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Pulte Homes of NJ, Limited Partnership

IN THE MATTER OF THE APPLICATION OF  
THE BOROUGH OF FAR HILLS, COUNTY  
OF SOMERSET

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION SOMERSET COUNTY  
DOCKET NO.: SOM-L-903-15

(CIVIL ACTION- *MOUNT LAUREL*)

**NOTICE OF MOTION TO  
INTERVENE AND MOTION TO  
ENFORCE LITIGANT'S RIGHTS**

TO:

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2 East Broad Street, Second Floor  
Hopewell, NJ 08525  
*Special Master*

PLEASE TAKE NOTICE that, on March 28, 2024 at 9 a.m., or as soon thereafter as the matter may be heard, the undersigned attorneys for Movant/Interested Party Pulte Homes of NJ, Limited Partnership ("*Pulte*") will move before the Honorable Kevin M. Shanahan, A.J.S.C., at the Somerset County Superior Courthouse, 20 North Bridge Street, Somerville, New Jersey, for an Order permitting the intervention of Pulte in this matter pursuant to R. 4:33 as an intervenor and for the enforcement of litigant's rights pursuant to R. 1:10-3 in this matter; and


PLEASE TAKE FURTHER NOTICE that in support of the within motion, Pulte shall rely upon the Legal Brief, Certification of Craig M. Gianetti (with exhibits thereto, including a Proposed Answer), Certification of James Mullen (with exhibits thereto), and Certification of Ronald A. Kennedy, P.E. (with exhibits thereto) submitted herewith; and

PLEASE TAKE FURTHER NOTICE that Pulte requests oral argument if the Motion is opposed; and

PLEASE TAKE FURTHER NOTICE that at that time and place aforesaid, Pulte will request that the proposed form of Order submitted herewith be entered by the Court.

DAY PITNEY LLP  
Attorneys for  
Pulte Homes of NJ, Limited Partnership

Dated: March 12, 2024

By:   
CRAIG M. GIANETTI  
A Member of the Firm

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on this date, a true copy of the within Notice of Motion, Legal Brief, Certification of Craig M. Gianetti (with exhibits thereto), Certification of James Mullen (with exhibits thereto), Certification of Ronald A. Kennedy, P.E. (with exhibits thereto), and Proposed Order, were all served on the following counsel by email and eCourts and the special master by email:

Nancy L. Holm  
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*Special Master*

Dated: March 12, 2024

By:



\_\_\_\_\_  
CRAIG M. GIANETTI

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IN THE MATTER OF THE APPLICATION  
OF THE BOROUGH OF FAR HILLS,  
COUNTY OF SOMERSET

: SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION SOMERSET COUNTY  
: DOCKET NO.: SOM-L-903-15

:  
(CIVIL ACTION- *MOUNT LAUREL*)

:  
**[PROPOSED] ORDER GRANTING  
MOTION TO INTERVENE AND  
MOTION TO ENFORCE  
LITIGANT’S RIGHTS**

**THIS MATTER** having been opened to the Court upon the motion of Day Pitney LLP, attorneys for proposed Defendant-Intervenor Pulte Homes of NJ, Limited Partnership (“*Pulte*”), on notice to Nancy L. Holm. of Surenian, Edwards & Nolan, LLC, and Joseph V. Sordillo, Esq. and Albert E. Cruz, Esq. of DiFrancesco, Bateman, Kunzman, Davis, Lehrer & Flaum, PC, attorneys for the Borough of Far Hills (“*Borough*”), and upon notice to all other counsel on the service list attached to the Notice of Motion; and the Court having considered the papers submitted by the parties in support of and in opposition to the application; and having heard the arguments of counsel, if any; and good cause having been shown therefor;

**IT IS** on this \_\_\_\_\_ day of \_\_\_\_\_, 2024,

**ORDERED** as follows:

- (1) The motion of proposed Defendant-Intervenor Pulte to intervene in this matter, be, and the same hereby is, GRANTED. Pulte shall file its Answer within 14-days of this Order.

(2) The motion of Pulte to enforce litigant's rights pursuant to the settlement agreement dated October 15, 2018 by and between the Borough and Fair Share Housing Center, as amended by that certain First Amendment to Settlement Agreement dated July 6, 2020 in this matter (collectively, the "*FSHC Settlement Agreement*"), be, and the same hereby is, GRANTED.

(3) The Court finds the Borough to be in noncompliance with the FSHC Settlement Agreement, the Amended Order of Final Judgment of Compliance and Repose entered on March 16, 2022 ("*AJOR*"), and the Borough's affordable housing agreement dated December 9, 2019 ("*AHA*").

(4) The Court hereby invalidates the Notice of Violation, dated January 18, 2024 ("*Notice of Violation*"), and Notice of Default, dated March 4, 2024, ("*Notice of Default*") served by the Borough on Pulte relating to the 134 unit inclusionary, residential development with 25 non-age restricted and 4 age-restricted family rental affordable housing units (the "*Development*"), and finds that the Notice of Violation and Notice of Default are *void ab initio*.

(5) Additionally, the Borough shall not withhold any permits from Pulte relating to the Development based upon the Notice of Violation or Notice of Default. If the Borough withholds permits from Pulte for any reason relating to the Notice the Violation or Notice of Default, the Borough's immunity from builder's remedy lawsuits will be stripped.

(6) The Borough shall reimburse Pulte for all reasonable legal and professional fees in connection with the Notice of Violation and Notice of Default, including, but not limited to, all reasonable legal and professional fees incurred by Pulte in preparing its February 14, 2024 response to the Notice of Violation and this motion to intervene and to enforce litigant's rights.

(7) Should the Borough attempt to enforce the invalidated and *void ab initio* Notice of Violation or Notice of Default, refuse to issue zoning permits for the Development for any reason relating to the Notice of Violation or Notice of Default, or should the Borough take any actions to further unreasonably delay construction of the Development, the Borough’s immunity and protection from builder’s remedy lawsuits shall be stripped.

(8) The rights of Pulte to seek other relief may be addressed in further proceedings in this action, including but not limited to, the removal of the age-restriction on the market-rate units of the Development and a builder’s remedy.

(9) A true copy of this Order shall be served upon all counsel of record within seven (7) days of receipt of same by counsel for Pulte as entered by the Court. For these purposes service by e-filing shall suffice.

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HON. KEVIN M. SHANAHAN, A.J.S.C.

Opposed \_\_\_\_\_

Unopposed \_\_\_\_\_

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IN THE MATTER OF THE : SUPERIOR COURT OF NEW JERSEY  
APPLICATION OF THE BOROUGH : LAW DIVISION: SOMERSET COUNTY  
OF FAR HILLS, COUNTY OF : DOCKET NO.: SOM-L-903-15  
SOMERSET :  
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**PULTE HOMES OF NJ, LIMITED PARTNERSHIP LEGAL BRIEF IN SUPPORT OF  
MOTION TO INTERVENE AND TO ENFORCE LITIGANT’S RIGHTS**

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Homes of NJ, Limited Partnership

CRAIG M. GIANETTI, ESQ.  
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CRAIG M. GIANETTI, ESQ.  
MICHAEL J. FITZPATRICK, ESQ.  
*On the Brief*

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## PRELIMINARY STATEMENT

In this motion, Movant and interested party Pulte Homes of NJ, Limited Partnership (“*Pulte*”) seeks intervention in the Borough of Far Hills (“*Borough*” or “*Far Hills*”) *Mount Laurel* declaratory judgment action, *In the Matter of the Application of the Borough of Far Hills*, Docket No. SOM-L-903-15 (“*DJ Action*”), and seeks relief for the Borough’s bad faith attempt to deprive Pulte of its rights pursuant to the Borough’s court-approved settlement agreement with Fair Share Housing Center (“*FSHC*”), its December 9, 2019 affordable housing agreement (“*AHA*”) with Pulte’s predecessor in interest, Melillo Equities, LLC (“*Melillo*”), and a court order specifically addressing the development and construction of a multi-family inclusionary development that would satisfy a significant portion of the Borough’s affordable housing obligation. Pulte has no choice but to seek this relief due to the Borough’s latest attempt to stymy the construction of a multi-family development consisting of 105 age-restricted townhouse dwellings and an apartment building consisting of 29 affordable apartments (25 family affordable units and 4 age-restricted affordable units) as well as other related site improvements (the “*Development*”) on property located at 220 Route 202, Far Hills, NJ (formerly Block 5, Lot 4) (the “*Property*”).<sup>1</sup> More specifically, the Borough has inexcusably delayed and increased the costs of construction of the Development by serving Pulte with a baseless Notice of Violation dated January 18, 2024 (the “*Notice of Violation*”), and threatened to withhold future zoning permits for the Development until Pulte cures the purported violations set forth therein.

Nearly nine years ago, the Borough brought this DJ Action seeking a declaration that it is constitutionally compliant with its affordable housing obligation, and immune from subsequent

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<sup>1</sup> The Property is in the Borough’s Townhouse Inclusionary Age-Restricted Residential Zone (“*TH-6 IAR Zone*”) – a zone created as part of the Borough’s court-approved affordable housing compliance plan.

builder's remedy lawsuits. As part of the DJ Action, the Borough entered into a settlement agreement with FSHC dated October 15, 2018 as amended by a First Amendment to Settlement Agreement executed on July 6, 2020 (collectively, "*FSHC Settlement Agreement*"), and entered into Memorandum of Understanding dated October 9, 2018 (the "*MOU*") with Melillo. Melillo and the Borough also entered into the AHA, which, together with the MOU, set forth the general terms for construction of the Development. Pulte is under contract to construct the Development, including the affordable housing component, and has begun construction on the 105 age-restricted townhomes. Accordingly, Pulte has applied for and received preliminary and final major site plan and subdivision approval from the Borough Planning Board (the "*Board*") for the Development.

Despite its constitutional affordable housing obligation, the Borough is (once again) attempting to delay construction of the Development, which would provide much needed affordable housing.<sup>2</sup> Although this pattern of behavior is all too common in New Jersey, at issue before this Court is the Borough's latest effort to thwart the Development based on an unsupportable Notice of Violation. Among other things, the Notice of Violation alleges that Pulte violated Article IX, Section 905 ("*Section 905*") of the Land Management Ordinance of the Borough of Far Hills (the "*Ordinance*") by failing to obtain a design waiver to construct retaining walls that are more than six feet in height. The retaining walls at issue in the Notice of Violation (the "*Retaining Walls*") were required for Pulte to complete resolution compliance by addressing certain conditions of approval relating to stormwater management. Significantly, the Retaining Walls that the Borough now claims require a design waiver: (1) are consistent in height with other retaining walls included in the site plans originally reviewed and approved by the Board in

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<sup>2</sup> In 2023, the Borough purposefully delayed construction of the Development, which forced Melillo to file a Motion to Intervene and Enforce Litigant's Rights. *See* Motion to Intervene and Enforce Litigants Rights (Trans ID: LCV2023664586). That motion was amicably resolved by the parties.

February 2022 without need of a design waiver; and (2) are included in the revised site plans that were reviewed and approved by the Board's professionals and signed by the Board's Chairman, Secretary and Engineer in March 2023. In other words, the Board has already approved retaining walls well in excess of six feet for the Development, including the Retaining Walls at issue in the Notice of Violation, without requiring a design waiver.

There is no dispute that the Borough and its professionals have had express notice at all stages of the approval process that the original and revised site plans included retaining walls in excess of six feet. Indeed, prior to Pulte submitting the revised site plans in March 2023, the Borough's engineer met with Pulte's civil engineer, Gladstone Design, Inc. ("*Gladstone*"), to review the plans relating to the stormwater management system and the structural design for the Retaining Walls. The Borough even reviewed construction plans and issued permits to Pulte on July 28, 2023 and August 21, 2023 for construction of the Retaining Walls with full knowledge that the walls would exceed six feet. In reasonable reliance on those permits, Pulte completed construction on the majority of the Retaining Walls before November 1, 2023. Despite its express notice that the proposed Retaining Walls would be in excess of six feet, prior to issuing the Notice of Violation the Borough never contended that a design waiver was required. Worse yet, the Borough recently advised Pulte that it is allegedly in default of the Developers Agreement dated March 17, 2023 based on its purported failure to cure the sham Notice of Violation. It is the epitome of bad faith for the Borough to require at this late stage that Pulte incur the significant costs associated with obtaining a design waiver and submitting an amended site plan, and to issue default notices and threaten to withhold permits until it complies.

The Borough's issuance of the Notice of Violation is a disingenuous attempt to delay completion of the Development and unreasonably increase Pulte's costs. Accordingly, Pulte has

no option but to seek intervention in this case to enforce the terms of the FSHC Settlement Agreement, court orders, and AHA in order to protect its rights.

### **PROCEDURAL HISTORY**

On or about July 2, 2015, the Borough filed the DJ Action seeking declaration of its compliance with the *Mount Laurel* Doctrine and the Fair Housing Act of 1985 (the “*FHA*”), N.J.S.A. 52:27D-301 et seq., in accordance with *In re N.J.A.C. 5:96 and 5:97*, 221 N.J. 1, 30 (2015) (“*Mount Laurel IV*”). The Borough entered into a Settlement Agreement with FSHC dated October 15, 2018 that sets forth the Borough’s affordable housing obligation and the mechanisms for addressing same. See Certification of Craig M. Gianetti dated March 12, 2024 (“*Gianetti Cert.*”), **Ex. A** (Settlement Agreement). The FSHC Settlement Agreement provides that the Borough has a total affordable housing obligation of 117 affordable units, more specifically, a Rehabilitation Share of 4 units, a Prior Round Obligation of 38 units, and a Third Round Prospective Need Obligation of 75 units. *Id.* The FSHC Settlement Agreement, as amended by a First Amendment dated as of July 6, 2020, contemplated the Development, which includes 29 affordable housing units. *Id.*, **Ex. B** (Amendment to Settlement Agreement). The Borough also entered into a MOU and AHA with Pulte’s predecessor in interest, Melillo, which govern the parties’ respective rights and responsibilities relating to the Development. *Id.*, **Ex. D** (MOU), **Ex. E** (AHA).

Section 6(d) of the FSHC Settlement Agreement requires the Borough to cooperate with Pulte’s “efforts to obtain **all** required approvals and permits from all relevant public entities and utilities for the Development,” and to not impose development standards and/or requirements that would be considered unreasonably cost-generative. *Id.*, **Ex. A** (FSHC Settlement Agreement) (emphasis added), **Ex. B** (Amendment to FSHC Settlement Agreement). The AHA contains

substantially the same terms, and further states that “[t]he Borough, and all officers, employees and agents of the Borough shall take all reasonable steps to foster and facilitate” construction of the Development. *Id.*, **Ex. E** (AHA) at ¶¶ 4.3, 4.4, 5.3.

This Court conducted a Fairness Hearing on December 20, 2018, and entered an order on February 26, 2019 approving the FSHC Settlement Agreement (“*Fairness Order*”), which required the Borough to adhere to all other terms and conditions in that agreement. *Id.*, **Ex. F** (Fairness Order). The Fairness Order was amended a number of times to extend the time period for the Borough to comply with its outstanding obligations, culminating in the November 17, 2020 Compliance Hearing. On December 16, 2020, this Court entered a Conditional Order of Final Judgment of Compliance and Repose (“*JOR*”), which recognized that several terms of the affordable housing agreements between the Borough and several developers, including Melillo, remain outstanding, and that “those obligations will be addressed by the parties in due course.” *Id.*, **Ex. G** (JOR) at ¶ 9. The Court entered an Amended Order of Final Judgment of Compliance and Repose on March 16, 2022 (“*AJOR*”), wherein the Court made clear that the Borough continues to have obligations under the AHA. *Id.*, **Ex. H** (AJOR).

Last year, the Borough failed to comply with its obligations under the AJOR, the FSHC Settlement Agreement, and the AHA by, among other things, failing to timely approve certain ordinance easements (for the Borough’s benefit), enter into the Developers Agreement (defined below), and sign a final subdivision plat. Certification of James P. Mullen dated March 11, 2024 (“*Mullen Cert.*”), ¶ 19. This was done because without the Developers Agreement and approved easements, Pulte could not obtain building permits for the Development. *Id.* Those failures forced Melillo to move this Court to Intervene and Enforce Litigant’s Rights (*see* Trans ID: LCV2023664586 of the E-Docket in this matter), which motion was ultimately resolved by the

parties. *See* Trans ID: LCV2023959910 of the E-Docket in this matter. Less than one year later, the Borough has yet again attempted to thwart the Development by delaying construction and imposing unreasonably cost-generative development standards and requirements, this time by issuing the Notice of Violation to Pulte and thereafter declaring that Pulte is in default of the terms of the Developers Agreement.

## **STATEMENT OF FACTS**

### **The Parties' Rights and Obligations Relating to the Development**

Pulte's predecessor in interest, Melillo, was the contract purchaser of the Property that has been identified as part of the Borough's compliance plan to address its constitutional affordable housing obligation. Gianetti Cert., **Ex. J** (Certification of Anthony Melillo dated February 21, 2023 ("*Melillo Certification*")) at ¶ 3. Melillo originally approached the Borough with a proposal for the development of an inclusionary, residential rental and for sale development on the Property and the development of a mixed-use project on various sites referred to as the "Far Hills Proper Site." *Id.*, **Ex. J** (Melillo Cert.) at ¶ 4. On October 9, 2018, the Borough and Melillo entered into the MOU setting the general terms for the Development (a.k.a Errico Acres) and development of the Far Hills Proper Site. *Id.*, **Ex. D** (MOU); **Ex. J** (Melillo Cert.) at ¶ 5. Subsequently, on December 9, 2019, the Borough and Melillo entered into the AHA to set forth the terms, conditions, responsibilities, and obligations for each party as it relates to the proposed developments. *Id.*, **Ex. E** (AHA) on; **Ex. J** (Melillo Cert.) at ¶ 6. The parties agreed that the Development, which was a significant component of the Borough's court-approved affordable housing compliance plan, would include up to 134 total units, consisting of 25 non-age restricted family rental affordable units, 4 age-restricted rental affordable units, and 105 age-restricted market rate for sale units, along with the Borough making affordable housing payments pursuant

to the terms of the AHA. *Id.*, **Ex. E** (AHA); **Ex. J** (Melillo Cert.) at ¶ 7. Shortly after the MOU, Pulte became the contract purchaser of the Property and is under contract to build the twenty-nine (29) unit affordable housing units. Mullen Cert., ¶¶ 2-3.

Like the FSHC Settlement Agreement, the AHA requires the Borough to facilitate construction of the Development, cooperate with efforts to obtain the required approvals and permits for the Development, and to not impose requirements that would be considered unreasonably cost-generative. Gianetti Cert., **Ex. E** (AHA) at ¶ 4.3 (“The Borough, and all officers, employees and agents of the Borough shall take all reasonable steps to foster and facilitate development of the Overall Projects in accordance with this Agreement.”), ¶ 4.4 (“[T]he Borough will not impose development standards and/or requirements that have not otherwise been agreed to by the Parties or set forth in this Agreement, and would otherwise be considered to be ‘cost generative.’”), ¶ 5.3 (“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 Court, the Required Approvals, the development of the Properties consistent with the terms hereof, and the defense of any challenge with regard to any of the foregoing.”).

**The Borough’s Notice and Approval of the Requirement for Retaining Walls in Excess of Six Feet**

On April 9, 2021, Pulte submitted to the Board for review and approval site plans for the Development that were prepared by its civil engineer, Gladstone, and entitled “Preliminary and Final Major Site Development and Subdivision Plans, Residences at Overleigh” (the “Plans”). Mullen Cert., ¶ 3; Certification of Ronald A. Kennedy, P.E. dated March 12, 2024 (“*Gladstone Cert.*”), ¶¶ 1-3, **Ex. A** (Overall Site Plan). Due to the topography and environmental constraints on the Property, the Development, as contemplated by the AHA and by the zoning district created for the Development, could not be built without a number of retaining walls. Gladstone Cert., ¶ 4.



The Plans expressly included such retaining walls, which needed to be in excess of six feet in height due to the aforementioned topography and other conditions. *Id.* In fact, the retaining wall adjacent to the environmentally sensitive areas at the southern end of the site had a maximum height of 22-feet. *Id.*

The Board cannot dispute that it had notice that the Plans included such retaining walls because the walls were specifically referenced by both the Board's planner, David Banisch, and the Board's engineer, Paul Ferriero, who also serves as the Borough's engineer, in their respective review letters dated July 5, 2021 ("Planner Review"), comment 17(f) on page 7, and July 2, 2021 ("Engineer Review"), comment I.E(5) on page 4. *Id.*, ¶ 5, **Ex. B** (Planner Review), **Ex. C** (Engineer Review). Neither letter noted that a design waiver was required for the proposed retaining walls. *Id.* Gladstone then discussed the technical review and other comments with the Borough's professionals on July 21, 2021, but, once again, neither advised that the retaining walls violated Section 905 of the Ordinance or otherwise required a design waiver. *Id.*, ¶ 6.

Revised copies of the Plans that included retaining walls in excess of six feet were presented to the Board in October 2021 and December 2021, but the Board did not indicate that a design waiver was needed for the walls or that the walls violated the Ordinance. *Id.*, ¶ 7. Indeed, at the December 2021 Board meeting, a professional planner for an objector testified in opposition to the Development, and specifically identified the retaining walls and mentioned that one in particular was seventeen (17) feet in height, but did not state a design waiver was required. *Id.*, ¶ 8; Mullen Cert., ¶ 4. On February 7, 2022, the Board issued a resolution granting preliminary and final major site plan and subdivision approval for the Development (the "*Resolution*"), and did so with full knowledge that the Plans called for retaining walls in excess of six feet. Gladstone Cert., ¶ 9; Gianetti Cert., **Ex. I** (Resolution); Mullen Cert., ¶ 5.

Subsequent to obtaining the Resolution, Pulte completed resolution compliance by addressing the conditions of approval set forth in the Resolution as is customary. Gladstone Cert., ¶ 10; Mullen Cert., ¶ 6. Gladstone revised the Plans to comply with the conditions of approval, inclusive of addressing the comments in the Planner Review and Engineer Review. Mullen Cert., ¶ 6; Gladstone Cert., ¶¶ 10-11. Among the conditions and comments were requirements to address the stormwater management design, which included comments received from the New Jersey Department of Environmental Protection (“NJDEP”). Mullen Cert., ¶ 6; Gladstone Cert., ¶¶ 10-11. One such condition (Condition 33) stated that the revisions to the Plans to address the stormwater management design could not impact the layout of roads or buildings. Gladstone Cert., ¶ 10; Gianetti Cert., **Ex. I** (Resolution).

To address these conditions and requirements, Gladstone adjusted grade elevations across the site and added the subject Retaining Walls to the Plans, which are consistent in design and height with the retaining walls already shown on the Plans originally submitted and approved by the Board. Gladstone Cert., ¶ 11; Mullen Cert., ¶ 6. As part of Resolution compliance and addressing the comments in the Board Engineer Review and Board Planner Review, the Plans were revised eight times. Gladstone Cert., ¶ 11. The Plans were initially revised on March 15, 2022 to address comments relating to stormwater management. *Id.* It was on this revision that the grading was adjusted and the subject Retaining Walls were added, which range in height from four feet to seventeen feet and are setback approximately 60-feet from the Property line with a 50-foot wide landscaped buffer in between. *Id.*, **Ex. D** (Grading Plan Sheets), **Ex E** (Retaining Wall Plans); Mullen Cert., ¶ 13. Each time revised Plans were submitted for Resolution compliance, the Board Engineer reviewed the revised Plans and issued a “resolution compliance” letter specifically identifying the further changes that were needed. Mullen Cert., ¶ 7, **Ex. A** (July 31, 2023 Engineer

Letter), **Ex. B** (August 8, 2023 Engineer Letter). Each set of revised Plans contained the subject Retaining Walls, and none of the revised Plans altered the layout of the road network or the locations of any buildings as set forth in the original Plans, nor did they change “building height,” as that term is defined in the Ordinance, for any of the structures. Gladstone Cert., ¶¶ 12-13.<sup>3</sup>

In March 2023, Gladstone met with the Board Engineer to review construction relating to the stormwater management design system and Retaining Wall structural design set forth in the revised Plans. *Id.*, ¶ 14. The Engineer did not state: (1) that the proposed Retaining Walls violated the Ordinance or required a design waiver; (2) that the proposed grading modifications altered the layout of the road network or the locations of any buildings; or (3) that the proposed grading modifications changed the height of any buildings. *Id.* On March 14, 2023, the Board Engineer issued its last Resolution compliance letter and concluded that the revised Plans could be signed by the Board. *Id.*, ¶ 15. On March 15, 2023, the revised Plans were approved by the Board’s professionals and signed by the Board Chairman, Board Secretary, and Board Engineer. *Id.*, ¶ 16; Mullen Cert., ¶ 8.

As part of Resolution compliance, Pulte also entered into a “Developers Agreement” with the Borough dated March 17, 2023. Mullen Cert., ¶ 9, **Ex. C** (Developers Agreement). Section 4 of the Developers Agreement also provided that Pulte shall construct and design all improvements “in accordance with the improvements set forth on the approved plans.” *Id.*, **Ex. C**. Those “approved plans” were signed by the Board Chairman and the Board Engineer only a couple days earlier. Section 37 of the Developers Agreement gave the Borough the right to withhold building permits only if there is a “material deviation from the board-approved plans,” which Plans, again,

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<sup>3</sup> Gladstone submitted detailed response narratives to the Board and its professionals on March 2022, December 2022, and March 2023 that explained how each condition of approval was met and what changes were made to address technical review comments. Gladstone Cert., ¶ 13. The Board knew in real time exactly how Pulte intended to address the stormwater management comments during Resolution compliance.

had been approved by the Board Engineer three days earlier and signed by the Board Chairman two days earlier. *Id.*

Section 14 of the Developers Agreement provides a phasing schedule for the construction. *Id.* As it relates to the Development, the market-rate unit construction starts first because those units are subsidizing the construction of the affordable units. Mullen Cert., Ex. C. The phasing schedule in the Developers Agreement ensures that this sequencing does not impact the timely construction of the affordable housing. The phasing schedule provides that the building permit for the affordable apartment building must be issued by the 10<sup>th</sup> certificate of occupancy for the market-rate units; the foundation for the affordable apartment building must be completed by the 50<sup>th</sup> certificate of occupancy for the market-rate units; and the certificate of occupancy for the affordable apartment building must be issued by the 65<sup>th</sup> certificate of occupancy for the market-rate units (collectively, “*Affordable Phasing Schedule*”). *Id.*, Ex. C.

Based on the Resolution, Developers Agreement, and signed Plans, Pulte obtained from the Borough construction permits to construct the Retaining Walls (among other work), and commenced construction in July 2023. Mullen Cert., ¶¶ 10-11, **Ex D** (July 28, 2023 Permit), **Ex. E** (August 21, 2023 Permit). In reasonable and good faith reliance on those permits and the Borough’s engineering inspectors’ letters confirming that they had reviewed and approved final Plans for the Retaining Walls and other improvements, Pulte completed its construction of a majority of the Retaining Walls by approximately November 1, 2023, and spent approximately \$1,354,000.00 on that construction. *Id.*, ¶¶ 7, 10, 11, **Exs. A-B, D-E**. At that point in time, no person or entity affiliated with the Borough ever advised Pulte that the Retaining Walls violated the Ordinance or otherwise required a design waiver. *Id.*, ¶ 13.

Pulte first learned of the purported issue with the Retaining Walls during a call with the Board engineer on December 6, 2023. *Id.* During that call, the engineer conveyed a request from the owner of property located adjacent to the Property (the “Neighbor”) that a retaining wall be screened from his view. *Id.* The subject retaining wall is approximately 60-feet from the Neighbor’s property line with a 50-foot wide landscaped buffer in between, and the Neighbor’s house is 210-feet from the retaining wall with woods in between. *Id.* Notwithstanding, Pulte was (and still is) willing to supplement the landscaping to help screen that wall. *Id.* Thereafter, Pulte received a telephone call from the Borough’s attorney during which the attorney stated that the retaining wall exceeded the height limit in the Ordinance and needed to be screened. *Id.* On December 19, 2023, there was an informal meeting between Pulte representatives and Borough representatives and professionals to discuss the height of the retaining wall adjacent to the Neighbor’s property, a method to screen same, and the request by the Borough attorney to return to the Board for a variance.<sup>4</sup> *Id.* There was another informal meeting on January 11, 2024 to discuss a landscape buffer for the walls, and during that meeting Gladstone explained in detail the Resolution compliance process, including evidence that the Borough had contemporaneous knowledge throughout regarding the Retaining Walls and their height. *Id.* The Borough representatives again insisted that Pulte return to the Board, this time for a design waiver, for the Retaining Walls over six (6) feet tall. *Id.* Pulte insisted that the Retaining Walls were either approved by the Board and/or its authorized representatives and advised that it would not return to the Board. *Id.*<sup>5</sup>

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<sup>4</sup> That the Borough attorney sought a variance and not a design waiver as is required by Section 905 shows that not even the Borough’s representatives knew which section of the Ordinance applied. Mullen Cert., ¶ 13.

<sup>5</sup> Another issue discussed at this informal meeting was the installation of a waterline for the Property. Mullen Cert., ¶ 14. Unsurprisingly, the Borough took an unreasonable position relating to staging material and equipment on the Property for installation of the waterline, which significantly increased Pulte’s costs. *Id.* The Borough even unsuccessfully attempted to stop work on the waterline altogether despite the Borough not having jurisdiction over Route 202, which is where the

### The Notice of Violation and Pulte's Response

On January 18, 2024, the Borough's zoning officer served Pulte with the Notice of Violation (Mullen Cert., **Ex. F** (Notice of Violation)), which alleges the following:

1. **Retaining Walls in Excess of Six Feet**: The Borough alleges that the Retaining Walls violate Section 905 of the Ordinance because the walls are over six feet in height and Pulte failed to seek a design waiver and exception. *Id.* There is no mention of the comparable retaining walls constructed in accordance with the original Plans.
2. **Planning Board Condition 33 of the Resolution**: This condition required Pulte to obtain Board approval to change the *layout* of any buildings or the roadwork network in addressing the stormwater management comments from the Board Engineer and NJDEP. The Borough alleges that as part of Pulte's stormwater management solution, it increased the grades throughout the Development, which allegedly changed the *height* of the roadway network in purported violation of Condition 33. *Id.*
3. **Effect of Grading Changes**: As part of the site plan approval process, Pulte obtained a variance from the Board for the height of the buildings with walkout basements from the permitted height of 36-feet to a proposed 38.07-feet. The Board contends that Pulte changed the grades during Resolution compliance to address stormwater management, which altered "the perception of building height and mass compared to what was approved." Without providing any explanation of its calculations, the Borough alleges that the buildings will be "as much as eight (8) feet higher than was represented to the Planning Board at the hearing." *Id.*
4. **Issuance of Further Zoning Permits**: The Board provided Pulte with 30-days to cure the above violations and advised that no further zoning permits would be issued for the Development until the violations were cured. *Id.*

Pulte responded to the Notice of Violation on February 14, 2024 (Gianetti Cert., **Ex. K** (Response Letter)), and addressed each of the alleged violations as follows:

1. **Retaining Walls**: It is beyond dispute that the Borough has been aware that the Plans for the Development have always included retaining walls in excess of six feet, and the Board has never before stated that relief for retaining wall height is required. In fact, not only did the Board approve the original Plans containing retaining walls in excess of six feet without requiring a design waiver, it also unconditionally approved the revised Plans submitted to address stormwater management that included the subject Retaining Walls at issue in the Notice of Violation. Further, following those approvals, the Borough issued permits to Pulte to construct the Retaining Walls without imposing any requirements that Pulte obtain a design waiver or exception. In reliance on those

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work for the waterline was to take place. *Id.* This was yet another example of the Borough's efforts to unreasonably delay, obstruct, and stop construction of affordable housing on the Property. *Id.*

- permits and repeated approvals of plans containing the Retaining Walls, Pulte constructed most of the Retaining Walls at significant cost, and only after construction was substantially completed did the Borough raise an issue with wall height. The foregoing conduct demonstrates and equity compels that the Borough be estopped from enforcing any requirement that Pulte obtain a design waiver for the Retaining Walls or otherwise obtain additional Board approval. *Id.*
2. **Condition 33**: This condition is limited to changes to the *layout* of the building or roadway network, and the revisions to the Plans to address stormwater management did not result in any changes to the *layout* of the roadway network. Indeed, the Notice of Violation itself does not allege that Pulte’s stormwater management plan changed the layout of the roadway network. Instead, it alleges that the grade changes merely impacted the *height* of the roadway network, which does not require Board approval according to the express terms of Condition 33. *Id.*
  3. **Grading Changes**: The Notice of Violation misrepresents how building height is measured pursuant to the Ordinance, which defines “Building height” as: “the vertical distance measured to the highest point of the building from the average elevation of the finished grade six (6) feet from the foundation.” *Id.*, **Ex. M** (Ordinance Excerpts) (emphasis added). The grade changes made to address stormwater management did not impact the calculation of building height as defined by the Ordinance or the variance relief previously granted by the Board. Accordingly, Board approval of amended Plans was not required. *Id.*, **Ex. K** (Response Letter).
  4. **Zoning Permits**: Because the above violations are baseless and unsupportable, there is no authority for the Borough to withhold zoning permits for the Development. *Id.*

Based on the foregoing, among other reasons, Pulte requested that the Borough rescind the Notice of Violation by February 23, 2024. *Id.* To date, the Borough has not done so, and instead advised Pulte in a February 27, 2024 letter from its counsel that the Borough would consider future zoning permit applications submitted by Pulte for the *affordable housing apartments*, but that all other terms and conditions of the Notice of Violation remain in effect. *Id.*, **Ex. L** (February 27 Letter). In other words, the Borough still will not consider zoning permit applications for the market rate buildings until the Notice of Violation is cured, which, based on the Affordable Phasing Schedule discussed above, will delay the affordable housing construction. Then, on March 4, 2024, the Borough’s attorney sent Pulte a notice that it is in default of the Developers Agreement

(the “*Notice of Default*”) because it did not cure the Notice of Violation by the Borough’s arbitrary 30-day deadline. Mullen Cert., ¶ 17, **Ex. H** (Notice of Default).

To date, Pulte has only received building permits for one townhouse building consisting of five townhouses, which are more than 65% constructed. *Id.*, ¶¶ 12, 18. Pulte has not applied for a certificate of occupancy for that building as of the date of this Motion. *Id.* Based upon the Affordable Phasing Schedule in the Developers Agreement, any delays to the issuance of building permits and certificates of occupancy for the market-rate units will increase the costs of construction and also delay the construction of the affordable housing. Accordingly, Pulte has no choice but to file this Motion to Intervene and Enforce Litigants’ rights.

#### **Issues Relating to the Ordinance and Section 905**

It is worth noting that unlike almost every other municipality in this State, one cannot view the Borough’s Land Use Ordinance online. Gianetti Cert., ¶ 14. Rather, the Ordinance is only available at the Borough’s office. *Id.* The Ordinance as a code book is from 1989. *Id.* Attached to the Ordinance is an appendix that is over 450-pages in length that includes each and every ordinance adopted by the Borough after 1989 that amends the Ordinance. *Id.* The limited access to and unwieldy nature of the Ordinance and amendments thereto provides context for how the Board and all of its professionals, Pulte, Gladstone, objectors, and seemingly everyone else could overlook the applicable wall height design standard, which is an amendment to Section 905 that was adopted by ordinance in 2006 and included in the plethora of other ordinance amendments. *Id.*, ¶ 14, **Ex. M** (Ordinance Excerpts).



## LEGAL DISCUSSION

### POINT I

#### PULTE SHOULD BE GRANTED INTERVENOR STATUS

##### **A. Motion to Intervene Standard**

The law governing intervention pursuant to R. 4:33 supports Pulte's intervention in this matter. A party seeking to intervene in a pending matter may do so as of right if:

the applicant claims an interest relating to the property or transaction which is the subject of the action and is so situated that the disposition of the action may as a practical matter impair or impede the ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

R. 4:33-1.

This Rule is to be liberally construed and intervention should be granted unless it "will unduly delay or prejudice the rights of the original parties." *Meehan v. K.D. Partners, L.P.*, 317 N.J. Super. 563, 568 (App. Div. 1998) (quotation marks omitted). Intervention as of right requires that the movant

(1) claim an interest relating to the property or transaction which is the subject of the transaction, (2) show he is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest, (3) demonstrate that the [movant's] interest is not adequately represented by existing parties, and (4) make a timely application to intervene.

*Id.* (quotation marks omitted).

A motion to intervene as of right should be liberally viewed. *Atl. Emps. Ins. Co. v. Tots & Toddlers Pre-School Day Care Ctr., Inc.*, 239 N.J. Super. 276, 280 (App. Div. 1990). Whether to grant the intervention under R. 4:33-1 is not discretionary; rather, if all criteria governing an application for intervention are met, intervention as of right must be granted by the Court. *E.g.*, *Chesterbrooke Ltd. P'ship v. Plan. Bd. of Chester*, 237 N.J. Super. 118, 124 (App. Div. 1989).

Alternatively, under the permissive intervention standard set forth in R. 4:33-2, intervention may be granted upon timely application by anyone if the “claim or defense and the main action have a question of law or fact in common.” Intervention under this standard is discretionary by the court, and in using its discretion, the court “shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.”

Under either standard, the Court should allow Pulte to intervene. Pulte is the applicant and the developer of the Development (including the affordable component) that is the subject of the AHA. Pulte has a clear interest in the subject matter of this action. Pulte’s interest is not adequately represented, as no developers or property owners are currently parties to the action. Intervenor-Defendant FSHC is a non-profit public housing advocacy group involved in over 300 municipal declaratory judgment actions throughout the state. As FSHC has a significant case load, it has only so many resources it can devote to any particular town to ensure that it is complying with their agreement, and, unlike Pulte, it does not have firsthand knowledge regarding the Property, the construction of the Development, the Borough’s approval of the original and revised Plans, Resolution compliance, and the Borough’s repeated bad faith tactics. Therefore, no party currently in this matter can adequately represent Pulte’s interest as it relates to the Borough’s efforts to impede the Development through the Notice of Violation.

