the oldest sewer mains and those in the areas of high groundwater will show the largest return on investment.

Table 3
South Brunswick Township
Interceptor Flow Studies
Dry Weather Infiltration Analysis

Interceptor	Monitoring MH	Direct Contributions, LF	Cumulative Contributions, LF	Net DWI, MGD	Net DWI/LF, gpd/lf
Oakeys Brook	OB1	109,248	109,248	0.20	1.83
	OB2	23,195	23,195	0.05	2.16
	OB3	10,265	142,708	0.08	7.79
Town Center	TC1	18,216	18,216	0.08	4.39
	TC2	6,246	6,246	0.00	0.00
	TC3	33,033	57,495	0.39	11.81
Route 130	RT130	93,592	93,592	<u>0.34</u>	3.63
MCUA BASIN TOTAL				1.14	
Kingston	K1	138,720	138,720	0.00	0.00
	K2	118,222	256,942	0.38	1.48
	K3	118,222	256,942	0.37	1.44
Ridge Road	RR1	112,110	112,110	0.32	2.85
	RR2	49,102	161,212	0.04	0.81
	RR3	30,672	191,884	<u>0.29</u>	9.45
SBRSA BASIN TOTAL				1.40	

VI. IMPACT OF PROPOSED FUTURE DEVELOPMENTS

Fourteen new developments are proposed for the Third Round of Affordable Housing within South Brunswick Township. We previously prepared a desktop analysis of the impact of future flows from these projects on the Township's sewage collection system. We presented our findings in a report dated August 2016.

The data that was collected for the current study has enabled us to check some of the assumptions made in the 2016 study and take a closer look at the issues of capacity and surcharges. As reported in earlier sections of this report, the remaining capacity in the lower reaches of the Ridge Road Interceptor is minimal. Additionally, surcharging can be expected in the Ridge Road Interceptor, the Oakeys Brook Interceptor and the portion of the Kingston twenty-four inch interceptor upstream from metering points K2 and K3. Manhole overflows have already been reported to the NJDEP for incidents along the Ridge Road and Town Center Interceptors.

To assess the impact of the flows from the Third Round of Affordable Housing projects, we have created Table 4, which designates the metering points along the interceptors through which the flow from each development will pass. The proposed development locations are shown on Figure 2.

Tables 5 and 6 were then generated to analyze the impact of the proposed developments on pipe capacity and the likelihood of surcharging. From Table 5 it can be seen from the increase in the committed capacity ratio that the limited remaining capacity in the Ridge Road Interceptor will be partially used by the proposed development flows.

The analysis performed on Table 6 evaluates the ability of each interceptor to accommodate the future maximum flows. It also provides an estimate of the total maximum flows to each of the two regional sewerage authorities. The results show that surcharging can be expected during significant future storm events in the Oakeys Brook, Kingston and Ridge Road interceptors.

Table 6 also shows that the firm capacity of Pumping Station No. 10, which receives all flows within the MCUA basin, will be exceeded by these projected maximum flows. Our November 2000 report on this pumping station calculated the station's firm capacity to be 9.55 MGD. As stated in our earlier report, the Township has entered into an agreement with Cranbury Township to reserve 1.75 MGD of capacity at this pump station for future connections within Cranbury. Therefore, the total capacity available for South Brunswick Township is 7.80 MGD. The projected maximum flows of 10.17 MGD greatly exceed this capacity. The tendencies for the maximum flows to surcharge the interceptors and exceed the pumping station capacity can be alleviated through an aggressive I & I reduction program in both the Oakeys Brook and Town Center

Interceptors. Improvements to the pump station and force mains may eventually also be necessary. However, this would not be the most cost-effective approach.

From those analyses, it is recommended that total flows from all new developments into the Kingston or Ridge Road Interceptor be monitored closely to ensure that the allowable capacity is not exceeded. Furthermore, it is also recommended that developments that propose to connect into interceptors predicted to surcharge, and all interceptors that contribute flows to Pumping Station No. 10, locate and eliminate I & I in the drainage basins to which they will flow in an amount at least equal to the proposed peak flow from the development.

VII. FURTHER INVESTIGATION AND REHABILITATION

This report contains three metrics that can be used to determine priorities for further investigation and rehabilitation work. They are percent of sewer capacity used by the average dry weather flow, the likelihood of surcharging based upon the Net RDII/LF and the estimated DWI/LF. All three of these metrics are summarized and prioritized on Table 7. Determining which of these are most important to the Township in allocating resources will depend on the goals for each sub-basin. The percent of sewer capacity estimation will be most important within those sub-basins where capacity is needed for proposed development projects. The RDII/LF priorities should govern where surcharges have been most frequently reported. If best return on investment is the main consideration, then the DWI/LF priorities are most important.

Table 4
South Brunswick Township
Third Round Affordable Housing
Interceptor Runs Impacted

Map Label	Project	Proposed Flow, gpd	Meter Locations
A	Roedel	27,000	K2,K3
B	Cambridge Crossing	25,050	RR1,RR2,RR3
C	American Properties	20,250	OB1,OB3
D	Avalon Bay	42,750	TC1,TC3
E	SBC	457,875	TC2.TC3
F	Princeton Orchards	78,150	Rte 130
G	Windsor Assoc	13,950	TC1,TC3
H	RPM	45,750	OB2,OB3
I	E. Meadow Estates	16,500	OB1,OB3
J	Stanton Girard	27,000	K1,K2,K3
K	Wilson Farms	45,075	K1,K2,K3
L	Toll Bros (Mindel)	25,500	RR1,RR2,RR3
M	K Hovnanian (Bellemead)	28,125	RR3
N	PPF Industrial	142,200	TC3

Table 5
South Brunswick Township
Interceptor Flow Studies
Future Sewer Capacity Analysis

Interceptor	Monitoring MH	Pipe Diameter, in	Peak Dry Weather Flow, MGD	Proposed Connections, MGD	Future Flow, MGD	Full Flow, MGD	Committed Capacity Ratio
Kingston	K1	18	0.69	0.07	0.77	2.35	33%
	K2	24	1.31	0.04	1.35	4.06	33%
	K3	30	1.01	0.06	1.07	6.39	17%
Oakeys Brook	OB1	18	1.09	0.05	1.14	2.35	48%
	OB2	12	0.35	0.04	0.39	1.08	36%
	OB3	20	1.50	0.08	1.58	2.84	56%
Town Center	TC1	24	0.86	0.06	0.91	4.06	22%
	TC2	24	0.02	0.46	0.48	4.06	12%
	TC3	36	2.58	0.66	3.24	9.15	35%
Ridge Road	RR1	20	1.51	0.06	1.57	2.84	55%
	RR2	21	1.80	0.06	1.86	3.11	60%
	RR3	24	2.76	0.08	2.84	4.06	70%
Route 130	RT130	36	2.21	0.08	2.29	9.15	25%

Table 6
South Brunswick Township
Interceptor Flow Studies
Maximum Future Flow Analysis

Interceptor	Monitoring Manhole	Sewer Service Area	Pipe Diameter (in)	Net Peak Dry Weather Flow (mgd)	Net RDII 2 yr-24 hour (mgd)	Basin Total Peak Flow, MGD	Basin Total RDII, MGD	Basin Present Max Flow, MGD	Basin Proposed Connections, MGD	Basin Future Flows, MGD	Full Flow, MGD	Committed Capacity Ratio	Total Service Area Max Flows, MGD
Oakeys Brook	OB1		18	1.09	0.97	1.09	0.97	2.06	0.05	2.11	2.35	90%	
	OB2	MCUA	12	0.35	0.19	0.35	0.19	0.54	0.04	0.58	1.08	54%	
	OB3		20	0.06	0.28	1.50	1.44	2.94	0.08	3.02	2.84	106%	
Town Center	TC1		24	0.86	0.13	0.86	0.13	0.98	0.06	1.04	4.06	26%	
	TC2	MCUA	24	0.02	0.02	0.02	0.02	0.04	0.46	0.50	4.06	12%	
	TC3		36	1.70	0.65	2.58	0.80	3.37	0.66	4.03	9.15	44%	
Route 130	RT130	MCUA	36	2.21	0.83	2.21	0.83	3.04	0.08	3.12	9.15	34%	10.17
Kingston	K1		18	0.69	1.42	0.69	1.42	2.11	0.07	2.19	2.35	93%	
	K2	SBRSA	24	0.92	1.70	1.19	2.27	3.46	0.04	3.50	4.06	86%	
	K3		30	0.71	0.74	1.12	1.59	2.71	0.06	2.77	6.39	43%	
Ridge Road	RR1		20	1.51	0.85	1.51	0.85	2.36	0.06	2.42	2.84	85%	
	RR2	SBRSA	21	0.29	0.82	1.80	1.67	3.47	0.06	3.53	3.11	113%	
	RR3		24	0.97	1.09	2.76	2.76	5.52	0.08	5.60	4.06	138%	8.37

Note: Net flows represent only those flows that directly contribute to the sewers directly connected to the portion of the interceptor between the previous metering point to the metering point noted.

