

TOWNSHIP OF WEST ORANGE
TRUST FUND/COAH
WEST ORANGE, NJ 07062

WARNING: THIS DOCUMENT HAS SECURITY FEATURES IN THE PAPER
GARDEN STATE COMMUNITY BANK
New Jersey

Number

6

55-7102

\$\$\$\$\$250000dollars and 00cents

Date

Amount

08/27/12

\$250,000.00

STATE OF NEW JERSEY- HMFA
637 SOUTH CLINTON AVE
TRENTON, NJ 08650-2085



[Signature] MAYOR
[Signature] COMPTROLLER
[Signature] TREASURER / DESIGNEE

⑈000006⑈ 1226071004⑈ 5452000174⑈

TOWNSHIP OF WEST ORANGE

Number

6

Total Amount 250000.00

PO Number

Amount Account

Invoice

123567

250000.00 14-6040-00-0000-010 HMFA

2A Forest Avenue
HMFA #2762, SNHPLP #10

Special Needs Housing Partnership Loan Program
MUNICIPAL AFFORDABLE HOUSING TRUST FUND NOTE

Trenton, New Jersey

Dated: August 15, 2012

FOR VALUE RECEIVED, OUR HOUSE, INC., a not-for-profit (the "Borrower"), organized and existing pursuant to the laws of the State of New Jersey, duly authorized to transact business in the State of New Jersey and a qualified housing sponsor within the meaning of the New Jersey Housing and Mortgage Finance Agency Law of 1983, N.J.S.A. 55:14K-1 et seq., as amended (the "Act"), having its principal office at 76 Floral Avenue, Murray Hill, New Jersey 07974, has received Affordable Housing Trust Funds in the amount of \$250,000.00 (the "AHT Funds") from the Township of West Orange (the "Township"), to be disbursed by the NEW JERSEY HOUSING AND MORTGAGE FINANCE AGENCY (the "Agency"), as administrator of those and other Township Affordable Housing Trust Funds deposited with the Agency pursuant to a Memorandum of Understanding dated on or about May 29, 2012 between the Agency and the New Jersey Department of Human Services ("DHS") and the Township (the "MOU"). The Agency is a body corporate and politic and an instrumentality exercising public and essential governmental functions of the State of New Jersey, created pursuant to the Act, having at its principal office at 637 South Clinton Avenue, P.O. Box 18550, Trenton, New Jersey 08650-2085.

WHEREAS, on or about May 29, 2012, the Agency, DHS, and the Township entered into the MOU whereby the Township deposited with the Agency \$250,000.00 from the Township's Affordable Housing Trust Fund (the "Municipal Funds") allocated by the Agency to finance housing within the Township for individuals with disabilities. The terms of the MOU are, by reference, incorporated into this Note as if fully set forth herein, and the MOU is attached hereto as Exhibit A;

WHEREAS, by letter dated June 18, 2012, attached hereto as Exhibit B, the Borrower applied for up to \$250,000.00 of the Municipal Funds to be allocated to a project in the Agency's Special Needs Housing Partnership Loan Program ("SNHPLP"), to be known as 2A Forest Avenue (the "Project");

WHEREAS, by letter dated June 27, 2012, attached hereto as Exhibit C, the Township granted the Borrower's application and, consistent with the terms of the MOU, will match the amount of SNHPLP funds awarded to the Project by the Agency; and

WHEREAS, the Agency is lending the Borrower \$248,993.00 in SNHPLP funds and the Township is granting the AHT Funds as matching funds under the MOU, with the remainder of the Municipal Funds to be reserved for other qualifying projects;

NOW, THEREFORE, in consideration of the mutual promises and covenants below, the

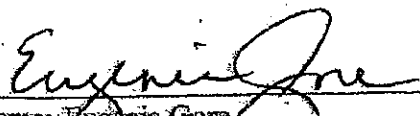
parties agree as follows:

1. INTEREST: No interest shall accrue or be due on the AHT Funds.
2. SERVICING FEES: No servicing fees shall accrue or be due on the AHT Funds.
3. REPAYMENT: No repayment of the AHT Funds is required by the Borrower to the Municipality or the Agency.
4. MATURITY: The maturity date of this Note is twenty (20) years from the date of execution, or August 15, 2042 ("Maturity Date").
5. REQUIREMENTS, CONDITIONS AND RESTRICTIONS OF MOU: All requirements, conditions and restrictions of the MOU remain in effect through the Maturity Date of this Note. Specifically, any deed restriction regarding the use of the premises and/or units therein will remain on the premises and will survive any transfer of ownership of the premises.
6. ASSIGNMENT BY AGENCY: The Borrower hereby consents to any assignment of this Note by the Agency. No assignment or delegation of this Note by the Borrower is permitted unless approved in writing by the Agency. If assigned, all rights, duties, obligations and interest arising under this Note shall bind and inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors and permitted assigns.
7. WAIVER OF FORMAL ACTS: All parties to this Note, whether Borrower, principal, surety, guarantor or endorser, hereby waive presentment for payment, demand, protest, notice of protest, and notice of dishonor.

IN WITNESS WHEREOF, this Note is executed by the Borrower on the date first set forth above.

WITNESS/ATTEST

OUR HOUSE, INC.


Name: Eugenia Gore
Title: Housing Coordinator

By: 
Michele Wernsing
Executive Director

This document has been reviewed and approved as to form.

ATTORNEY GENERAL OF THE STATE OF NEW JERSEY

By: 
Kimberly A. Sked
Deputy Attorney General

Schedule A
DESCRIPTION

ALL that certain tract or parcel of land and premises, situate, lying and being in the Township of West Orange, in the County of Essex, and State of New Jersey, more particularly described as follows:

BEGINNING at a point in the southeasterly side of Forest Avenue (50 feet wide), said point being distant northeasterly 124.96 feet along said sideline from an angle point connecting said sideline with the northeasterly sideline of Eagle Rock Avenue (147.96 feet from the intersection with Eagle Rock Avenue, if extended) and running; thence:

- (1) Along the southeasterly sideline of Forest Avenue, North 33 degrees 12 minutes 00 seconds East a distance of 25.00 feet to a P.K. nail found; thence
- (2) Leaving said southeasterly sideline, South 50 degrees 49 minutes 00 seconds East a distance of 100.00 feet to a capped pin found; thence
- (3) North 33 degrees 12 minutes 00 seconds East a distance of 50.00 feet; thence
- (4) South 50 degrees 49 minutes 00 seconds East a distance of 100.00 feet to an iron pin found on the northwesterly sideline of Eagle Street (40 feet wide); thence
- (5) Along said northwesterly sideline, South 33 degrees 12 minutes 00 seconds West 100.00 feet; thence
- (6) Leaving said northwesterly sideline, North 50 degrees 49 minutes 00 seconds West a distance of 100.00 feet; thence
- (7) North 33 degrees 12 minutes 00 seconds East a distance of 25.00 feet; thence
- (8) North 50 degrees 49 minutes 00 seconds West a distance of 100.00 feet to the point and place of BEGINNING.

The above description is in accordance with a survey drawn by David A. Stires Associates, LLC, Gary V. Marmo, P.L.S., dated July 18, 2012.

FOR INFORMATION ONLY:

Being known as Lot 962 in Block 152.18 on the Official Tax Map of the Township of West Orange in the County of Essex and State of New Jersey.

Being also known as 2A Forest Avenue, West Orange, New Jersey.



License No. GH2129

State of New Jersey
Department of Human Services
Office of Licensing

LICENSE

Youth Consultation Service

284 Broadway
Newark, NJ 07104-4003

*Having met the requirements of the New Jersey Statute, P.L. 1977, c. 448, and the regulations of this Department,
is hereby licensed as a*

Group Home Developmental Disability

for 4 individuals

at

2A FOREST AVENUE
WEST ORANGE, NJ 07052

This License is effective from 05/31/2018 to 05/31/2019

A handwritten signature in cursive script, likely belonging to Carol Johnson.

Carol Johnson, Commissioner, Department of Human Services

RECORDING INFORMATION SHEET

ESSEX COUNTY REGISTER'S OFFICE
HALL OF RECORDS, ROOM 130
465 MARTIN LUTHER KING Jr. Blvd
NEWARK NJ 07102

INSTRUMENT NUMBER:
12068120

DOCUMENT TYPE:
DEED

Official Use Only

PHILIP THIOPEN, REGISTER
ESSEX COUNTY, NJ

INSTRUMENT NUMBER
12068120
RECORDED ON
August 17, 2012 01:55 pm
BOOK:12384 PAGE:6243

BB

CONSIDERATION (R) \$0.00

MAIL COPY _____
NO COPY _____
ENVELOPE _____

ADDITIONAL STAMPINGS _____

Return Address (for recorded documents)
LAND TITLE AGENCY INC
464 VALLEY BROOK AVENUE
LYNDHURST NJ 07071

No. Of Pages (excluding Summary Sheet)

25

Recording Fee (excluding Transfer Tax)

\$270.00

Realty Transfer Tax

\$0.00

Amount Charged (Check # 1384)

\$270.00

Municipality

WEST ORANGE

Parcel Information

Block 152.18

Lot 962

First Party Name

NEW JERSEY HOUS & MTG FIN AGCY

Second Party Name

OUR HOUSE INC

Additional Information (Official Use Only)

***** DO NOT REMOVE THIS PAGE. *****
COVER SHEET (DOCUMENT SUMMARY FORM) IS PART OF ESSEX COUNTY FILING RECORD
***** RETAIN THIS PAGE FOR FUTURE REFERENCE. *****

Record and Return to:

LAND TITLE AGENCY, INC.

464 Valley Brook Avenue

Lyndhurst, NJ 07071

(201) 804-8844 12-27-0203

Princeton, New Jersey 08502-2085

2A FOREST AVENUE

HMFA# 2762, SNHPLP#10

FINANCING, DEED RESTRICTION AND REGULATORY AGREEMENT

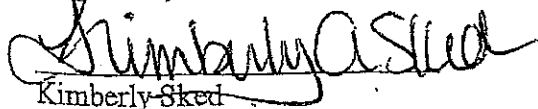
between

NEW JERSEY HOUSING AND MORTGAGE FINANCE AGENCY

and

OUR HOUSE, INC.

Prepared by:



Kimberly Sked

Deputy Attorney General

Construction and Permanent Financing
Special Needs Housing
Partnership Loan Program

(Revised June 4, 2012)

Record and Return to:

Lisa DiOrio, Paralegal
New Jersey Housing and Mortgage
Finance Agency
637 South Clinton Avenue
P.O. Box 18550
Trenton, New Jersey 08650-2085

2A FOREST AVENUE
HMFA# 2762, SNHPLP#10

FINANCING, DEED RESTRICTION AND REGULATORY AGREEMENT

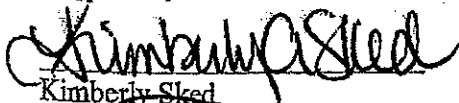
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Construction and Permanent Financing
Special Needs Housing
Partnership Loan Program

(Revised June 4, 2012)

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Schedule A.	Legal Description

THIS FINANCING, DEED RESTRICTION AND REGULATORY AGREEMENT (this "Agreement"), made and entered into as of this 15th day of August, 2012 by and between the **NEW JERSEY HOUSING AND MORTGAGE FINANCE AGENCY** (the "Agency" or "Lender"), a body politic and corporate and an instrumentality exercising public and essential governmental functions of the State of New Jersey and **OUR HOUSE, INC.**, ("Owner" or "Borrower"), a non-profit corporation organized and existing pursuant to the laws of the State of New Jersey and duly authorized to transact business in the State of New Jersey.

WITNESSETH

In consideration of the mutual covenants and undertakings set forth herein, and other good and valuable consideration, the receipt and sufficiency of which hereby are acknowledged, the Agency and the Owner hereby agree as follows:

Section 1. Definitions and Interpretation. The following terms shall have the respective meanings set forth below:

"Act" means the New Jersey Housing and Mortgage Finance Agency Law of 1983, as amended from time to time; P.L. 1983, c. 530, N.J.S.A. 55:14K-1 et seq., and the regulations promulgated thereunder, as amended from time to time.

