

TOWNSHIP OF WEST ORANGE APPLICATION FORM FOR THE PLANNING BOARD OR ZONING BOARD OF ADJUSTMENT

A. APPLICANT INFORMATION

Full Legal Name: WEST ESSEX HIGHLANDS, INC.
(Last) (First)
Mailing Address: 820 Morris Turnpike, Suite 301, Short Hills, NJ 07078
(Street) (City) (State) (Zip)
Telephone Number: (973) 467-5000 Email: markh@gardenhomes.com

Is the Applicant an: ☐ Individual, ☒ Corporation, ☐ Partnership, ☐ Other _____

If the Applicant is a corporation or partnership, a list of the names and addresses of persons having a 10% interest or more in the corporation or partnership must be attached.

Relationship of the applicant to the property: ☒ Owner, ☐ Tenant or Lessee, ☐ Purchaser under contract
(with consent of owner, ☐ Other (please specify) _____

If the applicant is not the owner of the property in question, the applicant must submit an affidavit with the owner(s) authorization to proceed with this process.

B. PROPERTY OWNER INFORMATION

☒ Check here if same as applicant. If the owner is not the applicant, please complete the following:

Owner's Name: _____
Address: _____
Telephone Number: () _____ Email: _____

C. PROPERTY INFORMATION

Street Address: Warner Road
Block Number(s): 179; Lot Number(s): 32
Tax Plate: 130; Zone of Property: IH-1 (Inclusionary Housing)
The location of the property is approximately 1,800 feet from the intersection of Oval Road
_____ and Warner Road (closest intersection.)

Has there been any previous Zoning Board of Adjustment or Planning Board hearings involving this property?

☒ Yes, Date(s): See Attached Resolutions; ☐ No

If yes, please attach copies of the written decisions adopted by the Board to each application. Copies Enclosed

Please attach a list of all contiguous or adjacent property owned by the applicant or owner. ☐ None See Attached

Is this property listed in "The Historic Sites Survey" prepared by Robert Guter 7/9/1992 ☐ Yes ☒ No

D. TYPE OF APPLICATION

Indicate the type of application being submitted, check all boxes that apply. Note that more than one variance may be necessary, please indicate the number of each type needed:

- 1) ☐ Interpretation of ordinance or map.
- 2) ☐ Appeal of action of Zoning Officer.
- 3) ☐ Variance "C1" Reason: ☐ shape of property; ☐ physical features; ☐ exceptional situation.
- 4) ☐ Variance "C2".
- 5) ☐ Variance "D".
- 6) ☐ Subdivision without variances: ☐ major; ☐ minor; ☐ preliminary; ☐ final; ☐ preliminary and final.
- 7) ☐ Subdivision with variances: ☐ major; ☐ minor; ☐ preliminary; ☐ final; ☐ preliminary and final.
- 8) ☒ Site Plan: ☐ preliminary; ☐ final; ☒ preliminary and final; ☐ with variances; ☒ without variances.
- 9) ☐ Amended Site Plan.
- 10) ☐ Conditional Use.
- 11) ☐ Conceptual.
- 12) ☐ Home Professional Office.
- 13) ☐ Home Occupation.
- 14) ☐ Soil Removal Permit.

Please list the specific Sections of the Ordinance for which a variance is sought. If additional space is required, please attach a list.

Section: _____; Proposed: _____; Description: _____
Section: _____; Proposed: _____; Description: _____
Section: _____; Proposed: _____; Description: _____
Section: _____; Proposed: _____; Description: _____

E. DESCRIPTION OF PROPERTY

Existing Use of the Property

Briefly describe the major elements of your proposal: (a more detailed description is required in Section G.)

496 multi-family units contained in 4 buildings plus amenities and site improvements
in accordance with the Court-approved Settlement of Litigation Agreement between**

The property is 5,245,870 (square feet); 120.429 (acres)

Impervious Surface Coverage: Present: Vacant; Proposed: _____

Building Coverage: Present: Vacant; Proposed: _____

Is the property located:

Within 200 feet of another municipality?	☒ Yes	☐ No
Adjacent to an existing or proposed county road?	☐ Yes	☐ No
Adjacent to other county land?	☐ Yes	☒ No
Adjacent to a state highway?	☐ Yes	☒ No

F. EXPERTS

The following information is respectfully requested to enable the Board to facilitate the processing of this application:

APPLICANT'S ATTORNEY: Bryan D. Plocker, Esq., c/o Hutt & Shimanowitz, PC

Telephone Number: (732) 634-6400 Email: bplocker@huttshim.com

Address: 459 Amboy Avenue, P.O. Box 648, Woodbridge, NJ 07095

APPLICANT'S ENGINEER: Paul W. Anderson, PE

Telephone Number: (973) 975-0703 Ext. 101 Email: pandersonpe@gmail.com

Address: Anderson Consulting Services LLC, 40 Miller Drive, Boonton, NJ 07005

APPLICANT'S ARCHITECT: Larry Appel, RA, Appel Design Group, PA Architects

Telephone Number: (973) 994-1776 Email: la@adgarchitects.com

Address: 220 South Orange Avenue, Suite 100, Livingston, NJ 07039

APPLICANT'S PLANNER: John McDonough, LA, PP

Telephone Number: (973) 222-6011 Email: jmcDonoughpp@gmail.com

Address: 101 Gibraltar Drive, Suite 1A, Morris Plains, NJ 07950

OTHER EXPERT(S): Walter Lublanecki, PE, c/o Lublanecki Engineering, Inc. (Traffic)
52 Glen Ridge Drive, Long Valley, NJ 07853

Telephone Number: (908) 852-8508 Email: lei@eclipse.net

Address: _____

If necessary, please list any additional experts below, including address, telephone number and email address.

G. REQUIREMENTS FOR VARIANCES

- 4A) Please attach a written statement labeled "PROPOSAL", describe the major elements of your proposal, and describe in detail the physical and use changes proposed.
- 4B) Please attach a written statement labeled "REASONS FOR RELIEF", which fully answers 4C-1, 4C-2 or 4D (Special Reasons) AND part 4E (Negative Criteria).
- 4C-1) (For C1 variances only) The strict application of the provisions of the Zoning Ordinance would result in the peculiar and exceptional practical difficulties or exceptional undue hardship under *N.J.S.A. 40:55D-70c(1)*. List in detail wherein this case conforms to this requirement, including, if applicable, reference to the exceptional narrowness, shallowness, or shape of the property, or the exceptional topographical conditions affecting the property which applicant contends warrants the granting of the variance.
- 4C-2) (For C2 variances only) State how the purposes of the Municipal Land Use Law would be advanced by a deviation from the zoning ordinance requirements and the benefits of the deviation would substantially outweigh any detriment according to *N.J.S.A 40:55D-70c(2)*. Please list all benefits of the deviation to the Township and any adverse effects. State how the benefits of the deviation would substantially outweigh any detriment to the Township.
- 4D) (For D variances only) State the special reasons under *N.J.S.A 40:55D-70d* affecting this property.
- 4E) The granting of this variance will not be substantially detrimental to the public good and will not substantially impair the intent of the zone plan and zoning ordinance. List in detail the reasons, among others, why the variance can be granted without being materially detrimental to the welfare of the community or injurious to the property or improvements of others in the neighborhood and zone.

H. PLAT SUBMISSION

- 4F) Please list all maps and other exhibits accompanying this application. Attach an additional sheet if necessary.

ITEM	SIGNED BY	DATE/REVISION
Preliminary/Final Site Plan	Paul Anderson, PE	9-23-23/10-26-23
Architectural Plans	Appel Design Group	11-24-22/12-8-23
Drainage Report	Paul Anderson, PE	3-12-23/10-30-23

I. NOTICE

Applicant is responsible to publish and serve notice of this application in accordance with Zoning Board of Adjustment/Planning Board requirements; however, notice may not be served until this application is certified as complete and the administrative officer has assigned the applicant a public hearing date.

J. VERIFICATION AND AUTHORIZATION

SIGNATURE IS REQUIRED FOR ALL OF THE FOLLOWING:

APPLICANT'S VERIFICATION

I hereby certify that the above statements made by me and the information contained in the papers submitted in connection with this application are true. I am aware that if any of the foregoing statements are willfully false, I am subject to punishment.

WEST ESSEX HIGHLANDS, INC.

Applicant's Signature: BY: [Signature] Date: 12/21/23
MARK HOFFMAN

CONTINUANCE

Should the Planning Board/Zoning Board of Adjustment have a full and heavy agenda, or discussion and meeting regarding this application requiring carrying the matter past the statue time limit, the applicant grants permission for such an extension.

WEST ESSEX HIGHLANDS, INC.

Applicant's Signature: BY: [Signature] Date: 12/21/23
Mark Hoffman

OWNER'S AUTHORIZATION - MUST BE SIGNED

I hereby certify that I reside at 820 Morris Ave Short Hills
in the County of Essex and the State of New Jersey;
and that I am the owner of all that certain lot, piece or parcel of land known as Block(s) 179;
Lot(s) 32 on the Tax Map of West Orange which property is the subject of the above
application, and that said application is hereby authorized by me. Furthermore, I authorize inspection of the site
which is the subject of this application.

Owner's Signature: [Signature] Date: 12/21/23
Zygmunt Wilk

THIS APPLICATION DOES NOT RELIEVE THE APPLICANT FROM COMPLYING WITH OTHER TOWNSHIP ORDINANCES SUCH AS THE TREE REMOVAL ORDINANCE AND OBTAINING THE NECESSARY APPROVALS AND PERMITS UNDER SUCH ORDINANCES.

Site Plan/Subdivision Checklist

ALL DOCUMENTS MUST BE PREPARED,
SIGNED AND SEALED BY NEW JERSEY
LICENSED PROFESSIONAL

[illegible]

ALL DOCUMENTS MUST BE PREPARED,
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Item Number	Description	Pre-Application - Concept Plan	Minor Application		General Development Plan	Major Application				COMPLETE	INCOMPLETE	WAIVER REQUESTED
			Subdivision	Site Plan		Subdivision		Site Plan				
						Preliminary	Final	Preliminary	Final			
12. Item: One (1) of four (4) standardized sheets: 30" x 42", 24" x 36", 15" x 21", 8.5" x 13" Comment: Required by Map Filing Law for minor and major subdivisions.			X	X		X	X	X		X		
13. Item: Metes and bounds description showing dimensions, bearings, curve data, length of tangents, radii, arcs, chords and central angles for all centerlines and right-of-way, and centerline curves on streets.			X				X			X		X
14. Item: Affidavit of ownership. Comment: Map Filing Law for minor and major subdivision.		X	X	X	X	X	X	X	X	X		
15. Item: Average of tract to the nearest tenth of an acre (for GDP--to nearest acre).			X	X	X	X	X	X	X	X		
16. Item: Date of original and all revisions. Comment: Item necessary for continuity-history of project.			X	X	X	X	X	X	X	X		
17. Item: Size and location of any existing or proposed structures with all setbacks dimensioned. Comment: Item important for detailed planning.		X	X	X	X	X	X	X	X	X		
18. Item: Location and dimensions of any existing or proposed streets (for GDP and pre-application- concept plan -- general locations). Comment: Item important for detailed planning.		X	X	X	X	X	X	X	X	X		
19. Item: All proposed lot lines and area of lots in square feet.			X	X		X	X	X	X	N/A		
20. Item: Copy and/or delineation of any existing or proposed deed restrictions or covenants. e		X	X	X	X	X	X	X	X	Known None		
21. Item: Any existing or proposed easement or land reserved for or dedicated to public use. e		X	X	X	X	X	X	X	X	Sewer Easement See Site Plan		
22. Item: Development stages or staging plans (for GDP--general staging). Comment: Not applicable at pre-application- concept plan stage; minor plans usually not built in stages.					X	X	X	X	X			X

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Item Number	Description	Pre-Application - Concept Plan	Minor Application			General Development Plan	Major Application				COMPLETE	INCOMPLETE	WAIVER REQUESTED
			Subdivision	Site Plan			Subdivision		Site Plan				
							Preliminary	Final	Preliminary	Final			
23. Item:	List of required regulatory approvals or permits. <u>Comment:</u> Basic planning information. €		X	X		X		X			X		
24. Item:	List of variances required or requested. € <u>Comment:</u> Basic planning information.		X	X			X	X	X	X			
25. Item:	Requested or obtained design waivers or exceptions. € <u>Comment:</u> Describes location of all adjacent structures; not necessary at pre-application-concept plan stages; required at site plan stages; required at site plan only if notice is required by ordinance.		X	X			X	X	X	X			
26. Item:	Payment of application fees. <u>Comment:</u> Fee not imposed for pre-application conference.						X	X	X	X			
27. Item:	Property owners and lines of all parcels within 200' identified on most recent tax map sheet. <u>Comment:</u> Describes location of all adjacent structures; not necessary at pre-application-concept plan stages; required at site plan only if notice is required by ordinance.	X	X	X		X	X	X	X	X			
28. Item:	All existing street, water courses, flood plains, wetlands or other environmentally sensitive areas on and within 200' of site. <u>Comment:</u> While detailed specification of environmentally sensitive areas may not be necessary at pre-application-concept plan and GDP stages, general specification of and sensitivity to such conditions is an important planning consideration.				X	X	X	X	X	X			
29. Item:	Existing right-of-way and/or easements on and within 200' of tract. <u>Comment:</u> Rights-of-way and easements are often unknown at the pre-application-concept (see however, item 28).	X		X		X	X	X	X	X			
30. Item:	Topographical features of subject property from U.S.G.S. map. <u>Comment:</u> More detailed topographic information is needed for major subdivision.	X		X		X	X	X	X	X			

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Item Number	Description	Pre-Application - Concept Plan	Minor Application		General Development Plan	Major Application				COMPLETE	INCOMPLETE	WAIVER REQUESTED
			Subdivision	Site Plan		Subdivision		Site Plan				
38.	Item: Soil Erosion and Sediment Control Plan. Comment: Required for soil disturbance over 5,000 sq. ft.			X		X	X	X	X	X		
39.	Item: Spot and finished elevations at all property corners, corners of all structures or dwellings, existing or proposed first floor elevations. Comment: Not required for minor subdivision because not involving construction of buildings.			X	X	X	X	X	X	X		
40.	Item: Construction details as required by ordinance. Comment: Such level of detail necessary only for major applications.					X	X	X	X	X		
41.	Item: Road and paving cross-sections and profiles. Comment: See Item 40.					X	X	X	X	X		
42.	Item: Proposed street names. Comment: Applicable only when new road is proposed.					X	X	X	X	X		X
43.	Item: New block and lot numbers confirmed with local assessor or municipal designee. Comment: Needed whenever a new lot is created.		X			X	X	X	X	X	N/A	
44.	Item: Lighting plan & details. Comment: Not applicable for minor subdivision because just creating lots.			X		X	X	X	X	X	X	
45.	Item: Landscape plan & details prepared by a professional landscape architect Comment: Required for site plans because of magnitude of required landscaping.			X				X	X	X	X	
46.	Item: Solid waste management plan. Comment: Site plan consideration only; see Item 44.			X				X	X	X		
47.	Item: Site identification signs, traffic control signs, and directional signs. Comment: See Item 44.			X		X	X	X	X	X	Applicant will provide testimony	**

Applicant will provide testimony

**partial waiver for street signs

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Item Number	Description	Pre-Application - Concept Plan	Minor Application		General Development Site Plan	Major Application				COMPLETE	INCOMPLETE	WAIVER REQUESTED
			Subdivision	Site Plan		Subdivision	Site Plan					
							Preliminary	Final	Preliminary			
48. Item: Sight triangles. Comment: Necessary even for minor applications because sight triangle easement created.			X	X		X	X	X	X			X
49. Item: Vehicular and pedestrian circulation patterns (less detail necessary for pre-application-concept plan and GSP stages). Comment: See Item 44.		X		X	X	X	X	X	X			
50. Item: Parking plan showing spaces, size and type, aisle width, curb cuts, drives, driveways, and all ingress and egress areas and dimensions. Comment: See Item 44.				X		X	X	X	X	X		
51. Item: Preliminary architectural plan and elevations. Comment: Not required where building is not proposed.				X				X	X	X		
52. Item: Plans and legal documents for compliance with West Orange COA Ordinance.		X	X	X	X	X	X	X	X	X		

Proposed restrictions or covenants do not have to be included for pre-application-concept plan and GDP.
Conditional approval may be granted subject to other regulatory approvals.

