# TOWNSHIP OF EAST WINDSOR

MERCER COUNTY NEW JERSEY

# **MASTER PLAN**

AMENDMENT TO FAIR SHARE PLAN

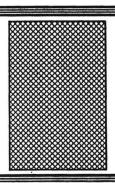
**JANUARY 2000** 



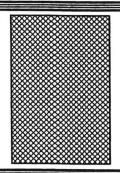
PREPARED BY: COPPOLA & COPPOLA ASSOCIATES PRINCETON JUNCTION ~ NEW JERSEY

# TOWNSHIP OF EAST WINDSOR

# MERCER COUNTY NEW JERSEY



# JANUARY 2000 AMENDMENT TO THE FAIR SHARE PLAN



THE ORIGINAL OF THIS REPORT WAS SIGNED AND SEALED IN ACCORDANCE WITH N.J.S.A. 45:14A-12

Richard T. Coppola, P.P. # 1378

PREPARED BY: COPPOLA & COPPOLA ASSOCIATES PRINCETON JUNCTION ~ NEW JERSEY

### TOWNSHIP OF EAST WINDSOR MASTER PLAN

# AMENDMENT TO THE FAIR SHARE PLAN PORTION OF THE HOUSING PLAN ELEMENT AND FAIR SHARE PLAN

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# AMENDMENT TO THE FAIR SHARE PLAN PORTION OF THE EAST WINDSOR TOWNSHIP HOUSING PLAN ELEMENT AND FAIR SHARE PLAN January 31, 2000

#### INTRODUCTION

The New Jersey Council On Affordable Housing (COAH) has determined that the Township of East Windsor has the following "Net Indigenous Need" (the "Rehabilitation Component") and "Net Reallocated Present And Prospective Need" (the "New Construction Component") for the twelve (12) year period between 1987 and 1999:

ADJUSTED "FAIR SHARE" HOUSING OBLIGATION			
INDIGENOUS NEED	+ 28 DU		
Less Spontaneous Rehabilitation	- 5 DU		
NET INDIGENOUS NEED:	+ 23 DU		
REALLOCATED PRESENT NEED	+ 28 DU		
PROSPECTIVE NEED 1993-1999	+289 DU		
Less Filtering	- 112 DU		
Less Conversions	- 10 DU		
Plus Demolitions	+ 3 DU		
Plus Prior Cycle Prospective Need	+ 169 DU		
1995 COAH Correction	- 22 DU		
NET REALLOCATED PRESENT AND PROSPECTIVE NEED:	+ 345 DU		

On May 4, 1998, the East Windsor Township Planning Board held a public hearing and adopted, via Resolution No. 98-15A, an updated "Housing Plan Element And Fair Share Plan" document, dated March 1998, as part of the Township Master Plan.

On May 5, 1998, the East Windsor Township Council adopted Resolution No. R98-86A petitioning the New Jersey Council On Affordable Housing (COAH) for "Substantive Certification". The Township then forwarded the Resolution and the "Housing Plan Element And Fair Share Plan" to COAH in accordance with COAH's "Substantive Rules".

On May 8, 1998, COAH acknowledged to Mayor Janice S. Mironov its receipt of the petition for "Substantive Certification" and, in a subsequent letter to the Mayor dated June 23, 1998, COAH indicated that no objections to the filed petition were received by COAH during the prescribed forty-five (45) day objection period.

Copies of Resolution No. 98-15A adopted by the Planning Board and Resolution No. R98-86A adopted by the Township Council appear in Addendum I to this report. Also included in Addendum I are copies of the May 8, 1998 and June 23, 1998 letters to Mayor Mironov from COAH.

The "Fair Share Plan" of the Township of East Windsor, as adopted on May 4, 1998 by the Planning Board and as forwarded on May 5, 1998 to COAH by the Township Council for "Substantive Certification", included the following components:

- A "Housing Rehabilitation Program";
- 110 "Prior Cycle Credits";
- 5 Units From Litigation Settlement;
- 136 Units From "Inclusionary" Developments, Including A Rental Unit Obligation Of 59 Units;
- 47 Units From A "Regional Contribution Agreement";
- 47 "Senior Citizen" HUD Units, Including A Rental Unit Obligation Of 8 Units; and
- Development Fees For Residential Construction.

As a result of further efforts by East Windsor Township, it appears that twenty-one (21) "Alternate Living Arrangements" can be credited against the Township's "New Construction Component" and, additionally, that COAH will credit three (3) dwelling units being constructed in the Township by Habitat For Humanity.

Moreover, the Township has reconsidered one (1) of the three (3) previously proposed "inclusionary" developments and, in cooperation with the landowner, is now proposing an agerestricted development with the payment of a development fee in lieu of actually building the required "low" and "moderate" income units.

As a result of these modifications, the "Fair Share Plan" for East Windsor Township now includes the following components:

- A "Housing Rehabilitation Program";
- 110 "Prior Cycle Credits";
- 5 Units From Litigation Settlement;
- 3 Units From Habitat For Humanity;
- 21 Units (Beds) From Existing "Alternate Living Arrangements";
- 102 Units From Approved "Inclusionary" Developments, Including A Rental Unit Obligation Of 51 Units;

- 27 Units From A "Regional Contribution Agreement" In Lieu Of Affordable Units Within The "ARH" District;
- 31 Units From A "Regional Contribution Agreement";
- 46 "Senior Citizen" HUD Units, Including A Rental Unit Obligation Of 8 Units; and
- Amended Development Fees For Affordable Housing.

#### REHABILITATION COMPONENT

The twenty-three (23) "Net Indigenous Need" units obligated to the Township of East Windsor will be the subject of a "Rehabilitation Program" in accordance with N.J.S.A. 5:93-5.2 of the "Substantive Rules" of the New Jersey Council On Affordable Housing (COAH). As stated within COAH's "Substantive Rules", the purpose of a "Rehabilitation Program" is as follows:

"The purpose of a rehabilitation program is to rehabilitate substandard housing units occupied by low and moderate income households. A substandard housing unit is defined as a unit with health and safety code violations that require the repair or replacement of a major system. A major system shall include a roof, plumbing (including wells), heating, electricity, sanitary plumbing (including septic systems) and/or a load bearing structural system..."

Regarding the Township of East Windsor, the rehabilitation of the twenty-three (23) "Indigenous Need" units is proposed to be funded from available State and County programs and/or from the "Development Fees" collected from developers of new residential dwelling units and new nonresidential buildings within the Township.

In accordance with N.J.A.C. 5:93-5.2 (h) of COAH's "Substantive Rules", at least ten thousand dollars (\$10,000) per unit to be rehabilitated will be allocated as follows:

"A municipality that chooses to rehabilitate its rehabilitation component shall be responsible for funding the program. This requirement includes administrative and actual rehabilitation activities. A municipality shall provide \$2,000 per unit of its rehabilitation component towards administration and \$8,000 per unit for rehabilitation activity to total \$10,000 per unit of its rehabilitation component..."

Given the fact that the Township of East Windsor has a "Net Indigenous Need", or "rehabilitation component", of twenty-three (23) dwelling units, the total dollar amount required to fund the "Housing Rehabilitation Program" is two hundred thirty thousand dollars (\$230,000) which, in accordance with N.J.A.C. 5:93-5.2 (h)1. of COAH's "Substantive Rules", shall be made available in accordance with the following schedule:

"Municipalities shall provide sufficient dollars to fund one-third of the municipal rehabilitation component within one year of substantive certification. In each subsequent year of the substantive certification period, the municipality shall provide sufficient dollars to fund one-sixth of the municipal rehabilitation component."

Again, the rehabilitation of the twenty-three (23) "Indigenous Need" units presumed to exist in East Windsor Township is proposed to be funded from available State and County programs and/or from the "Development Fees" collected from developers of new residential dwelling units within the Township and, as required by COAH, the moneys will be made available as follows:

- \$80,000 within one (1) year of "Substantive Certification"; and
- \$37,500 per year for the next four (4) years.

Finally regarding the "Rehabilitation Program", and in accordance with N.J.A.C. 5:93-5.2 (g) of the "Substantive Rules" of the New Jersey Council On Affordable Housing (COAH), affordability controls, in the form of a lien filed with the subject property's deed, shall be placed upon a rehabilitated unit for a period of six (6) years in the case of an owner occupied unit, or for a period of ten (10) years in the case of a rental unit.

#### NEW CONSTRUCTION COMPONENT

The three hundred forty-five (345) "Net Reallocated Present And Prospective Need" units obligated to the Township of East Windsor will be satisfied in the following manner:

#### **Prior Cycle Credits**

In accordance with N.J.A.C. 5:93-3.2 (a) of COAH's "Substantive Rules", East Windsor Township is seeking a credit of one hundred ten (110) units against its "New Construction Component" obligation of three hundred forty-five (345) affordable housing units.

More specifically, "St. James Village", a "Senior Citizen" development, was constructed during the time period between April 1, 1980 and December 15, 1986 with income and rent restrictions as required by COAH. Documentation of the issuance of the Certificate of Occupancy for the facility is included within Addendum II to this report.

Therefore, at the one for one (1:1) credit permitted by COAH, the one hundred ten (110) "St. James Village" units reduces East Windsor Township's three hundred forty-five (345) "New Construction Component" obligation to two hundred thirty-five (235) affordable housing units.

#### Thompson Realty Co. Of Princeton, Inc. Settlement

The settlement agreement regarding the above captioned litigation brought by East Windsor Township against "Thompson Realty" contains the following language regarding five (5) lots which are to have affordable housing units constructed upon them:

"The five (5) dwelling units to be constructed...shall be developed in accordance with the "Substantive Rule" (N.J.A.C. 5:93-1 et seq.) of the New Jersey Council On Affordable Housing (COAH) existing at the time of the construction of the units...The units shall be constructed, marketed, occupied and maintained as 'low' and 'moderate' income dwelling units in accordance with the following sections of COAH's 'Substantive Rules':

- N.J.A.C. 5:93-7: 'Inclusionary Developments';
- N.J.A.C. 5:93-9: 'Controls On Affordability';
- N.J.A.C. 5:93-10: 'Cost Generation';
- N.J.A.C. 5:93-11: 'Affirmative Marketing'; and
- N.J.A.C. 5:93-12: 'Monitoring'."

A copy of the "Settlement Agreement" is included within Addendum III to this report.

Therefore, the five (5) affordable units required to be constructed by Thompson Realty as part of the settlement agreement reduces East Windsor Township's remaining "New Construction Component" obligation of two hundred thirty-five (235) affordable housing units to two hundred thirty (230) units.

#### **Habitat For Humanity**

On December 1, 1997, the East Windsor Township Planning Board granted minor subdivision approval to Habitat For Humanity for the creation of three (3) separate lots for the construction of single-family detached dwellings. Subsequently, during 1998, the applicant returned to the Planning Board seeking a design waiver and a variance from the prevailing ordinance provisions of the Township regarding the construction of driveways and garages, respectively.

The Planning Board approved the requested design waiver and variance on July 20, 1998, but the approval was conditioned upon the applicant taking all necessary steps to qualify the proposed dwelling units for credit against the affordable housing obligation mandated to East Windsor Township by the New Jersey Council On Affordable Housing (COAH).

As a result of the efforts of East Windsor Township, the applicant and COAH, procedures and requirements were established to qualify newly constructed Habitat For Humanity dwelling units throughout New Jersey for credit against municipal affordable housing obligations as mandated by COAH.

Regarding East Windsor Township, the procedures and requirements for qualifying the three (3) subject properties are included within Resolution No. 99-6, with its attachments, which was adopted by the Planning Board on January 25, 1999 and which is included within Addendum IV to this report.

Therefore, the three (3) affordable units to be constructed by Habitat For Humanity in East Windsor Township reduces the Township's remaining "New Construction Component" obligation of two hundred thirty (230) affordable housing units to two hundred twenty-seven (227) units.

#### **Alternative Living Arrangements**

A number of "Alternate Living Arrangements", as that term is defined and governed by COAH's "Substantive Rules", currently exist within East Windsor Township. More specifically, the following seven (7) "Alternate Living Arrangements", or "group homes", currently exist within the Township, and include an aggregate of twenty-one (21) beds:

Operator	Type Of Facility	Address	No. Of Beds
EDEN A.C.R.E.s, Inc.	Group Home For The Developmentally Disabled	919 Old York Road	3
EDEN A.C.R.E.s, Inc.	Group Home For The Developmentally Disabled	105 Maplestream Road	3
EDEN A.C.R.E.s, Inc.	Supervised Apts. For The Developmentally Disabled	1731 Country Mill Drive	2
EDEN A.C.R.E.s, Inc.	Supervised Apts. For The Developmentally Disabled	1631 Country Mill Dive	2
Enable, Inc.	Group Home For The Developmentally Disabled	6 Sutton Place	4

Operator	Type Of Facility	Address	No. Of Beds
Center For Innovative Family Achievements, Inc.	Group Home For The Developmentally Disabled	199 Dorchester Road	4
Community Options Properties, Inc.	Group Home For The Developmentally Disabled	3 Clark Court	3
		Total Beds:	21 Beds

Documentation qualifying the bedrooms as units to be credited against East Windsor Township's affordable housing obligation has been received from three (3) of the four (4) operators (i.e., EDEN A.C.R.E.s, Inc., Enable, Inc., & Center For Innovative Family Achievements, Inc.), and the forms are included within Addendum V to this report. To date, the efforts of the Township to receive such documentation from Community Options Properties, Inc. have been unsuccessful, but will be continued.

The twenty-one (21) beds within the "Alternative Living Arrangements" in East Windsor Township reduces the Township's remaining "New Construction Component" obligation of two hundred twenty-seven (227) affordable housing units to two hundred six (206) units.

#### **Inclusionary Developments**

There are two (2) tracts of land in East Windsor Township which have been approved for "inclusionary" residential developments with a mandatory setaside of "low" and "moderate" income affordable units.

It should be noted at this time, in accordance with N.J.A.C. 5:93-5.14 of COAH's "Substantive Rules", that the Township of East Windsor is required to provide a total of fifty-nine (59) units of affordable "Rental Housing" (i.e., 25% of 235 du [390 du "Precredited Need" - 110 du "Prior Cycle Credits" - 23 du "Rehabilitation Component" - 22 du "COAH Correction"] = 58.75 du or 59 rental units).

Furthermore, N.J.A.C. 5:93-5.9 (d) of COAH's "Substantive Rules" provides for a two to one (2:1) bonus credit for each rental affordable unit, provided and in accordance with the following:

- 1) The units are not age-restricted and are available to the general public;
- 2) The units are deed restricted, with the controls on the affordability of each rental unit to remain in effect for at least thirty (30) years;

No more than the number of units derived from the above formula (i.e., 59 units for East Windsor) are eligible to receive the bonus credit at this time, with any additional rental units credited against any future affordable housing obligation.

As approved, the two (2) tracts will provide a total of fifty-one (51) affordable units, and all fifty-one (51) units will be non age-restricted "Rental Housing" units, thereby satisfying fifty-one (51) of the Township's obligation to provide fifty-nine (59) rental units.

Additionally, in accordance with N.J.A.C. 5:93-5.15 (d)1. of COAH's "Substantive Rules", each of the fifty-one (51) non age-restricted "Rental Housing" units shall be credited as two (2) units against East Windsor Township's "New Construction Component" affordable housing obligation.

The following is an identification of the two (2) subject tracts and a discussion of the development approvals granted by East Windsor Township:

#### Tract 1:

The first tract of land is located along One Mile Road in the western portion of East Windsor Township near the Millstone River boundary with Cranbury Township. The property is zoned "R-M" which permits multiple-family housing development up to a density of ten (10) dwelling units per acre and requires that twenty percent (20%) of the units be made affordable to "low" and "moderate" income households in accordance with the mandates of the New Jersey Council On Affordable Housing (COAH).

The tract, consisting of approximately 9.33 acres, had been approved in 1990 for the construction of eighty-four (84) apartment units (9 du/ac) in a total of eleven (11) apartment-type buildings, with seventeen (17) of the units (i.e., 20%) to be "affordable" units in accordance with COAH's "Substantive Rules". The development is known as "Wyncrest".

During 1997, the applicant filed an application to amend the prior approval and construct a total of ninety (90) units to be located in a total of sixteen (16) relatively small individual buildings of a townhouse type. During its review of the proposed development, the Zoning Board of Adjustment caused the applicant to reduce the total number of units to eight-four (84) and the number of buildings to fifteen (15).

Moreover, the Zoning Board of Adjustment, as a result of a cooperative dialogue with the applicant, required that seventeen and one-half percent (17.5%), or fifteen (15), of the total eighty-four (84) units in the development be affordable "Rental Housing" units. Therefore, at the two to one (2:1) bonus credit, thirty (30) units will be credited against East Windsor Township's "fair share" affordable housing obligation, although only fifteen (15) units actually will be built.

As a result, East Windsor Township's remaining "New Construction Component" obligation of two hundred six (206) affordable housing units is reduced to one hundred seventy-six (176) units.

A copy of approval Resolution No. Z97-119A, adopted by the Zoning Board on March 10, 1999, is included within Addendum VI to this report, without the attachments referenced in the Resolution.

#### Tract 2:

The second tract of land is located between Cranbury Station Road and North Main Street, north of the "Hightstown By-Pass" road currently under construction. The tract contains approximately 78.49 acres of land, but because of the wetlands and flood plains associated with the adjacent Millstone River, only approximately 50.25 acres are readily buildable.

The tract is zoned "R-3" which permits multiple-family housing development up to a density of four (4) dwelling units per gross acre of land and which requires that twenty percent (20%) of the units be made affordable to "low" and "moderate" income households in accordance with the mandates of the New Jersey Council On Affordable Housing (COAH).

In accordance with the zoning of the tract, an application was submitted to the East Windsor Township Planning Board consisting of two hundred fifty-six (256) dwelling units, including two hundred (200) townhouse units and fifty-six (56) affordable apartment units. Therefore, the overall proposed density of the development was approximately three and one-quarter (3.25) dwelling units per acre, and the number of units proposed to be made available for occupancy by eligible "low" and "moderate" income households (i.e., 56) computed to approximately twenty-two percent (22%) of the total two hundred fifty-six (256) dwelling units proposed.

Similar to the treatment of the affordable units within "Tract 1" previously discussed, it was proposed that modifications be made to the submitted plan in order to maximize the number of affordable housing units credited to East Windsor Township against it "fair share" housing obligation, and provide some of the required "Rental Housing" units as mandated by the New Jersey Council On Affordable Housing (COAH).

Therefore, the Planning Board permitted that only fifteen percent (15%) of the total two hundred thirty-six (236) dwelling units be affordable units in accordance with COAH's "Substantive Rules", but that the resulting thirty-six (35) units be affordable "Rental Housing" units.

Therefore, at the two to one (2:1) bonus credit, the thirty-six (36) affordable "Rental Housing" units will be credited as seventy-two (72) units against East Windsor Township's "fair share" affordable housing obligation.

As a result, East Windsor Township's remaining "New Construction Component" obligation of one hundred seventy-six (176) affordable housing units is reduced to one hundred four (104) units.

A copy of approval Resolution No. 99-19, adopted by the Planning Board on August 2, 1999, is included within Addendum VII to this report, without the various attachments referenced in the Resolution.

# Inclusionary Age-Restricted Development With Payment In Lieu Of Construction For RCA

Two (2) properties are located adjacent to each other along One Mile Road, but currently are situated within two (2) different zoning districts. More particularly, one is within the "RM" Multifamily Residential zoning district, and the other is within the "R-3" Residential Medium Density zoning district.

#### The "RM" Property:

The subject "RM" property (Block 6/Lot 1 = 53.8 ac) was approved in 1983 for the construction of three hundred forty-six (346) townhouse units (6.43 du/ac). However, at the time of the approval, the zoning ordinance provisions of East Windsor Township did not require that a percentage of the total units be set aside as "affordable" units in accordance with the "Substantive Rules" of the New Jersey Council On Affordable Housing" (COAH).

Therefore, the development, if constructed as approved, would not have resulted in any units credited against the Township's "fair share" housing obligation. The development was known as "Windsor Hollow".

During 1997, the applicant sought to have the Township Planning Board grant an extension to the approval as required by the Municipal Land Use Law (N.J.S.A. 40:55D-1, et seq.). After due deliberation, the Planning Board denied the extension request since, among other reasons, the previously approved development did not contain any affordable units to help East Windsor Township satisfy is "fair share" housing obligation as mandated by COAH.

Additionally, it should be noted that the subject "RM" property borders the Millstone River along the entirety of its northerly boundary, and there are extensive 100-year flood plains, freshwater wetlands and steep slopes with grades fifteen percent (15%) and greater associated with the river. Regarding the wetlands, the current regulations of the New Jersey Department of Environmental Protection were not in effect when the prior plan for development was approved in 1983; therefore, the protection of the flora and fauna associated with the freshwater wetlands, including the required transitional buffer areas, were not assured via the prior approval.

Given the presence of the Millstone River along the northerly border of the property and the lack of any frontage of the property along One Mile Road, there are significant vehicular access limitations to the subject property. In fact, the subject "RM" property will share the same principal vehicular access with the neighboring "R-3" property via a common "access easement" right-of-way through the "R-3" property as shown on the East Windsor Township Tax Maps.

#### The "R-3" Property:

The subject "R-3" property (Block 6/Lot 5 = 95.04 ac) was preliminarily approved in 1992 and finally approved in 1994 for the construction of three hundred four (304) single-family detached dwellings (3.20 du/ac) on individual lots a minimum five thousand (5,000) square feet in area. Known as "Nob Hill", the proposed development would be located along the east side of One Mile Road, midway between Princeton-Hightstown Road (Rte. 571) and Old Trenton/Cranbury-Edinburgh Road (Rte. 535).