"Architectural Contract" means the agreement by and between the Owner and Architecture Plus, Inc., (the "Architect") dated July 30, 2012, for the construction or rehabilitation of the Project in accordance with the plans and specifications for the Project.

"Assignment of Leases" means the Assignment of Leases by and between the Owner and Lender of even date herewith.

"Commitment" means, collectively, the commitment approval letter signed by the Executive Director of the Agency dated August 8, 2012, and the financing commitment approval recommendations of the Special Needs Housing Partnership Loan Program loan committee members in the request for consideration dated August 2, 2012, together with all amendments thereto.

"Construction Contract" means the agreement between the Owner and P.S. Construction, Inc., dated July 21, 2012, or any other agreement executed by the Owner and approved by the Agency, for the construction or rehabilitation of the Project in accordance with the plans and specifications for the Project approved by the Agency.

"Construction Period" means the period of time as defined in the Construction Contract.

"Day" or "Days" whether or not the word is a capitalized term, shall mean calendar day or day(s) unless otherwise specified.

"DCA" means the State of New Jersey, Department of Community Affairs.

"DDD" means the Division of Developmental Disabilities within the DHS.

"DHS" means the State of New Jersey, Department of Human Services.

"Event of Default" means any of the events set forth in Section 28 of this Agreement.

"First Mortgage" or "Mortgage" means the first mortgage and security agreement of even date herewith that will constitute a first lien on a fee simple interest in the Project and Land, given by the Owner to the Agency to secure the First Mortgage Loan.

"First Mortgage Loan" or "Loan" means the loan made to the Owner by the Agency to finance a portion of the cost of the development, rehabilitation and/or construction of the Project that will be located on the real property described in Schedule A attached hereto, as evidenced by the First Mortgage Note and secured by the First Mortgage.

"First Mortgage Note" or "Mortgage Note" or "Note" means the non-interest bearing, non-recourse promissory note that contains the promise of the Owner to pay the sum of money stated therein at the times stated therein and that evidences the obligation of the Owner to repay the First Mortgage Loan.

"Guidelines" means the Special Needs Housing Partnership Loan Program Guidelines as approved by the Agency's Board on March 1, 2012, as may be amended from time to time.

"Improvements" means the building together with all fixtures and utility improvements, easements and rights of way that are owned by the Owner and located on the Land.

"Land" means the real property described in Schedule A attached hereto, on which the Project is located.

"Loan Documents" means and includes this Agreement, the Mortgage Note, the Mortgage, the UCC-1 Financing Statements and the Assignment of Leases.

"Low-Income Tenants" means families that have income of 50% or less of the area median gross income adjusted for family size.

"Permitted Encumbrances" means the Mortgage, together with any encumbrances permitted by the Agency thereunder or hereunder.

"Project" means the Improvements located on the Land together with the Land to be financed, in part, with the proceeds of the Loan.

State" means the State of New Jersey.

"UCC-1" means the UCC-1 Financing Agreement(s) of even date herewith.

Section 2. Background and Purpose. The Owner owns, or will own, and proposes to construct or rehabilitate, and will operate a Project to be located on the Land. The Lender will hold a first mortgage lien on the Project in the amount of \$248,993 during the term of the Mortgage at an interest rate of zero (0%) percent. Financing for the Project shall be derived from the Lender's Special Needs Housing Partnership Loan Program ("SNHPLP" or "Program").

In connection with the First Mortgage, the Owner and the Agency have entered into this Agreement.

In connection with its application for the Loan, the Owner has furnished to the Agency various details as to the Project, including the description of Land on which it is to be situated, plans and specifications for the construction/rehabilitation of the Project, the tenant population that shall be housed in the Project, the number of units of each type to be included therein, the estimated costs of providing the Project, details as to the Project income and expenses of the Project once constructed and/or rehabilitated and placed in operation, and arrangements for any tax abatement for the Project.

Section 3. Residential Rental Property. The Owner hereby represents, covenants, warrants and agrees that the Project to be known as 2A Forest Avenue will be located at Lot 962 in Block 152.18 in the Township of West Orange, Essex County, New Jersey. The Project involves the acquisition and rehabilitation of an existing expanded ranch home consisting of 4 bedrooms, 2 bathrooms, kitchen, living room, dining room, laundry area and private backyard. This Project will provide supportive permanent housing for four individuals with developmental disabilities.

All of the units in the Project are to be utilized at all times in accordance with the types of use as permitted by the Act and/or the Guidelines and as may be approved by the Agency. All units shall be subject to use and occupancy and/or intake and/or occupancy or lease agreements between the Owner and the tenants/residents.

Section 4. Additional Representations, Covenants and Warranties of the Owner.
The Owner represents, warrants and covenants that:

A. The Owner (i) is non-profit corporation, duly organized, validly existing and in good standing under the laws of the State of New Jersey and duly authorized to transact business in the State; (ii) has filed with the Agency a true and complete copy of its Certificate of Incorporation with all amendments, if any, thereto; (iii) has the power and authority to own or lease its properties and assets, including the Project and the Land, and to carry on its business as now being conducted (and as now contemplated), and to borrow the proceeds of the Loan; and (iii) has the power to execute and perform all the undertakings of this Agreement and the other Loan Documents.

B. All necessary legal action has been taken to authorize the execution, delivery and performance of the Loan Documents by the Owner.

C. The Loan Documents have been duly executed and delivered by the Owner and constitute the valid and legally binding obligations of the Owner, enforceable against the Owner in accordance with their respective terms.

D. To the best of the Owner's knowledge after due and diligent inquiry, the execution and performance of this Agreement, the Loan Documents and other instruments required pursuant to this Agreement by the Owner (i) will not violate or, as applicable, have not violated, any provision of law, rule or regulations, any order of any court or other agency or government or any provision of any document to which the Owner is a party and (ii) will not violate or, as applicable, have not violated, any provision of any indenture, agreement or other instrument to which the Owner is a party, or result in the creation or imposition of any lien, charge or encumbrance of any nature other than the Permitted Encumbrances.

E. The Owner has, at the time of execution of this Agreement and subject only to such exceptions as have been disclosed in writing to the Agency and which will not materially interfere with or impact the beneficial use of the Project and Land for purposes of the Project, good and marketable title to fee simple interest in the premises constituting the Land and the Project free and clear of any lien or encumbrance (subject to Permitted Encumbrances and encumbrances created or contemplated pursuant to this Agreement).

F. There is, after due and diligent inquiry, no action, suit or proceeding at law or in equity or by or before any governmental instrumentality or other agency now pending, or, threatened against or affecting it, or any of its properties or rights, which, if adversely determined, would materially impair its right to carry on business substantially as now conducted, or as contemplated to be conducted under this Agreement, or would materially adversely affect its financial condition.

G. To the best of the Owner's knowledge after due and diligent inquiry, the operation of the Project in the manner presently contemplated and as described in this Agreement will not conflict with any zoning, water or air pollution or other ordinance, order, law or regulation applicable thereto. The Owner has caused the Project to be designed in accordance with all applicable federal, State and local laws or ordinances (including rules and regulations) relating to zoning, building, safety and environmental quality and will proceed with due diligence to rehabilitate the Project pursuant to the Architectural Contract or the Construction Contract, as applicable.

Further, the Owner has received or shall obtain all necessary governmental approvals and building permits for construction, rehabilitation and operation of the Project in accordance with the plans and specifications and the Architectural Contract or Construction Contract, as applicable, and shall obtain in a timely manner any and all required extensions of governmental approvals, including, but not limited to, site plan approval.

H. The Owner has filed, caused to be filed by it, or shall file all federal, state and local tax returns which are required to be filed by it, if any, and has paid or caused to be paid all taxes as shown on said return or on any assessment received by it, to the extent that such taxes have become due.

I. To the best of the Owner's knowledge, after due and diligent inquiry, the Owner is not in default in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any material agreement or instrument to which it is a party that may materially affect this Project.

J. The information contained in the Project description provided in the applications for the Loan is accurate in all material respects and does not contain any untrue statements of a material fact or omit to state a material fact necessary to make the statements made therein, in light of the circumstances under which they were made, not misleading.

K. The Owner shall not during the term of this Agreement sell, transfer or exchange, the Project or the Land (or any part thereof or any interest therein) at any time except in accordance with the terms of the First Mortgage, this Agreement, the Act and the regulations promulgated pursuant to the Act, and unless such sale, transfer or exchange shall have been approved by the Agency. The Owner shall notify in writing and obtain the agreement in writing of any buyer or successor or other person acquiring the Project or Land or any interest therein, in a form acceptable to the Agency that such acquisition is subject to the requirements of this Agreement. This provision shall not act to waive any other restriction on such sale, transfer or exchange.

L. The Owner has not and will not execute any other agreement with provisions contradictory to; or in opposition to, the provisions hereof and the First Mortgage, and in any event, the requirements of this Agreement and the First Mortgage are paramount and controlling as to the rights and obligations herein and in the First Mortgage and such requirements shall supersede any other requirements in conflict herewith and therewith.

M. All statements contained in all applications, correspondence or other materials delivered to the Agency by the Owner in connection with its consideration of the Loan to the Owner or relating to the Project are materially true and correct.

N. The representations, covenants and warranties of the Owner contained in this Agreement on the date of its execution are true and shall continue to be true at all times during the term of this Agreement.

O. No event has occurred and no condition exists which constitutes an Event of Default under this Agreement or the First Mortgage or which, but for a requirement of notice or lapse of time, or both, would constitute such an Event of Default.

P. As of the date of this Agreement, the Architectural Contract and the Construction Contract are in full force and effect and no default has occurred thereunder, and a true copy of the entire Architectural Contract and the Construction Contract with all modifications and addenda to date has been filed with the Agency.

Section 5. Covenants to Run With the Land.

A. The Agency and the Owner hereby declare their understanding and intent that the burden of the covenants, reservations and restrictions set forth in this Agreement touch and concern the Land in that the Owner's legal interest in the Project and Land is rendered less valuable thereby. The Agency and the Owner hereby further declare their understanding and intent that the benefit of such covenants, reservations and restrictions touch and concern the Project and Land by enhancing and increasing the enjoyment and use of the Project and the Land by the tenants contemplated under this Agreement and by furthering the public purposes for which the First Mortgage Loan is made. The covenants, reservations and restrictions hereof shall apply uniformly to the entire Project and Land. Except as provided in subsection B below, the covenants, reservations and restrictions set forth herein shall be deemed covenants running with the Land and hereof and shall pass to and be binding upon the Owner's assigns and successors in title to the Land or Project. Each and every

contract, deed or other instrument hereafter executed covering or conveying the Project and/or the Land or any portion thereof shall conclusively be held to have been executed, delivered and accepted subject to such covenants, reservations and restrictions, regardless of whether such covenants, reservations and restrictions are set forth in such contract, deed or other instruments. If a portion or portions of the Project and/or Land are conveyed, all of such covenants, reservations and restrictions shall run to each portion of the Project and/or Land.

B. Upon termination of this Agreement in accordance with Section 6 hereof, said covenants, reservations and restrictions shall expire and in such event, the Agency shall, at the expense of the Owner, execute any and all instruments reasonably required to evidence of record the satisfaction, cancellation and discharge of this Agreement.

Section 6. Term. This Agreement shall remain in full force and effect until the maturity date as stated in the Note.

Section 7. Construction of Project. The Owner covenants and agrees to comply with all the provisions of the Construction Contract. The Owner covenants and agrees to diligently pursue the rehabilitation of the Project to completion in accordance with the plans and specifications set forth in the Owner's application for the Loan, the Architectural Contract, the Construction Contract and as approved by the Agency.

The Owner shall not approve or allow to occur any material change in the scope of work or plans and specifications for the Project without the express approval of the Agency. Rehabilitation or construction shall at all times be subject to the discretionary inspection, discretionary review, regulation and approval of the Agency and its duly authorized representatives. Any such inspection, regulation, review or approval of the Agency shall be solely for its benefit for the purpose of assuring that the programs and goals of the Project are being fulfilled.