Total flows represent all upstream contributions to the metering point noted.

Net upstream flows into K2 & K3 were proportional divided into these parallel lines to arrive at basin totals.

The total future flows to Pumping Station No. 10 will include the 10.17 MGD from South Brunswick plus 1.75 MGD from Cranbury for a total of 11.92 MGD

The results of the flow monitoring were used to create a picture of the areas within the system that should be prioritized to address the I & I problems. However, further investigations are needed to determine the actual root of the problems within each service area, which is typical following a flow monitoring study. Studies have shown that 100% removal of I & I is not something that can be achieved, but approximately thirty percent removal can be expected. This removal can be obtained by manhole inspections, CCTV inspections and smoke testing in conjunction with flow monitoring.

The goal of the manhole inspections will be to identify any infiltration that is getting into the manhole via cracks within the manhole itself or at the frame and cover. The CCTV inspections will allow for an internal investigation of the pipes to identify any cracked pipes and leaky joints. Smoke testing is useful to locate any illegal connections to the sanitary sewer system as well and any cracked mains and laterals within the system. These investigations should start in the interceptors with the highest priority for corrections. If the corrections made as a result of the investigations do not yield sufficient I & I reduction, the Township should then continue upstream to the sewer mains that supply the interceptors to determine if there are any I & I problems that need to be addressed in the smaller pipes.

It should be noted that addressing sewer capacity issues, should they arise, is a much more costly endeavor than sewer rehabilitation to reduce I & I. Since sewer capacity is determined based upon the size of the pipe, reducing I & I in the affected lines will not serve to increase the pipe's capacity. The construction of a parallel sewer main would be the most practical way to increase an interceptor's capacity. These costs should be the responsibility of the developers that propose to send more flow through the affected sewers.

VIII. RECOMMENDATIONS

For the next phase of the Township's I & I corrections program, emphasis should be placed on those interceptors that are rated with a high priority on Table 7. These would include the interceptors upstream from monitoring manholes OB3, TC3, RR2 and RR3. All of these trunk sewers either run along the banks of a stream or have at least one stream crossing. They are probably in areas of high groundwater and any cracked pipes or leaking joints would allow significant amounts of infiltration into the system.

Table 7
South Brunswick Township
Interceptor Flow Studies
Composite Priorities

Interceptor	Monitoring MH	Basis for Priority		
		Interceptor Capacity	Surcharge Prevention	DWI
Kingston	K1	8	4	12
	K2	7	6	8
	K3	12	10	9
Oakeys Brook	OB1	5	5	7
	OB2	6	8	11
	OB3	3	3	3
Town Center	TC1	11	12	4
	TC2	13	13	12
	TC3	9	9	1
Ridge Road	RR1	3	7	6
	RR2	2	2	10
	RR3	1	1	2
Route 130	RT130	10	11	5

Note: The K1 and K2 combined peak wet weather flows will exceed the capacity of the single 24" sewers upstream from these locations.

In early July 2018, Township Sewer Utility personnel witnessed a demonstration of a sewer main leak detection technology. This technology, the Focused Electrode Leak Location (FELL) System, is capable of locating leaks not detectable by CCTV. It can also provide an estimate of the leak's flow rate under prescribed conditions. The use of this technology to investigate sewer lines in areas of high groundwater could significantly reduce the cost to locate and eliminate extraneous flows. The system can either be installed in the Township's existing CCTV truck or provided by the technology's owner on a short-term price per linear foot basis. One negative aspect of this technology is that it is currently a proprietary product in that only Electroscan, Incorporated can provide the equipment and services for its implementation. The Township should continue its investigation into the use of this technology in its efforts to cost effectively reduce the amount of infiltration into its collection system.

When considering the cost effectiveness of performing the recommended investigations and rehabilitation, several factors should be kept in mind. As we previously noted, 100% reduction of I & I cannot be obtained. However, even typical amounts of reduction can alleviate the surcharging experienced during major storms which subject the Township to fines from the NJDEP. Also, even a thirty percent reduction of dry weather infiltration in the recommended interceptors would result in a 210,000 gpd reduction of flows to MCUA and a 90,000 gpd reduction of flows to SBRSA.

IX. ADDITIONAL FLOWS ATTRIBUTABLE TO PROPOSED DEVELOPMENTS

The NJDEP's definition of Adequate Conveyance Capacity (N.J.A.C. 7:14A-1.2) includes a provision that "the peak wet weather flow does not result in overflows or discharges from any unpermitted discharge locations." The additional flows that are estimated to be generated by all proposed developments will exacerbate the surcharging issues that exist within the Township's sanitary sewer system. In order to meet this requirement, all developers/applicants must eliminate extraneous flows in an amount equal to their contribution into the system so that additional overflows can be prevented.

WDS/das

APPENDIX F

STIPULATIONS OF K. HOVNIANIAN SHORE ACQUISITIONS, LLC
LAST REVISED JANUARY 30, 2020

PLANNING DEPARTMENT MEMO FROM BRYAN BIDLACK DATED SEPTEMBER 26, 2019

I through IV. are statements and do not require a response from K. Hovnianian Shore Acquisitions, LLC (the "Applicant").

V. Staff Reports:

A. Planning/Zoning/Bignell Planning Consultants:

**APPLICANT'S RESPONSE TO PLANNING REVIEW LETTER BY BIGNELL PLANNING
CONSULTANTS DATED SEPTEMBER 10, 2019**

STIPULATION 1: Items 1 through 5.B.2. are statements and do not require a response.

5.B. Bulk Standards

STIPULATION 2: 5.B.3. Application is in compliance as submitted. Applicant **and the Township agree that** all references to §62-206(5) are inapplicable to this application since such standards govern multifamily dwellings. To the extent any such standards are applicable, the correct section is §62-206(4) which governs townhouse attached dwellings.

6. Parking Review

STIPULATION 3: 6.A and 6.B. Applicant agrees to revise the plans to include thirty (30) additional on-street parking stalls. Applicant will not specifically designate any on-street parking stalls to any unit. The Application otherwise complies as submitted.

STIPULATION 4: 6.C. Application is in compliance as submitted. Applicant shall provide a demonstrative exhibit with respect to the design of front driveway spaces for affordable units. **See Exhibits A-8 and A-9.**

STIPULATION 5: 6.D. Application is in compliance as submitted.

7. Sign Review

STIPULATION 6: 7. The revised submission provides for a compliant entryway sign. No internal wayfinding signs are proposed at this time.

8. Landscaping and Buffering

STIPULATION 7: 8. Street trees are appropriately spaced in available locations. Excessive open space, recreation, landscape, buffering, tree replacement and reforestation requirements are prohibited as cost-generative per N.J.A.C. 5:93-10.2(a)(6) and 5:97-10.2(a)(3). See Stipulation 17.



9. Land Use Inventory

STIPULATION 8: 9. is a statement and does not require a response.

10. Plan Review Comments

STIPULATION 9: 10.A. is a statement. Applicant agrees to submit all required documentation related to approvals needed from outside agencies.

STIPULATION 10: 10.B. Applicant provided a bulk table/chart with the proposed bulk conditions on Sheet 2 of the plan, however, Applicant will not provide a bulk table with proposed conditions for each lot. This is unduly burdensome and not an ordinary request for a townhouse subdivision plan. The filed map will govern.

STIPULATION 11: 10.D. Applicant shall defer to the Special Hearing Officer's recommendation with respect to final site plan and subdivision approval procedures. A set of three sheets representing the Final Subdivision Plats was submitted for review. Applicant agrees to submit a compliance package evidencing adherence to any condition or requirement imposed upon preliminary approval.

STIPULATION 12: 10.F. Applicant **has revised the plans** to include thirty (30) additional on-street parking stalls. Applicant will not specifically designate any on-street parking stalls to any unit. The Application otherwise complies as submitted.

STIPULATION 13: 10.I. The Applicant is willing to add to the proposed landscaping along the eastern side of the infiltration basin adjacent to "The Pointe" development.