The subject property is bordered by Route 133, the "Hightstown By-Pass", along the entirety of its southerly boundary and by the "Rocky Brook" along the entirety of its easterly boundary. The presence of Route 133, recently completed and opened, creates two (2) principal land use planning concerns: 1) The need to provide adequate distance between the by-pass and any residence or recreational facility; and 2) The need to prevent any traffic conflict with the off-ramp traffic proceeding from the by-pass onto One Mile Road along the frontage of the subject property. The concern to prevent any traffic conflict with the by-pass traffic on One Mile Road brings into question the wisdom of providing the "Whitman Drive" secondary access into the property as shown on the "Nob Hill" subdivision drawings.

The presence of the "Rocky Brook" along the property's easterly boundary creates a significant environmental land use concern. As originally approved, the freshwater wetlands associated with the brook were required by the New Jersey Department of Environmental Protection (NJDEP) to have a fifty foot (50') "transitional buffer" along the border of the wetlands.

However, subsequent to the subdivision approvals granted by East Windsor Township, and as a result of the environmental impact review conducted for the construction of the "Hightstown By-Pass", the NJDEP has determined that the freshwater wetlands associated with the "Rocky Brook" are "exceptional resource wetlands" due to the discovery of an existing habitat for "Wood Turtles". As a result of this new information, a "transitional buffer" of one hundred fifty feet (150') now would be required along the border of the "Rocky Brook" wetlands, versus the fifty foot (50') dimension previously required.

Again, as previously noted, the subject "R-3" property will share the same principal vehicular access with the neighboring "RM" property via a common "access easement" right-of-way through the subject "R-3" property as shown on the East Windsor Township Tax Maps.

#### Land Use Plan Element Amendment:

Regarding the subject two (2) properties, on August 16, 1999, the Planning Board adopted an amendment to the Land Use Plan Element portion of the East Windsor Township Master Plan which recommended the appropriate rezoning of the subject properties in order to accomplish the following objectives:

Lesson the traffic impact along One Mile Road resulting from the development of the subject properties;

- Provide a zoning of the subject properties to enable their individual development as compatible residential neighborhoods which could utilize the shared "access easement" as a common entrance boulevard into the developments;
- Provide zoning for an age-restricted development (i.e., 55 years and older) in order to expand the diversity of housing opportunities within East Windsor Township; and
- Provide for an addressment of East Windsor Township's affordable housing obligation as mandated by the New Jersey Council On Affordable Housing (COAH), while not requiring that the affordable units actually be constructed within the age-restricted development.

At this time, East Windsor Township is formulating zoning ordinance provisions to implement the recommendations contained within the adopted amendment to the Land Use Plan Element, including the following affordable housing requirements:

"Age-restricted housing developments in the 'ARH' zoning district shall be considered 'inclusionary' developments in accordance with the "Substantive Rules" of the New Jersey Council On Affordable Housing (COAH). However, in lieu of actually constructing affordable housing units on the subject property, in accordance with COAH's 'Substantive Rules', the developer shall contribute twenty thousand dollars (\$20,000) per seven and one-half percent (7.5%) of the total units approved within the age-restricted development, which moneys shall be deposited in the East Windsor Township 'Housing Trust Fund' to be utilized for a 'Regional Contribution Agreement'."

Assuming that three hundred fifty (350) total dwelling units were to be constructed on the acreage of the combined properties available for development, the developer would contribute twenty thousand dollars per unit in lieu of actually constructing twenty-seven (27) "low" and "moderate" income units (i.e.,  $7.5\% \times 350$  du's = 26.25 or 27 affordable du's).

The end result would be a contribution of five hundred forty thousand dollars (\$540,000) to be utilized by East Windsor Township for a "Regional Contribution Agreement" (RCA) of twenty-seven (27) affordable housing units.

As a result, East Windsor Township's remaining "New Construction Component" obligation of one hundred four (104) affordable housing units is reduced by the twenty-seven (27) RCA units to seventy-seven (77) units.

#### **Regional Contribution Agreement**

In accordance with Subchapter 6 of the "Substantive Rules" of the New Jersey Council On Affordable Housing (COAH), the Township of East Windsor proposes to transfer thirty-one (31) units of its affordable housing obligation to another municipality within its "East Central Housing Region" consisting of Mercer, Monmouth and Ocean Counties via a "Regional Contribution Agreement" (RCA).

East Windsor Township recognizes that it must transfer at least twenty thousand dollars (\$20,000) for each of the thirty-one (31) units, and that it must submit a contractual "Regional Contribution Agreement" (RCA) in the amount of at least six hundred twenty thousand dollars (\$620,000) between it and the receiving municipality for review and approval by COAH prior to receiving "Substantive Certification".

East Windsor Township also recognizes that the "Regional Contribution Agreement" (RCA) must specify a payment schedule which conforms to the construction or rehabilitation schedule established by the receiving municipality, and that the RCA must relate to the receiving municipality's ability to deliver the housing units in a timely fashion.

As a result of the thirty-one (31) affordable units to be transferred to another municipality via a "Regional Contribution Agreement" (RCA), East Windsor Township's remaining "New Construction Component" obligation of seventy-seven (77) affordable housing units is reduced to forty-six (46) units.

East Windsor Township intends to fund the thirty-one (31) unit RCA agreement with \$1,000,000 to be paid the Township by "Centex" as a result of the settlement of a prior litigation.

The thirty-one (31) units proposed by the Township of East Windsor to be transferred via an RCA agreement, plus the additional twenty-seven (27) RCA units resulting from the previously discussed "inclusionary" age-restricted development, adds to a total of fifty-eight (58) affordable units to be satisfied by East Windsor Township via RCA agreements.

The total fifty-eight (58) units are less than the maximum number of units permitted by COAH. Specifically, in accordance with N.J.A.C. 5:93-6.1 (a)3. of COAH's "Substantive Rules", which regulates the maximum number of units that can be transferred by municipalities that have never received "Substantive Certification" or a final "Judgement Of Repose" and are not seeking a vacant land adjustment, East Windsor Township could transfer up to one hundred twenty-nine (129) units as part of an RCA agreement (i.e., 50% x's 258 [390 du "Precredited Need" - 110 du "Prior Cycle Credits" - 22 du "COAH Correction"] = 129 RCA units).

#### Senior Citizen HUD Units

"Presbyterian Homes" received approval from East Windsor Township and has constructed eighty-five (85) age-restricted "Senior Citizen" units with funding provided via Section 202 of the United States Department Of Housing And Urban Development (HUD). The subject property is located along Lanning Boulevard Extension.

A copy of the September 30, 1995 "Fund Reservation Award" letter to "Presbyterian Homes" from the U.S. Department of Housing and Urban Development is included within Addendum VIII to this report.

Although all eighty-five (85) of the units meet the income and eligibility requirements of the New Jersey Council On Affordable Housing (COAH), in accordance with N.J.A.C. 5:93-5.13 of COAH's "Substantive Rules", only forty-four (44) of the units can be credited against East Windsor Township's "fair share" obligation at this time.

More particularly, since East Windsor Township is proposing to transfer housing units via "Regional Contribution Agreements" (RCA's) totalling fifty-eight (58) units, COAH provides that the maximum number of "Senior Citizen" units to be credited by the Township against its "fair share" affordable housing obligation be calculated as follows: 25% of 177 du [390 du "Precredited Need" - 110 du "Prior Cycle Credits" - 23 du "Rehabilitation Component" - 22 du "COAH Correction" - 58 "RCA" du] = 44.25 or 44 du.

Given the fact that all of the "Presbyterian Home" units are age-restricted rental units, and given the fact that East Windsor Township, via the "Wyncrest" and "Calton Homes" developments, satisfied only fifty-one (51) units of its total "Rental Housing" obligation of fifty-nine (59), eight (8) of the forty-four (44) "Presbyterian Home" units can be credited to fulfill the Township's "Rental Housing" obligation.

Moreover, in accordance with N.J.A.C. 5:93-5.15 of COAH's "Substantive Rules", the eight (8) "Presbyterian Home" "Rental Housing" units shall receive one and one-third ( $1\frac{1}{3}$ ) units of credit, resulting in ten (10) units of credit (i.e., 8 du's x  $1\frac{1}{3}$  = 10.67 du's or 10 du's).

Therefore, the total forty-four (44) "Presbyterian Home" units can be credited as forty-six (46) units against East Windsor Township's affordable housing obligation (i.e., 36 du's at a 1:1 credit = 36 du's, plus 8 du's at a 1:11/3 credit = 10 du's).

As a result of the forty-six (46) units credited from the "Presbyterian Home" development, East Windsor Township has fully satisfied it's remaining "New Construction Component" obligation.

#### **Development Fees For Affordable Housing**

In accordance with Subchapter 8 of the "Substantive Rules" of the New Jersey Council On Affordable Housing (COAH), and as previously approved by COAH, the Township of East Windsor adopted ordinance provisions for the collection of "Development Fees For Affordable Housing". A copy of the adopted ordinance provisions is included within Addendum IX to this report.

At this time, East Windsor Township desires to modify the previously adopted affordable housing development fee ordinance provisions in order to provide for the payment of a development fee in the proposed "ARH" Age-Restricted Housing "inclusionary" zoning district in lieu of the actual construction of the affordable housing units.

Additionally, in accordance with relatively recent modifications of COAH's "Substantive Rules", East Windsor Township wishes to amend its previously adopted development fee ordinance provisions to include a six percent (6%) bonus development fee for the additional residential units realized as a result of the granting of a "d" variance above the number of residential units permitted by right under the existing zoning and a six percent (6%) bonus development fee for the additional floor area ratio (F.A.R.) realized as a result of the granting of a "d" variance above the F.A.R. permitted by right under the existing zoning.

The proposed amendment to the ordinance provisions for the collection of "Development Fees For Affordable Housing" are included within Addendum X to this report.

### **ADDENDUM I**

PLANNING BOARD RESOLUTION NO. 98-15A ADOPTING THE MARCH 1998
"HOUSING PLAN ELEMENT AND FAIR SHARE PLAN"

TOWNSHIP COUNCIL RESOLUTION R98-86A PETITIONING COAH FOR "SUBSTANTIVE CERTIFICATION"

MAY 8, 1998 & JUNE 23, 1998 LETTERS FROM COAH TO MAYOR MIRONOV

TOWNSHIP OF EAST WINDSOR PLANNING BOARD
RESOLUTION OF MEMORIALIZATION
MERCER COUNTY, NEW JERSEY
MASTER PLAN AMENDMENT TO HOUSING PLAN ELEMENT
AND FAIR SHARE PLAN

Approved:

May 4, 1998

Memorialized:

MATTER OF:

MASTER PLAN AMENDMENT TO HOUSING PLAN ELEMENT AND FAIR SHARE PLAN

WHEREAS, the Municipal Land Use Law, specifically N.J.S.A. 40:55D-28, authorizes a Planning Board to prepare and, after public hearing, adopt or amend a Master Plan, or component parts thereof, to guide the use of lands within the municipality in a manner which protects public health and safety and promotes the general welfare; and,

WHEREAS, the East Windsor Township Planning Board held a public hearing on May

4, 1998 regarding proposed amendments to the Housing Plan Element And Fair Share Plan of
the East Windsor Township Master Plan; and,

WHEREAS, the major purposes of the Housing Plan. Element And Fair Share Plan.

document for East Windsor Township are as follows:

- 1. To satisfy the requirement of the Municipal Land Use Law (N.J.S.A. 40:55D-1 et. seq.) that a "Housing Plan Element" be prepared in accordance with the Fair Housing Act.
- 2. To comply with its "fair share" affordable housing obligation as mandated by the New Jersey Council On Affordable Housing (COAH) in a manner that will not require the Township to zone any additional lands for housing development; and,
- 3. To receive "Substantive Certification" from the New Jersey Council On Affordable Housing (COAH) in accordance with it's "Substantive Rules" which became law on June 6, 1994; and,

WHEREAS, at the May 4, 1998 public hearing the proposed amendments were reviewed

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members of the public; and the Housing Plan Element And Fair Share Plan document for East
Windsor Township was reviewed and discussed by the Planning Board; and,

WHEREAS, the East Windsor Township Planning Board has determined that the proposed amendments to the Housing Plan Element And Fair Share Plan portion of the East. Windsor Township Master Plan are consistent with the protection of public health and safety and with the promotion of the general welfare of East Windsor Township.

NOW, THEREFORE, BE IT RESOLVED by the Planning Board of the Township of

East Windsor on this \_\_\_\_\_\_ 4 day of \_\_\_\_ May \_\_\_, 1998 that the Planning Board hereby adopts

the proposed amendments to the Housing Plan Element And Fair Share Plan of the East Windsor

Township Master Plan, as set forth in the "Housing Plan Element And Fair Share Plan"

document.

BE IT FURTHER RESOLVED, that the Board secretary is hereby authorized and directed to cause a notice of this decision to be published in the *Hightstown Gazette*, to send a certified copy of this Resolution to the Township clerk, engineer, attorney and tax assessor, and shall make same available to all other interested parties.

Edward M. Kelley, Chairman \
East Windsor Township Planning Board

Prepared by:

Louis P. Rago, Esq.

I hereby certify this to be a true and accurate copy of the Resolution adopted by the East
Windsor Township Planning Board, Mercer County, New Jersey at a public meeting held on \_
May 4\_, 1998.

Nancy Panison, Secretary

East Windsor Township Planning Board

cm/15840res.hou

#### RESOLUTION R98-86A.

# EAST WINDSOR TOWNSHIP MERCER COUNTY

WHEREAS, the East Windsor Planning Board has considered the Housing Element and Fair Share Plan at a special meeting of the Planning Board held on April 20, 1998, and did adopt said "Housing Element and Fair Share Plan" as part of the Master Plan of the Township; and

WHEREAS, the Township desires to petition the Council on Affordable Housing (COAH) for substantive certification of this plan.

NOW, THERFORE, BE IT RESOLVED, by the Township Council of the Township of East Windsor that the Housing Element and Fair Share Plan of the Township as adopted by the Planning Board of the Township as a part of the Master Plan thereof, be submitted to COAH together with the fair share plan and that this Resolution be considered by COAH as a petition for substantive certification by the Township.

BE IT FURTHER RESOLVED, that the Township be authorized to publish notice of the petition for substantive certification in a newspaper of county wide circulation and that a copy of this Resolution and the adopted housing element and proposed fair share plan and supporting documentation be made available for public inspection at the office of the Township Clerk during regular business hours at East Windsor Township Municipal Building, 16 Lanning Boulevard, East Windsor, New Jersey 08520 Monday through Friday, 8:30 a.m. to 4:30 p.m. for a period of at least 45 days following the date of publication of said legal notice.

I hereby certify the foregoing to be a true copy of a Resolution adopted by the East Windsor Township Council at a meeting held on May 5, 1998.

Kathleen M. Filipowicz

Municipal Clerk



CHRISTINE TODD WHITMAN
Governor

State of New Jersey
Council on Affordable Housing
PO Box 813
TRENTON NJ 08625-0813
609-292-3000

609-292-3000 FAX: 609-633-6056 TDD#: (609) 278-0175 JANE M. KENNY
Chairman
SHIRLEY M. BISHOP, P.P.
Executive Director

May 8, 1998

The Honorable Janice S. Mironov East Windsor Township 16 Lanning Blvd. East Windsor, New Jersey 08520-1999

Dear Mayor Mironov:

The Council on Affordable Housing (COAH) acknowledges receipt of East Windsor Township's petition for substantive certification of its housing element/fair share plan. Please be aware that the 45-day objector period will end on June 22, 1998 (based on notice published in The Trenton Times on May 8, 1998).

If you have any questions or need further information, please call Pam Yallowitz, housing secretary, at (609)292-4532 or Mary Beth Lonergan at (609)984-4584.

Sincerely

Shirley M. Byshop, P.P

Executive Director

cc: Pam Yallowitz, housing secretary, COAH Mary Beth Lonergan, COAH planner Attached Service List



CHRISTINE TODD WHITMAN
GOVERNOT

# State of New Jersey Council on Affordable Housing PO Box 813

TRENTON NJ 08625-0813

609-292-3000 FAX: 609-633-6056 TDD#: (609) 278-0175 JANE M. KENNY
Chairman
SHIRLEY M. BISHOP, P.P.
Executive Director

June 23, 1998

The Honorable Janice S. Mironov
East Windsor Township
16 Lanning Blvd.
East Windsor, New Jersey 08520-1999

Dear Mayor Mironov:

Your municipality filed a petition for substantive certification with the Council on Affordable Housing (COAH). At the end of the 45-day objection period, no objections were received.

As a result, your housing element/fair share plan is under review by Mary Beth Lonergan, COAH planner. If you have any questions or need further information, you can reach Ms. Lonergan at (609)984-4584.

Sincerely

Skirley M. Bishop, P.P

Executive Director

cc: Service List

Mary Beth Lonergan, COAH planner

d3738w/5



## ADDENDUM II

DOCUMENTATION OF THE ISSUANCE OF A CERTIFICATE OF OCCUPANCY FOR "ST. JAMES VILLAGE"





CCN NO.	<b>经济主义和</b> ****	
DATE ISSUEL	7.6.21	85- C#
Block 11	Lot	3
Subdivision		

IDENTIFICATION	PAYMENTS				
Owner St. James Village	Barry Gordon				
Address No. Main Street	Address 1436 E. Elizabeth				
Hightstown, NJ 08520	Linden, NJ 07036				
	Tel. (201) 925.1123				
Work Site Address	Lic, No.				
No. Main Street	Federal Emp. No.				
	)				
CERTIFICATE OF OCCU	PANCY/APPROVAL				
A. CERTIFICATE OF OCCU					
This serves notice that said building, structure, or equipment has been constructed or installed in accordance with the New Jersey Uniform Construction Code, and is approved for use and/or occupancy.					
D	NUED COOLIDANOV				
B. CERTIFICATE OF CONT					
	d on a general inspection of the visible parts of the building there are no building is approved for continued occupancy.				
C.   TEMPORARY CERTIFIC.	ATE OF OCCUPANCY				
THE STATE OF THE S	ficate of Occupancy the following conditions must be met no later than				
	or the owner will be subject to a fine or order to vacate:				
D. DESCRIPTION OF WORK:	Construct five story senior citizen building				
P-2	1 1/2				
	FIRE GRADING1 1/2				
MAXIMUM LIVE LOAD	100 MAXIMUM OCCUPANCY LOAD 188 persons				
SPECIFIC USEMulti family					
FINAL COST OF CONSTRUCTION: \$ 4,800,000,00 CTY CONSTRUCTION OFFICIAL					

## **ADDENDUM III**

## SETTLEMENT AGREEMENT REGARDING LITIGATION BROUGHT BY EAST WINDSOR TOWNSHIP AGAINST "THOMPSON REALTY"



### Mercer County Clerk's Office Catherine DiCostanzo, County Clerk Recording Sheet

Return To:

HUFF MORAN & ORRON 1246 SOUTH RIVER RD CRANBURY NJ 08512

THIS COVER SHEET CONTAINS ALL RECORDING INFORMATION. PLEASE DO NOT REMOVE FROM DOCUMENT.

Being Be-Recorded to

Index DEEDS

Cornect From Rel to

Book 03424 Page 0027

2 base of

No. Pages 0023

Instrument MISC DEEDS

Date :

8/13/1998

Time :

9:44:29

Control # 199808130009

INST#

RD 1998 031698

THOMPSON REALTY CO INC

EAST WINDSOR TWP

Employee ID LISAC

RECORDING .00 .00 .00 .00 .00 .00 .00 .00 .00 Total: .00

STATE OF NEW JERSEY Mercer County Clerk's Office

TRANSFER TAX

.00

Transfer Tax

.00

Catherine DiCostanzo Mercer County Clerk



### MODIFICATION OF SETTLEMENT AGREEMENT

55.00 pd & # 37394 I entered 271-11

THIS MODIFICATION OF SETTLEMENT AGREEMENT made and entered into this 1st day of , May , 1998, by and between the TOWNSHIP OF EAST WINDSOR, County of Mercer, and State of New Jersey, 16 Lanning Boulevard, East Windsor, New Jersey 08520 (hereafter "Township"), and THOMPSON REALTY COMPANY OF PRINCETON, INC., 195 Nassau Street, Princeton, New Jersey 08540, (hereafter "Thompson");

#### WITNESSETH:

THAT WHEREAS, in or around December of 1978, the Township, as grantor, conveyed title to No Assets, Inc. (Thompson's predecessor in interest and hereinalter referred to collectively as "Thompson"), as grantee, to property located at Block 49, Lot 17; Block 48, Lots 27, 38, 39 and 40, and Block 22, Lots 15, 16 and 21, as indicated on the Official Tax Map of East Windsor Township, Mercer County, New Jersey, and as more specifically described in deeds recorded in the Office of the Clerk of Mercer County in the Book of Deeds, Volume 2068, beginning at page 973, on April 4, 1978; Volume 1883, beginning at page 5, on June 11, 1971; Volume 2018, beginning at page 747, on July 1, 1976; and Volume 1901, beginning at page 440, on January 28, 1972; and

WHEREAS, each of the aforementioned deeds were subject to a condition subsequent and reverter clause, which provided that:

The Township of East Windsor conveys this property to the grantee herein expressly and solely upon the condition that the grantee herein shall be obligated to construct a dwelling unit permissible in the small lot district within whatever construction costs or rental guidelines the U.S. Department of Housing and Urban Development or any successor federal agency has in effect at the time of construction for low and moderate income housing. If such dwelling is not built within three (3) years from he date of closing of title, the property shall revert back to the Township. If the Township at the end of said three (3) years shall be satisfied that an individual sewage disposal system cannot be approved for the subject property and if sewers have not been installed capable of serving the subject property, the Township Council of the Township of East Windsor shall by resolution extend the time within which the above-stated conditions subsequent must be met, in failure of which the subject property shall revert to the Township of East Windsor. Failure of the grantee herein to convey the subject property by conveyance containing the above specific condition subsequent before such condition has been satisfied shall cause the property to immediately revert to the Township of East Windsor.