The Owner shall not knowingly do any act which would cause the release, in whole or in part, of the surety bond or bonds issued in connection with the Construction Contract, including, without limitation, deviation from the payment schedule, waiver of any material requirements imposed on the contractor or any subcontractor under the Construction Contract or consent to any major change in the in the scope of plans and specifications or scope of the work, unless such act would not cause any release because the surety has consented thereto.

Section 8. Rehabilitation or Construction and Funding.

A. Rehabilitation or Construction of Project:

The Owner covenants and agrees to comply with all provisions of the Architectural Contract and the Construction Contract. The Owner covenants and agrees to diligently pursue the rehabilitation or construction of the Project to completion, time being of the essence, in accordance with the plans and specifications for the Project as approved by the Agency.

B. Funding:

Upon and subject to the terms and conditions of this Agreement, the First Mortgage and First Mortgage Note, the Agency agrees to advance and disburse the Principal Sum of \$248,993 only after the Agency has received and approved, subject to its sole discretion, all items required for closing in the Agency's Document Checklist for the SNHPLP and the satisfaction of the conditions set forth in the Commitment.

C. Conditions Precedent to Advance:

The Agency's obligations to make the other disbursements under the First Mortgage shall be subject to the satisfaction of the following conditions precedent, any of which may be waived in whole or part by the Agency.

1. Each of the Owner's covenants, agreements, representations and warranties contained in this Agreement shall continue to be true and shall not be breached.
2. The full amount of all previous advances shall have been expended for Land acquisition, Project costs approved by the Agency, and the discharge of any related lien(s).
3. All work performed and material furnished for the Project shall be in accordance with the plans and specifications for the Project and all work shall have been properly performed to the satisfaction of the Agency.
4. No event shall have occurred and no conditions shall exist that would prevent the advance from becoming a valid first mortgage lien on the Project and the Land or secured by a prior protected security interest on any other collateral mentioned in the First Mortgage. If the Agency shall deem it necessary or desirable, all or part of the advance may be disbursed in escrow to a title insurance company licensed to do business in the State of New Jersey for the purpose of discharging any construction or other lien on the Project and Land or any other security mentioned in the First Mortgage, and the Owner agrees to certify in writing that the foregoing conditions have been satisfied.

Section 9. Insurance; Condemnation. The Owner shall cause the buildings on the premises and the fixtures and articles of personal property covered by the First Mortgage to be insured against loss by fire and against loss by such other hazards as may be required by the Agency for the benefit of the Agency, including, but not by way of limitation, flood insurance if any part of the Project is located in an area designated by or on behalf of the federal government as having specific flood hazard. Such insurance shall be written by such companies in an amount not less than the full insurable value of the Project exclusive of excavations and foundations and in such forms as are satisfactory to the Agency. The Owner shall assign and deliver the policies to the Agency, and the Agency shall be mortgagee, loss payee and additional insured under such policies. Such policies shall provide that the insurer may not cancel the policy and will not refuse to renew the policy except after thirty (30) days written notice to the Agency. If the Agency shall not receive evidence

satisfactory to it of the existence of effective insurance coverage as required by the Agency, the Agency may (but shall not be required to) obtain such coverage and the Owner shall reimburse the Agency on demand for any premiums paid for insurance procured by the Agency, and until so reimbursed the amount of such premiums shall be added to the principal amount of the First Mortgage and shall bear interest at the then current rate being paid by the Agency on its borrowing as determined in good faith by the Agency. Valid participation by the Owner in a blanket insurance program offered by or through the Agency or approved by the Agency shall be satisfactory evidence of the required insurance for each type or class of coverage.

In the event of substantial damage to the Project by the occurrence of an insured casualty or the taking of a substantial portion of the Project by condemnation, if, in the sole judgment of the Agency (which judgment shall be conclusive): (a) the Project can be replaced or restored in whole or in part, and (b) the Project as so replaced will produce sufficient income to meet the obligations of the Owner under the Loan Documents, the proceeds of insurance or condemnation, together with any other money available for such purpose, if sufficient, shall be made available to the Owner, subject to the approval of the Agency. To the extent the Project is not replaced or restored, the balance of such proceeds shall be applied to the indebtedness secured thereby. Nothing in this Section shall affect the lien of this Agreement and the obligation of the Owner under the Loan Documents to pay the entire balance of the Loan.

The Owner shall maintain continuously in effect such other insurance coverage of the types and in the amounts specified by the Agency, including workers' compensation insurance and other insurance required by law with respect to employees of the Owner, and liability insurance with limits of not less than \$1,000,000 per accident or occurrence on account of personal injury, including death resulting therefrom, and \$1,000,000 per accident or occurrence on account of damage to the property of others and a blanket excess liability policy in an amount acceptable to the Agency, protecting the Owner and the Agency against any loss or liability or damage for personal injury or property damage with respect to the Project. Owner shall also maintain use and occupancy insurance covering loss of revenues derived from the Project by reason of interruption, total or partial, of the use of the Project resulting from loss or physical damage thereto in an amount not less than one year's gross rental income. The Owner shall carry fidelity bond insurance covering all employees of the Owner authorized to handle the revenues derived from the Project in an amount equal to one-half times the maximum monthly rent roll.

Section 10. Taxes or Payments in Lieu of Taxes. The Owner covenants and agrees to pay any valid municipal taxes or payments in lieu of taxes, charges, assessments, water charges and/or sewer charges, and in default thereof, the Agency may pay the same. Any such sum or sums so paid by the Agency shall be added to the principal sum secured by the First Mortgage, as determined by the Agency, and shall bear interest at the then current rate being received by the Agency on its investments as determined in good faith by the Agency. If the Project is subject to a payments in lieu of taxes agreement with the municipality, the Owner shall not terminate or materially amend such agreement without the prior written approval of the Agency.

Section 11. Liens and Encumbrances. The Owner covenants and agrees to maintain its right, title and interest in the Project, Land and all items enumerated in the Loan Documents, as

security for repayment of the Mortgage Loan, free and clear of all liens, security interests and other encumbrances except for Permitted Encumbrances and those exceptions identified and set forth in a certain title insurance commitment issued to the Agency by Commonwealth Land Title Insurance Company, dated June 29, 2012 and identified as Title Number 12-LT-0203, continued to the date of this Agreement, as accepted by the Agency. The foregoing covenant and agreement shall not prevent the Owner from leasing or renting the Project or Land in the manner as otherwise provided in this Agreement. Except with the written consent of the Agency, the Owner will not install any item of tangible personal property as part of the fixtures or furnishings of the Project that is subject to a purchase money lien or security interest.

The Agency may, at its sole option, pay the amount necessary to discharge any lien or other encumbrance, and the Owner shall reimburse the Agency upon demand for any amounts so paid. Until reimbursement of the Agency of any amounts so paid, such amount shall be added to the principal sum of the First Mortgage Note and shall bear interest at the then current rate being received by the Agency on its investments as determined in good faith by the Agency.

The Owner covenants and agrees not to sell, lease or otherwise encumber the Project or the Land, or any part thereof, or the rents or revenues thereof without prior written consent of the Agency, except by leasing to eligible residential tenants as provided by the First Mortgage and this Agreement.

Section 12. Maintenance, Repair and Replacement. The Owner covenants and agrees to maintain the Project and the housing units contained therein and the appurtenant equipment and grounds in good repair and condition so as to provide decent, safe and sanitary housing accommodations.

Following completion of construction, the Owner will not make any substantial alteration in the Project without the consent of the Agency, nor will the Owner permit the removal of any fixtures or articles of personal property except in connection with the replacement thereof with appropriate property of at least equal value and free of all liens or claims.

The Owner will not permit any waste with respect to the Project or any of its real or personal property without the consent of the Agency, or make any alteration which will increase the hazard of fire or other casualty.

Section 13. Advance Amortization Payments. The Note is pre-payable at any time without a prepayment penalty. However, upon prepayment of the Note, this Agreement will remain in full force and effect until the maturity date set forth in the Note.

Section 14. Compliance with the Program, the Act, the Guidelines, Agency's Regulations and Any Federal or State Subsidy Source. The Owner covenants and agrees to comply with the Program, the Act, the Guidelines and any regulations promulgated pursuant thereto, and with any amendments or supplements to the Program, the Act, the Guidelines or regulations. Throughout the term of this Agreement, the Owner further covenants and agrees to

comply with any and all requirements imposed upon it as a condition of any federal or State grant, subsidy or loan.

Section 15. Use of Project - Leasing. Except as otherwise expressly provided in Sections 2 and 3 of this Agreement or as otherwise agreed to in writing by the Agency, and except for facilities approved by the Agency as normally appurtenant to residential projects for non-transients (such as laundry facilities), the Project shall be used solely to provide housing for the residential population and the facilities and the amenities as described in Section 3 hereof, all as approved in the Commitment.

Section 16. Consideration for Lease or Intake and/or Occupancy Agreement. The Owner covenants and agrees not to require as a condition of the occupancy of any dwelling unit in the Project and not to accept or allow any employee or agent to accept any consideration other than the prepayment of the first month's rent or allowable intake and/or occupancy agreement charges, plus a security deposit not in excess of one (1) month's rent or allowable intake and/or occupancy agreement charges to guarantee the performance of the covenants of the lease or intake and/or occupancy agreement.

Section 17. Security Deposit. The Owner covenants and agrees to deposit all moneys, if any, paid to the Owner by any resident as a security deposit for the payment of rent or other allowable intake and/or occupancy charges under any use and occupancy agreement and/or lease in a separate interest-bearing bank account held and maintained in accordance with applicable law.

Section 18. Account for Project Revenues/Operating Account. The Owner covenants and agrees to establish an account for Project Revenues specific to the Project. "Project Revenues" shall mean all rents, intake, occupancy and other revenues of any type whatsoever received in respect of the Project or the Owner, except for Loan disbursements. Project Revenues shall be deposited in such account and all operating expenses should be paid from this account.

Section 19. Inspection of Premises. The Owner covenants and agrees to permit the Agency, its agents or representatives, to inspect the Project at any and all reasonable times with or without notice, pursuant to the provisions of the Act and/or the Guidelines.

Section 20. Books and Records. The Owner covenants and agrees to maintain adequate books and records of its transactions with respect to the Project in the Owner's standard form. Such books and records shall be available for inspection and audit by the Agency or its agents at any time during business hours, with notice, pursuant to the provisions of the Act and/or the Guidelines. The Owner further covenants and agrees to cause the financial affairs with respect to the Project to be audited by independent certified public accountants and shall furnish the Agency with its audit report of such accountants as may from time to time be required by the Agency.

The Owner shall furnish to the Agency such other information and reports respecting the Project as may from time to time be required by the Agency.

Section 21. Management Contract. The Owner may, and if the Agency so elects, shall contract for the services of a firm experienced in real estate management to act as the managing agent for the Project. The selection of any such managing agent, the scope of the agent's duties and the basis of the agent's compensation shall be the subject of a consultation between the Agency and the Owner and any contract for the employment of any managing agent shall provide that such contract may be terminated by the Agency at any time by notice of such determination by the Agency given to the Owner and managing agent.

Section 22. Prohibited Actions. Except with the express approval of the Agency, which approval shall not be unreasonably withheld, the Owner shall not with Project Revenues (as defined in Section 18 hereof), or Loan disbursements:

- A. incur any liabilities, except in connection with the acquisition, rehabilitation or construction and rental of the Project and its operation and maintenance;
- B. engage in any business activity except the ownership and operation of the Project;
- C. enter into contracts for managers, attorneys, accountants or other services without the prior written approval of the Agency;
- D. pay more than fair market value thereof for goods or services; and
- E. pay compensation to any officer, director or partner in such capacity or make any cash distribution to any of the foregoing.

Section 23. Transfers of Ownership Interests. The Owner shall not transfer or sell any interest in the Project, except to another SNHLEP- eligible applicant as set forth in the Guidelines and upon prior written notice to the Agency, or as the Executive Director of the Agency may approve.