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REVISED: 8/30/05 aw

Forms & Awards: B-ZBAPP, FRM-CHECKLIST-CHECKLIST-FRM

SUSTAINABILITY CHECKLIST FORM

SUSTAINABLE BUILDING AND DESIGN STANDARDS		APPLICANT - PRINT OR TYPE - ALL SECTIONS TO BE COMPLETED:	TOWNSHIP OK (Date)
Name of LEED Accredited Professional working on project:			
List of Energy Star and WaterSense appliances, fixtures and construction techniques:			
List of green and recycled building materials in new construction, renovation, and maintenance:			
Waste Management Plan for recycling and/or reuse of 60 percent of all construction and demolition of waste generated in projects larger than \$25,000:			
Use of any water efficient landscaping:			
Use of any on-site renewable energy systems such as: (i) Solar (ii) Wind (iii) Geothermal			
Details of roofing materials designed to reduce the urban heat island effect such as: (i) Construction of roof top gardens to reduce solar gain in summer and insulate in winter (ii) Use of roofing materials that are no darker than a light gray or demonstrate how alternate roofing materials reduce the urban heat island effect		*See Exhibit C to Settlement Agreement (Design Terms and Conditions) (copy enclosed)	
Details of any sustainable stormwater systems employed such as: (i) Bioswales/ raingardens (ii) Permeable surfaces (iii) Grey water systems (iv) Retention and detention facilities (v) Continuous trenching			
A list of native and well adapted species used in landscaping to eliminate the need for fertilization and pesticides:			

Note: Please indicate for each of the sustainable building/design items listed, the extent to which the measure is being incorporated in the project or, alternatively, indicate the reason(s) why it is not being incorporated in the project.

**LIST OF CONTIGUOUS OR ADJACENT PROPERTIES
OWNED BY APPLICANT**

Block 179.17, Lots 1 through 9

Block 179.14, Lot 15

DISCLOSURE OF OWNERSHIP

The following are the names and addresses of individuals owning ten (10%) percent or greater of the applicant, West Essex Highlands, Inc., a New Jersey Corporation:

<u>NAME</u>	<u>ADDRESS</u>
Leonard A. Wilf	820 Morris Turnpike, Suite 301 Short Hills, NJ 07078
Zygmunt Wilf	820 Morris Turnpike, Suite 301 Short Hills, NJ 07078
Mark Wilf	820 Morris Turnpike, Suite 301 Short Hills, NJ 07078
Gary Happel	820 Morris Turnpike, Suite 301 Short Hills, NJ 07078

SETTLEMENT OF LITIGATION AGREEMENT

This Settlement of Litigation Agreement (the "Agreement") is entered into this ____ day of _____, 2020, by and between **WEST ESSEX HIGHLANDS, INC.**, a corporation of the State of New Jersey having a business address of 820 Morris Turnpike, Short Hills, New Jersey 07078 ("**WEHI**"), the **TOWNSHIP OF WEST ORANGE**, County of Essex, State of New Jersey, a municipal corporation of the State of New Jersey with a business address of 66 Main Street, West Orange, New Jersey 07052 (the "**Township**"), and **WEST ESSEX HIGHLANDS CONDOMINIUM ASSOCIATION, INC.**, having an address of 1 Reger Lane, West Orange, New Jersey 07052 (the "**Association**"). Collectively, WEHI, the Township and the Association shall be referred to as the "**Parties**."

WITNESSETH:

WHEREAS, this Agreement concerns the development of real property consisting of approximately 120.5 acres generally located in the northwest corner of the Township adjacent to the northern terminus of Warner Road, which property is specifically identified as Block 179, Lot 32 on the Township's Official Tax Map (the "**Subject Property**"); and

WHEREAS, the Subject Property is generally bordered by the Township of Essex Fells ("**Essex Fells**") to the west, the Township of Verona ("**Verona**") to the north, and the West Essex Highlands Condominium development in West Orange (the "**Condominium**") to the south;

WHEREAS, the Association is duly constituted condominium association for the Condominium;

WHEREAS, WEHI is the owner of the Subject Property; and

WHEREAS, the Township instituted certain litigation now pending in the Superior Court of New Jersey, Law Division, Essex County captioned In the Matter of the Application of the

Township of West Orange, Docket No. ESX-L-4697-15 (the “**Declaratory Judgment Litigation**”); and

WHEREAS, the Declaratory Judgment Litigation seeks declaratory relief approving the Township’s plan to satisfy its current affordable housing obligation and immunity from builders’ remedy lawsuits through the year 2025; and

WHEREAS, WEHI intervened as a defendant in the Declaratory Judgment Litigation;

WHEREAS, WEHI and the Township engaged in court-ordered mediation with Elizabeth McManus, P.P., the court-appointed Special Master in the Declaratory Judgment Litigation; and

WHEREAS, the Association is not a party to the Declaratory Judgment Litigation, but WEHI and the Township recognized the Association, an adjacent neighbor to the Subject Property, as an interested party with respect to the development of the Subject Property whose participation and input at mediation was deemed essential;

WHEREAS, the Township wishes to include the Subject Property as part of its affordable housing compliance plan in connection with the Declaratory Judgment Litigation; and

WHEREAS, the Parties, subject to the terms hereof and all other required governmental approvals, have agreed that the Subject Property shall be developed as a multi-family residential development consisting of 396 market rate units and 100 affordable units, for a total of 496 units, and a clubhouse/amenity buildings (the “**Proposed Development**”) consistent with the “West Essex Highlands Concept Plan 16 for West Essex Highlands, Block 179, Lot 32, Township of West Orange, Essex County, New Jersey” dated March 3, 2020 prepared by Anderson Consulting Services, LLC (the “**Concept Plan**”), a true copy of which is attached hereto as **Exhibit A**; and

WHEREAS, the Concept Plan reflects certain requests by the Association, including that (1) the Proposed Development be located a sizeable distance from the Subject Property’s boundary

with the Condominium; (2) Bayowski Drive remain a cul-de-sac and will only serve as an emergency access point to the Proposed Development; (3) the Proposed Development result in a minimal amount of disturbance to the Subject Property; and (4) Warner Road is intended as the primary means of access to the Proposed Development; and

WHEREAS, the Parties, subject to the terms hereof, have agreed that the Proposed Development shall include an affordable housing set aside of 20% of the total units constructed; and

WHEREAS, the Subject Property is not presently zoned as to permit the development of the Proposed Development; and

WHEREAS, Township has agreed to adopt an ordinance rezoning the Subject Property so as to permit the construction of the Proposed Development as of right consistent with the permitted uses and bulk standards as set forth in a proposed amendment to the Zoning Ordinance of the Township in the form attached hereto and made a part hereof as **Exhibit B** (the “**Zoning Amendment**”); and

WHEREAS, the Parties recognize and agree that the Proposed Development shall be accomplished in a manner consistent with the design terms and conditions set forth in **Exhibit C**, attached hereto (the “**Design Terms and Conditions**”); and

WHEREAS, the Parties recognize and agree that the Proposed Development shall be accomplished in a manner consistent with the terms and conditions agreed to by the Association and WEHI, as set forth in **Exhibit D**, attached hereto (the “**Association Terms and Conditions**”); and

WHEREAS, the Planning Board of the Township of West Orange (the “**Planning Board**”) is not a party to this Settlement Agreement. However, the Parties understand and

anticipate that the Planning Board will consider the Proposed Development in accordance with applicable land use laws, municipal ordinances and the Township's approval of this Agreement; and

WHEREAS, in order to amicably resolve all issues in the Declaratory Judgment Litigation, the Township shall adopt the Zoning Amendment in a manner consistent with this Agreement; and

WHEREAS, the Parties have reached an amicable settlement of the Declaratory Judgment Litigation, and desire and intend to memorialize the settlement by the execution of this Agreement.

NOW, THEREFORE, IN CONSIDERATION OF THE PROMISES, TERMS AND CONDITIONS SET FORTH HEREIN, INTENDING TO BE LEGALLY BOUND HEREBY, THE PARTIES AGREE AS FOLLOWS:

1. **RECITALS.** The WHEREAS recital paragraphs hereinabove set forth are incorporated herein by reference.

1.1 **PURPOSE.** The Purpose of this Agreement is to amicably resolve the Declaratory Judgment Litigation consistent with the terms hereof which, in part, are intended to ensure the construction of the Proposed Development generally consistent with the Concept Plan.

2. **OBLIGATIONS OF THE TOWNSHIP.**

2.1. **Adoption of Zoning Amendment.** Within one hundred twenty days (120) days from Court approval of this Agreement at a duly noticed Fairness Hearing, the Township shall move and vote on the adoption of an ordinance similar in all material respects to the Zoning Amendment after a duly noticed public hearing. Within the same time period, the Planning Board shall make recommendation on the Zoning Amendment in accordance with the procedures of the Municipal Land Use Law, N.J.S.A. 40:55D-1, et seq. ("MLUL"). Simultaneously, to the extent

necessary, the Council shall submit an amendment to the Master Plan for consideration by the Planning Board consistent with the Zoning Amendment. The Township hereby agrees not to take any action which will modify the Zoning Amendment or which will otherwise require a variance application in connection with the Proposed Development without the consent of WEHI.

2.2. **Obligation to Cooperate.** The Parties acknowledge that in order to construct the Proposed Development on the Subject Property, WEHI will be required to obtain all necessary agreements, approvals and permits from all relevant public entities and utilities; such as, by way of example only, the Planning Board, the County of Essex, the Essex County Planning Board, and the State of New Jersey, Department of Environmental Protection (“NJDEP”) -- including all ordinance requirements as to site plan and/or subdivision approvals (collectively, the “**Required Approvals**”). The Parties agree to cooperate in all undertakings to obtain the Required Approvals, including but not limited to those approvals required for the installation of a traffic signal at the intersection of Eagle Rock Avenue and Oval Road, including the Township exercising its eminent domain/condemnation powers. All expenses to obtain approvals and acquisition of property shall be at WEHI’s sole cost and expense. If any public takings are necessary for intersection improvements, WEHI shall have the sole authority to settle any condemnation proceedings and WEHI shall fund all expenses of any condemnation process, including but not limited to legal fees, appraisals and any other experts and any just compensation required by any settlement or formal decision awarding such compensation. Within five (5) days of the Township Council’s approval of this Agreement, the Township shall provide a copy of this Agreement to the Planning Board. Although the Association and WEHI may desire for the Township to accept a dedication of Oval Road as a public road, the Township does not presently have a desire to accept Oval Road as a public road and is under no obligation to do so in the future.

2.3. **Obligation to Cooperate Regarding Utilities, Including Public Sewer and Water Service.** The Township and WEHI shall reasonably cooperate with respect to WEHI's providing utility service, including but not limited to sewer, water, electric and/or natural gas through appropriate means, including but not limited to the Township's endorsing all reasonable NJDEP LURP forms, Sewer Extension and Water Extension forms, Water Quality Management Plan and Wastewater Management Plan Amendments and other governmental applications which are reasonably required to facilitate the Proposed Development on the Subject Property; and WEHI's efforts to obtain water and sewer and other utility services for the Subject Property; and the application, if necessary, to amend appropriate Water Quality Management Plans, Wastewater Management Plans and the like to include the Subject Property; and WEHI's obtaining any and all local, county, or regional Sewer Authority approvals, County Planning Board approvals, Stormwater Drainage approvals, and generally cooperate in the obtaining of all land development approvals. Absent a denial by a governmental entity with appropriate jurisdiction, the Proposed Development will be sewerred in the Township at WEHI's sole cost and expense.

2.4. **Concept Plan.** The Parties have reviewed the Concept Plan (**Exhibit A**) and find the design of the Proposed Development as represented on the Concept Plan to be feasible and acceptable as well as consistent with the Zoning Amendment (**Exhibit B**), subject to the addition of amenities buildings and structures within the general area of disturbance depicted on the Concept Plan (i.e., clubhouse, dog park, maintenance shed and other aesthetic considerations). The Parties have agreed to implement the Design Terms and Conditions set forth on **Exhibit C** annexed hereto.

2.5. Planning Board Process:

2.5.1. Completeness. WEHI will complete and submit site plan and/or subdivision applications for the Subject Property, consistent with this Agreement, which applications shall be reviewed by the Township Planner and Township Engineer for purposes of determining completeness, as defined by the MLUL, and compliance with the Zoning Amendment and applicable Design Terms and Conditions. WEHI shall contemporaneously submit a copy of all application materials to the Association. In accordance with the MLUL, completeness determination by the Board must occur within forty five (45) days of submission. In addition, WEHI shall submit all plans to DeFeo & Associates, the Township's environmental consultant, for review and comment. WEHI shall meet with DeFeo & Associates in good faith regarding the location and implementation of fencing and other items designed to regenerate the undergrowth of the Subject Property. Unless otherwise modified by the terms of this Agreement, the MLUL applies to the Township's review and adjudication of WEHI's applications.

2.5.2. Decision By the Planning Board. After the Planning Board determines that WEHI's applications are complete, the Board shall schedule the public hearing on the applications. Action on the subdivision and site plan applications shall be taken in accordance with the MLUL. If necessary, the Township shall ask the Planning Board to provide WEHI with a special meeting(s) for the review of the development application at WEHI's sole cost and expense.

2.5.3. Fees. The Township recognizes that any approvals and this Agreement all contemplate the development of an "inclusionary development" within the meaning of the Mount Laurel doctrine, and WEHI shall be entitled to any benefits, protections and obligations afforded to developers of inclusionary developments, including but not limited to protections from the

imposition of cost-generative requirements, pursuant to N.J.A.C. 5:93-10 and N.J.A.C. 5:97-10. WEHI agrees to pay all typical application fees and escrows and permit fees in connection with its application to the Planning Board and subsequent construction of the Proposed Development. The Parties recognize that the Proposed Development is not yet fully engineered. Upon the full engineering, WEHI may apply for waivers or bulk variances from any standard imposed by the Township's Land Use and Development Ordinance or any other Township ordinance, as applicable, and WEHI may seek waivers or de minimis exceptions to any standard or requirement of New Jersey's Residential Site Improvement Standards ("RSIS") in accordance with the applicable regulations. To the extent a full engineering of the Proposed Development requires WEHI to seek reasonable relief from a Township ordinance not specifically contemplated by this Agreement, the Township will consider same in good faith. The Township recognizes that a full engineering of the Proposed Development may require WEHI to make alterations to the Concept Plan in order to accommodate the location/installation of utilities, amenities and other related development concerns. The Township and WEHI agree that the Concept Plan, which includes Kuzik Drive as a means of ingress/egress for the Subject Property, complies with RSIS regarding traffic circulation. However, pursuant to the Association Terms and Conditions, WEHI will first seek approval to eliminate Kuzik Drive as an access point, which will require WEHI to obtain a de minimis exception from RSIS. The Township and Association support the granting of such a de minimis exception. However, if the Planning Board does not grant such an exception, then WEHI will pursue its application with Kuzik Drive as a means of ingress/egress, which would be acceptable to the Association pursuant to the Association Terms and Conditions. Finally, the Township and WEHI recognize that the Proposed Development will require the installation of a traffic signal at the intersection of Oval Road and Eagle Rock Avenue, an Essex County Road.

