

SETTLEMENT AGREEMENT

In the Matter of the Application of the Township of Colts Neck, MON-L-ZZ34-15

THIS SETTLEMENT AGREEMENT ("Agreement") made this ___ day of ___ 2020, by and between:

TOWNSHIP OF COLTS NECK, a municipal corporation of the State of New Jersey, County of Monmouth, having an address of 124 Cedar Drive, Colts Neck, New Jersey 07722 (hereinafter the "Township" or "Colts Neck");

And

COLTS NECK BUILDING ASSOCIATES, LLC, a New Jersey limited liability company with a business address of 30A Vreeland Turnpike, Suite 220, Florham Park, New Jersey 07932 (hereinafter referred to as "Deyekmer");

Collectively, the Township and Developer shall be referred to as the "Parties."

WHEREAS, in compliance with the New Jersey Supreme Court's decision in In re Adoption of N.J.A.C. 5:96 and 5:97 by N.J. Council On Affordable Housing, 221 N.J. 1 (2015), on or about July of 2015, the Township filed an action with the Superior Court of New Jersey ("Court"), entitled In the Matter of the Application of the Township of Colts Neck, County of Monmouth, Docket No. MON-L-2234-15 seeking a Judgment of Compliance and Repose approving its Housing Element and Fair Share Plan (hereinafter "Affordable Housing Plan"), in addition to related reliefs (the "Compliance Action") and simultaneously filed a motion for temporary immunity, which was subsequently granted by the Court and is still in full force and effect; and

WHEREAS, the Developer filed a Motion to Intervene in the Township's Compliance Action, which was granted by Order dated August 19, 2015; and

WHEREAS, the Developer attended several mediations with Township representatives, Township professionals, the Court appointed Special Master, Michael Bolan, and Settlement Conferences with the Honorable Dennis E. O'Brien; and

WHEREAS, Developer owns property located at 302 Route 537, Colts Neck, NJ, and identified on the Township's tax map as Block 22, Lot 18 (formerly Lots 11, 12, 13, and 14) (the "Project Site 11");

WHEREAS, in evaluating properties appropriate for inclusionary developments, the Township has determined that the Project Site present an available, approvable, developable, and suitable opportunity for such development N.J.A.C. 5:93-1.3; and

WHEREAS, subject to the adoption of ordinances with terms specified herein and subject further to Court approval of this agreement, the Township has determined to incorporate the Project Site identified in this Agreement into its Affordable Housing Plan; and

WHEREAS, the Affordable Housing Plan will include the Project Site, which will be developed at a density that will permit a total of up to three hundred sixty (360) residential units, two hundred eighty-eight (288) to be market rate units, and a twenty percent (20%) affordable housing set-aside equating to seventy-two (72) multi-family rental units affordable to very low, low and moderate income households (hereinafter the "Project"); and

WHEREAS, the affordable units within the Project shall comply with the applicable regulations of the New Jersey Council on Affordable Housing ("COAH"), including the Uniform Housing Affordability Controls, N.J.A.C. 5:80-26.1 et lliJ, ("UHAC"), and all other applicable law, including a requirement that 13% of all affordable units within each bedroom distribution are available to very low income households, and said Project shall be deed restricted for a period of at least 30 years; and

WHEREAS, the Parties wish to enter into this Agreement, setting forth the terms, conditions, responsibilities and obligations of the Parties, and seek the Court's approval of this Agreement at a Fairness Hearing; and

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

ARTICLE I - PURPOSE

- 1.1 The purpose of this Agreement is (a) to set forth the terms and conditions agreed upon by the Parties to be in their mutual best interests and in the furtherance of the public welfare to settle the Compliance Action; (b) to amend the existing zoning ordinance, zoning map, and adopt an Affordable Housing Plan, to permit construction of three hundred sixty (360) residential units, two hundred eighty-eight (288) to be market rate units, and seventy-two (72) multi-family rental units affordable to very low, low and moderate income households, at the Project Site; (c) to redirect the resources and efforts of the Parties from litigating their rights and facilitating the actual construction of affordable housing.
- 1.2 The Project shall be substantially consistent with the concept site plan and rendering attached hereto and made a part hereof as Exhibit A, which has been reviewed and approved by the Township and the Township's professionals. The existing stormwater management basins and facilities may be utilized in connection with the development of the Project.
- 1.3 The Township will also introduce at public hearings and consider for adoption an ordinance rezoning the Project Site, and permitting the Project, substantially in the form attached hereto as Exhibit B (the "Rezoning Ordinance"), and will introduce and consider for adoption a corresponding appropriate amendment to the Township's Zoning Map.