STIPULATION 14: 10.L. Applicant will fence the basin. We proposed vinyl rail fence with protective netting.

STIPULATION 15: 10.O. Applicant agrees to comply as a condition of approval.

STIPULATION 16: 10.P. See attached Stipulated Affordable Housing Standards for detailed responses to the comments from the Township's affordable housing consultant.

STIPULATION 17: 10.W. The HOA will be responsible for snow removal and will work with its contractor to identify suitable locations for snow storage or, in circumstances where excessive snow amounts accumulate, the snow can be removed from the community.

STIPULATION 18: 10.X. **To the extent the Special Hearing Officer finds that the Applicant is required to construct any physical off-tract improvement, rather than the payment of a sum of money toward off-tract improvements, Applicant agrees to enter a developer's agreement with respect to the off-tract improvements.**

STIPULATION 19: 10.Z. Applicant objects to these statements as detailed in the letter dated October 14, 2019 from Applicant's counsel. *Notwithstanding the foregoing, Applicant agrees to comply with all conditions imposed by the Special Hearing Officer and court that are required pursuant to the preliminary approval. Following compliance with all conditions, Applicant shall submit to the Court Master a complete submission demonstrating compliance with all conditions of the Court's Order granting Preliminary Approval. The Township and Court Master shall review the Compliance submission to determine that all conditions have in fact been satisfied. Upon a finding that all conditions have been satisfied, the Court Master shall recommend to the Special Hearing Officer and the Court that the Court is authorized to sign the subdivision plat for recording with the Middlesex County Clerk and the Site Plan for submission to the Building Department. In the event of a settlement, Applicant shall make an application for final approval to the South Brunswick Township Planning Board.*

STIPULATION 20: 10.AA. Applicant agrees to comply with the Township's tree replacement standards.

STIPULATION 21: 10.BB. Applicant agrees to comply.

11. Recommendations

STIPULATION 22: 11.A. Applicant agrees to comply as a condition of final approval, upon recommendations of Special Hearing Officer and Special Master with respect to those items which Applicant objects or does not agree to comply.

STIPULATION 23: 11.B. Applicant agrees to comply as a condition of final approval.

STIPULATION 24: 11.C. is not applicable because no variance relief is sought in connection with this application.

STIPULATION 25: 11.D. is not applicable because no variance relief is sought in connection with this application.

STIPULATION 26: 11.E. Applicant agrees subject to a reservation of its right to protest excessive fees that are cost generative.

B. Planning/Zoning – Clarke Caton Hintz:

APPLICANT'S RESPONSE TO PLANNING REVIEW LETTER BY CLARKE CATON HINTZ DATED SEPTEMBER 10, 2019

STIPULATION 27: Items 1.1 through 4.1 are statements and do not require a response.

4. Use and Area Standards

- STIPULATION 28: 4.2. Applicant **agreed** to limit the density and **amended** the proposed zoning ordinance to include a density standard which reads: “7 *dwelling units per acre, with no more than 129 total units being permitted in the zone.*”
- STIPULATION 29: 4.3 is a statement and does not require a response.
- STIPULATION 30: 4.4. Application is in compliance as submitted.
- STIPULATION 31: 4.5 Applicant **revised** the proposed zoning ordinance to add an impervious coverage standard for the ***entirety of the tract which allows*** for a maximum of 50% impervious coverage.
- STIPULATION 32: 4.6 Applicant **revised the proposed zoning ordinance** to add a building coverage standard for the ***entirety of the tract which allows*** for a maximum of 25% building coverage.
- STIPULATION 33: 4.7 Applicant **agreed to revise the proposed zoning ordinance** to add an open space standard for the entirety of the tract and will amend the proposed zoning ordinance to require a **minimum of 30% open space**. “Open space” shall include the stormwater basin and the entirety of the buffer area with the total area of any encroachments and individual lot areas deducted from the total area of the buffer. **Applicant agrees to designate an open space lawn/play area, which will be reflected as an open space lawn/play area in the Homeowner’s Association documents, as depicted in the attached Open Space Exhibit.**
- STIPULATION 34: 4.8 Applicant will agree to provide site perimeter buffering per the standards set forth in the proposed zoning ordinance.
- STIPULATION 35: 4.9 Applicant agrees to comply.
- STIPULATION 36: 4.10 Application is in compliance as submitted.
- STIPULATION 37: 4.11 Application is in compliance as submitted.
- STIPULATION 38: 4.12 Application is in compliance as submitted.
- STIPULATION 39: 4.13 Application is in compliance as submitted.
- STIPULATION 40: 4.14 Application is in compliance as submitted. **Applicant agrees that no building shall be closer than 10’ to any parking area.**
- STIPULATION 41: 4.15 Application is in compliance as submitted.
- STIPULATION 42: 4.16 Application is in compliance as submitted.

5. Design Standards

- STIPULATION 43: 5.3 is a statement and does not require a response.

- STIPULATION 44:** 5.4 Applicant has provided adequate screen planting per the standards in the proposed zoning ordinance. The proposed buffer plant mix is appropriate and will provide a better buffer than only evergreens by providing a greater diversity of species. The proposed buffer is compatible with existing surrounding developments. Further, excessive open space, recreation, landscape, buffering, tree replacement and reforestation requirements are prohibited as cost-generative per N.J.A.C. 5:93-10.2(a)(6) and 5:97-10.2(a)(3).
- STIPULATION 45:** 5.5 Application is in compliance as submitted.
- STIPULATION 46:** 5.6 Application is in compliance as submitted.
- STIPULATION 47:** 5.7 Application is in compliance as submitted.
- STIPULATION 48:** 5.8 Application is in compliance as submitted.
- STIPULATION 49:** 5.9 Applicant agrees to comply.

6. Lighting Standards

- STIPULATION 50:** 6.1 Application is in compliance as submitted.
- STIPULATION 51:** 6.2 Application is in compliance as submitted.
- STIPULATION 52:** 6.3 Application is in compliance as submitted.
- STIPULATION 53:** 6.5 Applicant agrees to comply with recommended lighting levels. **However, the Applicant and the Township agree that it is acceptable for the lighting level at sidewalks and pedestrian walkways to meet the 0.5 footcandle level.**
- STIPULATION 54:** 6.6 Applicant objects to request for electrical lines to be shown on plans as the electrical layout for the development is prepared by the applicable utility company after the Township has approved the project. Therefore, Applicant will comply with the requirements set forth by the utility companies. Applicant agrees to revise the plans to show electrical lines after the utility company provides the design. Applicant can agree to provide this as a condition for receiving building permit. **Applicant agrees to include a note on the plans to indicate that utility lines shall be underground.**

7. Residential Site Improvement Standards

- STIPULATION 55:** 7.1 Applicant **has revised the plans** to include thirty (30) additional on-street parking stalls. Applicant will not specifically designate any on-street parking stalls to any unit. **See Stipulation 3.**
- STIPULATION 56:** 7.2 Application is in compliance as submitted.
- STIPULATION 57:** 7.3 Application is in compliance as submitted.

STIPULATION 58: 7.4 Application is in compliance as submitted.

8. Affordable Housing Standards

- STIPULATION 59: 8.1 See attached Stipulated Affordable Housing Standards.
STIPULATION 60: 8.2 See attached Stipulated Affordable Housing Standards.
STIPULATION 61: 8.3 See attached Stipulated Affordable Housing Standards.
STIPULATION 62: 8.4 See attached Stipulated Affordable Housing Standards.
STIPULATION 63: 8.5 See attached Stipulated Affordable Housing Standards.
STIPULATION 64: 8.6 See attached Stipulated Affordable Housing Standards.
STIPULATION 65: 8.7 See attached Stipulated Affordable Housing Standards.
STIPULATION 66: 8.8 See attached Stipulated Affordable Housing Standards.
STIPULATION 67: 8.9 See attached Stipulated Affordable Housing Standards.
STIPULATION 68: 8.10 See attached Stipulated Affordable Housing Standards.
STIPULATION 69: 8.11 See attached Stipulated Affordable Housing Standards.
STIPULATION 70: 8.12 See attached Stipulated Affordable Housing Standards.
STIPULATION 71: 8.13 See attached Stipulated Affordable Housing Standards.

C. Engineering – CME Associates:

**APPLICANT’S RESPONSE TO ENGINEERING REVIEW LETTER BY CME ASSOCIATES
DATED SEPTEMBER 9, 2019**

- STIPULATION 72: 1 through 4. are statements and do not require a response from Applicant.
STIPULATION 73: 5. Applicant only agrees to use the ordinance as non-binding for guidance to the extent same is reasonable; to the extent the ordinance is cost-generative and unduly burdensome, Applicant will not agree to rely upon the ordinance.