It is beyond dispute that the Borough has violated its obligations by issuing the Notice of Violation and Notice of Default, refusing to issue further zoning permits, and demanding that Pulte either remove the constructed Retaining Walls or submit an application to the Board for amended site plan approval. As set forth above and in Pulte’s letter in response to the Notice of Violation, the purported violations are either unenforceable based on the Borough’s conduct (e.g. by repeatedly approving iterations of the Plans containing retaining walls in excess of six feet, issuing

permits for the construction of the walls, and waiting until after construction of the walls was substantially completed to allege that a design waiver was needed), or are entirely unsupported by the undisputed facts (e.g. alleging that grade changes somehow modified the layout of a roadway network or altered building height). Conditioning the issuance of future zoning permits on Pulte incurring significant costs to cure such unsupported violations certainly does not constitute cooperation with Pulte or facilitation of its construction of the Development. Rather it has the effect of delaying construction by imposing unnecessary cost-generative standards and requirements in clear violation of the FSHC Settlement Agreement, AHA, and AJOR. *See* Gianetti Cert., **Exs. A-B** (FSHC Settlement Agreement), **Ex. H** (AJOR), and **Ex. E** (AHA). The Borough has failed to comply with its obligations, and Pulte is uniquely situated to assert its rights.

Given Pulte's interest in this matter and the importance of the Development in addressing the Borough's affordable housing obligation, Pulte has met the standard for intervention as of right under *R. 4:33-1*. In the alternative, it should be permitted to intervene pursuant to *R. 4:33-2*.

**B. Pulte's Motion to Intervene is Timely and Will not Delay Final Disposition of the Case.**

Case law is clear that intervention is appropriate where a party seeks to intervene, not for the purpose of restarting the process from the beginning, but to participate in the proceedings from the existing stage. *See Chesterbrooke*, 237 N.J. Super. at 125-26. Intervention as of right has been granted even in cases that were already adjudicated or settled. *Meehan*, 317 N.J. Super. at 571-72 (granting intervention subsequent to settlement); *see also Allan-Deane Corp. v. Bedminster Twp.*, 63 N.J. 591, 591-92 (1973) (ruling that intervention should be granted despite the fact that the case was ready to be tried within 30-days).

The Borough filed this DJ Action over nine years ago, yet continues to have issues with its compliance. The Notice of Violation is the Borough's latest roadblock with respect to the

Development, and Pulte requested in its response letter that the Borough rescind the Notice of Violation by February 23, 2024. The Borough refused to do so and instead issued the Notice of Default, necessitating this Motion. As the delays in this DJ Action (and the production of affordable housing) have been solely caused by the Borough, Pulte's intervention will only hasten the Borough's compliance and ultimately lead to the production of additional affordable housing. Given the satisfaction of the standards under R. 4:33, Pulte should be permitted to intervene.

### **C. Pulte Qualifies as an Indispensable Party that Must be Joined**

Closely related to the principles of mandatory intervention are the principles of joinder. Here, Pulte is more than merely an interested party, but also an indispensable party required to be joined pursuant to R. 4:28-1. The Rule states:

(a) A person who is subject to service of process shall be joined as a party to the action if . . . (2) the person claims an interest in the subject of the action and is so situated that the disposition of the action in the person's absence may . . . (i) as a practical matter impair or impede the person's ability to protect that interest.

R. 4:28-1.

“Whether a party is indispensable depends upon the circumstances of the particular case.” *Allen B. Du Mont Lab'ys, Inc. v. Marcalus Mfg. Co.*, 30 N.J. 290, 298 (1959). As a general proposition, a party is indispensable when he has an interest inevitably involved in the subject matter before the court and a judgment cannot justly be made between the litigants without either adjudging or necessarily affecting the absentee's interest. *Id.* “Indispensability is usually determined from the [perspective] of the absent party.” Pressler & Verniero, *Current N.J. Court Rules*, Comment 3.1 on R. 4:28-1 (GANN 2021).

Pulte qualifies as an indispensable party that must be joined pursuant to R. 4:28-1(a)(2)(i). Pulte has an undeniable interest in the subject of the action, i.e. whether the Borough has met its constitutional obligation to provide a realistic opportunity for the development of affordable

housing. Pulte holds vested rights pursuant to the AHA for the construction of the Development – an inclusionary project that is included in the FSHC Settlement Agreement, noted in the AJOR, and a fundamental component of the Borough’s affordable housing compliance plan. This interest can only be protected by establishing that the Borough defaulted on its obligations under the FSHC Settlement Agreement, AJOR, and AHA by issuing the Notice of Violation and Notice of Default because such notices impose unreasonable, cost-generative standards and requirements on Pulte’s completion of the Development.

The existing parties’ interests in this matter are so materially distinct from, and at such odds with, the interests of Pulte, that adjudication and disposition of this matter without Pulte’s participation substantially impairs its ability to protect that interest. The Borough is a municipal government entity that is clearly adverse to Pulte based on its service of the Notice of Violation and Notice of Default. The Borough has an interest in establishing its compliance with its constitutional obligation to provide a realistic opportunity for the development of affordable housing and the satisfaction of the AHA, AJOR, and FSHC Settlement Agreement, which is directly at odds with Pulte’s interest. Therefore, Pulte should be permitted to intervene and assert its rights.

## **POINT II**

### **THIS COURT SHOULD ENFORCE PULTE’S RIGHTS AND THE FSHC SETTLEMENT AGREEMENT, AJOR, AND AHA**

The FSHC Settlement Agreement, AJOR, and AHA all require the Borough to facilitate Pulte’s construction of the Development rather than impede it. *See* Gianetti Cert., **Exs. A-B** (FSHC Settlement Agreement), **Ex. E** (AHA), **Ex. H** (AJOR). Paragraph 6(d) of the FSHC Settlement Agreement requires the Borough to “cooperate with [Pulte’s] efforts to obtain all required approvals and permits from all relevant public entities and utilities for the Development,” and to

“not impose development standards and/or requirements that are considered to be unreasonably cost-generative.” *Id.*, **Exs. A-B**. The AHA has substantially the same terms, *Id.*, **Ex. E** (AHA) at ¶¶ 4.3, 4.4, 5.3, 7.1, except it goes a step further in that it requires that “[t]he Borough, and all officers, employees and agents of the Borough shall take all reasonable steps to foster and facilitate” construction of the Development. *Id.*, **Ex. E** (AHA) at ¶ 4.3. The AJOR reiterates that the Borough has *ongoing obligations* with respect to the AHA, meaning that the Borough must continue to cooperate with Pulte and facilitate construction of the Development as a condition of the AJOR. *Id.*, **Ex. H** (AJOR). Yet here we are, almost eight years since the Borough filed its DJ Action, and its most critical affordable housing development has yet to produce any affordable units.

It is clear from the baseless and unsupportable Notice of Violation and subsequent Notice of Default that the Borough has utterly failed to satisfy its obligations pursuant to the FSHC Settlement Agreement, AHA, and AJOR. Instead of fostering and facilitating the Development, the Notice of Violation and Notice of Default will unduly delay and unreasonably inflate the costs associated with construction, which undermines the creation of affordable housing that has been earmarked by the Borough in its compliance plan to address its constitutional affordable housing obligation. The Borough’s representation that it will not delay issuing any zoning permits for the affordable housing buildings at the Development is a red herring because it reiterated that it will continue to withhold permits for the market-rate buildings until the Notice of Violation is cured. Based on the Affordable Phasing Schedule, where the market-rate units subsidize the affordable units and the affordable units do not have to be produced until a certain number of market-rate units are produced, any delays to the market-rate buildings will result in corresponding delays to the affordable housing buildings. *See supra* at pp. 10-11. That the Borough admits that there are

retaining walls in excess of six feet on other parts of the Property for which it has processed zoning permits and not issued any violations only underscores the Borough's bad faith and unfair dealing.

**A. Motion to Enforce Litigant's Rights Standard.**

The law governing enforcement of litigant's rights pursuant to R. 1:10-3 permits Pulte to seek relief. Courts generally view standing to assert a motion to enforce litigant's rights liberally, as even amicus curiae are granted standing to seek relief. *See Pressler & Verniero, Current N.J. Court Rules*, Comment 4.1.2 on R. 1:10-3 (citing *Asbury Park Bd. of Educ. v. N.J. Dep't of Educ.*, 369 N.J. Super. 481, 486-487 (App. Div.), *aff'd in part and rev'd in part*, 180 N.J. 109 (2004)). If Pulte is permitted to intervene in this action, it will have sufficient standing to seek court intervention and enforcement of FSHC Settlement Agreement, AJOR, and AHA.

Generally, "a litigant in any action may seek relief by application in the action." R. 1:10-3. This Rule does not require establishing that the violator of an order acted with the intention to disobey, as would be necessary for a finding of contempt, as the focus is on the vindication of litigant's rights. *Mount Laurel IV*, 221 N.J. at 17 (citing *Lusardi v. Curtis Point Prop. Owners Ass'n*, 138 N.J. Super. 44, 49 (App. Div. 1975)). Courts have recognized that the rule evinces "an intent toward flexibility when the enforcement of rights is at stake" and that judicial discretion is key in "fashioning relief to litigants when a party does not comply with a judgment or order." *Id.* at 17-18. Similar to *Mount Laurel IV*, the enforcement of the FSHC Settlement Agreement, AJOR, and AHA approved by this court is remedial of constitutional rights, and will bring the Borough into compliance with its affordable housing obligations. *See id.* at 20.

**B. The Borough has Breached its Obligations in the FSHC Settlement Agreement, AJOR, and AHA by issuing the Notice of Violation and Notice of Default and Refusing to Issue Permits.**

The Borough clearly issued the Notice of Violation and subsequent Notice of Default for the illegitimate and bad faith purpose of frustrating Pulte's construction of the Development. As

stated above, the alleged violations relating to Condition 33 and “building height” lack factual support. With respect to Condition 33, the Notice of Violation alleges that the grade changes impacted the “height of the roadway network.” However, Condition 33 requires Board review and approval only if the stormwater management design impacts that *layout* of the roadway network, and the revisions to the Plans did not result in any changes to the layout. Gladstone Cert., ¶¶ 12, 14. Further Board approval is not necessary because there is no violation.

The purported “building height” violation also is belied by the facts. The Borough alleges that the grade changes will “alter the perception of building height,” and then baselessly states that the buildings will be as much as eight feet higher than what was represented to the Board. This simply is not true. *Id.*, ¶¶ 12, 14. Conspicuously absent from the Notice of Violation is any reference to how “building height” is calculated under the Ordinance. The Ordinance sets forth the following definition of “Building height”: “the vertical distance measured to the highest point of the building from the average elevation of the finished grade six (6) feet from the foundation.” Gianetti Cert., **Ex. M** (Ordinance Excerpts) (emphasis added). Accordingly, grade changes that occurred after the conclusion of the Board hearings, which are the result of revisions to the stormwater management design in direct response to the Engineer Review and NJDEP comments, do not impact the calculation of building height or the variance relief previously granted by the Board for said building height. Once again, there is no need for an amended application to the Board because the grade changes had no impact on the calculation of building height.

Finally, the alleged violation relating to the height of the Retaining Walls is directly at odds with the Borough’s approval of the original Plans that included comparable retaining walls that also were above six feet, including walls as high as 22-feet. Gladstone Cert., ¶ 4. The Borough did not require design waiver relief for those walls. This begs the question — why should a design



waiver be necessary for additional Retaining Walls of comparable height and for the same purpose, especially when the walls were necessary to comply with the Resolution's stormwater management provisions? Further undercutting this violation is the fact that the Borough Engineer approved the stormwater redesign (which included the additional Retaining Walls), and the revised Plans were signed by the Board Chairman on March 15, 2023. *Id.*, ¶¶ 11-16; Mullen Cert., 6-10, **Exs. A-B**. The Borough's admission that the Notice of Violation does not apply to the initial retaining walls, which are on the affordable housing apartment lot, and that it will continue to process zoning permits for that lot highlights the Borough's bad faith and dispels any potential argument that the subject Retaining Walls somehow impermissibly violate the Ordinance, undermine the character of the zoning district, or have otherwise caused harm to the Borough or its residents.

Worse yet, the Borough issued permits to Pulte to construct the very Retaining Walls it now contends require a design waiver. Mullen Cert., ¶ 10, **Exs. D-E**. The Borough cannot credibly dispute that it expected Pulte to reasonably rely on the permits and commence construction, which is exactly what Pulte did at substantial cost (approximately \$1,354,000.00). *Id.*, ¶ 11. Moreover, those multi-million dollar improvements were approved by the Borough engineering inspectors. *Id.*, **Exs. A-B**. In the face of these undisputed facts, it simply is not reasonable or in the spirit of cooperation for the Board to require Pulte to incur the significant costs associated with removing the Retaining Wall or submitting an amended site plan application to the Board for approval (where the first application took several hearings and had significant objections, including from a recently elected Council member).

Under these circumstances, equitable doctrines, such as equitable estoppel, laches, and relative hardship, should preclude the Borough from rescinding the permits for the Retaining Walls

and/or imposing retroactive requirements related thereto, including, but not limited to, requiring Pulte to obtain a design waiver and/or further approval of amended Plans. Equitable principles of estoppel may be applied against a municipality “where the interests of justice, morality and common fairness clearly dictate that course.” *Gruber v. Mayor & Twp. Comm. of Raritan*, 39 N.J. 1, 13 (1962). Although equitable estoppel is rarely invoked against governmental entities, the remedy is available “where [the government entity’s] misconduct or that of its officials acting strictly within the scope of unlawful authority threatens to work a serious injustice against a person who has reasonably relied upon such conduct to his detriment.” *Mott v. Zoning Bd. of Adjustment of Ocean City*, No. A-1584-08T1, 2009 WL 3460397, at \*2 (N.J. Super. Ct. App. Div. Oct. 16, 2009) (quoting *Capano v. Borough of Stone Harbor*, 530 F. Supp. 1254, 1267 (D.N.J. 1982)). New Jersey courts have applied equitable estoppel where a township’s building inspector wrongfully, but in good faith, issues a construction permit and the recipient of the permit reasonably and in good faith relies on that permit to their detriment. *Id.* at \*3 (affirming decision applying equitable estoppel where a building owner reasonably relied, in good faith, upon zoning and building permits issued by the municipality, which attempted to revoke the permits for noncompliance with the zoning code after the owner expended substantial amounts of money); *Hill v. Bd. of Adjustment of Eatontown*, 122 N.J. Super. 156, 162 (App. Div. 1972).<sup>6</sup>

Here, there is no doubt that it was within the Borough’s authority to issue the permit for the Retaining Walls and that Pulte was reasonable in relying upon those permits to its significant

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<sup>6</sup> The holding in *Hill* was clarified in *Jesse A. Howland & Sons, Inc. v. Borough of Freehold*, 143 N.J. Super. 484, 489 (App. Div. 1976), in which the Appellate Division held that courts should also consider the construction of the zoning ordinance in determining whether the official acted without reasonable basis in issuing the permit. Here, the Board’s and its professionals’ approval of the retaining walls in the original Plans and repeated approvals of the subject Retaining Walls in the revised Plans supports a finding that there was a reasonable basis to issue the permit and a good faith basis for Pulte to rely upon the permit in commencing construction. Construction of the Ordinance also weighs in Pulte’s favor because: (1) the Borough inexplicably limits access to the Ordinance by requiring that it be reviewed in person at the Borough’s office (it is not available online); and (2) the wall height design standard is buried in the 450+ page appendix containing amendments to the Ordinance. *See supra* at p. 14. Even the Borough’s representatives misconstrued the Ordinance after belatedly raising the issue in December 2023. Mullen Cert., ¶ 13.

financial detriment. It would be incredibly unjust to force Pulte to incur significant costs to cure the alleged violation and either demolish the wall or seek further Board approval relating to the Retaining Walls, particularly after the Borough and its professionals had ample opportunity throughout the approval process (specifically, from April 9, 2021 when the Plans were initially submitted to the Board until August 8, 2023, when the Borough Engineer issued his second letter approving construction of the Retaining Walls (Mullen Cert., Exs. A-B)) to raise the Retaining Walls as an issue and instead inexcusably waited to do so until December 2023, over one month after the walls were substantially constructed.

Based on the foregoing, the Notice of Violation relating to the Retaining Walls also should be invalidated pursuant to the equitable doctrine of laches. *Hill*, 122 N.J. Super. at 163-64 (applying laches where plaintiff inequitably sought revocation of a construction permit after plaintiff had notice that the defendant reasonably relied on the permit and was expending substantial sums of money). Also, because the Borough cannot claim any discernible damage or hardship relating to the Retaining Walls in light of the fact that it is not seeking any relief with respect to the retaining walls set forth in the original Plans, which are of comparable height, the equitable doctrine of relative hardship also applies. *Id.* at 164 (finding that the doctrine of relative hardship precludes claims where there would be severe hardship to force the defendant to retroactively comply with zoning ordinances when the “plaintiffs have suffered no discernible damage by the proposed construction” and the violation “is consistent with many other properties in the neighborhood”).

In short, the Borough was aware of and approved all of the site conditions that are the subject of the Notice of Violation and Notice of Default. The Borough specifically required Pulte to address stormwater management as part of Resolution compliance, and Pulte submitted

amended Plans to the Board delineating exactly how it proposed to achieve that compliance. The amended Plans included the proposed Retaining Walls and grading modifications, and the Borough and its professionals approved those amended Plans time and time again. The Borough then issued permits to Pulte so it could implement the stormwater management system, which the Borough knew Pulte reasonably relied upon in commencing construction. Only after Pulte spent over one million dollars to substantially complete that construction did the Borough finally issue the Notice of Violation, in which it contends, for the first time, that the Retaining Walls and grading modifications that it preapproved violate the Ordinance and other conditions. It is difficult to imagine a more clear example of inexcusable delay, bad faith, and underhanded dealing.

The Development is an essential component of the Borough's affordable housing obligation. Pursuant to the FSHC Settlement Agreement, AHA, and AJOR, the Borough has an ongoing obligation to support the Development and cooperate with Pulte in delivering affordable housing units, and to do so without imposing unnecessary cost-generative measures on Pulte. Issuing the Notice of Violation falls well short of those obligations. Refusing to issue building permits, even if just for the market-rate units, will delay the construction of the affordable housing as the market-rate units subsidize the construction of the affordable units and the delivery of the affordable units are tied to the delivery of the market-rate units pursuant to the Affordable Phasing Schedule.

Based upon the Borough's failure to comply with the FSHC Settlement Agreement, AJOR, and AHA, Pulte respectfully requests that the Court find the Borough to be in noncompliance with the AJOR and the terms set forth in the FSHC Settlement Agreement and AHA; find that the Notice of Violation and Notice of Default are invalid and *void ab initio*, and direct the Borough as part of its affordable housing compliance to not unreasonably withhold zoning permits needed for

the Development; and direct the Borough to reimburse Pulte for all reasonable legal and professional fees in connection with the preparation of its letter in response to the Notice of Violation and this Motion.

### **C. Borough's Recent Pattern of Obstructing this Development**

The recent Notice of Violation and Notice of Default are only the latest in a series of efforts by the Borough to delay the Development since the prior Mayor resigned in 2022 and the main objector to the Development during the site plan hearings, Charles Schwester, was elected to the Council. Mullen Cert., ¶ 19, **Ex. I**. This is not a coincidence.<sup>7</sup> Towards the end of 2022 while Pulte was in Resolution compliance, the Borough refused to: (a) execute a Developers Agreement with Pulte, and (b) approve easements *that Pulte was granting to the Borough for its benefit. Id.* This was done because without the Developers Agreement and approved easements, Pulte could not obtain building permits. *Id.* Melillo had to file a motion to intervene and enforce litigant's rights that was joined by FSHC. The motion and claims therein were resolved before the Court considered it.

As such, any order granting this motion should also make clear that should the Borough continue to seek to enforce the invalid Notice of Violation and Notice of Default, unreasonably refuse to issue zoning permits for the Development, or should the Borough take any further actions to unreasonably delay or otherwise impede the construction of the Development, the Borough's immunity and protection from builder's remedy lawsuits shall be stripped. Further, Pulte should be entitled to attorneys' fees for having to file this motion and seek relief from this Court just to

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<sup>7</sup> Indeed, Mr. Schwester has publicly vowed to stop the Development, including at February 2023 council meeting that resulted in his arrest. Mullen Cert., ¶ 19, **Ex. I**. Mr. Schwester also has repeatedly trespassed onto the Property both during and after working hours, and has driven his car into restricted work areas, placing himself and workers in danger of injury. *Id.*

build the Development that has been part of the Borough's affordable housing plan for years and was approved by the Board. This Borough's bad-faith and obstructionist behavior needs to stop.

**CONCLUSION**

For the foregoing reasons, the Court should grant Pulte's motion for Intervention and to enforce the FSHC Settlement Agreement, AJOR, and AHA.

Day Pitney LLP  
Attorneys for Movant/Interested Party  
Pulte Homes of NJ, Limited Partnership



By: \_\_\_\_\_  
Craig M. Gianetti, Esq.  
A Member of the Firm

DATED: March 12, 2024

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Pulte Homes of NJ, Limited Partnership

IN THE MATTER OF THE APPLICATION OF THE BOROUGH OF FAR HILLS, COUNTY OF SOMERSET	: SUPERIOR COURT OF NEW JERSEY : LAW DIVISION: SOMERSET COUNTY : DOCKET NO.: SOM-L-903-15
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: (CIVIL ACTION- *MOUNT LAUREL*)

	<b>CERTIFICATION OF          CRAIG M. GIANETTI IN SUPPORT OF          MOTION TO INTERVENE AND          MOTION TO ENFORCE LITIGANT’S          RIGHTS</b>
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I, Craig M. Gianetti, of full age, hereby certifies as follows:

1. I am an attorney-at-law of the State of New Jersey and am a member of the law firm of Day Pitney LLP, attorneys for Movant/Interested Party Pulte Homes of NJ, Limited Partnership (“*Pulte*”) in connection with the above-referenced matter. As such, I am fully familiar with the facts and circumstances set forth herein. I make this Certification in support of Pulte’s Motion to Intervene and Motion to Enforce Litigant’s Rights.

2. A true copy of the Fair Share Housing Center Settlement Agreement dated October 15, 2018 in In the Matter of the Application of the Borough of Far Hills, County of Somerset, Docket No. SOM-L-903-15 is attached hereto as **Exhibit A**.

3. A true copy of the First Amendment to Fair Share Housing Center Settlement Agreement dated July 6, 2020 in In the Matter of the Application of the Borough of Far Hills, County of Somerset, Docket No. SOM-L-903-15 is attached hereto as **Exhibit B**.

4. A true copy of Pulte's proposed Answer and Affirmative Defenses, if permitted to intervene, is attached hereto as **Exhibit C** pursuant to R. 4:33-3.

5. A true copy of the Memorandum of Understanding dated October 9, 2018 by and between the Borough of Far Hills (the "*Borough*") and Pulte's predecessor in interest, Melillo Equities, LLC ("*Melillo*"), is attached hereto as **Exhibit D**.

6. A true copy of the Affordable Housing Agreement dated December 9, 2019 by and between the Borough and Pulte's predecessor in interest, Melillo, is attached hereto as **Exhibit E**.

7. A true copy of the Order of Fairness and Preliminary Round 3 Compliance entered on February 26, 2019 is attached hereto as **Exhibit F**.

8. A true copy of the Conditional Order of Final Judgment of Compliance and Repose entered on December 16, 2020 is attached hereto as **Exhibit G**.

9. A true copy of the Amended Order of Final Judgment of Compliance and Repose entered on March 16, 2022 is attached hereto as **Exhibit H**.

10. A true copy of the Borough of Far Hills Planning Board Resolution No. 2022-10 dated February 7, 2022 is attached hereto as **Exhibit I**.

11. A true copy of the Certification of Anthony Melillo, dated February 21, 2023, and filed in this action on February 22, 2023, is attached hereto as **Exhibit J**.

12. A true copy of my February 14, 2024 letter, sent on behalf of Pulte in response to the January 18, 2024 Notice of Violation served on Pulte by the Borough's Zoning Officer is attached hereto as **Exhibit K**.

13. A true copy of the February 27, 2023 letter from the Borough's attorney, Albert E. Cruz, is attached hereto as **Exhibit L**.



14. True copies of the relevant pages of the Land Management Ordinance of the Borough of Far Hills (the “*Ordinance*”) is attached hereto as **Exhibit M**. Unlike most other municipalities in this State, one cannot view the Borough’s Ordinance online. Rather, the Ordinance is only available for review at the Borough’s office. The Ordinance as a code book is from 1989. Attached to the Ordinance is an appendix that is over 450-pages in length that includes each and every ordinance adopted by the Borough after 1989 that amends the Ordinance. The section of the Ordinance relating to wall height design standards was adopted in 2016 and is included in the aforementioned appendix of Ordinance amendments.

I hereby certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.



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Craig M. Gianetti

DATED: March 12, 2024

# EXHIBIT A

**AGREEMENT TO RESOLVE ISSUES BETWEEN THE BOROUGH OF FAR HILLS, MELILLO EQUITIES, AND FAIR SHARE HOUSING CENTER CONCERNING THE BOROUGH'S MOUNT LAUREL FAIR SHARE OBLIGATIONS AND THE MEANS BY WHICH THE BOROUGH SHALL SATISFY SAME.**

**In the Matter of the Borough of Far Hills, County of Somerset,  
Docket No. SOM-L-903-15**

**THIS SETTLEMENT AGREEMENT** ("Agreement") made this 15<sup>th</sup> day of October, 2018, by and between:

**BOROUGH OF FAR HILLS**, a municipal corporation of the State of New Jersey, County of Somerset, having an address at 6 Prospect Street, Far Hills, New Jersey 07931-2793 (hereinafter the "Borough" or "Far Hills");

And

**FAIR SHARE HOUSING CENTER**, having an address at 510 Park Boulevard, Cherry Hill, New Jersey 08002, (hereinafter "FSHC");

**WHEREAS**, pursuant to In re N.J.A.C. 5:96 and 5:97, 221 N.J. 1 (2015) (Mount Laurel IV), the Borough filed the above-captioned matter on July 2, 2015 seeking, among other things, a judicial declaration that its amended Housing Element and Fair Share Plan (hereinafter "Fair Share Plan"), as may be further amended in accordance with the terms of this settlement, satisfies its "fair share" of the regional need for low and moderate income housing pursuant to the Mount Laurel doctrine; and

**WHEREAS**, the Borough simultaneously sought and ultimately secured an Order protecting it from all exclusionary zoning lawsuits while it pursues approval of its Fair Share Plan; and

**WHEREAS**, the immunity secured by Far Hills remains in force as of the date of this Agreement; and

**WHEREAS**, Far Hills and FSHC have engaged in good faith negotiations and have reached an amicable accord on the various substantive provisions, terms and conditions delineated herein; and

**WHEREAS**, through that process, the Borough and FSHC agreed to settle the litigation and to present that settlement to the trial court, recognizing that the settlement of Mount Laurel litigation is favored because it avoids delays and the expense of trial and results more quickly in the construction of homes for lower-income households; and

**WHEREAS**, at this time and at this particular point in the process resulting from the Mount Laurel IV decision, when fair share obligations have yet to be definitively determined, it is appropriate for the parties to arrive at a settlement regarding a municipality's Third Round present and prospective need, instead of doing so through plenary adjudication of the present and prospective need.

**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, do hereby covenant and agree, each with the other, as follows:

### Settlement Terms

The Borough and FSHC hereby agree to the following general terms, subject to any relevant conditions set forth in more detail below:

1. Far Hills' "Rehabilitation" obligation is 4.
2. Far Hills' "Prior Round" obligation is 38.
3. Far Hills' allocation of the Round 3 regional need (gap period and prospective need) is 75.

4. Far Hills and FSHC agree that Far Hills does not accept the basis of the methodology or calculations proffered by FSHC's consultant, David N. Kinsey, PhD, P.P., F.A.I.C.P. The Parties agree to the terms in this agreement solely for purposes of settlement of this action. Although the Borough does not accept the basis of the methodology or calculations proffered by FSHC's consultant, FSHC contends, and is free to take the position before the court, that the 75-unit obligation should be accepted by the court because it is based on the Prior Round methodology and reflects the statutory 20 percent cap (as has been recognized in COAH's Prior Round regulations as an interpretation of N.J.S.A. 52:27D-307) as applied to the Borough's Third Round fair share obligations.

5. **Satisfaction of the 4-unit Rehabilitation Obligation:** The Borough has a 4-unit rehabilitation obligation, and shall satisfy that obligation as follows:

- (a) The Borough shall participate in the Somerset County CDBG Rehabilitation Program to secure funding to rehabilitate four substandard residential units occupied by income-eligible households.
- (b) If for some reason, the Somerset County CDBG Rehabilitation Program cannot provide funding to rehabilitate four substandard units, the Borough shall appropriate funding from the Borough's affordable housing trust fund to pay for rehabilitation of two substandard units occupied by income-eligible households.
- (c) If it is found that there are no substandard housing units occupied by income-eligible households, the Borough may seek an adjustment to the rehabilitation obligation by application to the Court on notice to and with opportunity to respond by all parties to this agreement, which shall be documented through a structural conditions survey conducted in accordance with accepted standards for a housing survey as indicated in N.J.A.C. 5:93-5.2 Appendix C.

6. **Satisfaction of the 38-unit Prior Round Obligation:** The Borough has a 38-unit Prior Round obligation, that it will satisfy as follows:

Project	Units	Family	Rental	A-R	Rental Bonus	Units & Bonuses
(a) Polo Club (Sunnybranch Rd.) gen. public for-sale	8	8	-	-	-	8
(b) Dumont Road Apts. (25 Dumont) AR/rental	6	0	6	6	-	6
(c) Hotz Apts. (8-10 Peapack Rd) gen. public rental	5	5	5	-	5	10

(d) Melillo (220 Route 202) gen. public rental	5	5	5	-	5	10
(d) Melillo (220 Route 202) AR/rental	4	0	4	4	-	4
TOTALS:	28	18	20	10	10	38

## Compliance parameters:

- Rental: 10 rental units required (25%) vs. 18 rental units provided (47%);
- Age-restricted: 9 AR permitted (25%) vs. 10 Age-restricted units provided (26%) (the parties agree this is acceptable because no AR are provided in the Third Round so still cumulatively under 25%); and
- Bonus: 10 rental bonus permitted (25%) vs. 10 rental bonuses (25%).

The following is a summary of the affordable units identified in the table above that will address Far Hills Borough's Prior Round obligation of 38 affordable units:

(a) 8 Polo Club Units (Block 6.28, various lots), Sunnybranch Road: 8 for-sale units that are part of a 25-unit existing for-sale family affordable housing project.

- Total of 8 credits toward the Prior Round obligation.

(b) 6 Dumont Road Apartments (Block 15, Lot 1.02), 25 Dumont Road: 6 age-restricted rental apartments (existing) (the parties acknowledge that two apartments have been occupied by tenants who do not meet the age restriction but who are income qualified, on which the Borough agrees to not enforce the age restriction as to the present tenants, with the anticipation that future tenants may revert to being age-restricted).

- Total of 6 credits toward the Prior Round obligation.

(c) 5 Hotz Apartments (Block 13, Lots 2 & 3), 8 & 10 Peapack Road – 5 rental apartments available to the general public will be created at two adjacent sites, 8 & 10 Peapack Road as part of a 7-unit proposed rental project of affordable rental apartments available to the general public. The project involves reconfiguration of existing market-rate rental apartments and conversion of two one-story non-residential office/commercial buildings to affordable residential apartments. Far Hills Borough will amend zoning and enter into a developer's agreement with Hotz to permit the conversion of existing non-residential floor area to rental housing and for the development of a total of 7 affordable rental units on the two lots. The bedroom and affordability mix will conform to UHAC requirements and as outlined in this agreement. There will be no displacement of current occupants, however, current occupants may qualify as affordable households, provided that the 30 year deed restriction period shall begin upon the first occupancy by a tenant income qualified pursuant to UHAC after affirmative marketing. The project earns 5 bonus credits for rental units available to the general public toward the Borough's Prior Round obligation.

- Total of 10 credits (5 units and 5 rental bonus credits) toward the Prior Round obligation.

(d) Melillo Inclusionary Site (Block 5, Lot 4), 220 Route 202 – Melillo will develop a total of 134 units, including 105 townhouse for-sale market-rate units, 25 affordable apartments available to the general public and 4 affordable age-restricted apartments in this inclusionary project. The specific terms and specifications for this inclusionary development shall be substantially consistent with the development identified in the Concept Plan and Project Submission attached hereto and made a part hereof as **Exhibit A**, prepared by Melillo Equities (Melillo) and authorized by Mayor and Council on October 9, 2018.

In addition to the foregoing, the affordable units shall remain affordable rental units for a period of at least thirty (30) years ("Deed-Restriction Period"). At the end of the 30 years, the deed restrictions shall be governed by UHAC or any successor laws or regulations. The Borough may count the units against its obligations to provide family rental housing.

The Borough acknowledges that, in order for Melillo to construct its Inclusionary Development, Melillo will be required to obtain any and all necessary and applicable agreements, approvals, and permits from all relevant public entities and utilities. The Borough agrees to cooperate with Melillo's efforts to obtain all required approvals and permits from all relevant public entities and utilities for the Development. The Planning Board understands the intent of this Settlement Agreement is to develop the site in accordance with the concept plans attached hereto.

Melillo shall be entitled to any benefits, protections, and obligations afforded to developers of inclusionary developments, other than what Melillo has agreed to in its Agreement with Far Hills Borough for this inclusionary development. Accordingly, in the absence of consent by Melillo, the Borough will not impose development standards and/or requirements that are considered to be unreasonably "cost generative."

Far Hills will apply five (5) of the affordable apartments available to the general public in this development, the four (4) affordable age-restricted apartments and five (5) rental bonus credits from the five (5) apartments available to the general public, for a total of 14 affordable units and credits to the Borough's prior round obligation.

- Total of 14 credits (9 units and 4 rental bonus credits) toward the Prior Round obligation.

7. **75-unit Round 3 Obligation:** The Borough has a 75-unit Round 3 obligation, and will satisfy that obligation with the following projects that will yield a total of 76 units and rental bonus credits to satisfy the Third Round obligation:

Project	Units	Family	Rental	V L-I	Rental Bonus	Units & Bonuses
(a) Polo Club (Sunnybranch Rd.) gen. public for-sale	17	17	0	0	0	17
(b) Matheny Group Home (46 Peapack Road) Supportive & Special Needs	8	0	8	8	8	16
(c) Hotz Apts. (8-10 Peapack Rd) gen. public rental	2	2	2	1	2	4
(d) Melillo (220 Route 202) gen. public rental	20	20	20	3	9	29
(e) Accessory Apartment program	10	0	10	2	0	10
TOTALS:	57	39	30*	12**	19	76

\* Total would be 40 rental units including 10 accessory apartments, which are not included in compliance parameter analysis below.

\*\* Total would be 14 Very low-income units including 2 very low-income accessory apartments, not included in the compliance parameter analysis below.

Third Round Compliance parameters:

- 39 family units required (50%) vs. 39 family units provided (50%);
- 19 rental required (25%) vs. 30 rental units provided (39%), 40 if accessory apartments included (52%);

- 10 family rental units required vs. 22 family rental units provided (29%);
  - 10 Very low-income required (13%) vs. 12 very low-income provided (16%); and
  - 19 rental bonuses allowable (25%) vs. 19 rental bonuses (25%).
- (a) 17 Polo Club Units (Block 6.28, various lots) on Sunnybranch Road that are existing units and part of the 25-unit Polo Club project referenced in paragraph 6(a) above.
- 17 units toward the Third Round obligation.
- (b) 8 Matheny School/Hospital group home bedrooms (Block 8, Lot 1), 46 Peapack Road: 8-bedroom group home for persons with special needs to be constructed on Borough-owned Block 8, Lot 1, consisting of 1.22-acres. A total of 8 units of credits and 8 rental bonus credits for a total of 16 units and credits are applied to the Borough's Third Round affordable housing obligation.
- 16 credits (8 units and 8 rental bonus credits) toward the Third Round obligation.
- (c) 2 Hotz Apartments (Block 13, Lots 2 & 3), 8 & 10 Peapack Road as per 6.(c) above – 2 rental apartments available to the general public will be created at two adjacent sites, 8 & 10 Peapack Road as part of a 7-unit proposed rental project of affordable rental apartments available to the general public. The project involves reconfiguration of existing market-rate rental apartments and conversion of two one-story non-residential office/commercial buildings to affordable residential apartments.
- 4 credits (2 units and 2 rental bonus credits) toward the Third Round obligation.
- (d) 20 Melillo affordable rental apartments available to the general public as part of the inclusionary project described in 6.(d) above to be constructed on Block 5, Lot 4 located at 220 Route 202, including 3 very low-income rental apartments available to the general public. 20 affordable apartments and 9 rental bonus credits.
- 29 credits (20 units and 9 bonus credits) toward the Third Round obligation.
- (e) 10 Accessory Apartments – the Borough of Far Hills will create an accessory apartment program to create a total of 10 accessory apartment, including 5 low-income apartments, of which 2 will be very low-income accessory apartments and 5 will be moderate-income accessory apartments.
- 10 credits toward the Third Round obligation.

These five projects will produce a total of 57 units and 19 bonus credits for a total of 76 units and rental bonus credits to address the Borough's Round 3 obligation of 75 units. FSHC and the Borough agree that the Borough may add affordable housing credits by producing affordable housing or creating additional realistic opportunities for affordable housing in addition to the units to be produced by the five projects listed above without returning to the Court for approval. FSHC will not unreasonably withhold approval of affordable housing credits that may be produced by the Borough either through the production of actual units or creation of additional realistic opportunities for affordable housing during the Third Round.

8. To further demonstrate its longstanding commitment to Mount Laurel compliance, the Borough intends to adopt an inclusionary overlay zone, subject to the notice and public comment provisions in the New Jersey Municipal Land Use Law, N.J.S.A. 40:55D-1 et. seq. If adopted, the overlay zone shall impact all lots located within the Village Commercial – VC Zone in Far Hills village (including Block 12, Lots 1, 1.01, 1.02, 1.03 & 2, Block 14, Lots 1, 2, 3, 4, 5 & 6, and Block 15, Lots 1.01, 1.02, 2, 3, 4, 5, 6, 7 & 8) with the goal of providing sufficient developer incentives to capture affordable housing opportunities as they arise in the future.

9. The Borough agrees to require 13% of all the affordable units referenced in this plan, with the exception of units constructed as of July 1, 2008, and units subject to preliminary or final site plan approval as of July 1, 2008, to be very low-income units (defined as units affordable to households earning 30 percent or less of the regional median income by household size), with half of the very low income units being available to families. Plan compliance with this requirement is demonstrated in the Plan summary in Paragraph 7. above.

