

## SETTLEMENT OF LITIGATION AGREEMENT

This Settlement of Litigation Agreement (the "Agreement") is entered into this \_ day of March, 2020, by and between COUNTRYSIDE DEVELOPERS, INC., a corporation of the State of New Jersey with a business address of 76 Stillwell Road, Holmdel, New Jersey ("Countryside"), and the TOWNSHIP OF COLTS NECK, County of Monmouth, State of New Jersey, a municipal corporation of the State of New Jersey with a business address of 124 Cedar Drive, Colts Neck, New Jersey (the "Township"). Collectively, Countryside and the Township shall be referred to as the "Parties."

### WITNESSETH:

WHEREAS, Countryside is the contract purchaser of approximately 26 contiguous acres of real property generally located on Stone Hill Road in the Township and in the Township of Howell, which property is specifically identified as Block 42, Lot 4 on the Township's Official Tax Map and Block 172, Lot 15 on the Official Tax Map of Howell (collectively, the "Subject Property"); and

WHEREAS, the Subject Property does not presently have access to public sewer or water service;

WHEREAS, the Subject Property is not included in the Sewer Service Area element of Monmouth County's Wastewater Management Plan;

WHEREAS, in order for the Subject Property to obtain public sewer service, the Subject Property would need to be included in Monmouth County's Sewer Service Area and connected to sewer lines owned by Suez Water Company, which lines are connected to sewer lines owned by the Township of Freehold which flow into sewer lines owned by the Manasquan River Regional

Sewerage Authority ("MRRSA"), which MRRSA sewer lines flow into sewer lines owned by the Ocean County Utilities Authority ("OCUA"), which entity ultimately treats MRRSA's sewerage;

WHEREAS, in order for the Subject Property to obtain public water service, the Subject Property would need to obtain water service from Suez Water Company, which receives water from the Township of Freehold;

WHEREAS, in order for the Subject Property to obtain public sewer and water service, an expansion of the franchise area of Suez Water Company is required, Suez Water Company currently serves as a sewer and water customer of the Township of Freehold in connection with "The Grande," a development located in the Township across the street from the Subject Property;

WHEREAS, Countryside previously instituted certain litigation against the Township and various other municipal defendants, county defendants and utility authorities in the Superior Court of New Jersey, Law Division, Monmouth County captioned Countryside Developers, Inc. v. Township of Colts Neck, et al., Docket No. MON-L-4028-17 (the "Sewer Litigation"), which litigation was dismissed without prejudice; and

WHEREAS, the Sewer Litigation, among other things, sought to (1) have the Subject Property placed in Monmouth County's Sewer Service Area so that Countryside could obtain the necessary sewer approvals from MRRSA, OCUA, the County of Monmouth, the County of Ocean and/or the State of New Jersey, Department of Environmental Protection; and (2) provide water service for the Subject Property; and

WHEREAS, on October 10, 2018, the Township Committee adopted Resolution No. 2018-142, pursuant to which the Township: (1) endorsed the Subject Property's inclusion in the Sewer Service Area element of Monmouth County's Wastewater Management Plan; and (2)

authorized the expansion of the franchise area of Suez Water Company to provide sanitary sewer and water service to the Subject Property; and

**WHEREAS**, on December 12, 2018, Countryside refiled the Sewer Litigation, under Docket No. MON-L-4435-18, against MRRSA, MRRSA's constituent members, and Monmouth County, which litigation is pending; and

**WHEREAS**, the Township instituted certain litigation now pending in the Superior Court of New Jersey, Law Division, Monmouth County captioned In the Matter of the Application of the Township of Colts Neck, Docket No. MON-L-2234-15 (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; and

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

**WHEREAS**, the Parties, subject to the terms hereof: have agreed that the Subject Property may be permitted to be developed as a multi-family development by the construction of 53 market rate units and 15 affordable units on the Subject Property for a total of 68 units (the "**Proposed Development**"); and

**WHEREAS**, the Parties recognize that the Proposed Development would require the availability of public sewer and water service; and

**WHEREAS**, the Subject Property is presently zoned as to permit the development of inclusionary, multi-family housing; and

**WHEREAS**, the Township has agreed to introduce and place on the Township Council agenda for public hearing and potential adoption an ordinance rezoning the Subject Property so as to provide for permitted uses and bulk standards intended to allow as a permitted use and to facilitate the construction of the Proposed Development generally consistent with the "Concept Plan for Charleston Meadows at Colts Neck, Block 42, Lot 4, Colts Neck Township, Monmouth County, New Jersey" dated September 10, 2018 prepared by Maser Consulting, P.A. (the "**Concept Plan**"), a true copy of which is attached hereto as Exhibit A.