Aside the improvements associated with the installation of that traffic signal and those improvements agreed to between WEHI and the Association as set forth in the Association Terms and Conditions, the Township will not require WEHI to make any other off-tract or off-site improvements.

2.5.4. **Trees.** The Township and WEHI recognize the Subject Property is heavily wooded. In that regard, the Township commissioned a tree study, the results of which are reflected in the tree study report of DeFeo Associates dated February 3, 2020 (the “Tree Study”). As set forth in the Tree Study, the overall health of the forest on the Subject Property is weak and the ability of the forest to regenerate itself is poor. The Township and WEHI recognize the importance of preserving and/or optimizing the regeneration of the forest in connection with the development of the Subject Property, but also recognize that the Township’s Tree Protection and Removal Ordinance (Ordinance § 25-7) (the “Tree Ordinance”), if applied to the Proposed Development, would constitute a cost-generative requirement contrary to Section 2.5.3 of this Agreement. In light of the foregoing, the parties agree that tree removal and replacement for the Proposed Development shall be governed by the Design Terms and Conditions attached hereto as Exhibit C, specifically Section 2 (Site & Landscaping).

2.5.5. **Steep Slopes.** The Concept Plan reflects the Township’s requirement that the Proposed Development be located west of a certain point near the ridgeline located on the eastern portion of the Subject Property. The Proposed Development, as set forth on the Concept Plan, must strictly abide by the Township’s request that all structures for the Proposed Development are located west of the ridgeline. To the extent that any portion of the Proposed Development as contemplated in this Agreement would be restricted and/or prohibited by the Township’s Steep Slope and Natural Features Ordinance, Township Code § 25-28.1 through 28.10

(the “**Steep Slope Ordinance**”), including the Adequate Contiguous Area Ordinance (§ 25-28.9), the Steep Slope Ordinance shall not apply to the Proposed Development, which shall be reflected in the Zoning Amendment.

2.5.6. The Parties’ engineering representatives shall consult with one another and other professional staff as they deem appropriate to discuss the status of the application once the application is submitted. Such communications are intended to allow for informal review, comments and discussion in order to facilitate consideration of the Proposed Development, with the understanding that the Township professional staff has no authority to approve or reject an application and that these technical review meetings and other communications are not intended to usurp or limit the Planning Board’s statutory authority. Said discussions shall continue until the Parties deem further meetings unnecessary. The same process shall be followed for final approval applications, if separate from the preliminary approval application, and for subsequent applications. WEHI shall have the right to file simultaneous applications for preliminary and final site plan and subdivision approvals. Insofar as this application qualifies as a major site plan, it shall also be subject to review by the Site Plan Review Advisory Board (“SPRAB”) prior to a public hearing by the Planning Board.

2.5.7. The Township agrees that WEHI may elect, to the extent permitted by law, to pursue approval of development phases, provided that every phase must provide the mandated affordable units in each phase pursuant to N.J.A.C. 5:97-6.3(d) and cannot be backended.

2.6. Because the Proposed Development provides a substantial set aside of affordable housing units, any affordable housing residential development fees required by Township ordinance for non-inclusionary developments shall not apply to the Proposed Development.

WEHI shall pay to Fair Share Housing Center the amount of \$50,000, which sum represents all legal fees/expenses of Fair Share Housing Center ("FSHC"), as agreed to by FSHC.

2.7. The Township hereby acknowledges that this Agreement was the result of numerous mediation sessions conducted by the Special Master in the Declaratory Judgment Litigation. Although the Association was not a party to the Declaratory Judgment Litigation, the Township and WEHI recognized that the Association was an interested party with regard to the development of the Subject Property. Accordingly, a representative of the Board of Directors of the Association and the Board's attorney were invited to attend mediation sessions and otherwise be a part of the mediation process. Through its participation in the mediation process, the Association offered a great amount of input regarding the development of the Subject Property, which input, in part, is reflected in the Concept Plan.

3. OBLIGATIONS OF WEHI.

3.1 **Obligation To Submit Development Applications Substantially Consistent With the Concept Plan.** WEHI shall file and seek Planning Board approval of a site plan and/or subdivision application substantially consistent with the design for the Proposed Development of the Subject Property as represented in the Concept Plan, subject to the addition of amenities buildings and structures within the general area of disturbance depicted on the Concept Plan (i.e., clubhouse, dog park, maintenance shed and other aesthetic considerations). In light of the Zoning Amendment, the parties do not contemplate that any substantial waivers and/or variances will be necessary to develop the Subject Property in accordance with the Concept Plan. However, the parties acknowledge that WEHI has not yet engineered the Proposed Development and that upon engineering the Proposed Development and the submission of land development applications, it may become necessary to seek waivers, variances (except use variances) and/or other relief. In

such event, the parties acknowledge that WEHI shall be entitled to such minor relief as may be necessary to develop the Subject Property in accordance with the Concept Plan. The bedroom distribution for all affordable units in the Concept Plan shall comply with New Jersey's Uniform Housing Affordability Controls, applicable Council on Affordable Housing Regulations and the Fair Housing Act, including those provisions regarding the phasing of affordable units. No more than twenty percent (20%) may be one bedroom units; at least thirty percent (30%) will be two bedroom units; and at least twenty percent (20%) will be three bedroom units. Thirteen percent (13%) of the affordable units shall be affordable to very low-income households; thirty-seven percent (37%) of the affordable units shall be affordable to low income households; and the remaining fifty percent (50%) of the affordable units shall be affordable to moderate income households. In addition, WEHI shall execute an Agreement with an Administrative Agent designated by the Township to administer the affirmative marketing of the affordable units including but not limited to advertising, income qualifying, setting rents/re-rents and affordability controls and related responsibilities. All costs shall be the sole responsibility of WEHI. All affordable units shall comply with the requirements set forth in N.J.A.C. 5:80-26.11, which requires all affordable units to be deed restricted for a period of at least thirty (30) years commencing on the date of initial occupancy.

3.2 Obligation to Support the Township's Affordable Housing Compliance Plan.

WEHI agrees to not object to the Township's compliance plan in connection with the Township's satisfaction of its Third-Round affordable housing obligation.

3.3 Obligation During the Construction of the Proposed Development. WEHI agrees to the Design Terms and Conditions and guidelines set forth in the attached **Exhibit C** in connection with the construction of the Proposed Development;

3.4 **Obligation to The Association.** As consideration for the Association's promise to support, and not object to, the Proposed Development, as fully set forth in paragraph 4 below, WEHI agrees to the Terms and Conditions set forth in the attached **Exhibit D** regarding the development of the Subject Property and the construction of the Proposed Development.

3.5 **Deed Restriction of Subject Property.** After all building permits for the Proposed Development have been issued by the Township, WEHI agrees to record a deed restriction for the Subject Property, which deed restriction will run solely in favor of the Township and solely for the benefit of the Township. Substantively, the deed restriction shall restrict the Subject Property from all further development, except for the need to install and/or modify utilities and the construction of non-commercial amenities and accessory buildings which would serve the residents of the Proposed Development and/or the Association, including but not limited to a clubhouse, fitness center and other facilities beneficial to the residents. WEHI recognizes that approval from an appropriate land use board would nonetheless be required to construct any such additional amenity/accessory buildings.

3.6 **Obligation to Pay for the Services of DeFeo & Associates.** WEHI agrees to pay for the services of DeFeo & Associates in connection with the Proposed Development. In that regard, the Township shall promptly provide WEHI with copies of all invoices received from DeFeo & Associates.

3.7 **Obligation to Keep the Township and the Association Informed.** WEHI shall keep the Township and Association fully and contemporaneously informed regarding construction activities on the Subject Property and shall utilize a website and/or social media available to the Township and the Association and its members for construction updates and communications.

4. **OBLIGATIONS OF THE ASSOCIATION.**

4.1 **Obligation to Support, and Not Object to, the Proposed Development.** The Association hereby recognizes that the Concept Plan, Proposed Development and this Agreement are the product of several Court-ordered mediation sessions in the Declaratory Judgment Action, and that members of the Association's Board of Directors participated in those mediation sessions. The Association acknowledges that the Concept Plan, Proposed Development and this Agreement reflect the Association's input and are acceptable to the Association. The Association hereby agrees to support and endorse, and not object to, any application made by WEHI to the Planning Board or any other agency that is consistent with the Concept Plan and this Agreement.

5. **MUTUAL OBLIGATIONS.**

5.1 **Mutual Good Faith, Cooperation and Assistance.** The Parties shall exercise good faith, cooperate and assist each other in fulfilling the intent and purpose of this Agreement, including, but not limited to, the approval of this Agreement by the Superior Court, the site plan and/or subdivision approval for the Subject Property and the defense of any challenge with regard to any of the foregoing by any party or entity, including but not limited to Essex Fells, Verona, and individuals having an ownership interest in the Condominium.

5.2 **Need for Concept Plan Revisions.** It is WEHI's full intention to develop the Subject Property in accordance with the Concept Plan so that 496 total units are constructed pursuant to the general building layout on the Concept Plan. However, if, for any reason, the Proposed Development as contemplated by the Concept Plan cannot be built because WEHI is unable to obtain one or more governmental approvals from the NJDEP, County of Essex, the Planning Board or any other third-party, or that any such approvals would necessitate the development of less than 496 total units or the significant relocation of one or more structures as

set forth on the Concept Plan, the Parties recognize that the Subject Property shall remain in the Township's Mount Laurel compliance plan and that the Parties agree to cooperate in good faith to amend the Concept Plan so that the Parties agree upon an alternative concept for the Proposed Development to yield 496 units, 100 of which would be affordable units. If necessary, the Parties will utilize the Special Master in the Declaratory Judgment Litigation to mediate such negotiations regarding Concept Plan revisions. If any such revisions are necessary, the Parties shall in good faith work to address the spirit and intent of the Association's concerns as set forth in this Agreement, to the extent possible.

5.3. **Fairness Hearing.** The Parties acknowledge that the Superior Court will need to conduct a fairness hearing as to the fairness and reasonableness of this Agreement before approving same and the Court will presumably seek the input of the Special Master before making a decision.

5.4. **Pending Tax Appeals.** WEHI shall dismiss all pending tax appeals regarding the Subject Property without prejudice upon approval of this Agreement by the Court at a duly noticed fairness hearing. The without prejudice dismissal contemplated herein shall be accomplished by WEHI and the Township filing a Stipulation of Dismissal Without Prejudice, which stipulation shall include an agreement tolling the statute of limitations for any and all tax appeals regarding the Subject Property and providing that if any of the tax appeals need to be refiled by WEHI, the refiling of such appeals shall be deemed to have been filed in a timely manner. WEHI will dismiss any and all tax appeals regarding the Subject Property with prejudice after all building permits for the Proposed Development have been issued by the Township.

6.0 **MISCELLANEOUS PROVISIONS.**

6.1. **Effective Date of Agreement.** The terms set forth in this Agreement shall become effective upon approval thereof by the Court at a Fairness Hearing duly noticed in accordance with law.

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

6.3. **Successors Bound.** The provisions of this Agreement and the obligations and benefits hereunder shall be binding upon and inure to the benefit of the parties, their successors and assigns, including any person, corporation, partnership, or other legal entity which at any particular time may have an interest in any of the provisions which are the subject of this Agreement. The Parties acknowledge that the individual members of the Association are not bound by this Agreement.

6.4. **Governing Law.** This Agreement shall be governed by and construed by the laws of the State of New Jersey. Venue shall be exclusively in the Superior Court of New Jersey, Essex County, Law Division.

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

6.6. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be an original and all of which together shall constitute but one and the same Agreement.

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

6.8. **Preparation.** Each of the parties hereto acknowledges that this Agreement was not drafted by anyone of the parties, but was drafted, negotiated and reviewed by all parties and, therefore, the presumption of resolving ambiguities against the drafter shall not apply. Each of the parties expressly represents to the other that: (i) it has been represented by counsel in connection with negotiating the terms of this Agreement; and (ii) it has conferred due authority for execution of this Agreement upon the persons executing it.

6.9. **Exhibits.** Any and all exhibits annexed to this Agreement are hereby made a part of this Agreement.

6.10. **Entire Agreement.** This Agreement constitutes the entire Agreement between the parties hereto and supersedes all prior oral and written agreements between the parties with respect to the subject matter hereof, except as otherwise provided herein.

6.11. **Notices.** All notices required under this Agreement ("Notice(s)") shall be written and shall be served upon the respective parties by Certified Mail, Return Receipt Requested or by a recognized overnight or by a personal carrier. In addition, where feasible (for example, transmittals of less than 50 pages) Notices shall be served by email. All Notices shall be deemed received upon the date of delivery. Delivery shall be affected as follows:

To WEHI:
West Essex Highlands, Inc.
820 Morris Turnpike
Short Hills, NJ 07078
Attn.: Mark Hoffman
Email: markh@gardenhomes.com

With a copy to counsel for WEHI:
Bryan D. Plocker, Esq.
Hutt & Shimanowitz, P.C.
459 Amboy Avenue
Woodbridge, NJ 07095
Email: bplocker@huttshim.com

To the Township:
Township of West Orange
66 Main Street
West Orange, NJ 07052
Attn.: Township Administrator

With a copy to counsel for the Township:
Richard D. Trenk, Esq.
McManimon, Scotland & Baumann, LLC
75 Livingston Avenue
Roseland, NJ 07068
Email: rtrenk@msbnj.com

To the Association:
West Essex Highlands Condominium Association, Inc.
1 Reger Lane
West Orange, NJ 07052
Attn: President, Board of Directors

With a copy to counsel for the Association:
Kenneth R. Sauter, Esq.
Hill Wallack LLP
240 Cedar Knolls Road, Suite 209
Cedar Knolls, NJ 07927
Email: ksauter@hillwallack.com

IN WITNESS WHEREOF, WEHI, the Township and the Association have caused this Agreement to be properly executed, witnessed and/or attested this ____ day of _____, 2020.

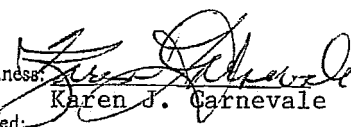
WEST ESSEX HIGHLANDS, INC.

Witness: _____

By _____

Dated: _____

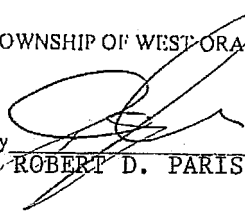
TOWNSHIP OF WEST ORANGE

Witness:  _____

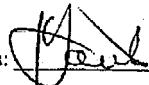
By

Dated: _____

Karen J. Carnevale

 ROBERT D. PARISI, MAYOR

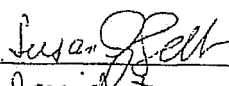
WEST ESSEX HIGHLANDS
CONDOMINIUM ASSOCIATION, INC.