WHEREAS, on or about January 2, 1990, the Township commenced a legal action against Thompson styled "Township of East Windsor, plaintiff, v. Thompson Realty Co. of Princeton, Inc., defendant, Action No. C90-00001" in the Superior Court of New Jersey, Chancery Division, Mercer County, based on the alleged failure of the above condition subsequent; and

WHEREAS, the said litigation was settled on or about August 13, 1991, as authorized by resolution R91-139. A copy of said resolution and a copy of the Settlement Agreement are attached hereto as Exhibits A and B and incorporated herein by reference; and

WHEREAS, Thompson previously conveyed Lot 17, Block 49, to the local chapter of Habitat For Humanity, on which lot Habitat For Humanity has constructed a residence; and

WHEREAS, Lots 27, 38, 39 and 40, in Block 48 (hereinafter the "Airport Road Lots") and Lots 15, 16 and 21, in Block 22 (hereinafter the "Daniel Street Lots"), remain vacant, unimproved and in the name of Thompson; and

WHEREAS, Thompson has paid and kept the real estate taxes on the Airport Road Lots and the Daniel Street Lots current; and

WHEREAS, the Township requires possession of Lots 15 and 16, in Block 22, for the Daniel Street Reconstruction Project which acquisition was not anticipated at the time of the attached Settlement Agreement; and

WHEREAS, the New Jersey Department of Community Affairs has authorized the purchase of said lots for a total consideration of \$12,000.00 (\$8,000.00 for Lot 16, Block 22, and \$4,000.00 for Lot 15, Block 22); and

WHEREAS, sanitary sewer is now available to each of the Airport Road Lots and Daniel Street Lots and the Township remains desirous of encouraging the construction of low and moderate income housing on the Airport Road Lots and the remaining Daniel Street lot, Block 22, Lot 21; and

WHEREAS, the Township and Thompson have agreed to modify and amend the aforesaid Settlement Agreement for the purpose of carrying out the original intent and purpose of the aforesaid December, 1978 conveyances under the current existing facts and circumstances.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, and other good and valuable consideration, the receipt of which is hereby acknowledged, the Township and Thompson hereby modify and amend the

aforesaid Settlement Agreement authorized by East Windsor Township resolution R91-139 on or about August 13, 1991 as follows:

- 1. The foregoing recitals are hereby incorporated into this Agreement and made a part hereto.
- 2. Paragraphs 3 through 13 of the aforesaid Settlement Agreement are hereby rendered void and of no further legal effect and are replaced by the terms of this Agreement.
- 3. Upon execution of this Agreement, Thompson shall execute deeds, in a form acceptable to the township attorney, conveying to the Township of East Windsor Lot 15, Block 22, for a consideration of \$4,000.00 and Lot 16, Block 22, for a consideration of \$8,000.00.
- 4. Thompson and the Township agree and acknowledge that sanitary sewer service is currently available to each of the Airport Road Lots and to the remaining Daniel Street lot, Block 22, Lot 21.
- 5. Within twelve months from the date of this Agreement, Thompson shall obtain state, county and municipal approvals, including variances, if any, and including building permits for the construction of a dwelling unit on each of the four Airport Road Lots and on the remaining Daniel Street Lot which meet the provisions set forth in subparagraph 6 below. Thompson shall be required to complete each of the said dwelling units and obtain Certificates of Occupancy within eighteen months of the date of this Agreement.
- 6. The five dwelling units to be constructed on the subject lots, i.e., Lot 21, Block 22 (Daniel Street) and Lots 27, 38, 39 and 40, in Block 48 (Airport Road Lots), shall be developed in accordance with the "Substantive Rules" (N.J.A.C. 5:93-1 ct seq.) of the New Jersey Council On Affordable Housing (COAH) existing at the time of the construction of the units. The five (5) lots shall be considered an "Inclusionary Development" as defined and controlled within COAH's "Substantive Rules" unless otherwise specifically approved by East Windsor Township. In any case, the units shall be constructed, marketed, occupied and maintained as "low" and "moderate" income dwelling units in accordance with the following sections of COAH's "Substantive Rules":
  - N.J.A.C. 5:93-7: "Inclusionary Developments"
  - N.J.A.C. 5:93-9: "Controls On Affordability";
  - N.J.A.C. 5:93-10: "Cost Generation";
  - N.J.A.C. 5:93-11: "Affirmative Marketing"; and
  - N.J.A.C. 5:93-12: "Monitoring"."



# Mercer County Clerk's Office Catherine DiCostanzo, County Clerk Recording Sheet

HUFF MORAN & ORRON 1246 SOUTH RIVER RD CRANBURY NEW JERSEY 0512

EAST WINDSOR TWP

THOMPSON REALTY CO ICN

INFURMATION. PLEASE DO NOT REMOYE FROM DOCUMENT.

Index RELEASE OF MORTGAGE

Book 00301 Page 0008

No. Pages 0022

Instrument REL/MOD/SUB/POS

Date: 5/28/1998

Time: 11:35:40

Control # 199805280214

INST# RD 1998 020897

Employee ID EDAINO

RECORDING	\$ 55.00
	\$ .00
	\$ - 00
	\$ .00

STATE OF NEW JERSEY
Mercer County Clerk's Office

TRANSFER TAX

-00

Transfer Tax \$ .00

Catherine DiCostanzo Mercer County Clerk



55.00

\* In house error should be recorded in deeds \*

Total:

Additionally, each deed conveyed by Thompson to any party other than the Township shall include the COAH model deed restrictions attached hereto as Exhibit C; and shall be subject to the the COAH model Repayment Mortgage Note and Repayment Mortgage attached hereto as Exhibits D & E.

- 7. Prior to the conveyance of any of the lots subject to this Agreement, Thompson shall submit the proposed deed, note and mortgage to the township attorney, along with evidence of the satisfaction of all conditions of this Agreement, for his review and approval.
- 8. In the event that Thompson sells any of the subject lots to another party, other than the Township, prior to the completion of a dwelling unit in accordance with the terms of this Agreement, Thompson shall incorporate by reference the terms and conditions of this Agreement in the deed and the purchaser shall take title to the lot subject to all the terms, conditions and time periods set forth in this agreement.
- 9. This Agreement shall be recorded in the office of the Mercer County Clerk and the covenants and restrictions herein shall be deemed an incumbrance on each of the subject lots and shall run with the land for the benefit of the Township.
  - 9. It shall be deemed a breach of this agreement if:
- A. Thompson or his successor fails to obtain a building permit for any of the subject lots within twelve months of the date of this Agreement;
- B. Thompson or his successor fails to complete construction of a dwelling unit on any of the subject lots within eighteen months of the date of this Agreement; or
- C. Thompson or his successor otherwise breaches any of the terms or conditions of this Agreement. In the event of a breach of this Agreement, ownership of the lot to which the breach applies shall revert to the Township and Thompson shall execute a deed or other documents necessary to effectuate the transfer of ownership, without further consideration, upon written notice of the breach to Thompson and the expiration of a thirty day period following said notice, during which period Thompson or his successor may cure the breach and avoid this forfeiture. In addition, Thompson or his successor will pay to the Township a penalty in the amount of \$5,000.00, which the parties hereby agree to be a reasonable amount, per lot for each lot to which the breach applies.
- 10. This Agreement contains the entire agreement between the parties hereto and the terms of this Agreement are contractual and not a mere recital. The breach of any of the terms of this Agreement shall constitute a material breach of the entire Agreement.

. 1998.

# THOMPSON REALTY CO. OF PRINCETON, F.c.

ATTEST:

TOOD J. CULARYSSO, SIECREMAY

W. BRYCE PHOMPSON, IV.

OMPSON, IV. Presiden

ATTEST:

TOWNSHIP OF EAST WINDSOR

: SS.

COUNTY OF MERCER

STATE OF NEW JERSEY:

I certify that on May 1, 1998, before me the subscriber, a Notary Public of New Jersey, personally appeared KATHLEEN M. FILIPOWICZ, who, being by me duly sworn on her oath, deposes and makes proof to my satisfaction, that she is the Municipal Clerk of the TOWNSHIP OF EAST WINDSOR, the Municipal Corporation named in the within Instrument; that JANICE S. MIRONOVis the Mayor of said Municipal Corporation; that the execution, as well as the making of this Instrument, has been duly authorized by a proper Resolution of the Township Council of the said Municipal Corporation; that deponent well knows the corporate seal of said Municipal Corporation; and that the seal affixed to said Instrument is the proper corporate seal and was thereto affixed and said Instrument signed and delivered by said Mayor as and for the voluntary act and deed of said Municipal Corporation, in the presence of deponent, who thereupon subscribed her name thereto as attesting witness.

Sworn and Subscribed to before me this 1st day of May, 1998.

A Notary Public of New Jersey

KATHLEEN M. FILIPOWICZ, Municipal Clerk

KIM-MARIE CHISANO
NOTARY PUBLIC OF NEW JERSEY
MY COMMISSION EXPIRES JULY 25, 1993

#### STATE OF NEW JERSEY:

: SS.

# COUNTY OF MERCIA:

I certify that on APRIL 30, 1998, W. BRYGE THOMPSON, IL personally came before me and this person acknowledged under oath, to my satisfaction, that this person:

(a) this person signed, sealed and delivered the attached document as PRESIDENT of Thumson Resurces, the corporation named in this document:

(b) the proper corporate seal was affixed; and

(c) this document was signed and made by the corporation as its voluntary act and deed by virtue of authority from its Board of Directors.

#### RECORD & RETURN TO:

DAVID E. ORRON, ESQ. Huff, Moran & Orron 1246 South River Rd. Cranbury, N.J. 08512

# MERCEN COUNTY MERCEN COUNTY



WHEREAS, it is in the best public interest of the Township of East Windsor to scorpt the proposed settlement wish Thompson Realty Company of Princeton, Inc. (as successor to No Assets, Inc.) in the pending appeal of Judge Lovy's order to the Hew Jersey Superior Court - Appellate Division \$A-2706-9071

HOW, THEREFORE, BY IT RESOLVED by the Township Council of the Township of Rest Mindeot, County of Mercer, State of Mew Jersey that the Mayor is hereby authorized to execute the attached settlement agreement with Thompson Realty Company of Princeton, Inc.

I horaby certify the foregoing to be a true copy of a resolution adopted by the East Windsor Township Council at a meeting hold on Hugual 13.1991

Elisabeth G. Holan Hunicipal Clark

EXHIBIT

Pro	parad	DYI
		-

STATE OF NEW JEICET

MERCEN COUNTY

BETTLEMENT ACROCHOM

THIS SETTLEMENT ACREEMENT made and entered into this the day of \_\_\_\_\_, 1991 by and between East Mindson Township ["Township") and Thompson Realty Company of Princeton, Inc. ["Thompson"]

#### HITHES BETH!

THAT WHEREAS In or around Dacamber of 1978, the Township, as granter, conveyed title to No Assets, Inc. (Thompson's preducessor in interest and hereinafter referred to collectively as 'Thompson'), as grantee, to property located at Block 49, Lot 17; Black 40, Lots 27, 38, 39 and 40 (hereinafter the 'Daniels Street Late') and Block 22, Lots 15, 16 and 21 (hereinafter the "Airport Road Lots"), as indicated on the Official Tax Map of East Mindsor Township, Harcer County, New Jersey and as more specifically described in doeds recorded in the Office of the Clerk of Marcer County in the Book of Deads, Volume 2008, beginning at page 373, on April 4, 1978; Volume 1883, beginning at page 5, on June-14, 1971; Volume 2010, beginning at page 747, on July 1, 1976; and Volume 1991, beginning at page 440, on January 28, 1972; and

HHEREAS each of the aforgmentioned deeds were subject to a condition subsequent and reverter clause, which provided that:

The Township of Past Windoor conveys this property to the grantee herein expressly and solely upon the condition that the grantee heroin shall be obligated to construct a dwelling unit permissible in the small lot district within whatever construction costs or runtal guidelines the U.S. Department of Housing and Urban Development or any successor federal agency has in offect at the time of construction for low and moderate income housing. If such dwelling is not built within throw [3] years from the date of closing of title, the property shall revert back to the Township. If the Township at the end of said throo (1) years shall be satisfied that an individual sowage disposal system cannot be " approved for the subject property and if savers have not been installed capable of serving the nubject property, the Township Council of the

Township of East Mindsor shall by resolution extend the time within which the above-stated conditions subsequent mustibe met, in failure of which the subject property shall revert to the Township of East Windsor. Failure of the Urantee harein to convey the subject property by conveyance containing the above specific condition subsequent before such condition has been satisfied shall cause the property to immediately revert to the Township of East Windsor.

WHUREAS, on or about January 2, 1990, the Township commenced a legal action against Thompson styled "Township of East Windsor, plaintiff v. Thompson Realty Co. of Princeton, Inc., defendant. Action No. C90-00001" in the Superior Court of New Jersey, Chancery Division, Mercer County; and

MHEREAS, the above-referenced legal action came on to be heard by the Honorable Paul G. Lavy, J.S.C., on January 7, 1991; and

HIUREAO, Judge Levy entered a judgment and Order on or about January 28, 1991, ordering the transfer of title to each of the might property lote to the Township; and

Judge Levy's Order to the New Jorney Superior Court - Appellate Division, No. A-3306-90T1; and

HHEREAS, the Township and Thompson have agreed to compromise and settle the aforesaid litigation;

NOW THEREFORE, in consideration of the mutual promises and coverants contained herein, and other good and valuable consideration, East Mindsor Township ("Township") and Thompson Realty Co. of Princeton, Inc. ("Thompson") hereby enter into the following Agreement and coverants:

- 1. Upon execution of this Agreement, Thompson shall withdraw and diemiss its appeal in Action No. A-3306-9071;
- I Upon execution of this Agreement, the Township shall reinstate to Thompson ownership under the old deeds to each of the aforementioned Daniel Street Lots and Airport Road Lots, with Thompson nemed as grantee, subject to each of the terms and conditions of this Agreement, which shall be binding upon Thompson and any nuccessors or assigns of Thompson, except as hereinsfter otherwise provided;

- In the small lot district within whatever construction costs, purchase price or rental guidalines the New Jersey Council On Affordable Housing (COAH) or any successor state agency has in effect for low and moderate income housing on each of the Daniel Street and Airport Road Lors when sawer service becomes available for each lot. For the purposes of this Agreement, sawer service shall be deemed to become "symilable" when sanitary sewer lines have been installed capable of servicing the aluressid lots, and any moratorium on now public sawer connections or sawage flows promulyated by the test Windsor Municipal Utilities Authority expires;
- 4. Within 30 days of sever service becoming "available," as heretofore defined, Thompson shall apply to the Township for building permits and continuously and diligently pursue the applicantum process to construct low and moderate income housing, for each of the Daniel Street Lots and Airport Road Lots for which sewer service is then "available";
- 5. Thompson shall, upon the execution of this Agreement, promptly prepare formal plans for the proposed housing and submit them to the Township Building Department within 90 days efter the execution of this Agreement. It is agreed and understood that Thompson will only be required to submit the plans to the Building Department if the Building Department is authorized and allowed by law-to-receive these plans for review prior to the "availability" of sewer analytic at these lots;
- 6. If, upon review of the plans by the Building Department, it is determined that any variance, waiver or other action (unrelated to the "availability" of sawer service) by the Zoning or Planning Board is needed, Thompson will immediately apply and continuously and diligently pursue the application process and all applications necessary to allow for the issuance of a building permit within 10 days of sawer service "availability." It is understood and agreed that Thompson will only be required to apply to the Joning or Planning Board and pursue the appropriate process prior to the "availability" of sawer service if the Joning or Planning Board and slowed by law to consider the applications;
- 7. Thompson shall satisfy all tax sale certificates and delinquencies in property taxes in connection with the Daniel Street Louis and Airport Road Lots within 30 days after the execution of this Agreement, and Thompson shall heap the payment of taxes on those lots current in the future;
- U. If, for any reason, pawers do not become "available" for the Daniel Street Lots or Airport Mond Lots within five years of the date of this Agreement, Thompson will thereafter immediately offer these lots for sole, at a reasonable market price to be

determined in Thompson's discretion, to adjoining landowners, a homeowner's association, or the Township. During the original five-year period from the date of this Agreement, Thompson may soll one or more of those lots to an adjoining landowner to merge with the landowner's existing lot, upon approval by the Township.

- y. Thompson shall provide the Township with a leaseback option, under which the Daniel Street Lots and Airport Road Lots may be leased by the Township for a nominal consideration for use by the Township for any public purpose. This lease will exist, and will be extended, until such time as severs become "available" to the lots or the lots are sold to an adjoining landowner, homeowner's association or the Township. If the Township elects to exercise the leaseback option for one or more of these lots, the Township agrees to use the property for a public purpose without any substantial permanent alterations to the condition of the property;
- 10. In the event that Thompson sells any of the lots to a party, other than the Township, a homeowner's association, or an adjoining landowner to merge the purchased lot with the landowner's existing lot, Thompson shall incorporate by reference the terms and conditions of this Agreement in the deed and the purchaser shall take title to the lot subject to all the terms and conditions of this Agreement;
- and the covenants and restrictions herein shall run with the land for the benefit of the Township;
- 12. It shall be deemed a broach of this Agreement if (i) Thompson fails to obtain a building parmit for any of the lots within 30 days of sever enrvice becoming available for such los; (ii) Thompson fails to complete construction of a housing unit on any of the lots within one year of sewer service becoming available for such lot; or (iii) Thompson otherwise breaches any of the terms or conditions of this Agraement. 'In the event of a breach, ownership of the lot (to which the breach applies) shall revert to the Township and Thompson shall execute any deed or other documents nacesaury to affectuate the transfer of ownership, upon written notice of the breach to Thompson and the expiration of a 30-day period following said notice, during which period Thompson may cure the breach and avoid the forfeiture. In addition, Thompson will pay to the Township a penalty in the emount of 35,000.00, which the parties hereby agree to be a reasonable amount, per lot for each lot to which the breach applical and
- 13. Thompson will have the right, at any time, within one year from the date of this Agreement, to donate the Daniel Street and Aleport Road lots to the Township without payment of the penalty referred to in paragraph 12 horoin, provided that and expressly upon the condition that, at the time of such donation.

Thompson is not in default or breach of any of the terms, obligations, or conditions of this Agreement.

This Agreement contains the EMTIRE AGREEMENT between the parties hereto, and the terms of this Agreement are contractual and not a mere recital. The breach of any of the terms of this Agreement shall constitute a material breach of the entire Agreement.

The undersigned acknowledge that this settlement is not be construed as an admission of liability on the part of the parties hereto, that they have read the Agreement and know the contents thereof, and sign the same as their own free act.

Timess my hand and seal this the 24th day of

Thompson Realty Co. of Princeton

Exemply (190

before my this 284 to day of 224, 1991

Oc- anne Janukourung

MY Commission Expired 0.3 - 72 - 43

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HITHESE my hand	and soe	l this	tho		day	oí
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before me this day of, 1991					٠,	
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#### State of New Jersey Council On Affordable Housing New Jersey Department of Community Affairs

#### AFFORDABLE HOUSING AGREEMENT Contains Deed Restrictions



Prepared	by:	 

#### A DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

Pursuant to the transfer of ownership of	an affordable housing unit for the price of \$, this AGREE.
MENT is entered into on thisday of	between owner of the
properties designated in Section II PROF	PERTY DESCRIPTION, hereafter "OWNER", and New Jersey Department o
Community Affairs, hereafter AUTHORIT	Y, which Authority is an instrumentality of
(referred to as the "MUNICIPALITY"), both p.	arles having agreed that the covenants, conditions and restrictions contained
herein shall be imposed on the Affordabl	e Housing unit described in Section II PROPERTY DESCRIPTION for a period
of at least years beginning on _	and ending at the first non-exempt transfer o
title after	unless extended by municipal resolution as described in Section III TERI
OF RESTRICTION.	

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

1.1. -4.2 .1 CUI # 1

WHEREAS, the Act requires that municipalities ensure that such designated housing remains affordable to low and moderate income households for a minimum period of at least 8 years; and

WHEREAS, the Act establishes the Council on Affordable Housing (hereinafter "Council") to assist municipalities in determining a realistic opportunity for the planning and development of such affordable housing, and

WHEREAS, pursuant to the Act, the housing unit (units) described in Section II PROPERTY DESCRIPTION hereafter and/or an attached Exhibit A of this Agreement has (have) been designated as low and moderate income housing as defined by the Act; and

WHEREAS, the purpose of this Agreement is to ensure that the described housing units(unit) remain(s) affordable to low and moderate income eligible households for that period of time described n Section In TERM OF RESTRICTION.

NOW, THEREFORE, It is the intent of this Agreement to ensure that the affordability controls are contained directly in the property deed for the premises and incorporated into and recorded with the property deed so as to bind the owner of the described premises and nolity all future purchasers of the housing unit that the housing unit is encumbered with affordability controls; and by entering into this Agreement, the Owner of the described premises agrees to restrict the sale of the housing unit to low and moderate income eligible households as a maximum resale price determined by the Authority for the specified period of time.

#### L DEPINITIONS

For purposes of this Agreement, the following terms shall be defined as follows:

"Affordable Housing" shall mean residential units that have been restricted for occupancy by Households whose total Gross Annual Income is measured at less than 80% of the median income level established by an authorized income guideline for geographic region and family size.