ARTICLE II · BASIC TERMS AND CONDITIONS

2.1 This Agreement is subject to Court approval following a duly noticed "Fairness Hearing" and the Parties agree to request the Court's approval of this Agreement within thirty (30) days of the Effective Date.

2.2 In the event of any legal challenges to the Court's approval of this Agreement or the Required Approvals (defined in section 4.6), including a challenge by any third-party, the Parties must diligently defend any such challenge and shall cooperate with each other regarding said defense. In addition, if any such challenge results in a modification of this Agreement or the Project, the Parties shall negotiate in good faith with the intent to draft a mutually-acceptable amended Agreement, provided that no such modification requires an increase or decrease in density than provided herein. Each party shall be responsible for all costs which they may incur in obtaining Court approval of this Agreement and/or defending any challenge to the same.

2.3 This Agreement does not purport to resolve all of the issues before the Court raised in the Compliance Action. In the event the Township adopts the Rezoning Ordinance rezoning the Project Site and the Court approves this Settlement Agreement, but the Township is unable to reach a settlement with Fair Share Housing Center ("FSHC") or any other person or entity, all of the Parties hereto are obligated to comply with their obligations under this Agreement including but not limited to the obligation to defend this Agreement.

ARTICLE III-DEVELOPER OBLIGATIONS

3.1 **Obligation To File Development Applications In Accordance With Rezoning Ordinance, Concept Plans.** Developer shall file development applications in accordance with the Rezoning Ordinance. All such applications shall be substantially consistent with the concept plan, and rendering, attached hereto as Exhibit A and the proposed ordinance rezoning the Project Site attached hereto as Exhibit B. The Township agrees to act in good faith and with continuity of purpose to advance the potential approval and permitting of the Project. Although the Planning Board of the Township of Colts Neck is not a party to this Settlement Agreement, the Parties understand and anticipate that the Planning Board will undertake all necessary steps required by law to advance and expedite the process for the potential approval and permitting of the Project.

3.2 Obligation To Maintain 20 Percent Affordable Housing Set-Aside And To Comply With All Affordable Housing Laws. Developer, its successors and/or assigns shall have an obligation to deed-restrict twenty percent (20%) of the total residential units produced in the Project as multi-family rental units. If the Project delivers the agreed upon three hundred sixty (360) residential units, then Developer shall be obligated to provide seventy-two (72) units affordable to very low, low and moderate income. Developer shall not be subject to any payment in-lieu, or affordable housing development fee. All affordable units shall be integrated into the market rate dwelling units with no more than 10 affordable units per building (as reflected on Exhibit A).

3.3 **Obligation To Phase The Affordable Units:** Certificates of occupancy for the Project shall be issued in accordance with the phasing schedule provided within N.J.A.C. 5:93-5.6(d) to ensure that the affordable units are constructed.

3.4 Additional Affordable Housing Requirements: All of the affordable units in the Project shall comply with UHAC, the Township's Affordable Housing Plan, the Township's Affordable Housing Ordinance, any applicable order of the Court (including the Township's eventual Judgment of Compliance and Repose Order or "TOR Order"), and other applicable laws. The Developer will also comply with the following provisions regarding the affordable units in the Project:

- 3.4.1 Deed Restriction Period: The Developer shall have an obligation to deed restrict the affordable units in the proposed project as very low, low or moderate income affordable units for a period of at least thirty (30) years from the date of the initial occupancy of each affordable unit (the "Deed-Rgstriction Period"), unless and until the Township decides, in its sole discretion, to release the controls on affordability, so that the Township may count each affordable unit against its obligation to provide affordable housing. The Parties agree that the affordability controls shall not expire until such time, after thirty (30) years from the date of initial occupancy that the Township may, in its sole discretion, take action to release the controls on affordability, and that, thereafter, the affordability controls shall continue in effect until the date on which the individual affordable rental unit shall become vacant, provided that the occupant household continues to earn a gross annual income of less than 80 percent of the applicable median income. See N.J.A.C. 5:80-26.1 l(b). If, at any time after the potential release of the affordability controls by the Township, a rental household's income is found to exceed 80 percent of the regional median income, the rental rate restriction shall expire at the later of either the next scheduled lease renewal or sixty (60) days. See Ibid.
- 3.4.2 Deed Restriction: The Developer shall execute and record a Deed Restriction for the affordable units in a form acceptable to both Parties before the first Certificate of Occupancy is issued for the Project. The Deed Restriction will be recorded in the Monmouth County Clerk's office. The Township may, in its sole discretion, take all actions necessary to release and discharge the Deed Restriction with respect to each affordable unit upon the expiration of the Deed Restriction Period with respect to such unit, subject to the terms of 3.4.1 hereof.
- 3.4.3 Income Distribution Requirements: Thirteen percent (13%) of the total number of the affordable family rental units within each bedroom distribution in the Project must be very low income units, thirty-seven (37%) of the total number of affordable rental units must be low income units, and the remaining fifty percent (50%) must be moderate income rental units.
- 3.4.4 Bedroom Mix: At least twenty percent (20%) of the affordable units will be three bedroom units, and no more than twenty percent (20%) of the affordable units will be one bedroom units. The remainder of the affordable units will be two bedroom units.