Witness:  _____

By

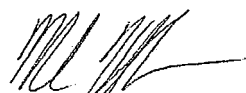
Dated: _____

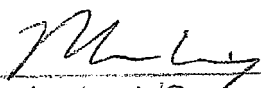
April 17, 2020

 President

IN WITNESS WHEREOF, WEHL, the Township and the Association have caused this Agreement to be properly executed, witnessed and/or attested this 23rd day of APRIL, 2020.

WEST ESSEX HIGHLANDS, INC.

Witness: 
Dated: Mark Hoffman
April 23, 2020

By 
Mark Wilf

TOWNSHIP OF WEST ORANGE

Witness: _____

By _____

Dated: _____

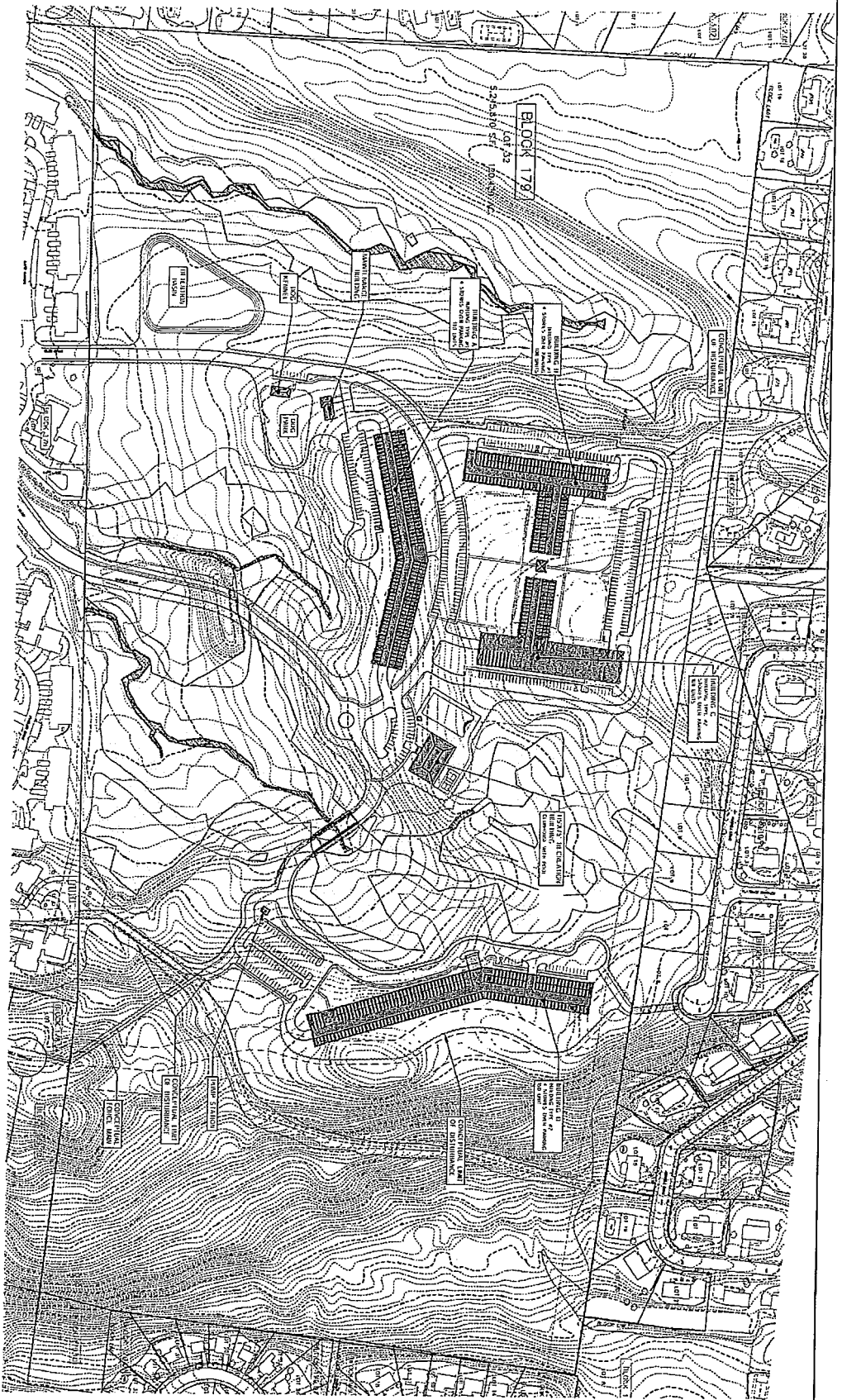
WEST ESSEX HIGHLANDS
CONDOMINIUM ASSOCIATION, INC.

Witness: _____

By _____

Dated: _____

EXHIBIT A
(Concept Plan)



DEVELOPMENT SUMMARY

EXISTING CONDITIONS		PROPOSED DEVELOPMENT	
Area	Value	Area	Value
Lot Area	1.00	Lot Area	1.00
Building Area	1.00	Building Area	1.00
Open Space	1.00	Open Space	1.00
Water	1.00	Water	1.00
Other	1.00	Other	1.00

PROPOSED DEVELOPMENT	
Area	Value
Lot Area	1.00
Building Area	1.00
Open Space	1.00
Water	1.00
Other	1.00

AREA OF DISTURBANCE = 26.17 ACRES ±22.2%

PROPOSED DEVELOPMENT	
Area	Value
Lot Area	1.00
Building Area	1.00
Open Space	1.00
Water	1.00
Other	1.00

- REMARKS:**
1. ALL DIMENSIONS ARE IN FEET AND DECIMALS THEREOF.
 2. THE PROPOSED DEVELOPMENT IS SUBJECT TO THE REVIEW AND APPROVAL OF THE ESSEX COUNTY BOARD OF PLANNING AND ZONING.
 3. THE PROPOSED DEVELOPMENT IS SUBJECT TO THE REVIEW AND APPROVAL OF THE ESSEX COUNTY BOARD OF PLANNING AND ZONING.

SHEET 1 OF 1

WEST ESSEX HIGHLANDS
BLOCK 179 LOT 32
TOWNSHIP OF WEST ORANGE
ESSEX COUNTY, NEW JERSEY
CONCEPT PLAN 16: 3/03/20

File No: 16-0001
 Date: 03/03/20
 Project: 16-0001
 Designer: ACS
 Checker: ACS
 Title: 16-0001

ACS
 Architectural Consulting Services, LLC
 400 N. 10th St.
 Essex, NJ 07025
 Tel: 973.975.0723
 Fax: 973.975.0723
 www.acs-nj.com

CERTIFICATE OF AUTHORIZATION
 PLANNING BOARD

PAUL W. ANDERSON
 N.J. PROFESSIONAL ENGINEER
 LIC. NO. 34412

EXHIBIT B
(Zoning Amendment)

**Township of West Orange
Draft Proposed Zoning Amendments
West Essex Highlands Property**

April 2020

ADD THE FOLLOWING NEW SECTION TO CHAPTER XXV LAND USE REGULATIONS:

25-19 IH-1 (INCLUSIONARY HOUSING) DISTRICT

a. Purpose

The purpose of the IH-1 District is to provide for inclusionary development that contributes to the region's fair share of affordable housing, in accordance with a court settlement agreement which outlines provisions for same.

b. Description of Zone Boundary

The zone boundary of the IH-1 District shall encompass the entirety of the property identified as Block 179 Lot 32, which shall hereafter be referred to as the "Tract." The zone boundary shall be coincident with the lot lines of Block 179, Lot 32. The municipal zone map is hereby amended to reflect same.

c. General Provisions

1. The development regulations set forth herein shall apply to the Tract as a whole, not to individual lots which may be created within the Tract.
2. The Tract shall be permitted to be subdivided into one or more lots, and one or more buildings or uses shall be permitted on a single lot.
3. The Tract shall be permitted to be constructed in one or more phases consistent with N.J.A.C 5:97-6.4 (d).
4. Any street within the Tract shall be permitted to be public or private.
5. Development of the Tract shall be exempt from all bulk, design, and environmental regulations of the West Orange Land Use Regulations Ordinance, unless otherwise indicated herein, and further provided that nothing herein shall circumvent or contravene the procedural requirements of the Municipal Land Use Law (N.J.S.A. 40:55D-1 et seq.) nor the regulatory requirements of outside agencies including but not limited to New Jersey Department of Environmental Protection and Hudson-Essex-Passaic Soil Conservation District.

d. Use Regulations

1. Permitted Principal Uses.

- (a) Multifamily residential
- (b) Open space

2. Permitted Accessory Uses

- (a) Residential amenities including but not limited to the following, by way of example: clubhouse buildings, swimming pools, fitness centers, lounges, common or private terraces and balconies, courts or open lawn areas for multipurpose use such as lawn games i.e. corn hole, bocce, badminton, croquet, and the like; work space or meeting space for tenants, tenant storage, dog parks and/or dog playgrounds. Rooftop amenities shall be permitted including observation areas or

rooms, multipurpose or recreation rooms, vestibules, outdoor terraces, pergolas, shade structures, or the like.

- (b) Pet-friendly amenities. As part of the amenity package, in addition to dog parks and/or playgrounds above, a development shall be permitted to include an onsite pet service that shall be permitted to offer walking services, pet-sitting services, a pet spa or grooming service, overnight boarding, or related services, which shall be permitted to operate indoors as part of a building and/or as a stand-alone building.
- (c) Residential accessory uses such as leasing and management offices, maintenance buildings, dwelling units for onsite building superintendents, and model units
- (d) Parking, which shall be permitted to be structured or surface, and further provided that tandem parking shall be permitted where such spaces are assigned to the same unit
- (e) Fences and walls
- (f) Signs
- (g) Any use that is customarily incidental to a permitted principal use

e. Bulk Regulations

- 1. The total number of dwelling units shall be 496, and the total number of units shall be permitted to be lowered without variance at the sole discretion of the developer and/or based on outside agency requirements. Model apartments and onsite housing for the building superintendent and maintenance/management staff shall not be included as part of the unit count.
- 2. The affordable housing set-aside shall be twenty percent (20%) of the total units actually constructed in the development (excluding model apartments and onsite housing for the building superintendent and maintenance/management staff).
- 3. There shall be no minimum lot size requirement.
- 4. The maximum area of disturbance for the entire Tract shall be 30 acres. Trails, deer fencing, and buffer planting shall not be counted as part of the area of disturbance.
- 5. Unrestricted site access (ingress and egress) shall be permitted from Warner Drive and Kuzik Drive.
- 6. Emergency access (ingress and egress) shall be permitted to Block 179.17, Lots 8 and 9 to the north and Bayowski Road to the south.
- 7. The affordable units shall consist of moderate-income, low-income, and very low-income units in accordance with the requirements of the settlement agreement. The minimum unit sizes for the affordable units shall be as follows:
 - (a) One-bedroom 650 square feet
 - (b) Two-bedroom 875 square feet
 - (c) Three-bedroom 1,150 square feet
- 8. The maximum building height shall be 75 feet, and further subject to the standards set forth below, which shall supersede any regulation to the contrary in the West Orange Land Use Regulations Ordinance:
 - (a) The building height shall be a vertical dimension measured in a straight line from first story finished floor elevation to the roof line elevation of a flat roof, or the midpoint elevation of a pitched roof.

- (b) The first story shall mean the lowest story that has its finished floor entirely above grade. Cellars and basements shall not be considered a first story.
 - (c) The building height shall not be measured based on the grading around the building.
9. The maximum number of stories per building shall be 4 stories, and further subject to the standards set forth below which shall supersede any regulation to the contrary in the West Orange Land Use Regulations:
- (a) Story shall mean the space of a building between the surface of a floor and any floor next above it, or if there be no floor above it, then the space between the floor and the ceiling above it, and as further refined below.
 - (b) Any level with a finished floor entirely below grade or partially below grade shall not be considered a story, such as cellars and basements, including walk-out basements and "garage-under" levels.
 - (c) Any level that contains 10 or more parking spaces shall not be considered a story.
 - (d) Mezzanines shall not be considered a story, provided the floor area of the mezzanine is no greater than 33 percent of the floor area below it.
 - (e) Lofts serving individual dwelling units as permitted by building code shall not be considered a story.
 - (f) Rooftop amenities and rooftop features shall not be considered a story or fractional portion thereof.
 - (g) Architectural roof design features such as attics, mansards, parapets, cupolas, and other similar architectural design features and/or appurtenances shall not be considered a story or fractional portion thereof.
10. The grading around buildings shall be subject to the following:
- (a) The maximum exposure of perimeter walls for basements, cellars, or building foundations shall not exceed 50% of the total surface area of such walls, which shall be based on the aggregate area of all perimeter walls, not each wall individually.
 - (b) Walkout basements and "garage under designs shall be permitted and shall be permitted to have one or more perimeter walls entirely exposed, and further provided that the 50% exposure threshold set forth above for all perimeter walls shall still apply.
11. The minimum buffer width around the entire Tract boundary shall be 100 feet. The buffer shall remain undisturbed except for roads and accessways, utilities and stormwater management improvements, signs, fences, walls, and associated grading.
12. The east face of the Watchung Mountain shall remain undisturbed from the peak of the ridgeline, except that utility construction shall be permitted east of the ridgeline
13. Any deviation from the above requirements shall be considered a "c" variance.
- f. Parking Regulations
1. Principal uses. The quantity and dimensions of off-street parking spaces shall be in accordance with the Residential Site Improvement Standards (RSIS). Any deviation shall be considered a de minimis exception from RSIS, not a variance. Tandem parking arrangements shall be permitted in accordance with the use regulations of this Chapter as set forth above. Automated or mechanical parking shall be permitted to meet the RSIS parking count requirement, and shall be exempt from RSIS parking stall size requirements, subject to review and approval of manufacturer's specifications.

2. Accessory uses. Accessory uses such as clubhouses or recreation areas shall be exempt from parking requirements.

g. Tree Removal and Replacement

The removal of trees shall be permitted, and the replacement of trees shall be in accordance with formula below. Any other regulation pertaining to tree removal and replacement in the Township of West Orange Code shall not apply to the Tract, and shall be superseded by the regulations set forth below, except where otherwise indicated herein.