A. Site Grading and General Comments

- STIPULATION 74: 1. Applicant agrees to provide an Engineer’s Bond Estimate for the proposed off-tract improvements only per N.J.S.A. 40:55D-53.

- STIPULATION 75:** 2. Applicant agrees to submit all required documentation to outside agencies for approval, and provide the Township with copies of all approvals once obtained.
- STIPULATION 76:** 3. Applicant shall defer to the Special Hearing Officer's recommendation with respect to final site plan and subdivision approval procedures.
- STIPULATION 77:** 4. Applicant agrees to comply as a condition of approval.
- STIPULATION 78:** 5. Applicant agrees to comply.
- STIPULATION 79:** 6. Applicant agrees to comply as a condition of approval.
- STIPULATION 80:** 7. is a statement and does not require a response from Applicant.
- STIPULATION 81:** 8.a. and 8.b. Applicant agrees to review marked up plan provided by CME Engineering and make necessary grading changes as well as provide additional elevations as needed.
- STIPULATION 82:** 8.c. through 8.e. Application is in compliance as submitted.
- STIPULATION 83:** 9. Application is in compliance as submitted.
- STIPULATION 84:** 10. Application is in compliance as submitted.
- STIPULATION 85:** 11. Township and Applicant agree on the proposed slope to allow the bioswale to function properly.
- STIPULATION 86:** 12. Applicant agrees to comply.
- STIPULATION 87:** 13. Applicant agrees to comply.
- STIPULATION 88:** 14. Applicant agrees to comply.
- STIPULATION 89:** 15. Applicant agrees to comply.
- STIPULATION 90:** 16. Township and Applicant agree on the proposed slope to allow the bioswale to function properly.
- STIPULATION 91:** 17. Applicant agrees to comply.
- STIPULATION 92:** 18. Applicant agrees to comply.
- STIPULATION 93:** 19. Applicant agrees to comply.
- STIPULATION 94:** 20. Applicant shall provide whatever standard encasements, cradles or support blocks are necessary based on minimal pipe clearances, the Applicant will agree to install said measures.

STIPULATION 95: 21. Applicant agrees to comply.

STIPULATION 96: 22. Applicant agrees to revise the plans to include thirty (30) additional on-street parking stalls. Applicant will not specifically designate any on-street parking stalls to any unit. The Application otherwise complies as submitted.

B. Sanitary Sewer System

STIPULATION 97: 1. Applicant agrees to comply as a condition of approval.

STIPULATION 98: 3. Applicant agrees to comply as a condition of approval.

STIPULATION 99: 4. Applicant shall show where typical detail/ lateral will be for condition of final

C. Water Distribution System

STIPULATION 100: 1. Applicant agrees to comply.

STIPULATION 101: 2. Applicant agrees to comply.

D. Storm Drainage System

STIPULATION 102: 1. Applicant agrees to comply as a condition of approval; the agreement shall be between the Township and the HOA

STIPULATION 103: 2. Applicant agrees to discuss this with CME Engineering and revise the calculations accordingly.

STIPULATION 104: 3. Applicant agrees to discuss this with CME Engineering and revise the calculations accordingly.

STIPULATION 105: 5. Applicant agrees to comply as a condition of approval.

STIPULATION 106: 6. Applicant agrees to comply as a condition of approval.

STIPULATION 107: 7. Applicant agrees to comply as a condition of approval.

STIPULATION 108: 8. Applicant will submit to and obtain approval from the Freehold Soil Conservation District with respect to this issue.

STIPULATION 109: 9. Applicant agrees to comply as a condition of approval.

STIPULATION 110: 10. Applicant agrees to comply as a condition of approval.

STIPULATION 111: 12. Applicant agrees to comply as a condition of approval.

STIPULATION 112: 13. Applicant agrees to comply as a condition of approval.

- STIPULATION 113:** 14. Applicant has provided a clay core for the infiltration basin berm that extends to the bottom elevation of the basin, which will protect adjacent structures from the water elevations in the basin; see the infiltration basin detail found on plan entitled “Construction Details – 2.” **Applicant agrees to extend the clay core around the entire basin.**
- STIPULATION 114:** 16. Applicant agrees to comply as a condition of approval.
- STIPULATION 115:** 17. Applicant will submit to and obtain approval from the Delaware and Raritan Canal Commission with respect to this issue.
- STIPULATION 116:** 18. Applicant agrees to comply as a condition of approval.
- STIPULATION 117:** 19. Applicant agrees to comply as a condition of approval.
- STIPULATION 118:** 20. Applicant agrees to add heavy filter fabric under the rip-rap.
- STIPULATION 119:** 21. Applicant agrees to comply as a condition of approval.
- STIPULATION 120:** 22. Applicant agrees to comply as a condition of approval.
- STIPULATION 121:** 23. Applicant agrees to comply as a condition of approval.
- STIPULATION 122:** 24. Applicant agrees to comply as a condition of approval.
- STIPULATION 123:** 25. Applicant agrees to comply as a condition of approval.
- STIPULATION 124:** 26. Applicant will secure approval for its stormwater system as part of its submission to the Delaware and Raritan Canal Commission with respect to this issue. **The Applicant agrees to perform post-construction permeability testing in the infiltration basin to confirm that the system will perform as designed.**
- STIPULATION 125:** 27. Applicant will secure approval for its stormwater system as part of its submission to the Delaware and Raritan Canal Commission with respect to this issue. **The Applicant agrees to perform post-construction permeability testing in the infiltration basin to confirm that the system will perform as designed.**
- STIPULATION 126:** 28. Applicant agrees to comply as a condition of approval.

E. Landscaping and Lighting

- STIPULATION 126:** 1. Applicant agrees to comply.
- STIPULATION 127:** 2. **Applicant and the Township agree that providing a minimum of 0.5 foot-candle lighting intensity along the entire length of sidewalks and pedestrian walkways is acceptable.**

- STIPULATION 128: 3. Applicant agrees to comply.
- STIPULATION 129: 5. Applicant agrees to comply as a condition of approval.
- STIPULATION 130: 6. Applicant agrees to comply as a condition of approval.
- STIPULATION 131: 7. Applicant agrees to comply as a condition of approval.

F. Roadway Improvements and Miscellaneous

- STIPULATION 132: 2. Applicant agrees to comply as a condition of approval.
- STIPULATION 133: 3. Applicant agrees to comply as a condition of approval.

G.1 through G.9. Final Plat – Major Subdivision

- STIPULATION 134: Applicant shall defer to the Special Hearing Officer’s recommendation with respect to final site plan and subdivision approval procedures. Note that a set of three sheets representing the Final Subdivision Plats were submitted for review. Applicant agrees to comply with Items 1 through 9 as conditions of final approval. **See Stipulation 19.**

E. Water Supervisor – Tim Lesko:

APPLICANT’S RESPONSE TO WATER SUPERVISOR’S COMMENTS

- STIPULATION 135: 1. Applicant agrees to comply; maintenance will be the responsibility of the HOA.
- STIPULATION 136: 2. Applicant agrees to comply with respect to the market rate units. This will be different for affordable units because the driveways are right next to each other. Affordable units may have curb box in driveway, which would be located closer to sidewalk.
- STIPULATION 137: 3. Applicant agrees to comply.
- STIPULATION 138: 4. is a statement and does not require a response from Applicant.
- STIPULATION 139: 5. Applicant disputes the need for a water allocation permit; Applicant agrees to obtain a water main extension permit from the New Jersey Department of Environmental Protection Bureau of Water System Engineering.
- STIPULATION 140: 6. Applicant agrees to comply with respect to any mainline water valve.
- STIPULATION 141: 7. Applicant agrees to comply as a condition of approval.

- STIPULATION 142: 8. Applicant agrees to comply as a condition of approval.
- STIPULATION 143: 9. Applicant agrees to comply as a condition of approval.
- STIPULATION 144: 10. Application is in compliance as submitted.
- STIPULATION 145: 11. Application is in compliance as submitted.
- STIPULATION 146: 12. Applicant agrees to comply as a condition of approval.
- STIPULATION 147: 13. Applicant agrees to comply as a condition of approval.
- STIPULATION 148: 14. Applicant agrees to comply as a condition of approval, provided that these proposed requirements are in effect at the time of final approval.
- STIPULATION 149: 15. Applicant agrees to comply.
- STIPULATION 150: 16. is a statement and does not require a response from Applicant. However, note that the projected water demand by the Township is significantly different than the water flow projected by the Township's consultant, Alaimo Associates.
- STIPULATION 151: 17. is a statement and does not require a response from Applicant.
- STIPULATION 152: 18. Applicant agrees to comply as a condition of approval.
- STIPULATION 153: 19. Applicant agrees that the HOA shall be responsible for the maintenance of all water mains within the development up to the public right of way.