3.4.5 Administrative Agent; The Developer shall, subject to written approval by the Township Council, contract with a qualified and experienced third party administrative agent, which may be the Township administrative agent (the "administrative agent") for the administration of the affordable units and shall have the obligation to pay all costs associated with properly deed restricting the affordable units in accordance with this Agreement for the Deed-Restriction Period. The Developer and its administrative agent shall work with the Township and the Township's administrative agent, should the Developer's and the Township's administrative agent not be one and the same, regarding any affordable housing monitoring requirements imposed by COAH or the Court. The Developer shall provide, within thirty (30) days after written notice, detailed information reasonably requested by the Township or the Township's administrative agent, should the Developer's and the Township's administrative agent not be one and the same, concerning the Developer's compliance with UHAC, the Township's Affordable Housing Ordinance, the Township's Amended Affordable Housing Plan, all applicable Court orders (including the Township's JOR), and other applicable laws.

3.4.6 Inclusion Of Affordable Units In The Township's Affordable Housing Plan: The Parties agree that the Project will be included in the Township's Affordable Housing Plan, which will be approved by the Court at a Compliance Hearing, and will be memorialized in a JOR Order, and that the affordable housing credits generated by the Project will be applied against the Township's affordable housing obligation.

3.4.7 UHAC. Notwithstanding anything to the contrary contained herein, to the extent there is any discrepancy between UHAC and the Township's Affordable Housing Ordinance and/or UHAC and this Agreement, the terms of UHAC shall control.

3.5 Obligation to post Escrows. Developer shall post escrows to cover the costs of the Township's and Planning Board's professionals in conjunction with their review of Developer's development applications, which costs shall include, by way of example, the cost to review submissions of the applicant and other relevant documents and to testify about the reports reviewed. All such escrows shall be governed by the requirements of the Municipal Land Use Law, N.J.S.A. 40:SSD-1 et seq. ("MLUL").

3.6 Obligation To Comply With Reasonable Conditions of Approval. Developer acknowledges that as a condition of preliminary and/or final site plan and/or subdivision approval, Planning Board may require on-site and off-site improvements only as permitted by N.J.S.A. 40:55D-42. Developer shall comply with all such reasonable conditions and shall confine any challenge to any condition of approval to an attempt to rectify the contested condition.

3.7 Developer shall perform, at its expense, any studies the Planning Board or other Township Board, commission or other entity with jurisdiction may reasonably, and lawfully, require with respect to any infrastructure improvements necessitated by the Project.

3.8 Obligation Not To Oppose Township's Application for Approval of its Affordable Housing Plan. Developer will cooperate with and support the Township's subsequent request for entry of a Judgment of Compliance and Release provided that the Township's Affordable Housing Plan includes the Project Site consistent with this Agreement, and will support the settled upon fair share and will not otherwise challenge the validity of the Township's Affordable Housing Plan.

3.9 Obligation to Cooperate. Developer and Township shall each have the obligation to cooperate and advance the intent and purposes of this Agreement.

ARTICLE IV - OBLIGATIONS OF THE TOWNSHIP

4.1 The Rezoning Ordinance. Within sixty (60) days of the approval of this Agreement by Court Order after a properly noticed Fairness Hearing is held, the Township shall introduce and place on the Township Council agenda for public hearing and potential adoption that Rezoning Ordinance that is substantially in the form attached hereto as **Exhibit B** that will permit the development of the Project Site consistent with the Rezoning Ordinance, and reasonably consistent with the attached concept site plans, and rendering (attached as **Exhibit A**) that allows for the development of the Project.

4.1 Upon introduction of the Rezoning Ordinance, the Township shall refer the Rezoning Ordinance to the Planning Board for review and recommendation,

4.3 Within thirty (30) days of a recommendation by the Planning Board regarding the Rezoning Ordinance, the Township will place on the Township Council agenda for public hearing, second reading and potential adoption the Rezoning Ordinance.

4.4 The adoption of the Rezoning Ordinance shall not await the adoption of the Affordable Housing Plan. If the Township fails to adopt the Rezoning Ordinance within one hundred and eighty (180) days from the execution of the Settlement Agreement, the parties consent to the Court's jurisdiction to continue adjudicate the dispute between the parties and the parties to this Agreement shall be restored, *status quo ante*, to their respective positions prior to the execution of this Agreement, and no party shall be entitled to use this Agreement to the disadvantage of the other in any future litigation.