1. Tree Baseline. The existing tree count on the Tract shall be established at 212 trees per acre.
2. Tree Baseline Loss.
 - (a) Tree Baseline Loss shall be established by multiplying the proposed number of acres disturbed by the existing 212 trees per acre on the Tract; by way of example, a proposed disturbance area of 25 acres shall calculated to a Tree Baseline Loss of 5,300 trees, which figure would increase or decrease based upon the final acreage disturbed).
 - (b) Tree Baseline Loss shall be reduced for each healthy major tree (greater than 6 inches) within the proposed area of disturbance that is not removed in connection with a proposed development
 - (c) Tree Baseline Loss shall be reduced for each non-invasive major tree or minor tree (as defined in the Township of West Orange Code) proposed as part of a landscape plan. The tree replacement calculation shall apply one credit for each such tree which is a native species and $\frac{1}{4}$ credit for each such tree which is not a native species.
 - (d) The Tree Baseline Loss shall be reduced by 212 trees for each acre of forest outside the area of disturbance enclosed by a controlled, gated access deer fence that is eight (8) feet in height, the purpose of which is to regenerate the growth of the native forest, and which deer fencing shall be maintained in perpetuity;
3. Adjusted Tree Baseline Loss.
 - (a) Adjusted Tree Baseline Loss shall be calculated as the Tree Baseline Loss after crediting.
 - (b) If the Adjusted Tree Baseline Loss calculates to zero (0), or less than zero, the developer shall have no further obligation regarding tree removal or replacement in connection with a proposed development.
 - (c) If the Adjusted Tree Baseline Loss calculates to a number greater than zero, then the development shall satisfy the requirements of the West Orange Tree Ordinance only with respect to the Adjusted Tree Baseline Loss.

h. Landscape Regulations

1. Street Trees. Street trees shall be provided in accordance with the West Orange Land Development Code.
2. Additional Trees. The developer shall plant new trees and landscaping along or near the southern border of the Tract for the purpose of supplementing the buffering of the nearest residential units to the south.
3. Any deviation from the regulations of this section shall be considered design exceptions, not variances, subject to the statutory criteria of N.J.S.A. 40:55D- 51 for relief.

i. Signage Regulations

1. Development Entrance Sign. One freestanding sign shall be permitted at the entrance to the development. The sign dimensions shall have a maximum width of 10 feet and a maximum height of 8 feet. The sign may be incorporated as part of a decorative element such as a wall or fence feature, and further provided that the decorative element shall not be included in the calculation of the sign area. The top of the sign, including any decorative element framing it, shall not exceed 10 feet above grade.
2. Identification Signage. Freestanding identification signs shall be permitted to demarcate individual buildings or sections within the development, not to exceed one such sign per building or section. The sign dimensions shall have a maximum width of 8 feet and a maximum height of 6 height, and the top of any such sign shall not exceed 8 feet above grade. This shall apply to accessory recreation or amenity uses as well, such as a clubhouse or pet service, which shall be permitted to have identification signage in accordance with the above.
3. Building Signage. One building sign shall be permitted at each building lobby and/or building entrance. The sign dimensions for each building sign shall have a maximum width of 8 feet and a maximum height of 6 feet.

**Township of West Orange
Draft Proposed Zoning Amendments
West Essex Highlands Property**

April 2020

ADD THE FOLLOWING NEW SECTION TO CHAPTER XXV LAND USE REGULATIONS:

25-19 IH-1 (INCLUSIONARY HOUSING) DISTRICT

a. Purpose

The purpose of the IH-1 District is to provide for inclusionary development that contributes to the region's fair share of affordable housing, in accordance with a court settlement agreement which outlines provisions for same.

b. Description of Zone Boundary

The zone boundary of the IH-1 District shall encompass the entirety of the property identified as Block 179 Lot 32, which shall hereafter be referred to as the "Tract." The zone boundary shall be coincident with the lot lines of Block 179, Lot 32. The municipal zone map is hereby amended to reflect same.

c. General Provisions

1. The development regulations set forth herein shall apply to the Tract as a whole, not to individual lots which may be created within the Tract.
2. The Tract shall be permitted to be subdivided into one or more lots, and one or more buildings or uses shall be permitted on a single lot.
3. The Tract shall be permitted to be constructed in one or more phases consistent with N.J.A.C 5:97-6.4 (d).
4. Any street within the Tract shall be permitted to be public or private.
5. Development of the Tract shall be exempt from all bulk, design, and environmental regulations of the West Orange Land Use Regulations Ordinance, unless otherwise indicated herein, and further provided that nothing herein shall circumvent or contravene the procedural requirements of the Municipal Land Use Law (N.J.S.A. 40:55D-1 et seq.) nor the regulatory requirements of outside agencies including but not limited to New Jersey Department of Environmental Protection and Hudson-Essex-Passaic Soil Conservation District.

d. Use Regulations

1. Permitted Principal Uses.

- (a) Multifamily residential
- (b) Open space

2. Permitted Accessory Uses

- (a) Residential amenities including but not limited to the following, by way of example: clubhouse buildings, swimming pools, fitness centers, lounges, common or private terraces and balconies, courts or open lawn areas for multipurpose use such as lawn games i.e. corn hole, bocce, badminton, croquet, and the like; work space or meeting space for tenants, tenant storage, dog parks and/or dog playgrounds. Rooftop amenities shall be permitted including observation areas or

rooms, multipurpose or recreation rooms, vestibules, outdoor terraces, pergolas, shade structures, or the like.

- (b) Pet-friendly amenities. As part of the amenity package, in addition to dog parks and/or playgrounds above, a development shall be permitted to include an onsite pet service that shall be permitted to offer walking services, pet-sitting services, a pet spa or grooming service, overnight boarding, or related services, which shall be permitted to operate indoors as part of a building and/or as a stand-alone building.
 - (c) Residential accessory uses such as leasing and management offices, maintenance buildings, dwelling units for onsite building superintendents, and model units
 - (d) Parking, which shall be permitted to be structured or surface, and further provided that tandem parking shall be permitted where such spaces are assigned to the same unit
 - (e) Fences and walls
 - (f) Signs
 - (g) Any use that is customarily incidental to a permitted principal use
- e. Bulk Regulations
- 1. The total number of dwelling units shall be 496, and the total number of units shall be permitted to be lowered without variance at the sole discretion of the developer and/or based on outside agency requirements. Model apartments and onsite housing for the building superintendent and maintenance/management staff shall not be included as part of the unit count.
 - 2. The affordable housing set-aside shall be twenty percent (20%) of the total units actually constructed in the development (excluding model apartments and onsite housing for the building superintendent and maintenance/management staff).
 - 3. There shall be no minimum lot size requirement.
 - 4. The maximum area of disturbance for the entire Tract shall be 30 acres. Trails, deer fencing, and buffer planting shall not be counted as part of the area of disturbance.
 - 5. Unrestricted site access (ingress and egress) shall be permitted from Warner Drive and Kuzik Drive.
 - 6. Emergency access (ingress and egress) shall be permitted to Block 179.17, Lots 8 and 9 to the north and Bayowski Road to the south.
 - 7. The affordable units shall consist of moderate-income, low-income, and very low-income units in accordance with the requirements of the settlement agreement. The minimum unit sizes for the affordable units shall be as follows:
 - (a) One-bedroom 650 square feet
 - (b) Two-bedroom 875 square feet
 - (c) Three-bedroom 1,150 square feet
 - 8. The maximum building height shall be 75 feet, and further subject to the standards set forth below, which shall supersede any regulation to the contrary in the West Orange Land Use Regulations Ordinance:
 - (a) The building height shall be a vertical dimension measured in a straight line from first story finished floor elevation to the roof line elevation of a flat roof, or the midpoint elevation of a pitched roof.

- (b) The first story shall mean the lowest story that has its finished floor entirely above grade. Cellars and basements shall not be considered a first story.
 - (c) The building height shall not be measured based on the grading around the building.
- 9. The maximum number of stories per building shall be 4 stories, and further subject to the standards set forth below which shall supersede any regulation to the contrary in the West Orange Land Use Regulations:
 - (a) Story shall mean the space of a building between the surface of a floor and any floor next above it, or if there be no floor above it, then the space between the floor and the ceiling above it, and as further refined below.
 - (b) Any level with a finished floor entirely below grade or partially below grade shall not be considered a story, such as cellars and basements, including walk-out basements and "garage-under" levels.
 - (c) Any level that contains 10 or more parking spaces shall not be considered a story.
 - (d) Mezzanines shall not be considered a story, provided the floor area of the mezzanine is no greater than 33 percent of the floor area below it.
 - (e) Lofts serving individual dwelling units as permitted by building code shall not be considered a story.
 - (f) Rooftop amenities and rooftop features shall not be considered a story or fractional portion thereof.
 - (g) Architectural roof design features such as attics, mansards, parapets, cupolas, and other similar architectural design features and/or appurtenances shall not be considered a story or fractional portion thereof.
- 10. The grading around buildings shall be subject to the following:
 - (a) The maximum exposure of perimeter walls for basements, cellars, or building foundations shall not exceed 50% of the total surface area of such walls, which shall be based on the aggregate area of all perimeter walls, not each wall individually.
 - (b) Walkout basements and "garage under designs shall be permitted and shall be permitted to have one or more perimeter walls entirely exposed, and further provided that the 50% exposure threshold set forth above for all perimeter walls shall still apply.
- 11. The minimum buffer width around the entire Tract boundary shall be 100 feet. The buffer shall remain undisturbed except for roads and accessways, utilities and stormwater management improvements, signs, fences, walls, and associated grading.
- 12. The east face of the Watchung Mountain shall remain undisturbed from the peak of the ridgeline, except that utility construction shall be permitted east of the ridgeline
- 13. Any deviation from the above requirements shall be considered a "c" variance.
- f. Parking Regulations
 - 1. Principal uses. The quantity and dimensions of off-street parking spaces shall be in accordance with the Residential Site Improvement Standards (RSIS). Any deviation shall be considered a de minimis exception from RSIS, not a variance. Tandem parking arrangements shall be permitted in accordance with the use regulations of this Chapter as set forth above. Automated or mechanical parking shall be permitted to meet the RSIS parking count requirement, and shall be exempt from RSIS parking stall size requirements, subject to review and approval of manufacturer's specifications.

2. Accessory uses. Accessory uses such as clubhouses or recreation areas shall be exempt from parking requirements.

g. Tree Removal and Replacement

The removal of trees shall be permitted, and the replacement of trees shall be in accordance with formula below. Any other regulation pertaining to tree removal and replacement in the Township of West Orange Code shall not apply to the Tract, and shall be superseded by the regulations set forth below, except where otherwise indicated herein.

1. Tree Baseline. The existing tree count on the Tract shall be established at 212 trees per acre.
2. Tree Baseline Loss.
 - (a) Tree Baseline Loss shall be established by multiplying the proposed number of acres disturbed by the existing 212 trees per acre on the Tract; by way of example, a proposed disturbance area of 25 acres shall calculated to a Tree Baseline Loss of 5,300 trees, which figure would increase or decrease based upon the final acreage disturbed).
 - (b) Tree Baseline Loss shall be reduced for each healthy major tree (greater than 6 inches) within the proposed area of disturbance that is not removed in connection with a proposed development
 - (c) Tree Baseline Loss shall be reduced for each non-invasive major tree or minor tree (as defined in the Township of West Orange Code) proposed as part of a landscape plan. The tree replacement calculation shall apply one credit for each such tree which is a native species and ¼ credit for each such tree which is not a native species.
 - (d) The Tree Baseline Loss shall be reduced by 212 trees for each acre of forest outside the area of disturbance enclosed by a controlled, gated access deer fence that is eight (8) feet in height, the purpose of which is to regenerate the growth of the native forest, and which deer fencing shall be maintained in perpetuity;
3. Adjusted Tree Baseline Loss.
 - (a) Adjusted Tree Baseline Loss shall be calculated as the Tree Baseline Loss after crediting.
 - (b) If the Adjusted Tree Baseline Loss calculates to zero (0), or less than zero, the developer shall have no further obligation regarding tree removal or replacement in connection with a proposed development.
 - (c) If the Adjusted Tree Baseline Loss calculates to a number greater than zero, then the development shall satisfy the requirements of the West Orange Tree Ordinance only with respect to the Adjusted Tree Baseline Loss.

h. Landscape Regulations

1. Street Trees. Street trees shall be provided in accordance with the West Orange Land Development Code.
2. Additional Trees. The developer shall plant new trees and landscaping along or near the southern border of the Tract for the purpose of supplementing the buffering of the nearest residential units to the south.
3. Any deviation from the regulations of this section shall be considered design exceptions, not variances, subject to the statutory criteria of N.J.S.A. 40:55D- 51 for relief.

i. Signage Regulations

1. Development Entrance Sign. One freestanding sign shall be permitted at the entrance to the development. The sign dimensions shall have a maximum width of 10 feet and a maximum height of 8 feet. The sign may be incorporated as part of a decorative element such as a wall or fence feature, and further provided that the decorative element shall not be included in the calculation of the sign area. The top of the sign, including any decorative element framing it, shall not exceed 10 feet above grade.
2. Identification Signage. Freestanding identification signs shall be permitted to demarcate individual buildings or sections within the development, not to exceed one such sign per building or section. The sign dimensions shall have a maximum width of 8 feet and a maximum height of 6 height, and the top of any such sign shall not exceed 8 feet above grade. This shall apply to accessory recreation or amenity uses as well, such as a clubhouse or pet service, which shall be permitted to have identification signage in accordance with the above.
3. Building Signage. One building sign shall be permitted at each building lobby and/or building entrance. The sign dimensions for each building sign shall have a maximum width of 8 feet and a maximum height of 6 feet.

EXHIBIT C
(Design Terms and Conditions)

EXHIBIT C

DESIGN TERMS AND CONDITIONS

WEHI shall implement the following design standards in constructing the Proposed Development:

1. General

- a. Reduce construction waste generation through separation of construction debris on site into separate containers for disposal or recycling. At a minimum, the following items will be separated for recycling:
 - i. Corrugated Cardboard
 - ii. Clean, untreated wood
 - iii. Scrap Metals
 - iv. Trees removed within the Limit of Disturbance ("LOD").
 - v. Soils if removed from site.
- b. Recycling: Design to accommodate recycling for tenants and to allow for the separation of solid waste from recyclable materials in accordance with the Township's recycling ordinance. Implement a continuous education program for recycling with new tenants, existing tenants, and guests.
 - i. Program to include:
 - 1. Posting of signage outlining the requirements of solid waste disposal.
 - 2. Posting of signage outlining the requirements of the West Orange Recycling Ordinance and program.
 - a. Signage subject to approval of the Township prior to installation.
- c. Cigarette Smoking Policy: Prohibition of smoking within 25 feet of all entries and prohibition of smoking within residential occupancies and all common areas.