"Agency" shall mean the New Jersey Housing and Montgage Finance Agency established by P. L. 1983, c.530 (N.J.S.A. 55:14K-1 et seq.).

"Agreement" shall mean this written Affordable Housing Agreement between the Authority and the owner of an Affordable Housing unit which places restrictions on Affordable Housing units so that they remain affordable to and occupied by Low and Moderate Income-Eligible Households for the period of time specified in this agreement.

"Assessments" shall mean all taxes, levies or charges, both public and private, including those charges by any condominium, cooperative or homeowner's association as the applicable case may be, imposed upon the Affordable Housing unit.

"Authority" shall mean the administrative organization designated by municipal ordinance for the purpose of monitoring the occupancy and resale restrictions contained in this Affordable Housing Agreement. The Authority shall serve as an instrument of the municipality in exercising the municipal rights to the collection of funds as contained in this Agreement. VOL 030 | PC 022

"Base Price" shall mean the initial sales price of a unit produced for or designated as owner-occupied Affordable Housing.

"Council" shall mean the Council on Altordable Housing (COAH) established pursuant to the Fair Housing Act, N.J.S.A. 52:270-301 et seq.

"Certified Household" shall mean any aligible Household whose estimated total Gross Annual Income has been verified, whose financial references have been approved and who has received written certification as a Low or Moderate Income-Eligible Household from the Authority.

"Department" shall mean the New Jersey State Department of Community Affairs.

"Exempt Transaction" shall mean the following "non-soles" title transactions: (1) Transfer of ownership between husband and wite; (2) Transfer of ownership between former spouses ordered as a result of a judicial decree of divorce or judicial separation (but not including sales to third parties); (3) Transfer of ownership through an Executor's deed to a Class A Beneficiary; and, (4) Transfer of ownership by court order. All other title transfers shall be deemed non-exempt.

"Fair Market Price" shall mean the unrestricted price of a low or moderate income housing unit if sold at a current real estate

"First Purchase Money Mortgage" shall mean the most senior mortgage lien to secure repayment of funds for the purchase of an Affordable Housing unit providing that such mortgage is not in excess of the applicable maximum allowable resale price and is payable to a valid First Purchase Money Mortgagee.

"First Purchase Money Mortgagee" shall mean an institutional lander or investor, ficensed or regulated by the Federal or a State government or any agency thereof, which is the holder and or assigns of the First Purchase Money Mongage.

"Foreclosure" shall mean the termination through legal processes of all rights of the mortgagor or the mortgagor's heirs, successors, assigns or grantees in a restricted Atlandable Housing unit covered by a recorded mortgage.

"Gross Annual Income" shall mean the total amount of all sources of a Household's Income including, but not limited to salary. wages, interest, tips, dividends, alimony, pensions, social security, business and capital gains, tips and welfare benefits. Generally, gross annual income will be based on those sources of income reported to the Internal Revenue Service (IRS) end/or that can be utilized for the purpose of mortgage approval.

"Hardship Waiver" shall mean an approval by the Authority at a non-exempt transfer of title to sell an affordable unit to a household that exceeds the income eligibility criteria after the Owner has demonstrated that no Certified Household has signed an agreement to purchase the unit. The Owner shall have marketed the unit for 90 days after a Notice of Intent to Sell has been received by the Authority and the Authority shall have 30 days thereafter to approve a Hardship Waiver. The Hardship Waiver shall permit a low income unit to be sold to a moderate income household or a moderate income unit to be sold to a household whose income is at 80% or above the applicable median income guide. The Hardship Walver is only valid for a single sale.

"Household" shall mean the person or persons occupy-Ing a housing unit YOL3 1; 21; PGO 42

"Index" shall mean the measured percentage of change in the median income for a Housel of four by geographic region using the income guideline approved for use by Council.

فعالات والموادرة والراري

"Low Income Household" shall mean a Household whose total Gross Annual income is equal to 50% or less of the median gross income figure established by geographic region and household size using the income guideline approved for use by Council.

"Moderate Income Household" shall mean a Household whose total Gross Annual Income is equal to more than 50% but less than 80% of the median gross locome established by geographic region and household size using the income guideline approved for use by Council.

"Owner" shall mean the title holder of record as same is reflected in the most recently dated and recorded deed for the particular Affordable Housing unit. For purposes of the initial sales or rentals of any Affordable Housing unit, Owner shall include the developer/owner of such Affordable Housing units. Owner shall not include any co-signer or co-borrower on any First Purchase Money Mortgage unless such co-signer or co-borrower is also a named title holder of record of such Affordable Housing unit.

"Price Differential" shall mean the total amount of the restricted sales price that exceeds the maximum restricted resale price as calculated by the Index after reasonable real estate broker fees have been deducted. The unrestricted sales price shall be no less than a comparable fair market price as determined by the Authority at the time a Notice of Intent to Sell has been received from the Owner.

"Primary Residence" shall mean the unit wherein a Corlified Household maintains continuing residence for no less than nine months of each calendar year.

"Purchaser" shall mean a Certified Household who has signed an agreement to purchase an Affordable Housing unit subject to a mortgage commitment and closing.

"Repayment" shall mean the Owner's obligation to the municipality for payment of 95% of the price differential between the maximum allowable resale price and the fair market selling price which has accrued to the Affordable unit during the restricted period of resale at the first non-exempt sale of the property after restrictions have ended as specified in the Affordable Housing Agreement.

"Repayment Mortgage" shall mean the second mortgage document signed by the Owner that is given to the municipality as security for the payment due under the Repayment Note.

"Repayment Note" shall mean the second mortgage note signed by the owner that requires the repayment to the municipality of 95% of the price differential which has accrued to the low of moderate income unit during the period of resale controls at the first non-exempt sale of the property after restrictions have ended as specified in the Affordable Housing Agreement.

"Resale Price" shall mean the Base Price of a unit designated as owner-occupied affordable housing as adjusted by the Index. The resale price may also be adjusted to accommodate an approved home improvement.

"Total Monthly Housing Costs" shall mean the total of the following monthly payments associated with the cost of an owner-occupied Affordable Housing unit including the mortgage payment (principal, interest, private mortgage insurance), applicable assessments by any homeowners, condominium, or cooperative associations, real estate taxes, and fire, theft and liability insurance.

#### II. PROPERTY DESCRIPTION

property common BlockLot	ily known as: Municipali	tv	
		•	ATTENDED TO THE PARTY OF THE PA
Complete Street	Address & Unit #	-	
City	State	Zip	
this Agreement,	Affordable Housing un a description of each It A and is incorporate	th addition	

This agreement applies to the Owner's interest in the real

#### III. TERM OF RETRICTION

A. The terms\_astrictions and covenants of this Affordable Housing Agreement shall begin on the later of the date a Certificate of Occupancy is issued or the date on which closing and transfer of title takes place for initial ownership.

B. The terms, restrictions and covenants of this Affordable Housing Agreement shall terminate upon the occurrence of either of the following events:

- At the first non-exempt sale after 10 (ten) years from
  the beginning date established pursuant to Para- graph A above for units located in municipalities
  receiving State Aid pursuant to P.L. 1976, L.14
  (N.J.S.A. 52:27D-178 et seq.) that exhibit one of the
  characteristics delineated in N.J.A.C. 5:93-5.3(b);
  or at the first non-exempt sale after 30 (thirty) years
  from the beginning date established pursuant to
  Paragraph A above for units located in all other
  municipalities; or
- The date upon which the event set torth in Section IX FORECLOSURE herein shall occur.
- C. The terms, restrictions and covenants of this Affordable Housing Agreement may be extended by municipal resolution as provided for in N.J.A.C. 5:93-9. Such municipal resolution shall provide for a period of extended restrictions and shall be effective upon filing with the Council and the Authority. The municipal resolution shall specify the extended time period by providing for a revised ending date. An amendment to the Affordable Housing Agreement shall be filed with the recording office of the county in which the Affordable Housing unit or units is/are located.
- D. At the first non-exempt title transaction after the established ending date, the Authority shall execute a document in recordable form evidencing that the Affordable Housing unit has been released from the restrictions of this Affordable Housing Agreement.

#### IV. RESTRICTIONS

- A. The Owner of an owner-occupied Affordable Housing unit for sale shall not sell the unit at a Resale Price greater than an established Base Price plus the allowable percentage of increase as determined by the Index applicable to the municipality in which the unit is located. However, in no event shall the approved resale price be established at a lower level than the last recorded purchase price.
- B. The Owner shall not sell the Affordable Housing unit to anyone other than a Purchaser who has been certified utilizing the Income verification procedures established by the Authority to determine qualified Low and Moderate Income-Eligible Households.
- C. An Owner wishing to enter a transaction that will terminate controls as specified heretofore in Section III TERM OF RESTRICTION shall be obligated to provide a Notice of Intent to Sell to the Authority and the Council. An option to buy the unit at the maximum restricted sales price as calculated by the Index shall be made available to the Municipality, the Department, the Agency, or a qualified non-profit organization as determined by the Council for a period of ninety (90) days from the date of delivery of the Notice of Intent to Sell. The option to buy shall be by certified mail and shall be effective on the date of mailing to the Owner.
  - If the option to buy is not exercised within ninety (90) days pursuant to Paragraph C above, the Owner may elect to sell the unit to a certified income-eligible household at the maximum restricted sales price as calculated by the Index provided the unit continues to be restricted by an Atlordable Housing Agreement and a Repayment Lien for a period of up to thirty (30) years.

2. Alternately, the Owner may also elect to sell to any purchaser at a fair market price. In this event, the Owner shall be obligated to pay the municipality 95% of the Price Differential generated at the time of closing and transfer of title of the Affordable Housing unit after restrictions have ended as specified heretofore in Section III TERM OF RESTRICTION.

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- 3. If the Owner does not sell the unit within one (1) year of the date of delivery of the Notice of Intant to Sell, the option to buy shall be restored to the municipality and subsequently to the Department, the Agency or a Non-Profit approved by the Council. The Owner shall then be required to submit a new Notice of Intent to Sell the affordable unit to the Authority.
- D. The Affordable Housing unit shall be sold in accordance with all rules, regulations, and requirements duly promulgated by the Council (N.J.A.C. 5:93-1 et seq.), the intent of which is to ensure that the Affordable Housing unit remains affordable to and occupied by Low and Moderate Income-Eigible Households throughout the duration of this Agreement.

#### V. REQUIREMENTS

- A. This Agreement shall be recorded with the recording office of the county in which the Affordable Housing unit or units are located. The Agreement shall be filled no earlier than the recording of an applicable Master Deed and no later than the closing date of the initial sale.
- B. When a single Agreement is used to govern more than one Affordable Housing unit, the Agreement shall contain a description of each Affordable Housing unit govemed by the Agreement as described in Section II PROPERTY DESCRIPTION and/or Exhibit A of the Agreement and an ending date to be imposed on the unit as described in Section III TERM OF RESTRIC-TION of the Agreement.
- C. A Repayment Mortgage and a Repayment Note shall be executed between the Owner and the municipality wherein the unit(s) Is(are) located at the time of closing and transfer of title to any purchaser of an Affordable Housing Unit. The Repayment Mortgage shall provide for the repayment of 95% of the Price Differential at the first non-exempt transfer of title after the ending date of restrictions as specified in Section III TERM OF RE-STRICTION. The Repayment Mortgage shall be recorded with the records office of the County in which the unit is located.
- VI. DEEDS OF CONVEYANCE AND LEASE PROVISIONS
  All Deeds of Conveyance and Contracts to Purchase from
  all Owners to Certified Purchasers of Affordable Housing units
  shall include the following clause in a conspicuous place.

"The Owner's right, title and interest in this unit and the use, sale, resale and rental of this property are subject to the terms, conditions, restrictions, limitations and provisions as set forth in the AFFORDABLE HOUSING AGREEMENT which is on file in the Office of the Clerk of \_\_\_\_\_\_\_ County and is also on file with the Authority".

Any Master Deed that includes an Affordable Housing unit shall also reference the affordable unit and the Affordable Housing Agreement and any variation in services, less, or other terms of the Master Deed that differentiates the affordable unit from all other units covered in the Master Deed.

#### VIL COVENANTS RUNNING WITH LAND

The provisions of this Affordable Housing Agreement shall constitute covenants running with the land with respect to each Affordable Housing unit affected hereby, and shall bind all Purchasers and Owners of each Attordable Housing unit, their heirs, assigns and all persons claiming by, through or under their heirs, executors, administrators and assigns for the duration of this Agreement as set forth herein.

#### VIII. OWNER RESPONSIBILITIES

In addition to fully complying with the terms and provisions of this Affordable Housing Agreement, the Owner acknowledges the following responsibilities:

- A. Affordable Housing units shall at all times remain the Primary Residence of the Owner. The Owner shall not rent any Affordable Housing unit to any party whether or not that party qualifies as a Low or Moderate income household without prior written approval from the Authority.
- B. All home improvements made to an Affordable Housing Unit shall be at the Owner's expense except that expenditures for any alteration that allows a unit to be resold to a larger household size because of an increased capacity for occupancy shall be considered for a recalculation of Base Price. Owners must obtain prior approval for such alteration from the Authority to qualify for this recalculation.
- C. The Owner of an Affordable Housing unit shall keep the Affordable Housing unit in good repair.
- D. Owners of Affordable Housing units shall pay all taxes, charges, assessments or levies, both public and private, assessed against such unit, or any part thereof, as and when the same become due.
- E. Owners of Affordable Housing units shall notify the Authority in writing no less than ninety (90) days prior to any proposed sale of an intent to sell the propeny. Owners shall not execute any purchase agreement, convey title or otherwise deliver possession of the Affordable Housing unit without the prior written approval of the Authority.
- F. An Owner shall request referrals of eligible households from pre-established referral lists maintained by the Authority.
- G. If the Authority does not refer an eligible household within sixty (60) days of the Notice of Intent to Sell the unit or no Agreement to Purchase the unit has been executed, the Owner may propose a Contract to Purchase the unit to an eligible household not referred through the Authority. The proposed Purchaser must complete all required Household Eligibility forms and submit Gross Annual Income information for verification to the Authority for written certification as an eligible sales transaction.
- H. At resale, all Items of property which are permanently affixed to the unit and/or were included when the unit was initially restricted (e.g. reingerator, range, washer, dryer, dishwasher, wall to wall carpeting) shall be included in the maximum allowable Resale Price. Other items of property may be sold to the Purchaser at a reasonable price that has been approved by the Authority at the time of signing the Agreement to Purchase. The purchase of central air conditioning installed subsequent to the initial sale of the unit and not included in the Base Price may be made a condition of the unit resale provided the price has been approved by the Authority. Unless otherwise permitted by the Council, the purchase of any property other than central all conditioning shall not be made a condition of the unit resale. The Owner and the Purchaser must personally certify at the time of closing that no unapproved transfer of funds for the purpose of selling and receiving property has taken place at Resale.
  - I. The Owner shall not permit any lien, other than the First Purchase Money Mongage, second mortgages approved by the Authority and liens of the Authority to attach and remain on the property for more than staty (50) days.
  - J. If an Affordable Housing unit is part of a condominium, homeowner's or cooperative association, the Owner, in addition to paying any assessments required by the Master Deed of the Condominium or By-laws of an Association, shall further fully comply with all of the terms, covenants or conditions of said Master Deed or By-Laws, as well as fully comply with all terms, conditions and restrictions of this Affordable Housing Agreement.

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# STATE OF NEW JERSEY COUNCIL ON AFFORDABLE HOUSING NEW JERSEY DEPARTMENT OF COMMUNITY AFFAIRS

# REPAYMENT MORTGAGE Contains Deed Restrictions



#### MORTGAGE IS SUBORDINATE TO A FIRST PURCHASE MONEY MORTGAGE OR REFINANCING

(referred to as the "Authority")  (referred to as the "Municipality")
(referred to as the "Municipality")
y (described below) purchased by the Borrower, th
to pay the amounts due under the Note and to abid
•
performance of all promises under the Note. The
ferred to as the "Property"):
d
ry, specifically described as follows:

#### Together with:

- 1. All buildings and other improvement that now are or will be located on the Property.
- All features, equipment and personal property that now are or will be attached to or used with the land, buildings and improvements
  of or on the Property.
- 3. All rights which the Borrower now has or will acquire with regard to the Property.

#### BORROWER'S ACKNOWLEDGEMENTS

- 1.' The Borrower acknowledges and understands that:
- a) Municipalties within the State of New Jersey are required under the Fair Housing Act and regulations adopted under the authority of the Act to provide for their fair share of housing that is affordable to households of low and moderate income; and
- b) The Property which is subject to this Mortgage has been designated as housing which must remain affordable to low and moderate income households for at least thirty years unless a shorter time period is authorized in accordance with rules established by any agency having jurisdiction (the "restricted period"); and
- c) To ensure that such housing, including this Property, remains alterdable to low and moderate income households during the restricted period, an Affordable Housing Agreement has been executed by the Borrower that constitutes covenants running with the land with respect to the Property and the Municipality has adopted procedures and restrictions governing the resale of the Property; and
- d) The Authority to which the Property is mortgaged has been designated by the Municipality to administer the procedures and restrictions governing such housing.
- The Borrower also acknowledges and understands that the Property has been purchased at a restricted sales price that is less than the fair market value of the Property.

#### BORROWER'S PROMISES

In consideration for the value received in connection with the purchase of the Property at a restricted sales price, the Borrower agrees as follows:

- The Borrower will comply with all of the terms of the Note and this Mongage which includes:
- a) Within the restricted period starting with the date the Borrower obtained little to the floribity the Borrower about not sell or transfer

- tille to the Property for an amount that exceeds the maximum allowable resale price as established by the Authority. In the event of breach of this promise, Bornower hereby assigns all proceeds in excess of the maximum allowable resale price to the Authority, said assignment to be in addition to any and all rights and remedies the Authority has upon default.
- b) At the first non-exempt transfer of titls of the Property after the ending date of the restricted period, the Borrowor agrees to repay 95% of the incremental amount between the maximum allowable resale price and the fair market selling price which has accused to the Property during the restricted period to the Authority.
- The Borrower warrants title to the premises (N.J.S.A. 46:9-2). This means the Borrower owns the Property and will defend its ownership against all claims.
- 3. The Borrower shall pay all tiens, laxes, assessments and other governmental charges made against the Property when due. The Borrower will not claim any credit against the principal and interest payable under the Note and this Mortgage for any taxes pay? on the Property.
- 4. The Borrower shall keep the Property in good repair, neither damaging nor abandoning it. The Borrower will allow the Authority to Inspect the Property upon reasonable notice.
- 5. The Borrower shall use the Property in compilance with all laws, ordinances and other requirements of any governmental authority.

#### CONTROLS ON AFFORDABILITY

The procedures and restrictions governing resale of the Property have been established pursuant to the Fair Housing Act and the regulations adopted under the authority of the Act, (all collectively referred to as "Controls on Affordability"). Reference is made to the Controls on Affordability for the procedure in calculating the maximum affordability resale pipes the method of repayment described in

# STATE OF NEW JERSEY COUNCIL ON AFFORDABLE HOUSING NEW JERSEY DEPARTMENT OF COMMUNITY AFFAIRS





• "
COO MANUE DECEMBED
FOR VALUE RECEIVED (referred to as the "Borrowor")
promises to pay to (referred to as the "Authority")
an instrumentality of (the "Municipality") the amounts specified in this Note and
promises to abide by the terms contained below.
REPAYMENT MORTGAGE
As security for the payment of amounts due under this Note and the performance of all promises contained in this Note, in Destroyer
is giving the Authority a Repayment Mortgage, dated The Repayment Mortgage covers real estate (the
"Property") owned by the Borrower, the logal description of such real estate being contained in the Repayment Mortgage. This mortgage
is subordinate to the first mortgage executed contemporaneously herewith or any subsequent financing.
BORROWER'S PROMISE TO PAY AND OTHER TERMS
1. The Property is subject to terms, restrictions and conditions that prohibit its sale at a fair market price for an established period of time.
Within the restricted period, starting with the date the Borrower obtains title to the Property, the Borrower shall not sold a transfer falls
to the Property for an amount that exceeds a maximum allowable resale price established by the Authority.
a. All proceeds received during the restricted period in excess of the restricted amount shall be paid to the Authority.
b. At the first non-exempt sale of the Property after restrictions have ended, the Borrower agrees to repay 95% of the Incremental
amount between the maximum allowable resale price and the fair market selling price which has account to the Proporty during
the restricted period of resale (the "Price Differential") to the Authority.
2. The amount due and payable to the Authority shall be calculated as follows:
•
FAIR MARKET PRICE ISS MAXIMUM ALLOWABLE RESALE PRICE
equals
PRICE DIFFERENTIAL
60t.
BORROWER'S PROCEEDS
eduale
MAXIMUM ALLOWABLE RESALE PRICE PIUS 5% OF PRICE DIFFERENTIAL.
AMOUNT OF NOTE
equals  FAIR MARKET PRICE less BORROWER'S PROCEEDS
PAIR MARKE) PRICE IESS BURHOWER S PROCEEDS
WAIVER OF FORMAL ACTS
The Borrower waives its right to require the Authority to do any of the following before enforcing its rights under this Note:
THE BUILDING WARRES IS TIGHT IN TEQUING THE PARTICING IN THE TOTAL WITH THE BUILDING IN TIGHTS WHICH THIS MUSIC
To demand payment of amount due (known as Presentment).
2. To give notice that amounts due have not been paid (known as Notice of Dishonor).
To obtain an official certificate of non-payment (known as Protest).
a. 10 object all official collection of fortpayment (within as 1 tops).
RESPONSIBILITY UNDER NOTE
All Borrowers signing this Note are jointly and individually obligated to pay the amounts due and to abide by the terms under this
Note. The Authority may enforce this Note against any one or more of the Borrowers or against all Borrowers together.
SIGNATURES
The Borrower agrees to the terms of this Note by signing below.
WITNESSED
Signature Signature (Borrower)

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#### XL RIGHT TO ASSIGN

The Authority may assign from time to time its rights, and delegate its obligations hereunder without the consent of the Owner. Upon such assignment, the Authority, its successors or assigns shall provide written notice to the Owner.