10. To the extent that Far Hills is entitled to any “bonus credits” to be applied to its Round 3 obligation, such bonuses will be applied in accordance with N.J.A.C. 5:93-5.15(d). The parties agree the Borough will be entitled to the rental bonus credits reflected in paragraphs 6 and 7 above, and to the degree that any projects receiving credits in those paragraphs become ineligible for rental bonus credits, the Borough may substitute other eligible bonus credits so long as the total bonus credits do not exceed 10 for the Prior Round and 19 for the third round, i.e the rental bonuses for which it is eligible based on its obligation. Bonus crediting in accordance with N.J.A.C. 5:93-5.15(d) is demonstrated in the Plan summary in Paragraph 7 above and does not exceed bonus credits on 25% of the units in the Plan.

11. At least 50 percent of the units addressing the Borough’s Round 3 obligation shall be affordable to a combination of very-low-income and low-income households, while the remaining affordable units shall be affordable to moderate-income households.

12. At least twenty-five percent of the Third Round Prospective Need shall be met through rental units, including at least half in rental units available to families. Far Hills’ Plan summary in Paragraph 7. above demonstrates that at least 39% of the units in the Plan are rental units in accordance with this requirement.

13. At least half of the units addressing the Third Round Prospective Need in total must be available to families. Far Hills’ Plan summary in Paragraph 7. above demonstrates that at least 50% of the units in the Plan are rental units in accordance with this requirement.

14. The Borough agrees to comply with COAH’s Round 2 age-restricted cap of 25 percent, and to not request a waiver of that requirement. This shall be understood to mean that in no circumstance may the Borough claim credit toward its fair share obligation for age-restricted units that exceed 25 percent of all units developed or planned to meet its Prior Round and Round 3 fair share obligations. Far Hill’s Plan summary in Paragraph 7. above demonstrates that 0% of the Third Round obligation is being addressed with age-restricted affordable units.

15. The Borough and/or its administrative agent shall add the following entities to the list of community and regional organizations in its affirmative marketing plan, pursuant to N.J.A.C. 5:80-26.15(f)(5): Fair Share Housing Center (510 Park Boulevard, Cherry Hill, NJ 08002), the New Jersey State Conference of the NAACP, the Latino Action Network (P.O. Box 943, Freehold, NJ 07728, the Supportive Housing Association, and the New Brunswick, Plainfield Area, Perth Amboy, and Metuchen/Edison branches of the NAACP. As part of its regional affirmative marketing strategies during implementation of its fair share plan, the Borough and/or its



administrative agent shall also provide notice of all available affordable housing units to the above-referenced organizations.

16. All affordable housing units created pursuant to the measures set forth in this Agreement shall comply with the Uniform Housing Affordability Controls ("UHAC"), N.J.A.C. 5:80-26.1 et. seq. or any successor regulation, with the exception that in lieu of 10 percent of affordable units in rental projects being required to be affordable to households earning at or below 35 percent of the regional median household income by household size, 13 percent of affordable units in such projects shall be required to be affordable to households earning at or below 30 percent of the regional median household income by household size subject to paragraph 13 herein, and all other applicable law. All new construction units shall be adaptable in conformance with P.L.2005, c.350/N.J.S.A. 52:27D-311a and -311b and all other applicable law. The Borough, as part of the Housing Element and Fair Share Plan that will be prepared, adopted and endorsed as a result of this Agreement, shall adopt and/or update appropriate implementing ordinances in conformance with standard ordinances and guidelines developed by COAH to ensure that this provision is satisfied. The Borough shall prepare, adopt, and submit to the Court a Housing Element and Fair Share Plan and Spending Plan, along with changes to the Borough's zoning ordinance and other implementing ordinances required to implement this Agreement, within 120 days of the entry of an order by the Court approving this Agreement

17. Upon full execution of this Agreement, Far Hills shall place this agreement on file in the Borough's municipal building and file a copy with the Court for the upcoming scheduled Fairness Hearing, at which the Borough will seek judicial approval the terms of this Agreement pursuant to the legal standard set forth in Morris Cty. Fair Hous. Council v. Boonton Twp., 197 N.J. Super. 359, 367-69 (Law Div. 1984), aff'd o.b., 209 N.J. Super. 108 (App. Div. 1986); East/West Venture v. City of Fort Lee, 286 N.J. Super. 311, 328-29 (App. Div. 1996). Notice of the Fairness Hearing shall be published at least 30 days in advance of the Hearing. Far Hills shall also apply to the Court for scheduling a "Compliance Hearing" seeking judicial approval of Far Hills's Housing Element and Fair Share Plan, once same is prepared, adopted and endorsed. The Fairness and Compliance Hearings can be held concurrently or sequentially, which shall be decided by the Court with consultation by the Borough of Far Hills and FSHC. Far Hills shall make its consulting planner and any other relevant witnesses available for testimony at the Hearing(s). FSHC shall not challenge the validity of any of the documents attached hereto, or the validity of the Borough's Fair Share Plan. If the Fairness and Compliance Hearing(s) result in approval of this Agreement and the Borough's Fair Share Plan, the parties agree that the Borough will be entitled to either a "Judgment of Compliance and Repose" ("JOR") or the "judicial equivalent of substantive certification and accompanying protection as provided under the FHA," 221 N.J. at 6, which shall be determined by the trial judge. Each party may advocate regarding whether substantive certification or repose should be provided by the court, with each party agreeing to accept either form of relief and to not appeal an order granting either repose or substantive certification. Among other things, the entry of such an Order shall maintain Far Hills's immunity from all Mount Laurel lawsuits through July 2, 2025.

18. Subsequent to the signing of this Agreement, if a binding legal determination by the Judiciary, the Legislature, or any administrative subdivision of the Executive Branch determines that Far Hills's Round 3 obligation is decreased to 60 or less, with any relevant appeal periods having passed, the Borough may file a proposed form of Order, on notice to FSHC and the Borough's Service List, seeking to reduce its Round 3 obligation accordingly. Such relief shall be presumptively granted. Notwithstanding any such reduction, the Borough shall be obligated to implement the Fair Share Plan prepared, adopted and endorsed as a result of this Agreement, including by leaving in place any site specific zoning adopted or relied upon in connection with the Plan approved pursuant to this settlement agreement; maintaining all mechanisms referenced in this settlement agreement; and otherwise fulfilling fully the fair share obligations as established herein. The reduction of the Borough's obligation below that established in this agreement does

not provide a basis for seeking leave to amend this agreement or the fair share plan adopted pursuant to this agreement or seeking leave to amend an order or judgment pursuant to Rule 4:50-1. If the Borough prevails in reducing its prospective need for Round 3, the Borough may carry over any resulting surplus credits to Round 4.

19. The Borough shall prepare a Spending Plan which shall be approved by the Court during, or prior to, a duly-noticed Compliance Hearing. FSHC reserves its right to provide any comments or objections on the Spending Plan to the Court upon review. Upon approval by the Court, the Borough and Fair Share Housing Center agree that the expenditures of funds contemplated in the Borough's Spending Plan shall constitute the "commitment" for expenditure required pursuant to N.J.S.A. 52:27D-329.2 and -329.3, with the four-year time period contemplated therein commencing in accordance with the provisions of In re Tp. of Monroe, 442 N.J.Super. 565 (Law Div. 2015), aff'd 442 N.J.Super. 563 (App. Div. 2016). Upon approval of its Spending Plan the Borough shall also provide an annual Mount Laurel Trust Fund accounting report to the New Jersey Department of Community Affairs, Council on Affordable Housing, Local Government Services, or other entity designated by the State of New Jersey, with a copy provided to Fair Share Housing Center and posted on the municipal website (if and when the Borough establishes an official website), using forms developed for this purpose by the New Jersey Department of Community Affairs, Council on Affordable Housing, or Local Government Services.

20. On the first anniversary of the execution of this Agreement, and every anniversary thereafter through the end of this Agreement, the Borough agrees to provide annual reporting of the status of all affordable housing activity within the municipality through posting on the municipal website (if and when the Borough establishes an official website) with a copy of such posting provided to FSHC, using forms previously developed for this purpose by the Council on Affordable Housing or any other forms endorsed by the Special Master and FSHC. In addition to the foregoing, the Borough may also post such activity on the CTM system and/or file a copy of its report with the Council on Affordable Housing or its successor agency at the State level.

21. The Fair Housing Act includes two provisions regarding action to be taken by the Borough during the ten-year period of protection provided in this agreement. The Borough agrees to comply with those provisions as follows:

(a) For the midpoint realistic opportunity review due on July 1, 2020, as required pursuant to N.J.S.A. 52:27D-313, the Borough will post in Borough Hall, with a copy provided to Fair Share Housing Center, a status report as to its implementation of its Plan and an analysis of whether any unbuilt sites or unfulfilled mechanisms continue to present a realistic opportunity. Such posting shall invite any interested party to submit comments to the municipality, with a copy to Fair Share Housing Center, regarding whether any sites no longer present a realistic opportunity and should be replaced. Any interested party may by motion request a hearing before the court regarding these issues.

(b) For the review of very low income housing requirements required by N.J.S.A. 52:27D-329.1, within 30 days of the third anniversary of this agreement, and every third year thereafter, the Borough will post on its municipal website (if and when the Borough establishes an official website), with a copy provided to Fair Share Housing Center, a status report as to its satisfaction of its very low income requirements, including the family very low income requirements referenced herein. Such posting shall invite any interested party to submit comments to the municipality and Fair Share Housing Center on the issue of whether the municipality has complied with its very low income housing obligation under the terms of this settlement.

(c) In addition to the foregoing postings, the Borough may also elect to file copies of its reports with the Council on Affordable Housing or its successor agency at the State level.

22. This agreement may be enforced by the Borough or FSHC through a motion to enforce litigant's rights or a separate action filed in Superior Court, Somerset County. If FSHC determines that such action is necessary, the Borough consents to the entry of an order providing FSHC party status as an intervenor solely for purposes of its motion to enforce litigant's rights.

23. The Borough agrees to pay FSHC's attorneys fees and costs in the amount of \$15,000.00 within ten (10) days of the Court's approval of this Agreement pursuant to a duly-noticed fairness hearing.

24. All Parties shall have an obligation to fulfill the intent and purpose of this Agreement. However, if an appeal of the Court's approval or rejection of the Settlement Agreement is filed by a third party, the Parties agree to defend the Agreement on appeal, including in proceedings before the Superior Court, Appellate Division, and New Jersey Supreme Court, and to continue to implement the terms of the Settlement Agreement if the Agreement is approved by the trial court unless and until an appeal of the trial court's approval is successful, at which point the Parties reserve their right to return to the *status quo ante*. In this regard, the Borough and FSHC acknowledge that the parties have entered into this agreement to settle the litigation and that each is free to take such position as it deems appropriate should the matter return to the *status quo ante*.

25. Unless otherwise specified, it is intended that the provisions of this Agreement are to be severable. The validity of any article, section, clause or provision 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.

26. This Agreement shall be governed by and construed by the laws of the State of New Jersey.

27. This Agreement may not be modified, amended or altered in any way except by a writing signed by the Borough and FSHC.

28. 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.

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

30. The Borough and FSHC acknowledge that this Agreement was not drafted by the Borough and FSHC, but was drafted, negotiated and reviewed by representatives of the Borough and FSHC and, therefore, the presumption of resolving ambiguities against the drafter shall not apply. The Borough and FSHC expressly represent 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 persons executing it.

31. 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 the Borough and FSHC.

32. This Agreement constitutes the entire Agreement between the Borough and FSHC hereto and supersedes all prior oral and written agreements between the Borough and FSHC with respect to the subject matter hereof except as otherwise provided herein.

33. Anything herein contained to the contrary notwithstanding, the effective date of this Agreement shall be the date upon which representatives of the Borough and FSHC have executed and delivered this Agreement.

34. All notices required under this Agreement ("Notice[s]") shall be written and shall be served upon the Borough and FSHC 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 fifty pages) shall be served by facsimile or e-mail. All Notices shall be deemed received upon the date of delivery. 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 FSHC:** Adam M. Gordon, Esq.  
Fair Share Housing Center  
510 Park Boulevard  
Cherry Hill, NJ 08002  
Phone: (856) 665-5444  
Fax: (856) 663-8182  
E-mail: adamgordon@fairsharehousing.org

**TO THE BOROUGH:** Michael A. Jedziniak, Esq.  
Jeffrey R. Surenian & Associates, LLC  
707 Union Avenue, Suite 301  
Brielle, NJ 08730  
Phone: (732) 612-3100  
Fax: (732) 612-3101  
Email: maj@surenian.com

Joseph V. Sordillo, Esq.  
McElroy, Deutsch, Mulvaney & Carpenter, LLP  
1300 Mount Kemble Avenue  
PO Box 2075  
Morristown, NJ 07962-2075  
Phone: (973) 425-4170  
Fax: (973) 425-0161  
Email: jsordillo@mdmc-law.com

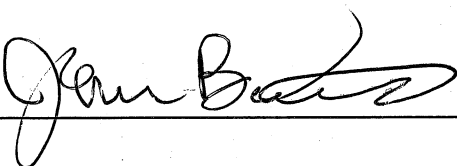
**WITH A COPY TO THE  
BOROUGH CLERK:** Dorothy Hicks, Borough Clerk  
Borough of Far Hills  
6 Prospect Street  
Far Hills, NJ 07931  
Phone: (908) 234-0611  
Fax: 908-234-0918

Email: dhicks@FarHillsNJ.org

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.


**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.

Witness/Attest:

  
\_\_\_\_\_

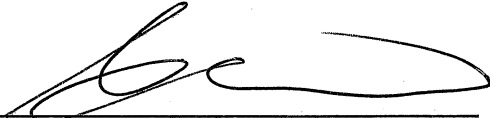
Dated: 10/15/18

Witness/Attest:

  
\_\_\_\_\_

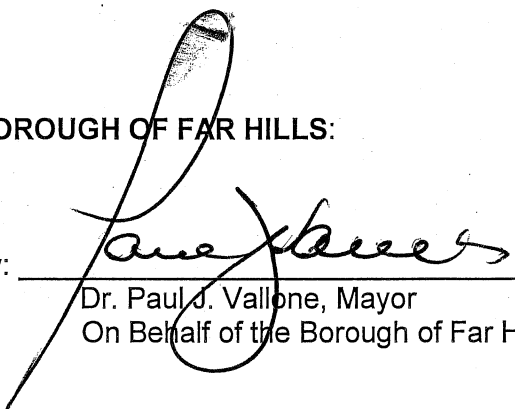
Dated: 10/9/18

**FAIR SHARE HOUSING CENTER:**

By:   
\_\_\_\_\_

Adam Gordon, Esq.  
On Behalf of Fair Share Housing Center

**BOROUGH OF FAR HILLS:**

By:   
\_\_\_\_\_

Dr. Paul J. Vallone, Mayor  
On Behalf of the Borough of Far Hills

# EXHIBIT B

**FIRST AMENDMENT TO AGREEMENT TO RESOLVE ISSUES BETWEEN THE BOROUGH OF FAR HILLS, MELILLO EQUITIES, AND FAIR SHARE HOUSING CENTER CONCERNING THE BOROUGH'S MOUNT LAUREL FAIR SHARE OBLIGATIONS AND THE MEANS BY WHICH THE BOROUGH SHALL SATISFY SAME.**

**In the Matter of the Borough of Far Hills, County of Somerset  
Docket No. SOM-L-903-15**

This AMENDMENT TO SETTLEMENT AGREEMENT ("Amendment") is made on this 26<sup>th</sup> day of May, 2020 (the "Effective Date"), by and between,

**BOROUGH OF FAR HILLS**, a municipal corporation of the State of New Jersey, County of Somerset, having an address at 6 Prospect Street, Far Hills, New Jersey 07931-2793 (hereinafter the "Borough" or "Far Hills");

and

**FAIR SHARE HOUSING CENTER**, having an address at 510 Park Boulevard, Cherry Hill, New Jersey 08002 (hereinafter "FSHC").

**WITNESSETH:**

**WHEREAS**, in compliance with the New Jersey Supreme Court decision in In re Adoption of N.J.A.C. 5:96 & 5:97 by N.J. Council on Affordable Housing, 221 N.J. 1 (2015) ("Mount Laurel IV"), on or about July 2, 2015, the Borough filed an action with the Superior Court of New Jersey, entitled In the Matter of the Application of the Borough of Far Hills, County of Somerset, Docket No. SOM-L-903-15, seeking, among other things, a Judgment of Compliance and Repose consisting of a judicial declaration that its amended Housing Element and Fair Share Plan (hereinafter "Fair Share Plan"), as may be further amended in accordance with the terms of this settlement, satisfies its "fair share" of the regional need for low and moderate income housing pursuant to the Mount Laurel doctrine, in addition to related reliefs (the "Mt. Laurel litigation"); and

**WHEREAS**, the Borough simultaneously sought and ultimately secured an Order protecting it from all exclusionary zoning lawsuits while it pursues approval of its Fair Share Plan; and

**WHEREAS**, the Borough and FSHC entered into a settlement agreement, dated October 15, 2018, that addressed the Borough's affordable housing obligations and resolves the Borough's Third Round Mt. Laurel litigation (the "Settlement Agreement"); and

**WHEREAS**, the Superior Court of New Jersey issued a Fairness Order on February 26, 2019, which has subsequently been amended, that found the Borough of Far Hills Housing Plan Element and Fair Share Plan and the Settlement Agreement to be fully responsive to the Borough's affordable housing obligations and fair to low- and moderate-income persons; and

**WHEREAS**, since the entry of the Fairness Order the Borough has furthered its negotiations with the developers of the affordable housing developments identified in the Borough's Far Share Plan and settlement agreement with FSHC; and

**WHEREAS**, the Borough and FSHC negotiated and agreed upon revised terms of settlement, which are set forth in this Amendment to Settlement Agreement.

**NOW, THEREFORE**, in consideration of the promises, the mutual obligations contained in the Settlement Agreement and herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each of the parties, the Borough and FSHC hereby covenant and agree as follows:

1. Section 6(d) of the Settlement Agreement is hereby amended and revised as follows [new language in **bold and underlined**, deleted language in ~~double strikethrough~~]:

(d) Melillo Inclusionary Site (Block 5, Lot 4), 220 Route 202 – Melillo will develop a total of 134 units, including 105 townhouse for-sale, ~~age-restricted~~, market-rate units, ~~25~~ **29** affordable housing apartments available to the general public, ~~with and 4 of the~~ **apartments having the option to be** age-restricted ~~apartments~~ in this inclusionary project. The specific terms and specifications for this inclusionary development shall be substantially consistent with the development identified in the ~~revised~~ **revised** Concept Plan and Project Submission attached hereto and made a part hereof as **Exhibit A**, prepared by Melillo Equities (Melillo), ~~dated June 20, 2019 and authorized by Mayor and Council on October 9, 2019.~~ **dated June 20, 2019**

\*\*\*

[The remainder of this Section shall be unchanged.]

2. Section 7(c) of the Settlement Agreement is hereby amended and revised as follows [new language in **bold and underlined**, deleted language in ~~double strikethrough~~]:

(c) 2 Hotz Apartments ~~(Block 13, Lots 2 & 3) 8 & 10 Peapack Road~~ **(Block 8, Lot 1) 46 Peapack Road** as per 6(c) above – 2 rental apartments available to the general public will be created at ~~the 46 Peapack Road site (after subdivision of a portion thereof for the 8 Matheny School/Hospital group home bedrooms as per 7(b) above) two adjacent sites, 8 & 10 Peapack Road~~ **the 46 Peapack Road site (after subdivision of a portion thereof for the 8 Matheny School/Hospital group home bedrooms as per 7(b) above)** as part of a 7-unit proposed rental project of affordable rental apartments available to the general public. The project involves reconfiguration of ~~an existing two story residence market rate rental apartments and conversion of two one story non-residential office/commercial buildings~~ **an existing two story residence** to affordable residential apartments.

- 4 credits (2 units and 2 rental bonus credits) toward the Third Round obligation.

3. Section 8 of the Settlement Agreement is hereby amended and revised as follows [new language in **bold and underlined**, deleted language in ~~double strikethrough~~]:

8. To further demonstrate its longstanding commitment to Mount Laurel compliance, the Borough ~~intends to adopt~~ **has adopted** an inclusionary overlay zone ~~subject to the notice and public comment provisions~~ **pursuant to the** of the New Jersey Municipal Land Use



Law, N.J.S.A. 40:55D-1 et seq. ~~If adopted, the~~ The overly zone ~~shall~~ impacts all lots located within the Village Commercial – VC Zone in Far Hills village (including Block 12, Lots 1, 1.01, 1.02, 1.03 & 2, Block 14, Lots 1, 2, 3, 4, 5 & 6, and Block 15, Lots 1.01, 1.02, 2, 3, 4, 5, 6, 7 & 8) with the goal of providing sufficient developer incentives to capture affordable housing opportunities as they arise in the future.

- 4. Section 23 of the Settlement Agreement is hereby amended and revised as follows [new language in **bold and underlined**, deleted language in ~~double strikethrough~~]:

23. The Borough agrees to pay FSHC’s attorneys fees and costs in the amount of \$15,000 within ten (10) days of the Court’s approval of this Agreement pursuant to a duly-noticed fairness hearing. **The Borough agrees to pay an additional \$5,000 towards the FSHC’s attorneys fees and costs within thirty (30) days of the Court’s final approval granted after a duly-noticed compliance hearing before the Court.**

- 5. The remainder of the Settlement Agreement shall remain in full force and effect.
- 6. This Amendment may be executed in counterparts, each of which shall be an original, but all of which shall constitute one and the same instrument.

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

Witness/Attest:

FAIR SHARE HOUSING CENTER


By:   
Name: Donna Gomez  
Title: Administrative Asst.

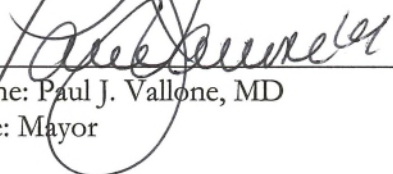
By:   
Name: Adam Gordon, Esq.  
Title: Executive Director

Dated: July 6, 2020

Witness/Attest:

BOROUGH OF FAR HILLS

By:   
Name: Dorothy S. Hicks  
Title: Borough Clerk

By:   
Name: Paul J. Vallone, MD  
Title: Mayor

Dated: May 26, 2020

# EXHIBIT A

LOT 3.04  
BLOCK 5

LOT 3.03  
BLOCK 5



<p>DATE: APR 20, 2018</p> <p>TITLE: 1" = 60' 20-1-13</p> <p>PROJECT: 20-1-13</p> <p>SCALE: 1" = 60'</p> <p>DATE: 1 OF 1</p>		<p>PROJECT: ERICCO ACRES LOT 4 - 80,078 S</p> <p>PREPARED BY: JAE HUIS SHERIDAN COUNTY NEW JERSEY</p>	<p>EXHIBIT A</p> <p>ACTIVE ADULT COMMUNITY CONCEPTUAL LAYOUT</p>	<p>GLADSTONE DESIGN, INC.</p> <p>240 Main Street, 2nd Floor Littleton, CO 80120 Tel: 303.741.1100 Fax: 303.741.1101 www.gladstone.com</p>	<p>REVISIONS</p> <table border="1"> <tr> <th>NO.</th> <th>DATE</th> <th>DESCRIPTION</th> </tr> <tr> <td> </td> <td> </td> <td> </td> </tr> <tr> <td> </td> <td> </td> <td> </td> </tr> <tr> <td> </td> <td> </td> <td> </td> </tr> </table>	NO.	DATE	DESCRIPTION									
NO.	DATE	DESCRIPTION															

# EXHIBIT C

**DAY PITNEY LLP**  
 ONE JEFFERSON ROAD  
 Parsippany, New Jersey 07054  
 Craig M. Gianetti (036512003)  
 (973) 966-6300  
 Attorneys for Defendant-Intervenor  
 Pulte Homes of NJ, Limited Partnership

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IN THE MATTER OF THE APPLICATION OF THE BOROUGH OF FAR HILLS, COUNTY OF SOMERSET	: SUPERIOR COURT OF NEW JERSEY LAW DIVISION: SOMERSET COUNTY : DOCKET NO.: SOM-L-903-15 : : : <b>[PROPOSED] ANSWERS AND</b> : <b>AFFIRMATIVE DEFENSES OF</b> : <b>DEFENDANT-INTERVENOR PULTE</b> : <b>HOMES OF NJ, LIMITED</b> : <b>PARTNERSHIP</b> : :
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Defendant-Intervenor Pulte Homes of NJ, Limited Partnership (“*Pulte*”) having its principal place of business at 27 Route 202, Suite 6, Far Hills, New Jersey 07931, by way of an Answer to the Complaint filed by and on behalf of the Borough of Far Hills (the “*Borough*”) says:

**AS TO BACKGROUND**

1. Admitted.
2. Admitted.
3. Pulte neither admits nor denies the allegations set forth in paragraph 3 of the Complaint, as the Supreme Court Decisions, So. Burlington County N.A.A.C.P. v. Tp. of Mount Laurel, 67 N.J. 151 (1975) (“*Mount Laurel I*”) and So. Burlington County N.A.A.C.P. v. Tp. of Mount Laurel, 92 N.J. 158 (1983) (“*Mount Laurel II*”), and the New Jersey Fair Housing Act, N.J.S.A. 52:27D-301 et seq. (“*FHA*”) speaks for themselves.

4. Admitted.

**AS TO COUNT 1**

5. Admitted.

6. Admitted.

7. Pulte neither admits nor denies the allegations set forth in paragraph 7 of the Complaint, as the *Mount Laurel II* case speaks for itself.

8. Pulte neither admits nor denies the allegations set forth in paragraph 8 of the Complaint, as the FHA speaks for itself.

9. Pulte neither admits nor denies the allegations set forth in paragraph 9 of the Complaint, as the FHA speaks for itself.

10. Pulte neither admits nor denies the allegations set forth in paragraph 10 of the Complaint, as the *Mount Laurel II* case speaks for itself.

11. Pulte neither admits nor denies the allegations set forth in paragraph 11 of the Complaint, as this is a legal conclusion to which no response is required.

12. Pulte neither admits nor denies the allegations set forth in paragraph 12 of the Complaint, as the FHA speaks for itself.

13. Pulte neither admits nor denies the allegations set forth in paragraph 13 of the Complaint, as the FHA speaks for itself.

14. Pulte neither admits nor denies the allegations set forth in paragraph 14 of the Complaint, as the FHA speaks for itself.

15. Pulte neither admits nor denies the allegations set forth in paragraph 15 of the Complaint, as the FHA speaks for itself.

16. Pulte neither admits nor denies the allegations set forth in paragraph 16 of the Complaint, as the *Mount Laurel II* case speaks for itself.

17. Pulte neither admits nor denies the allegations set forth in paragraph 17 of the Complaint, as the J.W. Field Co., Inc. v. Tp. of Franklin, 204 N.J. Super. 445 (Law Div. 1985) (“*JW*”) case speaks for itself.

18. Pulte neither admits nor denies the allegations set forth in paragraph 18 of the Complaint, as the *JW* case speaks for itself.

19. Pulte neither admits nor denies the allegations set forth in paragraph 19 of the Complaint, as the *Mount Laurel III* case speaks for itself.

20. Pulte neither admits nor denies the allegations set forth in paragraph 20 of the Complaint, as the *Mount Laurel III* case speaks for itself.

21. Pulte neither admits nor denies the allegations set forth in paragraph 21 of the Complaint, as this is a legal conclusion to which no response is required.

22. Pulte neither admits nor denies the allegations set forth in paragraph 22 of the Complaint, as this is a legal conclusion to which no response is required.

23. Pulte neither admits nor denies the allegations set forth in paragraph 23 of the Complaint, as the *JW* case speaks for itself.

24. Pulte neither admits nor denies the allegations set forth in paragraph 24 of the Complaint, as the *JW* case speaks for itself.

25. Pulte neither admits nor denies the allegations set forth in paragraph 25 of the Complaint, as this is a legal conclusion to which no response is required.

26. Pulte neither admits nor denies the allegations set forth in paragraph 26 of the Complaint, as the In the Matter of the Adoption of N.J.A.C. 5:96 and 5:97 by the New Jersey Council on Affordable Housing, 221 N.J. 1 (2015) (“*In re COAH*”) case speaks for itself.

27. Pulte neither admits nor denies the allegations set forth in paragraph 27 of the Complaint, as this is a legal conclusion to which no response is required.

28. Pulte neither admits nor denies the allegations set forth in paragraph 28 of the Complaint, as *In re Coah* case speaks for itself.

29. Pulte neither admits nor denies the allegations set forth in paragraph 29 of the Complaint, as this is a legal conclusion to which no response is required.

30. Pulte neither admits nor denies the allegations set forth in paragraph 30 of the Complaint, as this is a legal conclusion to which no response is required.

31. Pulte neither admits nor denies the allegations set forth in paragraph 31 of the Complaint, as this is a legal conclusion to which no response is required.

32. Pulte neither admits nor denies the allegations set forth in paragraph 32 of the Complaint, as this is a legal conclusion to which no response is required.

33. Pulte neither admits nor denies the allegations set forth in paragraph 33 of the Complaint, as this is a legal conclusion to which no response is required.

34. Pulte does not have sufficient knowledge as to the truth of the allegations contained in this paragraph and leaves the Borough to its proofs.

35. Pulte does not have sufficient knowledge as to the truth of the allegations contained in this paragraph and leaves the Borough to its proofs.

36. Pulte does not have sufficient knowledge as to the truth of the allegations contained in this paragraph and leaves the Borough to its proofs.

37. Pulte does not have sufficient knowledge as to the truth of the allegations contained in this paragraph and leaves the Borough to its proofs.

38. Pulte does not have sufficient knowledge as to the truth of the allegations contained in this paragraph and leaves the Borough to its proofs.

39. Pulte does not have sufficient knowledge as to the truth of the allegations contained in this paragraph and leaves the Borough to its proofs.

40. Pulte does not have sufficient knowledge as to the truth of the allegations contained in this paragraph and leaves the Borough to its proofs.

41. Pulte does not have sufficient knowledge as to the truth of the allegations contained in this paragraph and leaves the Borough to its proofs.

42. Pulte does not have sufficient knowledge as to the truth of the allegations contained in this paragraph and leaves the Borough to its proofs.

43. Pulte does not have sufficient knowledge as to the truth of the allegations contained in this paragraph and leaves the Borough to its proofs.

44. Pulte neither admits nor denies the allegations set forth in paragraph 44 of the Complaint, as *In re Coah* case speaks for itself.



45. Pulte neither admits nor denies the allegations set forth in paragraph 45 of the Complaint, as *In re Coah* case speaks for itself.

46. Pulte does not have sufficient knowledge as to the truth of the allegations contained in this paragraph and leaves the Borough to its proofs.

47. Pulte neither admits nor denies the allegations set forth in paragraph 47 of the Complaint, as this is a legal conclusion to which no response is required.

48. Pulte neither admits nor denies the allegations set forth in paragraph 48 of the Complaint, as this is a legal conclusion to which no response is required.

49. Pulte neither admits nor denies the allegations set forth in paragraph 49 of the Complaint, as this is a legal conclusion to which no response is required.

50. Pulte neither admits nor denies the allegations set forth in paragraph 50 of the Complaint, as this is a legal conclusion to which no response is required.

51. Pulte does not have sufficient knowledge as to the truth of the allegations contained in this paragraph and leaves the Borough to its proofs.

52. Pulte neither admits nor denies the allegations set forth in paragraph 52 of the Complaint, as this is a legal conclusion to which no response is required.

53. Pulte neither admits nor denies the allegations set forth in paragraph 53 of the Complaint, as the FHA speaks for itself.

54. Pulte neither admits nor denies the allegations set forth in paragraph 54 of the Complaint, as this is a legal conclusion to which no response is required.

55. Pulte neither admits nor denies the allegations set forth in paragraph 55 of the Complaint, as this is a legal conclusion to which no response is required.

56. Pulte neither admits nor denies the allegations set forth in paragraph 56 of the Complaint, as this is a legal conclusion to which no response is required.

57. Pulte does not have sufficient knowledge as to the truth of the allegations contained in this paragraph and leaves the Borough to its proofs.

58. Pulte neither admits nor denies the allegations set forth in paragraph 58 of the Complaint, as this is a legal conclusion to which no response is required.

59. Pulte neither admits nor denies the allegations set forth in paragraph 59 of the Complaint, as this is a legal conclusion to which no response is required.

60. Pulte neither admits nor denies the allegations set forth in paragraph 60 of the Complaint, as this is a legal conclusion to which no response is required.

61. Pulte does not have sufficient knowledge as to the truth of the allegations contained in this paragraph and leaves the Borough to its proofs.

62. Pulte does not have sufficient knowledge as to the truth of the allegations contained in this paragraph and leaves the Borough to its proofs.

63. Pulte does not have sufficient knowledge as to the truth of the allegations contained in this paragraph and leaves the Borough to its proofs.

64. Pulte does not have sufficient knowledge as to the truth of the allegations contained in this paragraph and leaves the Borough to its proofs.

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67. Pulte does not have sufficient knowledge as to the truth of the allegations contained in this paragraph and leaves the Borough to its proofs.

68. Pulte does not have sufficient knowledge as to the truth of the allegations contained in this paragraph and leaves the Borough to its proofs.

69. Pulte does not have sufficient knowledge as to the truth of the allegations contained in this paragraph and leaves the Borough to its proofs.

70. Pulte does not have sufficient knowledge as to the truth of the allegations contained in this paragraph and leaves the Borough to its proofs.

71. Pulte does not have sufficient knowledge as to the truth of the allegations contained in this paragraph and leaves the Borough to its proofs.

72. Pulte does not have sufficient knowledge as to the truth of the allegations contained in this paragraph and leaves the Borough to its proofs.

73. Pulte does not have sufficient knowledge as to the truth of the allegations contained in this paragraph and leaves the Borough to its proofs.

74. Pulte does not have sufficient knowledge as to the truth of the allegations contained in this paragraph and leaves the Borough to its proofs.

75. Pulte does not have sufficient knowledge as to the truth of the allegations contained in this paragraph and leaves the Borough to its proofs.

76. Pulte does not have sufficient knowledge as to the truth of the allegations contained in this paragraph and leaves the Borough to its proofs.

77. Pulte does not have sufficient knowledge as to the truth of the allegations contained in this paragraph and leaves the Borough to its proofs.

78. Pulte does not have sufficient knowledge as to the truth of the allegations contained in this paragraph and leaves the Borough to its proofs.

79. Pulte does not have sufficient knowledge as to the truth of the allegations contained in this paragraph and leaves the Borough to its proofs.

80. Denied.

81. Pulte does not have sufficient knowledge as to the truth of the allegations contained in this paragraph and leaves the Borough to its proofs.

82. Pulte does not have sufficient knowledge as to the truth of the allegations contained in this paragraph and leaves the Borough to its proofs.

83. Pulte does not have sufficient knowledge as to the truth of the allegations contained in this paragraph and leaves the Borough to its proofs.

84. Pulte does not have sufficient knowledge as to the truth of the allegations contained in this paragraph and leaves the Borough to its proofs.

85. Pulte does not have sufficient knowledge as to the truth of the allegations contained in this paragraph and leaves the Borough to its proofs.

86. Pulte does not have sufficient knowledge as to the truth of the allegations contained in this paragraph and leaves the Borough to its proofs.

87. Pulte neither admits nor denies the allegations set forth in paragraph 87 of the Complaint, as this is a legal conclusion to which no response is required.

88. Pulte does not have sufficient knowledge as to the truth of the allegations contained in this paragraph and leaves the Borough to its proofs.

89. Pulte does not have sufficient knowledge as to the truth of the allegations contained in this paragraph and leaves the Borough to its proofs.

90. Pulte does not have sufficient knowledge as to the truth of the allegations contained in this paragraph and leaves the Borough to its proofs.

91. Pulte does not have sufficient knowledge as to the truth of the allegations contained in this paragraph and leaves the Borough to its proofs.

92. Pulte does not have sufficient knowledge as to the truth of the allegations contained in this paragraph and leaves the Borough to its proofs.

93. Pulte does not have sufficient knowledge as to the truth of the allegations contained in this paragraph and leaves the Borough to its proofs.

94. Pulte does not have sufficient knowledge as to the truth of the allegations contained in this paragraph and leaves the Borough to its proofs.

95. Pulte does not have sufficient knowledge as to the truth of the allegations contained in this paragraph and leaves the Borough to its proofs.

96. Pulte does not have sufficient knowledge as to the truth of the allegations contained in this paragraph and leaves the Borough to its proofs.

97. Pulte does not have sufficient knowledge as to the truth of the allegations contained in this paragraph and leaves the Borough to its proofs.

98. Pulte does not have sufficient knowledge as to the truth of the allegations contained in this paragraph and leaves the Borough to its proofs.

99. Pulte does not have sufficient knowledge as to the truth of the allegations contained in this paragraph and leaves the Borough to its proofs.

100. Pulte does not have sufficient knowledge as to the truth of the allegations contained in this paragraph and leaves the Borough to its proofs.

101. Pulte neither admits nor denies the allegations set forth in paragraph 101 of the Complaint, as the *Mount Laurel II* case speaks for itself.

102. Pulte neither admits nor denies the allegations set forth in paragraph 102 of the Complaint, as the FHA speaks for itself.

103. Pulte neither admits nor denies the allegations set forth in paragraph 103 of the Complaint, as this is a legal conclusion to which no response is required.

104. Pulte neither admits nor denies the allegations set forth in paragraph 104 of the Complaint, as this is a legal conclusion to which no response is required.

105. Pulte neither admits nor denies the allegations set forth in paragraph 105 of the Complaint, as this is a legal conclusion to which no response is required.

106. Pulte neither admits nor denies the allegations set forth in paragraph 106 of the Complaint, as this is a legal conclusion to which no response is required.

107. Pulte neither admits nor denies the allegations set forth in paragraph 107 of the Complaint, as this is a legal conclusion to which no response is required.

108. Pulte neither admits nor denies the allegations set forth in paragraph 108 of the Complaint, as this is a legal conclusion to which no response is required.

109. Pulte neither admits nor denies the allegations set forth in paragraph 109 of the Complaint, as this is a legal conclusion to which no response is required.