Section 24. Statutory Powers and Restrictions. The First Mortgage shall be subject to the restrictions in the Act, and in connection therewith, the Agency shall have the powers set forth in the Act and/or the Guidelines and the regulations now or hereafter promulgated pursuant to the Act, and the Owner hereby consents to such restrictions and agrees to be bound thereby. Such powers and restrictions shall be in addition to and not in limitation of the rights of the Agency expressly set forth in this Agreement.

Section 25. Accounting in Event of Default; Estoppel. Upon the occurrence of an Event of Default and within ten (10) business days of demand therefor by the Agency, and otherwise within ten (10) business days of written demand by the Agency, the Owner will furnish to the Agency in writing a statement of the principal amount remaining due on the Loan, together with a statement of any known defenses which may exist as to any liability of the Owner on the Note or otherwise thereunder.

Section 26. Financing Statements. The Owner hereby irrevocably authorizes the Agency to execute, if applicable, and file on its behalf one or more financing statements or renewals thereof in respect to any of the security interests granted by the First Mortgage.

Section 27. Assignment by Agency. The Owner hereby consents to any assignment of this Agreement by the Agency.

Section 28. Defaults. Each of the following shall be an Event of Default:

- A. failure by the Owner to pay more than thirty (30) calendar days after the due date any installment of principal or interest on the Loan or any other payment required by the Owner to the Agency or any other person pursuant to the terms of this Agreement, the First Mortgage or the other Loan Documents;
- B. commission by the Owner of any act prohibited by the terms of this Agreement, the First Mortgage or any other Loan Document; failure by the Owner to perform or observe in a timely fashion any action or covenant required by any of the terms of this Agreement, the First Mortgage or any other Loan Document, or failure by the Owner to produce satisfactory evidence of compliance therewith;
- C. the filing by the Owner under any federal or state bankruptcy or insolvency law or other similar law of any petition in bankruptcy or for reorganization or composition with creditors or the making of an assignment for the benefit of creditors;
- D. the filing against the Owner of a petition seeking its adjudication as a bankrupt or the appointment of a receiver for the benefit of its creditors which shall not have been dismissed within sixty (60) days of the filing thereof, or the adjudication of the Owner as a bankrupt or the appointment of a receiver for the benefit of its creditors; or the appointment by court order of a custodian (such as a receiver, liquidator or trustee) of the Owner or of any of its property or the taking of possession of the Owner or any of its property for the benefit of its creditors and such order remains in effect or such possession continues for more than sixty (60) days;
- E. the occurrence of substantial destruction of the Project by an uninsured casualty or the inability to replace or restore the Project in accordance with Section 9;
- F. any representation in conjunction with the Loan and the Project by or on behalf of the Owner that is knowingly false or misleading in any respect or warranty of the Owner that is breached;
- G. any breach by the Owner of its obligations or any failure to observe its covenants under this Agreement, and the other Loan Documents;
- H. failure to complete the Project as approved by the Agency; and

- I. failure to comply with the Guidelines, as may be amended from time to time.

The events set forth in the subsections B and G of this Section shall not constitute Events of Default until the prohibited acts, failure to perform or observe, or breaches shall remain uncured for a period of thirty (30) calendar days after the Agency's written notice to the Owner, specifying such prohibited act, failure or breach and requiring that it be remedied, unless the Agency shall agree in writing to an extension of such time prior to its expiration; provided, however, that after the Project Construction Period only, if the prohibited act, failure, or breach stated in each notice is correctable, but cannot be corrected within the 30-day period, the Agency may not unreasonably withhold its consent to an extension of up to 120 days from the delivery of the written notice referred to herein if corrective action is instituted by the Owner within the initial 30-day period and diligently pursued. The Agency will send, simultaneously with sending to the Owner any notices under B and G of this Section, a copy of the aforementioned notices to the Owner's investor limited partner or member, if any; and to the extent such Event of Default is curable, a cure tendered in full pursuant to the terms and conditions of this Agreement and the other Loan Documents by any investor limited partner or member of Owner shall be honored by the Agency.

Section 29. Remedies. Upon the occurrence of any Event of Default, the Agency may at its option take any one or more of the following actions or remedies. No failure to exercise any remedy or take any action enumerated shall constitute a waiver of such right or preclude a subsequent exercise by the Agency of any such remedy:

- A. declare the entire principal sum of the First Mortgage together with any interest and all other liabilities of the Owner under the Note and the other Loan Documents to be immediately due and payable;
- B. cease making disbursements to the Owner of any funds under the Loan or from reserves held by the Agency;
- C. apply any reserves held by the Agency or the balance in the accounts for Project disbursements and revenues, or any combination of these monies, to the payment of the Owner's liabilities hereunder;
- D. foreclose the lien of the First Mortgage on the Project and Land or a portion thereof, including, without limitation, all Improvements existing or hereafter placed in or on the Project and Land. In any action to foreclose, the Agency shall be entitled to the appointment of a receiver of the rents (which shall include all applicable intake and/or occupancy charges) and profits of the Project as a matter of right and without notice, with power to collect the rents, uses and profits of said Project, due and becoming due during the pendency of such foreclosure suit, such rents and profits being hereby expressly assigned and pledged as additional security for the payment of the indebtedness secured by the First Mortgage without regard to the value of the Project or the solvency of any person or persons liable for payment of the mortgaged indebtedness. The Owner for itself and any such subsequent owner hereby waives any and all defenses to the application for a receiver as above and hereby specifically

consents to such appointment without notice, but nothing herein contained is to be construed to deprive the holder of the First Mortgage of any other right, remedy or privilege it may now have under the law to have a receiver appointed. The provisions for the appointment of a receiver of the rents and profits and the assignment of such rents and profits, is made an express condition upon which the Loan hereby secured are made. Upon such foreclosure the Agency shall have the right to have a receiver appointed for the Project and the rents from the Project;

- E. pursuant to its rights under the Act, remove the Project managing agent(s) and/or service providers after consultation with the Owner, or, if the Agency, after consultation with the Owner, decides it is in the best interest of the Project and its tenants and/or residents, the Owner shall deed the Project and Land to the Agency;
- F. take possession of the Project and Land or a portion thereof;
- G. without judicial process, collect all rents, use and occupancy fees and other revenue including federal and State subsidies as the agent of the Owner (which upon the occurrence of any Event of Default the Agency is deemed to have been irrevocably appointed by the Owner), and apply the same at the Agency's option either to the operation and maintenance of the Project or to the liabilities of the Owner under the Mortgage;
- H. act as landlord of the Project and rent or lease the same on any terms approved by it, or dispossess by summary proceedings or other available means any tenant defaulting under the terms of the lease of a dwelling unit;
- I. take possession of equipment, appliances or other tangible personal property in which a security interest has been granted by this Agreement or the First Mortgage and dispose of the same in any commercially reasonable manner. The Agency shall have the option to dispose of any such equipment and personal property either separately from the Project and Land or in conjunction with a sale of the Project and Land, and the Owner agrees that either method of disposition shall be commercially reasonable;
- J. make effective an assignment of the Architectural Contract and/or Construction Contract by the Owner to the Agency, in which event the Agency is specifically empowered by the Owner to exercise any and all rights of the Owner under the Architectural Contract and/or Construction Contract, and at the option of the Agency to proceed with the rehabilitation or construction of the Project, in which event all payments by the Owner made with respect to the Architectural Contract and/or Construction Contract shall be treated as disbursements on the Loan;
- K. sue the Owner for a mandatory injunction or other equitable relief requiring performance by the Owner of any of its obligations under this Agreement or the First Mortgage or the other Loan Documents. The Owner agrees with the Agency that the

Agency's remedy at law for the violation or nonperformance of the Owner's obligations under the First Mortgage or this Agreement or the other Loan Documents is not adequate by reason, among other things, of the Agency's public purpose to provide adequate, safe and sanitary dwelling units Low-Income Tenants;

- L. after consultation with the Owner, sue under the Architectural Contract and/or Construction Contract or on a warranty to recover any amount payable to the Owner pursuant to the Architectural Contract and/or Construction Contract or payable to the Owner pursuant to any such warranty and to settle any such claim or liability and release the same and apply the proceeds of any such suit, settlement or release to the liabilities of the Owner under this Agreement or the First Mortgage;
- M. if the Owner commits a breach or threatens to commit a breach of any of the provisions of the Mortgage or other Loan Documents, the Agency shall have the right, without posting bond or other security, to seek injunctive relief or specific performance, it being acknowledged and agreed that any such breach, or threatened breach, will cause irreparable injury to the Agency and that money damages will not provide an adequate remedy;
- N. to undertake reasonable maintenance and make reasonable repairs to the Project and to add the cost thereof to the principal balance of the First Mortgage; and/or
- O. notwithstanding the above enumeration of remedies, the Agency shall have available to it all other remedies provided at law or in equity or any other action permitted by law subject to the provisions of Section 37 of this Agreement.

Section 30. Expenses Due to Default. All expenses (including reasonable attorneys' fees and costs and allowances) incurred in connection with an action to foreclose the First Mortgage or in exercising any other remedy provided by the First Mortgage or this Agreement or the other Loan Documents, including the curing of any Event of Default, shall be paid by the Owner, together with interest at the then current rate being received by the Agency on its investments as determined in good faith by the Agency. Any such sum or sums and the interest thereon shall be a further lien on the Project, Land and Improvements, and shall be secured by this Agreement and the First Mortgage.

Section 31. Burden and Benefit. The Agency and the Owner hereby declare their understanding and intent that the burden of the covenants set forth herein touch and concern the Land in that the Owner's legal interest in the Land and the Project is rendered less valuable thereby. The Agency and the Owner hereby further declare their understanding and intent that the benefit of such covenants touch and concern the Land by enhancing and increasing the enjoyment and use of the Land and the Project as permanent supportive housing for the residential population described in Section 3 of this Agreement.

Section 32. Uniformity; Common Plan. The covenants, reservations and restrictions hereof shall apply uniformly to the entire Project and Land.

Section 33. Remedies; Enforceability. The provisions hereof are imposed upon and made applicable to the Land and shall run with the Land and shall be enforceable against the Owner or any other person or entity that has or had an ownership interest in the Project at the time of such violation or attempted violation. No delay in enforcing the provisions hereof as to any breach or violation shall impair, damage or waive the right of any party entitled to enforce the provisions hereof or to obtain relief against or recover for the continuation or repetition of such breach or violation or any similar breach or violation hereof at any later time or times.

Section 34. Amendments; Notices; Waivers. This Agreement and the First Mortgage may be amended only by an instrument in writing executed and acknowledged on behalf of the Agency and the Owner in such manner that the instrument may be recorded.

No waiver by the Agency in any particular instance of any Event of Default or required performance by the Owner and no course of conduct of the parties or failure by the Agency to enforce or insist upon performance of any of the obligations of the Owner under this Agreement, the First Mortgage, or under the other Loan Documents at any time shall preclude enforcement of any of the terms of this Agreement, the First Mortgage, the First Mortgage Note, or the other Loan Documents thereafter.

Any provisions of this Agreement, the First Mortgage or other Loan Documents requiring the consent or approval of the Agency for the taking of any action or the omission of any action requires such consent by the Agency in writing signed by a duly authorized officer of the Agency. Any such consent or approval, unless it expressly states otherwise, is limited to the particular action or omission referred to therein and does not apply to subsequent similar actions or omissions.

Notice provided for under this Agreement shall be given in writing signed by a duly authorized officer and any notice required to be given hereunder shall be given by recognized private carrier with acknowledgment of delivery, or by confirmed facsimile with a hard copy sent by certified mail, return receipt requested, or by certified or registered mail, postage prepaid, return receipt requested, at the addresses specified below, or at such other addresses as may be specified in writing by the parties hereto.

Agency: Executive Director
New Jersey Housing and Mortgage Finance Agency
637 South Clinton Avenue, CN 18550
Trenton, NJ 08650-2085

Owner: Our House, Inc.
76 Floral Avenue
Murray Hill, NJ 07974

with a copy to: K & L Gates
One Newark Center, 10th Floor
Newark, NJ 07102

All notices shall be deemed given when received.

Section 35. Severability. The invalidity of any part or provision hereof shall not affect the validity, legality and enforceability of the remaining portions hereof, and to this end the provisions of this Agreement shall be severable.