#### XII. INTERPRETATION OF THIS AGREEMENT

The terms of this Agreement shall be interpreted so as to avoid financial speculation or circumvention of the purposes of the Fair Housing Act for the duration of this Agreement and to ensure, to the greatest extent possible, that the purchase pince, mortgage payments and rents of designated Affordable. Housing units remain affordable to Low and Moderate Income-Eigible Households as defined herein.

#### XIL NOTICES

All notices required herein shall be sent by certified mall, return receipt requested as follows:

#### To the Owner:

At the address of the property stated in Section II PROP-ERTY DESCRIPTION hereof.

To the Authority: ..

At the address stated below:

Attention: .

Or such other address that the Authority, Owner, or municipality may subsequently designate in writing and mail to the other panies.

#### XIV. SUPERIORITY OF AGREEMENT

Owner warrants that no other Agreement with provisions contradictory of, or in opposition to, the provisions hereof has been or will be executed, and that, in any event, the requirements of this Agreement are paramount and controlling as to the rights and obligations between and among the Owner, the Authority, and their respective successors.

#### XV. SEVERABILITY

It is the Intention of all parties that the provisions of this instrument are severable so that if any provisions, conditions, covenants or restrictions thereof shall be invalid or void under

any applicable tederair state or local law, the remainder shall be unaffected thereby.

In the event that any provision, condition, covenant or restriction hereol, is at the time of recording of this instrument, void, voidable or unenforceable as being comrary to any applicable federal, state or local law, both parties, their successors and assigns, and all persons claiming by, through or under them covenant and agree that any future amendments or supplements to the said laws having the effect of removing said invalidity, voidability or unenforceability, shall be deemed to apply retrospectively to this instrument thereby operating to validate the provisions of this instrument which otherwise might be invalid and it is covenanted and agreed that any such amendments and supplements to the said laws shall have the effect herein described as fully as if they had been in effect at the time of the execution of this instrument.

#### XVI. CONTROLLING LAW

The terms of this Agreement shall be interpreted under the laws of the State of New Jersey.

#### XVIL OWNER'S CERTIFICATION

The Owner certifies that all information provided in order to qualify as the owner of the property or to purchase the property is true and correct as of the date of the algoring of this Agreement.

#### XVIII. AGREEMENT

A. The Owner and the Authority hereby agree that all Affordable Housing units described herein shall is marketed, sold, and occupied in accordance with the provisions of this Agreement. Neither the Owner nor the Authority shall amend or alter the provisions of this Agreement without first obtaining the approval of the other party except as described in Section III, Paragraph C, TERM OF RESTRICTION. Any such approved amendments or modifications of this Agreement shall be in writing and shall contain proof of approval from the other parties and shall not be effective unless and until recorded with the County Clerk for the County in which the Affordable Housing units are situated.

#### XIX. ACKNOWLEDGEMENT

 A. Owner acknowledges receipt of a true copy of this Agreement at no charge.

Dated:			
		<b>By:</b>	Signature (Owner)
			Signature (Co-Owner)
STATE OF NEW JERSEY	)		
	)59		
COUNTY OF	)	÷	
BE IT REMEMBERED, that			beared
Owner) named in the within	on his/her ( Instrument;	oath, deposes and m that is the Affordal	takes proof to my satisfaction, that he/she is the Owner (Co- ole Housing Agreement of the described Property; that the in duly authorized and is the voluntary act and deed of said
Sworn to and subscribed before the date aforesaid.	ore me,		

K. The Owner chall have responsibility for lutiliting all requirements in accordance wand subject to any rules and regulations duly promegated by the Council (N.J.A.C. 5:93-1 et seq.), for determining that a resale transaction is qualified for a Certificate of Exemption. The Owner shall notify the Authority in writing of any proposed Exempt Transaction and supply the necessary documentation to qualify for a Certificate of Exemption. An Exempt Transaction does not terminate the resale restrictions or existing liens and is not considered a certified sales transaction in calculating subsequent resale prices. A Certificate of Exemption shall be filed with the deed at the time of title transfer.

- L. The Owner shall have responsibility for fulfilling all requirements in accordance with and subject to any rujes and regulations duly promulgated by the Council (N.J.A.C. 5:93-1 et seq.), for determining that a resale transaction is qualified for a Hardship Waiver. The Owner may submit a written request for a Hardship Waiver it no Certified Household has executed an agreement to purchase within ninety (90) days of notification of an approved resale price and referral of potential purchasers. Prior to issuing a Hardship Walver, the Municipality shall-have 30 days in which to sign an agreement to purchase the unit at the approved resale price and subsequently rent or convey It to a Certified Household. The Municipality may transfer this option to the Department, the Agency, or a qualitied non-protit organization as determined by the Council. For approval of a Hardship Walver, an Owner must document efforts to sell the unit to an income eligible household. If the waiver is granted, the Owner may offer a low income unit to a moderate income household or a moderate income unit to a household whose income exceeds 80% of the applicable median income guide. The Hardship Waiver shall be filed with the deed at the time of closing and is only valid for the designated recale transaction. It does not affect the resale price. All future resales are subject to all restrictions stated herein.
- M. The Owner shall be obligated to pay a reasonable service fee to the Authority at the time of closing and transfer of title in the amount specified by the Authority at the time a restricted resale price has been determined after receipt of a Notice of Intent to Sell. Such fee shall not be included in the calculation of the maximum resale price.

#### IX FORECLOSURE

The terms and restrictions of this Agreement shall be subordinate only to the First Purchase Money Mortgage lien on the Affordable Housing property and in no way shall impair the First Purchase Money Mortgagee's ability to exercise the contract remedies available to it in the event of any default of such mortgage as such remedies are set forth in the First Purchase Money Mortgage documents for the Affordable Housing unit.

Any Affordable Housing owner-occupied property that is acquired by a First Purchase Money Mongagee by Deed in lieu of Foreclosure, or by a Purchaser at a Foreclosure sale conducted by the holder of the First Purchase Money Mortgagee shall be permanently released from the restrictions and covenants of this Affordable Housing Agreement. All resale restrictions shall cease to be effective as of the date of transfer of title pursuant to Foreclosure with regard to the First Purchase Money Mortgagee, a lender in the secondary mortgage market including but not limited to the FNMA, Federal Home Loan Mortgage Corporation, GNMA, or an entity acting on their behalf and all subsequent purchasers, Owners and mortgagees of that particular Affordable Housing unit (except for the defaulting mortgagor, who shall be forever subject to the resale restrictions of this Agreement with respect to the Affordable Housing unit owned by such defaulting mortgagor at time of the Foreclosure sale).

Upon a judgment of Foreclosure, the Authority shall execute a document to be recorded in the county recording office as evidence that such Alfordable Housing unit has been forever released from the restrictions of this Agreement. Execution of foreclosure sales by any other class of craditor or

mortgagee shall not result in a release of the Affordable Housing unit from the pro one and restrictions of this Agreement.

In the event of a Foreclosure sale by the First Purchase Montgagee, the detauting montgagor shall be personally obligated to pay to the Authority any excess funds generated from such Foreclosure sale. For purposes of this agreement, excess funds shall be the total amount paid to the sheriff by reason of the Foreclosure sale in excess of the greater of (1) the maximum permissible Resale Price of the Attordable Housing unit as of the date of the Foreclosure sale pursuant to the rules and guidelines of the Authority and (2) the amount required to pay and satisfy the First Money mortgage, including the costs of Foreclosure plus any second montgages approved by the Authority in accordance with this Agraement. The amount of excess funds shall also include all payments to any junior creditors out of the Foreclosure sale proceeds even if such were to the exclusion of the defaulting montgagor.

The Authority is hereby given a first priority lien, second only to the First Purchase Money Mortgagee and any taxes or public assessments by a duly authorized governmental body, equal to the full amount of such excess funds. This obligation of the defaulting mortgagor to pay the full amount of excess funds to the Authority shall be deemed to be a personal obligation of the Owner of record at time of the Foreclosure sale surviving such sale. The Authority shall be empowered to enforce the obligation of the defaulting mortgagor in any appropriate court of law or equity as though same were a personal contractual obligation of the defaulting mortgagor. Neither the First Purchase Money Mortgagee nor the purchaser at the Foreclosure sale shall be responsible or liable to the Authority for any portion of this excess.

No part of the excess funds, however, shall be part of ites defaulting mortgagor's equity.

The defaulting mortgagor's equity shall be determined to be the difference between the maximum permitted Resale Price of the Affordable Housing unit as of the date of the Foreclosure sale as calculated in accordance with this Agreement and the total of the following sums: First Purchase Money Mortgage, prior tiens, costs of Foreclosure, assessments, property taxes, and other liens which may have been attached against the unit prior to Foreclosure, provided such total is less than the maximum permitted Resale Price.

If there are Owner's equity sums to which the defaulting mortgagor is properly entitled, such sums shall be turned over to the defaulting mortgagor or placed in an escrow account for the defaulting mortgagor if the defaulting mortgagor cannot be located. The First Purchase Money Mortgagee shall hold such tunds in escrow for a period of two years or until such earlier time as the defaulting mortgagor shall make a claim for such. At the end of two years, if unclaimed, such tunds, including any accrued interest, shall become the property of the Authority to the exclusion of any other creditors who may have claims against the defaulting mortgagor.

Nothing shall preclude the municipality wherein the Affordable Housing unit is located from acquiring an affordable property prior to foreclosure sale at a negotiated price not to exceed the maximum Resale sales price and holding, renting or conveying it to a Certified Household if such night is exercised within 90 days after the property is listed for sale and all outstanding obligations to the First Purchase Money Mortgagee are satisfied.

#### X. VIOLATION, DEFAULTS AND REMEDIES

In the event of a threatened breach of any of the terms in this Agreement by an Owner, the Authority shall have all remedies provided at law or equity, including the right to seek injunctive relief or specific performance, it being recognized by both parties to this Agreement that a breach will cause Irreparable harm to the Authority, in light of the public policies set forth in the Fair Housing Act and the obligation for the provision of low and moderate income housing. Upon the occurrence of a breach of any of the terms of the Agreement by an Owner, the Authority shall have all remedies provided at law or equity, including but not limited to foreclosure, acceleration of all sums due under the mortgage, recoupment of any funds from a sale in violation of the Agreement, injunctive relief to prevent further violation of the Agreement, entry on the premises, and specific performance.

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item 1(b) of the section entitled "Borrowers Promises", and the definition of a "restricted sale" for purposes of determining when the Affordability Controls are applicable, and the determination of the restricted period of time.

#### RIGHTS GIVEN TO LENDER

The Borrower, by mortgaging the Property to the Authority, gives the Authority those rights shared in this Mortgage, all rights the law gives to lenders who hold mortgages, and also all rights the law gives to the Authority and/or Municipality under the Affordability Controls. The rights given to the Authority and the restrictions upon the Property are coverants running with the land. The rights, terms and restrictions in this Mortgage shall bind the Borrower and all subsequent purchasers and owners of the Property, and the helical assigns of all of them. Upon performance of the promises contained in the Nota and Mortgage, the Authority will cancel this Mortgage at its expense.

#### DEFAULT

The Authority may declare the Borrower in detault on the Note and this Mortgage It:

- The Borrower fails to comply with the provisions of the Attordable Housing Agreement;
- The Borrower falls to make any payment required by the Note and this Mortgage;
- The Borrower fails to keep any other promise made in this Mortgage;
- The ownership of the Property is changed for any reason without compliance with the terms of the Note and Mortpage;
- The holder of any lien on the Property starts foreclosure proceedings; or
- Banlouptcy, insolvency or receivership are started by or against any of the Borrowers.

#### AUTHORITY'S RIGHTS UPON DEFAULT

If the Authority declares that the Note and this Mortgage are in default, the Authority shall have, subject to the rights of the First Mortgages, all rights given by law or set forth in this Mortgage.

#### NOTICES

ALL NOTICES MUST BE IN WRITING AND PERSONALLY DELIVERED OR SENT BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, TO THE ADDRESSES GIVEN IN THIS MORT-GAGE. ADDRESS CHANGES MAY BE MADE UPON NOTICE TO THE OTHER PARTY.

#### NO WAIVER BY AUTHORITY

The Authority may exercise any right under this Mortgage or under any law, even if the Authority has delayed in exercising that right or has agreed in an earlier instance not to exercise that right. The Authority does not waive its right to declare the Borrower is in default by making payments or incurring expense on behalf of the Borrower.

#### EACH PERSON LIABLE

This Mortgage is legally binding upon each Borrower and all who succeed to their responsibilities (such as helis and executors). The Authority may enforce any of the provisions of the Note and this Mortgage against any one or more of the Borrowers who sign this Mortgage.

#### SUBORDINATE MORTGAGE

The lien on this Mortgage is interior to and subject to the terms and provisions of the First Purchase Money Mortgage executed contemporaneously herewith or any subsequent referencing.

#### NO ORAL CHANGES

This Montgage can only be changed by an agreement in emiting signed by both the Borrower and the Authority.

#### SIGNATURES

The Borrower agrees to the terms of this Mortgage by signing below.

#### ACKNOWLEDGEMENT

Borrower acknowledges receipt of a true copy of this shortgage at no charge.

			-	
Dated:		_		
ATTEST:		By:		
•		•	Signature (Born	rower)
٠				
			Signature (Co-B	опомег)
STATE OF NEW JERS	EY )			
	)zz(			•
COUNTY OF	)			
	T REMEMBERED, that on this			
	wom on his/heroath, deposes and make:			
	it that is the Repayment Mortgage for t			
	luly authorized and is the voluntary act a	*		,
Sworn to and subscribe	ed before me.			
the date aforesaid.				

## **ADDENDUM IV**

RESOLUTION NO. 99-6, WITH ATTACHMENTS,
ADOPTED BY THE EAST WINDSOR PLANNING BOARD ON JANUARY 25, 1999
REGARDING HABITAT FOR HUMANITY

#### RESOLUTION 99- 6

# TOWNSHIP OF EAST WINDSOR PLANNING BOARD RESOLUTION OF MEMORIALIZATION MERCER COUNTY, NEW JERSEY SUPPLEMENTAL RESOLUTION REGARDING SATISFACTION OF CERTAIN CONDITIONS

Approved:

December 21, 1998

Memorialized:

January 25, 1999

### MATTER OF HABITAT FOR HUMANITY

#### **APPLICATION #SD97-112**

WHEREAS, an application for minor subdivision approval had previously been made to the East Windsor Township Planning Board (hereinafter referred to as the "Board") by Habitat for Humanity (hereinafter referred as the "Applicant") on lands known and designated as Lot 44.02 of Block 48, as depicted on the Tax Map of the Township of East Windsor, which is located at Evan Avenue at Airport Road in the Township of East Windsor; and

WHEREAS, said application for minor subdivision approval was granted by the Board and was memorialized by Resolution #98-8 adopted by the Board on March 16, 1998; and,

WHEREAS, an application for amended minor subdivision approval with waivers and a variance had previously been made to the Board by the Applicant for the same lot and block; and

WHEREAS, said application for amended minor subdivision approval with waivers and a variance was granted by the Board and was memorialized by Resolution #98-25 adopted by the Board on August 3, 1998; and

WHEREAS, Condition #2 of Resolution #98-25 required the applicant to take all

necessary steps to qualify the proposed living units for COAH credits and, additionally, required the applicant to make best faith efforts in order to qualify the living units for COAH credits; and

WHEREAS, Condition #2 of Resolution #98-25 also stated that no Certificate of Occupancy would issue unless the units qualify for COAH credits or, alternatively, the applicant satisfies the Board that the applicant has made all good and necessary efforts to qualify said units for COAH credits; and

WHEREAS, Condition #3 of Resolution #98-25 stated that the issue of the applicant's contribution to the Transportation Improvement Program (TIP) was to be deferred until, and was to be related to, the outcome of the issue of COAH credits; and

WHEREAS, the Board has reviewed a letter from the applicant's attorney, Thomas Jay Hall, Esq., to the Honorable Janice Mironov, Mayor of East Windsor Township, dated December 11, 1998 (copy attached hereto and made a part hereof) and a letter from Mary Beth Lonergan, Principal Planner for the Council On Affordable Housing, to Thomas Jay Hall, Esq., dated December 11, 1998 (copy attached hereto and made a part hereof) and has determined that it is the sense of the Board that the applicant has made best faith efforts in order to qualify the proposed living units for COAH credits.

NOW, THEREFORE, BE IT RESOLVED by the Planning Board of the Township of East Windsor on this 25 day of January 1999, that the action of the Planning Board taken on December 21, 1998 with regard to Application No. SD97-112 of Habitat for Humanity be and the same is hereby memorialized as follows:

- 1) The Board hereby accepts the efforts of Habitat for Humanity as complying with the requirements as set forth in Condition #2 of Resolution #98-25 regarding the qualification of the proposed living units for COAH credits.
- The Board recommends the issuance of the appropriate Certificates of Occupancy as set forth in Condition #2 of Resolution #98-25,

subject to the finalization of all appropriate documents and the execution of an agreement between the Applicant and the Township regarding all COAH issues.

- 3) With regard to Condition #3 of Resolution #98-25, the Board waives the obligation of the applicant to contribute to the Transportation Improvement Program (TIP).
- 4) Except where specifically modified herein, all of the conditions as previously set forth in memorializing Resolutions #98-8 and 98-25 shall remain in full force and effect.

BE IT FURTHER RESOLVED that the Board secretary is hereby authorized and directed to cause a notice of this decision to be published in the *Hightstown Gazette* at the applicant's expense to send a certified copy of this Resolution to the applicant and to the Township clerk, engineer, attorney and tax assessor, and shall make same available to all other interested parties.

Edward M. Kelley, Chairman

East Windsor Township Planning Board

Prepared by: Louis P. Rago, Esq.

I hereby certify this to be a true and accurate copy of the Resolution adopted by the East
Windsor Township Planning Board, Mercer County, New Jersey at a public meeting held on January

25 , 1999.

Nancy Paulson, Secretary

East Windsor Township Planning Board

CM 16616REVISED RES.2



202 Carnegie Center CN 5226

Princeton, New Jersey 08543-5226 Telephone: (609) 924-0808

Fax: (609) 452-1888

P. O. Box 1388
Trenton, New Jersey 08607-1388

Telephone: (609) 393-2400 Fax: (609) 393-2475

FILE NO.: 9807\0008\387358.

WHITEN - DIRECT DIVICE (609) 734-6334

PLEASE MERLE TO:

Princeson

December 11, 1998

Hon. Janice Mironov East Windsor Township 16 Lanning Blvd. East Windsor, NJ 08512

Re: Habitat for Humanity

Dear Mayor Mironov:

As I indicated in my last letter to you, dated November 20, 1998, we are fast approaching the time when we will be scheduled to have a closing with our partner family in the first of our COAH-eligible homes for East Windsor Township. We have been informed by the Building Official that no C of O will issue unless all paperwork is in order. We would be grateful if you can arrange to have the Township's responsens to our inquires completed so that before December 22, 1998, we will be in a position to close on this housing unit.

I had a meeting with the Council on Affordable Housing personnel December 8, 1998. I am expecting a letter from COAH, putting in writing the answers to the questions I raised with them and I will send you that letter as soon as I have received it. The substance of our meeting, however, included agreement on the following points:

- a. COAH was satisfied with the arrangements we have struck with respect to our first Habitat home (the closing which is scheduled in the near future) subject to our filing with the Township the appropriate documentation. We need to know the person with whom we will be filing that information, i.e., the Administrator of the resale price controls, etc.
- b. We do need to enter into an agreement with the Township with respect the relationship of Habitat for Humanity in East Windsor Township and the Township needs to provide direction to its building officials so that when we apply for a Certificate of Occupancy, we will not be assessed the transportation impact fee or otherwise delayed in this closing due to our participation in the Township's affordable housing program.

- c. COAH pointed out that it would support Habitat's waiver from COAH regulations if necessary, as follows:
- 1. If Habitat's affordable housing unit is sold after a 30-year period; Habitat should be the recipient of any recapture funds; and
- 2. Once East Windsor's plan is certified, it will have the right to extend the resale price controls for an additional 20 years after the 30 year initial price controls have terminated. If there are contractual problems with the current contract, we may need to waive that right as to this unit.

Up to this point, our conversations with the homeowner and our written documentation clearly indicates that the price controls will be in existence for a 30-year period. We have never indicated that the price controls would be extended beyond that. Given that this unit will close before COAH will be providing substantive certification to the Township, I do not think it inappropriate to exclude this unit from the possiblity of the extension of price controls on that unit.

I will be preparing an appropriate letter to COAH seeking a waiver of those conditions. We would like to discuss with the Township how it intends to administer the price controls and when it might be in a position to have the appropriate administrative Authority to undertake the ongoing administration of this program.

You should be aware that we are in the beginning stages of family selection process for our next Habitat home so timely resolution of all outstanding issues is needed. Any contracts between Habitat and any new family should be completely in accord with COAH regulations and East Windsor's plan.

I look forward to hearing from you in the immediate future.

Sincerely,

Thomas Jay Hall

TJH/lcf

cc: Habitat for Humanity
Mary Beth Lonergan



CARISTENE TODD WHITMAN CARPTROL

State of New Jersey COUNCIL ON AFFORDABLE HOUSING PO Box \$13 TRENTON NJ 08625-0813

JANE M. KENNY

Chairman

SHIRLEY M. BISHOP, P.P.