**WHEREAS**, the Township has agreed to use reasonable efforts and act in good faith and with continuity of purpose to cooperate with Countryside to help facilitate the the provision of public sewer and water service to the Subject Property; and

**WHEREAS**, the Planning Board of the Township of Colts Neck (the "**Planning Board**") is not a party to this Settlement Agreement, but the Parties anticipate that the Planning Board will exercise good faith and cooperation toward the goal of facilitating the development of the Subject Property in accordance with the Proposed Development pursuant to the terms of this Agreement; and

**WHEREAS**, in order to amicably resolve all issues in the Declaratory Judgment Litigation and the Sewer Litigation on the basis of: (a) the Township's adoption of the Zoning Amendment; (b) the Township's agreement to use reasonable efforts and to act in good faith and with continuity of purpose to cooperate with Countryside toward the goal of facilitating the provision of public sewer and water service to the Subject Property; and (c) the Township's agreement to act with good faith and continuity of purpose to advance the approval of Countryside's application for site plan approval on the Subject Property; and

**WHEREAS**, the Parties have reached an amicable settlement of any and all claims that could have been asserted in the Declaratory Judgment Litigation and the Countryside 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 and Sewer Litigation consistent with the terms hereof which, in part, are intended to facilitate the approval and construction of the Proposed Development generally consistent with the Concept Plan.

**2. OBLIGATIONS OF THE TOWNSHIP.**

2.1 **Adoption of Zoning Amendment.** Within sixty days (60) days from Court approval of this Agreement after a duly noticed Fairness Hearing is held, the Township shall introduce and place on the Township Council agenda for public hearing and potential adoption an ordinance rezoning the Subject Property so to provide for permitted uses and bulk standards intended to facilitate the approval and construction of the Proposed Development generally consistent with the Concept Plan (the "**Zoning Amendment**"). Upon introduction of the Zoning Amendment, the Township shall refer the Zoning Amendment to the Planning Board for review and recommendation. If the Township fails to adopt the Zoning Amendment within one hundred and twenty (120) days from the the execution of this Settlement Agreement, the parties' consent to the Court's jurisdiction to continue to adjudicate the dispute between the parties and the parties

to this Agreement shall be restored to, *status quo ante*, to their respective positions prior to the execution of this Agreement, and no party shall be entitled to use this Settlement Agreement to the disadvantage of the other in any future litigation.

2.2. **Obligation to Cooperate.** The Township acknowledges that in order for Countryside to construct the Proposed Development, Countryside will be required to obtain approvals and permits from relevant public entities, municipalities and utilities, such as, by way of example only, the Township, the Planning Board, the County of Monmouth, the Monmouth County Planning Board, the New Jersey Department of Environmental Protection ("NJDEP"), the New Jersey Department of Transportation, the Soil Conservation District, MRRSA, the constituent municipal members of MRRSA, the County of Ocean, and OCUA (collectively, the "**Required Approvals**"). The Township agrees to act in good faith and with continuity of purpose to use reasonable efforts to cooperate with Countryside in its undertakings to obtain the Required Approvals, provided that the taxes on the Subject Property are current.

2.3. **Obligation to Cooperate Regarding Public Sewer and Water Service,** The Township shall use reasonable efforts and act in good faith and with continuity of purpose to advance the provision of public sewer and water service for the Subject Property by tie-in to existing sewer collection service through Freehold Township Public Works and by tie-in to existing public potable water supply located in Freehold Township (the "**Proposed Connection Locations**"), including but not limited to the following:

(a) The Township shall support and endorse and, if necessary, become a co-applicant on applications made by Countryside to Monmouth County, the NJDEP, MRRSA, any of MRRSA's constituent members, OCUA, Ocean County and/or any other body politic or utility

authority necessary in order to provide public sewer and water service to the Subject Property by tie-in to the Proposed Connection Locations;

(b) The Township shall endorse and join in any request made by Countryside to MRRSA or any of MRRSA's constituent members regarding the procurement of a sewer allocation sufficient to service the Subject Property and the Proposed Development;

(c) The Township shall endorse and join in any request made by Countryside to the Township of Freehold in connection with the procurement of sewer and water service from the Township of Freehold and/or Suez Water Company so that public sewer and water service may be provided to the Proposed Development by tie-in to the Proposed Connection Locations;

(d) If necessary, the Township shall join, cooperate with and support Countryside in any litigation necessary to procure public sewer and/or water for the Subject Property and the Proposed Development by tie-in to the Proposed Connection Locations, including any litigation against MRRSA, the Township of Freehold, MRRSA's constituent members, the County of Monmouth, the NJDEP, the County of Ocean, OCUA or any other necessary party, including potentially joining as a party in the Sewer Litigation. It is understood and agreed by the Parties to the Settlement Agreement that the Township's role as a party in the Sewer Litigation may, in its reasonable discretion, include relying upon and joining in motions, briefs, pleadings, arguments, etc. that are prepared and/or advanced by Countryside, as well as relying upon Countryside's expert witnesses and reports.

2.4. Concept Plan. The Parties have reviewed the Concept Plan, which is attached hereto and made a part hereof as Exhibit A. The Parties find the design of the Proposed Development as represented on the Concept Plan, as a general concept, to be feasible and

acceptable as well as consistent with the proposed Zoning Amendment to be considered for adoption by the Township.