F. Sewer Supervisor – Scott Cevera:

APPLICANT'S RESPONSE TO SEWER SUPERVISOR'S COMMENTS

- STIPULATION 154: 1. Applicant agrees to comply as a condition of approval.
- STIPULATION 155: 2. Applicant agrees that the HOA shall be responsible for the maintenance of all sanitary sewer facilities in the development up to the public right of way.
- STIPULATION 156: 3. Applicant seeks to dedicate the sanitary sewer pump station and force main to the Township and agrees to design these items to the Township's standards as well as bond.
- STIPULATION 157: 4. Applicant agrees to comply as a condition of approval.
- STIPULATION 158: 5. This item is not applicable as same will be dedicated to the Township.
- STIPULATION 159: 6. Applicant agrees to install cleanouts near buildings only.
- STIPULATION 160: 7. Applicant agrees to comply as a condition of approval.

- STIPULATION 161: 8. Applicant agrees to comply as a condition of approval.
- STIPULATION 162: 9. Applicant agrees to comply as a condition of approval.
- STIPULATION 163: 10. Applicant agrees to comply as a condition of approval.
- STIPULATION 164: 11. Applicant agrees to comply as a condition of approval.
- STIPULATION 165: 12. is a statement and does not require a response from Applicant.
- STIPULATION 166: 13. is a statement and does not require a response from Applicant.

G. Health Officer – Robert Uhrik:

APPLICANT’S RESPONSE TO HEALTH OFFICER’S COMMENTS

- STIPULATION 167: 1. Applicant has completed historic pesticide testing of the soil which has demonstrated that no further action is necessary. These reports were submitted to the Township for review.
- STIPULATION 168: 3. Application is in compliance as submitted as the portion of the property closest to U.S. Route 1 contains a community garden and roadway cul-de-sac.

H. Construction Official – James Dowgin:

APPLICANT’S RESPONSE TO CONSTRUCTION OFFICIAL’S COMMENTS

- STIPULATION 169: Application is in compliance as submitted

I. Fire Official – John Funcheon:

APPLICANT’S RESPONSE TO FIRE OFFICIAL’S COMMENTS

- STIPULATION 170: 1. Applicant agrees to perform hydrant testing on Independence Way and Ridge Road.
- STIPULATION 171: 2. Applicant utilized the dimensions provided by the Township. Applicant agrees to comply if this comment refers to emergency access, not the hammerhead turnaround.
- STIPULATION 172: 3. Application is in compliance as submitted.
- STIPULATION 173: 4. If the commenter is looking for all parking along internal streets (except within head-in parking areas) to be prohibited, the Applicant agrees to comply with this recommendation and will install “No Parking” signs as required.

J. Public Works Director – Raymond Olsen:

APPLICANT’S RESPONSE TO PUBLIC WORKS DIRECTOR’S COMMENTS

Roads:

- STIPULATION 174: 1. Applicant agrees to comply as a condition of approval.
- STIPULATION 175: 2. Applicant agrees to comply as a condition of approval.
- STIPULATION 176: 3. Applicant agrees to comply as a condition of approval.
- STIPULATION 177: 4. Applicant agrees to comply as a condition of approval.
- STIPULATION 178: 5. Applicant agrees to comply as a condition of approval.
- STIPULATION 179: 6. Applicant agrees to comply as a condition of approval.
- STIPULATION 180: 10. Application is in compliance as submitted. Note, internal roadways do not have public right-of-ways established as they will be private streets.
- STIPULATION 181: 11. Applicant will agree to full width milling and repaving of Independence Way solely for the length of Applicant’s frontage.

Parks – Bill Epps:

- STIPULATION 182: 1. Applicant agrees to comply as a condition of approval.
- STIPULATION 183: 2. Applicant agrees to comply as a condition of approval.
- STIPULATION 184: 3. Applicant agrees to comply as a condition of approval.
- STIPULATION 185: 4. Applicant agrees to comply as a condition of approval.

Recycling – Paul Luceri:

- STIPULATION 186: 1. Applicant agrees to comply as a condition of approval.
- STIPULATION 187: 3. Applicant agrees to comply as a condition of approval, which will be specified in the HOA documents. The plans indicate that the affordable units will have a small refuse enclosure to house the refuse containers for these units.
- STIPULATION 188: 4. Applicant agrees to comply as a condition of approval.

K. Environmental Commission – Dennis Weitz:

APPLICANT’S RESPONSE TO ENVIRONMENTAL COMMISSION’S COMMENTS

- STIPULATION 189: 1. Applicant agrees to comply, but note that a “one sheet” composite site plan was submitted to the Township as part of the application.
- STIPULATION 190: 2. Applicant agrees to comply as a condition of approval.
- STIPULATION 191: 3. Applicant objects to any further review by the Environmental Commission as it will extend beyond the timeframe of Applicant’s Special Hearing by the Court.

L. Deputy Tax Assessor – Bradley Millman:

APPLICANT’S RESPONSE TO TAX ASSESSOR’S COMMENTS

- STIPULATION 192: Application is in compliance as submitted.

M. Police Department – TSC. Joseph Charmello:

APPLICANT’S RESPONSE TO POLICE DEPARTMENT’S COMMENTS

- STIPULATION 193: Applicant agrees to revise the plans to include thirty (30) additional on-street parking stalls. The Application otherwise complies as submitted.
- STIPULATION 194: Applicant shall provide “No Parking” signs to remain proposed as submitted.
- STIPULATION 195: Application is in compliance as submitted as it does have an emergency access road connection from Ridge Road.

N. Board of Education – David Pawlowski:

APPLICANT’S RESPONSE TO BOARD OF EDUCATION’S COMMENTS

- STIPULATION 196: Application is in compliance as submitted; Applicant agrees to discuss location of school bus pickup with Board of Education. **The Township Board of Education has confirmed its desired bus route which includes three stops within Carnegie Crossing: (1) at the corner of Road E and Road C; (2) at the corner of Road B and Road C; and (3) at the corner of Road B and Road A. See attached email correspondence dated October 28, 2019 and accompanying map depicting proposed bus route.**

O. Shade Tree Commission – Jeff Cramer:

APPLICANT’S RESPONSE TO SHADE TREE COMMISSION’S COMMENTS

STIPULATION 197: Application is in compliance as submitted; Applicant objects to any further review as being out of time.

TRAFFIC ENGINEERING REVIEW BY CME ASSOCIATES DATED SEPTEMBER 11, 2019

STIPULATION 198: 1. is a statement and does not require a response from Applicant.

STIPULATION 199: 2. and 3. indicate that the Applicant has previously agreed to comply.

STIPULATION 200: 4. Applicant's traffic engineer **provided** the necessary testimony regarding the NJDOT timing directive, and has provided supplemental correspondence from McDonough & Rea Associates, Inc. dated October 8, 2019 to address the question about NJDOT signal timing and NJDOT's timing directive.

STIPULATION 201: 5. through 13. indicate that the Applicant has previously agreed to comply.

STIPULATED AFFORDABLE HOUSING STANDARDS

Affordable Housing Set-Aside. K Hovnanian shall have an obligation to deed-restrict thirty (30) of the on-site residential units in the Inclusionary Development as low and moderate income affordable family for sale units. Any such affordable for sale units shall comply with UHAC, applicable COAH affordable housing regulations (N.J.A.C. 5:93-1), any applicable order of the Court, and other applicable laws.

Planning Review Letter by Clarke Caton Hintz dated September 10, 2019

8.1 **Reference to N.J.A.C 5:93:** K Hovnanian agrees to comply as a condition of approval.

8.2 **Bedroom Distribution:** K Hovnanian complies with this requirement.

8.3 **Very low income Requirement:** K Hovnanian will contribute between \$17,500.00 to no more than \$20,000.00 per bedroom, said amount to be determined by the Township and ARC of Middlesex, to subsidize the construction of a four (4) bedroom group home proposed by ARC, for a total contribution not to exceed \$80,000. The contribution shall be due upon the issuance of the 50th Certificate of Occupancy and shall be paid into the Township's affordable housing Trust Fund for specific use by ARC to create the four bedroom group home. Upon payment of the subsidy amount, K Hovnanian's income distribution shall be modified as reflected in paragraph 8.5 below. The Township may take a four (4) unit Very Low Income additional credit towards satisfaction of the Township's Third Round affordable housing obligation.