110. Pulte neither admits nor denies the allegations set forth in paragraph 110 of the Complaint, as this is a legal conclusion to which no response is required.

111. Pulte neither admits nor denies the allegations set forth in paragraph 111 of the Complaint, as this is a legal conclusion to which no response is required.

112. Pulte neither admits nor denies the allegations set forth in paragraph 112 of the Complaint, as this is a legal conclusion to which no response is required.

113. Pulte does not have sufficient knowledge as to the truth of the allegations contained in this paragraph and leaves the Borough to its proofs.

114. Pulte neither admits nor denies the allegations set forth in paragraph 114 of the Complaint, as the FHA speaks for itself.

115. Pulte does not have sufficient knowledge as to the truth of the allegations contained in this paragraph and leaves the Borough to its proofs.

116. Pulte neither admits nor denies the allegations set forth in paragraph 116 of the Complaint, as this is a legal conclusion to which no response is required.

117. Denied.

118. Pulte does not have sufficient knowledge as to the truth of the allegations contained in this paragraph and leaves the Borough to its proofs.

119. Pulte neither admits nor denies the allegations set forth in paragraph 119 of the Complaint, as this is a legal conclusion to which no response is required.

120. Pulte neither admits nor denies the allegations set forth in paragraph 120 of the Complaint, as this is a legal conclusion to which no response is required.

121. Pulte does not have sufficient knowledge as to the truth of the allegations contained in this paragraph and leaves the Borough to its proofs.

**AS TO COUNT 2**

122. Pulte repeats and incorporates the statements in As to Background, and As To Count 1 as if set forth fully herein.

123. Pulte neither admits nor denies the allegations set forth in paragraph 123 of the Complaint, as the FHA speaks for itself.

124. Pulte neither admits nor denies the allegations set forth in paragraph 124 of the Complaint, as this is a legal conclusion to which no response is required.

125. Pulte neither admits nor denies the allegations set forth in paragraph 125 of the Complaint, as this is a legal conclusion to which no response is required.



126. Pulte does not have sufficient knowledge as to the truth of the allegations contained in this paragraph and leaves the Borough to its proofs.

127. Pulte neither admits nor denies the allegations set forth in paragraph 127 of the Complaint, as this is a legal conclusion to which no response is required.

128. Pulte does not have sufficient knowledge as to the truth of the allegations contained in this paragraph and leaves the Borough to its proofs.

129. Pulte neither admits nor denies the allegations set forth in paragraph 129 of the Complaint, as this is a legal conclusion to which no response is required.

130. Pulte neither admits nor denies the allegations set forth in paragraph 130 of the Complaint, as this is a legal conclusion to which no response is required.

131. Pulte does not have sufficient knowledge as to the truth of the allegations contained in this paragraph and leaves the Borough to its proofs.

132. Pulte neither admits nor denies the allegations set forth in paragraph 132 of the Complaint, as this is a legal conclusion to which no response is required.

133. Pulte neither admits nor denies the allegations set forth in paragraph 133 of the Complaint, as this is a legal conclusion to which no response is required.

134. Pulte neither admits nor denies the allegations set forth in paragraph 134 of the Complaint, as this is a legal conclusion to which no response is required.

135. Pulte does not have sufficient knowledge as to the truth of the allegations contained in this paragraph and leaves the Borough to its proofs.

WHEREFORE Pulte demands judgment: (1) only permitting temporary immunity to the Borough subject to conditions and benchmarks; and (2) any such other relief as the Court deems just and equitable.

**AFFIRMATIVE DEFENSES**

**FIRST AFFIRMATIVE DEFENSE**

The Borough has failed to propose and/or adopt a constitutionally or statutorily compliant Housing Element and Fair Share Plan.

**SECOND AFFIRMATIVE DEFENSE**

The Borough has not adopted land use regulations or a zone plan which provide a realistic opportunity for the construction of its fair share of the regional need for affordable housing for low and moderate income families as required by the *Mount Laurel* Doctrine.

**THIRD AFFIRMATIVE DEFENSE**

The Borough has not provided a realistic opportunity for the construction of its fair share of the regional need for affordable housing for low and moderate income families as required by the *Mount Laurel* Doctrine.

DAY PITNEY LLP  
Attorneys for Defendant/Intervenor  
Pulte Homes of NJ, Limited Partnership

By: \_\_\_\_\_  
CRAIG M. GIANETTI  
A Member of the Firm

DATED: \_\_\_\_\_, 2024

**DESIGNATION OF TRIAL COUNSEL**

In the event that this matter requires a plenary hearing or trial before the court, pursuant to R. 4:5-1(c), Pulte hereby designates Craig M. Gianetti, Esq., of Day Pitney LLP, as its counsel for the purposes of said hearing or trial.

DAY PITNEY LLP  
Attorneys for Defendant-Intervenor  
Pulte Homes of NJ, Limited Partnership

By: \_\_\_\_\_  
CRAIG M. GIANETTI  
A Member of the Firm

DATED: \_\_\_\_\_, 2024

**CERTIFICATION**

I hereby certify pursuant to *R. 4:5-1* that this matter is not the subject of any other action pending in any court or of a pending arbitration proceeding, nor is any other action or arbitration proceeding contemplated. I further certify that at this time I am unaware of any non-party who should be joined in this action pursuant to *R. 4:28* or who is subject to joinder pursuant to *R. 4:29-1(b)* because of potential liability to any party based on the same transactional facts.

---

CRAIG M. GIANETTI

DATED: \_\_\_\_\_, 2024

**CERTIFICATION OF SERVICE**

I hereby certify that on this date a copy of the within Answer to the Complaint on behalf of

Pulte Homes of NJ, Limited Partnership was served upon:

Nancy L. Holm  
Surenian, Edwards & Nolan, LLC  
311 Broadway, Suite A  
Point Pleasant Beach, NJ 08730  
*Attorneys for Declaratory Plaintiff, Borough of Far Hills*

Ashley J. Lee, Esq.  
Fair Share Housing Center  
510 Park Boulevard  
Cherry Hill, NJ 08002  
*Counsel for Intervenor-Defendant Fair Share Housing Center*

Joseph V. Sordillo, Esq.  
DiFrancesco, Bateman, Kunzman, Davis, Lehrer & Flaum, PC  
15 Mountain Blvd.  
Warren, NJ 07059  
*Attorneys for Declaratory Plaintiff, Borough of Far Hills*

James T. Kyle, PP/AICP  
Kyle & McManus Associates  
2 East Broad Street, Second Floor  
Hopewell, NJ 08525  
*Special Master*

Thomas C. Miller, A.J.S.C. (Ret.)  
Somerset County Superior Courthouse  
20 N. Bridge Street,  
Somerville, NJ 08876  
*Special Master-March 16, 2022 CMO*

by email and eCourts within the time provided by the Court’s Order granting intervention.

\_\_\_\_\_  
CRAIG M. GIANETTI

DATED: \_\_\_\_\_, 2024

# EXHIBIT D

**MEMORANDUM OF UNDERSTANDING**

BY AND BETWEEN

**BOROUGH OF FAR HILLS**

AND

**MELILLO EQUITIES, LLC**

REGARDING

**DEVELOPMENT OF A RESIDENTIAL DEVELOPMENT PROJECT  
WITH INCLUSIONARY AFFORDABLE HOUSING  
IN  
THE BOROUGH OF FAR HILLS  
COUNTY OF SOMERSET, STATE OF NEW JERSEY**

**WHEREAS**, in compliance with the New Jersey Supreme Court decision in In re Adoption of N.J.A.C. 5:96 & 5:97 by N.J. Council on Affordable Housing, 221 N.J. 1 (2015) (“Mount Laurel IV”), on or about July 2, 2015, the Borough of Far Hills (“Borough”) filed an action with the Superior Court of New Jersey, entitled In the Matter of the Application of the Borough of Far Hills, County of Somerset, Docket No. SOM-L-903-15, seeking a Judgment of Compliance and Repose approving its Fair Share Plan, in addition to related reliefs (the “Compliance Action”); and

**WHEREAS**, Melillo Equities, LLC (“Melillo”) approached the Borough with alternative proposals for the potential development of inclusionary, residential rental developments; one of which involved the properties identified as Block 5, Lot 4, located at 220 Route 202, consisting of approximately 42.3± acres (“Errico Acres”), and Block 15, Lot 3, located at 39 Dumont Road, Block 15, Lot 4, located at 43 Dumont Road, Block 15, Lot 5, located at 45 Route 202, and Block 15, Lot 1.01, located at 49 Route 202, consisting of approximately 2.1± acres (“Far Hills Proper”); and

**WHEREAS**, after ongoing discussions, negotiations and mediations between the Borough and Melillo, the parties have agreed upon the general terms of a mixed use, residential development of the Far Hills Proper site, and an inclusionary affordable residential development of the Errico Acres site; and

**WHEREAS**, the Borough and Melillo wish to enter into this Memorandum of Understanding (“MOU”) to memorialize the agreed upon terms of the inclusionary, residential development and mixed use development of the Errico Acres and Far Hills Proper sites, respectively, with the additional and more specific terms and conditions of said development to be further negotiated and agreed to in additional agreements, and wherein the terms of this MOU

are to be incorporated into a formal settlement agreement with the Borough and the Fair Share Housing Center (“FSHC”) to be filed with the Court in connection with the Compliance Action.

**NOW, THEREFORE**, for good and valuable consideration in hand paid, receipt of which is hereby acknowledged, and in consideration of the mutual covenants and obligations hereinafter set forth, the Borough and Melillo hereby set forth in this Memorandum of Understanding that the following general terms that shall apply to the future development of the Errico Acres and Far Hills Proper sites:

1. Melillo (its successors and/or assigns) agrees to develop, construct, or otherwise build an inclusionary, residential development at the Errico Acres site subject to the following conditions:

- a. Affordable Housing Component – The residential development shall have an inclusionary affordable housing component of not less than twenty five (25) non age restricted, family rental affordable housing units and four (4) age-restricted rental units (for a total of 29 affordable rental units); which are to be developed as very low, low and moderate income affordable housing units to qualify as such pursuant to the terms of the applicable affordable housing regulations, Court Order, Court Special Master requirements, and the Uniform Housing Affordability Controls (“UHAC”) regulations, N.J.A.C. 5:80-26.1, *et seq.*, and any subsequent laws and regulations of the State of New Jersey. While the market-rate units in the proposed residential development will be for-sale units, the affordable housing units shall be rental units. In addition to the foregoing, the affordable units shall remain affordable rental units for a period of at least thirty (30) years (“Deed-Restriction Period”). At the end of the 30 years, the deed restrictions shall be governed by UHAC or any successor laws or regulations of the State of New Jersey. The Parties agree that the affordable housing units are to be included in the Borough’s Fair Share Plan to be approved and credited by the Court in the Compliance Action; which may be eligible for family rental bonus credits.
- b. Density of Development – The residential development of the Errico Acres site shall be developed with a permitted density of up to one hundred thirty four (134) total units, including not less than twenty five (25) non age restricted, family rental affordable housing units and four (4) age-restricted rental units (for a total of 29 affordable rental units).
- c. Residential Development / Development Regulations – The specific terms and specifications for this development shall be in substantial compliance with the development identified in the proposal and concept plan attached hereto and made a part hereof as Exhibit A, entitled “Affordable Housing Proposal,” dated September 21, 2018. The residential development of the Errico Acres site shall be governed by a rezoning of the property, with the specific terms of same to be in substantial compliance with the terms and conditions set forth



herein, inclusive of the proposal and concept plan attached hereto as Exhibit A.

- d. Open Land/Development Restrictions – Melillo agrees to maintain as undeveloped open land or otherwise restrict the development of approximately 21.0± acres located at the westerly portion of the site, fronting U.S. Highway Route 202; with the exception of the existing barn and development of the required driveway/roadway from U.S. Highway Route 202 to access the residential development at the Errico Acres site. The final form of the preservation or development restriction to maintain these 21.0 acres as undeveloped open land, including the purposes and permitted uses and ownership therein, shall be subject to the Borough's approval.
- e. Development Bulk Regulations – While the final development setbacks and related bulk regulations for the residential development of the Errico Acres site will be subject to further negotiation and shall be memorialized in the final zoning ordinance to be adopted by the Borough, the parties agree that the residential development shall be set back approximately 750 feet from the proposed right-of-way along U.S. Highway Route 202, and will have a minimum side yard setback buffer to its property line of approximately 100 feet; subject to final engineering of the site by Melillo and approval by the Borough. Additionally, the height of the residential development shall not exceed three (3) stories and/or thirty-eight feet and six inches (38' 6") in height in a walkout condition as measured from the average finished grade around each building.
- f. Sanitary Sewer – The parties acknowledge that the residential development of the Errico Acres site will require an extension of the sewer line and sewer service area, which shall be the responsibility of Melillo. The parties agree that the design and size of the new sewer line shall limit the extension of the sewer service area and sewer service to the Errico Acres site and shall be designed as a force main or other similar design that shall preclude connection to the sewer line by any of the existing properties along U.S Highway Route 202, or properties within Far Hills Borough located between and adjacent to Errico Acres and the existing terminus of the sewer line in Route 202. Accordingly, Melillo will provide sewer service to the Errico Acres site from the south westerly direction along U.S Highway Route 202, subject to final engineering and approval by the utility authority. The Borough agrees to reasonably assist with and provide an endorsement with a signature of any documentation necessary, including without limitation, a site-specific wastewater management plan amendment and/or water quality management plan and the treatment works application to the NJDEP, for Melillo to obtain all necessary approvals to extend the sanitary sewer service to the Errico Acres site in compliance with the terms herein. The Borough also confirms, to the extent that it can, that there is adequate capacity at the New Jersey

American Water Sewer Plant and within the sewer conveyancing lines to services the Errico Acres Project as proposed.

Melillo shall be responsible for all administrative tasks required to secure a site-specific wastewater management plan amendment to the Borough's chapter of the Somerset County Water Quality Management Plan / Wastewater Management Plan for sewer service to the Errico Acres site. Melillo shall provide all documentation prepared for submission to the NJDEP for the Borough's review prior to submission to the NJDEP for the Borough's review and comment.

Melillo shall be responsible for any costs associated with applying for and securing a site-specific wastewater management plan amendment, treatment works approval, the purchasing of sewer capacity, along with any and all sewer connection fees necessary to serve the residential development at the Errico Acres site. To the extent that the Borough must incur costs associated with endorsement of and support for the required NJDEP wastewater management plan and treatment works approvals, Melillo shall pay those costs reasonably incurred by the Borough to provide said endorsements and support.

- g. Rezoning – The Borough and Melillo agree that the inclusionary, residential development shall be permitted by way of rezoning and zoning ordinance amendment to be adopted by the Borough within six (6) months after the final approval of this MOU and settlement agreement with FSHC by the Court. The Borough shall initiate a re-examination of the Master Plan to include the proposed residential development, including the required inclusionary affordable housing component. Melillo agrees to pay the cost for Master Plan and zoning ordinance amendments that the Borough incurs to facilitate the rezoning of the property for the development contemplated herein pursuant to Section 7 herein.

2. Melillo (its successor and/or assigns) agrees to develop, construct, or otherwise build a mixed use (commercial/residential) development at the Far Hills Proper site subject to the following conditions:

- a. Affordable Housing Component – The existing six (6) age-restricted, rental affordable housing units located at the property identified as Block 15, Lot 1.02, 25 Dumont Road, shall remain, subject to the existing affordable housing agreements, deeds, restrictions and regulations, which may be extended upon the expiration of the current affordable housing restriction terms by agreement of the parties subject to UHAC or any successor laws or regulations of the State of New Jersey. The Parties agree that the affordable housing units are to continue to be included in the Borough's Fair Share Plan to be approved and credited by the Court in the Compliance Action; which may be eligible for bonus credits. The parties further acknowledge that two

apartments have been occupied by tenants who do not meet the age restriction but who are income qualified, on which the Borough agrees to not enforce the age restriction as to the present tenants, with the anticipation that future tenants may revert to being age-restricted.

- b. Mixed-Use Development – In addition to the existing 6 age-restricted, rental affordable housing units, the mixed use development of the Far Hills Proper site shall be developed with permitted residential development of up to ten (10) total residential rental units, and up to 7,900 square feet of commercial development. The mixed-use development will consist of three buildings with ground floor retail and luxury rental residential units on the second and third floors. The buildings include the redevelopment of the existing firehouse, and the demolition of the existing structures located only on Lots 3, 4 and 5 in Block 15, which is only a portion of the Far Hills Proper property for the construction of new structures at the street corner of Dumont Road and U.S. Highway Route 202, with related improvements.
- c. Residential/Commercial Development / Development Regulations – The specific terms and specifications for this development shall be in substantial compliance with the development identified in the proposal and concept plan attached hereto and made a part hereof as Exhibit A, entitled “Affordable Housing Proposal,” dated September 21, 2018. The residential and commercial development of the Far Hills Proper site shall be governed by a rezoning of the property, with the specific terms of same to be in substantial compliance with the terms and conditions set forth herein, inclusive of the proposal and concept plan attached hereto as Exhibit A. The commercial uses permitted within the 7,900 square feet of commercial development shall include boutique-type retail and professional office uses, with small bistro, café uses, with the complete list of permitted and prohibited uses to be further negotiated and detailed in the zoning ordinance.
- d. Development Setbacks – While the final development setbacks and related bulk regulations for the residential development of the Far Hills Proper site will be subject to further negotiation and shall be memorialized in the final zoning ordinance to be adopted by the Borough, the parties agree that the mixed use development shall not exceed two and a half (2.5) floors and 38.5 feet in height.
- e. Sanitary Sewer – Melillo shall be responsible for any costs associated with improving the sewer lines to serve the project, along with any and all sewer connection fees necessary to serve the mixed use development at the Far Hills Proper site. The Borough agrees to reasonably assist with and provide any documentation necessary for Melillo to obtain all necessary approvals to provide the sanitary sewer service to the Far Hills Proper site in compliance with the terms herein. The Borough shall assist in the negotiation of the sewer connection fees with the utility company for a reduction in connection fees to

an appropriate amount for an inclusionary development. The Borough also confirms, to the extent that it can, that there is adequate capacity at the New Jersey American Water Sewer Plant and within the sewer conveyancing lines to services the Errico Acres Project as proposed.

- f. Parking – Melillo shall provide the requisite parking (currently calculated at 58 parking spaces) as surface parking, to be located on-site, off-site and street parking. The Borough will also provide Melillo with access and permission to park on Borough property described as Block 15, Lot 7. That parties will agree upon the actual location of the designated parking spaces.
- g. Rezoning – The Borough and Melillo agree that the mixed use commercial and inclusionary residential development shall be permitted by way of rezoning and zoning ordinance amendment to be adopted by the Borough within six (6) months after the final approval of this MOU and settlement agreement with FSHC by the Court. The Borough shall initiate a re-examination of the Master Plan to include the proposed residential development, including the required inclusionary affordable housing component. Melillo agrees to pay the cost for Master Plan and zoning ordinance amendments that the Borough incurs to facilitate the rezoning of the property for the development contemplated herein pursuant to Section 7 herein.

3. The Borough shall review and approve the final development plans, building elevations, architectural floor plans, design standards, building materials, streetscape improvements, amenities and like development information, which shall be agreed upon and included in the zoning ordinance to be negotiated and adopted by the Borough. The parties understand and agree that the final development plans, including architectural design, building materials and amenities shall be of such quality meeting the current planning, style and standards of the Borough.

4. Open Space/Off-Tract/Affordable Housing Contributions. Melillo agrees to contribute the sum of four hundred thousand (\$400,000.00) dollars to the Borough in lieu of installing on-site recreational improvements as set forth in the Open Space/Recreation Ordinance of the Borough. It is the intention of the parties that such contribution is made to enhance the J. Malcolm Belcher Fairgrounds in lieu of providing recreational and/or active amenities on site. Such contribution to the Borough will be deposited into the Borough's Open Space/Recreation Fund or other similar account pursuant the provisions of the fully enforceable Borough Ordinance.

Melillo further agrees to contribute an additional sum of four hundred and fifteen thousand (\$415,000.00) dollars to the Borough to assist with the Borough's development of off-site improvements and related expenses caused by the development of the Errico Acres and Far Hills Proper sites; in addition to assisting the Borough with the provision of affordable housing opportunities in the Borough in addition to those being provided at the Errico Acres and Far Hills Proper sites. This contribution is being provided to the Borough for off-site improvements or

other uses based on the new obligations created on the Borough because of the developments proposed herein. Such contribution may also be utilized by the Borough to provide additional realistic affordable housing opportunities in the Borough. Such contribution may further be utilized by the Borough in connection with any and all professional expenses relating to the rezoning of the Errico Acres and Far Hills Proper sites.

Both of these contributions are being made voluntarily to provide for off-tract improvements, public amenities and green spaces will help to encourage a more vibrant, inviting and walkable downtown; as well as for the assistance of the Borough to provide for affordable housing opportunities in addition to those provided at the Errico Acres and Far Hills Proper sites. The Borough shall have sole discretion over the final utilization of the contributions, subject to the terms herein. These contributions to the Borough will be made at such time all governmental approvals needed to develop the Errico Acres site as proposed are issued and unappealable.

5. The Borough acknowledges that in order for Melillo to construct the mixed use commercial and inclusionary, residential development Melillo will be required to obtain any and all necessary and applicable agreements, approvals, and permits from all relevant public entities and utilities having jurisdiction thereof. The Borough agrees to cooperate with Melillo's efforts to obtain all required approvals and permits from all relevant public entities and utilities having jurisdiction thereof for the development of both Errico Acres and the Far Hills Proper sites. The parties acknowledge that the Planning Board understands the intent of this agreement is to develop the site in accordance with the concept plans attached hereto. Melillo shall be entitled to any benefits, protections, and obligations afforded to developers of inclusionary developments, other than what Melillo has agreed to in this MOU. Accordingly, the Borough will not impose development standards and/or requirements that are considered to be unreasonably "cost generative." In addition, the Borough agrees to process the site plan application submitted by Melillo simultaneously, and not consecutively, with the required governmental permits and approvals for an amendment to the Borough's wastewater management plan and/or water quality management plan, as may be necessary.

6. The parties understand and agree that this Memorandum of Understanding sets forth the general agreed upon terms for the development of the inclusionary, residential, development of the Errico Acres site and mixed use development of the Far Hills Proper site. Nothing herein shall bind or otherwise restrict the parties from negotiating and agreeing to additional and more specific terms of development.

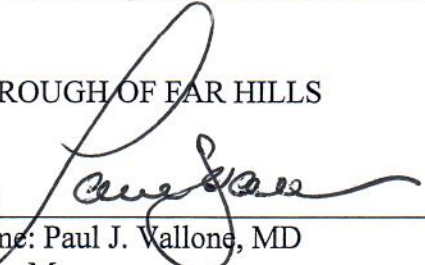
7. Upon approval of the settlement agreement filed with the Court, Melillo agrees to enter into an escrow agreement with the Borough for the deposit of monies in escrow with the Borough to be utilized to tender payment of reasonable fees for professional services, including legal, engineering and planning services, being provided in conjunction with the preparation and adoption of the Master Plan Reexamination (only if a partial reexamination is done specifically for the Errico Acres and Far Hills Proper sites) and zoning ordinance implementing the rezoning of the Errico Acres and Far Hills Proper sites for the residential and mixed use developments. The total amount of money spent by the Borough on its professionals for the purposes described in this Paragraph 7 shall reduce the contribution of Melillo set forth in Paragraph 4 herein. Notwithstanding, the parties acknowledge and agree that the contributions set forth in Paragraph

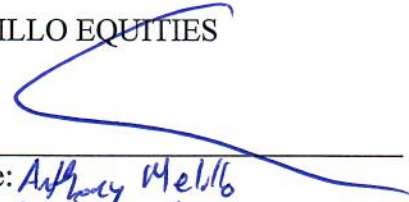
4 herein shall not affect any and all escrows required in connection with applications with the Borough land use board.

8. The Borough and Melillo hereby agree to act in good faith in the negotiation of the final terms of the development, along with the preparation of the zoning ordinance setting forth the development regulations for the inclusionary, residential, development at the Errico Acres and Far Hills Proper sites as set forth herein. The parties further agree to proceed in good faith in proceeding through the rezoning process and developing the site in compliance with the terms set forth herein. The Borough agrees to provide drafts of the revised zoning ordinance to Melillo prior to adoption for review and comment by Melillo.

9. Miscellaneous. This Memorandum of Understanding shall be governed by, and construed and enforced in accordance with, the laws of the State of New Jersey. This Memorandum of Understanding may be modified or amended only by a written instrument signed by both parties. This is a negotiated agreement wherein both parties were represented by legal counsel. This Memorandum of Understanding shall not be construed against any party by virtue of its counsel having prepared same or part thereof. This Memorandum of Understanding may be executed in counterparts, with facsimile signatures shall be deemed original signatures.

IN WITNESS WHEREOF, the Borough and Melillo have executed this Memorandum of Understanding as of the dates set forth below.

BOROUGH OF FAR HILLS  
By:   
Name: Paul J. Vallone, MD  
Title: Mayor  
Dated: 10/9, 2018

MELILLO EQUITIES  
By:   
Name: Anthony Melillo  
Title: Site Member  
Dated: 10/9, 2018

# EXHIBIT E

## AFFORDABLE HOUSING AGREEMENT

This Affordable Housing Agreement (“Agreement”) is made and entered into this 9th day of December 2019, by and between the parties hereto:

**MELILLO EQUITIES, LLC** New Jersey limited liability company, having offices at 350 Main Street, Suite 8, Bedminster, New Jersey 07921 (hereinafter “Melillo”);

and

**THE BOROUGH OF FAR HILLS**, a New Jersey municipal corporation in the County of Somerset, with an address at 6 Prospect Street, Far Hills, New Jersey 07931, (hereinafter “Far Hills” or the “Borough”).

### RECITALS:

Collectively, the Melillo and the Borough shall be referred to as the “Parties.”

**WHEREAS**, in compliance with the New Jersey Supreme Court decision in In re Adoption of N.J.A.C. 5:96 & 5:97 by N.J. Council on Affordable Housing, 221 N.J. 1 (2015) (“Mount Laurel IV”), on or about July 2, 2015, the Borough of Far Hills (“Borough”) filed an action with the Superior Court of New Jersey, entitled In the Matter of the Application of the Borough of Far Hills, County of Somerset, Docket No. SOM-L-903-15, seeking a Judgment of Compliance and Repeal approving its Fair Share Plan, in addition to related reliefs (the “Compliance Action”); and

**WHEREAS**, at a duly noticed public hearing on July 1, 2019, the Planning Board of the Borough of Far Hills (“Planning Board”) adopted a Housing Element and Fair Share Plan (hereinafter “Affordable Housing Plan”), which was endorsed by the Mayor and Borough Council at its July 8, 2019 public meeting, which is subject to the Court’s review and approval; and

**WHEREAS**, Melillo approached the Borough with a proposal for the development of an inclusionary, residential rental and for sale development on the property identified as Block 5, Lot 4, located at 220 Route 202, consisting of approximately 42.3± acres (hereinafter referred to as “Errico Acres Site”) and the development of a mixed-use project on property identified as Block 15, Lot 3 (located at 39 Dumont Road), Block 15, Lot 4 (located at 43 Dumont Road), Block 15, Lot 5 (located at 45 Route 202) and Block 15, Lot 1.01 (located at 49 Route 202), consisting of approximately 2.1 acres (“Far Hills Proper Site” together with the Errico Acres Site, the “Properties”); and

**WHEREAS**, at the October 9, 2018 Borough Council meeting, Melillo made a public presentation of the proposed development of the Errico Acres Site and Far Hills Proper Site, with opportunity for the public input and question; and

**WHEREAS**, the Borough and Melillo entered into a Memorandum of Understanding, dated October 9, 2018, setting for the general terms for the inclusionary, residential development



at the Errico Acres site and mixed-use development (residential / commercial) on the Far Hills Proper Site (“MOU”); and

**WHEREAS**, the proposed residential development of the Errico Acres site agreed to be developed with a permitted density of up to one hundred thirty four (134) total units, including not less than twenty five (25) non-age restricted, family rental affordable housing units and up to four (4) age-restricted rental units (for a total of 29 affordable rental units); and

**WHEREAS**, pursuant to subsequent negotiations, Melillo agreed to age-restrict the for sale, market units at the Errico Acres site, which consisted up to one hundred and five (105) units, and as the market rate units are subsidizing the construction of the affordable units, the Borough agreed to make an affordable housing contribution towards the project to address the loss in value converting from a family project to an age-restricted project; and

**WHEREAS**, the Errico Acres Site inclusionary, residential development shall be substantially consistent with the concept plan attached hereto as **Exhibit A**, subject to compliance with the final zoning ordinance and the site plan approval process (the “Errico Acres Project”); and

**WHEREAS**, a copy of the form deed restriction to be placed on the affordable housing units shall be consistent with form Appendix E2 of the UHAC Regulations, which is attached hereto as **Exhibit B** and made a part hereof (the “Deed Restriction”); and

**WHEREAS**, the Parties further agree as to the rezoning of the Far Hills Proper Site for a mixed-used residential / commercial consisting of up to ten (10) residential rental units and up to an additional 1,869 square feet of commercial development (beyond the existing 37,897 square feet of commercial development on the Far Hills Proper Site) to be finalized and completed at a later date as set forth herein (“Far Hills Proper Project” together with Errico Acres Project, “Overall Projects”); and

**WHEREAS**, the Parties wish to enter into this Agreement, setting forth the terms, conditions, responsibilities and obligations of the Parties for the Overall Projects.

**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 – INCLUSIONARY DEVELOPMENT & REZONING**

**1.1** The purpose of this Agreement is to set forth the terms and conditions and obligations of the Parties to create a realistic opportunity for the construction of the Errico Acres Project, and to generate affordable housing credits for the Borough to apply to its Gap (1999-2015) and Round 3 (2015-2025) affordable housing obligations. The Errico Acres Project shall be substantially consistent with the concept plan, and floor plans and elevations attached hereto and

made a part hereof as **Exhibit A**, provided same shall be subject to further refinement and subject to applicable Borough, County and State approvals through the site plan approval process, and shall be further subject to the following requirements:

- 1.1.1** Density. The residential development of the Errico Acres Site shall be developed with a permitted density of up to one hundred and thirty four (134) total residential units, including not less than twenty five (25) non-age restricted, family rental affordable housing units and up to four (4) age-restricted rental affordable housing units (for a total of 29 affordable rental units). The remaining residential units shall consist of not more than one hundred and five (105) age-restricted, for sale market units.
- 1.1.2** Height. The affordable housing residential development of the Errico Acres Site shall consist of one building, which shall be a three (3) story building with the appearance of a 2 ½ story building, with a maximum height of forty two feet (42') as defined in the Borough's Land Development Ordinances. The market rate residential development of the Errico Acres Site shall consist of townhouses, to be clustered in 4-5 unit groupings, which shall be three (3) story structures with the appearance of a 2 ½ story building, with a maximum height of thirty six feet (36') as defined in the Borough's Land Development Ordinances. Melillo agrees to work with the Borough and the Borough's professionals to prepare to improve architectural building elevation for both buildings described herein.
- 1.1.3** Setbacks – The residential development of the Errico Acres Site shall comply with all applicable building setbacks for the overall tract/site to be set forth in the zoning ordinance to be adopted by the Borough as follows:
- Front Yard Site Setback from Route 202 – Minimum 300 feet
  - Side Yard Site Setback – Minimum 100 feet
  - Side Yard Tree Buffer – Minimum 50 feet
  - Rear Yard Site Setback from the rail right of way – Minimum 50 feet
- 1.1.4** Age-restriction – Any and all of the market rate, for-sale residential units to be built on the Errico Acres Site (not to exceed 105), shall be age-restricted. Said age-restriction shall be set forth in all deeds, by-laws and resolutions of the homeowners association, and registered with the State of New Jersey.
- 1.1.5** Amenities/Off-Site Improvements. Melillo agrees to provide a walking path throughout the Errico Acres Site for use by the residents of the Errico Acres Project. Said walking path shall not be open to the public. In addition, in lieu of providing traditional recreational amenities on site, Melillo hereby agrees to make a payment to the Borough in the amount of six hundred thousand (\$600,000.00) to assist with the Borough's development of off-site improvements for public amenities, improvements, and green spaces to encourage public recreational amenities and a more vibrant, inviting and walkable downtown and to enhance the J. Malcolm Belcher Fairgrounds and the Village downtown area ("Recreation Contribution"); which monies are to be deposited into the Borough's Open Space/Recreation Fund

or other similar account pursuant the provisions of the fully enforceable Borough Ordinance. This contribution to the Borough shall be made prior to, or as a condition of, issuance of the first building permit for the development of the Errico Acres site as set forth herein.

- 1.1.6** Parking. Melillo hereby agrees to provide parking pursuant to the applicable RSIS standards.
- 1.1.7** Scenic Corridor/Open Land/Development Restrictions. Melillo hereby agrees to comply with the Borough's Scenic Corridor Ordinance fronting along U.S. Highway Route 202, including, without limitation the granting of a 200 foot scenic corridor easement to the Borough. In addition to the scenic corridor easement, Melillo hereby agrees to grant the Borough an additional 100 foot common area open land easement to maintain as undeveloped open land or otherwise restrict the development. The easement for the additional 100 foot common area open land shall permit Melillo to install an underground septic field within said 100 foot common area open land easement. The final form of the preservation or development restriction/easement shall be subject to the Borough's approval.
- 1.1.8** Sanitary Sewer – Unless Melillo is able to provide for on-site sanitary sewerage treatment, the Parties acknowledge that the residential development of the Errico Acres Site may require an extension of the sewer line and sewer service area (“EA Sewer Extension”), which shall be the responsibility of Melillo. The Parties agree that the design and size of the new sewer line shall limit the extension of the sewer service area and sewer service to the Errico Acres Site and shall be designed as a force main or other similar design that shall preclude connection to the sewer line by any of the existing properties along U.S Highway Route 202, or properties within Far Hills Borough located between and adjacent to Errico Acres and the existing terminus of the sewer line in Route 202. Accordingly, Melillo will provide sewer service to the Errico Acres Site from the south westerly direction along U.S Highway Route 202, subject to final engineering and approval by the utility authority. The Borough agrees to reasonably assist with and provide an endorsement with a signature of any documentation necessary, including without limitation, a site-specific wastewater management plan amendment and/or water quality management plan and the treatment works application to the NJDEP, for Melillo to obtain all necessary approvals to extend the sanitary sewer service to the Errico Acres Site in compliance with the terms herein. The Borough also confirms, to the extent that it can, that there is adequate capacity at the New Jersey American Water Company Sewer Plant and within the sewer conveyancing lines to service the Errico Acres Project as proposed. Melillo shall be responsible for all administrative tasks required to secure a site-specific wastewater management plan amendment to the Borough's chapter of the Somerset County Water Quality Management Plan / Wastewater Management Plan for sewer service to the Errico Acres Site. Melillo shall provide all documentation prepared for submission to the NJDEP for the Borough's review prior to submission to the NJDEP for the Borough's review and comment. Melillo shall be responsible for any costs associated with applying for and securing a site-specific wastewater management

plan amendment, treatment works approval, the purchasing of sewer capacity, along with any and all sewer connection fees necessary to serve the residential development at the Errico Acres Site. To the extent that the Borough must incur costs associated with endorsement of and support for the required NJDEP wastewater management plan and treatment works approvals beyond what is the customary review and endorsement by a municipality, Melillo shall pay those costs reasonably incurred by the Borough to provide said endorsements and support.

**1.1.9** Final Plans/Architectural Design. Melillo shall construct the Errico Acres Project in substantial compliance with the concept plans shown on the attached **Exhibit A**, with the final architectural building elevations to be revised at the direction of the Borough and Borough Professionals. All drawings and plans shall be further reviewed and approved by the Borough.

**1.1.10** Phasing of Development. The Parties agree that the Errico Acres Project shall be constructed in 2 or 3 phases. Approximately 35 units are to be constructed during each phase. The affordable housing units shall be constructed in accordance with the schedule set forth in N.J.A.C. 5:93-5.6(d) as follows:

Minimum Percentage of Low and Moderate Income Units Completed	Percentage of Market Housing Units Completed
0	25
10	25 + 1 unit
50	50
75	75
100	90

**1.1.11** Rezoning. The Parties agree that the Errico Acres Project shall be permitted by way of rezoning and zoning ordinance amendment to be adopted by the Borough. The Borough shall initiate the rezoning process pursuant to the July 19, 2019 Scheduling Order issued by the Honorable Thomas C. Miller, P.J.Cv., or any subsequent amendment thereof.

**1.2.1 Far Hills Proper Rezoning.** As provided for in the MOU, the Borough agrees to rezone, and Melillo agrees to develop, the Far Hills Proper Site. The Far Hills Proper Site shall be zoned to allow a mixed use development permitting up to ten (10) total residential rental units and up to an additional 1,869 square feet of commercial development (beyond the existing 37,897 square feet of commercial development on the Far Hills Proper Site), which may involve the renovation of the existing Victorian structures on the site. The mixed use development shall include the renovation of the existing firehouse located thereon. The parties acknowledge and agree that the specific terms and specifications for this development and zoning shall be further negotiated and agreed upon, with the appropriate zoning ordinance enacted within eighteen (18) months of the date of this Agreement. The commercial uses permitted within this new zone shall include boutique-type retail and professional office uses, with small bistro, café uses, with the complete list of permitted and prohibited uses to be further negotiated and detailed in the zoning ordinance. The parties agree that the mixed use development shall not exceed two and a half (2.5) stories and 38.5 feet in height. Melillo shall be responsible for its pro rata share of any costs associated with improving the sewer lines to serve the project consistent with the MLUL, along with any and all sewer connection fees necessary to serve the mixed use of development at the Far Hills Proper Site. The terms of the MOU paragraph 2(a) entitled Affordable Housing Component concerning the existing affordable units at the Far Hills Proper Site remain binding on the Borough and Melillo and are not impacted in any way by this Affordable Housing Agreement.

**1.2.2 Far Hills Proper Parking** In addition to any off-street parking provided by Melillo, the Borough will also provide Melillo with exclusive access and permission to use 13 parking space on Borough property (Block 15, Lot 7) at no cost to Melillo. The parties will agree upon the actual location of the designated parking spaces, but the spaces will be nearest the Far Hills Proper Site. Melillo is permitted to install signage to identify the off-site parking spaces for use exclusively by the patrons of the businesses located on Lots 3, 4, and 5 in Block 15. In addition, Melillo will be permitted to provide and count nine (9) on-street parking spaces along Dumont Road in connection with, and exclusive to, its project.