**2.5. The Planning Board's Obligation to Countryside's Development Applications.**

The Parties understand that the Planning Board is not a party to this Agreement, but the Parties anticipate that the Planning Board will undertake all necessary steps required by law and expedite the process for potential approval and permitting of the Proposed Development,

2.5.1. **Completeness.** Countryside will complete and submit a site plan and/or subdivision application for the Subject Property which shall be reviewed by the Planning Board for purposes of determining completeness, as defined by the Municipal Land Use Law, and compliance with the Zoning Amendment and applicable design standards. The Township will request that the Planning Board consider concluding its completeness determination within thirty (30) days of submission.

2.5.2. **Decision By the Planning Board.** After the Planning Board determines that the site plan and/or subdivision application is complete, the Planning Board shall schedule the public hearing on the application. The Township will request that the Planning Board consider taking action on the site plan and/or subdivision application within sixty (60) days of the determination of completeness, including, if necessary, providing Countryside with a special meeting exclusively for the review of the development application.

2.5.3. **Obligation to Refrain From Imposing Cost Generative Requirements.** The Planning Board recognizes that any approvals and this Agreement all contemplate the development of an "inclusionary development" within the meaning of the Mount Laurel doctrine, and Countryside shall be entitled to any benefits, protections and obligations afforded to developers of inclusionary developments. The Parties understand that the Planning Board is not a

party to this Agreement, but it is anticipated that the Planning Board will abide by the spirit and intent of this Agreement and the Mount Laurel doctrine's elimination of cost generative requirements from applications providing for an inclusionary development.

**3. OBLIGATIONS OF COUNTRYSIDE,**

**3.1. Dismissal of the Countryside Litigation as to Colts Neck.** Upon execution and entry by the Court of an Order incorporating and approving this Settlement Agreement, Countryside shall cause the dismissal with prejudice of the Sewer Litigation only as to Colts Neck by filing a Stipulation of Dismissal with Prejudice and Without Costs.

**3.2 Obligation To Submit Development Applications Substantially Consistent With the Concept Plan.** Countryside shall file and seek Planning Board approval of a site plan and/or subdivision application substantially consistent with the design for the development of the Subject Property as represented in the Concept Plan. 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 Countryside 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 minor waivers, exceptions, variances (except use variances) and/or other relief (such as relief from New Jersey's Residential Site Improvement Standards or the Township's Land Use and Development Ordinance). In such event, the parties acknowledge that Countryside shall be entitled to pursue such minor relief as may be necessary to develop the Subject Property in accordance with the Concept Plan and the Township shall recommend that the Planning Board grant such relief pursuant to N.J.A.C. 5:93-10.1 and N.J.A.C. 5:97-10J(b). 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, and all other applicable law, including a requirement that thirteen percent (13%) of the affordable units within each bedroom distribution 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. All affordable 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,

4. 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 approval for the Subject Property and the defense of any challenge with regard to any of the foregoing.

5. FAIRNESS HEARING. This Agreement is subject to Court approval following a properly noticed "Fairness Hearing." The terms set forth in this Agreement shall become effective upon approval thereof by the Court following such Fairness Hearing.

6. PAYMENT OF FEES TO FAIR SHARE HOUSING CENTER. Countryside shall make a one-time payment to the Fair Share Housing Center ("FSHC") in the amount of \$7,500, representing Countryside'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. The Township will reimburse Countryside for the Payment if the Township is in default of its obligations in this Agreement and after receiving written notice of

being in default, fails to cure the default after having a reasonable opportunity to cure the default 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 the State of New Jersey.

7. **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.

8. **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.

9. **GOVERNING LAW.** This Agreement shall be governed by and construed by the laws of the State of New Jersey.

10. **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.

11. **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.

12. **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.

13. PREPARATION. 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 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.

14. EXHIBITS. Any and all exhibits annexed to this Agreement are hereby made a part of this Agreement.

15. 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.

16. NOTICES. All notice, demands 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 by a recognized overnight or by a personal carrier. 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 the change as to the person(s) to be notified and/or their respective addresses upon ten (10) days' notice as provided herein:

To Countryside:

Countryside Developers, Inc.  
76 Stillwell Road  
Holmdel, NJ 07733  
Attn.: Terry Sherman

With a copy to counsel for Countryside:  
Bryan D. Plecker, Esq.  
Hutt & Shimanowitz, P.C.  
459 Amboy Avenue  
Woodbridge, NJ 07095

**To the Township:**

Township of Colts Neck  
124 Cedar Drive  
Colts Neck, NJ 07722  
Attn.: Borough Administrator

With a copy to counsel for the Township:  
Ronald L. Israel, Esq.  
Chiesa Shahinian & Giantomasi, P.C.  
One Boland Drive  
West Orange, NJ 07052

**IN WITNESS WHEREOF**, Countryside and the Township have caused this Agreement to be properly executed, witnessed and/or attested this \_\_\_ day of \_\_\_\_\_, 2020.

COUNTRYSIDE DEVELOPERS, INC.

Witness: -----

By -----

Dated:

TOWNSHIP OF COLTS NECK

Witness: \_\_\_\_\_

By \_\_\_\_\_

Dated: 3/18/20

**EXHIBIT A- CONCEPT PLAN**