8.4 **Unit Integration:** K Hovnanian complies with this requirement

8.5 **Income Distribution:** K Hovnanian proposes the following income split requirements upon payments of the subsidy detailed in paragraph 8.3:

15 low/ very low income units: 3 three bedroom units and 12 two bedroom units. Four (4) off site Very Low Income Units provided by subsidy to four (4) bedroom ARC Group Home. The four (4) very low income units on site will convert to four (4) two bedroom moderate income units upon subsidy payment.

15 moderate income units: 3 three bedroom units and 12 two bedroom units

8.6 **Phasing:** K Hovnanian agrees to construct and deliver the Affordable units as follows:

COAH RULE		COAH DELIVERY	
Minimum Percentage of Low & Moderate Income Units Completed	% of Market Housing Units Completed	COAH	Market
0	25	0	24
10	25 + 1	3	25
50	50	15	50
75	75	23	75

100	90	30	90
	100	30	99

K Hovnanian will provide a specific construction schedule as a condition of approval.

8.7 Household Size, Unit Pricing. Utility Allowance: K Hovnanian agrees to provide a unit pricing schedule in accord with COAH regulations N.J.A.C 5:93-7.4(a) and UHAC regulations, N.J.A.C 5:80-26.3(d).

8.8 Deed Restriction Length of Controls: K Hovnanian shall submit a UHAC form with at least a thirty (30) year deed restriction governing the 30 affordable for sale units residential units in the Inclusionary Development as low and moderate income affordable family for sale units in form acceptable to the Court, which restriction shall be imposed on all affordable units prior to the first sale to a qualified household. The restriction shall be for a time period of at least thirty (30) years, subject to the Township's option to extend in accord with the then applicable rules and procedures governing affordable housing deed and income restrictions.

8.9 Heating Source: K Hovnanian agrees to provide the same heating source for all units, both market and affordable.

8.10 Accessibility and Adaptability: K Hovnanian complies with this requirement

8.11 Amenities: K Hovnanian complies with this requirement

8.12 Administrative Agent: K Hovnanian complies with this requirement

8.13 Affirmative Marketing: K Hovnanian complies with this requirement

Fisher, David

Subject: FW: [EXT] Re: Carnegie Crossing planned development

From: Jill Ottignon <jill.ottignon@sbschools.org>
Sent: Monday, October 28, 2019 2:32 PM
To: Fisher, David <DFisher@KHOV.COM>
Subject: [EXT] Re: Carnegie Crossing planned development

Of course, not a problem

Jill Ottignon - Transportation Supervisor
South Brunswick School District
4 Executive Dr, Monmouth Junction, NJ 08852
(732)297-7800 ext 3126
Jill.Ottignon@sbschools.org

On Mon, Oct 28, 2019 at 2:18 PM Fisher, David <DFisher@khov.com> wrote:

Thank you very much Jill. I was thinking the same thing as your route; as it's a logical way to maneuver through the community. I appreciate your input at this juncture, and may relay the information (if you don't mind) to the Township Planning Dept when we have future discussions with them.

Thanks,

David B. Fisher, PP, AICP
Vice President – Governmental Affairs
K. Hovnanian Homes

From: Jill Ottignon <jill.ottignon@sbschools.org>
Sent: Monday, October 28, 2019 8:05 AM
To: Fisher, David <DFisher@KHOV.COM>
Subject: [EXT] Re: Carnegie Crossing planned development

Good morning,

Yes I agree, we would most likely come from Independence Way and make a right on Road E, making a bus stop at the corner of Road E and Road C. Then make a left on Road C and stop at the corner of Road B. Then a right on Road B and stop at the corner of Road A for the students in the back of the cul-de sac. Then a left on Road A back to Independence Way and back out to Rt 1

In an ideal world we would of had access to Ridge Rd as our only turn around on Rt 1 will be all the way down at Princeton Forrestal Village but I understand the resistance of the township to have the community exit and enter onto Ridge Rd and we will have to make sue without. The

addition of sidewalks in the community will make it very walkable and I think us weaving through the community as stated above would work well for our buses.

Please let me know if I can offer other assistance

Jill Ottignon - Transportation Supervisor
South Brunswick School District
4 Executive Dr, Monmouth Junction, NJ 08852
(732)297-7800 ext 3126
Jill.Ottignon@sbschools.org

On Thu, Oct 24, 2019 at 3:54 PM Fisher, David <DFisher@khov.com> wrote:

Ms. Ottignon:

Thanks for calling me earlier today. Attached is the overall site plan for a 129 unit townhouse development with points of access onto Independence Way. By request of the Township, they did not want us to have an a full access onto Ridge Road, so we have only a planned emergency access drive onto Ridge Rd.

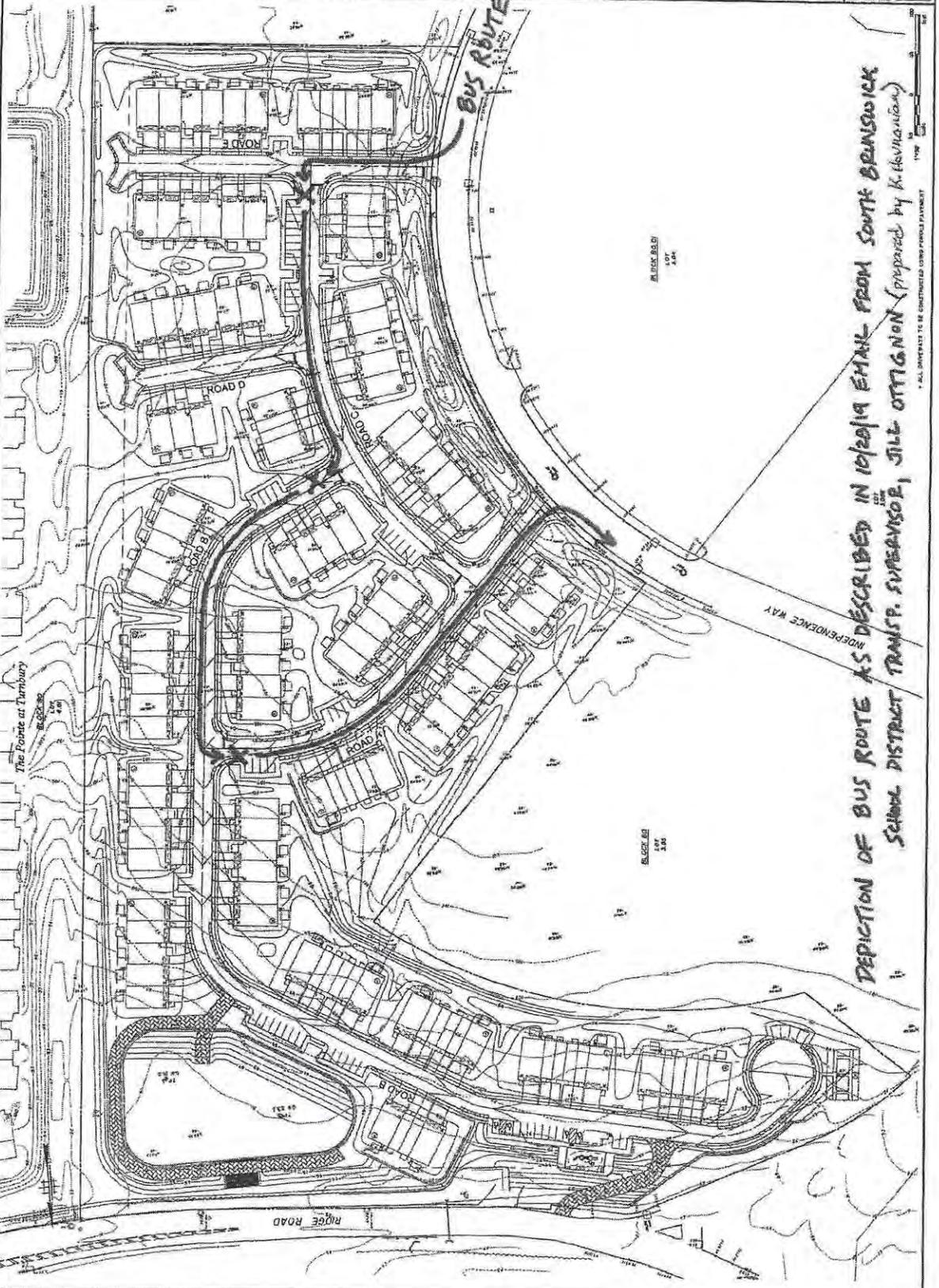
I think you will probably agree that it would be beneficial to enter the development at one entrance and loop through a portion of the project to get closer to the homes on the back (long) cul-de-sac. Would be happy to hear your thoughts on this.