4.5 Obligation To Include Project Into Township's Affordable Housing Plan. The Township shall incorporate the Project, this Agreement and the Rezoning Ordinance into the Affordable Housing Plan for which it seeks the Court's approval. The Township agrees that, absent written consent of Developer, or its successors in title the Rezoning Ordinance shall remain applicable to the Project Site until the conclusion of the Third Round compliance period (July 2, 2025), and the Project Site may only be removed from the Affordable Housing Plan with the approval of the Court on Notice to Developer and its successors,

4.6 Obligation To Cooperate. The Township acknowledges that in order for Developer to construct the Project, the Developer will be required to obtain approvals and permits from relevant public entities, municipalities, and utilities, such as, by way of example only, other municipalities, the Township, the Planning Board, the County of Monmouth, the Monmouth

County Planning Board, Manasquan River Regional Sewer Authority, the New Jersey Department of Environmental Protection, and the New Jersey Department of Transportation (collectively, "Required Approvals"). The Township agrees to act in good faith and with continuity of purpose and to use reasonable efforts to cooperate with Developer in its undertakings to obtain the Required Approvals provided that the taxes on the subject property are current. The Township further acknowledges that the Project as depicted on the concept site plans attached hereto may require modification to comply with conditions imposed by the Required Approvals, and that deviations and reasonable variances from the Rezoning Ordinance or the Township's Ordinance may be required to comply with the Required Approvals and effectuate the intent and purpose of this Agreement.

4.7 **Obligation to Maintain Proposed Re-Zoning of Project Site.** The Township agrees that if a decision of a court of competent jurisdiction in Monmouth County, or a determination by an administrative agency responsible for implementing the Fair Housing Act, or an action by the New Jersey Legislature, would result in a calculation of an affordable housing obligation for the Township for the period 1987-2025 that would lower the Township's affordable housing obligation beyond that established by COAH for the period 1987-1999 and/or this Court for the period 1999-2025, the Township shall nonetheless implement the Rezoning Ordinance contemplated by this Agreement, and act in good faith to support the development of the Project as it is contemplated by this Agreement,

4.8 **Obligation to Provide Developer Relief from Cost-Generative Features and/or Requirements.** The Township recognizes that as an inclusionary development, within the meaning of the Mason v. Lalor doctrine, the Project is entitled to certain relief from cost-generative features as defined by relevant law. The Township specifically acknowledges that in accordance with N.J.S.A. 40:14A-8.3 and N.J.S.A. 40:14B-22.3, the affordable units shall be entitled to a 50% reduction for any connection fees or tapping fees to be assessed.

4.9 **Utilities to Serve the Project.** The Township shall cooperate with Developer, and act in good faith and with continuity of purpose to assist the Developer in facilitating the provision of public water and sewer to the Project Site by tie-in to existing sewer collection service through Freehold Township or Freehold Township Public Works and by tie-in to existing public potable water supply located in Freehold Township (the "Proposed Connection Locations"). Such cooperation shall include, but not be limited to, immediately introducing and recommending a resolution supporting an amendment to the sewer service area and an expansion of the water franchise area, entering into agreements, and taking any other reasonable steps necessary or required to help facilitate the provision of public water and sewer to the Project Site by tie-in to the Proposed Connection Locations, placement within an appropriate sewer service area, and incorporation into an approved Monmouth County Water Quality Management Plan ("WQMP") and the Township's Wastewater Management Plan ("WWMP") to allow development of the Project. The Township, if necessary, shall endorse and support any applications required for the allocation of capacity and delivery of sewer and water service to the Project Site by tie-in to the Proposed Connection Locations. The Township shall become a co-plaintiff and cooperate with and support Developer in its efforts to obtain judicial approval, including any appeals, it being understood by the parties to this Agreement that the Township's role as a co-plaintiff in such litigation or appeals may, in its reasonable discretion, include relying upon and joining in motions, briefs, pleadings,

arguments, etc. that are prepared and/or advanced by the Developer, as well as relying upon Developer's expert witnesses and reports. Notwithstanding, the Township, and its professional consultants, shall act in good faith and with continuity of purpose to cooperate with Developer its undertakings to obtain public sewer and water approvals including participating in the preparation and review of litigation documents and expert reports.

ARTICLE V – MUTUAL OBLIGATIONS

5.1 Obligations Regarding Costs. Except as set forth herein, each Party shall be responsible for its own costs and expenses associated with seeking Court approval for and implementing this Agreement. The foregoing provision shall not be construed to preclude joint representation of Township and Planning Board in any litigation or other proceeding.