Section 36. Successors and Assigns. This Agreement and all rights, duties, obligations and interests arising hereunder shall bind and inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors and permitted assigns.

Section 37. Personal Liability. Notwithstanding any other provision contained in this Agreement, the other Loan Documents or any other document or instrument executed by the Owner in connection herewith or therewith, the Agency agrees, on behalf of itself and any future holder of the Note, that the liability of the Owner and its respective heirs, representatives, successors and assigns for the payment of its obligations hereunder and under the other Loan Documents, including, without limitation, the payment of principal, interest and other charges due hereunder and thereunder, shall be limited to the collateral pledged under the First Mortgage and the other Loan Documents, and that the Agency shall have no right to seek a personal judgment against the Owner, its respective heirs, representatives, successors and assigns individually, except to the extent necessary to subject the collateral (including the Project and Land) pledged under the First Mortgage and the other Loan Documents to the satisfaction of the First Mortgage debt, and provided, however, that the Agency shall retain the right to exercise any and all remedies granted to it under the First Mortgage, this Agreement and the other Loan Documents including, without limitation, the right to sue for injunctive or other equitable relief. The foregoing limitation of liability shall not apply to any party to the extent such party has committed fraudulent, criminal or other unlawful acts or omissions with regard to the Project or the Land.

Section 38. Counterparts. This Agreement may be executed in multiple counterparts, all of which shall constitute one and the same instrument, and each of which shall be deemed to be an original.

Section 39. Disclaimer of Warranties, Liability; Indemnification/Defense.

A. The Owner acknowledges and agrees that (i) the Agency has not heretofore and does not make any warranty or representation, either express or implied, as to the value, condition, or fitness for particular purposes of the Project or any portions thereof or any other warranty or representation with respect thereto; (ii) in no event shall the Agency and its members, directors, officers, agents, servants and employees be liable or responsible for any incidental, indirect, special or consequential damages in connection with or arising out of this Agreement or any of the other Loan Documents or the development of the Project or the existence, functioning or use of the Project or any items or services provided for in this Agreement or the other Loan Documents; and (iii) during the term of this Agreement and the other Loan Documents and to the fullest extent permitted by law, the Owner shall indemnify, defend and hold the Agency harmless against, and the Owner shall pay, any and all liability, loss, cost, damage, claims, judgments or expenses of any and all kinds or nature and however arising (including reasonable attorneys' fees), imposed by law, which

Section 44. Owner's Default Under Financing Documents.

A. Upon the occurrence of an Event of Default set forth in this Agreement or in the event of a violation by the Owner of the terms of any agreement between the Agency and the Owner, or in the event of a violation of the rules and regulations of the Agency or in the event that the Agency shall reasonably and in good faith determine that the Loans are in jeopardy of not being repaid, the Agency shall have the right to manage the affairs of the Owner as such affairs relate to the Project or to name a designee to manage the same.

B. The delegation of authority to the Agency shall terminate upon the curing, to the satisfaction of the Agency, of the event giving rise to the delegation.

C. The Agency and its members, designees, agents, officers, or employees shall not be personally responsible for the debts, obligations or liabilities of the Owner.

D. The admission and delegation to the Agency or its designee shall last only for a period coexistent with the duration of the event giving rise to the action hereunder or until the Agency determines in its sole discretion that such an event or one of similar nature will not reoccur.

E. The Agency or its designee shall serve without compensation, but shall be entitled to be reimbursed for all necessary expenses incurred in discharge of its duties as determined by the Agency.

F. The primary function of the Agency or its designee is to protect the interest of the Agency's Loan and the Low-Income Tenants of the Project and, in the absence of fraud or bad faith, the Agency or its designee shall not be liable for damages to the Owner or any partner, member or stockholder thereof.

G. This Agreement and the admission of and delegation to the Agency shall not be construed as to cause a merger between any of the Loan Documents and the title to the Project.

H. The rights and remedies granted to the Agency under this Agreement are not intended to limit in any way its rights and powers under Section 7(b)(6) of the Act.

Section 45. Applicability and Conflict of Terms and Conditions. The terms and conditions of this Agreement are applicable for the entire term of this Agreement (as set forth in Section 6 hereof) unless otherwise set forth in this Agreement. In the event of any conflict or inconsistency between the terms and conditions of any of the Loan Documents (including this Agreement), the terms and conditions of this Agreement shall prevail. Notwithstanding the foregoing, the Owner agrees that the Agency may render a decision concerning the intent and/or applicability of any term or condition of the Loan Documents, which decision shall be final and binding, unless such decision is found to be arbitrary or capricious by a court of competent jurisdiction.

Section 46. Miscellaneous. Unless the context clearly requires otherwise, as used in this Agreement, words of the masculine, feminine or neuter gender shall be construed to include any other gender when appropriate and words of the singular number shall be construed to include the plural number, and vice-versa, when appropriate. This Agreement and all the terms and provisions thereof shall be construed to effectuate the purposes set forth herein and to sustain the validity hereof.

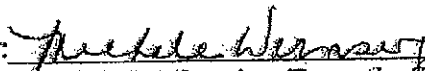
The titles and headings of the sections of this Agreement have been inserted for convenience of reference only, and are not to be considered a part hereof and shall not in any way modify or restrict any of the terms or provisions hereof or be considered or given any effect in construing this Agreement or any provisions hereof or in ascertaining intent, if any question of intent shall arise.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first written above.

WITNESS/ATTEST

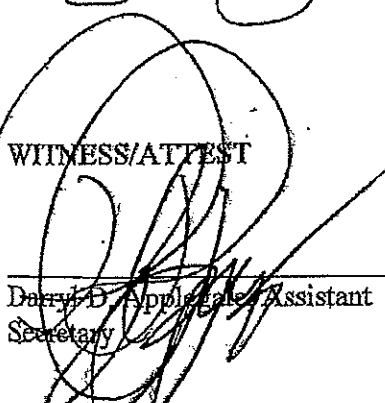
Owner: OUR HOUSE, INC.


Eugenia Gore

By: 
Michele Wernsing, Executive Director

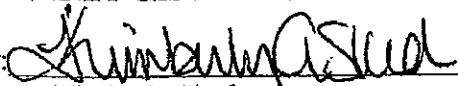
WITNESS/ATTEST

Lender:
NEW JERSEY HOUSING AND
MORTGAGE FINANCE AGENCY


Darryl D. Applegate, Assistant
Secretary

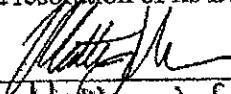
By: 
Leslie S. Lefkowitz, Chief of Legal and
Regulatory Affairs

This Agreement is approved as to form:
ATTORNEY GENERAL OF NEW JERSEY

By: 
Kimberly Sked
Deputy Attorney General

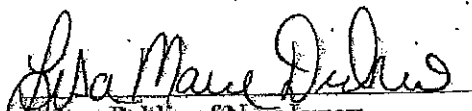
STATE OF NEW JERSEY, COUNTY OF MERCER SS:

I CERTIFY that on August 15, 2012, Michele Wernsing personally came before me, the subscriber, a Notary Public of the State of New Jersey, and acknowledged under oath, to my satisfaction that (a) she is the Executive Director of Our House, Inc., the non-profit corporation named in this document; and (b) she executed and delivered this document as the voluntary act of said corporation duly authorized by a resolution of its Board of Directors.


Matthew J. Schiller, Esq.
Notary Public of New Jersey
Attorney at Law, State of New Jersey

STATE OF NEW JERSEY, COUNTY OF MERCER SS:

I CERTIFY that on August 15, 2012, LESLIE S. LEFKOWITZ personally came before me, a Notary Public of the State of New Jersey, and acknowledged under oath to my satisfaction that a) he is the Chief Counsel of NEW JERSEY HOUSING AND MORTGAGE FINANCE AGENCY, the Agency named in this document, and b) he executed and delivered this document as the voluntary act of the Agency, duly authorized by a proper resolution of its members, on behalf of the Agency.


Notary Public of New Jersey
My Commission Expires _____

LISA MARIE DI ORIO
A Notary Public of New Jersey
My Commission Expires March 21, 2013

RECORDING INFORMATION SHEET**ESSEX COUNTY REGISTER'S OFFICE
HALL OF RECORDS, ROOM 130
465 MARTIN LUTHER KING Jr. Blvd
NEWARK NJ 07102**INSTRUMENT NUMBER:
12068118DOCUMENT TYPE :
DEED**Official Use Only**PHILIP THIGPEN, REGISTER
ESSEX COUNTY, NJINSTRUMENT NUMBER
12068118
RECORDED ON
August 17, 2012 01:52 pm
BOOK:12384 PAGE:6218

BB

CONSIDERATION (R) \$350,000.00

MAIL COPY _____

NO COPY _____

ENVELOPE _____

ADDITIONAL STAMPINGS _____

*Return Address (for recorded documents)*LAND TITLE AGENCY INC
464 VALLEY BROOK AVENUE
LYNDHURST NJ 07071

No. Of Pages (excluding Summary Sheet)

4

Recording Fee (excluding Transfer Tax)

\$70.00

Realty Transfer Tax

\$2,105.00

Amount Charged (Check # 802)

\$2,175.00

Municipality

WEST ORANGE

Parcel Information

Block 152.18

Lot 962

First Party Name

MARGARET BERTELSEN

Second Party Name

OUR HOUSE INC

Additional Information (Official Use Only)***** DO NOT REMOVE THIS PAGE. *****
COVER SHEET (DOCUMENT SUMMARY FORM) IS PART OF ESSEX COUNTY FILING RECORD
***** RETAIN THIS PAGE FOR FUTURE REFERENCE. *****

RECORD AND RETURN:
LAND TITLE AGENCY, INC.
484 VALLEY BROOK AVE.
LYNDHURST, N.J. 07071
(201) 894-8844

Deed

This Deed is made on August 15, 2012

BETWEEN

Margaret Bertelsen, Unremarried
Surviving Tenant by the Entirety
whose post office address is
2A Forest Avenue
West Orange, New Jersey 07052

referred to as the Grantor,

AND Our House, Inc.

a Not-For-Profit Organization of the State of New Jersey
whose post office address is
76 Floral Avenue
New Providence, New Jersey 07974

referred to as the Grantee.

The words "Grantor" and "Grantee" shall mean all Grantors and all Grantees listed above.

1. **Transfer of Ownership.** The Grantor grants and conveys (transfers ownership of) the property (called the "Property") described below to the Grantee. This transfer is made for the sum of \$350,000.00.
Three Hundred Fifty Thousand Dollars and No Cents
The Grantor acknowledges receipt of this money.

2. **Tax Map Reference.** (N.J.S.A. 46:15-1.1) Municipality of **West Orange**
Block No. **152.18** Lot No. **962** Qualifier No. Account No.
☐ No lot and block or account number is available on the date of this Deed. (Check box if applicable.)

3. **Property.** The Property consists of the land and all the buildings and structures on the land in
the Township of **West Orange**
County of **Essex** and State of New Jersey. The legal description is:

☒ Please see attached Legal Description annexed hereto and made a part hereof. (Check Box if Applicable.)

BEING the same premises conveyed to Alf Bertelsen and Margaret Bertelsen, his wife, by Deed from Louise Ann Petruzzello, unmarried, dated May 17, 1984, recorded on June 20, 1984, in Deed Book 4832 at Page 472.

Alf M. Bertelsen died December 13, 2010 (Essex County Surrogate's Docket No. 2011-0099) vesting title in Margaret Bertelsen as surviving tenant by the entirety.

This conveyance is subject to easements and restrictions of record and such state of facts as an accurate survey shall reveal, municipal, state and federal zoning laws and ordinances as may be applicable to the subject premises.

Prepared by: (print signor's name below signature)

(For Recorder's Use Only)

Paul S. Foreman

Paul S. Foreman, Esq., Attorney at Law of NJ

The street address of the Property is:
2A Forest Avenue, West Orange, New Jersey

4. Promises by Grantor. The Grantor promises that the Grantor has done no act to encumber the Property. This promise is called a "covenant as to grantor's acts" (N.J.S.A. 46:4-6). This promise means that the Grantor has not allowed anyone else to obtain any legal rights which affect the Property (such as by making a mortgage or allowing a judgment to be entered against the Grantor).