Thanks,
Dave Fisher

David B. Fisher, PP, AICP
Vice President – Governmental Affairs
K. Hovnanian Homes
110 Fieldcrest Ave., 5th Floor
Edison, NJ 08837
T 732-623-6927 M 908-618-6034

KHovnanian
Homes

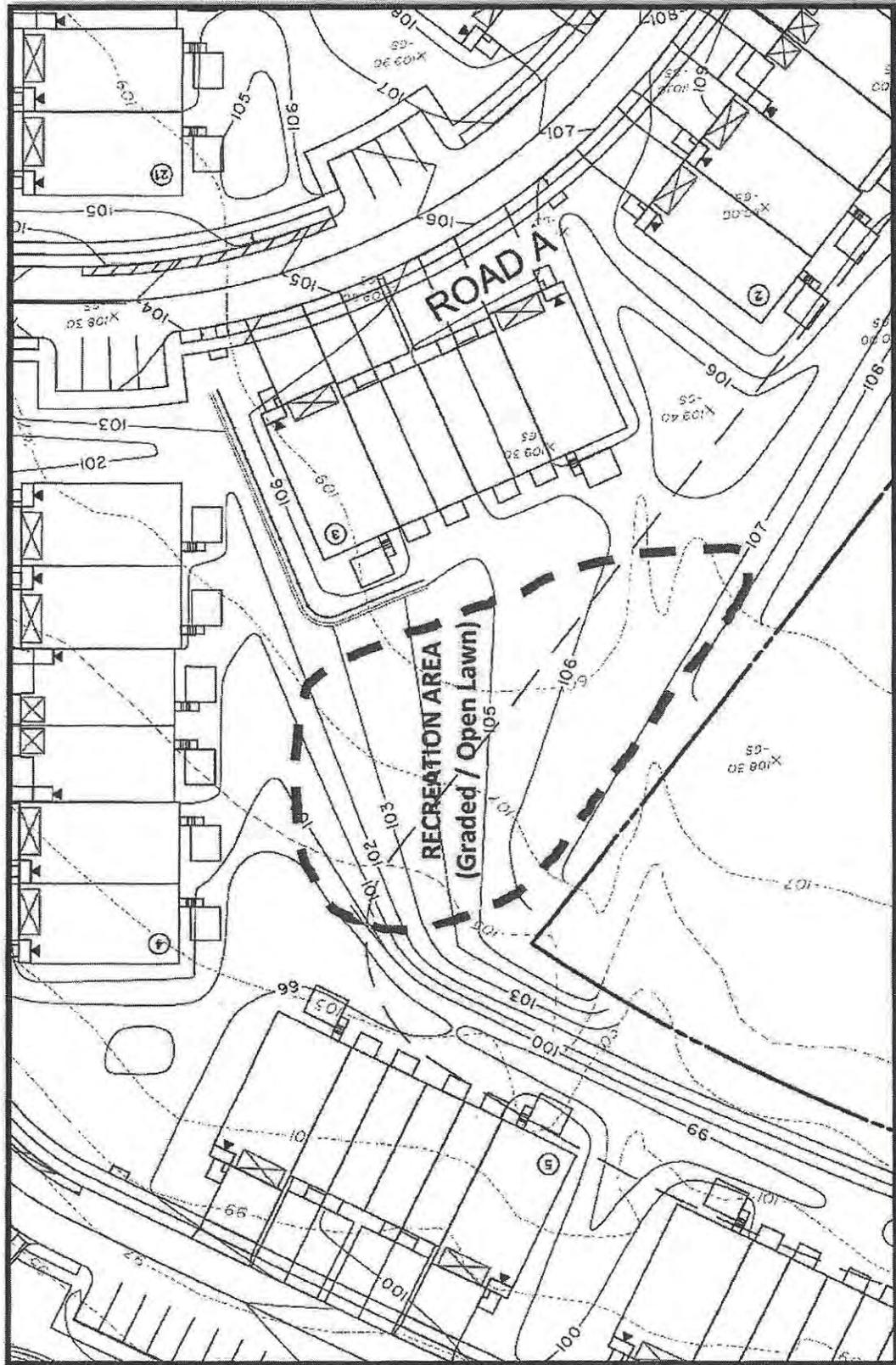
<p>Najarian Associates Professional Engineers and Surveyors One Franklin Way, Suite 200, Franklin, NJ 07030 (908) 782-1100 • FAX (908) 782-1101 NJ REG. NO. 120000000 • PA. REG. NO. 000000000</p>	<p>PETER A. CILIBERTO, P.E. REGISTERED PROFESSIONAL ENGINEER EXPIRES 12/31/2014</p>	<p>1. SITE PLAN 2. CONCEPT PLAN 3. CONCEPT PLAN 4. CONCEPT PLAN 5. CONCEPT PLAN 6. CONCEPT PLAN 7. CONCEPT PLAN 8. CONCEPT PLAN 9. CONCEPT PLAN 10. CONCEPT PLAN</p>	<p>SOUTH BRUNSWICK MIDDLESEX COUNTY NEW JERSEY</p>	<p>SITE PLAN</p>
				<p>CARRBORO CROSSING PRELIMINARY & FINAL MAJOR SUBDIVISION BLOCK 80 LOT 3.024</p>



DEPICTION OF BUS ROUTE AS DESCRIBED IN 10/20/19 EMAIL FROM SOUTH BRUNSWICK SCHOOL DISTRICT TRANSP. SUPERVISOR, JILL OTTIGNON (prepared by K. HANAWAY)

* ALL DIMENSIONS TO BE CONSTRUCTED UNLESS OTHERWISE INDICATED

**EXHIBIT ___ - ADDITIONAL RECREATION/OPEN SPACE AREA
CARNEGIE CROSSING INCLUSIONARY DEVELOPMENT, SOUTH BRUNSWICK, NJ**



FILED

December 9, 2020

Hon. Michael V. Cresitello, Jr., J.S.C.

FOX ROTHSCHILD LLP*Formed in the Commonwealth of Pennsylvania*

BY: Henry L. Kent-Smith, Esq. (Atty. ID #034211988)

Irina B. Elgart, Esq. (Atty. ID #027311999)

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Attorneys for K. Hovnanian Shore Acquisitions, LLC

**IN THE MATTER OF THE
APPLICATION OF THE TOWNSHIP
OF SOUTH BRUNSWICK, COUNTY
OF MIDDLESEX,**

Petitioner,

**K. HOVNIANIAN SHORE
ACQUISITIONS, LLC,**

Plaintiff,

v.

**TOWNSHIP OF SOUTH BRUNSWICK,
COUNTY OF MIDDLESEX, ET AL.,**

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION – MIDDLESEX COUNTY
DOCKET NO. MID-L-4433-17

Civil Action

Mount Laurel Action

(CONSOLIDATED WITH)

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION – MIDDLESEX COUNTY
DOCKET NO. MID-L-1194-17

Civil Action

**ORDER GRANTING K. HOVNIANIAN
SHORE ACQUISITIONS, LLC FINAL
SITE PLAN AND SUBDIVISION
APPROVAL WITH CONDITIONS**

THIS MATTER having been opened to the Court by Henry Kent-Smith, Esq. of Fox Rothschild LLP, counsel for K. Hovnanian Shore Acquisitions, LLC, (“K. Hovnanian”) on notice to all parties of record; and

The Township having instituted a Declaratory Judgment Action, entitled IMO the Application of the Township of South Brunswick, Dkt. No. MID-L-4433-17 (previously docketed as MID-L-3878-15) (“DJ Action”), in response to the Supreme Court’s decision In re Adoption of N.J.A.C. 5:96 and N.J.A.C. 5:97, 221 N.J. 1 (2015) (“Mount Laurel IV”) and requesting a judicial determination with regard to the Township’s Housing Element and Fair Share Plan (“HEFSP”); and the Court having appointed Christine A. Nazzaro-Cofone, P.P., A.I.C.P., as the Special Master in this matter (“Special Master”); and