## **ARTICLE II - BASIC TERMS AND CONDITIONS**

**2.1** This Agreement is subject to Court's approval of the Borough's Fair Share Plan and Housing Element, and overall approval of the Borough's affordable housing compliance plans in the Compliance Action.

**2.2** In the event of any legal challenges to the Court's approval, the Parties shall 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 Overall Projects, 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 from that agreed upon and reflected in the within Agreement.

**2.3** This Agreement does not purport to resolve all of the issues before the Court raised in the Compliance Action.

### ARTICLE III – MELILLO OBLIGATIONS

**3.1 Affordable Housing Set-Aside.** Melillo shall have an obligation to deed-restrict twenty nine (29) of the residential units in the Inclusionary Development as very low, low and moderate income affordable units, including not less than twenty five (25) non-age restricted, family rental affordable housing units and up to four (4) age-restricted rental affordable housing units (for a total of 29 affordable rental units) in accordance with the Uniform Housing Affordability Controls, N.J.A.C 5:80-26.1, et. seq. (“UHAC”). Any such affordable units shall comply with UHAC, applicable COAH affordable housing regulations, any applicable order of the Court, and other applicable laws.

**3.1.1** In addition, the affordable units shall remain affordable rental units for a period of at least thirty (30) years from the date of their initial occupancy (“Deed-Restriction Period”) so that the Borough may count the units against its obligations to provide family rental affordable housing. This obligation includes, but is not limited to, Melillo’s obligation to comply with (1) bedroom distribution requirements; (2) income split requirements (including the family affordable units to comply with the bedroom distribution requirements applicable to family units, which includes proportionally distributing the income splits across each bedroom distribution, and the age-restricted units to comply with the bedroom distribution requirements applicable to age-restricted units) as provided for in the table below; (3) pricing requirements; (4) affirmative marketing requirements, (5) candidate qualification and screening requirements; (6) integrating the affordable units amongst the market rate units; and (7) deed restriction requirements.

<b>Sample Distribution of Total Affordable Units</b>	<b>Low Income (including Very Low Income)</b>	<b>Moderate Income</b>	<b>Very Low Income</b>
25 family affordable units	13	12	3
4 age-restricted affordable units	2	2	1

- Family affordable units (assuming 25 family affordable units): No more than 5 one-bedrooms, at least 8 two-bedrooms, and at least 5 three-bedrooms.

<b>Sample Family Bedroom Distribution</b>	<b>One-Bedroom</b>	<b>Two-Bedroom</b>	<b>Three-bedroom</b>
Very Low Income (at 30% of median income)	1	1	1

Low Income (including Very Low Income)	3	8	3
Moderate Income	2	7	2

- 3.1.2** Melillo shall contract with a qualified and experienced administrative agent (“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 UHAC and other applicable laws for the Deed-Restriction Period. Melillo and its Administrative Agent shall work with the Borough and the Borough’s Administrative Agent regarding the affordable units and any affordable housing monitoring requirements imposed by COAH or the Court.
- 3.1.3** At the end of the Deed Restriction Period, the deed restrictions shall be governed by UHAC, which currently provides that the deed restrictions continue until the municipality in its sole discretion may choose to release the restrictions, or any successor laws or regulations of the State of New Jersey.
- 3.1.4** The Parties agree that the affordable units are to be included in the Borough’s Fair Share Housing Plan and Housing Element to be approved and credited by the Court in the Compliance Action, and that the credits will be applied against the Borough’s gap (1999-2015) and Round 3 (2015-2025) obligations.
- 3.1.5** Upon written notice, Melillo shall provide detailed information requested by the Borough, or the Borough’s Administrative Agent, within 30 days concerning the compliance with UHAC and other applicable laws.

**3.2 Obligation Not To Oppose Borough’s Application for Approval of its Fair Share Plan & Housing Element.** As it pertains to the Borough’s Application for Approval of its Fair Share Plan and Housing Element, or any adjudication of the Compliance Action, provided the Borough is not in default of this Agreement, Melillo shall not directly or indirectly oppose or undertake any further action to interfere with the Court’s adjudication of the Borough’s affordable housing obligations and compliance standards. Provided the Borough is not in default of this Agreement, Melillo shall also not directly or indirectly oppose or undertake any further action to interfere with the Court’s approval and/or implementation of the Fair Share Plan And Housing Element, as it may be amended in any form, unless same deprives Melillo of any rights created hereunder, or unless any other defendants or interested parties undertake any action to obstruct or impede Melillo from securing such approvals as it needs to develop the Overall Projects on the Properties.

**3.3 Affordable Housing Contribution.** In addition to the Errico Acres affordable units, Melillo agrees to make a payment in lieu of construction in the amount of two hundred and fifteen thousand (\$215,000.00) dollars to the Borough Affordable Housing Trust Fund, which

money shall be used towards the cost of rezoning the Properties pursuant to this Agreement, with any funds leftover after rezoning to be used by the Borough for affordable housing. This contribution to the Borough shall be paid on a pro rata basis per market rate unit prior to, or as a condition of, issuance of a building permit for each market rate unit at the Errico Acres Site as set forth herein. Based upon 105 market rate units, that would be a payment of \$2,047.61 at building permit for each market rate unit.

#### **ARTICLE IV - OBLIGATIONS OF THE BOROUGH**

**4.1 Obligation To Effect Rezoning of The Properties.** At the time of execution of this Agreement, the Borough Planning Board has adopted the Fair Share Plan and Housing Element, which was endorsed by the Mayor and Borough Council. The Borough shall initiate the rezoning process pursuant to the July 19, 2019 Scheduling Order issued by the Honorable Thomas C. Miller, P.J.Cv., or any subsequent amendment thereof. Melillo shall provide the Borough with the necessary information and documentation regarding the Properties and the Overall Projects, including, without limitation, a topographical survey and any and all environmental reports and maps, in order to assist with the Borough's preparation of the zoning ordinance for the Properties. The Parties acknowledge that such information is necessary to prepare the required zoning ordinance(s) to address the application of other, existing ordinances that may affect the development of the Properties, such as the Borough's steep slope ordinance.

**4.2 Representation regarding Sufficiency of Water and Sewer:** The Borough agrees to reasonably comply with Melillo's investigation and inquiry into the sufficiency of portable water and sewer capacity to service the proposed Overall Projects. Any on-site, off-site or off-tract water, sewer, or any other utility infrastructure or improvements required for the development of the proposed Overall Projects shall be at the sole cost and expense of Melillo.

**4.3 Obligation To Cooperate:** The Borough acknowledges that in order for Melillo to construct its Overall Projects, Melillo will be required to obtain any and all necessary and applicable agreements, approvals, and permits from all relevant public entities and utilities; such as, by way of example only, the Borough, the Planning Board, the County of Somerset, the Somerset County Planning Board, the New Jersey Department of Environmental Protection, the New Jersey Department of Transportation, the Somerset-Union Soil Conservation District and the like, including the Borough's ordinance requirements as to site plan and subdivision approval (the "Required Approvals"). To the extent permitted under applicable law, the Borough agrees to support and endorse and, if possible, sign, any applications of Melillo that are in accordance with this Agreement and to seek expedited Board review of the development applications. The Borough, and all officers, employees and agents of the Borough shall take all reasonable steps to foster and facilitate development of the Overall Projects in accordance with this Agreement. The Borough shall cooperate in all efforts of Melillo to secure necessary municipal, county and state permits and approvals.

**4.4 Obligation to Refrain From Imposing Cost-Generative Requirements.** The Borough recognizes that the Required Approvals and this Agreement all contemplate the development of an "inclusionary development" within the meaning of the Mount Laurel doctrine, and Melillo shall be entitled to any benefits, protections, and obligations afforded to developers of inclusionary developments, in addition to what Melillo has agreed to in this Agreement.



Therefore, the Borough will not impose development standards and/or requirements that have not otherwise been agreed to by the Parties or set forth in this Agreement, and would otherwise be considered to be “cost generative.”

**4.5 Municipal Affordable Housing Contribution.** The Borough and Melillo hereby acknowledge that the market rate units in the Errico Acres Project are subsidizing the affordable units within the project, and that as part of placing an age-restriction on the market rate units (which impact the value of those units), the Borough is agreeing to provide an annual affordable housing contribution to Melillo in the amount of \$6,580.00, per market rate unit built (“Affordable Contribution”) for a period of ten (10) years from issuance of a certificate of occupancy for such market rate unit. The Borough will make its Affordable Contribution to Melillo on an annual basis, at the end of the Borough’s fiscal year, calculated based upon issuance of a certificate of occupancy(ies) of each unit in the development. Each annual payment of the Affordable Contribution will be subject to a cap (“Installment Cap”) so that the annual Affordable Contribution payment plus the Errico Acres Project’s share of any increase in municipal service expenses (with Errico Acres share to be 20% of any municipal expense increase over the base year, which is the year prior to the first installment) does not exceed the tax revenue generated from the Errico Acres Project. If at any point the annual Affordable Contribution for a calendar year is reduced so as not to exceed the Installment Cap, the payment schedule shall thereafter be revised to adjust for same, with the reduction amount being carried over and accrued to the following year(s) until the Affordable Contribution is paid in full. The Parties acknowledge and agree that the Affordable Contributions set forth herein shall be structured as to always keep the Borough at a net positive based on the foregoing. The parties anticipate that the Affordable Contribution payments will be in compliance with the schedule attached hereto as **Exhibit C** and made a part hereof. No such Affordable Contribution may be distributed from the Borough Affordable Housing Trust Fund.

## ARTICLE V – MUTUAL OBLIGATIONS

**5.1 Escrow Agreement.** The Parties shall enter into an escrow agreement for the deposit of monies by Melillo in escrow with the Borough to be utilized to tender payment of reasonable fees for professional services, including legal, engineering, planning services and construction inspection, being provided in conjunction with the rezoning of the Properties, along with the review and construction inspection of the Errico Acres Project, Far Hills Proper Project and any off-site and off-tract improvements.

**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 Overall Projects 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 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 Court, the Required Approvals,

the development of the Properties consistent with the terms hereof, and the defense of any challenge with regard to any of the foregoing.

**5.4 Defense of Agreement.** Each party exclusively shall be responsible for all costs, which they may incur in obtaining Court approval of this Agreement and any appeal therefrom, or from obtaining the Required Approvals or the approval of the Fair Shae Plan and Housing Element or any part thereof. The Parties shall diligently defend any such challenge.

#### **ARTICLE VI - AFFORDABLE HOUSING CREDITS**

**6.1** Upon written notice, Melillo agrees to supply the Borough and the Borough's Administrative Agent, within 30 days, all documents within its possession that may be reasonably necessary to demonstrate the creditworthiness of the affordable units.

#### **ARTICLE VII - COOPERATION AND COMPLIANCE**

**7.1 Implementation And Enforcement Of Agreement:** The Parties agree to cooperate with each other, provide all reasonable and necessary documentation, and take all necessary actions to satisfy the terms and conditions hereof and assure compliance with the terms of this Agreement, subject to prior written agreement between the Parties on payment by the requesting party of the requested party's direct costs and expenses in connection with such assistance. The Borough's obligation to cooperate shall be further conditioned upon Melillo paying and maintaining current real estate taxes, subject to any Exemption for the Errico Acres Site.

#### **ARTICLE VIII - NOTICES**

**8.1 Notices:** Any notice or transmittal of any document required, permitted or appropriate hereunder and/or any transmittal between the Parties relating to the Properties (herein "Notice[s]") shall be written and shall be served upon the respective Parties by facsimile or 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 (for example, any transmittal of less than fifty (50) pages), and in addition thereto, a facsimile delivery shall be provided. 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 MELILLO:**

**Melillo Equities, LLC**  
 Attention: Anthony Melillo  
 350 Main Street, Suite 8  
 Bedminster, NJ 07921  
 Phone: 908-234-9561  
 Email: Anthony.Melillo@melilloequities.com

**WITH COPIES TO:**

**Day Pitney, LLP**

Attention: Craig Gianetti, Esq.  
One Jefferson Road  
Parsippany, New Jersey 08648  
Phone: 973-966-8053  
Fax: 973-206-6273  
Email: cgianetti@daypitney.com

**TO THE BOROUGH:**

**Borough of Far Hills**  
Attention: Dorothy Hicks, Borough Clerk  
6 Prospect Street  
Far Hills, New Jersey 07931  
Phone: 908-234-0611  
Fax: 908-234-0918  
Email: dhicks@farhillsnj.org

**WITH COPIES TO:**

**DiFrancesco, Bateman, Kunzman, Davis, Lehrer  
& Flaum, PC**  
Attention: Joseph Sordillo, Esq.  
15 Mountain Boulevard  
Warren, New Jersey 07959  
Phone: 908-757-7800  
Fax: 908-757-8039  
Email: jsordillo@newjerseylaw.net

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.

**ARTICLE IX - MISCELLANEOUS**

**9.1 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, except that if Paragraph 4.5 is adjudged as such, then the total Affordable Housing Contribution (based upon 105 market rate units) shall be paid to Melillo in the form of a lump sum payment over a two year period from the date of such determination.

**9.2 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 Properties 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.

**9.3 Governing Law:** This Agreement shall be governed by and construed by the laws of the State of New Jersey.

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

**9.5 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.

**9.6 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 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.

**9.7 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.

**9.8 Necessity of Required Approvals:** The Parties recognize that the site plans required to implement the Overall Projects provided in this Agreement, and such other actions as may be required of the Planning Board or Borough under this Agreement, cannot be approved except on the basis of the independent reasonable judgment by the Planning Board and the Borough 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. Similarly, nothing herein is intended to preclude Melillo from appealing any denials of or conditions imposed by the Planning Board in accordance with the MLUL or taking any other action permitted by law.

**9.9 Exhibits/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.

**9.10 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. Specifically with regard to the Memorandum of Understanding, dated October 9, 2018, between the Borough and Melillo, this Agreement shall supersede any and all provisions relating to the Errico Acres Site, but not with regard to the Far Hills Proper Site, to which the terms of the Memorandum of Understanding shall still govern.

**9.11 Conflict Of Interest:** No member, official or employee of the Borough or the Planning Board shall have any direct or indirect interest in this Agreement, nor participate in any decision relating to the Agreement which is prohibited by law, absent the need to invoke the rule of necessity.

**9.12 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.

**9.13 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.

**9.14 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.

**9.15 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, 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.

**9.16 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.

**9.17 Construction, Resolution of Disputes.** This Agreement has been entered into and shall be construed, governed and enforced in accordance with the laws of the State of New Jersey without giving effect to provisions relating to the conflicts of law. Jurisdiction of any litigation ensuing with regard to this Agreement exclusively shall be in the Superior Court of New Jersey, with venue in Somerset County. Service of any complaint may be effected consistent with the terms hereof for the delivery of “Notices,” hereinafter defined. The Parties waive formal service of process. The Parties expressly waive trial by jury in any such litigation.

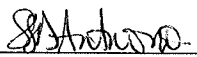
**9.18 Recitals.** The recitals of this Agreement are incorporated herein and made a part hereof.

**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.

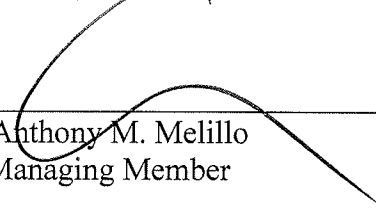
Witness/Attest:

MELILLO EQUITIES, LLC



Name: Samantha Damiano

Title:

By: 

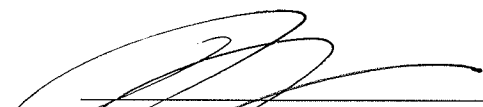
Name: Anthony M. Melillo

Title: Managing Member

Dated: 12/20/19

Witness/Attest:

BOROUGH OF FAR HILLS



Dorothy S. Hicks, Borough Clerk

By: 

Paul J. Wallone, MD, Mayor

Dated: 12/9/19

**EXHIBIT A**

**CONCEPT PLAN, FLOOR PLANS AND ELEVATIONS FOR INCLUSIONARY  
DEVELOPMENT**







2669.602

Villa A

Aston



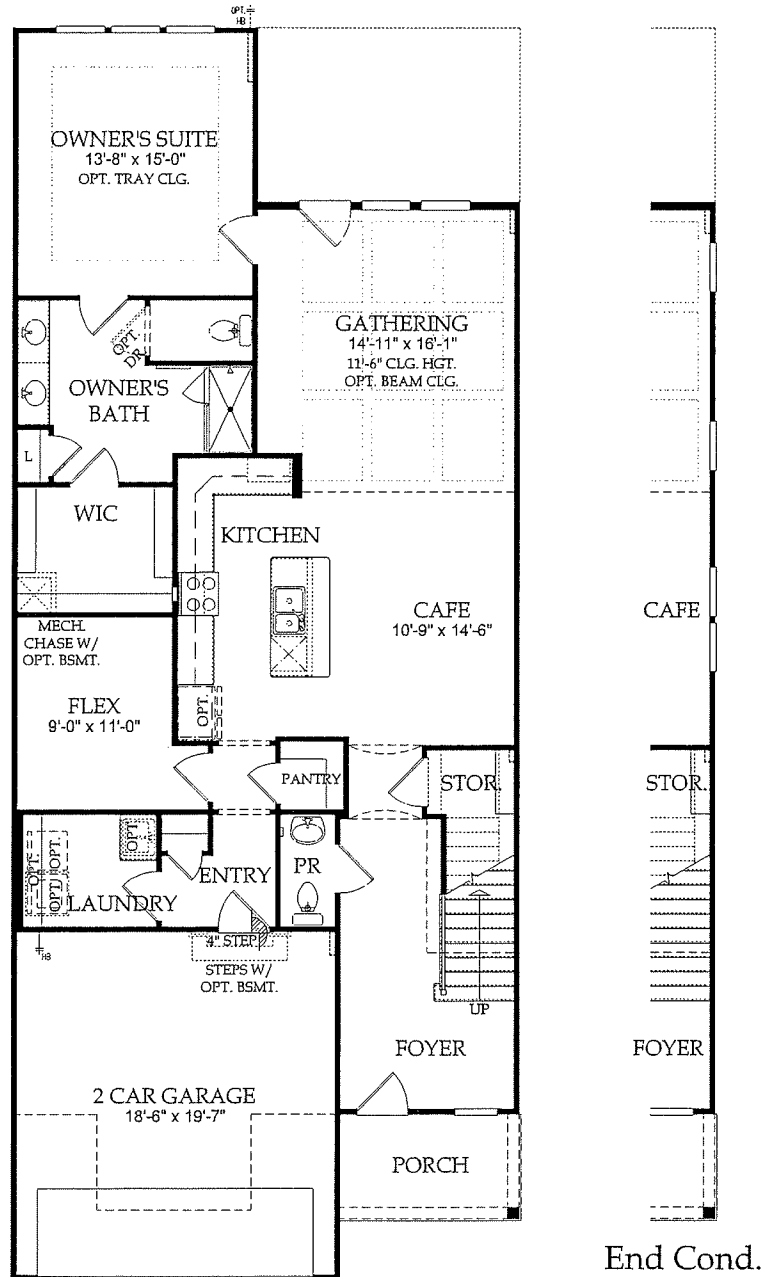
*Floor plans, Elevations and Options will vary from Community to Community and may not reflect current changes. Dimensions shown are approximate.*

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2669-MA-Base-BROC.dwg - CVR-2669.602

2669-MA-Base-05.18.2018





# First Floor

9'-0" Ceiling

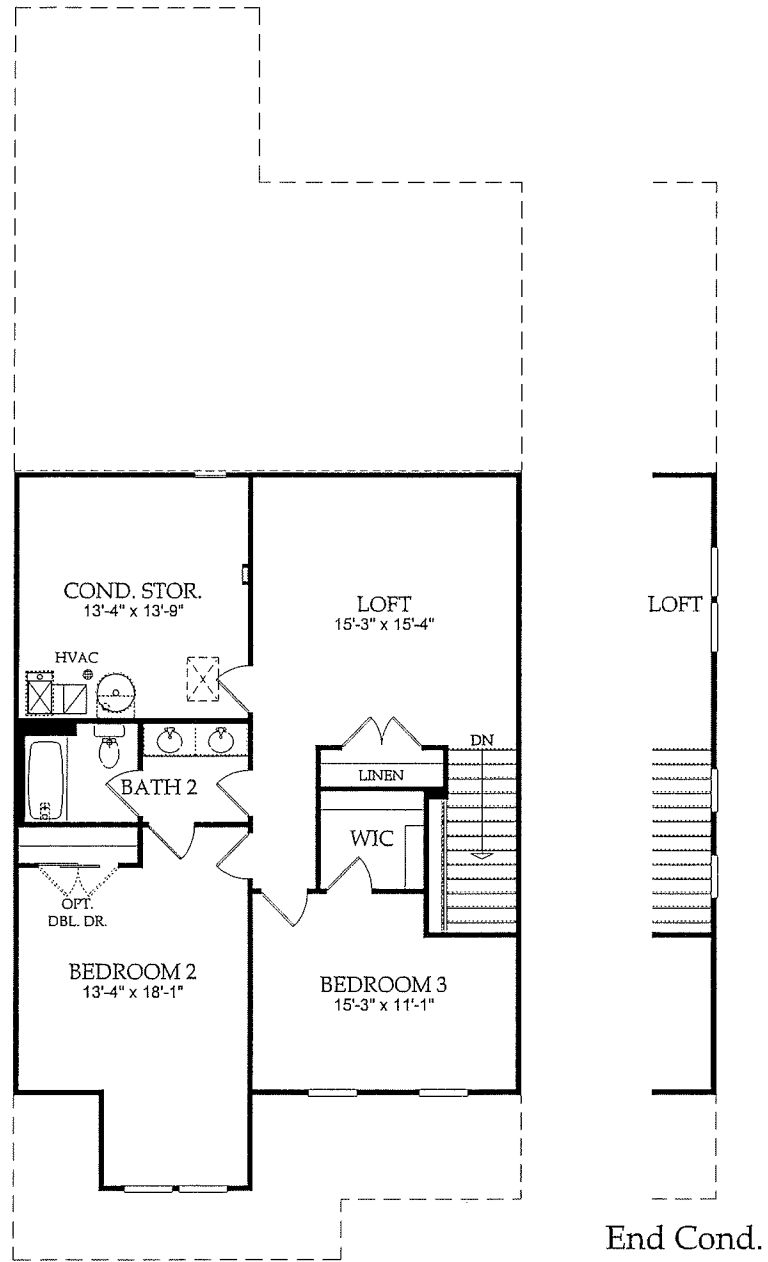
Floor plans, Elevations and Options will vary from Community to Community and may not reflect current changes. Dimensions shown are approximate.

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2669-MA-Base-05.18.2018





## Second Floor

8'-0" Ceiling

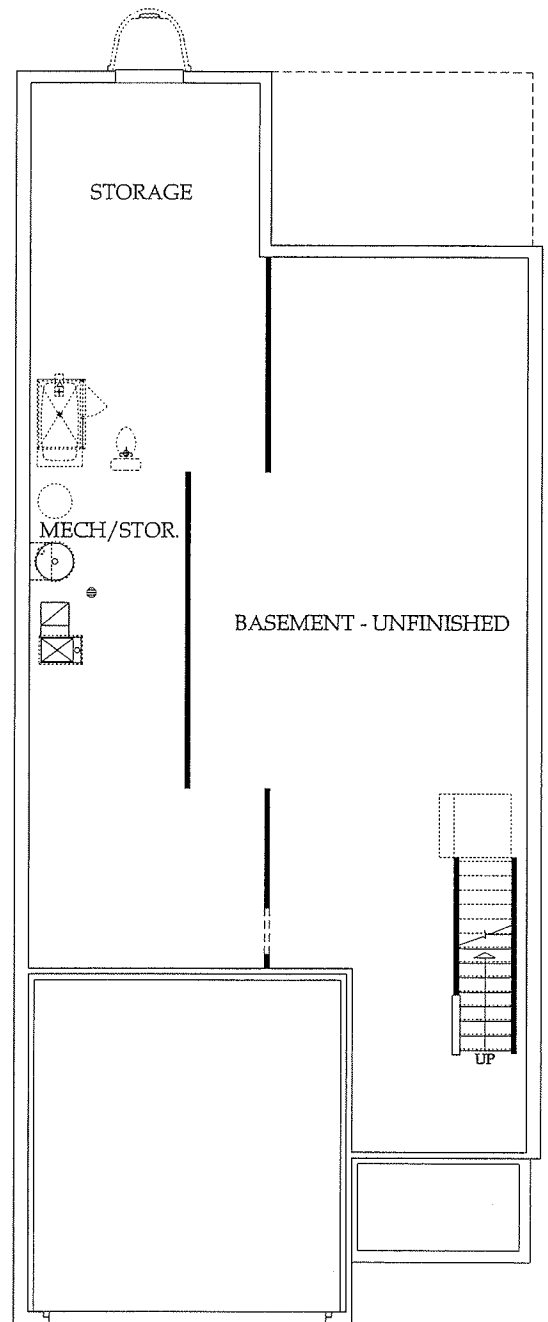
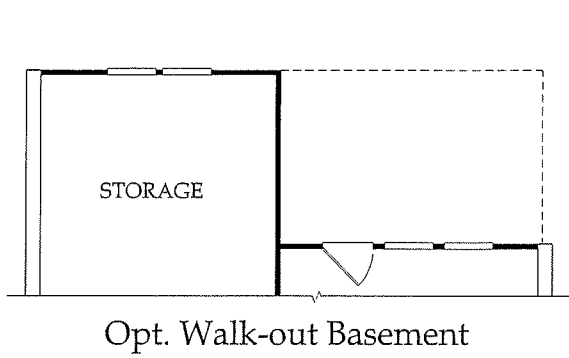
Floor plans, Elevations and Options will vary from Community to Community and may not reflect current changes. Dimensions shown are approximate.

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2669-MA-Base-BROC.dwg - FL2

2669-MA-Base-05.18.2018





## Basement Option

9'-0" Ceiling

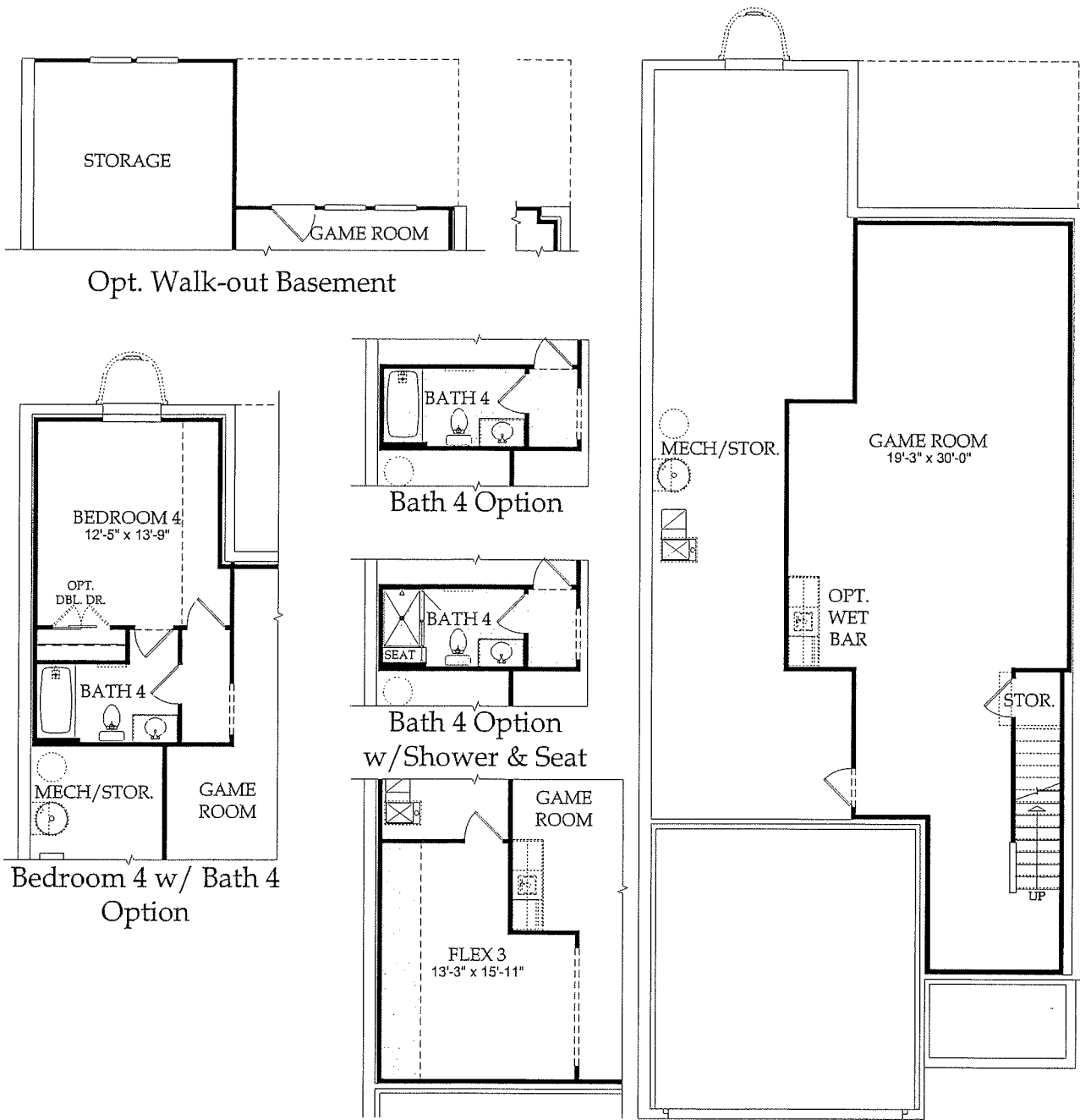
*Floor plans, Elevations and Options will vary from Community to Community and may not reflect current changes. Dimensions shown are approximate.*

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2669-MA-Base-BROC.dwg - OP00

2669-MA-Base-05.18.2018





Opt. Walk-out Basement

Bath 4 Option

Bath 4 Option  
w/ Shower & Seat

Bedroom 4 w/ Bath 4  
Option

Flex 3 Option

## Finished Basement Option

9'-0" Ceiling

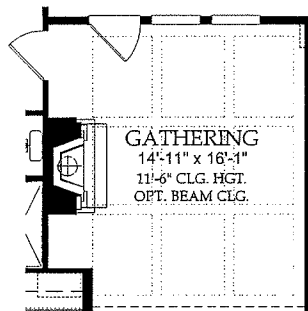
*Floor plans, Elevations and Options will vary from Community to Community and may not reflect current changes. Dimensions shown are approximate.*

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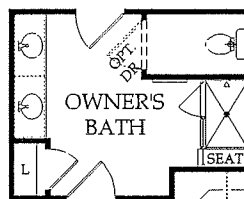
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2669-MA-Base-05.18.2018

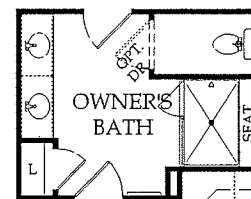




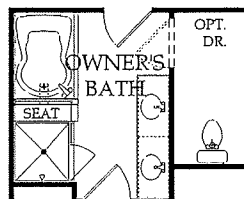
Fireplace  
Option



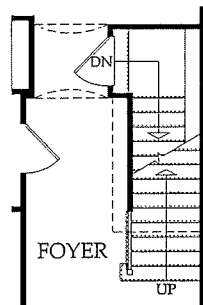
Owner's Bath  
Option 3



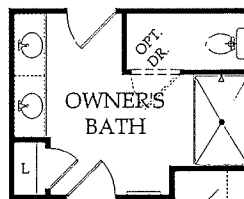
Owner's Bath  
Option 6



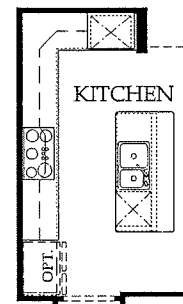
Owner's Bath  
Option 5



Partial First Floor  
Plan w/ Basement  
Option



Owner's Bath Roll-in  
Shower Option



Gourmet Kitchen  
Option

## First Floor Options

9'-0" Ceiling

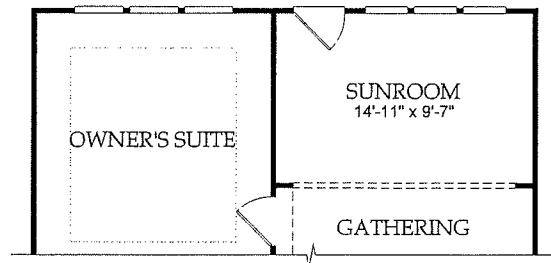
*Floor plans, Elevations and Options will vary from Community to Community and may not reflect current changes. Dimensions shown are approximate.*

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2669-MA-Base-BROC.dwg - OP10

2669-MA-Base-05.18.2018

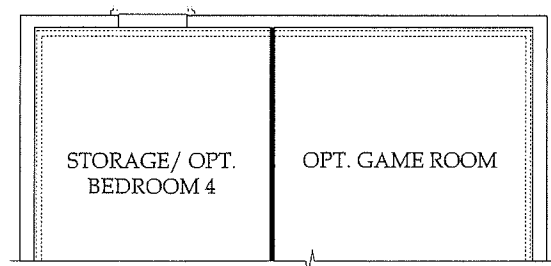




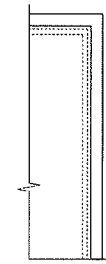
Sunroom Option



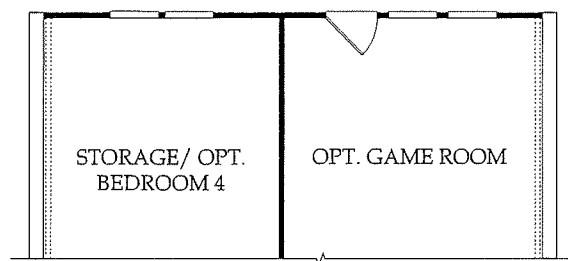
End cond.



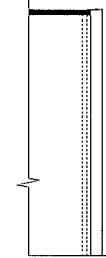
Basement Plan w/  
Sunroom Option



End cond.



Walk-out Basement Plan  
w/ Sunroom Option



End cond.