2. Site & Landscaping:

- a. Implement a Tree Preservation and Replacement Plan in accordance with the following parameters:
 - i. The tree density equals 212 trees per acre, as per the Tree Study.
 - ii. The maximum LOD shall not exceed thirty (30) acres, as per the Zoning Amendment ("Maximum LOD"). No LOD beyond the Maximum LOD shall be permitted under any circumstances.
 - iii. If the Maximum LOD is achieved, the maximum tree loss will be 6,360 trees (212 trees multiplied by 30 acres) ("Maximum Permitted Tree Loss").
 - iv. If less than the Maximum LOD is achieved ("Actual LOD"), then the actual tree loss ("Actual Tree Loss") will be calculated by multiplying 212 trees by the Actual LOD (for example, if only 25.5 acres are disturbed, then the Actual Tree Loss will be 5,406 trees).
 - v. WEHI will engage in tree planting and forest regeneration in accordance with the following activities, which are designed to provide credits against the Actual Tree Loss resulting in a net gain of trees planted and forest area

protected for regeneration so that the Actual Tree Loss is reduced to less than zero:

1. Credit for each healthy major tree (Greater than 6" diameter) within the LOD that is protected in accordance with standard tree protection procedures during development and not removed as determined by the Township Forester.
2. Credit for each tree planted as the result of an approved landscape plan in accordance with the definition of Major (Greater than 6" Diameter Breast Height) and Minor (Less than 6" Diameter Breast Height) trees. Require that trees be native species for full credit. Prohibit invasive species as defined by the New Jersey Department of Environmental Protection, or another approved source. Provide $\frac{1}{4}$ credit for each tree planted that is a non-native species and is non-invasive.
3. WEHI shall install thirty (30) acres of gated access deer fencing that is eight (8) feet in height in areas of the Subject Property outside of the LOD. Fenced area will be prioritized for location between the LOD and the West Essex Highlands Condominium Association (the "Association") to maximize regrowth and to maximize native understory growth to intercept runoff. WEHI shall receive a credit against the Actual Tree Loss in an amount of 212 trees for each acre of deer fencing installed. If WEHI fulfills its obligation and installs the thirty (30) acres of deer fencing contemplated herein, then WEHI shall receive a credit against the Actual Tree Loss in the amount of 6,360 trees.
 - a. Deer fencing will be maintained in perpetuity.
4. It is the parties' intent that the installation of thirty (30) acres of deer fencing alone will reduce the Actual Tree Loss to zero or less than zero. However, should the above items, including the deer fencing, fail to reduce the Actual Tree Loss to zero or less than zero, tree planting can be offered for other locations within the Township with priority to locations within the Association where trees are needed as designated by the Township Forester.
5. If WEHI complies with the procedure set forth in this Site & Landscaping section, then WEHI shall have no further obligation regarding the removal or replacement of trees in connection with the construction of the Proposed Development, including but not limited to any replacement of trees or payment of fees which may otherwise be required by the Township's Tree Protection and Removal Ordinance (Ordinance § 25-7) (the "Tree Ordinance"). The procedure set forth herein, if followed, shall serve as a substitute for the Tree Ordinance with respect to the Subject Property.
6. Nothing herein shall supplement: (1) the need for a landscape plan in connection with the Proposed Development to be considered and approved by the Planning Board in accordance with MLUL;

and (2) WEHI's obligation to install landscaping and/or buffering on or near the property owned by the Association, pursuant to WEHI's agreement with the Association and in cooperation with the Association.

3. Building & Site Utilities:

- a. Implement underground utilities where site conditions allow.
- b. Conceal and/or screen exposed utility structures such as transformers.
- c. Install individual metering or submeters as appropriate for water, gas and electric utilities.
- d. Prewire all units for hi-speed internet.

4. Building: Energy Efficiency and Green Initiatives:

- a. Implement education of tenants in the reduction of energy, water consumption, and environmental beneficial operations.
- b. Appliances: Utilize only Energy Star appliances in all apartments.
 - i. Do not install any unvented combustion appliances (ovens and ranges excluded).
- c. HVAC Equipment shall meet the following minimum efficiency standards:
 - i. Furnaces shall be Energy Star Rated or have an AFUE of 95% or better.
 - ii. Air conditioning systems shall be Energy Star Rated or have a minimum SEER of 15 and a 12.5 EER for split systems.
 - 1. Package systems shall have a minimum SEER of 15 and an EER of 12.
- iii. Domestic Hot Water heaters shall be Energy Star Rated or meet the following minimum energy efficiency standard:
 - 1. ≤ 55 gallon shall have an energy factor of 0.67 or better.
- iv. WEHI may apply to the Environmental Compliance Officer for a hardship waiver on the installation of HVAC equipment meeting the standards outlined herein. Approval of such an application shall not be unreasonably withheld. The minimum requirements for such an application shall include the following information:
 - 1. Proof that WEHI has applied to the New Jersey Office of Clean Energy for an energy rebate package on both HVAC and Hot Water systems. A complete copy of the application shall be submitted for review.
 - a. The full value of any rebates shall be clearly marked.
 - 2. Evidence that the inclusion of the systems substantially interferes with the structural design of the building.
 - 3. Financial documentation that the cost of the systems exceeds the cost of any potential rebates offered by any government agency requiring that WEHI expend a sum greater than two (2) times the cost of a system of lower energy standard.

- v. The Environmental Compliance Officer shall review the application and respond within ten (10) days of receipt of all required information.
- vi. WEHI may appeal a negative decision to the Township Council for reconsideration.
- d. Utilize energy efficient double pane, low-e glazing on windows and patio doors throughout the development with the following minimum performance standards:
 - i. Windows will have a minimum National Fenestration Rating Council (NFRC) performance standard of:
 - 1. U Factor $\leq .30$
 - 2. SHGC $\geq .40$
 - a. Window selection may be modified based on the orientation of the residential units. Windows facing East/South and West must meet both criteria. Windows facing North may waive the SHGC standard but must meet the U factor standard.
 - ii. Patio or glass doors of any type leading from residential units to balconies or patios will have minimum National Fenestration Rating Council (NFRC) performance standard of:
 - 1. U Factor $\leq .30$
 - 2. SHGC $\geq .40$
 - a. Door selection may be modified based on the orientation of the residential units. Windows facing East/South and West must meet both criteria. Windows facing North may waive the SHGC standard but must meet the U factor standard.
- e. Utilize Energy Star or DLC approved LED lighting throughout interior and exterior. For common area exterior site lighting, provide Dark Sky Qualified lighting and incorporate one or more of the following:
 - i. Motion sensor controls
 - ii. Integrative photovoltaic cells.
 - iii. Photosensors
 - iv. Astronomic time-clock operation
- f. Renewable energy: Design structures to allow for future incorporation of solar panels.
- g. Each lavatory faucet will have a maximum flow rate of 1.5 gallons per minute.
- h. Each toilet shall utilize no more than 1.28 gallons per flush.
- i. Each showerhead will have a maximum flow rate of 2.0 gallons per minute.
- j. Covered Parking Areas: Reduce tenant exposure to indoor pollutants from covered parking through the use of tightly sealed building envelope and natural or mechanical ventilation of enclosed parking areas per the building code standards.
 - i. At a minimum, all conditioned spaces above the garage shall have all penetrations and all connecting floor and ceiling joist bays sealed.
 - ii. Electric Vehicle Charging Stations: Install electric vehicle charging stations at each building (within underground parking area) and make provisions for additional future charging stations through installation of conduit.

- k. Bathrooms and Kitchens to be individually ventilated to minimize excess moisture and odors in each dwelling unit.
 - l. Duct work to be protected during construction to avoid contamination.
 - m. Install permanent walk-off mats designed to allow for cleaning at each common exterior entryway.
 - n. In the interior of the units, use as many building components as possible based on availability, timing and cost ("cost" is defined as cost neutral for the specific product) that meet one or more of the following criteria subject to Paragraph (o) below:
 - i. Green Seal
 - ii. Cradle to Cradle
 - iii. California Department of Public Health Standard Method V1.1-2010 or equivalent
 - iv. UL Greenguard or UL Ecologo.
 - v. Green Squared
 - vi. SCS Global Services
 - vii. Declare Living Future Institute
 - viii. Forest Stewardship Council (FSC)
 - ix. Product contains at least 25% post-consumer and 50% pre-consumer material.
 - x. Product preference will be given to manufacturers who participate in an Extended Producer Responsibility Program.
 - o. The use of one or more of the standards outlined in Paragraph (n) above must apply to all interior paints and coatings, adhesives, and sealants.
5. Building: Safety and Appearance
- a. Building will be equipped with fire sprinklers throughout.
 - b. Exterior façade materials and claddings will be selected to be low-maintenance or maintenance-free to provide a lasting quality and appearance.
 - c. Install carbon monoxide detectors in each unit.
 - d. Covered parking to be provided for at least 40% of required stalls. Handicap parking stalls to be distributed in both covered parking lots and open surface lots.
 - e. All common areas and dwelling units to be designed to meet or exceed accessibility standards prescribed by N.J.A.C. 5:97-3.14 and the Fair Housing Act.
 - f. Tenant amenities to be provided for both active and passive recreation. Among tenant amenity spaces will be interior mail room(s) and parcel package locker(s).
6. Records will be provided to verify each item outlined in this exhibit as requested by the Township of West Orange. Acceptable records will include:
- a. Receipts for products and materials.(Must be provided for all products. Pricing may be redacted).
 - b. Product Labels.
 - c. Product Extended Producer Responsibility Reports.
 - d. Third Party standard descriptions for the specific Product.

EXHIBIT D

(Association Terms and Conditions)

EXHIBIT D

(Items Agreed to By WEHI With Respect to the Association in Connection With the Proposed Development)

1. 496 residential upscale/luxury apartment units, 20% of which shall be low and moderate income housing units;
2. Building layout as set forth in the Concept Plan, subject to paragraph 5.2 of the Settlement Agreement;
3. Buildings of Proposed Development to have a minimum 100-foot setback from Association property;
4. To the extent possible, WEHI to minimize disturbance of 100-foot buffer for installation of utilities;
5. Berms with nondeciduous trees to be constructed and installed, similar to the Vizcaya project berms; to be determined by a joint, site specific inspections. The Association has the right to review landscape plans and installations WEHI's landscape architect, upon request. Temporary irrigation shall be provided on berms for initial tree growth. [Notwithstanding, based on the increased building setbacks and woodlands preservation, the parties recognize that such berms may not be necessary and/or desirable as adequate year-round buffer/screening may be provided. Therefore, the parties agree to consider omission of berms based on the extent of, for instance, preserved woodlands, undisturbed areas, setbacks, and elevations and agree to review these issues following the balloon test described in No. 31 below.]
6. Proposed Development to have amenities such as a pool/clubhouse, open space, features related to open space, i.e. walking trails, playground, etc., and other amenities related to the operation of an apartment complex. The amenities within the Development, excluding the dog/cat daycare and boarding facility identified in paragraph 33 below, shall not be open to the general public. Residents of the Association shall have the right to utilize any walking trails. Points of access to any such trails shall be provided at areas mutually agreeable to the parties, but shall not promote the parking of vehicles at such access points. (For instance, parking areas shall not be constructed without Association approval.);
7. The main public access to the Subject Property shall be via Warner Road and Kuzik Drive, as set forth in the Concept Plan, because same is likely required by New Jersey's Residential Site Improvement Standards ("RSIS"). However, if RSIS permits the closure of Kuzik Drive, then Kuzik Drive shall be designated for emergency access only. If RSIS requires Kuzik Drive to remain open, WEHI shall seek a waiver from RSIS requirements before the Planning Board in connection with WEHI's application for the Proposed Development. If the request for a waiver is denied, then Kuzik Drive shall serve as a secondary access point along with Warner Road. If Kuzik Drive remains open, WEHI shall employ traffic calming measures (i.e., speed bumps, humps and/or tables) intended

- to route as much traffic as possible onto Warner Road, to the extent permitted by RSIS (to be discussed and designed as the construction of the Proposed Development progresses);
8. Bayowski Drive shall remain a cul-de-sac, but may provide emergency access to the Subject Property;
 9. Emergency access to the Subject Property shall be via Howell Drive and Bayowski Drive, to the extent required by the Township and/or Planning Board. If permitted by RSIS or if WEHI obtains a waiver (see No. 6, above), then Kuzik Drive shall also serve as emergency access to the Subject Property. All emergency access points shall include physical barriers to deter and prevent non-emergency access;
 10. WEHI to install speed bumps/traffic calming devices and/or signage on Association lands where necessary (to be discussed and designed as the construction of the Proposed Development progresses);
 11. WEHI to install landscaping, buffering and speed calming measures/devices along Warner Road and Kuzik Drive within Association lands in connection with transforming Warner Road into a "boulevard" (to be discussed and designed as the construction of the Proposed Development progresses);
 12. The construction of the Proposed Development will not result in any loss of parking on Association lands;
 13. Before the commencement of construction of the Proposed Development, and within thirty (30) days following nonappealable site plan and related municipal land use approvals for the Proposed Development, WEHI will pave the portion of Oval Road from Oval Road's intersection with Eagle Rock Avenue to Oval Road's intersection with Warner Road;
 14. Contemporaneously with the commencement of the paving of the first portion of the final course of roadway paving within the Proposed Development, WEHI shall restore and repave the following Association roads (the "Shared Roads"): Oval Road from Eagle Rock Avenue to Warner Road; Warner Road; Kuzik Drive; Reger Lane; a portion of Lapis Circle (southeast quadrant connecting Reger Lane to the northeast segment of Lapis Circle and continuing to its intersection with Kuzik Drive) and Bayowski Drive;
 15. Warner Road shall be the only road utilized by WEHI in connection with the construction of the Proposed Development. WEHI shall in good faith limit construction traffic and employ dust control/street cleaning measures, as necessary. WEHI shall not permit construction deliveries on Saturday, Sunday or holidays. No construction parking/idling shall take place within or near Association property;
 16. WEHI shall provide the Association with at least 2-weeks' notice of any road closures or utility interruption;

17. During construction of the Proposed Development, WEHI shall ensure access to and passage along Warner Road and Oval Road, and Warner Road and Oval Road shall be kept in good repair, i.e. fixing of potholes, etc.;
18. At the commencement of construction of the Proposed Development, WEHI and the Association shall divide the cost for the maintenance of Warner Road and the portion of Oval Road from Eagle Rock Avenue to its intersection with Warner Road, and any other common costs incurred by the Association in accordance with the ratio of 496 (WEHI): 300 (Association). As used in this Agreement, maintenance with respect to the Shared Roads shall mean and include, by way of example and not limitation, services, maintenance, repair, improvement and replacement with respect to the following: snow, ice, leaf and debris removal; catch basin and stormwater cleanout and repair; curb repair; paving; crack filling; traffic calming devices; sealcoating; line striping; and lawn, irrigation and landscaping services of the boulevards and island areas. The Association shall not be responsible for any roads or other improvements within or installed in connection with the Proposed Development, unless otherwise expressly agreed by the parties;
19. At the commencement of Construction, WEHI and the Association shall divide the cost of snow removal for Bayowski Drive and Kuzik Drive;
20. WEHI will support any effort by the Association to have Oval Road dedicated to the Township of West Orange;
21. WEHI will obtain approval for and install a traffic signal at the intersection of Oval Road and Eagle Rock Avenue;
22. WEHI will agree to install a bus shelter on the eastbound side of Eagle Rock Avenue at the entrance to Oval Road, to the extent WEHI is permitted to do so by the Township of West Orange and/or the County of Essex under conditions reasonable to WEHI;
23. WEHI does not intend to utilize the Association's sewerage pump station in connection with the Proposed Development. However, if engineering concerns and/or the Township require the use of the Association's pump station, WEHI shall, at its own cost, upgrade the pump station so that sewer services to the Association will not be adversely affected by the Proposed Development. In that event, WEHI shall enter into an agreement pursuant to which WEHI will split the cost/maintenance for the pump station on a 300:496 ratio. If WEHI needs to utilize the pump station, no upgrades to the pump station may be performed until WEHI and Association enter into a separate agreement regarding the use of and upgrades to the pump station, which the parties will negotiate in good faith;
24. WEHI will install a guardhouse with a gate, subject to approval by the Planning Board of the Township of West Orange, to be utilized by the Association and the Proposed Development.