The Court having entered Orders dated October 21, 2016 permitting the filing of builder’s remedy lawsuits against the Township and processing development application(s) in accordance with the Special Hearing Officer (“SHO”) process provided for in the Order dated October 21, 2016 pursuant to Cranford Development Associates, LLC, et als v. Township of Cranford, et als. 445 N.J. Super. 220 (App. Div.), cert. den., 227 N.J. 237 and 227 N.J. 266 (2016) as a means to prevent delay and interference with a builder processing its development application before municipal bodies who protest the entry of a builder’s remedy; and

The Court having considered and endorsed the continuation of the SHO process by Case Management Order dated May 10, 2019, and Conditional Order of Compliance dated November 27, 2019. Paragraph 1.f. of the Conditional Order provides that the potential or actual adoption of the ordinances shall not delay the review of development applications under the SHO process. Paragraph 7 of the Conditional Order further addresses the continued enforcement of the Court’s rulings, including those under the SHO process, to ensure the effective, timely implementation of the Mount Laurel doctrine, or in the alternative, forms of relief requested by the parties . . .” Moreover, paragraph 8 of the Conditional Order further provides that the “[Conditional] Order does not affect in any way the rights and remedies that any builder’s remedy plaintiff has under

the prior Orders of this Court including, but not limited to, the right to proceed under the SHO process for site plan approval . . .”; and

K. Hovnanian having filed a builder’s remedy action on February 28, 2017 entitled K. Hovnanian Shore Acquisition, LLC v. Township of South Brunswick, et al., Dkt No. MID-L-119417 (“K. Hovnanian Builder’s Remedy”), which was consolidated with the DJ Action in 2017. The Special Master, having concluded on June 12, 2019 that K. Hovnanian’s site is available, approvable, developable, and suitable for a proposed inclusionary development; and

The Court having appointed Steven P. Goodell, Esq. as Special Hearing Officer to hear K. Hovnanian’s development application for a preliminary and final subdivision and site plan approval pursuant to the SHO process, and advise the Court, the Township, and the builder with his recommendation as to whether the application should be approved, denied or approved with conditions; and

K. Hovnanian having submitted its development application in accordance with the SHO process to Steven P. Goodell, Esq. as Special Hearing Officer, for preliminary and final subdivision and site plan approval. The Special Hearing Officer having conducted the hearings at the Middlesex County Courthouse on December 3, 2019, December 13, 2019, January 16, 2020, and January 30, 2020, and considered all evidence, stipulations, arguments, briefs, and proposed Resolutions; and

The Special Hearing Officer memorialized his determinations in a proposed Resolution entitled “Special Hearing Officer’s Proposed Resolution Granting Preliminary Major Site Plan and Preliminary Major Subdivision Approval with Conditions” dated July 23, 2020, together with appendices (hereinafter, “Special Hearing Officer’s Resolution,” which is attached hereto as **Exhibit A**) in accordance with N.J.S.A. 40:55D-10(g), which “set[s] forth such findings of fact

and conclusions necessary to appropriately summarize the evidence presented, so as to enable the Court to enter judgment” as provided by Section 2(L) of the October 21, 2016 Case Management Order; and

The Court having conducted a Final Compliance Hearing in relation to the DJ Action on October 20, 2020 as continued on October 22, 2020 upon the Township’s compliance with its Mount Laurel obligation, at which time copies of the Parties’ comments regarding the Special Hearing Officer’s findings and approval were marked as exhibits; and

The Court having received the following documents in connection with K.

Hovnanian’s development application:

- KH-1 Report by Special Hearing Officer dated July 23, 2020 entitled “Special Hearing Officer’s Report Resolving Disputed Issues”
- KH-2 Letter from Henry L. Kent-Smith, Esq. dated August 3, 2020 concerning K. Hovnanian’s objections to the Special Hearing Officer’s Report Resolving Disputed Issues
- KH-3 Letter from Henry L. Kent-Smith, Esq. dated August 3, 2020 concerning K. Hovnanian’s proposed changes to the Special Hearing Officer’s Resolution
- KH-4 Report by the Special Master dated September 14, 2020 containing recommendations and comments regarding the Special Hearing Officer’s Findings and Approval in the Special Hearing Officer’s Report Concerning Disputed Issues (“Special Master’s Report”)
- SB-13 Letter from Donald J. Sears, Esq. dated August 3, 2020 responding to Special Hearing Officer’s Report Resolving Disputed Issues
- SBPB-1 Letter from Thomas J. Molica, Jr., Esq. dated August 3, 2020 responding to Special Hearing Officer’s Report Resolving Disputed Issues
- SBPB-2 Letter from Thomas J. Molica, Jr., Esq. dated August 4, 2020 further responding to Special Hearing Officer’s Report

The Court having considered K. Hovnanian's request to sever the Builder's Remedy Complaint pursuant to N.J. R. Ct. 4:38-2(a), and to certify the Court's determination that K. Hovnanian is entitled to a final site plan and subdivision approval relative to its development applications pursuant to N.J. R. Ct. 4:42-2 as a final judgment; and

The Court having determined that the severance and finality of this judgment is not appropriate at this time; and

Based on the foregoing, on this 9th day of December 2020,

IT IS HEREBY ORDERED AND ADJUDGED:

1. The conditions of site plan and subdivision approval, set forth in the Findings and Approval of the Special Hearing Officer's Resolution (attached hereto as **Exhibit A**) and in the Special Master's Report (attached hereto as **Exhibit B**), including but not limited to the obligation to provide for additional on-site recreational space and compliance with South Brunswick Ordinance Nos. 2018-28 and 2018-30 regarding sanitary sewer capacity, are hereby approved and adopted, and incorporated herein by reference, as conditions of the instant Order (the "Final Subdivision and Site Plan Approval with Conditions").

2. Consistent with Section 2.H of the October 21, 2016 CMO "all other federal, state, and ancillary governmental permits and approvals that are required for the builder's project and the satisfaction of these ancillary permit requirements shall be a condition of any order approving a builder's application" and, as such, are hereby made conditions of the within order as well.

3. The terms of the October 21, 2016 CMO remain in full force and effect, except as expressly modified by the Court's November 27, 2019 Order of Conditional Judgment of Compliance and Repose, granting conditional approval of the Township's Compliance Plan and immunity from further Builder's Remedy claims, as may be amended by separate order relative to

final compliance, and any dispute between the Township and K. Hovnanian regarding either, K. Hovnanian's satisfaction of conditions of approval hereunder; conformance of construction plans with the Final Subdivision and Site Plan Approval with conditions, conditionally approved hereunder, or conformance of construction plans to State UCC and sub-codes and regulations, shall be referred to the Special Master in the first instance, in the manner provided within Section 2.F. of the October 21, 2016 CMO with respect to site plans: "The Special Master shall serve as nonbinding arbiter of any disputes relating to submissions and reports on the Builder's Site plans", and in that role, the Special Master shall determine the final recreation elements required for the K. Hovnanian development proposal.

4. K. Hovnanian shall comply with all requirements of the MLUL regarding post approval procedures and requirements, including but not limited to the submission of all reasonable and regular performance and maintenance bonds, or equivalent surety, authorized by the MLUL, and subject to provisions of the MLUL regarding the calculation and furnishing of performance guarantees pursuant to N.J.S.A. 40:55D-53 to -53.6, and K. Hovnanian shall be responsible for payment of reasonable and regular permitting, inspection and escrow fees as may be assessed consistent with regulations of the UCC of the New Jersey Department of Community Affairs ("DCA") regarding construction permitting, N.J.A.C. 5:23-1 to -12A.6, and DCA guidelines and practices regarding permitting and inspections.

5. K. Hovnanian shall pay any and all outstanding escrow fees (if any) no later than thirty (30) days of the date of this Order.

6. Subject to the terms hereof, and pursuant to Section 2.L. of the October 21, 2016 CMO, the instant order shall be considered a conditional final subdivision and site plan approval for purposes of the issuance of construction code and subcode permitting.

7. The posting of this Order on eCourts shall constitute service upon all counsel of record.

8. This Order shall be rendered final and notice thereof shall be published at the time of the entry of final judgment in the consolidated case of IMO the Application of the Township of South Brunswick, Dkt. No. MID-L-4433-17, and pursuant to N.J. R. Ct. 4:69-6(b)(3), in the official newspaper of the municipality or a newspaper of general circulation in the municipality, and shall be filed in the office of the municipal clerk and be available for inspection by the public.

9. K. Hovnanian shall provide copies hereof to the Special Master and Special Hearing Officer within three (3) days of the entry of this order.

/s/ Michael V. Cresitello, Jr.
HON. MICHAEL V. CRESITELLO, JR. J.S.C.

UNOPPOSED