5. Signatures. The Grantor signs this Deed as of the date at the top of the first page. (Print name below each signature.)

Witness by:

Linda J. Isakson
Linda J. Isakson

Margaret Bertelsen (Seal)
Margaret Bertelsen

(Seal)

STATE OF NEW JERSEY, COUNTY OF MORRIS
I CERTIFY that on August 9, 2012

SS:

Margaret Bertelsen

personally came before me and stated to my satisfaction that this person (or if more than one, each person):

(a) was the maker of this Deed; and,

(b) executed this Deed as his or her own act; and

(c) made this Deed for \$350,000.00

as the full and actual consideration paid or to be paid for the transfer of title. (Such consideration is defined in N.J.S.A. 46:15-5.)

RECORD AND RETURN TO:

LAND TITLE AGENCY, INC.

464 Valley Brook Avenue

Lyndhurst, NJ 07071

(201) 804-8844 12-LT-0203

Paul S. Foreman

Paul S. Foreman, Esq.

Attorney at Law, State of New Jersey

Print name and title below signature:

DESCRIPTION

~~ALL~~ that certain tract or parcel of land and premises, situate, lying and being in the Township of West Orange, in the County of Essex, and State of New Jersey, more particularly described as follows:

BEGINNING at a point in the southeasterly side of Forest Avenue therein distant northeasterly 147.96 feet from the intersection of the same with the northeasterly side of Eagle Rock Avenue; thence

- (1) Along the said side of Forest Avenue North 33 degrees 12 minutes East; thence
- (2) South 50 degrees 49 minutes East 100.00 feet; thence
- (3) North 33 degrees 12 minutes East 50.00 feet; thence
- (4) South 50 degrees 49 minutes East, 100.00 feet to a point in the northwesterly side of Eagle Street; thence
- (5) Along said side of Eagle Street South 33 degrees 12 minutes West 100.00 feet; thence
- (6) North 50 degrees 49 minutes West 100.00 feet; thence
- (7) North 33 degrees 12 minutes East 25.00 feet; and thence
- (8) North 50 degrees 49 minutes West 100.00 feet to the southeasterly side of forest Avenue and the point or place of BEGINNING.

The above description is in accordance with a survey drawn by David A. Stires Associates, LLC, Gary V. Marmo, P.L.S. dated July 18, 2012.

FOR INFORMATION ONLY:

Being known as Lot 962 in Block 152.18 on the Official Tax Map of the Township of West Orange in the County of Essex and State of New Jersey.

Being also known as 2A Forest Avenue, West Orange, New Jersey.

State of New Jersey
SELLER'S RESIDENCY CERTIFICATION/EXEMPTION
(C.55, P.L. 2004)

(Please Print or Type)

SELLER(S) INFORMATION (See Instructions, Page 2)

Names(s)

Margaret Bortelsen

Current Resident Address:

Street: 2208 Midewater Avenue

City, Town, Post Office

Rio Grande

State

NJ

Zip Code

08242

PROPERTY INFORMATION (Brief Property Description)

Block(s)

152.18

Lot(s)

962

Qualifier

Street Address:

2A Forest Avenue

City, Town, Post Office

West Orange

State

NJ

Zip Code

07052

Seller's Percentage of Ownership

100%

Consideration

\$350,000.00

Closing Date

8/15/12

SELLER ASSURANCES (Check the Appropriate Box) (Boxes 2 through 10 apply to Residents and Non-residents)

1. ☒ I am a resident taxpayer (individual, estate, or trust) of the State of New Jersey pursuant to N.J.S.A. 54A:1-1 et seq. and will file a resident gross income tax return and pay any applicable taxes on any gain or income from the disposition of this property.
2. ☒ The real property being sold or transferred is used exclusively as my principal residence within the meaning of section 121 of the federal Internal Revenue Code of 1986, 26 U.S.C. s. 121.
3. ☐ I am a mortgagor conveying the mortgaged property to a mortgagee in foreclosure or in a transfer in lieu of foreclosure with no additional consideration.
4. ☐ Seller, transferor or transferee is an agency or authority of the United States of America, an agency or authority of the State of New Jersey, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Government National Mortgage Association, or a private mortgage insurance company.
5. ☐ Seller is not an individual, estate or trust and as such not required to make an estimated payment pursuant to N.J.S.A. 54A:1-1 et seq.
6. ☐ The total consideration for the property is \$1,000 or less and as such, the seller is not required to make an estimated payment pursuant to N.J.S.A. 54A:1-1 et seq.
7. ☐ The gain from the sale will not be recognized for Federal income tax purposes under I.R.C. Section 721, 1031, 1033 or is a cemetery plot. (CIRCLE THE APPLICABLE SECTION). If such section does not ultimately apply to this transaction, the seller acknowledges the obligation to file a New Jersey income tax return for the year of the sale (see instructions).
☐ No non-like kind property received.
8. ☐ Transfer by an executor or administrator of a decedent to a devisee or heir to effect distribution of the decedent's estate in accordance with the provisions of the decedent's will or the intestate laws of this state.
9. ☐ The property being sold is subject to a short sale instituted by the mortgagee, whereby the seller has agreed not to receive any proceeds from the sale and the mortgagee will receive all proceeds paying off an agreed amount of the mortgage.
10. ☐ The deed being recorded is a deed dated prior to the effective date of P.L. 2004, c. 55 (August 1, 2004), and was previously unrecorded.

SELLER(S) DECLARATION

The undersigned understands that this declaration and its contents may be disclosed or provided to the New Jersey Division of Taxation and that any false statement contained herein could be punished by fine, imprisonment, or both. I furthermore declare that I have examined this declaration and, to the best of my knowledge and belief, it is true, correct and complete. By checking this box ☐ I certify that the Power of Attorney to represent the seller(s) has been previously recorded or is being recorded simultaneously with the deed to which this form is attached.

8/9/12
DateMargaret Bortelsen
Signature

(Seller) Please indicate if Power of Attorney or Attorney in Fact

Date

Signature

(Seller) Please indicate if Power of Attorney or Attorney in Fact

EXHIBIT R



Essex County Register Document Summary Sheet

ESSEX COUNTY REGISTER OF DEEDS & MORTGAGES HALL OF RECORDS - ROOM 130 465 DR. MARTIN LUTHER KING BLVD NEWARK NJ 07102	Transaction Identification Number		3569876	3042407	
	Recorded Document to be Returned by Submitter to: RIVERSIDE TITLE AGENCY INC 383 RIDGEDALE AVE STE 3 EAST HANOVER, NJ 07936				
Official Use Only DANA RONE REG. OF DEEDS & MORTGAGES ESSEX COUNTY New Jersey DOCUMENT TYPE 1 INSTRUMENT NUMBER 2018079674 RECORDED ON Sep 12, 2018 3:30:26 PM Total Pages: 8 NJ PRESERVATION ACCOUNT \$40.00 REGISTER RECORDING FEE \$50.00 EFILING CONVENIENCE FEES \$3.00 HOMELESSNESS TRUST FUND \$3.00 TOTAL PAID \$96.00 INV: 231101 USER: KWG	Submission Date (mm/dd/yyyy)		09/10/2018		
	No. of Pages (excluding Summary Sheet)		6		
	Recording Fee (excluding transfer tax) (Convenience Charge of \$3.00 included)		\$96.00		
	Realty Transfer Tax		\$0.00		
	Total Amount		\$96.00		
	Document Type	DEED-NO CONSIDERATION			
	Electronic Recordation Level		L2 - Level 2 (With Images)		
	Municipal Codes		WEST ORANGE 22		
Bar Code(s)  2 6 2 3 2 3					

Additional Information (Official Use Only)

* DO NOT REMOVE THIS PAGE.

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 RETAIN THIS PAGE FOR FUTURE REFERENCE.



Essex County Register Document Summary Sheet

DEED-NO CONSIDERATION	Type	DEED-NO CONSIDERATION				
	Consideration	\$0.00				
	Submitted By	RIVERSIDE TITLE AGENCY INC (CSC/INGEO SYSTEMS INC)				
	Document Date	08/22/2018				
	Reference Info					
	Book ID	Book	Beginning Page	Instrument No.	Recorded/File Date	
	GRANTOR	Name			Address	
		THE ALPERT GROUP LLC				
	GRANTEE	Name			Address	
		VALLEY ROAD RESIDENTIAL URBAN RENEWAL LLC				
	Parcel Info					
Property Type	Tax Dist.	Block	Lot	Qualifier	Municipality	
	22	9	1,7,44,50 & 56		22	
* DO NOT REMOVE THIS PAGE. COVER SHEET [DOCUMENT SUMMARY FORM] IS PART OF ESSEX COUNTY REGISTER FILING RECORD. RETAIN THIS PAGE FOR FUTURE REFERENCE.						

MANDATORY DEED RESTRICTION FOR RENTAL PROJECTS

Deed Restriction

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

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

THIS DEED RESTRICTION, entered into as of this the 23 day of August, 2018, by and between The Alpert Group, LLC ("Administrative Agent"), or its successor, acting on behalf of the Township of West Orange ("Municipality"), with offices at 66 Main Street, West Orange, New Jersey 07052 and Valley Road Residential Urban Renewal LLC, a New Jersey limited liability company, having offices at c/o The Alpert Group, LLC, One Parker Plaza, Fort Lee, New Jersey 07024 the developer/sponsor (the "Owner") of a residential affordable rental project (the "Project"):

WITNESSETH

Article 1. Consideration

In consideration of the loan received by the Owner from the Municipality regarding the residential rental project located on the Property (as hereinafter defined), the Owner hereby agrees to abide by the covenants, terms and conditions set forth in this Deed Restriction. with respect to the land and improvements more specifically described in Article 2, hereof (the "Property").

Article 2. Description of Property

The Property consists of all of the land, and a portion of the improvements thereon, that is located in the municipality of West Orange, County of Essex, State of New Jersey, and described more specifically as Block No. 9, Lot No. 1.01, and known by the street address of 22 Central Avenue. As this project on this Property was financed in part through the allocation of federal Low-Income Housing Tax Credits and so long as the requirements of federal law pursuant to 26 U.S.C. s. 42 are met, the units on this Property are eligible for New Jersey Affordable Housing credits pursuant to P.L. 2009, c. 82 sect 14, presently codified as N.J.S.A. 45:22A-46.16, and pursuant to the Council on Affordable Housing these units do not need to be classified as low or moderate income units. However, the following bedroom mix shall be maintained: eleven (11) one bedroom units, thirty-six (36) two bedroom units, and eight (8) three bedroom units.

Article 3. Affordable Housing Covenants

Each restricted unit shall remain subject to the requirements of N.J.A.C. 5:80-26.1 et. seq. this subchapter until the municipality in which the unit is located elects to release the unit from such requirements. Prior to such a municipal election, a restricted unit must remain subject to the requirements of N.J.A.C. 5:80-26.1 et. seq. for a period of at least 30 years.

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

- A. Sale and use of the Property is governed by regulations known as the Uniform Housing Affordability Controls, which are found in New Jersey Administrative Code at Title 5, chapter 80, subchapter 26 (N.J.A.C. 5:80-26.1, *et seq.* the "Uniform Controls") except thirteen (13%) percent or seven (7) units shall be very low income units (30% of AMI).
- B. The Property shall be used solely for the purpose of providing rental dwelling units for low-income or moderate-income households, and no commitment for any such dwelling unit shall be given or implied, without exception, to any person who has not been certified for that unit in writing by the Administrative Agent. So long as any dwelling unit remains within its Control Period, sale of the Property must be expressly subject to these Deed Restrictions, deeds of conveyance must have these Deed Restrictions appended thereto, and no sale of the Property shall be lawful, unless approved in advance and in writing by the Administrative Agent.
- C. No improvements may be made to the Property that would affect the bedroom configuration of any of its dwelling units, and any improvements to the Property must be approved in advance and in writing by the Administrative Agent.
- D. The Owner shall notify the Administrative Agent and the Municipality of any foreclosure actions filed with respect to the Property within five (5) business days of service upon Owner.
- E. The Owner shall notify the Administrative Agent and the Municipality within three (3) business days of the filing of any petition for protection from creditors or reorganization filed by or on behalf of the Owner.