WEHI recognizes that the Association's preference is to have the guardhouse located on Oval Road southeast of Oval Road's intersection with Bongart Drive. However, WEHI and the Association recognize the existence of a Declaration of Easement and Right of Way Agreement dated January 19, 1988 (the "Easement") recorded with the Essex County Clerk in Deed Book 5012, Page 571 between WEHI (predecessor in interest to the lands owned by the Association), Essex Fells Country Club, and Allied Signal, Inc., which Easement is binding upon the Association. Notification of the Easement was contained in the Public Offering Statement for the Association's condominium. Although it is not clear from the Easement as to which party or parties hold a fee simple ownership interest in Oval Road, or any portion thereof, the Easement generally provides that each party to the Easement grants to the other parties to the Easement "a permanent easement for reasonable ingress and egress on and across" all of Oval Road from Oval Road's intersection with Eagle Rock Avenue to the border of the Township of Essex Fells. The parties recognize that it is possible that all of Oval Road is not owned by the Association. The parties further recognize that Essex Fells and West Orange also have emergency access rights over a portion of Oval Road.

Notwithstanding the Easement, WEHI will attempt to obtain all necessary land use approvals for the installation of the guardhouse on Oval Road southeast of Oval Road's intersection with Bongart Drive, the Association's preferred location. However, if after reasonable due diligence, WEHI determines in good faith that the Easement or any other legal impediment will prevent the installation of the guardhouse on Oval Road, WEHI will notify the Association of any such impediment and meet with the Association in good faith to decide upon an alternate, mutually-agreeable location for the guardhouse, including but not limited to Warner Road (which could necessitate the installation of a gate on Bongart Drive at its intersection with Oval Road or the conversion of Bongart Drive into a cul-de-sac so as to prevent access from Oval Road via Bongart Drive).

The installation of the guardhouse, no matter where the ultimate location, shall be subject to a site plan application to the Planning Board filed by WEHI with the consent of the Association. At WEHI's sole discretion, WEHI may choose to have the guardhouse included on its site plan application for the Proposed Development or in a separate, contemporaneously-filed application only concerning the guardhouse.

25. WEHI shall have the Association and the Association's management company named as additional insureds on WEHI's Comprehensive General Liability insurance policy and on the CGL policies of any subcontractors;
26. WEHI will indemnify the Association and the Association's management company for any damage to Association property resulting from construction related activities;
27. The construction of the Proposed Development will have no negative impact on the Association's utilities, including electricity and water pressure;

28. WEHI and the Association will enter into an agreement for the monthly payment by WEHI of its portion (496/796) of shared costs for maintenance of all Shared Roads and the guardhouse as of the date set forth in No. 18, above;
29. WEHI will consult the Association, and any professionals retained by the Association, during the engineering phase of the Proposed Development, as necessary, and WEHI will simultaneously submit a complete copy of any Planning Board and any other development application and related submissions (including traffic reports and drainage reports) to the Association;
30. WEHI will abide by any regulations or ordinance regarding blasting activities on the Subject Property. WEHI agrees to provide not less than three-days' notice for any blasting activities, which shall only take place between the hours of 10 a.m. and 2 p.m.;
31. WEHI will perform a balloon test on the Subject Property to demonstrate the height of the buildings of the Proposed Development. (NOTE: This test may have been performed prior to the execution of this Agreement.);
32. WEHI shall keep the Association fully and contemporaneously informed regarding construction activities on the Subject Property and shall utilize a website and/or social media available to the Association and its members for construction updates and communications; and
33. The Association agrees that WEHI may create and maintain an area on the Subject Property for a well-supervised dog/cat daycare and boarding facility, which amenity will be available to members of the Association, residents of the Proposed Development and members of the general public. There will be no cost to the Association for the construction of this facility. If individual members of the Association want to utilize the facility, they will do so at their own cost.



TOWNSHIP OF WEST ORANGE

66 Main Street, West Orange, NJ 07052

PLANNING AND DEVELOPMENT

FEB 10 2005

JOHN F. McKEON
Mayor

Tel: (973) 325-4110
Fax: (973) 325-6359

SUSAN BORG A.I.A.
Planning Director

February 7, 2005

Ronald Schimanowitz, Esq.
459 Amboy Avenue
Woodbridge, NJ 07095

RE: ZB-04-23/Jayber Tract
Block: 166; Lot: 7.02 & 8; Zone: R-5
Northfield Avenue
Seeking preliminary and final major subdivision for 15 single-family lots.

Dear Mr. Schimanowitz:

Enclosed is a copy of the resolution adopted at the February 2, 2005 Planning Board Meeting for the above-referenced property.

In addition, an Affidavit of Compliance as referenced in the resolution is enclosed. Please complete and submit this document after completing all conditions in the resolution.

Please note that eight sets of final site plans and architectural with signature blocks must be submitted to the Planning Department and signed by the Township Engineer, Board Chairman and Board Secretary, prior to the issuance of building permits.

If I may be of further assistance, please contact me at (973) 325-4108.

Sincerely,

Nora Myers
Planning Department

Enclosures

CC: Russel DeSantis, Construction Official

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NORDAN REALTY/JAYBER TRACT

RESOLUTION OF THE PLANNING BOARD OF THE
TOWNSHIP OF WEST ORANGE

*Granting preliminary and final major subdivision approval
for 16 single-family lots.*

WHEREAS, the Planning Board of the Township of West Orange, at meetings held on December 1, 2004 and January 5, 2005, considered the application for preliminary and final major subdivision approval and preliminary site plan approval without variances for 16 single-family lots on property located in the R-5 Zone, identified as Block 166, Lots 7.02 and 8, which was submitted by Nordan Realty Corporation (the "Applicant"), through its attorney, Ronald Shimanowitz, Esq.; and

WHEREAS, the Planning Board considered the presentation of Ronald Shimanowitz, Esq., attorney for the Applicant; and heard and considered the testimony of the Applicant's Director of Development, Mark Hoffman, and heard and considered the testimony of the Applicant's professional planner/landscape architect, John McDonough, licensed in New Jersey as a professional planner/professional architect, and qualified in both capacities by the Board; and heard and considered the

testimony of the Applicant's engineer, Madeline Wasilas,
licensed in New Jersey as a professional engineer, and
qualified by the Board in that capacity, and considered
the proposed subdivision plans dated May 28, 2004, June 30,
2004, and July 9, 2004, all revised as December 2004, as
well as questions and comments from Board members, the
Board Experts, the Public Advocate, and the public as
shall appear in the Board's minutes for the meetings of
December 1, 2004 and January 5, 2005; and

WHEREAS, a complete application has been filed, all
fees required by Ordinance have been paid and it otherwise
appears that the jurisdiction and powers of the Planning
Board have been properly invoked and exercised; and the
Board having conducted a vote on this application on
January 5, 2005; and

WHEREAS, the Applicant requested preliminary and final
major subdivision approval without variances for 16 single-
family lots;

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

1. This is an application for preliminary and
final major subdivision approval without variances for
16 single-family lots.

2. The Board reviewed the proposed subdivision
~~plan submitted to the Board and revised as of~~
December, 2004.

3. The Board has recommended and the Applicant
has agreed to the following additional conditions of
approval:

(1) This property shall contain a deed
restriction to the effect 175 foot wide natural
woodland and wetlands conservation buffer zone be
maintained along the entire western border of the
tract. This area shall remain as open space to be
conserved as natural woodlands and/or wetlands in
perpetuity

(2) The Applicant shall resurface the
existing dirt access road; the resurfacing material
shall be compacted stone dirt.

(3) Subject to the Landowner's approval,
the Applicant shall provide and pay for new water and
sanitary sewer lines and connections to the home
located at 777 Northfield Avenue.

(4) The Applicant shall place "No Parking"
signs on one side of the new road.

(5) The Applicant's engineer shall meet
with the Township's engineer and a representative from

the adjoining property at 769 Northfield Avenue to review storm water plans to deal with any runoff onto the property at 769 Northfield Avenue.

(6) The Applicant shall meet with the Township fire sub-code official to insure that there is adequate ingress and egress for fire trucks to the property located on Lot 9.

(7) The Applicant shall pay off tract sanitary sewer fee at a rate consistent with other developers.

(8) Soil erosion and sediment control certification, if necessary, will be obtained from the H-E-P Soil Conservation District;

(9) All landscaping shall be planted in accordance with the approved landscape plan and shall be maintained in healthy and vigorous condition; all plants, shrubs, and trees that die shall be replaced with landscape materials of equal or better quality;

(10) All findings of fact and conclusions of law set forth herein are deemed conditions that are binding on the Applicant;

(11) Before a Temporary or Final Certificate of Occupancy/Approval can be issued, the Applicant shall submit proof to the West Orange Director of

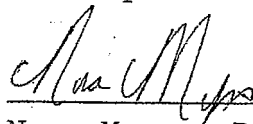
Planning that all real estate taxes are paid and current; and

(12) Before a Temporary or Final Certification of Occupancy/Approval can be issued, the Applicant shall execute and submit to the West Orange Director of Planning, an Affidavit of Compliance certifying that all conditions of approval agreed to by the Applicant and set forth herein have been fulfilled and satisfied.

(13) The Applicant agrees to pay \$1000.00 to digitize the entire application documentation.

NOW, THEREFORE, BE IT RESOLVED that this application for preliminary and final major subdivision approval and preliminary site plan approval without variances for 16 single-family lots is approved, subject to the additional conditions set forth in this resolution.

The foregoing is a true copy of the resolution adopted by the Planning Board of the Township of West Orange.



Nora Myers, Board Secretary
Planning Board of the
Township of West Orange

Dated: February 2, 2005



TOWNSHIP OF WEST ORANGE

66 Main Street, West Orange, New Jersey 07052

PLANNING AND DEVELOPMENT

John F. McKeon
Mayor

MAY - 9 2005

SUSAN BORG A.I.A.
Planning Director

Tel: 973-325-4110
Fax: 973-325-6369

May 5, 2005

Ronald Schimanowitz, Esq.
459 Amboy Avenue
Woodbridge, NJ 07095

RE: PB-04-23/Jayber Tract
Block: 166; Lot: 7.02 & 8; Zone: R-5
Northfield Avenue
Seeking preliminary and final major subdivision for 16 single-family lots.

Dear Mr. Schimanowitz:

Enclosed is a copy of the resolution adopted at the May 4, 2005 Planning Board Meeting for the above-referenced property.

In addition, an Affidavit of Compliance as referenced in the resolution is enclosed. Please complete and submit this document after completing all conditions in the resolution.

Please note that eight sets of final site plans and architectural with signature blocks must be submitted to the Planning Department and signed by the Township Engineer, Board Chairman and Board Secretary, prior to the issuance of building permits.

If I may be of further assistance, please contact me at (973) 325-4108.

Sincerely,

Nora Myers
Planning Department

Enclosures

CC: Russel DeSantis, Construction Official

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~~NORDAN REALTY/JAYBER TRACT~~

RESOLUTION OF THE PLANNING BOARD OF THE
TOWNSHIP OF WEST ORANGE

Granting preliminary and final major subdivision approval for 16 single-family lots.

WHEREAS, the Planning Board of the Township of West Orange, at meetings held on December 1, 2004 and January 5, 2005, considered the application for preliminary and final major subdivision approval and preliminary site plan approval without variances for 16 single-family lots on property located in the R-5 Zone, identified as Block 166, Lots 7.02 and 8, which was submitted by Nordan Realty Corporation (the "Applicant"), through its attorney, Ronald Shimanowitz, Esq.; and

WHEREAS, the Planning Board considered the presentation of Ronald Shimanowitz, Esq., attorney for the Applicant; and heard and considered the testimony of the Applicant's Director of Development, Mark Hoffman, and heard and considered the testimony of the Applicant's professional planner/landscape architect, John McDonough, licensed in New Jersey as a professional planner/professional architect, and qualified in both capacities by the Board; and heard and considered the testimony of the Applicant's engineer, Madeline Wasilas, licensed in New Jersey as a professional engineer, and qualified

by the Board in that capacity, and considered the proposed subdivision plans dated May 28, 2004, June 30, 2004, and July 9, 2004, all revised as December 2004, as well as questions and comments from Board members, the Board Experts, the Public Advocate, and the public as shall appear in the Board's minutes for the meetings of December 1, 2004 and January 5, 2005; and

WHEREAS, a complete application has been filed, all fees required by Ordinance have been paid and it otherwise appears that the jurisdiction and powers of the Planning Board have been properly invoked and exercised; and the Board having conducted a vote on this application on January 5, 2005; and

WHEREAS, the Applicant requested preliminary and final major subdivision approval without variances for 16 single-family lots;

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

1. This is an application for preliminary and final major subdivision approval without variances for 16 single-family lots.

2. The Board reviewed the proposed subdivision plan submitted to the Board and revised as of December, 2004.

3. The Board has recommended and the Applicant has agreed to the following additional conditions of approval:

(1) This property shall contain a deed restriction to the effect 150 foot wide natural woodland and wetlands conservation buffer zone be maintained along the entire western border of the tract. This area shall remain as open space to be conserved as natural woodlands and/or wetlands in perpetuity

(2) The Applicant shall resurface the existing dirt access road; the resurfacing material shall be compacted stone dirt.

(3) The Applicant shall provide and install new water and sanitary sewer lines to the home located at 777 Northfield Avenue.

(4) The Applicant shall place "No Parking" signs on one side of the new road.

(5) The Applicant's engineer shall meet with the Township's engineer and a representative from the adjoining property at 769 Northfield Avenue to review storm water plans to deal with any runoff onto the property at 769 Northfield Avenue.

(5A) The Applicant shall stabilize the roadway and repair, where needed, the Belgium Block curbing along the roadway and the Profeta property, 769 Northfield Avenue, which shall be done to the satisfaction of the Township Engineer. In order to accomplish this the

Applicant agrees to meet with a Profeta representative and

~~the Township Engineer to discuss the specifics of the work~~

to be done.

(6) The Applicant shall meet with the Township fire sub-code official to insure that there is adequate ingress and egress for fire trucks to the property located on Lot 9.

(7) The Applicant shall pay off tract sanitary sewer fee at a rate consistent with other developers.

(8) Soil erosion and sediment control certification, if necessary, will be obtained from the H-E-P Soil Conservation District;

(9) All landscaping shall be planted in accordance with the approved landscape plan and shall be maintained in healthy and vigorous condition; all plants, shrubs, and trees that die shall be replaced with landscape materials of equal or better quality;

(10) All findings of fact and conclusions of law set forth herein are deemed conditions that are binding on the Applicant;

(11) Before a Temporary or Final Certificate of Occupancy/Approval can be issued, the Applicant shall submit proof to the West Orange Director of Planning that all real estate taxes are paid and current; and

(12) Before a Temporary or Final Certification of
~~Occupancy/Approval can be issued, the Applicant shall~~
execute and submit to the West Orange Director of Planning,
an Affidavit of Compliance certifying that all conditions
of approval agreed to by the Applicant and set forth herein
have been fulfilled and satisfied.

NOW, THEREFORE, BE IT RESOLVED that this application for
preliminary and final major subdivision approval and preliminary
site plan approval without variances for 16 single-family lots
is approved, subject to the additional conditions set forth in
this resolution.

The foregoing is a true copy of the resolution
adopted by the Planning Board of the Township of West Orange.

Lori Pfeiffer

Board Secretary
Planning Board of the Township
of West Orange

Dated: May 5, 2005



TOWNSHIP OF WEST ORANGE

66 Main Street, West Orange, New Jersey 07052

PLANNING AND DEVELOPMENT

John F. McKeon
Mayor

SUSAN BORG A.I.A.
Planning Director

Tel: 973-325-4110
Fax: 973-325-6369

May 5, 2005

Ronald Schimanowitz, Esq.
459 Amboy Avenue
Woodbridge, NJ 07095

RE: PB-04-34/Northfield Village
Block: 167; Lot: 25,25.01,30,30.01,30.02,30.03,30.04,,30.05; Zone: R-3AH
Northfield Avenue
Seeking amended preliminary and final subdivision approval for 95 conforming single-family lots.