Executive Director

609-292-3000 FAX: 609-633-6056 TDD#: (609) 278-0175

December 11, 1998

Thomas Jay Hall, Esq. Hill Wallack 202 Carnegie Center CN 5226 Princeton, NJ 08543-5226

RE: Habitat for Humanity/ East Windsor Township

Dear Mr. Hall:

Regarding your recent meeting with Shirley Bishop, Executive Director, William Malloy, DAG, and myself from the Council on Affordable Housing (COAH), I am writing to confirm various points of our discussion. Specifically, we reviewed the November 20, 1998 letter you wrote to COAH regarding Habitat for Humanity units being constructed/planned under the auspices of the Millstone Basin Affiliate in East Windsor Township. The issues discussed were as follows:

1. Household Selection Process - To select participating households, Habitat utilizes criteria which include: income eligibility of the household, households currently living in substandard housing, the household commuting 500 hours of sweat equity and financial ability to pay a mortgage. All of these criteria combined meet, and exceed, COAH's regulations found at N.J.A.C. 5:93 et al. However, as we discussed. Habitat must eliminate its requirement that applicants must either live or work in the six communities which are part of the Millstone Basin Affiliate and must broaden its scope for future applicant pools by reaching out to households beyond the six communities. This must · be accomplished by placing an advertisement in a region-wide newspaper (The Trenton Times would be appropriate) and by sending notices to all of the Habitat chapters which are based in the COAHdefined region (Mercer, Monmouth and Ocean Cournies.) In addition, you noted that in the applicant selection process, Habitat accepts all households without regard to race, religious affiliation (or lack thereof), age or handicap. Therefore, Habitat must also clearly state in its advertisements and notices that Habitat accepts all households without regard to race, religious affiliation (or lack thereof), age or handicap. By including the broadened affirmative marketing effort as described above, Habitat applicant pools would meet COAH's regulations.

2. Time of Qualification - COAH regulations would permit the income-qualification process used by Habitat. That is, once a household is determined to be income-qualified, that qualification > Guncil Members/Planning Bd Members / K Daly / R Coppola be reviewed + finalized ASAP + pre-Dec 21

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Habitat for Humanity/ East Windsor Township December 11, 1998

would carry through to the closing on the unit.

- 3. Timing of Affordable Housing Plan The township may request credit for the COAHeligible Habitat units occupied before East Windsor receives substantive certification. However, to receive credit for future Habitat units planned in the township. East Windsor would have to amend its housing element and fair share plan either prior to certification or after certification.
- 4. Right of First Refusal You note that East Windsor Township has raised a question as to whether COAH would approve of Habitat's right of first refusal being placed in front of the township's right. Because you note that, "Habitat would be agreeing that under no circumstances would the home which has been constructed and made part of the Township's affordable housing plan be sold to anyone other than a COAH-income eligible household...," COAH would approve Habitat having the right of first refusal, in front of the township's right.
  - 5. Continuing Update Responsibility Habitat will be added to COAH's mailing list.
- 6. Administrative Authority As East Windsor Township has not yet designated an administrative entity to oversee its affordable housing units, Habitat may place the following language in the affordable housing agreements and deed restrictions for the unit(s) ready to close, "the administrative entity designated by East Windsor Township in its COAH-certified housing element and fair share plan." At such time as the township designates an actual administrative entity, future affordable housing agreements and deed restrictions should reflect that entity.

In addition, I've attached material relating to the Paterson/Habitat issue we discussed. The COAH action in Paterson does not appear to address issues raised in East Windsor. If you have additional questions or need additional information, please call me at (609) 984-4584.

Sincerely.

Mary Bern Lonergan, AICP, PP

Principal Planner

cc: Shirley Bishop, Executive Director William Malloy, DAG

Janice Mironov, Esq., Mayor

David Orron, Esq.

#### REQUEST FOR MODIFICATION OF COAH AFFORDABLE HOUSING AGREEMENT

The Ealanced Housing Program has designated a project known as Habitat Way as a Pilot Program under the Balanced Housing Program Rules (N.J.A.C.5-14-1.4). The developer is Paterson Habitat for Humanity ("Habitat".) The Balanced Housing Program seeks to modify the Affordable Housing Agreement by removing the repayment provision. The Affordable Housing Agreement requires that the owner repay "SE% of the price differential between the maximum allowable resale price and the fair market selling price which has account to the Affordable unit during the restricted period of resale at the first non-exempt sale of the property after the restrictions have ended..." The Balanced Housing Program seeks COAH approval to eliminate the repayment requirement in this instance.

Background: The Department has granted \$740,300 to the City of Paterson on behalf of Habitat to subsidize construction of 28 houses for sale to low income households. Balanced Housing money has been used primarily for site work, enabling Habitat to accelerate home building which otherwise would have been delayed for years.

Habitat conducts a sweat-equity program. The organization believes that the investment of time and labor earns the participants a home and the equity which accrues on that home. Consequently, when the affordability controls expire, Habitat seeks to assure the residents that they can sell their homes at an unrestricted prica. Consequently there is an incompatibility between the repayment provision of the COAH deed restriction and the operation of Habitat.

Justification: Habitat imposes a dead restriction for 20 years (twice the time period of Balanced Housing restriction in urban aid municipalities.) This deed-restriction is self-renewing. If the house is sold before the expiration of the 20 year restriction, Habitat imposes a new 20-year deed restriction on the purchaser. This has the potential of extending affordability controls well beyond 20 years from the date of initial occupancy.

In addition to donating their labor as a requirement of purchasing a home, the homeowners must pay to maintain the community infrastructure (roadways, severs, retaining walls and site work) within their subdivision. Consequently, they are bearing costs beyind those required of the typical homeowner.

The purpose of the repayment provision is to prevent a "windfall" profit by the seller at the first non-exempt sale. Given the fact that these houses are being built in a neighborhood in urban transition, a windfall is highly unlikely.

Action Requested: The Department believes that the circumstances of this project are sufficiently unusual to ment waiver of the repayment requirement and requests a resolution from COAH approving modification of the Affordable Housing Agreement for this Pilot Program.

# ADDENDUM V

# DOCUMENTATION OF ALTERNATIVE LIVING ARRANGEMENTS WITHIN EAST WINDSOR TOWNSHIP

## ALTERNATE LIVING ARRANGEMENTS TOWNSHIP OF EAST WINDSOR MERCER COUNTY, NJ

Page 1 of 2

### A. Description of Facility

Type of Facility	Address	# of Rooms Specifically Restricted to Low/Moderate Income Households Or Individuals	Construction or Rehabilitation	Date Of Certificate Of Occupancy For Now Construction Or Final Inspection For Rehabilitation
Group Home for the developmentally disabled	919 Old York Road	3	Rehabilitation	
for the developmentally disabled	105 Maplestream Road	3	Rehabilitation	12-6-94
Supervised Apt for the developmentally disabled	1731 Country Mill Drive	2	N/A	
Supervised Apt for the developmentally disabled	1631 Country Mill Drive	2	N/A	-

## B. Brief Description of Affordability Control (Attach Applicable Legal Instrument)

All 16 of the individuals who reside in either the homes or the condominiums do not pay to live there. Their placement is funded by the New Jersey Division of Developmental Disabilities. They receive SSI benefits and Medicaid.

# C. Briefly Describe Rehabilitation Work and Cost Per room, If Applicable.

The funds used to purchase and renovate the homes came from the New Jersey Division of Developmental Disabilities. The Division generally determines the cost of a project (home/apartment) on a per person basis, rather than on a per room basis. The cost to renovate a home is based upon the number of individuals with a developmental disability who will reside in the home. A home of 5 or less does not require, by code, certain

additions to the home (i.e. fire suppression system - sprinklers), as would a house of 6 or more.

The scope of the rehabilitation of each home varies, as a function of the needs of the specific home, the date it was rehabilitated and the codes and regulations in place at the time of rehabilitation. One or more of the following was installed/renovated, depending on the home:

- 1. installation of a comprehensive fire alarm system
- 2. installation of a fire suppression system
- 3. construction of a fire escape
- 4. an modifications to the house necessary to create the sufficient number of bedrooms to accommodate six individuals with autism and two staff.
- 5. upgrade the existing septic system
- 6. upgrades to the heating and air-conditioning systems
- 7. upgrades to the existing structure, i.e. new roof, interior/exterior paint, new carpeting, etc.
- 8. new appliances

The condominiums only required interior painting and the installation of new carpeting.

# D. Affidavit That The Occupants Meet either Low Or Moderate Income Eligibility Standards

All of the individuals who reside in the homes and condominiums have a developmental disability (autism), have been declared eligible to receive services from the New Jersey Division of Developmental Disabilities and receive SSI benefits. In some cases the State of New Jersey is the payee of the individual's benefits and in some cases the parent or guardian is the payee.

# E Verification That The Facility Is Open To The General Public And Is Not Age-Restricted

The individuals who reside in the homes and apartments are adults with autism. They are placed and funded by the New Jersey Division of Developmental Disabilities. Each resident was either on the Division's community list of individuals awaiting placement in a community residence or they were placed in the residence from a developmental center (institution). There are no specific age restrictions.

Certified By	Daw Rounel	
,	Owner Or Administrator Of Facility Or Developer	
Certifies By:		
	Chief Elected Municipal Official	

# ALTERNATE LIVING ARRANGEMENTS TOWNSHIP OF EAST WINDSOR MERCER COUNTY, NEW JERSEY

# ENABLE, INC. MERCER COUNTY AGENCY 13 ROSZEL ROAD PRINCETON, NJ 08540

# A. Description Of Facility

Type Of Facility	Address	# Of Rooms Specifically Restricted To Low/Moderate Income Households Or Individuals	Construction Or Rehabilitation	Date Of Certificate Of Occupancy For New Construction Or Final Inspection For Rehabilitation
Residence for evelopmentally sabled Indiv.	6 Sutton Pl. E. Windsor	4	Rehabilitated to accommodate wheelchairs	April 18, 1997

## B. Brief Description Of Affordability Control (Attach Applicable Legal Instrument)

All residents receive SSI

# C. Briefly Describe Rehabilitation Work And Cost Per Room, If Applicable

One bedroom doorway widened to accommodate passage with a wheelchair. Bathroom tub removed and roll-in shower installed.

# D. Affidavit That Occupants Meet Either Low Or Moderate Income Eligibility Standards

All residents considered homeless at time of placement.

# E. Verification That Facility Is Open To The General Public And Is Not Age-Restricted

No age restrictions

Certified By:

Owner Or Administrator Of Facility Or Developer

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Certified By:

## ALTERNATE LIVING ARRANGEMENTS TOWNSHIP OF EAST WINDSOR MERCER COUNTY, NEW JERSEY

# CENTER FOR INNOVATIVE FAMILY ACHIEVEMENTS, INC. 2490 PENNINGTON ROAD TRENTON, NJ 08638

## A. Description Of Facility

Type Of Facility	Address	# Of Rooms Specifically Restricted To Low/Moderate Income Households Or Individuals	Construction Or Rehabilitation	Date Of Certificate Of Germanicy For New Construction Or Final Inspection For Rehabilitation
Residence for developmental disabled consumers	199 Dorchester Rd E. Windsor, NJ	4 bedrooms	Construction for enclosed Fire escape to provide two means of EXIT.	1-3-89

# B. Brief Description Of Affordability Control (Attach Applicable Legal Instrument)

All 5 learners receive SSI & Medicaid however, all financial support is forwarded to Department of Developmental Disabilities (DDD).

# C. Briefly Describe Rehabilitation Work And Cost Per Room. If Applicable

N/A

# D. Affidavit That Occupants Meet Rither Low Or Moderate Income Elizability Standards

All 5 learners receive SSI & Medicaid however, all financial support is forwarded to Department of Developmental Disabilities (DDD).

Therefore, no Affidavit is needed.

E. Verification That Facility Is Open To The General Public And Is Not Age-Restricted

18 years and older.

Certified By:	D. Handrille Collin M.D. Chief Operation Of Facility Of Developer	Meio
· · · · · · · · · · · · · · · · · · ·	Owner Or Administrator Of Facility Of Developer	9/1
		.00
Carified By:		•
	Chief Elected Municipal Official	

## ADDENDUM VI

# ZONING BOARD RESOLUTION NO. Z97-119A ADOPTED MARCH 10, 1999 APPROVING THE "WYNCREST" INCLUSIONARY DEVELOPMENT

# RESOLUTION NO. Z97-119A EAST WINDSOR TOWNSHIP ZONING BOARD MERCER COUNTY, NEW JERSEY

WHEREAS, Wyncrest Commons, L.P. having its principal place of business at 1000 East Parke Boulevard, Cranbury, NJ 08512, has previously applied for and received a Use Variance for property known as Lot 2 in Block 6 on the Tax Map of the Township of East Windsor to permit the construction of sixty (60) townhouse units and twenty-four (24) flats, as set forth in Resolution Z97-119, attached hereto, on a parcel totaling 9.33 acres which approval was granted by the Board in March, 1998; and

WHEREAS, the applicant now requests an approval from the Zoning Board for preliminary and final subdivision approval to permit the development of the site in accordance with the previously granted variance; and

WHEREAS, the Zoning Board of Adjustment received and reviewed the following documents in its deliberation of said application:

- Plans of Wyncrest Commons, P.P., revised through April 8, 1998 prepared by
   Menlo Engineering Associates, Inc. consisting of ten (10) sheets.
- 2. Drainage Report revised to April 8, 1998 by Menlo Engineering Associates,
  Inc.
- Memorandum dated September 11, 1998 from Raymond Jordan of James C.
   Anderson Associates, Township Engineer.
- Memorandum dated April 11, 1997 from Kevin W. Brink, Township Fire
   Official.
- 5. Exhibit A-1 Color Rendering of Wyncrest at East Windsor, Landscape and Lighting Plan, dated April 8, 1998.

6. Exhibit A-2 entitled Wyncrest at East Windsor Site Plan.

WHEREAS, the Zoning Board of Adjustment heard testimony from Alfred Coco, P.E., of Menlo Engineering Associates; Jill Kovalsky, Landscape Architect of Mellilo & Bauer Associates; and A. Joseph Stern, partner of Wyncrest Commons, L.P.; and

WHEREAS, the applicant was represented by Donald S. Driggers, Esquire of the firm of Turp, Coates, Essl and Driggers, Esqs.; and

WHEREAS, the Zoning Board of Adjustment conducted a Public Hearing on the application on September 17, 1998; and

WHEREAS, the Board made the following factual findings:

- 1. The subject property is located in the R-Zone District which permits both townhouses and one (1) floor apartments but provides that there are different density requirements for the two (2) types of uses. The applicant previously received a use variance from the Board to permit the housing mix as proposed.
- 2. The subject premises is located on the One Mile Road and is adjacent to the Windsor Mill complex to the north and the Windsor Commons complex to the south.
- 3. By virtue of the use variance approval, the applicant can develop the site with up to eighty-four (84) units subject to the subdivision and site plan approval of the Board.
- 4. The applicant proposes the construction of eighty-four (84) residential units, consisting of a mix of townhouse and one(1) floor or "flat" units.
- 5. The applicant, or its predecessor in interest, has owned the property since early in the 1980's. The prior approval was for eight (8) three (3)- story apartment buildings. The plan as now presented provides for fifteen (15) two (2)- story apartment buildings.

- 6. The applicant proposes to construct a mix of 24 one (1) bedroom units; 44 two
  (2) bedroom unit and 16 three (3) bedroom units which will be constructed in both one
  (1) and two (2) floor styles.
- 7. Of the eighty-four (84) units to be developed, fifteen (15) shall be income restricted and the applicant agreed to abide by any requirements imposed on those units by the Council On Affordable Housing.
- 8. The applicant previously agreed to amend its original plan by the removal of free standing garages and the installation of parking at a ratio of 2.5 vehicles per unit.
- 9. The applicant adjusted the plan to provide for the ingress and egress point off of One Mile Road so as to be located between the property lines of Lots 5.01 and 5.02.
- 10. The applicant indicated that it would accommodate concerns by the property owner across from the subject property regarding drainage and potential adverse impact on her property from vehicular headlights by installing an inlet in One Mile Road and piping any runoff back into the storm water system and by the installation of plantings on the affected property.
- 11. The applicant intends to interconnect the proposed project with the adjacent apartment project which it also controls and that the recreational facilities will be shared. It was determined that appropriate cross access easements have been arranged so that the concept of shared recreational facilities would be acceptable.
- 12. The applicant accommodated the concern of the Board regarding on-site parking and has provided 210 parking spaces.
- 13. The applicant's engineer testified that it will install a detention basin which will be a dry basin and accommodate all of the runoff from the site

- 14. The applicant agreed that a note will be added to the plan indicating that if handicapped parking spaces are required they will be added to the plan.
- 15. The applicant agreed that the sidewalk configuration should be subject to the review and approval of the Township's landscape architectural consultant and should link the buildings.

WHEREAS, the Zoning Board of Adjustment of the Township of East Windsor determined that site plan approval for property known as Block 6, Lot 2, to permit the construction of eighty-four (84) residential units, inclusive of fifteen (15) Affordable Housing Units, be granted as requested by the applicant subject to the terms and conditions as follows:

- The applicant shall submit cross access agreements for review and approval by the Township Zoning Board Attorney which reflect the representations made at the time of the use variance hearing and which are consistent with the site plan approval.
- 2. The applicant will provide 17.5% of its units, or fifteen (15) actual dwelling units, as deed-restricted Affordable Housing Units subject to the rules established by the Council on Affordable Housing regarding such units. The Township will thus receive thirty (30) Affordable Housing credits for the project since the Affordable Housing Units will all be rental units; and
- The applicant shall design its project in such a way as to interconnect the subject property with the adjacent apartment complex with the intent of having the two
   projects architecturally compatible.

- 4. The applicant shall design the project to be consistent with COAH regulations regarding bedroom distribution for the fifteen (15) units of Affordable Housing which are to be included in the project.
- 5. The Site Plan shall reflect that the exterior architectural design of the Affordable Housing Units will not be distinguishable from the market rate units.
- 6. The applicant shall submit proposed deed language which would restrict 17.5% of the proposed units, or a total of fifteen (15) units pursuant to the guidelines established by the Council on Affordable Housing. The applicant shall also enter into a Developer's Agreement with the Township which shall specifically address the construction; marketing; and deed restrictions for such Affordable Housing Units.
- 7. The applicant shall provide for a cross access agreement indicating that there are at least fourteen (14) parking spaces which can be utilized near the pool, Clubhouse area and common recreational facilities which are intended to be shared by this project and the adjacent Windsor Commons project.
- 8. The island at the entrance of the project shall be setback at least twelve (12) feet from the One Mile Road so as to be consistent with the Windsor Commons Island setback.
- 9. The plan shall be amended to show an extension of the inlet on the westerly side of One Mile Road located between Lots 5.01 and 5.02, Block 5, on the Tax Map of the Township.
- 10. The plan shall be amended to provide a notation that the applicant will install additional planting in the front of the property consistent with a plan approved by the

Township Landscape Architectural Consultant prior to the issuance of the final Certificate of Occupancy.

- 11. The applicant shall submit a separate exhibit for the turning radius which will be subject to review and approval by the Township Professional staff to determine the adequacy of the same.
- 12. The plan shall be amended to show an area reserved for a 6 foot wide bicycle path which shall be subject to review and approval by the Township Landscape Architect and Engineer who shall also determine whether the same should be constructed at the time of the development of the site or in the future.
- 13. The applicant shall comply with any unresolved conditions of Township Engineer Raymond Jordan's Memorandum dated September 11, 1998.
- 14. The applicant shall provide a handicapped parking space(s), if same are required by law.
- 15. A connecting sidewalk shall be added to the plan between buildings and to the front of the property which shall be subject to review and approval by the Township Landscape Architectural Consultant as to design and location.
- 16. The applicant shall provide documentation concerning the adequacy of the turning radii in the project which shall be subject to review and approval by the Township's professional staff.
- 17. The development's identification sign shall be shown on the site plan as being temporary and subject to review and approval if the applicant later intends to request that it be made permanent.

18. The overall landscape plan shall be subject to review and approval by the

Township's Landscape Architectural Consultant.

19. The plan shall be amended to show the actual location of the connecting

sidewalks between the proposed development and the adjacent development which will

be part of the cross access easement agreements.

20. The plan shall be amended to show the additional fire hydrant as per Fire

Official Kevin Brinks' memorandum dated August 11, 1997.

21. The detention basin design shall be subject to review and approval by the

Township Engineer and Landscape Architectural Consultant.

22. The applicant shall be required to obtain any and all other state, county, or

local approvals which may be necessary at the time of obtaining site plan approval for the

project.

This is a resolution of memorialization of an action taken by the Zoning Board of

Adjustment of the Township of East Windsor granting Site Plan approval to the applicant

at a regular meeting held on September 17, 1998.

MOTION:

Mr. Orey

SECOND:

Mr. Sellers

ROLL CALL:

AYES:

Dodson, Eisner, Kern, Orey, Silver, Sellers, Berk

NAYES:

None

ABSTAINED:

None

MOTIONED CARRED:

7-0

The above is a true copy of a Resolution duly adopted by the East Windsor Township Zoning Board of Adjustment, in and for the Township of East Windsor, Mercer County, New Jersey, at a special meeting held on March 10, 1999.