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

5.3 **Notices**, Any notice or demand or other communication required under this Agreement by either party to the other shall be considered given and delivered if it is dispatched by certified mail, return receipt requested, or recognized overnight or personal carrier such as, for example, Federal Express, with certified proof of receipt, and, where feasible, All notices shall be deemed received upon the date of delivery set forth in such certified proof, and all times for performance based upon notice shall be from the date set forth therein. Delivery shall be affected as follows, subject to change as to the person(s) to be notified and/or their respective addresses upon ten (10) days' notice as provided herein:

TO DEVELOPER:

COLTS NECK BUILDING ASSOCIATES, LLC
Attention: Jenny Bernell
666 Fifth Avenue, Floor 15
New York, NY 10103

WITH COPIES TO:

Giordano, Halleran & Ciesla
Attention: John A. Sarto, Esq.
125 Half Mile Road, Suite 300
Red Bank, NJ 07701-6777
jsarto@ghclaw.com

TO THE TOWNSHIP OF COLTS NECK:

Township of Colts Neck
Attention: Kathleen M. Capristo, Twp, Administrator
124 Cedar Drive, Town Hall, Upper Floor
Colts Neck, NJ 07722

WITH COPIES TO:

Gluck Walrath, LLP
Attention: Meghan Bennett Clark, Esq.
11 Wharf Avenue, Suite 4
Red Bank, NJ 07701

AND TO:

Chiesa Shahinian & Giantomasi, PC
Attention: Ronald L. Israel, Esq.
One Boland Drive
West Orange, NJ 07052

In the event any of the individuals identified above has a successor, the individual identified shall name the successor and notify all others identified of their successor, Notice by counsel for a party shall be effective for all purposes.

ARTICLE VI - MISCELLANEOUS

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

6.2 Successors Bound, The provisions of this Agreement shall run with the land, and the obligations and benefits hereunder shall be binding upon and inure to the benefit of the Parties, their successors and assigns, including any person, corporation, partnership or other legal entity which at any particular time may have a fee title interest in the Project Site which is the subject of this Agreement. This Agreement may be enforced by any of the Parties, and their successors and assigns, as herein set forth.

6.3 Governing Law, This Agreement shall be governed by and construed by the laws of the State of New Jersey,

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

6.5 Effect of Counterparts. This Agreement may be executed simultaneously in one (1) or more facsimile or e-mail counterparts, each of which shall be deemed an original. Any facsimile or e-mail counterpart forthwith shall be supplemented by the delivery of an original counterpart pursuant to the terms for notice set forth herein.

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

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

6.8 Necessity of Required Approvals. The Parties recognize that approval of the development application to implement the Project provided in this Agreement, and such other actions as may be required of the Planning Board or Township under this Agreement, cannot be granted or approved except on the basis of the independent reasonable judgment by the Planning Board and the Township Council, as appropriate, and in accordance with the procedures established by law. Nothing in this Agreement is intended to constrain that judgment or to authorize any action not taken in accordance with procedures established by law, however, in accordance with procedures established by law, the Planning Board's judgment must not be arbitrary, capricious, or unreasonable in its consideration of the application. Similarly, nothing herein is intended to preclude Developer from appealing a denial of the development application or appealing from the imposition of any unreasonable conditions by the Planning Board in accordance with the MLUL.

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

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 Conflict of Interest. No member, official or employee of the Township or the Planning Board shall participate in any decision relating to the Agreement which is prohibited by law, absent the need to invoke the rule of necessity.

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

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

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

6.15 Default. In the event that any of the Parties shall fail to perform any material obligation on its part to be performed pursuant to the terms and conditions of this Agreement, unless such obligation is waived by all of the other Parties for whose benefit such obligation is intended, or by the Court, such failure to perform shall constitute a default of this Agreement. Upon the occurrence of any default, the non-defaulting Party shall provide notice of the default and the defaulting Party shall have a reasonable opportunity to cure the default within forty-five (45) days. In the event the defaulting Party fails to cure within forty-five (45) days, or such reasonable period of time as may be appropriate to take actions to cure the default in compliance with the laws of New Jersey, the Party(ies) for whose benefit such obligation is intended shall be entitled to exercise any and all rights and remedies that may be available in equity or under the laws of the State of New Jersey, including the right of specific performance to the extent available. Further, the Parties may apply to the Court for relief, by way of a motion for enforcement of litigant's rights.