Dear Mr. Schimanowitz:

Enclosed is a copy of the resolution adopted at the May 4, 2005 Planning Board Meeting for the above-referenced property.

In addition, an Affidavit of Compliance as referenced in the resolution is enclosed. Please complete and submit this document after completing all conditions in the resolution.

Please note that eight sets of final site plans and architectural with signature blocks must be submitted to the Planning Department and signed by the Township Engineer, Board Chairman and Board Secretary, prior to the issuance of building permits.

If I may be of further assistance, please contact me at (973) 325-4108.

Sincerely,

Nora Myers
Planning Department

Enclosures

NORTHFIELD VILLAGE (NORDAN REALTY)

RESOLUTION OF THE PLANNING BOARD OF THE
TOWNSHIP OF WEST ORANGE

Granting amended preliminary major and final major subdivision approval for 95 conforming single-family lots, one pump station lot and one tot lot without variances.

WHEREAS, the Planning Board of the Township of West Orange, at a meeting held on March 2, 2005 considered the application for amended preliminary major and final major subdivision approval for 95 conforming single-family lots, one pump station lot and one tot lot without variances on property located in the R-3AH Zone, identified as Block 167, Lots 25, 25.01, 30, 30.01, 30.02, 30.03, 30.04 & 30.05, which was submitted by Nordan Realty Corp. (the "Applicant"), through its attorney, Ronald Shimanowitz, Esq.; and

WHEREAS, the Planning Board considered the presentation of Ronald Shimanowitz, Esq., attorney for the Applicant; and heard and considered the testimony of Mark Hoffman, the Applicant's Director of Development; and heard and considered the testimony of John McDonough, the Applicant's professional planner and landscape architect (licensed in New Jersey in both capacities and approved by the Board as an expert in both capacities); and heard and considered the testimony of Madeline S. Wasilas, the Applicant's engineer (licensed in New Jersey as a professional

engineer and approved by the Board as an expert); and considered the subdivision plat dated August 30, 2004, the tree removal/tree replacement plan dated November 24, 2004 and the other exhibits presented to the Board; as well as questions and comments from Board members as shall appear in the Board's minutes and/or a transcript for the meeting of March 2, 2005; and

WHEREAS, a complete application has been filed, all fees required by Ordinance have been paid and it otherwise appears that the jurisdiction and powers of the Planning Board have been properly invoked and exercised; and the Board having conducted a vote on this application on March 2, 2005; and

WHEREAS, the Applicant requested amended preliminary major and final major subdivision approval for 95 conforming single-family lots, one pump station lot and one tot lot without variances;

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

1. This is an application for amended preliminary major and final major subdivision approval for 95 conforming single-family lots, one pump station lot and one tot lot without variances amended.

2. The Board reviewed the plans submitted.

3. The Board has recommended and the Applicant has agreed to the following additional conditions of approval:

(1) All conditions set forth in the preliminary subdivision approval granted to the Applicant under Resolution PB-94-12, dated December 4, 1996, and attached to this resolution and made a part of this resolution.

(2) Applicant will install buffer planting and a fence at a location to determined to protect the privacy of the owner of the home located at 5 Argyle Court.

(3) Applicant shall insure that there is no added water runoff from the Property.

(4) Applicant shall install the lighting on its property so as to minimize negative impact on the property located at 5 Argyle Court.

(5) All landscaping shall be planted in accordance with the approved landscape plan and shall be maintained in healthy and vigorous condition; all plants, shrubs, and trees that die shall be replaced with landscape materials of equal or better quality;

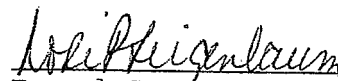
(6) All findings of fact and conclusions of law set forth herein are deemed conditions that are binding on the Applicant;

(7) Before a Temporary or Final Certificate of Occupancy/Approval can be issued, the Applicant shall submit proof to the West Orange Director of Planning that all real estate taxes are paid and current; and

(8) Before a Temporary or Final Certification of Occupancy/Approval can be issued, the Applicant shall execute and submit to the West Orange Director of Planning, an Affidavit of Compliance certifying that all conditions of approval agreed to by the Applicant and set forth herein have been fulfilled and satisfied.

NOW, THEREFORE, BE IT RESOLVED that this application for amended preliminary major and final major subdivision approval for 95 conforming single-family lots, one pump station lot and one tot lot without variances is approved in accordance with the subdivision plan, subject to the additional conditions set forth in this resolution.

The foregoing is a true copy of the resolution adopted by the Planning Board of the Township of West Orange.



Board Secretary
Planning Board of the Township
of West Orange

Dated: May 5, 2005

~~West Essex Highlands~~

**Resolution of Planning Board of the
Township of West Orange**

Denying an application for preliminary and final major subdivision for 136 single-family lots

WHEREAS, West Essex Highlands, Inc. having its principal office at 820 Morris Turnpike, Short Hills, New Jersey (hereinafter "Applicant"), being the owner of the property which is the subject of this application, being property located approximately 1600 feet from the intersection of Oval Road and Warner Road, West Orange, New Jersey, being Block No. 179, Lot 32 and being located in the R2 and R3 zones, applied to the Planning Board of the Township of West Orange for Preliminary and Final Major Subdivision Approval for 136 single-family lots, requesting no variances; and

WHEREAS, the Applicant presented proof that adequate notice of the application and the multiple hearings before the Planning Board of the Township of West Orange regarding said application was published in The West Orange Chronicle, one of the official newspapers of the Board; and

WHEREAS, the Applicant submitted proof of the service of notice of the hearing upon all property owners within 200 feet of the property; and

WHEREAS, the application was heard at the following public meetings of the Planning Board of the Township of West Orange: January 18, 2005, April 27, 2005, May 18, 2005, June 15, 2005, July 13, 2005, September 28, 2005, October 19, 2005, November 30, 2005, January 11, 2006, February 8, 2006 and March 8, 2006; and

WHEREAS, the Applicant made its presentation through Ronald Shimanowitz, Esq. of the firm of Hutt & Shimanowitz, attorneys for the Applicant, and its submissions included a Subdivision Plan prepared by John McDonough, Professional Planner, PPE Corporation, dated July 31, 2004; Storm Water Management Study prepared by Paul Anderson, PE, PPE Corporation, dated August 30, 2005; Traffic Impact Study prepared by Walter Lublanecki, PE, dated May 27, 2005; Environmental Impact Study, prepared by Paul Anderson, dated September, 2004; Revised Subdivision drawings dated April 14, 2005, November 30, 2005, and December 23, 2005 and numerous Exhibits marked A-1 through A-24 for the Record; and

WHEREAS, the Applicant presented and the Board heard the testimony of John McDonough, Madeline Wasilas, Paul Anderson, and Walter Lublanecki; and

WHEREAS, certain residents of the Township of West Orange objected to the Application and made their presentation directly to the Board and their submissions included the Report of William Gregor, PE, PP, dated January 24, 2006 and February 1, 2006; the Reports of Alexander Litwornia, PE, PP, of Litwornia Associates, dated October 6, 2005 December 6, 2005 and February 1, 2006; the Report of Amy Green dated February 7, 2005 and numerous exhibits marked O-1 through O-10 for the Record; and

WHEREAS, certain residents of the Township of West Orange objecting to the Application presented and the Board heard the testimony of William Gregor, Alexander Litwornia and Amy Greene; and

WHEREAS, other objectors to the Application included the Planning Board of the Township of Verona, having made its objections to the Board through its attorney Gregory Mascera, Esq., Bannon, Rawding, McDonald & Mascera; WE CARE, having made its objections to the Board through its attorney Herbert Waldman, Esq., Nagel, Rice & Mazie; The Condominium Association of West Essex Highlands, having made its objections to the Board through its attorney Richard Schkolnick, Esq., Ramsey & Berman, P.C.; and

WHEREAS, the Board heard the testimony of, considered the opinion of and reviewed the written submissions of Deborah Cerbone, the Board's consulting landscape engineer, dated January 10, 2006 and February 7, 2006; Leonard Lepore, PE, the Board's Engineer, dated March 30, 2005 and November 30, 2005 and Susan Borg, PE, PP, the Board's Planner, dated January 10, 2005; the Traffic Bureau of the West Orange Police Department, in an undated report signed by Police Officer Mastras #145; the Fire-Sub Code Official Matthew Serignese, dated November 9, 2004; December 21, 2005 and January 4, 2006; and Deputy Fire Chief Paul O'Connor; and

WHEREAS, all the facts and data contained in the submitted application and in all submissions and exhibits submitted to the Board by any and all interested parties and produced at a public hearing before the Board are incorporated as findings of fact of this Board as if set forth at length herein; and

WHEREAS, the Board having determined that it has jurisdiction to review and decide the matters brought before it by the Applicant;

NOW THEREFORE, does the Planning Board of the Township of West Orange make the following specific findings of facts and conclusions of law with regard to this application:

A. Applicant seeks Preliminary and Final Major Subdivision approval, with no variances, for 136 single-family lots at property which it owns, being property located approximately 1600 feet from the intersection of Oval Road and Warner Road, West

Orange, New Jersey, being Block No. 179, Lot 32 and being located in the R2 and R3 zones.

B. The property that is the subject of this application has been the subject of a variety of proposals for development and several years of litigation over its future development. The property is unique as within the Township of West Orange by virtue of, among other traits, its environmental characteristics, including the presence of isolated wetlands, steep slopes, mature trees, shallow depth to bedrock and the visually prominent ridgeline of the Second Watchung Mountain. Moreover, the property is one of the last, privately owned large undeveloped parcels of land remaining in the Township.

C. This application included a significant amount of evidence produced at the eleven (11) hearings, including testimony on many issues from the Applicant as well as from numerous objectors, including but not limited to, certain citizens of the Township of West Orange, certain citizens of the Borough of Essex Fells, WE CARE, the West Essex Highlands Condominium Association and the Planning Board of the Township of Verona.

D. The Applicant revised its drawings and submission on certain occasions during the course of the hearing in response to concerns raised by members of the public and certain objectors, specifically regarding emergency access to and from the subject property, the configuration of the internal road network on the subject property and their desire to eliminate the need for a *de minimus* exception to the Residential Site Improvement Standards (hereinafter "RSIS") for maximum daily number of vehicle trips on a cul-de-sac..

E. The Applicant seeks approval for an internal "boulevard style" roadway that includes fifteen (15) foot wide driving lanes on either side of the center divider. Based on the credible testimony of Mr. McDonough, Mr. Litwornia, Mr. Gregor, Mr. Lepore and Ms. Borg, and Deputy Fire Chief O'Connor, the Board finds that the fifteen (15) foot wide driving lanes do not conform with the intent of the pertinent Residential Site Improvement Standards (hereinafter "RSIS") nor do they provide ample space for safe and efficient use by emergency vehicles. In concluding that the proposed internal roads are not sufficiently wide, the Board find that the proposal jeopardizes the health, safety and welfare of the subject property and its residents by failing to provide safe and efficient road width for vehicles, impairing traffic flow and ability to turn around, particularly with respect to emergency vehicles.

F. The Board finds that, based on the credible testimony of Mr. Lepore and Mr. Litwornia, the Applicant failed to provide a graded right of way of adequate width between the street curb and the street right of way and as a result, the proposed plan does not meet the standards required pursuant to the pertinent Residential Site Improvement Standards. Moreover, if the Applicant were to restore the graded area in such a fashion as to comply with the RSIS requirement, a recalculation of lot areas and significant

revision to the subdivision plan would be needed to ensure compliance with the zone requirements.

G. The Applicant seeks subdivision approval for 136 single-family lots on a 120 acre parcel of land with only one access road – Warner Road, a two lane roadway - that connects to Oval Road, which then connects with Eagle Rock Avenue. The Applicant proposes three emergency access easements comprised of grass pavers rather than paved roads. The Board, based on the testimony of the Deputy Fire Chief, finds that the proposed grass pavers present maintenance difficulties, particularly in snow, that would impair safe, efficient and effective access by emergency vehicles. No satisfactory maintenance plan was presented to the Board to address the concerns raised Deputy Fire Chief and other interested parties that emergency vehicles would be able to efficiently, promptly and safely traverse the proposed easements in the event of an emergency.

H. Municipal Zoning Ordinances require a landscape buffer, of varying width between 75 and 110 feet, along the perimeter of the subject property. Based on its review of the proposal and testimony of Mr. Gregor and Ms. Borg, with respect to other viable designs and locations being available for the layout and placement of certain features of the proposal, the Board finds that a majority of detention basin #1 encroaches into the buffer zone in contravention of the pertinent municipal ordinance. Moreover, the Board finds that the proposed Lot 14 appears to encroach into the buffer zone and that the utility easement along the southern edge of the subject parcel is entirely within the buffer zone also in contravention of the intent and spirit of the applicable zoning ordinance. The Board concludes that locating major components of the proposal's infrastructure substantially within an area intended to be an undisturbed buffer, violates the intent and spirit of the municipal zoning ordinance governing this site because there is credible testimony that other options existed for design and layout of these features without practical impairment to their effective use and function.

I. The Board concludes, based upon the testimony of Mr. Gregor, Mr. Litwornia, Ms. Borg, and Mr. Lepore, that the proposed 136 single family subdivision with only one access route and insufficiently wide roadways creates dangerous and inefficient vehicular ingress and egress to and within the site. The Board finds that having one way in and one way out of this subdivision jeopardizes prompt and efficient emergency response, particularly given the insufficient width of the roadways and the location and construction of the emergency access easements, and creates an inefficient and potentially unsafe vehicular flow. Additionally, the Board finds that a development of this magnitude having only one means of ingress and egress creates an inefficient network of roads that is contrary to the goals and intent of the Master Plan of the Township of West Orange, which encourages providing more than one road into and from a neighborhood rather than developing enclave type neighborhoods.

J. The Board finds the Applicant failed to provide an adequate count of the trees it proposes to remove from the site as required by the pertinent municipal ordinance. The Applicant's calculation that 7625 trees were to be removed was determined by counting

trees with a caliper of 6 inches or greater. The pertinent municipal ordinance requires trees with a caliper of 2.5 inches or greater to be utilized in the calculation. The Board finds, based on the testimony of Ms. Cerbone, that the Application as presented, failed to provide a sufficient tree plan as required by the municipal ordinance.

K. In total, the Board finds that the numerous deficiencies set forth on the Record before it are so fundamental that denying the application is more appropriate than subjecting the Applicant to conditions that once enacted would, in the Board's view, result in a substantially different plan than the one proposed by the Applicant in the present matter.

NOW THEREFORE, BE IT RESOLVED by the Planning Board of the Township of West Orange, based upon the findings of fact and conclusions aforesaid, and upon the laws established in the State of New Jersey, that PB-04-24 be and hereby is denied.

I hereby certify that the foregoing Resolution was adopted by the Planning Board of the Township of West Orange at its meeting on April 5, 2006, and that said Resolution memorializes the action of the Planning Board taken at its meeting held on March 8, 2006, approving a motion to deny the referenced application by a vote of 5 for and 2 against.



Maria Abeles, Board Secretary

April 5, 2006