## Sunroom Option

9'-0" Ceiling

*Floor plans, Elevations and Options will vary from Community to Community and may not reflect current changes. Dimensions shown are approximate.*

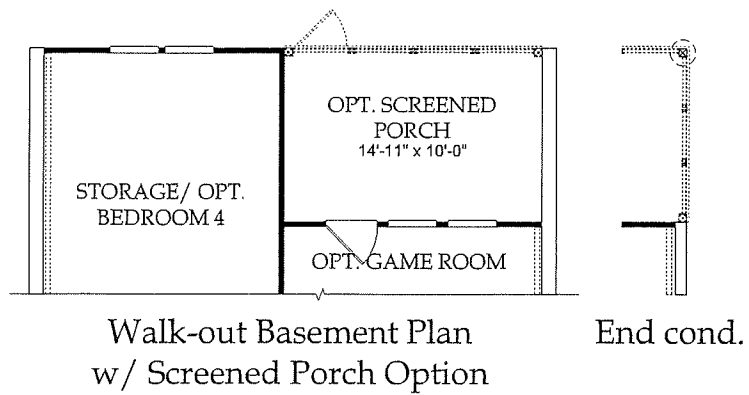
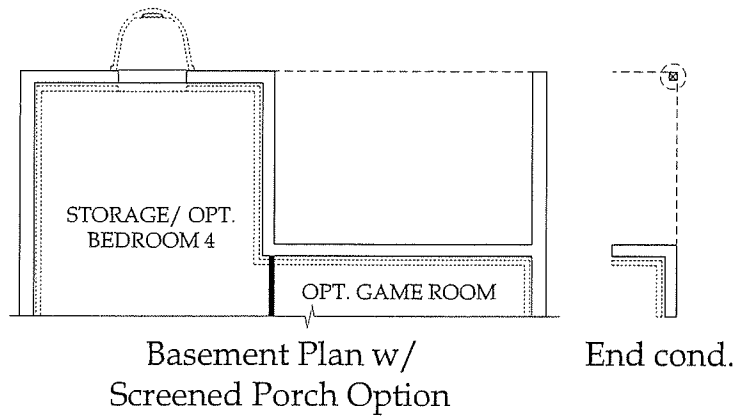
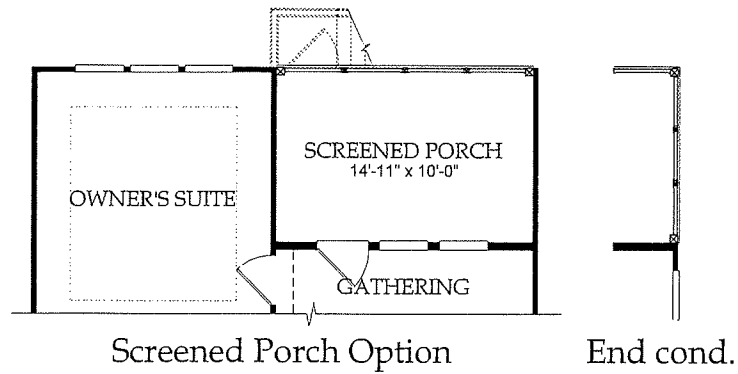
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2669-MA-Base-BROC.dwg - OP11

2669-MA-Base-05.18.2018







## Screened Porch Option

9'-0" Ceiling

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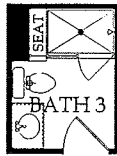
2669-MA-Base-BROC.dwg - OP12

2669-MA-Base-05.18.2018

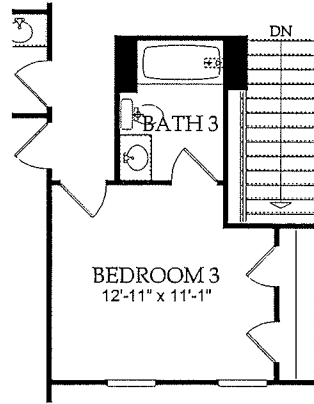




Bath 2 w/ Shower  
& Seat Option



Bath 3 w/ Shower  
& Seat Option



Bedroom 3 w/ Bath 3  
Option

## Second Floor Options

8'-0" Ceiling

*Floor plans, Elevations and Options will vary from Community to Community and may not reflect current changes. Dimensions shown are approximate.*

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2669-MA-Base-BROC.dwg - OP20

2669-MA-Base-05.18.2018





2670.602

Villa B

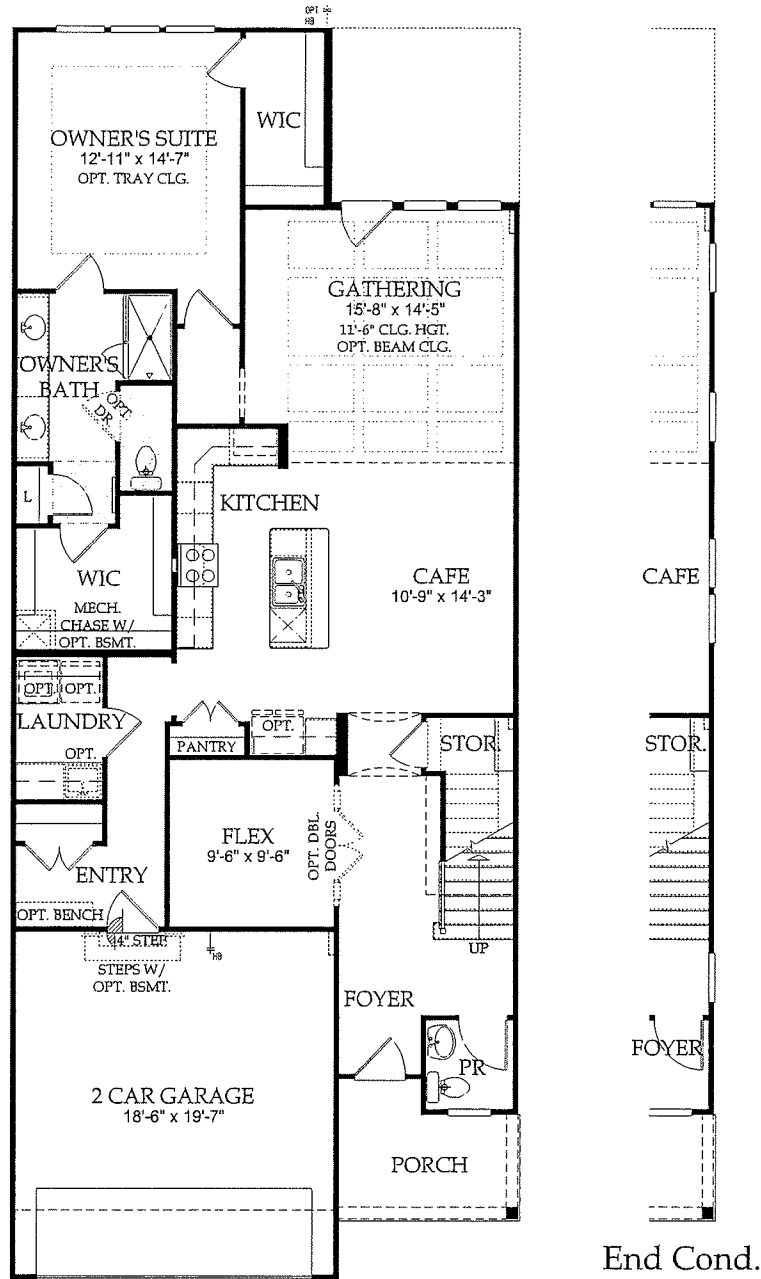
Branton



*Floor plans, Elevations and Options will vary from Community to Community and may not reflect current changes. Dimensions shown are approximate.*  
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2670-NZ-Base-Branton-2x4-BROC-2019-01-31.dwg - CVR-2670.602  
2670-MA-Base-05.18.2018





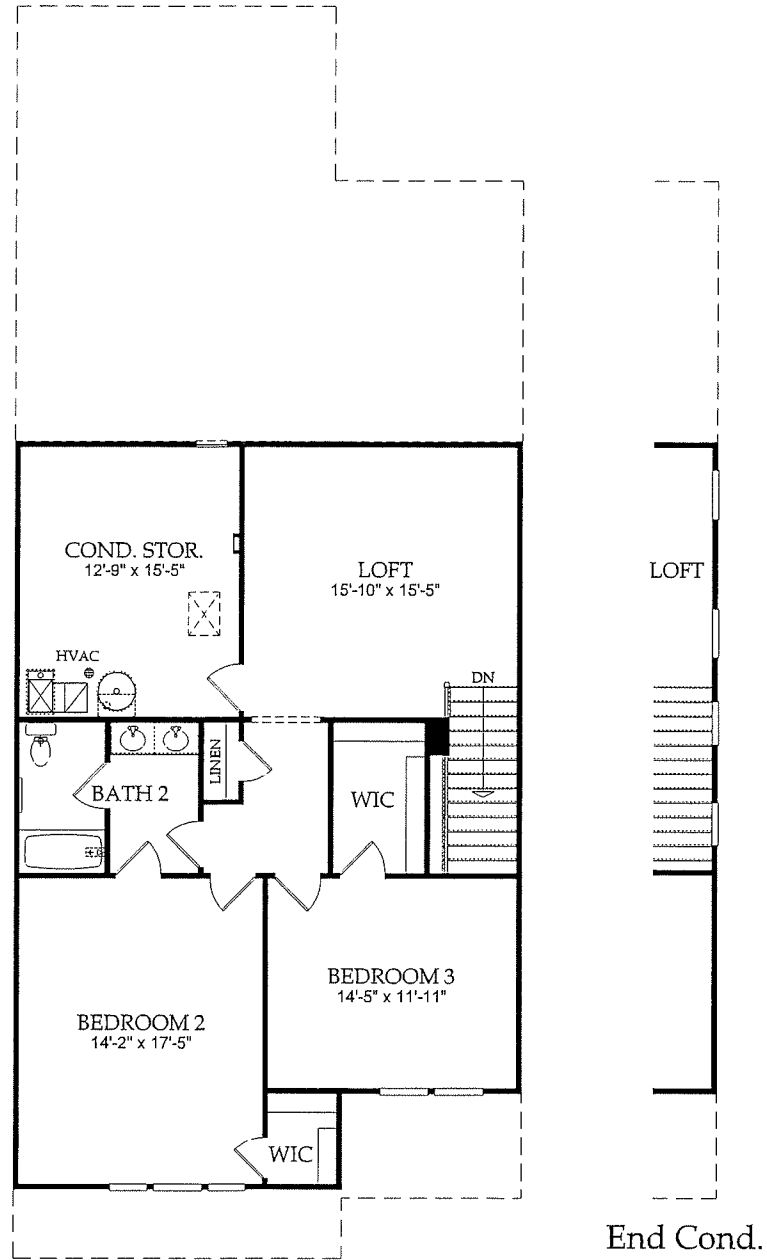
# First Floor

9'-0" Ceiling

Floor plans, Elevations and Options will vary from Community to Community and may not reflect current changes. Dimensions shown are approximate. Copyright © 2019 Pulte Homes, Inc.

2670-NZ-Base-Branton-2x4-BROC-2019-01-31.dwg - FL1  
2669-MA-Base-05.18.2018





## Second Floor

8'-0" Ceiling

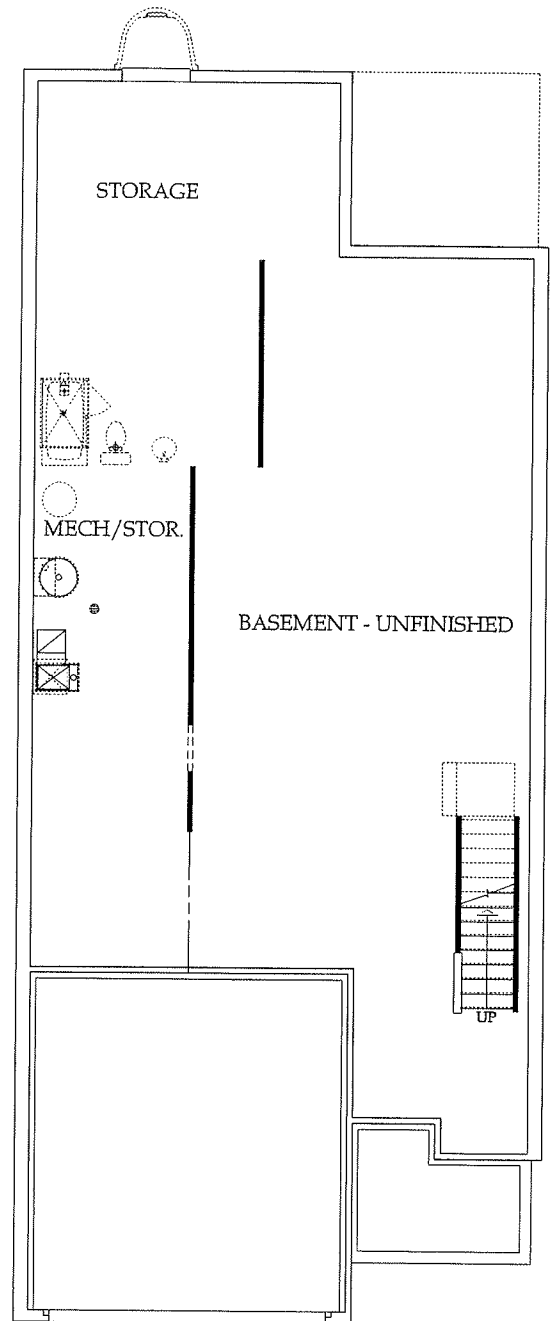
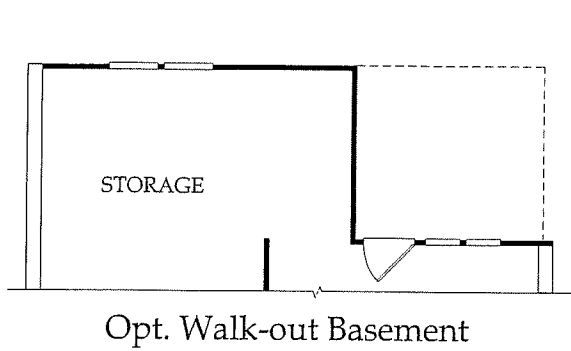
Floor plans, Elevations and Options will vary from Community to Community and may not reflect current changes. Dimensions shown are approximate.

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2670-NZ-Base-Branton-2x4-BROC-2019-01-31.dwg - FL2

2669-MA-Base-05.18.2018





## Basement Option

9'-0" Ceiling

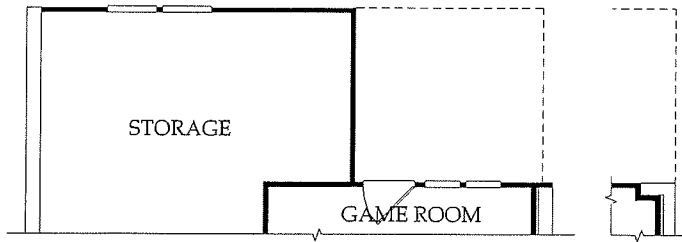
*Floor plans, Elevations and Options will vary from Community to Community and may not reflect current changes. Dimensions shown are approximate.*

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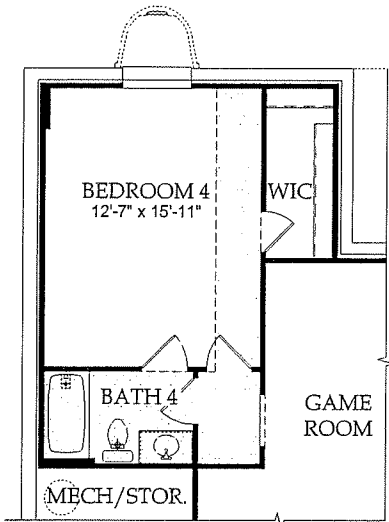
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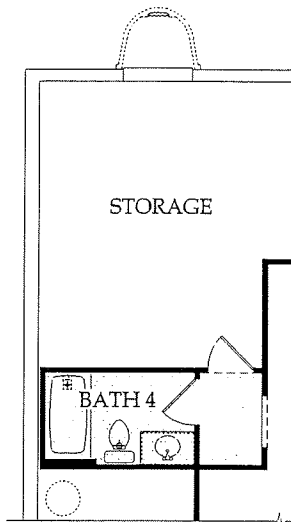




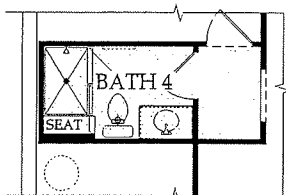
Opt. Walk-out Basement



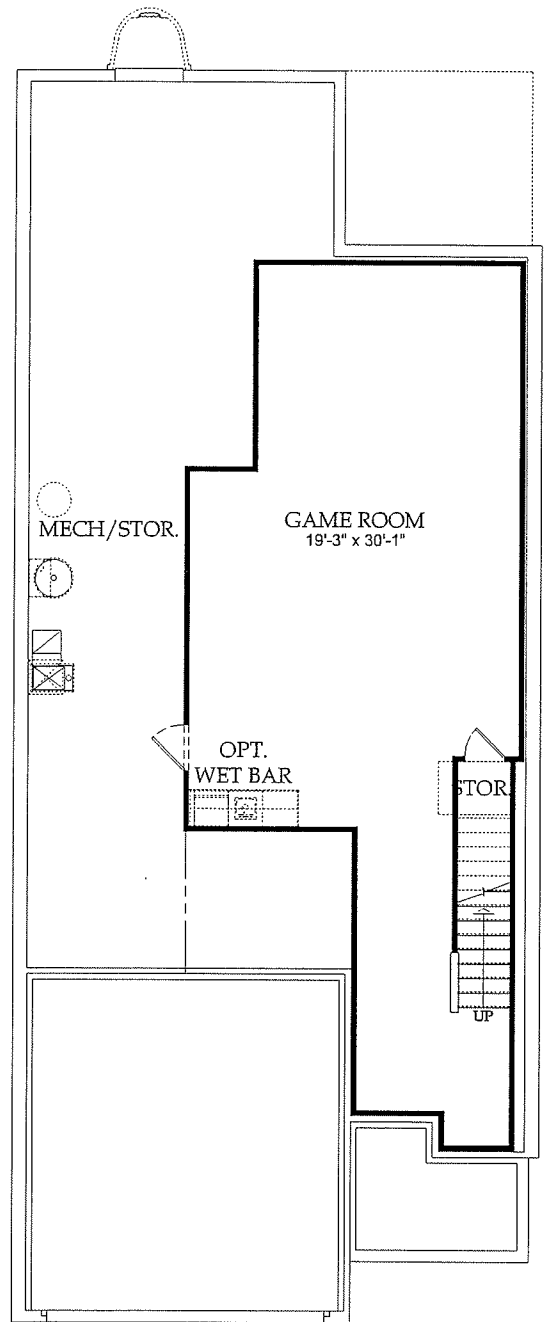
Bedroom 4 w/ Bath 4 Option



Bath 4 Option



Bath 4 Option w/ Shower & Seat



## Finished Basement Option

9'-0" Ceiling

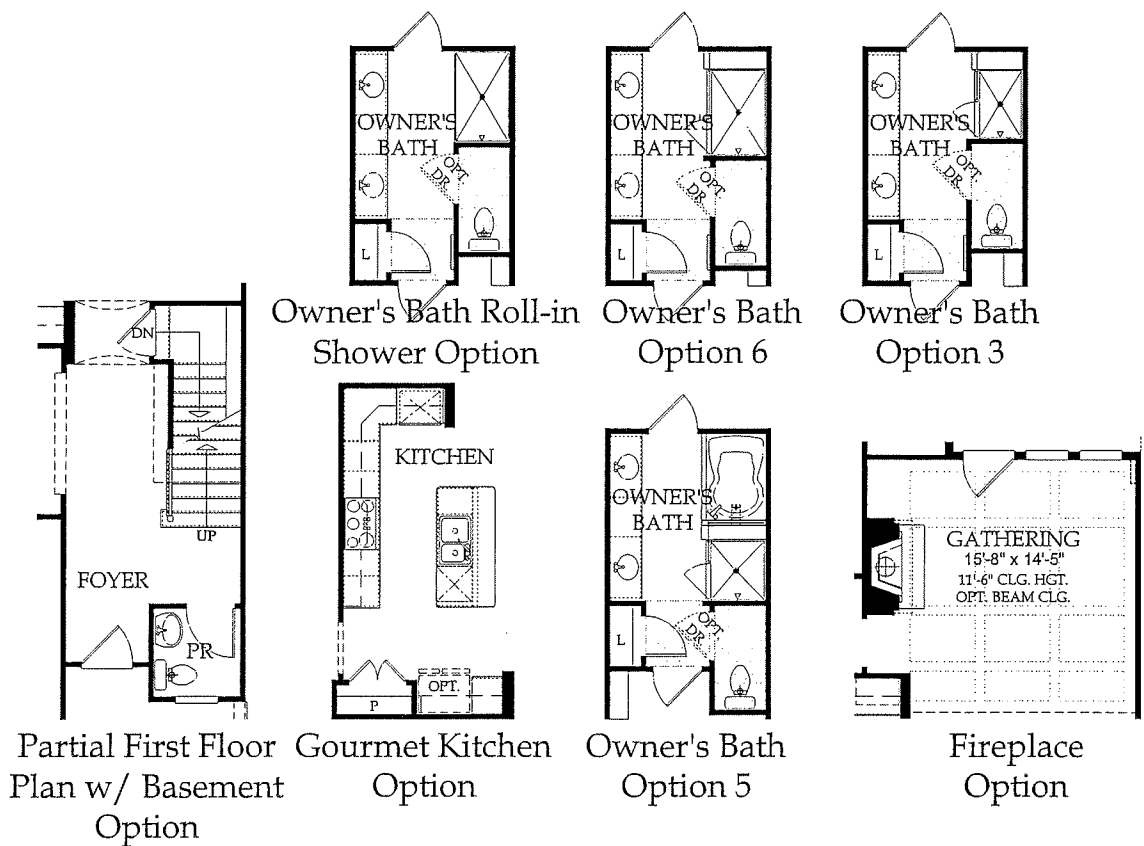
Floor plans, Elevations and Options will vary from Community to Community and may not reflect current changes. Dimensions shown are approximate.

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2670-NZ-Base-Branton-2x4-BROC-2019-01-31.dwg - OP01

2669-MA-Base-05.18.2018





# First Floor Options

9'-0" Ceiling

Floor plans, Elevations and Options will vary from Community to Community and may not reflect current changes. Dimensions shown are approximate.

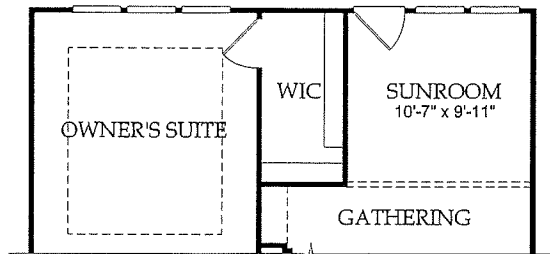
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2669-MA-Base-05.18.2018



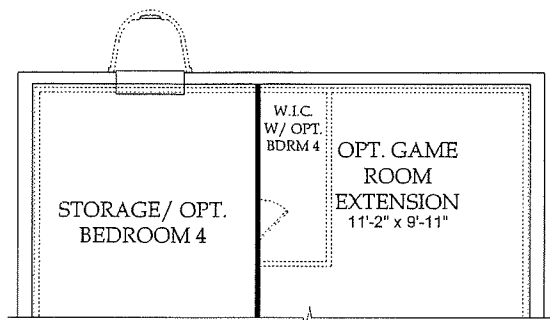




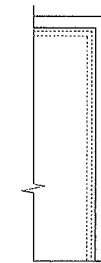
Sunroom Option



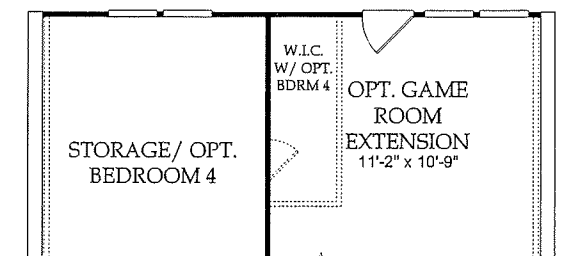
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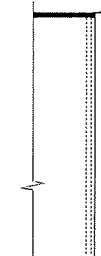
Basement Plan w/  
Sunroom Option



End cond.



Walk-out Basement Plan  
w/ Sunroom Option



End cond.

## Sunroom Option

9'-0" Ceiling

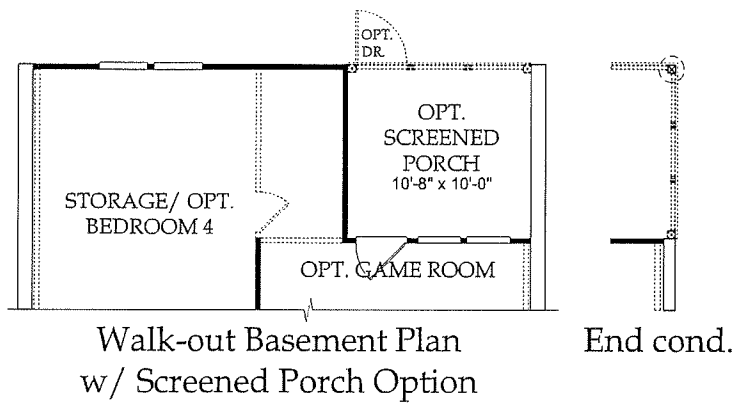
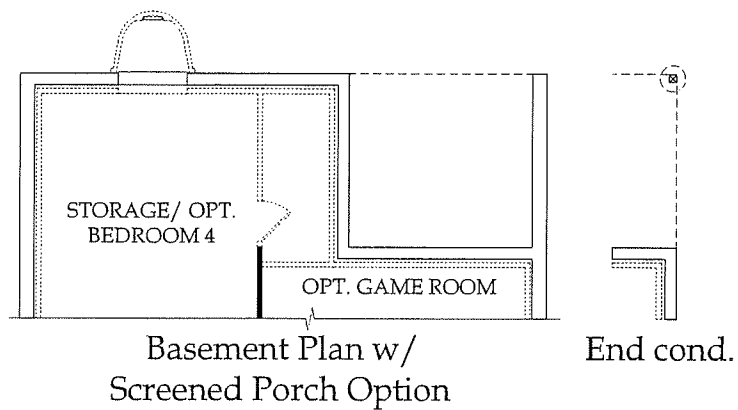
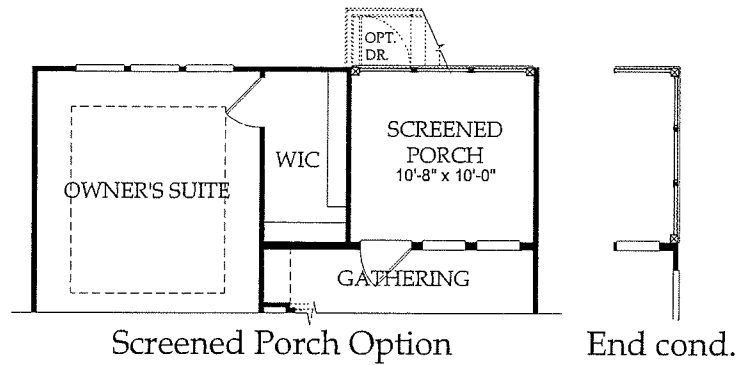
*Floor plans, Elevations and Options will vary from Community to Community and may not reflect current changes. Dimensions shown are approximate.*

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2670-NZ-Base-Branton-2x4-BROC-2019-01-31.dwg - OP11

2669-MA-Base-05.18.2018





## Screened Porch Option

9'-0" Ceiling

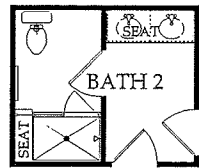
Floor plans, Elevations and Options will vary from Community to Community and may not reflect current changes. Dimensions shown are approximate.

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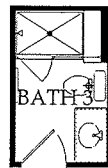
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2669-MA-Base-05.18.2018

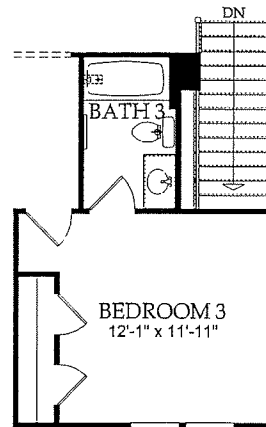




Bath 2 w/  
Shower & Seat  
Option



Bath 3 w/  
Shower & Seat  
Option



Bedroom 3 w/ Bath 3  
Option

## Second Floor Options

8'-0" Ceiling

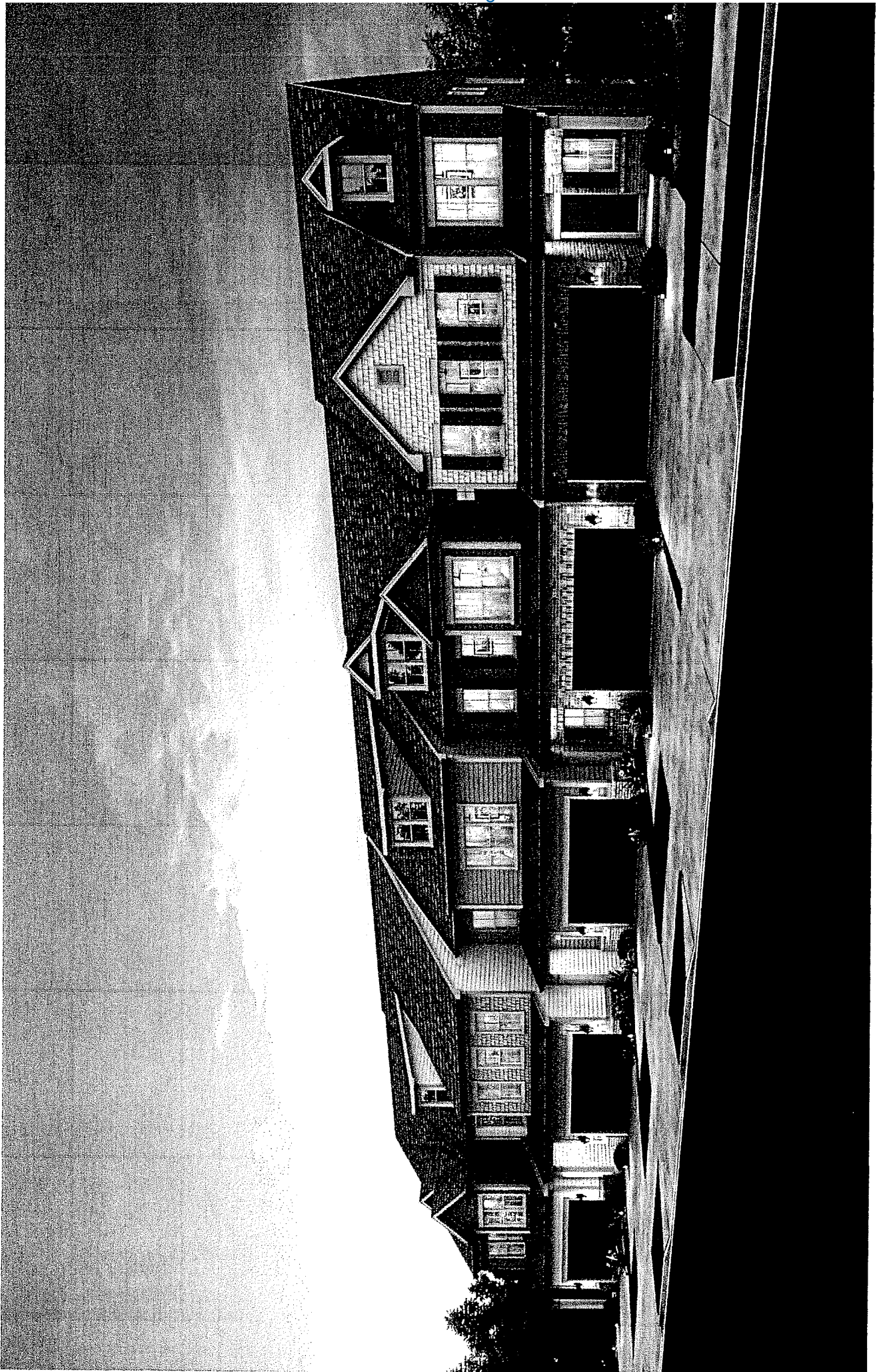
*Floor plans, Elevations and Options will vary from Community to Community and may not reflect current changes. Dimensions shown are approximate.*

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2669-MA-Base-05.18.2018





**EXHIBIT B**

**UHAC FORM DEED RESTRICTION**

updated June 2007

APPENDIX E-2

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 \_\_\_ day of \_\_\_\_\_, 20\_\_\_, by and between the [Administrative Agent] ("Administrative Agent"), or its successor, acting on behalf of \_\_\_\_\_ [Municipality], with offices at \_\_\_\_\_, and \_\_\_\_\_ a New Jersey [Corporation / Partnership / Limited Partnership] having offices at \_\_\_\_\_ the developer/sponsor (the "Owner") of a residential low- or moderate-income rental project (the "Project"):

WITNESSETH

Article 1. Consideration

In consideration of benefits and/or right to develop received by the Owner from the Municipality regarding this rental Project, 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

[If the project is a 100 percent affordable development, use the following:]

The Property consists of all of the land, and improvements thereon, that is located in the municipality of \_\_\_\_\_, County of \_\_\_\_\_, State of New Jersey, and described more specifically as Block No. \_\_\_\_\_ Lot No. \_\_\_\_\_, and known by the street address:

\_\_\_\_\_  
\_\_\_\_\_

[Where restrictions are limited to specific units within the project, use the following:]

updated June 2007

The Property consists of all of the land, and a portion of the improvements thereon, that is located in the municipality of \_\_\_\_\_, County of \_\_\_\_\_, State of New Jersey, and described more specifically as Block No. \_\_\_\_\_ Lot No. \_\_\_\_\_, and known by the street address:

\_\_\_\_\_  
\_\_\_\_\_

More specifically designated as:

(List specific affordable units by address or apartment number.)

Article 3. Affordable Housing Covenants

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 and expire as determined under the Uniform Controls, as defined below.

In accordance with N.J.A.C. 5:80-26.11, each restricted unit shall remain subject to the requirements of this subchapter, the "Control Period," 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 this subchapter for a period of at least 30 years; provided, however, that:

1. Units located in high-poverty census tracts shall remain subject to these affordability requirements for a period of at least 10 years; and
  2. Any unit that, prior to December 20, 2004, received substantive certification from COAH, was part of a judgment of compliance from a court of competent jurisdiction or became subject to a grant agreement or other contract with either the State or a political subdivision thereof, shall have its control period governed by said grant of substantive certification, judgment or grant or contract.
- 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").
  - B. The Property shall be used solely for the purpose of providing rental dwelling units for low- 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.

updated June 2007

- 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 threatened breach of any of the Covenants by the Owner, or any successor in interest of the Property, the Administrative Agent 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 Grantee, or any successor in interest or other owner of the Property, the Administrative Agent 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 ADMINISTRATIVE AGENT]

BY: \_\_\_\_\_  
XXXXXXXXXXXXXXXXX  
Title

[THE OWNER]

BY: \_\_\_\_\_  
XXXXXXXXXXXXXXXXX  
Title

APPROVED BY \_\_\_\_\_ [Municipality]

BY: \_\_\_\_\_  
XXXXXXXXXXXXXXXXX  
Title

ACKNOWLEDGEMENTS



updated June 2007

On this the        day of                    , 20    before me came \_\_\_\_\_, to me known and known to me to be the Administrative Agent for \_\_\_\_\_ [Municipality], who states that (s)he has signed said Agreement on behalf of said Municipality for the purposes stated therein.

\_\_\_\_\_  
NOTARY PUBLIC

On this the        day of                    , 20    before me came \_\_\_\_\_, to me known and known to me to be \_\_\_\_\_, the Owner of the Property, who states that (s)he has signed said Agreement for the purposes stated therein.

\_\_\_\_\_  
NOTARY PUBLIC

On this the        day of                    , 20    before me came \_\_\_\_\_ known and known to me to be \_\_\_\_\_ of \_\_\_\_\_, the Municipality identified as such in the foregoing Agreement, who states that (s)he is duly authorized to execute said Agreement on behalf of said Municipality, and that (s)he has so executed the foregoing Agreement for the purposes stated therein

\_\_\_\_\_  
NOTARY PUBLIC

**EXHIBIT C**

**AFFORDABLE HOUSING SUBSIDY SCHEDULE**

Year <sup>1</sup>	Sending District School Payments <sup>2</sup>	Pro-Rata Municipal Expense <sup>3</sup>	Municipal Expense allocated to Errico Acres	Municipal Annual Budget
0				6,511,000
1	(220,000)	(6,511)	(226,511)	6,608,665
2	(223,300)	(26,239)	(249,539)	6,707,795
3	(226,650)	(59,482)	(286,132)	6,808,412
4	(230,049)	(79,908)	(309,957)	6,910,538
5	(233,500)	(100,639)	(334,139)	7,014,196
6	(237,002)	(121,682)	(358,684)	7,119,409
7	(240,558)	(143,040)	(383,598)	7,226,200
8	(244,166)	(164,719)	(408,885)	7,334,593
9	(247,828)	(186,722)	(434,551)	7,444,612
10	(251,546)	(209,056)	(460,602)	7,556,281
11	(255,319)	(231,725)	(487,044)	7,669,626
12	(259,149)	(254,734)	(513,883)	7,784,670
<b>Total</b>	<b>(2,869,067)</b>	<b>(1,584,458)</b>	<b>(4,453,524)</b>	

<sup>1</sup> Commencing upon receipt of first Certificate of Occupancy

<sup>2</sup> Assumes 50% of affordable units (2-bedroom & 3-bedroom) to have school-aged children. Calculation includes 10 children at a cost of \$22,000 per child.

<sup>3</sup> Increase cost of municipal services (such as police, fire and administrative) over an initial base year, to be allocated to Errico Acres

Year	PHASE 1		PHASE 2		PHASE 3		TOTAL	
	Units #	Payment \$	Units #	Payment \$	Units #	Payment \$	Units #	Payments \$
1	35	230,300	-	-	-	-	35	230,300
2	35	230,300	35	230,300	-	-	70	460,600
3	35	230,300	35	230,300	35	230,300	105	690,900
4	35	230,300	35	230,300	35	230,300	105	690,900
5	35	230,300	35	230,300	35	230,300	105	690,900
6	35	230,300	35	230,300	35	230,300	105	690,900
7	35	230,300	35	230,300	35	230,300	105	690,900
8	35	230,300	35	230,300	35	230,300	105	690,900
9	35	230,300	35	230,300	35	230,300	105	690,900
10	35	230,300	35	230,300	35	230,300	105	690,900
11	35	-	35	230,300	35	230,300	105	460,600
12	35	-	35	-	35	230,300	105	230,300
13	35	-	35	-	35	-	105	-
14	35	-	35	-	35	-	105	-
15	35	-	35	-	35	-	105	-
16	35	-	35	-	35	-	105	-
<b>Total</b>		<b>2,303,000</b>		<b>2,303,000</b>		<b>2,303,000</b>		<b>6,909,000</b>

# EXHIBIT F

**JEFFREY R. SURENIAN AND ASSOCIATES, LLC**

Brielle Galleria

707 Union Avenue, Suite 301

Brielle, NJ 08730

(732) 612-3100

Attorneys for Declaratory Plaintiff, Borough of Far Hills

By: Jeffrey R. Surenian (Attorney ID: 024231983)

Michael A. Jedziniak (Attorney ID: 012832001)

**IN THE MATTER OF THE  
APPLICATION OF THE BOROUGH OF  
FAR HILLS, COUNTY OF SOMERSET**

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION  
SOMERSET COUNTY

DOCKET NO.: SOM-L-903-15

CIVIL ACTION – *MOUNT LAUREL*

**ORDER OF FAIRNESS AND  
PRELIMINARY ROUND 3  
COMPLIANCE**

THIS MATTER having been opened to the Court by Jeffrey R. Surenian and Associates, LLC, on behalf of declaratory plaintiff, Borough of Far Hills (hereinafter “the Borough” or “Far Hills”) via a Declaratory Judgment Complaint filed on July 2, 2015 seeking judicial approval of the Borough’s Round 3 Housing Element and Fair Share Plan (hereinafter “Fair Share Plan”) in response to In Re Adoption of N.J.A.C. 5:96, 221 N.J. 1 (2015) (“Mount Laurel IV”); and the Court having granted the Borough immunity from Mount Laurel lawsuits, which has remained in force, without interruptions, from July 2, 2015 to the present; and the Court having appointed James Kyle, P.P., A.I.C.P. as the Special Master (hereinafter the “Court Master”); and Fair Share Housing Center (“FSHC”) having participated in the Borough’s DJ Action as an interested party; and FSHC’s expert, David Kinsey, PhD, P.P., F.A.I.C.P., having issued an expert report that calculated fair share obligations for all of the municipalities in the state; and the Borough having hired Econsult Solutions, Inc., which produced its own expert report calculating fair share

obligations for all municipalities in the state; and the Borough's professionals and Adam Gordon, Esq. of FSHC having participate in mediation supervised by the Special Master for purposes of determining the Borough's fair share obligations, and establishing a framework on how the Borough would satisfy same; and FSHC and the Borough's professionals having agreed to terms and drafted a proposed form of settlement agreement ("FSHC Agreement," attached hereto as Exhibit A and incorporated by reference herein) establishing the Borough's Rehabilitation, Prior Round, and Round 3 (Gap and Prospective Need) obligations rather than doing so through a trial; and the FSHC Agreement having been executed by Adam Gordon, Esq., on behalf of FSHC; and, on October 15, 2018, the Borough Council having adopted a Resolution (attached hereto as Exhibit B and incorporated by reference herein) authorizing Mayor Vallone to execute the FSHC Agreement on behalf of the Borough; and Mayor Vallone having executed same; and the Court having scheduled a Mount Laurel Fairness Hearing on December 20, 2018; and the Fairness Hearing being required for the Court to determine whether the FSHC Agreement is fair, reasonable and adequately protects the interest of very low, low and moderate income households in the region; and counsel for the Borough having prepared an Affidavit of Public Notice (attached hereto as Exhibit C and incorporated by reference herein) to provide the Court with documented proof that the Borough provided sufficient published and actual notice of the Fairness Hearing to the public and all interested parties; and the Fairness Hearing having been held on December 20, 2018, during which Exhibits A through C were marked into evidence and considered by the Court; and the Court having also considered all testimony taken during the Fairness Hearing, as well as the comments of counsel; and the Special Master having recommended approval of the FSHC Agreement by the Court; and the Court having approved the FSHC Agreement and further declared that the Borough is entitled to a Preliminary Judgment of Compliance ; and good cause having been shown;

February  
It is hereby ordered on this 26th day of ~~January~~, 2019, as follows:

1. The Borough provided sufficient notice of the Fairness Hearing to the public and all interested parties.

2. Despite such notice, no interested party objected to the FSHC Agreement in writing prior to or via testimony during the Fairness Hearing.