Article 4. Remedies for Breach of Affordable Housing Covenants

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

- A. In the event of a breach of any of the Covenants by the Owner, or any successor in interest of the Property, the Administrative Agent (with the approval of the Municipality) and the Municipality shall have all remedies provided at law or equity, including the right to seek injunctive relief or specific performance.
- B. Upon the occurrence of a breach of any Covenants by the Owner, or any successor in interest or other owner of the Property, the Administrative Agent (with the approval of the Municipality) and the Municipality shall have all remedies provided at law or equity including but not limited to

forfeiture, foreclosure, acceleration of all sums due under any mortgage, recouping of any funds from a sale in violation of the Covenants, diverting of rent proceeds from illegal rentals, injunctive relief to prevent further violation of said Covenants, entry on the premises, those provided under Title 5, Chapter 80, Subchapter 26 of the New Jersey Administrative Code and specific performance.

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

THE ALPERT GROUP, LLC

By: _____

Joseph Alpert, Managing Member

STATE OF NEW JERSEY

COUNTY OF Essex

On this the 22nd day of August, 2018, before me came JOSEPH ALPERT, to me known and known to me to be the Managing Member of The Alpert Group, LLC, the Administrative Agent for the Township of West Orange, who states that he has signed said Agreement on behalf of said Municipality for the purposes stated therein.

Christine Q. Valentino
NOTARY PUBLIC

CHRISTINE Q. VALENTINO
A NOTARY PUBLIC OF NEW JERSEY
MY COMMISSION EXPIRES SEPTEMBER 27, 2020

VALLEY ROAD RESIDENTIAL URBAN RENEWAL LLC

By: _____

Joseph Alpert, Managing Member

STATE OF NEW JERSEY

COUNTY OF Essex

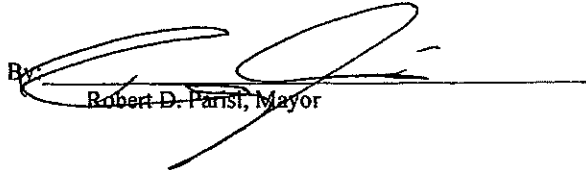
On this the 22nd day of August, 2018, before me came JOSEPH ALPERT, to me known and known to me to be a Managing Member of Valley Road Residential Urban Renewal LLC, the Owner of the Property, who states that he has signed said Agreement on behalf of said Owner for the purposes stated therein.

Christine Q. Valentino

NOTARY PUBLIC

CHRISTINE Q. VALENTINO
A NOTARY PUBLIC OF NEW JERSEY
MY COMMISSION EXPIRES SEPTEMBER 27, 2020

TOWNSHIP OF WEST ORANGE

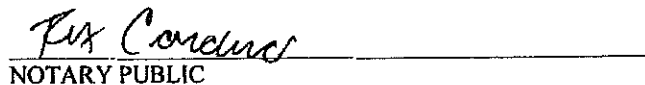
By 
Robert D. Parisi, Mayor

STATE OF NEW JERSEY

COUNTY OF Essex

On this the 22nd day of August, 2018, before me came ROBERT D. PARISI, to me known and known to me to be the Mayor of West Orange, the Municipality identified as such in the foregoing Agreement, who states that he is duly authorized to execute said Agreement on behalf of said Municipality, and that he has so executed the foregoing Agreement for the purposes stated therein.

REX CORDERO
Notary Public of New Jersey
My Commission Expires Feb. 5, 2020


NOTARY PUBLIC

ENGINEERING
SURVEYING
ENVIRONMENTAL
LANDSCAPE DESIGN



**Civil & Environmental
Engineering, Inc.**



DESCRIPTION OF
LOTS 1, 7, 44, 50 & 56
BLOCK 9
TOWNSHIP OF WEST ORANGE, ESSEX COUNTY, NEW JERSEY

All that certain lot, parcel, or tract of land, situated and lying in the Township of West Orange, County of Essex, and State of New Jersey, and being more particularly bounded and described as follows:

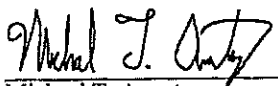
BEGINNING at a point situated along a northerly Right-Of-Way of Mitchell Street (50' wide R.O.W.), commonly representing a southerly property corner of Lot 8, Block 9 and a westerly property corner of Lot 7, Block 9, marked by a capped iron pin, and running thence:

1. North 29 degrees 30 minutes 13 seconds East, a distance of 164.84 feet to a point, thence;
2. South 62 degrees 42 minutes 47 seconds East, a distance of 19.33 feet to a point, thence;
3. North 32 degrees 04 minutes 13 seconds East, a distance of 199.34 feet to a point, thence;
4. South 57 degrees 55 minutes 47 seconds East, a distance of 179.40 feet to a point, thence;
5. South 30 degrees 37 minutes 13 seconds West, a distance of 77.34 feet to a point, thence;
6. South 35 degrees 49 minutes 13 seconds West, a distance of 28.80 feet to a point, thence;
7. South 32 degrees 53 minutes 46 seconds West, a distance of 251.99 feet to a point, thence;
8. North 60 degrees 29 minutes 47 seconds West, a distance of 2.65 feet to a point, thence;
9. North 31 degrees 23 minutes 13 seconds East, a distance of 0.75 feet to a point, thence;
10. North 60 degrees 28 minutes 47 seconds West, a distance of 185.25 feet to the point and place of BEGINNING.

CONTAINING 67,029 Square Feet (1.54 Acres).

Being in accordance with a plan entitled "Boundary Survey Plan prepared for Block 9, Lots 1, 7, 44, 50 & 56, Township of West Orange, Essex County, New Jersey", prepared by TRC Engineers, Inc, dated May 27, 2015, last revised July 17, 2015.

Subject to easements and restrictions of record, if any.


Michael T. Armstrong
Professional Land Surveyor.
NJPLS #35820

**LOAN AGREEMENT BETWEEN MUNICIPALITY OF WEST ORANGE AS LENDER
AND VALLEY ROAD RESIDENTIAL URBAN RENEWAL LLC,
A NEW JERSEY LIMITED LIABILITY COMPANY FOR NEW CONSTRUCTION OF
RENTAL UNITS AT 22 CENTRAL AVENUE, WEST ORANGE, NEW JERSEY**

WHEREAS, the Municipality of West Orange (hereinafter the "Lender") has funds available to provide for the development and construction of affordable housing to meet a portion of its affordable housing obligation;

WHEREAS, the Lender has designated Valley Road Residential Urban Renewal LLC (hereinafter the "Borrower") as a recipient of \$3,000,000 for new construction of a residential rental building (the "Building") located at Block 9, Lot 1.01, commonly known as 22 Central Avenue, West Orange, New Jersey (the "Property"), that will provide one hundred (100) total rental units, of which fifty-five (55) will be affordable rental units (the "Project"); and

WHEREAS, the Borrower has agreed to undertake the new construction of the Building as a multi unit residential building with 55 units of affordable housing with seven (7) units at very low income (up to 30% of AMI) and the balance of the units at affordable income (up to 60% of AMI); and

WHEREAS, the Lender and Borrower are concurrently herewith executing a Mortgage and Mortgage Note, securing this Loan Agreement on the Property; and

WHEREAS, it is the purpose hereof to further define and delineate the obligations and undertakings of the Lender and the Borrower under this Loan Agreement (the "Loan Agreement").

NOW, THEREFORE, in consideration of the Loan by the Lender to the Borrower and the Borrower's undertaking as described herein, the parties do agree as follows:

1. **The Loan Instruments.** The Lender and the Borrower concurrently herewith have executed the following instruments, a copy of each being annexed hereto (the "Loan Instruments").

Mortgage
Mortgage Note
Deed Restriction

The Loan Instruments are incorporated herein as if set forth in full and are amplified in accordance with the provisions contained herein. The remedies provided under the Mortgage, Mortgage Note, Deed Restriction and Loan Agreement shall be separate and distinct and the Lender shall be permitted to pursue any and all remedies together or separately.

2. **The Borrower's Undertaking.** The Borrower agrees upon execution hereof and delivery of the Loan Instruments to the Lender to undertake the new construction of the Project at the Property. The cost for new construction of the Project shall be financed in part by the Loan set forth in this instrument, and therefore the project shall be developed and operated subject to the terms and conditions contained herein and in the Mortgage Note and Mortgage.

This new construction project will provide a total of one hundred (100) units, of which fifty-five (55) will be affordable rental units for households. The affordable units shall be as identified in the Deed Restriction.

3. **Loan Amount and Terms.** Lender hereby agrees to loan under this agreement the sum of \$3,000,000. This Loan shall be made in one lump sum within five (5) days of the issuance of a temporary Certificate of Occupancy or a Certificate of Occupancy. This Loan is subject to appropriate deed restrictions which shall be set forth in the separate Deed Restriction document.

4. **Other Financing and Subordination of this Loan.** This Loan and the Mortgage securing this loan shall be subordinate to a construction mortgage given to TD Bank, N.A., a mortgage to the County of Essex, and a permanent mortgage to be given to TD Bank, N.A. or another lender. The subordination shall also be effective for any mortgage with respect to a refinancing or replacement of such permanent mortgage or new permanent financing. Lender agrees to sign appropriate subordination documents requested by TD Bank, N.A., the County of Essex or any permanent lender with respect to a subordination required by this Paragraph 4.

5. **Representations of the Borrower.** The Borrower represents that it is:

(a) Duly organized under Title 42:2B and now governed by Title 42:2C of the laws of the State of New Jersey as a Limited Liability Company qualified to undertake the residential project described in this Loan Agreement.

(b) Authorized to execute this Loan Agreement and a note, mortgage, and deed restriction.

(c) In good standing under the laws of the State is not the subject of any litigation, insolvency or bankruptcy proceedings.

(d) Able to execute this agreement without violating any of the provisions of its organizational documents and there is no legal impediment to its subscribing to the undertaking provided herein.

6. **Approval of the Project.** The Borrower represents that it will secure the requisite permits (if any are required) for the Project and can undertake the work and use as contemplated herein within existing codes and regulations of the Municipality of West Orange and other governmental authorities.

7. **Deed Restriction.** A Deed Restriction shall be executed and delivered by Borrower in a form reasonably acceptable to Lender.

8. **Notice.** Any notice or other communication with this Loan Agreement or the other Loan Instruments shall be in writing and (i) deposited in the United States mail, postage prepaid, by registered or certified mail, or (ii) hand delivered by any commercially recognized courier service or overnight delivery service, such as Federal Express, or (iii) sent by facsimile transmission if a fax number is designated below, addressed as follows:

If to the Lender: Township of West Orange
66 Main Street
West Orange, New Jersey 07052
Attn: Mayor

If to Borrower: Valley Road Residential Urban Renewal LLC
c/o The Alpert Group
One Parker Plaza
Fort Lee, New Jersey 07024

If to Borrower's Tax Credit Investor:

Wincopin Circle LLP
c/o Enterprise Community Asset Management, Inc.
70 Corporate Center
11000 Broken Land Parkway -- Suite 700
Columbia, MD 21044
Attn: General Counsel

9. **Hold Harmless.** The Borrower shall defend, hold harmless and indemnify the Lender and its agents from and against all losses and all claims, demands, payments, suits, actions, recoveries and judgments of any nature and description brought or recovered against it by reason of any act or omission of the Borrower, or its agents or employees arising out of the ownership of this Property and/or in the execution of the work and/or duties to be performed under this Loan Agreement, and/or resulting from environmental liabilities as described below in Paragraph 10; and further, any cost incurred by the Lender in defense of any claim, demand, payments, suits, actions, recoveries and judgments of such nature shall be reimbursed to the Lender by the Borrower.

Costs shall be deemed to include, but not be limited to, attorney's fees, filing expenses, expert witness fees, reproduction costs, long distance travel and telephone expenses incurred in connection with the defense of claims and shall bear interest at the prevailing rate.