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

6.17 Payment of Fee., to Fair Share Housing Center: The Developer shall make a one-time payment to the Fair Share Housing Center, in the amount of \$7,500, representing Developer's contribution to the attorney's fees and costs assessed to the Township by FSHC, and as referenced in paragraph 23 of the Township's executed settlement agreement with FSHC (the "Payment"). The Payment is due within thirty (30) days of the Court's Approval of this Agreement. In addition to all other remedies available to Developer, the Township will reimburse Developer for the Payment if the Township is in default of its obligations in this Agreement and fails to cure the default as provided in Section 6.15 herein.

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

THE REMAINDER OF THIS PAGE IS PURPOSEFULLY BLANK

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

Attest

**COLTS NECK BUILDING
ASSOCIATES, LLC**

By: _____

Print Name: -----

Print Name: -----

Date: ----, 2020

Attest:

**TOWNSHIP OF COLTS NECK,
A Municipal Corporation of the
State of New Jersey**



By: 

Print Name: TRINA Lindsey

Print Name: [?]-A-W/(t.J.: '27, lot,

Date: ----, 2020

EXHIBIT A

CONCEPT SITE PLAN AND RENDERING

DEVELOPMENT DATA

TOTAL RESIDENTIAL: 360 DU
 MAINT. BLDG: 1 UNIT
 CLUBHOUSE: 6,100 SF
 TOTAL PARKING: 691 SPACES



MINNO ■ WASKO

CLIENT NAME:
KUSHNER

CONCEPT SITE PLAN
 COLTS NECK
 COLTS NECK TOWNSHIP, NJ
 OSUBIA
 COLTS-NECK-TOWNSHIP

EXHIBIT B
ZONING ORDINANCE FOR THE PROJECT

TOWNSHIP OF COLTS NECK

ORDINANCE# __ _

AN ORDINANCE AMENDING AND SUPPLEMENTING CHAPTER 102, "DEVELOPMENT REGULATIONS" OF THE CODE OF THE TOWNSHIP OF COLTS NECK, ARTICLE VIII, "ZONING REQUIREMENTS," "PART 4. ZONING AND DESIGN REQUIREMENTS FOR RESIDENTIAL DISTRICTS," SECTION 102-85.2, "A-6 RESIDENTIAL DISTRICT"

WHEREAS, the Township Committee of the Township of Colts Neck desires to amend and supplement the Township of Colts Neck Zoning Code to provide for the construction of an inclusionary residential development designed to assist the Township in satisfying its fair share housing obligation through construction of affordable units set aside for low- and moderate-income households, pursuant to the *Mount Laurel* doctrine and the laws of New Jersey; and

WHEREAS, the A-6 Zone is comprised of the property identified as Lots 11, 12, 13 and 14, within Block 22, on the Colts Neck Township Tax Map; and

WHEREAS, the Township Committee of the Township of Colts Neck desires to adopt this Ordinance pursuant to a settlement agreement between Colts Neck Building Associates, LLC, and the Township, dated _____ 2020, in the case captioned *In the Matter of the Application of the Township of Colts Neck* docketed at MON-L-2234-15.

NOW, THEREFORE, BE IT ORDAINED by the Township Committee of the Township of Colts Neck, County of Monmouth, State of New Jersey, that the Code of the Township of Colts Neck is supplemented at Chapter 102, "Development Regulations," Article VIII, "Zoning Requirements," "Part 4. Zoning and Design Requirements for Residential Districts," Section 102-85.2, "A-6 Residential District."

SECTION 1. Chapter 102, "Development Regulations," Article VIII, "Zoning Requirements," Section 102-85.2, "A-6 Residential District," shall be amended and supplemented as follows:

A. Principal permitted uses on land and in buildings. The following shall be permitted as principal uses:

- (1) Multi-family residential buildings, with market rate and multi-family rental affordable housing units. A twenty percent (20%) set-aside of multi-family rental affordable housing units shall be provided in accordance with Section 102-97, 1 of the Township Code.
- (2) Agricultural uses.
- (3) Conservation areas and open space.