3. Pursuant to the judicial standard set forth in East/West Venture v. Bor. of Fort Lee, 286 N.J.Super. 311 (App. Div. 1996), the FSHC Agreement is fair, reasonable, and adequately protects the interests of the region's low- and moderate-income households, and the Court therefore approves same.

4. The Court preliminarily finds that the Borough's proposed Affordable Housing Plan, as set forth within the FSHC Agreement, facially creates a realistic opportunity to satisfy the Borough's fair share of the regional need for affordable housing, subject to confirmation by the Court during a duly-noticed Compliance Hearing.

5. As a result of the FSHC Agreement, the Borough's Rehabilitation obligation is four (4); its Prior Round obligation (1987-1999) is thirty eight (38); and its Round 3 (Gap + Prospective Need) obligation (1999-2025) is seventy five (75).

6. Pursuant to the approved FSHC Agreement, the Borough shall satisfy the fair share obligations set forth above as follows:

**Satisfaction of the 38-unit Prior Round Obligation:**

Project	Units	Family	Rental	A-R	Rental Bonus	Units & Bonuses
(a) Polo Club (Sunnybranch Rd.) gen. public for-sale	8	8	-	-	-	8
(b) Dumont Road Apts. (25 Dumont) AR/rental	6	0	6	6	-	6
(c) Hotz Apts. (8-10 Peapack Rd) gen. public rental	5	5	5	-	5	10
(d) Melillo (220 Route 202) gen. public rental	5	5	5	-	5	10
(e) Melillo (220 Route 202) AR/rental	4	0	4	4	-	4
<b>TOTALS:</b>	<b>28</b>	<b>18</b>	<b>20</b>	<b>10</b>	<b>10</b>	<b>38</b>



Prior Round Compliance Parameters:

- Rental: 10 rental units required (25%) vs. 18 rental units provided (47%);
- Age-restricted: 9 AR permitted (25%) vs. 10 Age-restricted units provided (26%) (the parties agree this is acceptable because no AR are provided in the Third Round so still cumulatively under 25%); and
- Bonus: 10 rental bonus permitted (25%) vs. 10 rental bonuses (25%).

Summary Of The Affordable Units Identified Above To Address Far Hills' 38-Unit Prior Round Obligation

(a) 8 Polo Club Units (Block 6.28, various lots), Sunnybranch Road: 8 for-sale units that are part of a 25-unit existing for-sale family affordable housing project.

- *Total of 8 credits toward the Prior Round obligation.*

(b) 6 Dumont Road Apartments (Block 15, Lot 1.02), 25 Dumont Road: 6 age-restricted rental apartments (existing) (the parties acknowledge that two apartments have been occupied by tenants who do not meet the age restriction but who are income qualified, on which the Borough agrees to not enforce the age restriction as to the present tenants, with the anticipation that future tenants may revert to being age-restricted).

- *Total of 6 credits toward the Prior Round obligation.*

(c) 5 Hotz Apartments (Block 13, Lots 2 & 3), 8 & 10 Peapack Road – 5 rental apartments available to the general public will be created at two adjacent sites, 8 & 10 Peapack Road as part of a 7-unit proposed rental project of affordable rental apartments available to the general public. The project involves reconfiguration of existing market-rate rental apartments and conversion of two one-story non-residential office/commercial buildings to affordable residential apartments. Far Hills Borough will amend zoning and enter into a developer's agreement with Hotz to permit the conversion of existing non-residential floor area to rental housing and for the development of a total of 7 affordable rental units on the two lots. The bedroom and affordability mix will conform to UHAC requirements and as outlined in this agreement. There will be no displacement of current occupants, however, current occupants may qualify as affordable households, provided that the 30 year deed restriction period shall begin upon the first occupancy by a tenant income qualified pursuant to UHAC after affirmative marketing. The project earns 5 bonus credits for rental units available to the general public toward the Borough's Prior Round obligation.

- *Total of 10 credits (5 units and 5 rental bonus credits) toward the Prior Round obligation.*

(d) Melillo Inclusionary Site (Block 5, Lot 4), 220 Route 202 – Melillo will develop a total of 134 units, including 105 townhouse for-sale market-rate units, 25 affordable apartments available to the general public and 4 affordable age-restricted apartments in this inclusionary project. The specific terms and specifications for this

inclusionary development shall be substantially consistent with the development identified in the Concept Plan and Project Submission attached to the Settlement Agreement and made a part thereof as Exhibit A to the Settlement Agreement, prepared by Melillo Equities (Melillo) and authorized by Mayor and Council on October 9, 2018.

In addition to the foregoing, the affordable units shall remain affordable rental units for a period of at least thirty (30) years ("Deed-Restriction Period"). At the end of the 30 years, the deed restrictions shall be governed by UHAC or any successor laws or regulations. The Borough may count the units against its obligations to provide family rental housing.

The Borough acknowledges that, in order for Melillo to construct its Inclusionary Development, Melillo will be required to obtain any and all necessary and applicable agreements, approvals, and permits from all relevant public entities and utilities. The Borough agrees to cooperate with Melillo's efforts to obtain all required approvals and permits from all relevant public entities and utilities for the Development. The Planning Board understands the intent of this Settlement Agreement is to develop the site in accordance with the concept plans attached hereto.

Melillo shall be entitled to any benefits, protections, and obligations afforded to developers of inclusionary developments, other than what Melillo has agreed to in its Agreement with Far Hills Borough for this inclusionary development. Accordingly, in the absence of consent by Melillo, the Borough will not impose development standards and/or requirements that are considered to be unreasonably "cost generative."

Far Hills will apply five (5) of the affordable apartments available to the general public in this development, the four (4) affordable age-restricted apartments and five (5) rental bonus credits from the five (5) apartments available to the general public, for a total of 14 affordable units and credits to the Borough's prior round obligation.

- *Total of 14 credits (9 units and 4 rental bonus credits) toward the Prior Round obligation.*

**75-unit Round 3 Obligation:**

Project	Units	Family	Rental	V L- I	Rental Bonus	Units & Bonuses
(a) Polo Club (Sunnybranch Rd.) gen. public for-sale	17	17	0	0	0	17
(b) Matheny Group Home (46 Peapack Road) Supportive & Special Needs	8	0	8	8	8	16
(c) Hotz Apts. (8-10 Peapack Rd) gen. public rental	2	2	2	1	2	4
(d) Melillo (220 Route 202) gen. public rental	20	20	20	3	9	29
(e) Accessory Apartment program	10	0	10	2	0	10
<b>TOTALS:</b>	<b>57</b>	<b>39</b>	<b>30*</b>	<b>12**</b>	<b>19</b>	<b>76</b>

\*\* Total would be 14 Very low-income units including 2 very low-income accessory apartments, not included in the compliance parameter analysis below.

Round 3 Compliance Parameters:

- 39 family units required (50%) vs. 39 family units provided (50%);
- 19 rental required (25%) vs. 30 rental units provided (39%), 40 if accessory apartments included (52%);
- 10 family rental units required vs. 22 family rental units provided (29%);
- 10 Very low-income required (13%) vs. 12 very low-income provided (16%); and
- 19 rental bonuses allowable (25%) vs. 19 rental bonuses (25%).

(a) 17 Polo Club Units (Block 6.28, various lots) on Sunnybranch Road that are existing units and part of the 25-unit Polo Club project referenced in paragraph 6(a) above.

- *17 units toward the Third Round obligation.*

(b) 8 Matheny School/Hospital group home bedrooms (Block 8, Lot 1), 46 Peapack Road: 8-bedroom group home for persons with special needs to be constructed on Borough-owned Block 8, Lot 1, consisting of 1.22-acres. A total of 8 units of credits and 8 rental bonus credits for a total of 16 units and credits are applied to the Borough's Third Round affordable housing obligation.

- *16 credits (8 units and 8 rental bonus credits) toward the Third Round obligation.*

(c) 2 Hotz Apartments (Block 13, Lots 2 & 3), 8 & 10 Peapack Road – 2 rental apartments available to the general public will be created at two adjacent sites, 8 & 10 Peapack Road as part of a 7-unit proposed rental project of affordable rental apartments available to the general public. The project involves reconfiguration of existing market-rate rental apartments and conversion of two one-story non-residential office/commercial buildings to affordable residential apartments.

- *4 credits (2 units and 2 rental bonus credits) toward the Third Round obligation.*

(d) 20 Melillo affordable rental apartments available to the general public as part of the inclusionary project described in 6.(d) above to be constructed on Block 5, Lot 4 located at 220 Route 202, including 3 very low-income rental apartments available to the general public. 20 affordable apartments and 9 rental bonus credits.

- *29 credits (20 units and 9 bonus credits) toward the Third Round obligation.*

(e) 10 Accessory Apartments – the Borough of Far Hills will create an accessory apartment program to create a total of 10 accessory apartment, including 5 low-

income apartments, of which 2 will be very low-income accessory apartments and 5 will be moderate-income accessory apartments.

- *10 credits toward the Third Round obligation.*

These five projects will produce a total of 57 units and 19 bonus credits for a total of 76 units and rental bonus credits to address the Borough's Round 3 obligation of 75 units. FSHC and the Borough agree that the Borough may add affordable housing credits by producing affordable housing or creating additional realistic opportunities for affordable housing in addition to the units to be produced by the five projects listed above without returning to the Court for approval. FSHC will not unreasonably withhold approval of affordable housing credits that may be produced by the Borough either through the production of actual units or creation of additional realistic opportunities for affordable housing during the Third Round.

To further demonstrate its longstanding commitment to Mount Laurel compliance, the Borough intends to adopt an inclusionary overlay zone, subject to the notice and public comment provisions in the New Jersey Municipal Land Use Law, N.J.S.A. 40:55D-1 et. seq. If adopted, the overlay zone shall impact all lots located within the Village Commercial – VC Zone in Far Hills village (including Block 12, Lots 1, 1.01, 1.02, 1.03 & 2, Block 14, Lots 1, 2, 3, 4, 5 & 6, and Block 15, Lots 1.01, 1.02, 2, 3, 4, 5, 6, 7 & 8) with the goal of providing sufficient developer incentives to capture affordable housing opportunities as they arise in the future.

7. FSHC and the Borough shall adhere to all other terms and conditions in the FSHC Agreement (Exhibit A), and all such terms and conditions are hereby incorporated by reference.

8. A duly-noticed Compliance Hearing will be held on                      a date to be set by the Court. 2019 at                      ~~a.m./p.m.~~, during which the trial judge will determine whether the Borough's Round 3 Housing Element and Fair Share Plan and implementing ordinances and resolutions create a realistic opportunity to satisfy its fair share of the regional need for affordable housing.

9. The Borough and its Planning Board's temporary immunity from all Mount Laurel lawsuits will remain in effect through 30 days after the Compliance Hearing.

10. Counsel for the Borough shall provide copies of this Order to the Borough's Service List within seven (7) days of receipt.

/S/ THOMAS C. MILLER, P.J.Cv.  
HON. THOMAS C. MILLER, ~~J.S.C.~~ P.J.Cv.

# EXHIBIT G

**JEFFREY R. SURENIAN AND ASSOCIATES, LLC**

Brielle Galleria

707 Union Avenue, Suite 301

Brielle, NJ 08730

(732) 612-3100

Attorneys for Declaratory Plaintiff, Borough of Far Hills

By: Jeffrey R. Surenian (Attorney ID: 024231983)

Michael A. Jedziniak (Attorney ID: 012832001)

**IN THE MATTER OF THE  
APPLICATION OF THE BOROUGH OF  
FAR HILLS, COUNTY OF SOMERSET**

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION  
SOMERSET COUNTY

DOCKET NO.: SOM-L-903-15

CIVIL ACTION – *MOUNT LAUREL*

**ORDER OF FAIRNESS AND  
PRELIMINARY ROUND 3  
COMPLIANCE**

THIS MATTER having been opened to the Court by Jeffrey R. Surenian and Associates, LLC, on behalf of declaratory plaintiff, Borough of Far Hills (hereinafter “the Borough” or “Far Hills”) via a Declaratory Judgment Complaint filed on July 2, 2015 seeking judicial approval of the Borough’s Round 3 Housing Element and Fair Share Plan (hereinafter “Fair Share Plan”) in response to In Re Adoption of N.J.A.C. 5:96, 221 N.J. 1 (2015) (“Mount Laurel IV”); and the Court having granted the Borough immunity from Mount Laurel lawsuits, which has remained in force, without interruptions, from July 2, 2015 to the present; and the Court having appointed James Kyle, P.P., A.I.C.P. as the Special Master (hereinafter the “Court Master”); and Fair Share Housing Center (“FSHC”) having participated in the Borough’s DJ Action as an interested party; and FSHC’s expert, David Kinsey, PhD, P.P., F.A.I.C.P., having issued an expert report that calculated fair share obligations for all of the municipalities in the state; and the Borough having hired Econsult Solutions, Inc., which produced its own expert report calculating fair share

obligations for all municipalities in the state; and the Borough's professionals and Adam Gordon, Esq. of FSHC having participate in mediation supervised by the Special Master for purposes of determining the Borough's fair share obligations, and establishing a framework on how the Borough would satisfy same; and FSHC and the Borough's professionals having agreed to terms and drafted a proposed form of settlement agreement ("FSHC Agreement," attached hereto as Exhibit A and incorporated by reference herein) establishing the Borough's Rehabilitation, Prior Round, and Round 3 (Gap and Prospective Need) obligations rather than doing so through a trial; and the FSHC Agreement having been executed by Adam Gordon, Esq., on behalf of FSHC; and, on October 15, 2018, the Borough Council having adopted a Resolution (attached hereto as Exhibit B and incorporated by reference herein) authorizing Mayor Vallone to execute the FSHC Agreement on behalf of the Borough; and Mayor Vallone having executed same; and the Court having scheduled a Mount Laurel Fairness Hearing on December 20, 2018; and the Fairness Hearing being required for the Court to determine whether the FSHC Agreement is fair, reasonable and adequately protects the interest of very low, low and moderate income households in the region; and counsel for the Borough having prepared an Affidavit of Public Notice (attached hereto as Exhibit C and incorporated by reference herein) to provide the Court with documented proof that the Borough provided sufficient published and actual notice of the Fairness Hearing to the public and all interested parties; and the Fairness Hearing having been held on December 20, 2018, during which Exhibits A through C were marked into evidence and considered by the Court; and the Court having also considered all testimony taken during the Fairness Hearing, as well as the comments of counsel; and the Special Master having recommended approval of the FSHC Agreement by the Court; and the Court having approved the FSHC Agreement and further declared that the Borough is entitled to a Preliminary Judgment of Compliance ; and good cause having been shown;

February  
It is hereby ordered on this 26th day of ~~January~~, 2019, as follows:

1. The Borough provided sufficient notice of the Fairness Hearing to the public and all interested parties.

2. Despite such notice, no interested party objected to the FSHC Agreement in writing prior to or via testimony during the Fairness Hearing.

3. Pursuant to the judicial standard set forth in East/West Venture v. Bor. of Fort Lee, 286 N.J. Super. 311 (App. Div. 1996), the FSHC Agreement is fair, reasonable, and adequately protects the interests of the region's low- and moderate-income households, and the Court therefore approves same.

4. The Court preliminarily finds that the Borough's proposed Affordable Housing Plan, as set forth within the FSHC Agreement, facially creates a realistic opportunity to satisfy the Borough's fair share of the regional need for affordable housing, subject to confirmation by the Court during a duly-noticed Compliance Hearing.

5. As a result of the FSHC Agreement, the Borough's Rehabilitation obligation is four (4); its Prior Round obligation (1987-1999) is thirty eight (38); and its Round 3 (Gap + Prospective Need) obligation (1999-2025) is seventy five (75).

6. Pursuant to the approved FSHC Agreement, the Borough shall satisfy the fair share obligations set forth above as follows:

**Satisfaction of the 38-unit Prior Round Obligation:**

Project	Units	Family	Rental	A-R	Rental Bonus	Units & Bonuses
(a) Polo Club (Sunnybranch Rd.) gen. public for-sale	8	8	-	-	-	8
(b) Dumont Road Apts. (25 Dumont) AR/rental	6	0	6	6	-	6
(c) Hotz Apts. (8-10 Peapack Rd) gen. public rental	5	5	5	-	5	10
(d) Melillo (220 Route 202) gen. public rental	5	5	5	-	5	10
(e) Melillo (220 Route 202) AR/rental	4	0	4	4	-	4
<b>TOTALS:</b>	<b>28</b>	<b>18</b>	<b>20</b>	<b>10</b>	<b>10</b>	<b>38</b>



Prior Round Compliance Parameters:

- Rental: 10 rental units required (25%) vs. 18 rental units provided (47%);
- Age-restricted: 9 AR permitted (25%) vs. 10 Age-restricted units provided (26%) (the parties agree this is acceptable because no AR are provided in the Third Round so still cumulatively under 25%); and
- Bonus: 10 rental bonus permitted (25%) vs. 10 rental bonuses (25%).

Summary Of The Affordable Units Identified Above To Address Far Hills' 38-Unit Prior Round Obligation

(a) 8 Polo Club Units (Block 6.28, various lots), Sunnybranch Road: 8 for-sale units that are part of a 25-unit existing for-sale family affordable housing project.

- *Total of 8 credits toward the Prior Round obligation.*

(b) 6 Dumont Road Apartments (Block 15, Lot 1.02), 25 Dumont Road: 6 age-restricted rental apartments (existing) (the parties acknowledge that two apartments have been occupied by tenants who do not meet the age restriction but who are income qualified, on which the Borough agrees to not enforce the age restriction as to the present tenants, with the anticipation that future tenants may revert to being age-restricted).

- *Total of 6 credits toward the Prior Round obligation.*

(c) 5 Hotz Apartments (Block 13, Lots 2 & 3), 8 & 10 Peapack Road – 5 rental apartments available to the general public will be created at two adjacent sites, 8 & 10 Peapack Road as part of a 7-unit proposed rental project of affordable rental apartments available to the general public. The project involves reconfiguration of existing market-rate rental apartments and conversion of two one-story non-residential office/commercial buildings to affordable residential apartments. Far Hills Borough will amend zoning and enter into a developer's agreement with Hotz to permit the conversion of existing non-residential floor area to rental housing and for the development of a total of 7 affordable rental units on the two lots. The bedroom and affordability mix will conform to UHAC requirements and as outlined in this agreement. There will be no displacement of current occupants, however, current occupants may qualify as affordable households, provided that the 30 year deed restriction period shall begin upon the first occupancy by a tenant income qualified pursuant to UHAC after affirmative marketing. The project earns 5 bonus credits for rental units available to the general public toward the Borough's Prior Round obligation.

- *Total of 10 credits (5 units and 5 rental bonus credits) toward the Prior Round obligation.*

(d) Melillo Inclusionary Site (Block 5, Lot 4), 220 Route 202 – Melillo will develop a total of 134 units, including 105 townhouse for-sale market-rate units, 25 affordable apartments available to the general public and 4 affordable age-restricted apartments in this inclusionary project. The specific terms and specifications for this

inclusionary development shall be substantially consistent with the development identified in the Concept Plan and Project Submission attached to the Settlement Agreement and made a part thereof as Exhibit A to the Settlement Agreement, prepared by Melillo Equities (Melillo) and authorized by Mayor and Council on October 9, 2018.

In addition to the foregoing, the affordable units shall remain affordable rental units for a period of at least thirty (30) years ("Deed-Restriction Period"). At the end of the 30 years, the deed restrictions shall be governed by UHAC or any successor laws or regulations. The Borough may count the units against its obligations to provide family rental housing.

The Borough acknowledges that, in order for Melillo to construct its Inclusionary Development, Melillo will be required to obtain any and all necessary and applicable agreements, approvals, and permits from all relevant public entities and utilities. The Borough agrees to cooperate with Melillo's efforts to obtain all required approvals and permits from all relevant public entities and utilities for the Development. The Planning Board understands the intent of this Settlement Agreement is to develop the site in accordance with the concept plans attached hereto.

Melillo shall be entitled to any benefits, protections, and obligations afforded to developers of inclusionary developments, other than what Melillo has agreed to in its Agreement with Far Hills Borough for this inclusionary development. Accordingly, in the absence of consent by Melillo, the Borough will not impose development standards and/or requirements that are considered to be unreasonably "cost generative."

Far Hills will apply five (5) of the affordable apartments available to the general public in this development, the four (4) affordable age-restricted apartments and five (5) rental bonus credits from the five (5) apartments available to the general public, for a total of 14 affordable units and credits to the Borough's prior round obligation.

- *Total of 14 credits (9 units and 4 rental bonus credits) toward the Prior Round obligation.*

**75-unit Round 3 Obligation:**

Project	Units	Family	Rental	V L- I	Rental Bonus	Units & Bonuses
(a) Polo Club (Sunnybranch Rd.) gen. public for-sale	17	17	0	0	0	17
(b) Matheny Group Home (46 Peapack Road) Supportive & Special Needs	8	0	8	8	8	16
(c) Hotz Apts. (8-10 Peapack Rd) gen. public rental	2	2	2	1	2	4
(d) Melillo (220 Route 202) gen. public rental	20	20	20	3	9	29
(e) Accessory Apartment program	10	0	10	2	0	10
<b>TOTALS:</b>	<b>57</b>	<b>39</b>	<b>30*</b>	<b>12**</b>	<b>19</b>	<b>76</b>

\*\* Total would be 14 Very low-income units including 2 very low-income accessory apartments, not included in the compliance parameter analysis below.

Round 3 Compliance Parameters:

- 39 family units required (50%) vs. 39 family units provided (50%);
- 19 rental required (25%) vs. 30 rental units provided (39%), 40 if accessory apartments included (52%);
- 10 family rental units required vs. 22 family rental units provided (29%);
- 10 Very low-income required (13%) vs. 12 very low-income provided (16%); and
- 19 rental bonuses allowable (25%) vs. 19 rental bonuses (25%).

(a) 17 Polo Club Units (Block 6.28, various lots) on Sunnybranch Road that are existing units and part of the 25-unit Polo Club project referenced in paragraph 6(a) above.

- *17 units toward the Third Round obligation.*

(b) 8 Matheny School/Hospital group home bedrooms (Block 8, Lot 1), 46 Peapack Road: 8-bedroom group home for persons with special needs to be constructed on Borough-owned Block 8, Lot 1, consisting of 1.22-acres. A total of 8 units of credits and 8 rental bonus credits for a total of 16 units and credits are applied to the Borough's Third Round affordable housing obligation.

- *16 credits (8 units and 8 rental bonus credits) toward the Third Round obligation.*

(c) 2 Hotz Apartments (Block 13, Lots 2 & 3), 8 & 10 Peapack Road – 2 rental apartments available to the general public will be created at two adjacent sites, 8 & 10 Peapack Road as part of a 7-unit proposed rental project of affordable rental apartments available to the general public. The project involves reconfiguration of existing market-rate rental apartments and conversion of two one-story non-residential office/commercial buildings to affordable residential apartments.

- *4 credits (2 units and 2 rental bonus credits) toward the Third Round obligation.*

(d) 20 Melillo affordable rental apartments available to the general public as part of the inclusionary project described in 6.(d) above to be constructed on Block 5, Lot 4 located at 220 Route 202, including 3 very low-income rental apartments available to the general public. 20 affordable apartments and 9 rental bonus credits.

- *29 credits (20 units and 9 bonus credits) toward the Third Round obligation.*

(e) 10 Accessory Apartments – the Borough of Far Hills will create an accessory apartment program to create a total of 10 accessory apartment, including 5 low-

income apartments, of which 2 will be very low-income accessory apartments and 5 will be moderate-income accessory apartments.

- **10 credits toward the Third Round obligation.**

These five projects will produce a total of 57 units and 19 bonus credits for a total of 76 units and rental bonus credits to address the Borough's Round 3 obligation of 75 units. FSHC and the Borough agree that the Borough may add affordable housing credits by producing affordable housing or creating additional realistic opportunities for affordable housing in addition to the units to be produced by the five projects listed above without returning to the Court for approval. FSHC will not unreasonably withhold approval of affordable housing credits that may be produced by the Borough either through the production of actual units or creation of additional realistic opportunities for affordable housing during the Third Round.

To further demonstrate its longstanding commitment to Mount Laurel compliance, the Borough intends to adopt an inclusionary overlay zone, subject to the notice and public comment provisions in the New Jersey Municipal Land Use Law, N.J.S.A. 40:55D-1 et. seq. If adopted, the overlay zone shall impact all lots located within the Village Commercial – VC Zone in Far Hills village (including Block 12, Lots 1, 1.01, 1.02, 1.03 & 2, Block 14, Lots 1, 2, 3, 4, 5 & 6, and Block 15, Lots 1.01, 1.02, 2, 3, 4, 5, 6, 7 & 8) with the goal of providing sufficient developer incentives to capture affordable housing opportunities as they arise in the future.

7. FSHC and the Borough shall adhere to all other terms and conditions in the FSHC Agreement (Exhibit A), and all such terms and conditions are hereby incorporated by reference.

8. A duly-noticed Compliance Hearing will be held on \_\_\_\_\_ a date to be set by the Court. ~~2019 at~~ \_\_\_\_\_ ~~a.m./p.m.~~, during which the trial judge will determine whether the Borough's Round 3 Housing Element and Fair Share Plan and implementing ordinances and resolutions create a realistic opportunity to satisfy its fair share of the regional need for affordable housing.

9. The Borough and its Planning Board's temporary immunity from all Mount Laurel lawsuits will remain in effect through 30 days after the Compliance Hearing.

10. Counsel for the Borough shall provide copies of this Order to the Borough's Service List within seven (7) days of receipt.

/S/ THOMAS C. MILLER, P.J.Cv.  
HON. THOMAS C. MILLER, ~~J.S.C.~~ P.J.Cv.

# EXHIBIT H

## SURENIAN, EDWARDS & NOLAN LLC

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March 15, 2022

### VIA ECOURTS

**Honorable Thomas C. Miller, J.S.C.**

Superior Court of New Jersey  
Somerset County Superior Court  
20 N. Bridge Street, 2<sup>nd</sup> Floor  
Somerville, NJ 08876

**RE: In the Matter of the Application of the Borough of Far Hills,**  
**Docket No.: SOM-L-903-15**

Dear Judge Miller,

As the Court is aware, a Conditional Judgment of Compliance and Repose (“JOR”) Order was entered by the Court on December 15, 2020. Enclosed, please find a Proposed Amended Final JOR Order. This form of order was provided in advance to both the Court Master and Fair Share Housing Center, as well as Craig Gianetti, counsel for Melillo Properties, and they have all contributed and consented to the enclosed version.

If this form of Order is acceptable to the Court, I ask that the Court execute same. I thank the Court for its continued time and attention to this matter.

Respectfully submitted,

*Nancy L. Holm*

Nancy L. Holm

NLH/rw

cc: Adam Gordon, Esq. *(via electronic mail)*  
Ashley Lee, Esq. *(via electronic mail)*  
James T. Kyle, PP/AICP *(via electronic mail)*  
Joseph V. Sordillo, Esq. *(via electronic mail)*  
David Banisch, PP/AICP *(via electronic mail)*  
Craig Gianetti, Esq. *(via electronic mail)*

**SURENIAN, EDWARDS & NOLAN, LLC**

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Attorneys for Declaratory Plaintiff, Borough of Far Hills

By: Jeffrey R. Surenian (Attorney ID: 024231983)

Nancy L. Holm (Attorney ID: 013442006)

**IN THE MATTER OF THE  
APPLICATION OF THE BOROUGH OF  
FAR HILLS, COUNTY OF SOMERSET**

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION  
SOMERSET COUNTY

DOCKET NO.: SOM-L-903-15

CIVIL ACTION – *MOUNT LAUREL*

**AMENDED ORDER OF FINAL  
JUDGMENT OF COMPLIANCE AND  
REPOSE**

THIS MATTER having been opened to the Court by Surenian, Edwards & Nolan, LLC, on behalf of declaratory plaintiff, Borough of Far Hills (hereinafter “the Borough” or “Far Hills”) via a Declaratory Judgment Complaint filed on July 2, 2015 to approve the Borough’s Housing Element and Fair Share Plan (hereinafter “Fair Share Plan”) in response to In Re Adoption of N.J.A.C. 5:96, 221 N.J. 1 (2015) (“Mount Laurel IV”); and the Court having granted the Borough immunity from Mount Laurel lawsuits from the time of the filing of the Borough’s Declaratory Judgment action (hereinafter “DJ Action”); and the Court having appointed James P. Kyle, P.P., A.I.C.P., as the Special Mount Laurel Court Master (hereinafter the “Court Master”); and Fair Share Housing Center (“FSHC”) having participated in the Borough’s DJ Action as an “interested party”; and the Borough and FSHC having entered into a Settlement Agreement on October 15, 2018 (hereinafter the “FSHC Settlement Agreement”); and said FSHC Settlement Agreement having set agreed-upon fair share obligations and how the Borough would satisfy same; and the

FSHC Settlement Agreement having been approved during a Fairness Hearing held on December 20, 2018, which was memorialized by an Order entered by the Court on February 26, 2019, which was thereafter amended; and the Borough having subsequently prepared a Housing Element and Fair Share Plan (hereinafter "Fair Share Plan") (Exhibit P-1), and all supporting documentation in accordance with the FSHC Settlement Agreement; and a Compliance Hearing having been scheduled for November 17, 2020 to approve the Borough's Fair Share Plan; and said Fair Share Plan having been put on file for public review at Borough Hall more than 30 days prior to the scheduled Compliance Hearing date of November 17, 2020; and counsel for the Borough having prepared a Notice Certification (Exhibit P-23), to document that proper 30-day notice of the Compliance Hearing had been given; and the Fair Share Plan, as well as other additional documents, resolutions, and ordinances having been submitted to the Court Master and FSHC for review; and the Borough having received no objections to the Fair Share Plan; and the Compliance Hearing having been held on November 17, 2020, during which Exhibits P-1 to P-24 were marked into evidence; and the Court having considered the testimony taken during the Compliance Hearing, as well as the comments of counsel; and the Court Master having recommended approval of the Borough's Fair Share Plan to the Court on the record during the Compliance Hearing, having found it to be in full compliance; and the Court having reviewed all of the documents submitted into evidence during the Compliance Hearing; and the Court having entered a conditional Judgment of Compliance and Repose on December 15, 2020 ("December 15, 2020 JOR"), wherein the Borough was given 120 days to respond to the conditions set forth in paragraph 7 of the December 15, 2020 JOR; and the Borough having responded within 120 days to said conditions; and since that time, several issues remain in need of resolution; and the Borough and FSHC having



agreed upon a proposed plan of action; and the Court having considered the proposed plan; and for good cause having been shown;

It is hereby ordered on this \_\_\_\_\_ day of \_\_\_\_\_, 2022, as follows:

1. Subject to the satisfaction of the Conditions in Paragraph 3 of this Order, the terms of the December 15, 2020 JOR remain in full force and effect, including, but not limited to, the Court's approval of the Borough of Far Hills's Fair Share Plan and Development Fee Ordinance, as well as the determination of the Borough's Rehabilitation Share, Prior Round Obligation, and Gap + Third Round Obligation. The December 15, 2020 JOR is attached hereto as **Exhibit A**.

2. The Borough's Judgment of Compliance and Repose shall remain in effect for ten (10) years beginning on July 2, 2015 and ending on July 2, 2025, and during this ten (10) year period the Borough shall have repose from all Mount Laurel lawsuits, including, but not limited to, Builder's Remedy lawsuits, other than actions brought to enforce the terms of settlement or this Court's Orders.

3. The following Conditions shall be addressed and resolved by the Borough within 120 days of the entry of this Order with information provided to the Special Master with a copy to FSHC:

- a. The Borough will provide a recorded deed restriction for both the Polo Club and Dumont Road development that is representative of the restrictions on the affordable units.
- b. The Borough, the Court Master, FSHC, and Melillo will agree upon Melillo Equities' modification of the UHAC phasing requirements, which will be confirmed in a fully executed Developer's Agreement between the Borough and Melillo Equities.

4. With respect to the Affordable Housing Agreement between the Borough and Melillo Equities dated December 9, 2019, the Borough has ongoing obligations.

5. Subject to the deadlines established in Paragraph 3 above, upon the Court Master and FSHC receiving, reviewing, and approving the additional documents and revisions required by the Conditions in Paragraph 3 above, and the Borough, Court Master, and FSHC shall agree upon the conditions being satisfied. Upon such agreement, the Borough will provide the Court with a Consent Order that will indicate that all Conditions have been satisfied, and that the Borough's conditional Judgment of Compliance and Repose has become a Final Judgment of Compliance and Repose, without any remaining pre-conditions.

6. The Borough's amended Spending Plan is hereby approved by the Court.

7. Counsel for the Borough shall provide copies of this Order to the Borough's Service List within seven (7) days of receipt.

**Thomas C. Miller, A.J.S.C.**  
HONORABLE THOMAS C. MILLER, A.J.S.C.

# **EXHIBIT A**

**SURENIAN, EDWARDS & NOLAN, LLC**

Brielle Galleria

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(732) 612-3100

Attorneys for Declaratory Plaintiff, Borough of Far Hills

By: Jeffrey R. Surenian (Attorney ID: 024231983)

Nancy L. Holm (Attorney ID: 013442006)

**IN THE MATTER OF THE  
APPLICATION OF THE BOROUGH OF  
THE TOWNSHIP OF FAR HILLS,  
COUNTY OF SOMERSET**

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION  
SOMERSET COUNTY

DOCKET NO.: SOM-L-903-15

CIVIL ACTION – *MOUNT LAUREL*

**ORDER OF FINAL JUDGMENT OF  
COMPLIANCE AND REPOSE**

THIS MATTER having been opened to the Court by Surenian, Edwards & Nolan, LLC, on behalf of declaratory plaintiff, Borough of Far Hills (hereinafter “the Borough” or “Far Hills”) via a Declaratory Judgment Complaint filed on July 2, 2015 to approve the Borough’s Housing Element and Fair Share Plan (hereinafter “Fair Share Plan”) in response to In Re Adoption of N.J.A.C. 5:96, 221 N.J. 1 (2015) (“Mount Laurel IV”); and the Court having granted the Borough immunity from Mount Laurel lawsuits from the time of the filing of the Borough’s Declaratory Judgment action (hereinafter “DJ Action”); and the Court having appointed James P. Kyle, P.P., A.I.C.P., as the Special Mount Laurel Court Master (hereinafter the “Court Master”); and Fair Share Housing Center (“FSHC”) having participated in the Borough’s DJ Action as an “interested party”; and the Borough and FSHC having entered into a Settlement Agreement on October 15, 2018 (hereinafter the “FSHC Settlement Agreement”); and said FSHC Settlement Agreement having set agreed-upon fair share obligations and how the Borough would satisfy same; and the FSHC Settlement Agreement having been approved during a Fairness Hearing held on December

20, 2018, which was memorialized by an Order entered by the Court on February 26, 2019, which was thereafter amended; and the Borough having subsequently prepared a Housing Element and Fair Share Plan (hereinafter “Fair Share Plan”) (Exhibit P-1), and all supporting documentation in accordance with the FSHC Settlement Agreement; and a Compliance Hearing having been scheduled for November 17, 2020 to approve the Borough’s Fair Share Plan; and said Fair Share Plan having been put on file for public review at Borough Hall more than 30 days prior to the scheduled Compliance Hearing date of November 17, 2020; and counsel for the Borough having prepared a Notice Certification (Exhibit P-23), to document that proper 30-day notice of the Compliance Hearing had been given; and the Fair Share Plan, as well as other additional documents, resolutions, and ordinances having been submitted to the Court Master and FSHC for review; and the Borough having received no objections to the Fair Share Plan; and the Compliance Hearing having been held on November 17, 2020, during which Exhibits P-1 to P-24 were marked into evidence; and the Court having considered the testimony taken during the Compliance Hearing, as well as the comments of counsel; and the Court Master having recommended approval of the Borough’s Fair Share Plan to the Court on the record during the Compliance Hearing, having found it to be in full compliance; and the Court having reviewed all of the documents submitted into evidence during the Compliance Hearing; and good cause having been shown;

It is hereby ordered on this 16th day of DECEMBER, 2020, as follows:

1. Subject to the satisfaction of the Conditions in Paragraph 7 of this Order, the Borough of Far Hills’s Fair Share Plan (Exhibit P-1) is hereby approved and the Borough is granted a Judgment of Compliance and Repose as to its Rehabilitation Share, its Prior Round Obligation (1987-1999), and its Third Round Obligation (the last comprised of both the Gap (1999-2015) and the Prospective (2015-2025) Needs), pursuant to the Court approved Settlement Agreement entered into between the Borough and FSHC on October 15, 2018, the Fair Housing Act (N.J.S.A. 52:27D-301, et. seq.)(“FHA”), the Uniform Housing Affordability Controls (N.J.A.C. 5:80-26.1,

et seq.) (“UHAC”), applicable Council on Affordable Housing (hereinafter “COAH”) substantive rules, and Mount Laurel case law, including the New Jersey Supreme Court’s Mount Laurel IV decision.

2. The Borough’s Judgment of Compliance and Repose shall remain in effect for ten (10) years beginning on July 2, 2015 and ending on July 2, 2025, and during this ten (10) year period the Borough shall have repose from all Mount Laurel lawsuits, including, but not limited to, Builder’s Remedy lawsuits.

3. As per the Court approved Settlement Agreement between the Borough and FSHC, and as established in the Borough’s Fair Share Plan, the Borough’s Rehabilitation Obligation is 4, the Borough’s Prior Round Obligation (1987-1999) is 38, and the Borough’s Third Round Obligation (Gap (1999-2015) plus Prospective (2015-2025) Need) is 75.

4. The Borough will address its 4-unit Rehabilitation Obligation with a municipally-run rehabilitation program, due to the fact that there is no longer a Somerset County Home Improvement Program.