NANCY PAULSON, Secretary

# ADDENDUM VII

PLANNING BOARD RESOLUTION NO. 99-19
ADOPTED AUGUST 2, 1999
APPROVING THE "CALTON HOMES, INC." INCLUSIONARY DEVELOPMENT

# RESOLUTION 99-19

TOWNSHIP OF EAST WINDSOR PLANNING BOARD RESOLUTION OF MEMORIALIZATION MERCER COUNTY, NEW JERSEY PRELIMINARY AND FINAL MAJOR SUBDIVISION AND SITE PLAN APPROVAL WITH VARIANCES

Approved: April 19, 1999

Memorialized: Ougust 2,1997

MATTER OF CALTON HOMES, INC. [ZAITZ PARCEL D]

APPLICATION NO. SP97-108

WHEREAS, an application for preliminary and final major subdivision and site plan approval with variances has been made to the East Windsor Township Planning Board (hereinafter referred to as the "Board") by Calton Homes, Inc. (hereinafter referred to as the "Applicant") on lands known as Zaitz Parcel "D", and further designated as Lots 3, 3.01, 3.06, 4 & 5 of Block 11 as depicted on the Tax Map of the Township of East Windsor, which property has frontage on North Main Street and Cranbury Station Road; and,

WHEREAS, public hearings were held before the Board on September 14th, October 5th, November 2<sup>nd</sup>, and December 7<sup>th</sup> all in 1998, and March 1<sup>st</sup> and April 19, 1999 with regard to this application; and

WHEREAS, the Board heard testimony and comments from the applicant, witnesses, consultants and the public; and,

WHEREAS, a complete application has been filed, the fees as required by Township Ordinance have been paid, and it otherwise appears that the jurisdiction and powers of the Board have properly been invoked and exercised;

NOW, THEREFORE, does the East Windsor Township Planning Board make the following findings of fact and conclusions of law with regard to this application:

- 1. General Project The applicant is seeking preliminary major subdivision and site plan approval, together with variances, in order to construct a 206 lot subdivision consisting of 200 individual town house lots, one lot containing 36 affordable apartment units and 5 open space lots. The existing property consists of 5 lots in Block 11, namely, lots 3, 3.01, 3.06, 4 & 5. The subject property contains a gross area of 76.89 acres with frontage on both North Main Street and Cranbury Station Road. The By-Pass, which is currently under construction, makes up a portion of the southern property line, and the Windsor Regency and St. James Village also lie along the southern boundary line. The Millstone River and the Cranbury Township line make up the northern boundary of the property. North Main Street is a County roadway and Cranbury Station Road is a dedicated Township street. At present, the subject property contains agricultural fields, open areas and forested areas. The site also contains wetlands bordering the Millstone River and this area of the site is also within the 100 year fleed plain.
- 2. <u>Proposed Open Space Lot</u>s- The applicant proposes 5 lots which total 46.04 acres in area to be open space lots. These are as follows:
  - (a) Lot 3 of Block 11.03 3.31 acres
    - (b) Lot 3.06 of Block 11.04 37.87 acres

- (c) Lot 4 of Block 11.05 2.53 acres.
- (d) Lot 4 of Block 11.06 .68 acres.
- (e) Lot 6 of Block 11.07 1.65 acres.

It should be noted that Lot 5 of Block 11.08, which contains 9. 77 acres, is to be utilized for the affordable rental apartment units.

- 3. Zoning The subject property lies in the R-3 Residential Median Zone as delineated by the current East Windsor Township Zoning Ordinance. Both townhouses and multi-family units are also permitted in this zone. The applicant is seeking the following variances:
  - (a) Section 20-10.5 A. which requires that no driveway shall be located within 5' of a side or rear property line.
  - (b) Section 20-10.5 B. which requires that at least one-half of the multi-family or attached units shall be provided with a parking space in a garage.
  - (c) Section 20-20.0600 b. which requires that affordable units shall be dispersed throughout the project.
  - (d) Side-yard setback the side-yard setback for one of the multi-family buildings to Road "F" is approximately 31' where the ordinance requires a setback of 75'
- 4. Phasing Plan The Applicant is proposing a Phasing Plan for construction. Phase I is intended to include the townhouses on both sides of St. James Drive near the North Main Street intersection. Phase II includes the townhouses along the Road "D" Loop Road and the multifamily units. Phase III includes the remainder of the townhouse units.
- 5. Roads St. James Drive is proposed to be extended to the east and connect to the interior roadway system within the proposed development. The main roadway through the development is intended to be dedicated to the Township, with all other streets and cul-de-sacs in the development to be Homeowner Association streets. Sidewalks have been provided throughout

the development on both sides of the interior streets, and a sidewalk has also been added to the plans on North Main Street and St. James Drive. A sidewalk is also being provided by the Applicant on the project side of North Main Street from the main entrance to the development to the south property line of the subject property. The sidewalk has been shown at 6' from the face of the curb which conforms to the technical standards of the Township. The Traffic Impact Study submitted by the applicant concludes that the development will not create an adverse impact on adjoining roadways at this point in time.

- 6. Stormwater Runoff To accommodate the proposed improvements to the subject property, stormwater runoff will be directed by inlet and piping to three stormwater management basins constructed throughout the site which will, in turn, discharge to the Millstone River. Detention Basin No. 6 will accept stormwater runoff from the west portion of the site. Detention Basin No. 5 will accommodate the central area of the site and Detention Basin No. 4 will accommodate the east portion of the site. All of the detention basins will operate as dry basins and shall be maintained by a Homeowner's Association. Basin No. 4 and Basin No. 6 have been provided with an underdrain system to eliminate groundwater in the basin. On-site surface runoff will be handled by an on-site drainage system consisting of inlets and storm drainage lines that will intercept and convey surface runoff to the three detention basins.
- 7. The Board has received the following Reports from its consultants and has incorporated them by reference in the body of this Resolution:
  - (a) Letter reports from JCA Associates, Inc., Township Engineers, dated July 24, 1998, September 2, 1998 and February 18, 1999.
  - (b) Memorandum #27-98 from Coppola & Coppola Associates, Township Planners, dated July 29, 1998.

- (c) Memorandum #30-98 from Coppola & Coppola Associates, Township Planners, dated August 31, 1998.
- (d) Memorandum #7-99 from Coppola & Coppola Associates, Township Planners, dated February 9, 1999.
- (e) Memorandum from Daniel Dobromilsky & Associates, Township Landscape Architects, dated July 29, 1998.
- (f) Memorandum from Daniel Dobromilsky & Associates, Township Landscape Architects, dated September 4, 1998.
- (g) Memorandum from Daniel Dobromilsky & Associates, Township Landscape Architects, dated February 23, 1999.
- 8. Raymond Papa, a licensed civil engineer, testified on behalf of the application. Mr. Papa discussed with the Board all engineering aspects of the proposal, more specifically, the revised site plan which he indicated now called for a total of 592 parking spaces on-site. Four hundred parking spaces will be located in the garage/driveways of the units, with an additional one hundred ninety two parking spaces proposed on-site. Mr. Papa also discussed the larger recreation area that is proposed for the center of the project and also commented on the low and moderate income apartments. As for these apartments, Mr. Papa indicated that distances and dimensions have been modified in order to save trees and allow more convenient access to parking areas. The witness generally discussed the detention basins and stated that all RSIS and DEP standards have been met. The witness also indicated that the Applicant will be meeting with the Township Council regarding the naming of roads for the project. Mr. Papa indicated that the Homeowners Association will be responsible for driveway, sidewalk and lawn maintenance.
- 9. Robert Fourniadis, Vice President and Corporate Counsel for Calton Homes, Inc., testified on behalf of the application and discussed the project in general, and the specific variances that the Applicant is seeking. With regard to the driveway issue, Mr. Fourniadis indicated that the

driveways and garages have been grouped together in order to maximize green areas within the development and provide for better utilization of townhouse space. The witness offered the opinion that the proposal, even though within 5 feet of a side-yard, was aesthetically more pleasing. As for the requirement that affordable housing units be dispersed throughout the project, Mr. Fourniadis indicated that this requirement would not be practical for the proposal in that the proposed apartments for low and moderate income housing should be separate from the townhouse units in that the townhouse units will be sold in fee, whereas the apartments will be rental units. Given the economics of the project, together with access to amenities and recreational facilities, Mr. Fourniadis offered the opinion that dispersing the affordable units throughout this project would not be advisable.

The witness also addressed the parking/garage issue and commented that the Applicant is proposing extensive surface parking throughout the project which is more cost effective. The witness indicated that, in his view, garages would be an unneeded expense for low and moderate income units. The witness also commented with regard to proposed signage. With regard to the issue of trash collection, Mr. Fourniadis indicated that the townhouse units will have curbside collection with trash cans, while the apartments will have dumpsters. The issue of the timing of construction and occupancy of the affordable units were also discussed and the witness indicated that the construction and occupancy of the affordable units would be tied into the development of the market units as required by law and by COAH regulations. It is to be noted that this schedule is set forth in more detail on page 2, paragraph 5 of the Coppola Memorandum of February 9, 1999.

George Cosentino, Jr., a landscape architect, testified on behalf of the application.
 Mr. Consentino discussed the proposed recreation areas and indicated that there was a central

recreation area or "community green" proposed for the project. This central recreation area will contain a playground and also have an open field approximately 150' x 150' in size. There will also be a total of three additional recreation areas for the project. The witness discussed the proposed detention basins and indicated that they will be dry with one basin having perimeter plantings and two others being either partially or fully planted. The witness stated that the Applicant will comply with Township ordinances regarding detention basin plantings and also work with, and comply with, all the comments of the Township landscape architect. As for the requested variance from the 75' side-yard setback requirement for Building #35, the witness indicated that although this apartment building would be approximately 35' from a public road, it is not physically possible to move the building in order to comply with the ordinance because of the shape of the lot and an existing sewer easement with the East Windsor Township MUA.

- 11. Richard Reading, a fiscal consultant, testified on behalf of the project and concluded that the project would be "revenue neutral" to the municipality. Mr. Reading faced a number of questions from the Board with regard to both the accuracy and thoroughness of his analysis.
- 12. David Horner, a licensed traffic engineer, testified on behalf of the application. Mr. Horner concluded that, currently, there will be no substantial traffic impact to adjoining roadways. The witness did indicate, however, that within approximately five years time there will in all probability be significant deficiencies at the North Main Street, Old Cranbury Road intersection and, because of this, the witness recommended that this area be reviewed subsequent to the project build out. The witness also indicated that the Applicant was aware of his obligations to contribute to the TIP Fund.
- 13. Richard Coppola, Township Planning Consultant, Raymond Jordan, Township Engineer and Dan Dobromilsky, Township Landscape Architect, all commented with regard to the

application and made reference to their Reports which have been attached to, and made a part of, this Resolution.

In that the subject property is located within the parameters of the East Windsor Transportation Improvement Program (TIP) the Developer shall abide by the provisions of the TIP and make an appropriate contribution to the TIP fund and enter into a Developer's Agreement with the Township Council, pursuant to East Windsor Township Code, for payment of such contribution, in addition to memorializing all other requirements and conditions of this approval.

WHEREAS, the East Windsor Township Planning Board has determined that the variances sought by the applicant, as more specifically set forth in the attached consultant's reports and in the testimony developed during the hearing, are not substantially detrimental to the public good, nor do they substantially impair the intent the purpose of the zone plan of East Windsor Township.

WHEREAS, the East Windsor Township Planning Board, having reviewed the proposed application and having considered the impact of the proposed application and requested variances, and having considered the impact of the proposed application on the Township and its residents to determine whether it is in furtherance of the Municipal Land Use Law; and having considered whether the proposal is conducive to the orderly development of the site and the general area in which it is located pursuant to the land use and zoning ordinances of the Township of East Windsor; and upon the imposition of specific conditions to be fulfilled, the East Windsor Township Planning Board hereby concludes that good cause has been shown to approve the application of Calton Homes, Inc., for preliminary and final major subdivision and site plan approval, together with variances.

NOW, THEREFORE, BE IT RESOLVED by the Planning Board of the Township of East Windsor on this and day of August, 1999, that the action of the Planning Board taken on

April 19, 1999 granting Application No. SP97-108 of Calton Homes, Inc., be and the same is hereby memorialized as follows:

The application is granted subject to the following conditions:

- 1. Applicant shall within 120 days from the date of this Resolution promptly submit revised plans incorporating all the conditions and modifications discussed during the course of the hearings.
- 2. Except where specifically modified by the terms of this Resolution, Applicant shall comply with all recommendations of the Township Consultants as contained in the attached Reports.
- 3. Based upon the evidence and testimony presented variances shall be granted from the following sections of Township ordinances:
  - (a) Section 20-10.5 A. which requires that no driveway shall be located within 5' of a side or rear property line.
  - (b) Section 20-10.5 B. which requires that at least one-half of the multi-family or attached units shall be provided with a parking space in a garage.
  - (c) Section 20-20.0600 b. which requires that affordable units shall be dispersed throughout the project.
  - (d) Side-yard setback the side-yard setback for one of the multi-family buildings to Road "F" is approximately 31' where the ordinance requires a setback of 75'
- 4. As discussed during the hearings, and as agreed to by the Applicant, the Applicant shall make an open space donation to the Township of East Windsor as agreed on the record herein.

  The dimensions and amount of land, and the form of donation, shall be determined by the Township Council and incorporated as part of the Developer's Agreement.

- 5. As discussed during the hearings, and as agreed to by the Applicant, the Applicant shall discuss with the Township Council their participation regarding a contribution to open space funds, and such contribution shall be incorporated as part of the Developer's Agreement..
- 6. All proposed Homeowner Association documents shall be forwarded to the municipal attorney for review, and shall be subject to the approval of the Township Council.
- 7. All street names shall be subject to approval of the Township and shall ultimately be appended to the Resolution memorializing final approval.
- 8. All lighting shall be subject to a "night light" test to the approval of the Township Engineer, and lighting shields shall be appropriate to minimize off-site glare.
- 9. As discussed during the hearings, and as agreed to by the Applicant, the Applicant shall include in all sales materials the appropriate disclosure regarding the By-Pass. Said documents shall be subject to review and approval of the municipal attorney and shall be filed with the Planning Board and incorporated in the Developers Agreement..
- In that the Township has established as part of its Master Plan a Transportation Improvement Program (TIP), and in that the subject property falls within the parameters of the TIP, the applicant shall make a contribution to the TIP fund in an amount calculated in accordance with the East Windsor Township Code, as amended and supplemented. As part of the TIP contribution, the Developer shall enter into a Developer's Agreement with the Township Council which will confirm the contribution to the TIP fund. Said Developer's Agreement shall also provide for all other conditions and recommendations as required by this Resolution. Said Developer's Agreement must be approved by the Township Council in recordable form..
- 11. Applicant shall make payment to the Township pursuant to the Capital Contribution Program provided by the New Jersey Central Power & Light Company, pursuant to §22-4.1e. of

the Code of the Township of East Windsor, as amended and supplemented.

12. Applicant shall comply with all resolutions, ordinances, and Township policies

regarding the excavation and closure of all Township roads.

13. Submission of proof of payment of all real estate taxes applicable to the property

and payment in a timely fashion by the applicant of all outstanding and future fees and escrow

charges, together with the posting of all performance guarantees in connection with the review of

this application prior, and subsequent, to the approval of this application.

14. Applicant shall be bound by all representations made in testimony before the Board.

15. Applicant shall comply with all Township ordinances, rules and regulations that are

applicable to this development application, and is required to obtain all necessary permits

including, but not limited to, certificates of occupancy, certificates of habitability, construction

permits and zoning permits.

16. The foregoing approval is subject to the review of, approval by and requirements

imposed by all federal, state, county and local bodies that shall have jurisdiction over the relief

sought in this application.

BE IT FURTHER RESOLVED that the secretary is hereby authorized and directed to

cause a notice of this decision to be published in the *Hightstown Gazette* at the applicant's expense

and to send a certified copy of this Resolution to the applicant and to the Township clerk, engineer,

attorney and tax assessor, and shall make same available to all other interested parties.

East Windsor Township Planning Board

Prepared by: Louis P. Rago, Esq.

11

I hereby certify this to be a true and accurate copy of the Resolution adopted by the East
Windsor Township Planning Board, Mercer County, New Jersey at a public meeting held on

Ougust 2, 1999.

Cindy A. Farley, Secretary

East Windsor Township Planning Board

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# ADDENDUM VIII

SEPTEMBER 30, 1995 "FUND RESERVATION AWARD" LETTER
TO "PRESBYTERIAN HOMES"
FROM THE U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT



U.S. Department of Housing and Urban Development New Jersey State Office Multifamily Housing Division One Newark Center Newark, New Jersey 07102-5260

September 30, 1995

Mr. Thomas F. LePrevost, President The Presbyterian Homes of NJ Foundation, Inc. 103 Carregie Center, Suite 102 P.O. Box 2184 Princeton, NJ 08543-2184

Dear Mr. LePrevost:

Subject: Project No. 035-EE016 (NJ39-S951-009)

East Windsor, NJ

Section 202 Fund Reservation-Notification of Selection

Location: Lanning Blvd., East Windsor, NJ

No. of Units: 85

Sponsor Name: Presbyterian Homes of NJ Foundation,

Inc.

Sponsor City/State: Princeton Junction, NJ

I am pleased to advise you that your Application for a Fund Reservation to construct units of housing for the elderly under the Section 202 Capital Advance Program has been approved for 0 efficiency units and/or 84 one-bedroom units and/or 1 2-bedroom non-revenue unit for a resident manager.

Capital Advance authority in the amount of \$ 6,368,400 has been reserved for this project, along with Project Rental Assistance contract and budget authority of \$296,200 and \$1,481,000, respectively.

Please indicate by signing in the space provided whether or not you accept this Notification including the special conditions or requirements that are specified herein and certify to your understanding that the project must be developed in accordance with the terms set forth in this Notification. Return two signed copies of this Notification along with the Housing Consultant's Contract (if any) and the HUD-2530, Previous Participation Certificate, and resume for the Consultant to this Office within 14 days from the date you receive this letter.

## FUND RESERVATION TERMS AND CONDITIONS

Your acceptance of this Notification constitutes a certification and agreement by the Sponsor that:

- (1) An Application for Conditional Commitment which meets HUD's design and cost standards and programmatic requirements will be submitted by the Owner. Design and cost standards apply to all projects regardless of the proposed operating cost level. The design must not include costly features and must be cost efficient.
- (2) There will not be made any sale, assignment, conveyance, or any other form of transfer of this Notification, the Fund Reservation, the property or project, or any interest therein, except transfer from the Sponsor to an approved single-purpose Owner organized by the Sponsor.
- (3) The Fund Reservation will be canceled if construction, rehabilitation, or acquisition has not commenced within 18 months from the date of this Notification, unless further extensions beyond the 18 months are approved by HUD. Such extensions will be based upon HUD's determination that the Owner has established a reasonable schedule and is making sufficient progress toward the start of construction.
- (4) The Section 202 and Project Rental Assistance funds reserved for the project identified herein may not be used in connection with any other project, without the express written approval of HUD.
- (5) This Fund Reservation will be subject to cancellation, at HUD's option, in the event there comes into existence or HUD becomes aware of a pre-existing conflict of interest involving the project on the part of officers or directors of either the Sponsor or Owner organizations (including affiliates).
- (6) An attempt will be made to obtain exemption from State and/or local real and/or personal property taxes. Evidence of filing, together with the response received from the taxing authority, must be submitted with the Conditional or Firm Commitment application in one of the following forms:
  - (a) Tax Exemption
  - (b) Tax Abatement
  - (c) Payment in Lieu of Taxes (PILOT)
  - (d) Ineligibility for Any Tax Relief

Eligibility for (a), (b), or (c) must be supported by a copy of the appropriate legislation or ordinance.

(7) Special Conditions or Requirements.

This Notification of Selection is issued subject to:

- (a) Formation of a legally acceptable single purpose Owner corporation.
- (b) Evidence that the site is under the <u>Owner's</u> <u>control</u> at the time the Conditional Commitment Application is submitted.
- (c) Submission of Forms HUD-2530, Previous
  Participation Certificate, for all officers and
  directors of the Sponsor and Owner within 90 days
  and subsequent clearance thereof.
- (d) Credit investigation clearance of Owner's officers of the Board.
- (e) Submission of a Conditional Commitment Application in full compliance with HUD's design and cost standards and programmatic policies within 120 days from the date of acceptance of this letter.
- (f) A commitment by the Sponsor to pay for any excessive design features included in the project.
- (g) Submission of Conflict of Interest and Disclosure Certifications for <u>each</u> officer and director of both the Sponsor and Owner and Identity of Interest and Disclosure Certifications for all development team members.

NOTE: At any time a new development team member is identified or changed, an Identity of Interest and Disclosure Certification must be submitted.

Likewise, at any time the Sponsor or Owner changes any officers or directors, a Conflict of Interest and Disclosure Certifications must be submitted for the new persons.

(h) If more than 24 months elapse before the submission of a Conditional Commitment (or Firm Commitment if the Conditional Stage is Bypassed), a reanalysis of the market will be performed by the HUD Economist to determine that a sustainable demand still exists for the project.

#### (i) See attachment.

To provide you and your architect with assistance in the development of a proposal which meets HUD design and cost standards amd other HUD requirements, a project planning conference will be held in the latter part of October.

If two copies of this Notification indicating acceptance are not returned within the specified period, or if you accept and a single purpose Owner corporation fails to submit a Conditional Commitment Application within the specified period HUD may rescind this Notification and cancel the Fund Reservation. If you have any questions regarding the requirements for submission of the Conditional Commitment Application, please call Ms. Rhona A. Williams, Multifamily Housing Representative at (201) 622-7900, Extension, 3405.

We look forward to working with you toward the successful completion of this project.

Encarnation Loukatos
Director
Multifamily Housing Division

Enclosure
Accept
(Signature of Authorized Officer)

Not Accept
(Signature of Authorized Officer)

Title:

Date:

cc: CHAS Chief Executive
State Review Coordinator
FmHA
JKW Associates, Inc.
P.O. Box 245
No. White Plains, NY 10603

# Project No. 035-EE016

## 7(i). Special Conditions:

- a. Subject to certification of a sediment control plan by the local Soil Conservation District.
- b. Subject to providing minimal on site parking, electric or well vented and exhausted gas appliances.
- c. Subdivision approval is required.