B. Permitted accessory uses.

- (1) Off street parking facilities and parking lots.
 - (2) Mailboxes, lampposts, flagpoles, driveways, paths, sidewalks.
 - (3) Common facilities and amenities including: tot lots, clubhouse with a fitness center and reception facilities, swimming pools, hot tubs, grilling stations and other on-site recreational areas and facilities, common walkways, gazebos, sitting areas, picnic areas and gardens, enclosed dog park/run area, and other similar uses.
 - (4) Patios, decks, terraces, and balconies.
 - (5) Fences and walls. See §102-57 and §102-73 for requirements.
 - (6) Maintenance building accessory to the multi-family buildings, and pump station maintenance building, not to exceed 1,500 s.f. of coverage and 25 feet in height.
 - (7) Satellite dishes and solar energy panels mounted at ground level, which shall be screened from view of public streets and neighboring properties by screening, planting, fencing or a combination of these techniques, in order to provide proper screening after two growing seasons. These location requirements do not apply to solar energy panels that are mounted flush, or nearly flush, with building sides or roofs.
 - (8) Antennae. See §102-49 for requirements.
 - (10) Bike racks
 - (12) Signs.
 - (13) Site lighting. The arrangement of exterior lighting shall adequately and safely illuminate parking areas, internal roadways, and walkways.
 - (14) Other uses which are customarily incidental to a permitted principal use.
 - (15) Temporary construction and sales trailers. See §102-80 for requirements.
 - (16) Utility structures, including but not limited to, stormwater management basins and facilities, pump stations, junction boxes, and the like. Existing stormwater management basins and facilities may be utilized in new development.
 - (17) Emergency generators.
 - (18) Barns and accessory buildings to farms. See §102-84 for requirements
- C. Maximum gross density. Notwithstanding the requirements set forth in §102-98H and §102-85.2E setting forth the maximum permitted gross density of residential development, the maximum number of residential units permitted within multi-family buildings is 360 units, or equivalent to a gross density not to exceed 9.5 units per gross acre,

- D. Affordable Housing. Not less than 20% of the total units developed on the site shall be affordable housing rental units. All affordable units shall be integrated into the market rate dwelling units with no more than 10 affordable units per building. If the multi-family rental dwelling units are subject to a condominium form of ownership, affordable units may be owned and managed by an affordable housing developer. The affordable units shall comply with the applicable regulations of the New Jersey Council on Affordable Housing, including the Uniform Housing Affordability Controls, N.J.A.C. 5:80-26.1 et seq., and all other applicable law, including a requirement that thirteen percent (13%) of all affordable units within each bedroom distribution are available to very low income households, and the affordable rental units shall be deed restricted for a period of at least thirty (30) years from the date of the initial occupancy of each affordable unit, unless and until the Township decides, in its sole discretion, to release the controls on affordability.
- E. Bulk, area, and building requirements. Multi-family dwelling units in the A-6 Zone shall be subject to the following requirements. Agricultural uses are subject to the standards of the A-1 Agricultural and Residential District requirements of §102-84.

Requirements for Multi-family Dwellings	Standard
Minimum lot area (acres)	35 acres
Minimum building setback from front Route 537 frontage *	75 feet
Minimum building setback from internal roads, aisles, and parking areas	10 feet
Minimum distance between buildings**	35 feet
Minimum side yard setback	20 feet
Minimum rear yard setback	0 feet where it abuts a riparian zone, otherwise 25 feet
Maximum building height***	50 feet
Maximum clubhouse height•**	30 feet
Maximum maintenance building height•••	25 feet
Maximum building length along longest side	145 feet

Maximum building coverage	20%
Maximum lot coverage	40%
Minimum open space	50%

*Setbacks are calculated from property line, and may overlap with buffers or setbacks required by any county or state agency.

**Patios, balconies, awnings, stairways servicing buildings are not included in the calculation of minimum distance between buildings, but a minimum separation of 11 feet between buildings including patios shall be maintained and a minimum separation of 15 feet between buildings including balconies, awnings, and stairways shall be maintained.

***Building height is measured from the finished development grade to the highest point of a roof.

F. Site access, off-street parking, and loading requirements.

- (1) Two site access driveways shall be permitted from County Route 537 to the site. Notwithstanding the provisions of §102-77H, a development in the A-6 Zone shall be permitted street intersections with the same side of an existing street at intervals of a minimum of 500 feet between center lines of the new streets.
- (2) The number of parking spaces shall be consistent with the requirements of N.J.A.C. 5:21-1.1 et seq. known as the Residential Site Improvements Standards,
- (3) The number of parking spaces required for a club house or amenity space shall be 1 parking space per 800 square feet of gross floor area. Shared parking between a club house or amenity space and residential units may be approved by the Planning Board or Zoning Board of Adjustment.
- (4) No Loading spaces are required,
- (5) Notwithstanding the requirements set forth in Section 102-II9G, aisles providing access to parking spaces shall be twenty-four (24) feet in width.
- (6) Parking spaces and parking areas shall be setback a minimum of 75 feet from the property boundary along the Route 537 frontage, and 0 feet from riparian zone buffers, and 15 feet in all other yards.
- (7) Parking space dimensions shall be 9 feet by 18 feet.

- (8) Notwithstanding the provisions of §102-?IA, shade trees shall be planted 10 feet from the curb line.
- (9) Notwithstanding the requirements set forth in §102-119A(2), no landscape islands shall be required in the parking areas.
- (10) Notwithstanding the provisions of §102-99B, a wall may be substituted in lieu of screen planting, except along Route 537.
- (11) The main loop road servicing the development shall have a pavement width of 28 feet.