10. **Environmental.** Borrower certifies and warrants that no contamination or violation of environmental laws is likely to occur at the Property, and represents that, except as set forth in environmental reports available to Lender, the site shall comply with all federal, state and local environmental laws, guidelines, etc. and that the environmental condition(s) of the Property shall not pose a risk or hazard to any person or the Project. The Borrower will indemnify, hold harmless and defend Lender from any liability resulting from any past, present or future contamination or clean up responsibilities, whether onsite or offsite, or the acts of any predecessors in title, and against any personal claims of sickness or illness; provided, however, such indemnity will not extend to lender or its agents if a loss or claim results from the willful misconduct of Lender or its agents or arises after the Lender forecloses on the Property.

IN WITNESS WHERETO, the parties have on this day of August 22, 2018
affixed their signatures.

Attest:



REX CORDERO
Notary Public of New Jersey
My Commission Expires Feb. 5, 2020

Attest:

LENDER:

Township of West Orange

By: 

Name: Robert D. Parisi

Title: Mayor

Date:

BORROWER:

Valley Road Residential Urban Renewal LLC

By: _____

Name: Joseph Alpert

Title: Co-Managing Member

Date:

EXHIBIT S

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

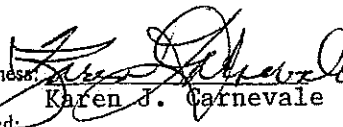
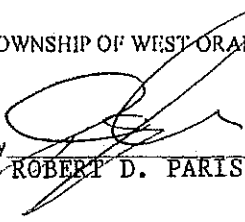
IN WITNESS WHEREOF, WEH, the Township and the Association have caused this Agreement to be properly executed, witnessed and/or attested this ____ day of _____, 2020.

WEST ESSEX HIGHLANDS, INC.

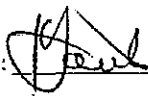
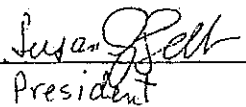
Witness: _____ By _____

Dated: _____

TOWNSHIP OF WEST ORANGE

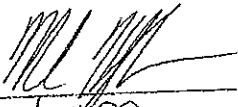
Witness:  By 
Karen J. Carnevale ROBERT D. PARISI, MAYOR
Dated: _____

WEST ESSEX HIGHLANDS
CONDOMINIUM ASSOCIATION, INC.

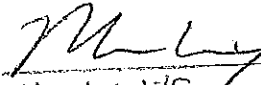
Witness:  By 
Dated: April 17, 2020 Susan Galt
President

IN WITNESS WHEREOF, WEH, 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: _____

Dated: _____

By _____

WEST ESSEX HIGHLANDS
CONDOMINIUM ASSOCIATION, INC.

Witness: _____

Dated: _____

By _____

EXHIBIT A
(Concept Plan)

NOTES:

1. EXISTING UTILITIES AND CONSTRUCTION ARE SHOWN WITHIN THE PROJECT AREA. ALL UTILITIES ARE TO BE DELETED OR RELOCATED AS SHOWN ON THE CONCEPT PLAN.
2. PROPOSED AND EXISTING DRIVEWAYS ARE SHOWN WITHIN THE PROJECT AREA. ALL DRIVEWAYS ARE TO BE DELETED OR RELOCATED AS SHOWN ON THE CONCEPT PLAN.
3. EXISTING AND PROPOSED DRIVEWAYS ARE SHOWN WITHIN THE PROJECT AREA. ALL DRIVEWAYS ARE TO BE DELETED OR RELOCATED AS SHOWN ON THE CONCEPT PLAN.
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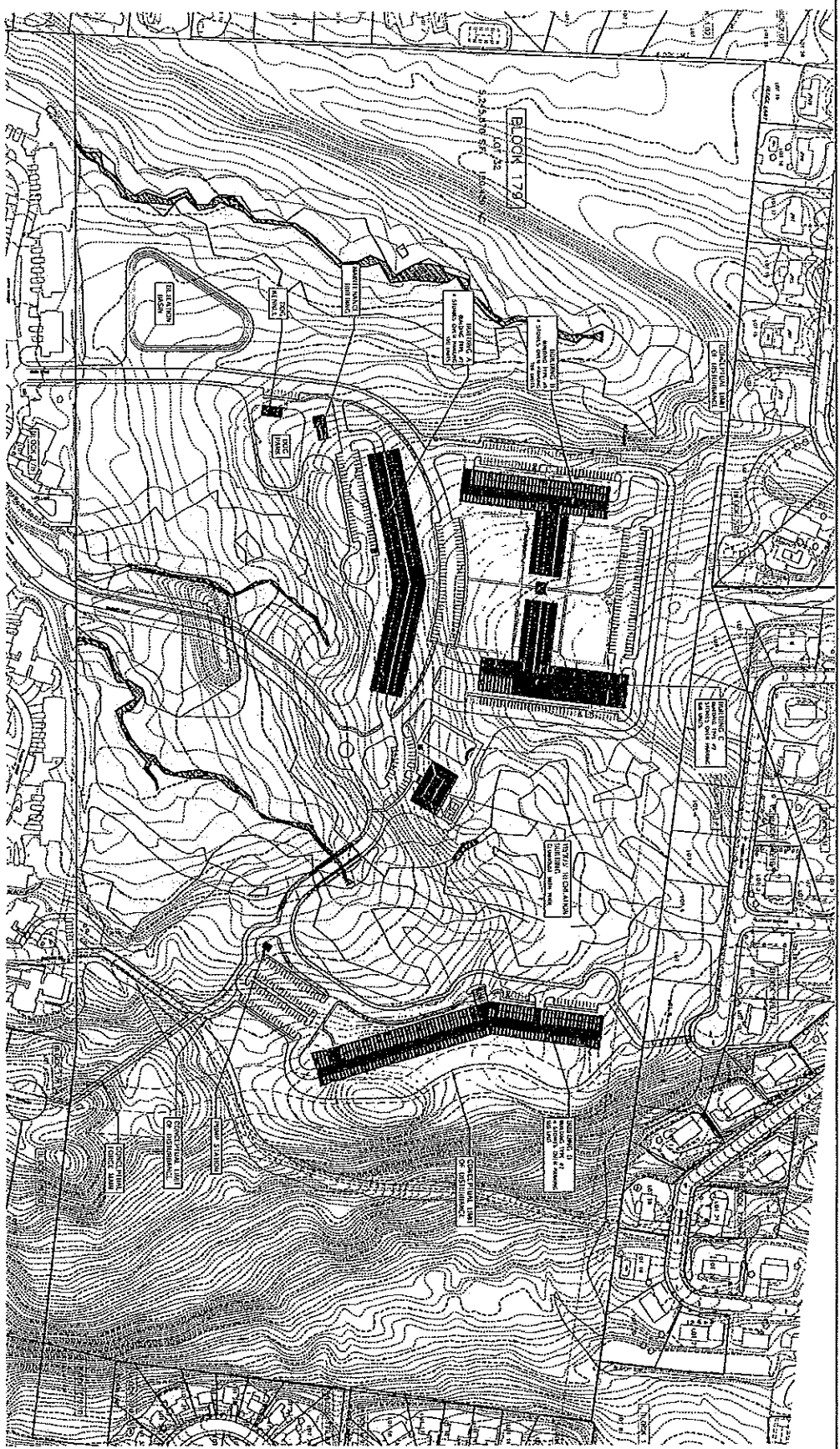


DEVELOPMENT SUMMARY

Category	Area (sq. ft.)	Volume (cu. yd.)	Weight (tons)
Gravel	1,200	1,200	1,200
Crushed Stone	1,200	1,200	1,200
Crushed Shell	1,200	1,200	1,200
Crushed Limestone	1,200	1,200	1,200
Crushed Granite	1,200	1,200	1,200
Crushed Basalt	1,200	1,200	1,200
Crushed Gneiss	1,200	1,200	1,200
Crushed Schist	1,200	1,200	1,200
Crushed Quartzite	1,200	1,200	1,200
Crushed Slate	1,200	1,200	1,200
Crushed Marble	1,200	1,200	1,200
Crushed Soapstone	1,200	1,200	1,200
Crushed Amphibole	1,200	1,200	1,200
Crushed Mica	1,200	1,200	1,200
Crushed Feldspar	1,200	1,200	1,200
Crushed Biotite	1,200	1,200	1,200
Crushed Hornblende	1,200	1,200	1,200
Crushed Anorthite	1,200	1,200	1,200
Crushed Pyroxene	1,200	1,200	1,200
Crushed Olivine	1,200	1,200	1,200
Crushed Garnet	1,200	1,200	1,200
Crushed Zircon	1,200	1,200	1,200
Crushed Spinel	1,200	1,200	1,200
Crushed Kyanite	1,200	1,200	1,200
Crushed Staurolite	1,200	1,200	1,200
Crushed Andalusite	1,200	1,200	1,200
Crushed Cordierite	1,200	1,200	1,200
Crushed Enstatite	1,200	1,200	1,200
Crushed Diopside	1,200	1,200	1,200
Crushed Hedenbergite	1,200	1,200	1,200
Crushed Anorthite	1,200	1,200	1,200
Crushed Pyroxene	1,200	1,200	1,200
Crushed Olivine	1,200	1,200	1,200
Crushed Garnet	1,200	1,200	1,200
Crushed Zircon	1,200	1,200	1,200
Crushed Spinel	1,200	1,200	1,200
Crushed Kyanite	1,200	1,200	1,200
Crushed Staurolite	1,200	1,200	1,200
Crushed Andalusite	1,200	1,200	1,200
Crushed Cordierite	1,200	1,200	1,200
Crushed Enstatite	1,200	1,200	1,200
Crushed Diopside	1,200	1,200	1,200
Crushed Hedenbergite	1,200	1,200	1,200

Category	Area (sq. ft.)	Volume (cu. yd.)	Weight (tons)
Gravel	1,200	1,200	1,200
Crushed Stone	1,200	1,200	1,200
Crushed Shell	1,200	1,200	1,200
Crushed Limestone	1,200	1,200	1,200
Crushed Granite	1,200	1,200	1,200
Crushed Basalt	1,200	1,200	1,200
Crushed Gneiss	1,200	1,200	1,200
Crushed Schist	1,200	1,200	1,200
Crushed Quartzite	1,200	1,200	1,200
Crushed Slate	1,200	1,200	1,200
Crushed Marble	1,200	1,200	1,200
Crushed Soapstone	1,200	1,200	1,200
Crushed Amphibole	1,200	1,200	1,200
Crushed Mica	1,200	1,200	1,200
Crushed Feldspar	1,200	1,200	1,200
Crushed Biotite	1,200	1,200	1,200
Crushed Hornblende	1,200	1,200	1,200
Crushed Anorthite	1,200	1,200	1,200
Crushed Pyroxene	1,200	1,200	1,200
Crushed Olivine	1,200	1,200	1,200
Crushed Garnet	1,200	1,200	1,200
Crushed Zircon	1,200	1,200	1,200
Crushed Spinel	1,200	1,200	1,200
Crushed Kyanite	1,200	1,200	1,200
Crushed Staurolite	1,200	1,200	1,200
Crushed Andalusite	1,200	1,200	1,200
Crushed Cordierite	1,200	1,200	1,200
Crushed Enstatite	1,200	1,200	1,200
Crushed Diopside	1,200	1,200	1,200
Crushed Hedenbergite	1,200	1,200	1,200

AREA OF DISTURBANCE * 28.9 ACRES * 22.2%



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

ACS
 American Consulting & Surveying, Inc.
 40 N. 9th St.
 Suite 200
 New York, NY 10003
 Tel: 212 677 6100
 Fax: 212 677 6101
 www.acs-engineering.com

PAUL W. ANDERSON
 A.E. PROFESSIONAL ENGINEER
 J.C. NO. 33416

DATE	3/03/20
BY	PAW
CHECKED BY	PAW
DATE	3/03/20

PAUL W. ANDERSON
 A.E. PROFESSIONAL ENGINEER
 J.C. NO. 33416

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 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 ¼ 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.