# ADDENDUM IX

PREVIOUSLY ADOPTED ORDINANCE PROVISIONS FOR "DEVELOPMENT FEES FOR AFFORDABLE HOUSING"

# TOWNSHIP OF EAST WINDSOR "DEVELOPMENT FEES FOR AFFORDABLE HOUSING"

## ORDINANCE NO. 1998 -

AN ORDINANCE AMENDING AND SUPPLEMENTING
CHAPTER XX, "ZONING",
OF THE REVISED GENERAL ORDINANCES OF
THE TOWNSHIP OF EAST WINDSOR
COUNTY OF MERCER, STATE OF NEW JERSEY
AND SPECIFICALLY
WITH REFERENCE TO SATISFYING THE REQUIREMENTS
OF THE NEW JERSEY COUNCIL ON AFFORDABLE HOUSING (COAH)
BY ADDING A NEW SECTION 20-21 ENTITLED
"DEVELOPMENT FEES FOR AFFORDABLE HOUSING"

WHEREAS the Mayor and Township Council of the Township of East Windsor desires to comply with the New Jersey Council On Affordable Housing (COAH) by requesting COAH to review and approve this ordinance establishing mandatory development fees for the provision of affordable housing; and

WHEREAS East Windsor Township has submitted all documentation as required in N.J.A.C. 5:93-8.8 (a) 1.-8. of COAH's "Substantive Rules" for review by COAH of this proposed development fee ordinance; and

WHEREAS COAH has reviewed the documentation and the provisions of this ordinance for compliance with Subchapter 8 and N.J.A.C. 5:93-4.3 (b) of COAH's "Substantive Rules" and has determined that this ordinance complies with all requirements set forth in said "Substantive Rules".

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND TOWNSHIP COUNCIL OF THE TOWNSHIP OF EAST WINDSOR in the County of Mercer and the State of New Jersey, that Chapter XX, "Zoning", of the Revised General Ordinances of the Township of East Windsor is hereby amended and supplemented as follows by adding a new Section 20-21 entitled "Development Fees For Affordable Housing".

SECTION 1. Add a new Section 20-21 to Chapter XX of the Revised General Ordinances of East Windsor Township to be entitled "DEVELOPMENT FEES FOR AFFORDABLE HOUSING" and to read in its entirety as follows:

#### "20-21 DEVELOPMENT FEES FOR AFFORDABLE HOUSING.

#### 20-21.1 **Purpose**

In <u>Holmdel Builder's Ass'n v. Holmdel Township</u>, 121 N.J. 550 (1990), the New Jersey Supreme Court determined that mandatory development fees are authorized by the Fair Housing Act of 1985, N.J.S.A. 52:27D-301, et seq., and the State Constitution subject to the Council On Affordable Housing's (COAH) developing rules. The purpose of this ordinance is to establish standards for the collection, maintenance and expenditure of development fees pursuant to COAH's rules. Fees collected pursuant to this ordinance shall be used for the sole purpose of providing "low" and "moderate" income housing. This ordinance shall be interpreted within the framework of COAH's rules on development fees.

#### 20-21.2 Residential Development

In accordance with N.J.A.C. 5:93-8.10 (a) of COAH's "Substantive Rules", all new development of residential dwelling units within the Township of East Windsor, not exempt from the collection of development fees in accordance with the provisions specified in Subsection 20-21.5 of this ordinance hereinbelow, shall pay a fee to East Windsor Township equal to one-half of one percent (0.5%) of the equalized assessed value of each housing unit.

### 20-21.3 Nonresidential Development

In accordance with N.J.A.C. 5:93-8.11 (a) of COAH's "Substantive Rules", all new development of nonresidential buildings within the Township of East Windsor, not exempt from the collection of development fees in accordance with the provisions specified in Subsection 20-21.5 of this ordinance hereinbelow, shall pay a fee to East Windsor Township equal to one-half of one percent (0.5%) of the equalized assessed value of each building.

## 20-21.4 Centex Development Company, L.P.

In accordance with N.J.A.C. 5:93-8.10 (c) of COAH's "Substantive Rules", seven (7) properties owned by Centex Development Company, L.P. (Centex) have been agreed upon between Centex and the Township of East Windsor to be considered, in aggregate, an "Inclusionary Development", and Centex has agreed to pay a development fee to East Windsor Township in lieu of the actual construction of "low" and "moderate" income units within the development, which fee shall be equal to eleven thousand dollars (\$11,000) per set-aside affordable housing unit based upon a fifteen percent (15%) set-aside, provided that the total feel shall not exceed one million dollars (\$1,000,000).

a. Notwithstanding the provisions of Subsection 20-21.6 hereinbelow to the contrary, the development fee for the Centex "Inclusionary Development" shall be paid into East Windsor Township's "Housing Trust Fund" when twenty-five percent (25%) of the units within each of the seven (7) properties have received Construction Permits in accordance with the following schedule, except as modified in Subsection 20-21.4 b. hereinbelow:

INDIVIDUAL SUBDIVISION	TOTAL UNITS	15% SET-ASIDE	FEE PER SET- ASIDE UNIT	TOTAL FEE TO BE PAID[1]
"Sheffield"	69 du	11 du	\$11,000	\$121,000
"Stratford"	105 du	16 du	\$11,000	\$176,000
"Yorkshire"	75 du	12 du	\$11,000	\$132,000
"Berwick"	26 du	4 du	\$11,000	\$44,000
"Wendover Commons"	251 du	38 du	\$11,000	\$418,000
"Wendover Estates"	40 du	6 du	\$11,000	\$66,000
"Mitchum Place"	42 du	7 du	\$11,000	\$77,000

<sup>[1]</sup> The Total Fee For Each Subdivision Shall Be Paid At The Time 25% Of The Construction Permits For The Total Units Within The Subdivision Have Been Issued

b. In any case, the total one million dollar (\$1,000,000) development fee shall be paid in full by Centex to the Township by December 31, 2000 and, furthermore, if the final installment payment is not made until after December 31, 1999, the portion of the Centex contribution due on or after April 1, 1999 shall be increased if the New Jersey Council On Affordable Housing (COAH) increases the minimum Regional Contribution Agreement (RCA) payment above the minimum payment set forth either in N.J.A.C. 5:92-11.5(c) or N.J.A.C. 5:93-6.4(b).

## 20-21.5 Eligible Exactions, Ineligible Exactions And Exemptions

- a. All residential dwelling units within any "Inclusionary Development" shall be exempt from paying development fees.
- b. Development fees shall not be collected for the expansion of an existing residential dwelling unit and/or for the construction of an accessory structure.
- c. Development fees shall not be collected for the expansion of an existing nonresidential building and/or for the construction of an accessory structure.
- d. Regarding minor subdivisions approved prior to the effective date of this ordinance, any residential dwelling unit to be constructed on a lot created by the approved minor subdivision shall be exempt from paying development fees if the Construction Permit for the dwelling unit is issued within two (2) years of the date on which the resolution of minor subdivision approval was adopted, or within such further time if an extension has been granted pursuant to the Municipal Land Use Law and/or the Permit Extension Act.
- e. Regarding minor site plans approved prior to the effective date of this ordinance, any principal nonresidential building to be constructed as part of the approved minor site plan shall be exempt from paying development fees if the Construction Permit for the building is issued within two (2) years of the date on which the resolution for minor site plan approval was adopted, or within such further time if an extension has been granted pursuant to the Municipal Land Use Law and/or the Permit Extension Act.

- f. Regarding preliminary major subdivisions and/or preliminary major site plans approved prior to the effective date of this ordinance, any residential dwelling unit and/or any principal nonresidential building to be constructed as part of the approved development shall be exempt from paying development fees if the following two (2) conditions have been met:
  - 1. The subject development received final major subdivision and/or final major site plan approval prior to the expiration of the vesting period of three (3) years from the date on which the resolution of preliminary approval was adopted, or within such further time if an extension has been granted pursuant to the Municipal Land Use Law and/or the Permit Extension Act; and
  - 2. The Construction Permit is issued within two (2) years of the date on which the resolution of final major subdivision and/or final major site plan approval was adopted, or within such further time if an extension has been granted pursuant to the Municipal Land Use Law and/or the Permit Extension Act.
- g. Regarding final major subdivisions and/or final major site plans approved prior to the effective date of this ordinance, any residential dwelling unit and/or any principal nonresidential building to be constructed as part of the approved development shall be exempt from paying development fees if the Construction Permit is issued within two (2) years of the date on which the resolution of final subdivision and/or final site plan approval was adopted, or within such further time if an extension has been granted pursuant to the Municipal Land Use Law and/or the Permit Extension Act.

#### 20-21.6 Collection Of Fees

East Windsor Township shall collect fees in accordance with the following:

a. Developers shall pay fifty percent (50%) of the required development fee to East Windsor Township at the time of the issuance of the Construction Permit therefor. The development fee shall be estimated by the Township Tax Assessor prior to the issuance of the Construction Permit;

- b. Developers shall pay the remainder of the development fee to East Windsor Township at the time of the issuance of a Certificate of Occupancy. The Township Tax Assessor shall re-estimate the equalized assessed value and the required development fee at the time of the issuance of the Certificate of Occupancy. The developer shall be responsible for paying the difference between the development fee calculated at the time of the issuance of the Certificate of Occupancy and the amount paid at the time of the issuance of the Construction Permit; and
- c. Thereafter, when the final equalized value is determined by the Township Tax Assessor, the developer shall be so noticed by the Township and shall, within ten (10) days from receipt of the notice, pay to the Township any additional development fee as may be required; i.e., the difference between the development fee as previously calculated based upon the estimates of the equalized value and the development fee as calculated based upon the equalized assessed value as finally determined.
  - 1. The failure of the developer to make timely payment of any required additional development fee shall entitle the Township to file, without further notice to the developer, a lien against the subject development; and
  - 2. In the event the Township shall file such a lien, the Township may add to the aforesaid additional development fee amount reasonable attorney fees necessary to file and discharge said lien, together with any and all costs incurred to file and discharge said lien.

## 20-21.7 Housing Trust Fund

All development fees shall be deposited by the Chief Financial Officer of the Township of East Windsor into a separate designated interest-bearing "Housing Trust Fund".

a. No money shall be expended from the "Housing Trust Fund" unless the expenditure conforms to the "Spending Plan" included in Subsection 20-21.8 of this ordinance hereinbelow.

- The development fees placed in the "Housing Trust Fund" shall be deemed "dedicated revenues" as such term is defined in N.J.S.A. 40A:4-36; and
- c. In establishing the "Housing Trust Fund", the Mayor and Township Council shall provide whatever express written authorization that may be required by the bank utilized by the Township of East Windsor in order to permit the Council (COAH) to itself direct the disbursement of development fees should it be determined by the Council (COAH) that there is not compliance by the Township of East Windsor with the requirements specified in N.J.A.C. 5:93-8.17 of the "Substantive Rules" of the Council (COAH).

### 20-21.8 Spending Plan

- a. Subject to the approval of the Mayor and Township Council, who shall adopt a "Resolution of Approval of Trust Fund Expenditure" to be forwarded to the Chief Financial Officer who shall issue the funds to be expended, East Windsor Township shall use the revenue collected from development fees for any activity approved by the Council (COAH) which addresses the "fair share" housing obligation of the Township of East Windsor, including, but not limited to the following:
  - 1. Rehabilitation of the units;
  - 2. New construction of "Affordable Units";
  - 3. "Regional Contribution Agreements";
  - 4. Purchase of land for "low" and "moderate" income housing;
  - 5. Improvement of land to be used for "low" and "moderate" income housing;
  - Extension and/or improvements of roads and infrastructure to "low" and "moderate" income housing sites;
  - Assistance designed to render housing units to be more affordable; and

- 8. Administration to the implementation of the "Housing Plan Element And Fair Share Plan" of the Township of East Windsor.
- b. Funds shall not be expended to reimburse the Township of East Windsor for past housing activities.
- c. At least thirty percent (30%) of the revenues collected from the development fees shall be devoted to render housing units more affordable:
  - 1. Examples of such activities include, but are not limited to, downpayment assistance, low interest loans, and rental assistance; and
  - The requirement may be waived in whole or in part when the Township of East Windsor demonstrates to the Council (COAH) the ability to address the requirement of affordability assistance from another source.
- d. No more than twenty percent (20%) of the revenues collected from the development fees shall be expended on administration, including, but not limited to, the salaries and benefits for East Windsor Township employees or consultant fees necessary to develop or implement a rehabilitation program, a new construction program, a regional contribution agreement, a housing element, and/or an affirmative marketing program. Administrative funds may be used for income qualification of households, monitoring the turnover of sale and rental units, and compliance with the monitoring requirements of the Council (COAH). Development fees shall not be used to defray the costs of existing staff.

#### 20-21.9 Monitoring

The Mayor and Township Council or its designee shall complete and return to the Council (COAH) all monitoring forms related to the collection of development fees, the expenditures of the revenues, and the implementation of the "Spending Plan" (see Subsection 20-21.8 hereinabove). Additionally, the Township of East Windsor or its designee shall file quarterly financial reports and annual program implementation and auditing reports with the Council (COAH) on forms designed by the Council (COAH).

#### 20-21.9 Expiration Of Ordinance

This ordinance shall expire if:

- a. The New Jersey Council On Affordable Housing (COAH)
  dismisses or denies East Windsor Township's petition for
  "Substantive Certification";
- b. COAH revokes "Substantive Certification" or its certification of this ordinance; and/or
- c. "Substantive Certification" expires prior to East Windsor
  Township's filing an adopted "Housing Plan Element" with COAH,
  petitioning for "Substantive Certification" or receiving COAH's
  approval of this ordinance."

SECTION 2. All ordinances or parts thereof which are inconsistent or conflict with the provisions of this ordinance or any part thereof are hereby repealed to the extent of said inconsistency or conflict.

SECTION 3. If the provisions of any section, subsection, paragraph, subdivision or clause of this ordinance shall be judged to be invalid by a Court of competent jurisdiction, such Order or Judgement shall not affect of invalidate the remainder of any section, subsection, paragraph, subdivision or clause if this ordinance, or any other ordinance which is referred to herein, and to this end, the provisions of any section, subsection, paragraph, subdivision or clause of this ordinance are hereby declared to be severable. Should any clause, sentence or other part of this ordinance be judged invalid by a Court of competent jurisdiction, such judgement shall not affect, impair or invalidate the remainder of this ordinance.

SECTION 4. This ordinance shall take effect twenty (20	) days after the final adoption,
publication and the filing of said ordinance with the Mercer Cour	nty Planning Board, all in
accordance with law.	*
Signed:	
Janice S. Mironov, Mayor	Date Adopted
Attest:	
Kathleen M. Filipowicz, Clerk	

# ADDENDUM X

PROPOSED AMENDMENT TO THE ORDINANCE PROVISIONS FOR "DEVELOPMENT FEES FOR AFFORDABLE HOUSING"

# TOWNSHIP OF EAST WINDSOR "DEVELOPMENT FEES FOR AFFORDABLE HOUSING"

#### ORDINANCE NO. 1998 -

AN ORDINANCE AMENDING AND SUPPLEMENTING
CHAPTER XX, "ZONING",
OF THE REVISED GENERAL ORDINANCES OF
THE TOWNSHIP OF EAST WINDSOR
COUNTY OF MERCER, STATE OF NEW JERSEY
AND SPECIFICALLY BY AMENDING
THE PREVIOUSLY ADOPTED SECTION 20-21 ENTITLED
"DEVELOPMENT FEES FOR AFFORDABLE HOUSING"

WHEREAS the Mayor and Township Council of the Township of East Windsor has complied with the New Jersey Council On Affordable Housing (COAH) and has adopted an ordinance establishing mandatory development fees for the provision of affordable housing; and

WHEREAS East Windsor Township now desires to modify the previously adopted affordable housing development fee ordinance provisions in order to provide for the payment of a development fee in the proposed "ARH" Age-Restricted Housing "inclusionary" zoning district in lieu of the actual construction of the affordable housing units;

WHEREAS, additionally, in accordance with relatively recent modifications of COAH's "Substantive Rules", East Windsor Township wishes to amend its previously adopted development fee ordinance provisions to include a six percent (6%) bonus development fee for the additional residential units realized as a result of the granting of a "d" variance above the number of residential units permitted by right under the existing zoning and a six percent (6%) bonus development fee for the additional floor area ratio (F.A.R.) realized as a result of the granting of a "d" variance above the F.A.R. permitted by right under the existing zoning;

WHEREAS East Windsor Township has submitted all documentation as required in N.J.A.C. 5:93-8.8 (a) 1.-8. of COAH's "Substantive Rules" for review by COAH of this proposed development fee ordinance; and

WHEREAS COAH has reviewed the documentation and the provisions of this ordinance for compliance with Subchapter 8 and N.J.A.C. 5:93-4.3 (b) of COAH's "Substantive Rules" and has determined that this ordinance complies with all requirements set forth in said "Substantive Rules".

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND TOWNSHIP COUNCIL OF THE TOWNSHIP OF EAST WINDSOR in the County of Mercer and the State of New Jersey, that Section 20-21, entitled "Development Fees For Affordable Housing", of Chapter XX, "Zoning", of the Revised General Ordinances of the Township of East Windsor is hereby amended as follows:

**SECTION 1.** Change Subsection 20-21.2, entitled "Residential Development", to read in its entirety as follows:

## "20-21.2 Residential Development

a. In accordance with N.J.A.C. 5:93-8.10 (a) of COAH's "Substantive Rules", all new development of residential dwelling units within the Township of East Windsor, not exempt from the collection of development fees in accordance with the provisions specified in Subsection 20-21.5 of this ordinance hereinbelow, shall pay a fee to East Windsor Township equal to one-half of one percent (0.5%) of the equalized assessed value of each housing unit.

- b. Notwithstanding the provisions of Subsection 20-21.2 a. hereinabove, if a "d" variance is granted for more residential units than otherwise permitted by right under the existing zoning, then the additional residential units realized as a result of the "d" variance approval shall pay a bonus development fee to East Windsor Township equal to six percent (6%) of the equalized assessed value of the residential development, rather than the one-half of one percent (0.5%) development fee otherwise required for the residential units permitted by right. However, if the zoning of a site has changed during the immediate two (2) years prior to the filing of the "d" variance application, then the base density for the purposes of calculating the bonus development fee shall be the highest density permitted by right during the two (2) year time period.
- c. In accordance with N.J.A.C. 5:93-8.10 (c) of COAH's "Substantive Rules", developers of inclusionary residential developments within the "ARH" Age-Restricted Housing zoning district shall pay a development fee to East Windsor Township in lieu of constructing the otherwise required setaside of "low" and "moderate" income units in accordance with the following:
  - 1. The amount of the development fee shall be equal to or greater than the cost of subsidizing the "low" and "moderate" income units that are replaced by the development fee but, in any case, shall not be less than an amount equal to twenty thousand dollars (\$20,000) per "low" and "moderate" unit being replaced by the fee; and
  - 2. The payment of the development fee in lieu of constructing the otherwise required setaside of "low" and "moderate" income units within the inclusionary development must be found by COAH to be consistent with East Windsor Township's "Housing Plan And Fair Share Plan" and to provide a realistic opportunity for addressing the Township's "fair share" affordable housing obligation."

**SECTION 2.** Change Subsection 20-21.3, entitled "Nonresidential Development", to read in its entirety as follows:

## "20-21.3 Nonresidential Development

- a. In accordance with N.J.A.C. 5:93-8.11 (a) of COAH's "Substantive Rules", all new development of nonresidential buildings within the Township of East Windsor, not exempt from the collection of development fees in accordance with the provisions specified in Subsection 20-21.5 of this ordinance hereinbelow, shall pay a fee to East Windsor Township equal to one-half of one percent (0.5%) of the equalized assessed value of each building.
- b. Notwithstanding the provisions of Subsection 20-21.3 a. hereinabove, if a "d" variance is granted for additional floor/area ratio (F.A.R.) than otherwise permitted by right under the existing zoning, then the additional floor area realized as a result of the "d" variance approval shall pay a bonus development fee to East Windsor Township equal to six percent (6%) of the equalized assessed value of the nonresidential development, rather than the one percent (1.0%) development fee otherwise required for the nonresidential floor area permitted by right. However, if the zoning of a site has changed during the immediate two (2) years prior to the filing of the "d" variance application, then the base F.A.R. for the purposes of calculating the bonus development fee shall be the highest F.A.R. permitted by right during the two (2) year time period."

**SECTION 3.** All ordinances or parts thereof which are inconsistent or conflict with the provisions of this ordinance or any part thereof are hereby repealed to the extent of said inconsistency or conflict.

SECTION 4. If the provisions of any section, subsection, paragraph, subdivision or clause of this ordinance shall be judged to be invalid by a Court of competent jurisdiction, such Order or Judgement shall not affect of invalidate the remainder of any section, subsection, paragraph, subdivision or clause if this ordinance, or any other ordinance which is referred to herein, and to this end, the provisions of any section, subsection, paragraph, subdivision or clause of this ordinance are hereby declared to be severable. Should any clause, sentence or other part of this ordinance be judged invalid by a Court of competent jurisdiction, such judgement shall not affect, impair or invalidate the remainder of this ordinance.

SECTION 5. This ordinance shall take effect twenty (20) days after the final adoption, publication and the filing of said ordinance with the Mercer County Planning Board, all in accordance with law.

Signed:	
Janice S. Mironov, Mayor	Date Adopted
Attest:	
Kathleen M. Root, Clerk	