G. Landscape buffer. Along the Route 537 frontage a seventy-five (75) foot landscaped buffer shall be provided. The buffer shall be calculated from the property line, and may overlap with any county or state buffers. The landscaped buffer shall be planted with an all-season screen consisting of groups of evergreen and deciduous trees staggered in double rows 15 feet on center. Evergreen tree groups shall consist of three to seven evergreen trees (minimum of six feet in height at planting), Deciduous tree groups shall consist of one canopy tree (minimum of 11 feet in height and 2 ½ inches in caliper at planting), and three ornamental trees (minimum of six feet in height, 1 ¾ inches caliper at planting.) A project identification sign is permitted within the landscaped buffer.

H. Signs.

- (1) One monument or freestanding project identification sign at each side of any site entrance along the Route 537 frontage in accordance with the following standards:
 - i. Signs shall be non-illuminated or externally illuminated.
 - ii. Signs shall be landscaped and may identify the community project name, developer, and logo.
 - iii. The maximum sign area containing text and logos shall not exceed 25 square feet for each side of the sign if two-sided.
 - iv. The maximum sign height, including the structure and sign area, shall not exceed 8 feet above proposed finished grade.
 - v. The minimum sign setback shall be 10 feet from the public right-of-way.
- (2) One (1) wall mounted building identification sign is permitted for each face of a building abutting an internal roadway or parking area. The wall mounted sign shall have a maximum height of 12 feet and a maximum area of 8 s.f. Wall mounted signs may be externally illuminated.

- (3) Ground mounted wayfinding signs shall be permitted to identify specific locations and/or buildings, areas, or recreational facilities. At entrances to these areas, two signs shall be permitted stating the name of the area or facility, as applicable, and no other advertising material. No sign shall exceed 4 square feet in area and 4.5 feet in height.
- (4) Street number designation, name plates, lawn signs, postal boxes, on-site directional and parking signs, and signs posting property as "private property," "no hunting," or similar purposes are permitted but shall not exceed an area of two square feet per sign.
- (5) Real estate signs and flag signs, the purpose of which is to advertise availability and/or direct the public to the development, are permitted along public streets and intersections, provided that such signs are located outside of any sight triangle easements, do not interfere with vehicle sight lines. Such signs shall comply with the following requirements:
 - i. There shall be no more than 5 real estate signs and 10 flag signs per property being advertised, however, there shall be no more than 5 real estate signs and 10 flag signs along County Route 537.
 - ii. Signs shall be freestanding and non-illuminated, and may be two sided.
 - iii. Real estate signs shall not exceed 25 square feet in area, per side, and 8 feet in height above the ground.
 - iv. Flag signs shall not exceed 60 square feet of area, per side, and shall not exceed 20 feet in height above the ground.
 - v. The text per each sign shall include the community project name, developer name, logo, and advertising and informational text.
- (6) Except as provided for herein, all signs shall be in accordance with the requirements of § 102-106.
- (7) Seasonal decorations are permitted in accordance with the requirements of § 102-106C.
- (8) Monument and freestanding signs shall be located outside of any sight triangle easements,

I. Refuse and recyclable material storage. Every multi-family building shall provide a storage area to accommodate refuse and recyclable materials. The area shall be screened from

view and enclosed by fencing, plantings; or other materials that are contextual with the architectural design of the development.

J. Yards.

(I) Notwithstanding the requirements set forth in §102-83C, there is no requirement to provide a yard area for any building.

K. Phased development.

(I) Phased development plans may be considered for residential development projects that include a minimum of 300 residential units and a land area of 35 acres or greater.

SECTION 2. Remainder. Except as hereby amended and supplemented, all other parts of Chapter 102 of the Code of the Township of Colts Neck shall remain in full force and effect.

SECTION 3, Referral to Planning Board. Upon introduction, this Ordinance shall be referred to the Planning Board of the Township of Colts Neck for its review and comment.

SECTION 4, **Repealer**. All ordinances or parts of ordinances inconsistent or in conflict with this Ordinance are hereby repealed as to said inconsistencies and conflict.

SECTION 5. Severability. If any Section, part of any Section or clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional, such decision shall not affect the remaining provisions of this Ordinance. The Township Committee of the Township of Colts Neck declares that it would have passed the Ordinance and each Section thereof, irrespective of the fact that any one or more of the subsections, sentences, clauses or phrases may be declared unconstitutional or invalid.

SECTION 4. Effective Date. This Ordinance shall take effect immediately upon final passage and publication according to law,