5. The Borough will satisfy its Prior Round Obligation of 38 with 38 units and rental bonuses, as follows:

- a. 8 family for-sale units from the Polo Club development;
- b. 6 age-restricted rental units located at 6 Dumont Road;
- c. 5 family rental units from the proposed Hotz project, plus 5 rental bonuses from that project; and
- d. 5 family rental units plus 5 rental bonuses and 4 age-restricted rental units from the Melillo inclusionary project.

6. The Borough will satisfy its Gap + Prospective Need Obligation of 75 with 76 units and rental bonuses, as follows:

- a. 17 family for-sale units from Polo Club development.

- b. 8 bedroom credits plus 8 rental bonuses from Matheny Group Home project.
- c. 2 family rental units from the Hotz Apartment project, which also earn 2 rental bonus credits for the project.
- d. 20 family rental units from the Melillo inclusionary project, which will generate 9 rental bonus credits.
- e. The Borough will also implement a 10-unit Accessory Apartment program.

7. The following Conditions shall be addressed and resolved by the Borough within 120 days of the entry of this Order with information provided to the Special Master with a copy to FSHC:

- a. The Borough will either provide evidence of opt-in to the Somerset County Home Improvement Program, if it continues to exist, or the Borough will provide evidence of its own rehabilitation program, including contract with an administrative agent to run the program, as well as all appropriate manuals.
- b. The Borough will provide crediting information for Polo Club and Dumont Road apartment units to the satisfaction of the Court Master.
- c. The Borough will amend the Affordable Housing Ordinance and Accessory Apartment Ordinance to provide consistency between the two, which includes where accessory apartments are permitted, amount of subsidies, and distribution of low and moderate units.
- d. The Borough will also amend its Affordable Housing Ordinance to include language that the 13% very low-income unit requirement be spread across the required bedroom distribution.
- e. The Borough will provide supplementary information addressing the bedroom distribution for all existing and planned affordable units to the satisfaction of the Court Master.
- f. The Borough will amend the Spending Plan to identify specific programs where funds in excess of those identified can be spent.

8. Subject to the deadlines established in Paragraph 7 above, upon the Court Master receiving, reviewing and approving the additional documents and revisions required by the Conditions in Paragraph 7 above, the Court Master shall advise the Court that said Conditions have been satisfied. Upon such notification, the Borough will provide the Court with a form of Order

that will indicate that all Conditions have been satisfied, and that the Borough's conditional Judgment of Compliance and Repose has become a Final Judgment of Compliance and Repose, without any remaining pre-conditions.

9. The Court acknowledges that several terms of the respective Affordable Housing Agreements between the Borough and the developers of the Hotz, Melillo, and Matheny projects remain outstanding, and those obligations will be addressed by the parties in due course as those projects move through the development process. Regarding the Melillo Affordable Housing Agreement, the Borough has ongoing obligations with respect to the projects therein with which the Borough shall comply.

10. The Borough's updated and adopted Development Fee Ordinance (Exhibit P-5) is hereby approved by the Court.

11. Counsel for the Borough shall provide copies of this Order to the Borough's Service List within seven (7) days of receipt.

**/S/ THOMAS C. MILLER, A.J.S.C.**  
**HONORABLE THOMAS C. MILLER, A.J.S.C.**

SEE ATTACHED STATEMENT OF REASONS



**IMO FAR HILLS**

**Docket No. SOM-L-903-15**

**A. INTRODUCTION**

In this “Compliance Hearing,” the Court considered whether the Borough’s adopted Housing Element and Fair Share Plan and supporting documents are consistent with the applicable rules of the Council on Affordable Housing (hereinafter “COAH”) (N.J.A.C. 5:93), the Fair Housing Act (N.J.S.A. 52:27D-301 et seq), and relevant case law.

Public notice of the hearing held by this Court on November 17, 2020 was published on October 15, 2020 in the Daily Record and Courier News. Notice was also sent to the service list. The notice properly summarized the purpose of the November 16, 2020 hearing and directed any interested parties to the Far Hills Borough Clerk’s office where they could review compliance documents, and indicated that written comments or objections must be filed with the Court by November 6, 2020. The Court did not receive any comments or objections having been received in response to the public notice. The notice also set forth a process for interested parties to participate in the upcoming hearing with the Court.

**B. BACKGROUND**

The Borough is located in the Highlands Region, with the entirety of the Borough in the Planning Area. The Borough petitioned the Highlands Council for conformance to the Regional Master Plan, but no final determination was made after submission.

Far Hills received Second Round Substantive Certification on February 7, 2001, which protected the Borough from all Mount Laurel lawsuits until February 6, 2007. The Borough filed its first Third Round petition on January 9, 2007, and again petitioned for Third Round substantive certification on June 8, 2010 with a Housing Element and Fair Share Plan adopted on May 24, 2010. The petition was deemed complete on August 25, 2010, however, substantive certification was not granted prior to invalidation of COAH’s rules. That Third Round Housing Plan will be amended or replaced as part of the anticipated subsequent compliance process where the Borough seeks a Judgement of Repose.

The Borough filed for Declaratory Judgment on June 30, 2015. In this Complaint the Borough sought the Court to exercise jurisdiction over the compliance of Far Hills compliance with its constitutional affordable housing obligations, immunity from exclusionary zoning litigation, and a Judgment of Compliance and Repose through 2025.

The Court has reviewed and considered the report of its Special Master, James T. Kyle, PP, AICP. Mr. Kyle’s report reviews the Borough’s adopted 2020 Housing Element and Fair Share Plan for compliance with applicable rules and associated caselaw.

Mr. Kyle’s report relies upon the second round regulations of COAH (N.J.A.C. 5:93) to the greatest extent practicable, the Uniform Housing Affordability Control Rules, N.J.A.C. 5:80-26.1 et seq., the Fair Housing Act (N.J.S.A. 52:27D-301 et seq), and relevant case law.

This approach encourages uniformity in the interpretation of the Mount Laurel doctrine and is consistent with both legislative and judicial directives. The Fair Housing Act (P.L. 1985, c. 222) states,

“The interest of all citizens, including low and moderate income families in need of affordable housing, would be best served by a comprehensive planning and implementation response to this constitutional obligation.” (*N.J.S.A. 52:27D-302(c)*)

Furthermore, the New Jersey Supreme Court, in its decision in The Hills Development Co. v. Town of Bernards, 103 NJ 1 (1986) (commonly known as Mount Laurel III) upheld the constitutionality of the Fair Housing Act, and stated,

“Instead of varying and potentially inconsistent definitions of total need, regions, regional need, and fair share that can result from the case-by-case determinations of courts involved in isolated litigation, an overall plan for the entire state is envisioned, with definitions and standards that will have the kind of consistency that can result only when full responsibility and power are given to a single entity [COAH].” (103 N.J. at 25)

Lastly, in the decision, the Supreme Court also stated that to the extent that Mount Laurel cases remained before the courts,

“...any such proceedings before a court should conform wherever possible to the decisions, criteria and guidelines of the Council.” (103 N.J. at 63)

On March 10, 2015 the N.J. Supreme Court delivered In the Matter of the Adoption of N.J.A.C. 5:96 and 5:97 by the New Jersey Council on Affordable Housing, 221 N.J. 1 (2015) (hereinafter “Mount Laurel IV”). This decision acknowledged COAH’s inability or unwillingness to adopt constitutional rules for the so-called “Third Round” of municipal affordable housing compliance. In the absence of regulatory guidance from COAH or Legislative action, the decision instructs the Trial Courts to once again evaluate the constitutionality of municipal Fair Share Plans.

While the Court has invalidated COAH’s attempts to promulgate Third Round rules, the Second Round rules (*N.J.A.C. 5:93*) are still largely intact. In fact, these rules have been relied upon by the Trial Courts in numerous compliance and fairness hearings during the “gaps” in COAH’s rule-making since the Second Round ended in 1999. Furthermore, in the Mount Laurel IV decision the NJ Supreme Court directed the Trial Courts to continue to rely on the Second Round rules, with certain specific exceptions.

**C. FAR HILLS BOROUGH’S HOUSING PLAN**

The Far Hills Planning Board adopted the Housing Plan on July 1, 2019 (memorialized by resolution on August 5, 2019) and the Borough Council endorsed it via resolution on July 8, 2019. The obligations and compliance mechanisms are consistent with the Settlement Agreement reached with FSHC with limited exceptions as noted later in this section.

**The Obligation and Compliance Mechanisms**

The Housing Plan set forth the following affordable housing obligation for the Borough of Far Hills, which is consistent with that identified in the Settlement Agreement with FSHC:

- Rehabilitation Obligation: 4 units
- Prior Round (1987 – 1999) Obligation: 38 units
- Third Round (1999 – 2025) Obligation: 75 units

**Rehabilitation Obligation**

The Borough will participate in the Somerset County CDBG Rehabilitation Program if the program is available. If that program has insufficient funding, the Borough has committed affordable housing trust funds for the rehabilitation of two (2) units. The plan also notes that if it is found there are no substandard units occupied by income-eligible households, the Borough may seek an adjustment to the obligation by application to the Court and preparation of a structural conditions survey.

**Prior Round Obligation**

The source of the 38 unit prior round obligation is that which was calculated by COAH for their 2008 substantive rules, N.J.A.C. 5:97 Appendix C. Utilization of this obligation is consistent with the Mt. Laurel IV decision which stated "...prior unfulfilled housing obligations should be the starting point for a determination of a municipality's fair share responsibility".

The Borough will satisfy the 38 unit prior round obligation with a total of 28 units and 10 rental bonus credits through the projects summarized in the table below. As noted in the Housing Element and Fair Share Plan, the Borough complies with the requirements related to the minimum number of rental units and maximum number of bonus credits permitted. While the age-restricted cap of 9 units, representing 25% of the Prior Round Obligation of 38 units, is exceeded, the plan notes the Borough is not seeking age-restricted credits for the Third Round Obligation. As such, the maximum percentage of age-restricted units over both the Prior and Third Rounds does not exceed a cumulative 25% of the obligation.

As part of the compliance information reviewed, the Borough has adopted zoning ordinance amendments for the Hotz apartments and Melillo projects. In terms of compliance, the Fair Share Plan did not include information documenting appropriate deed restrictions for the Polo Club and Dumont Road age-restricted apartments. Further, it does not include information on how projects set forth in the plan comply with the bedroom distribution requirements. **This will have to be provided for review and approval as a condition of any action by the Court on this matter.**

Satisfaction of the 38-unit Prior Round Obligation						
Project	Rental	Senior	Family	Units	Bonus Credits	Total Credits
Polo Club – For sale			X	8	3	8
Dumont Road Apts. (A/R Rental)	X	X		6		6
Hotz Apts. (8-10 Peapack Rd)	X		X	5	5	10
Melillo (220 Route 202)	X		X	5	5	10
Melillo (220 Route 202) A/R Rental	X	X		4		4
<i>Total</i>				<i>28</i>	<i>10</i>	<i>38</i>

### Third Round Obligation

The 75-unit Third Round Prospective Need obligation set forth in the Agreement represents 20% of the total existing housing units within Far Hills, known as the “20% cap”. This provision is contained in the Second Round rules at N.J.A.C. 5:93-2.16 and in the Agreement is noted as an interpretation of N.J.S.A. 52:27D-307, the Fair Housing Act.

The Borough will address its Third Round obligation with a total of 57 units and 19 rental bonuses as summarized on the table on the following page. The units include 17 family for-sale units in the existing Polo Club project, 8 new group home bedrooms and 8 rental bonus credits associated with the Matheny project, 2 family rentals and 2 bonus credits from the Hotz apartments, 20 family rentals and 9 rental bonus credits from the Melillo project and an accessory apartment project totaling 10 units.

As part of the compliance information reviewed, the Borough has adopted zoning amendments for the Hotz apartments and Melillo projects. The Borough has also adopted an overlay ordinance for the Village Commercial zoning district that requires a mandatory set aside of affordable housing units for all projects proposing more than five (5) units. Reviewing the Fair Share Plan, it documents the fact that the Borough complies with the minimum number of family units required, the minimum number of rental units required, the minimum number of family rental units required, the number of very low income units required and the maximum number of rental bonus credits permitted.

Satisfaction of the Third Round Obligation						
Project	Rental	Senior	Family	Units	Bonus Credits	Total Credits
Polo Club – For Sale			X	17	0	17
Matheny Group Home	X			8	8	16
Hotz Apts. (8-10 Peapack Rd.)	X		X	2	2	4
Melillo (220 Route 202)	X		X	20	9	29
Accessory Apartment Program	X			10	0	10
			<i>Total</i>	<i>57</i>	<i>19</i>	<i>76</i>

### Administration

The Borough submitted an adopted affordable housing regulating ordinance (AHO). This ordinance provides standards for item such as, but not limited to, bedroom distribution, sales and rental prices, affordability average, administration, monitoring and enforcement. It is consistent with the applicable standards in COAH’s substantive rules (N.J.A.C. 5:93), the Uniform Housing Affordability Control Rules (N.J.A.C. 5:80-26.1 et seq.) and the Fair Housing Act (N.J.S.A. 52:27D-301 et seq.). It should be noted there are inconsistencies between the affordable housing

ordinance and the accessory apartment ordinance that will need to be remedied. The first is related to where accessory apartments are permitted, with the AHO stating they are permitted in all residential and commercial zones and conditionally permitted in industrial zones while the accessory apartment ordinance calls out specific zone districts. Second, the AHO specifies a subsidy of \$35,000 regardless of the nature of the unit (very low, low or moderate income) while the accessory apartment ordinance tiers the subsidy. The third is related to the distribution of units, where the AHO notes they can be low and moderate income units where the accessory apartment ordinance states that very low, low and moderate income units will be provided. Further the Fair Share Plan notes that a minimum of two (2) very low income units will be provided. Finally, Section 6.1.A shall be amended to include language that the 13% very low income unit requirement shall be spread across bedroom distribution. These inconsistencies will need to be addressed and amendments will have to be provided for review and approval as a condition of any action by the Court on this matter.

I note that the Borough has appointed the Clerk as the administrative agent. Since the administrative agent is relied upon significantly in the Borough's compliance plan, information should be provided on the qualifications of this individual to handle the assigned tasks, which includes affirmative marketing and other administrative functions.

#### **Affordable Housing Trust Fund**

The Borough submitted the adopted development fee ordinance and a Spending Plan. The development fee ordinance was adopted on June 8, 2020. This ordinance meets the applicable requirements in COAH's substantive rules (N.J.A.C. 5:93) and the Fair Housing Act (N.J.S.A. 52:27D-301 et seq.), as well as the Borough's Settlement Agreement with FSHC.<sup>1</sup>

The Borough's Spending Plan provides for collection and expenditure of money in the affordable housing trust fund. The Borough proposes to expend funds on the municipal rehabilitation program, consistent with the adopted Housing Plan. The Borough also proposes to expend funds on an accessory apartment program, affordability assistance and administration, consistent with COAH's substantive rules (N.J.A.C. 5:93) and the Fair Housing Act (N.J.S.A. 52:27D-301 et seq.). In speaking with Fair Share Housing Center while preparing the Master's report, the Master noted that they take exception to the spending plan provision which permits excess funds to be spent on any affordable housing activity authorized under N.J.A.C. 5:98-8.16(a). Typically the spending plan is required to identify specific affordable housing activities upon which funds will be expended, while this approach is more open-ended and not necessarily consistent with that requirement. As such, the Court agrees that should the Borough have an excess of funds and wish to propose other expenditures, they should either amend the spending plan to identify additional mechanisms or return to the Court at a future date to approval of an amended spending plan. As such, revisions are necessary prior to Court approval of the spending plan.

#### **Other Compliance Issues**

The Borough's settlement agreement with FSHC notes additional compliance requirements, which are largely satisfied in Far Hills Borough's Compliance Plan. The Master has reported the following with regards to these requirements:

1. At least half of all housing units addressing the Third Round Prospective Need shall be affordable to low-income households, with 13% of the affordable housing units being

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<sup>1</sup> The Court also approves the development fee ordinance as part of this process as well.

reserved for very-low income households. The remainder of the affordable units shall be affordable to moderate-income households.

Satisfied.

2. At least 25% of the Borough's Third Round Prospective Need shall be met through rental units, at least half of which will be rental units available to families.

Satisfied.

3. At least half of the units addressing the Third Round Prospective Need in total must be available to families.

Satisfied.

4. No more than 25% of the affordable units addressing the Borough's Prior Round and Third Round obligation shall be age-restricted.

Satisfied.

5. Rental bonuses shall be calculated in accordance with COAH's Second Round rules N.J.A.C. 5:93 – 5.15 (d).

Satisfied.

6. All affordable housing units created pursuant to the Settlement Agreement shall comply with UHAC rules, with the exception of #2 above in which case those rules have been superseded by an amendment to the Fair Housing Act.

Satisfied.

7. The Borough shall update its affirmative marketing plan to include FSHC and other named organizations in its list of community and regional organizations, and both the Borough and any other developers or administrative agencies conducting affirmative marketing shall provide notice to those organizations of any available units.

Satisfied.

8. On the first anniversary of the execution of the Settlement Agreement, and every anniversary thereafter through the end of the Agreement, the Borough agrees to provide a status report of all affordable housing trust fund activity.

Compliance for this item will be determined at the appropriate time. This item will be addressed as a condition of approval.

9. The Borough shall submit its midpoint realistic opportunity review on or before July 2, 2020, as required pursuant to N.J.S.A. 52:27D-313. This midpoint review permits any interested party, such as FSHC, to request by motion a Court hearing regarding whether any sites in the Borough's compliance plan no longer present a realistic opportunity for affordable housing development and should be replaced. While this review is statutorily sanctioned and certainly reasonable, in the event the Court finds that an affordable housing site or other compliance mechanism should be replaced I recommend the Borough be given the opportunity to supplement its Fair Share Plan to correct any deficiency while being protected by immunity from builder remedy litigation.

Compliance for this item will be determined at the appropriate time. This item will be addressed as a condition of approval.

10. Within 30 days of every third anniversary of the Agreement the Borough will publish on its website and submit to FSHC a status report regarding its satisfaction of the very-low income requirement pursuant to N.J.S.A. 52:27D – 329.1.

Compliance for this item will be determined at the appropriate time. This item will be addressed as a condition of approval.

#### **D. COURT'S FINDING AND CONCLUSION**

The Court finds that the Fair Share Plan is generally consistent with the Court-approved Settlement Agreement, the Fair Housing Act, and COAH's Second Round rules, the Borough must correct some minor deficiencies in the Plan and supporting documentation. Those deficiencies shall be conditions of the Judgment of Compliance and Repose that will be issued by the Court. The conditions shall include:

1. The Borough shall provide evidence of opt-in to the County rehabilitation program, if required.
2. The Borough shall provide rehabilitation manuals for the referenced municipal program of two units.
3. The Borough shall provide crediting information for the Polo Club and Dumont Road apartments. This shall be provided as an appendix to the Fair Share Plan.
4. The Borough shall provide an amendment for the Fair Share Plan that documents compliance with bedroom distribution requirements.
5. The Borough shall amend the affordable housing ordinance and accessory apartment ordinance to provide consistency between the two. This includes where accessory apartments are permitted, the amount of subsidies and distribution of low and moderate income units.
6. The affordable housing ordinance shall be amended to include language that the 13% very low income unit requirement be spread across the required bedroom distribution requirements.
7. The Borough should discuss the qualifications of the appointed administrative agent.
8. The spending plan should be amended to identify specific programs where funds in excess of those identified can be spent.
9. The Court should approve the Borough's development fee ordinance.
10. Any judgment considered by the Court should be conditioned on compliance with continuing monitoring requirements.

The Conditions shall be met within one hundred twenty (120) days from the date of the Judgment.

# EXHIBIT I



**BOROUGH OF FAR HILLS****PLANNING BOARD****RESOLUTION NO. 2022-10**

Case No.: PB 2021-07  
220 Route 202  
Block 5, Lot 4

**WHEREAS**, Pulte Homes of NJ, Limited Partnership (referred to herein as the “Applicant”) has applied to the Borough of Far Hills Planning Board (the “Board”) seeking preliminary and final major site plan and subdivision approval to construct a multi-family development consisting of 105 age-restricted townhouse dwellings and an apartment building consisting of 29 affordable apartments (25 family affordable units and 4 age-restricted affordable units) as well as other related site improvements and variance relief. All of the foregoing relates to the property located at 220 Route 202, presently designated Block 5, Lot 4 on the Borough of Far Hills Tax Map (the “Property”); and

**WHEREAS**, public hearings were held on July 5, 2021, August 2, 2021, August 14, 2021 (a publicly noticed site visit), September 22, 2021, October 4, 2021, November 1, 2021, November 23, 2021, December 6, 2021, January 3, 2022, and February 7, 2022 during which the Board reviewed the application and supporting materials filed by the Applicant and from witnesses on behalf of the Applicant, reviewed and received exhibits, heard oral argument offered by Applicant’s counsel, reviewed municipal reports, heard comments from its consultants, attended a noticed site visit, and gave members of the public an opportunity to be heard; and

**WHEREAS**, the following exhibits were submitted into the record as evidence during the hearing, are on file with the Board, and are part of the record in this matter:

- A-1 Neighborhood Aerial Image
- A-2 Site Aerial Image
- A-3 Environmental Site Constraints
- A-4 Site Rendering

- A-5 Storm Water Management Exhibit
- A-6 Water Main Extension
- A-7 Lighting Plan
- A-8 Grading and Utility Rendering
- A-9 Aerial Perspective
- A-10 Architectural Renderings
- A-11 Street Scape Perspective
- A-12 Architectural Imager
- A-13 Sewer Treatment Building Façade Elevations
- A-14 Overall Site Rendering dated
- A-15 Stormwater Management Systems Exhibit
- A-16 Landscape Plan
- A-17 Stream Buffer Exhibit

- O-1 NJ-GeoWeb Map
- O-2 Map of Contaminated Sites
- O-3 Historical and Archeological Resources Map
- O-4 Critical Habitats Map
- O-5 Overall Site Concept Map
- O-6 Figure 2 from the Borough's 2003 Master Plan Report
- O-7 2003 Master Plan, Figure A-9
- O-8 2003 Master Plan, Figure A-10
- O-9 2003 Master Plan Report, Figure A-13

**WHEREAS**, the Board has considered all of the application materials, the testimony, reports, exhibits, comments of the Board's consultants, legal argument of counsel for the Applicant, presentation by Arthur Owens, Esq., attorney for Objector Suzanne Voorhees and comments and questions made by members of the public; and

**NOW, THEREFORE BE IT RESOLVED**, by the Planning Board of the Borough of Far Hills that based upon the foregoing the following findings of fact and conclusions of law are made.

1. This is an application for Preliminary and Final Major Site Plan, Preliminary and Final Major Subdivision and variance approval to permit the construction of a proposed multi-family residential development on Lot 4, Block 5 which is a primarily wooded 42.304 ± acre lot situated along the northbound U.S. Route 202 lying generally across from Lake Road and within the Borough's Townhouse Inclusionary Age-Restricted Residential Zone ("TH-6-IAR Zone").

2. The TH-6-IAR Zone was created as part of the Borough's affordable housing

settlement agreement with Fair Share Housing Center and an affordable housing settlement agreement with the Melillo Equities, LLC dated December 9, 2019, with both agreements approved by the Court. The zoning is part of the Borough's affordable housing plan that has been approved by the Court.

3. There is residential development to the north, east, west and south of the site; Far Hills Village is located to the west of the property, Far Hills Country Day School located to the northeast of the property, and NJ Transit railroad located to the south of the property.

4. The tract contains three residential structures and apartments located in the center of the property comprising approximately 6 residential units. The buildings are clustered near the original agricultural uses of the original estate property, with the apartments in out-buildings and small accessory structures for agriculture. The remainder of the property is wooded with an area of fallow agriculture field in the northeast portion of the property. The site is characterized by upland and successional fields, upland forest areas, wetlands and maintained landscaped areas.

5. The proposed development represents a significant portion of the Borough's affordable housing plan, which addresses the Borough's constitutional affordable housing obligation and insulates the Borough from builder's remedy lawsuits.

6. The proposed site plan is consistent with the TH-6-IAR Zone and the site plan and architectural drawings that are exhibits to the affordable housing agreement between Melillo Equities and Far Hills dated December 9, 2019 (the "Affordable Housing Agreement").

7. Consistent with COAH regulations and the affordable housing agreement, the Board may grant reasonable variances and relief associated with the inclusionary development.

8. Portions of Lot 4 are encumbered by environmental constraints despite its large area, and the environmental constraints include the following:

- a. The site topography ranges from gently sloping near the Route 202 frontage to very steeply sloping towards the rear of the property, the NJ Transit railroad and the Mine Brook.

- b. The site ranges from approximately elevation 300 in the northeast corner of the site near Route 202 to approximately elevation 180 at the southern property boundary.
- c. Steep slopes are generally manmade in the areas around the existing development and along the on-site stream.
- d. There are NJDEP regulated areas on the property, which have been verified by NJDEP Freshwater Wetlands Letter of Interpretation and Flood Hazard Area and Riparian Zone Verification.
- e. Freshwater wetlands are present in two main locations on the site: near the northeast portion of the property near the proposed entrance and adjacent to the state open water that bisects the southern portion of the property.
- f. Both areas of wetlands were deemed intermediate resource value and therefore subject to 50-foot transition areas.
- g. The Mine Brook is located just south of the railroad right-of-way along the southern property boundary and is a tributary to the North Branch of the Raritan River.
- h. A portion of the flood hazard area of the Mine Brook encroaches in the southeast corner of the property.
- i. The on-site water feature meets the definition of a stream and is subject to the Borough stream corridor buffer.

9. The Applicant was represented by Craig M. Gianetti, Esq., of the law firm Day Pitney LLP. He presented the testimony of Jim Mullen and Rob Holmes of Pulte Homes, Ron Kennedy, P.E., Bruce Englebaugh, AIA, Adam Stern, P.E., Wastewater Planning Engineer, Gary Dean, P.E., Traffic Engineer and Paul Phillips, P.P.

10. The Applicant presented the testimony of Jim Mullen, Director of Land Entitlements for the Applicant and Rob Holmes, Vice President, Northeast Corridor Division, of Pulte Homes. They

testified as follows:

- a. The Applicant is a national home builder based in Atlanta, Georgia with 40 divisions throughout 23 states in the United States.
- b. The Northeast Corridor Division located in Basking Ridge, New Jersey has been in existence since 1997, and closed 360 homes in 2020.
- c. The Applicant is the contract purchaser of the property and is proposing to build 105 age-restricted townhomes. A condominium association will be created and all the homeowners will be members.
- d. The affordable housing apartment building will have 25 non-age restricted and 4 age-restricted rentals to help the Borough satisfy its COAH requirement. These units will be owned and managed by Melillo Equities.
- e. Though the Applicant could not commit to a minimum sales price for the market-rate senior townhouse units, the Applicant did believe, in the current real estate market, they would expect these units to sell for about \$850,000. However, in the end, the sales price will be dependent upon the real estate market at the time the units are sold, which could be a few years from now.

11. The Applicant presented the testimony of Ronald Kennedy, P.E. of Gladstone Design, the Applicant's Civil Engineer, who prepared the site plan set and reports. He testified as follows:

- a. The proposed multi-family residential development is comprised of 24 residential buildings and one utility structure. The residential buildings are broken into 23 four-bedroom townhouse buildings with a total of 105 townhouses units. One multi-family building will consist of 29 apartment units varying between one and three bedrooms.
- b. The associated development includes access streets in compliance with New Jersey Residential Site Improvement Standards ("RSIS"). The streets are low intensity residential and multi-family courts. Sidewalks are provided on one side of the street internal to the development. Guest parking areas are provided throughout the development for the townhouses and two main parking lots are provided around the apartment building. Walking paths are provided around the perimeter of the development. There is a sewage treatment building and associated groundwater recharge field in connection with the on-

site treatment facility for sanitary sewerage.

- c. The subdivision of the tract will involve 105 individual lots for each market rate townhouse, a common elements lot associated with the townhouse community and a lot for the apartment building.
- d. The 105 market-rate age-restricted townhouses will have two different model types with four bedrooms each. The townhouses will be two stories, though some units, due to the topography and grading are two stories with a walk-out basement in the rear. Each unit will have a two-car garage and a two-car driveway, with each building containing 4-5 units.
- e. Four of the units in the apartments would be affordable age-restricted rental units. The remaining 25 will be affordable family rental units. The three-story multi-family building will contain a total of 29 affordable units; 9 one-bedroom units, 15 two-bedroom units, and 5 three-bedroom units. The main boulevard entrance at Route 202 off of the traffic circle leads to the multi-family parking lots, and there are 58 spaces within the parking lot, inclusive of 3 ADA spaces.
- f. Sidewalks are to be provided on one side of the road throughout the proposed development, with one exception being along Dillon Boulevard, where no sidewalk is proposed.
- g. The proposed development is designed to take advantage of the existing grades on the property, with roadways graded between 1% and 7% and walkout basements provided on most down-slope townhouse units. The multi-family building is stepped into the grade to take advantage of the site topography and to minimize the visual impact along the roadway.
- h. The total amount of tree removal for the project is 610 trees. The total area of disturbance for construction is 25.7 acres. The Applicant is planting 959 trees, wherein 357 will be evergreen trees and 602 will be deciduous and ornamental trees. Perimeter landscaping is provided to buffer the development from surrounding roads and residential neighbors with shrubs, groundcovers, and grasses that are proposed throughout the development.

- i. The proposed site signage includes 1 identification sign at the traffic circle internal to the site, which will be a ground mounted sign that is 8 square feet in size and 2.5 feet high. All signs will comply with ordinance standards.
- j. A total of 43 pole mounted lights are proposed for the internal roads and parking lots with a mounting height of 14 feet. Lights will remain on from dusk to dawn and the proposed plan complies with ordinance requirements for lighting levels.
- k. The proposed development is considered a major development under N.J.A.C. 7:8 stormwater regulations as it is over  $\frac{1}{4}$  acre of new impervious surfaces and disturbs more than 1 acre of land. The proposed development will manage the stormwater utilizing low impact, green infrastructure practices including several small-scale bio-retention basins, underground infiltration basins and a detention basin as described in the stormwater management report. There are a total of 12 basins on the property designed to treat, recharge, and attenuate the runoff for the proposed development.
- l. A gravity system from the entire project shall be utilized as the sanitary sewer collection system, which will drain to the sewer treatment building in the southern portion of the development. A force main will connect the sewer treatment building to the groundwater recharge field at the front portion of the site. The total flow from the project is 29,850 gallons per day. The recharge field is located in an open meadow which has limited vegetation. This area was identified as having the best soils for this type of recharge.
- m. As to potable water, the Applicant is working with New Jersey American Water Company (NJAWC) on the design of the water system, with fire hydrants being reviewed by the Fire Official. The multi-family units will have sprinklers while the townhouse units will not. The total domestic water demand is approximately 29,206 gallons per day. PSE&G looped gas lines will be installed throughout the townhouse roads, and all electric and telecommunications lines will be underground.
- n. Mr. Kennedy also testified as to the sales trailer and temporary signage plan, which will be temporary during construction and sales of the townhouse units. The Applicant indicated that the sales trailer and sales signage would remain for as long as the Applicant is selling townhomes. The Applicant anticipates that it will sell all of the townhomes

within 3 years of the date it obtains the first building permit.

- o. Mr. Kennedy testified that based upon board member and board professional comments, that the plans were revised to add a recreation area.
- p. Mr. Kennedy testified, from an engineering perspective, to the justifications for some of the variance relief the Applicant is seeking, particularly, variance relief for steep slope disturbance, stream corridor buffer and scenic corridor.
- q. With respect to the steep slope disturbance, the Applicant is proposing to disturb approximately 27,793 sq. ft. of steep slopes in the 15% to 25% category where only 6,520 sq. ft. of such steep slopes may be disturbed per Ordinance. The Applicant is also proposing to disturb approximately 8,672 sq.ft. of steep slopes in the 25% to 35% slope category where none is permitted per Ordinance and proposing to disturb approximately 5,395 sq. ft. of steep slopes in the 35% and greater category where none is permitted per Ordinance.
- r. Mr. Kennedy noted that most of these steep slopes are located toward the rear of the existing development and are “man-made” as opposed to naturally occurring within the Mine Brook stream corridor, therefore, their intrinsic value is not as high as naturally occurring steep slopes. Most of the disturbance associated with the development is due to grading towards the rear of the property and the two stormwater management basins towards the rear of the development.
- s. With respect to the Stream Corridor Buffer, Mr. Kennedy noted that the project complies with the NJDEP stream buffer requirements. However, the Borough’s stream corridor ordinance buffer requirement measures from the bank of the watercourse and the edge of contiguous wetlands and slopes greater than 12%. Therefore, the Borough’s stream corridor buffer extends significantly beyond the NJDEP’s stream corridor buffer. This is mostly due to the man-made slopes on the property near the stream corridor. Only one of the townhouse units, small portions of the internal roadways for the townhouses and the edge of the parking lot for the apartment building are within the Borough’s stream corridor as defined by ordinance.
- t. Mr. Kennedy stated the layout could be revised to place some of the townhouse units



and roadways closer to the property line, but from a buffering perspective with the adjacent property owners, this minimal disturbance in the center of the property is more appropriate. Further, the Applicant is offering to designate a significant wooded area, located towards the rear of the property that is not wetlands nor located in a regulated area, as a conservation easement.

- u. With respect to the scenic corridor ordinance variance relief sought, the Applicant is proposing to locate the recharge field for the on-site treatment facility within the 200 ft. scenic corridor buffer along Route 202. This location was selected because it had the best geologic and hydrologic features for groundwater recharge. The area is primarily an existing meadow area with minimal tree and forest vegetation. The entire system is underground so it is not visible and does not impact the scenic corridor in anyway.
- v. The project includes a major subdivision. Proposed Lot 4.01 consists of approximately 31.8 acres, has frontage along Route 202, and generally includes the improvements and open areas associated with the Townhouse Development. Proposed Lot 4.02, which includes a 50' stem to Route 202, consists of approximately 3.17 acres and includes the apartment building and associated improvements. Proposed Lots 4.03 through 4.107 include 105 fee simple age restricted townhouse lots of varying size.

12. The Applicant presented the testimony of Bruce E. Englebaugh, AIA of Minno & Wasko, the Applicant's Architect, who prepared the architectural plans. He testified as follows:

- a. The general architectural character of the proposed development is a contemporary interpretation of a Farmhouse. This includes traditional style features such as gable roofs, sloped roofs with turned accent gables, roof dormers, siding, gooseneck light fixtures, metal pent roofs as accents, eave supports with brackets and exposed beams, and gutters and accent details being black/dark grey.
- b. Mr. Englebaugh outlined how the materials proposed for the project are envisioned to look when constructed by comparison to an actual photograph. This involved a discussion of the dimensional shingles, fascia and shadow board (rake board), horizontal and board and batten siding, standing seam metal roof accent (pent roofs), oversize 5 inch black "K" style gutter, window and corner trims, gooseneck lighting fixture, and full

brick wainscoat.

- c. Mr. Englebaugh outlined the Applicant's interior products and options, including ceiling treatments, wall finishes, stairs and railings, kitchen finishes and appliances, and bathroom finishes.
- d. Mr. Englebaugh described the proposed design for the sewer treatment building, such as an increased roof slope, the addition of secondary "turned" gables, addition of roof dormers, addition of a cupola, and the addition of a retaining wall.
- e. In response to Board member comments about the architectural features, Mr. Englebaugh revised the plans so that more buildings will have side and rear enhanced "high visibility treatments". The elevation of the structures was revised to provide a unique and modern farm house style look with dark and light colors and a "saw-tooth" type layout to create depth and dimension from a visual perspective. The sewer treatment facility building was also significantly enhanced from a visual perspective to ensure it was in harmony with the rest of the development. Details of the proposed alternative architectural treatments are identified in Exhibit A-12 "Architectural Imager" and in the revised architectural plans dated October 19, 2021 submitted to the Board.
- f. Mr. Englebaugh identified that 34 of the townhouse units, which have walkout basements, would require a height variance for having a height of 38.1 ft. where a maximum height of 36 ft. is permitted per Ordinance. Mr. Englebaugh noted that the height variance is a function of the Borough's definition of height and how it is measured in relation to the topography of the site. The 34 units with walk-out basements have an attractive exterior appearance coordinated with the existing site topography. He noted that the units could conform without reducing the physical height with more grading (which is not desirable) and having exposed basements without a walk out design, but that would not be as attractive or as desirable as the walk-out units proposed.

13. The Applicant presented the testimony of Gary Dean of Dolan & Dean, the Applicant's Traffic Engineer, who prepared the Traffic Impact Assessment for the project. He testified as follows:

- a. Site access is proposed via a single full-movement driveway along northbound Route 202,

approximately 365 feet to the north of Lake Road. This driveway location and design meets NJDOT standards and is subject to its review and approval of a highway access permit. The design also meets the requirements under RSIS for a divided roadway to the first intersection to provide an alternate means of emergency vehicle access.

- b. The property is located near US State Route 202, a highway under NJDOT jurisdiction, and Lake Road, a local roadway with a general northwest/southeast orientation.
- c. All movements at the Lake Road intersection would typically operate at Level of Service "D" or better during both peak hours.
- d. The site development proposes 134 residential units with off-street parking to be provided in compliance with RSIS standards. Using the industry-standard ITE trip generation rates for "Multi-Family Housing (Low Rise)" and "Senior Adult Housing-Attached," the projected total trip generation for the proposed development is 36 trips in the morning peak hour, and 48 trips in the evening peak hour.
- e. The proposed access design will adequately accommodate peak hour traffic associated with the traffic volume projections and he confirmed that extensive on-site queuing will not occur.
- f. The RSIS requires a total of 310 on-site parking spaces, whereas 481 spaces are proposed. The proposed parking supply will adequately provide available spaces during peak demand periods.

14. The Applicant presented the testimony of Adam Stern of NSU, the Applicant's Sanitary Sewer Engineer, who prepared the on-site sewer treatment plans. He testified as follows:

- a. Mr. Stern discussed the background of NSU and his company's significant experience with on-site treatment facilities.
- b. Mr. Stern described the regulatory basis for the provision of on-site sewer to the proposed development, in particular with the NJDEP. This type of on-site sewer treatment is becoming more common in residential developments, throughout the country, including New Jersey.

- c. He described several similar systems in Somerset and Morris Counties, including how the systems operate and the reliability of these systems.
- d. Mr. Stern testified as to the safety of the system and all of the redundancies to ensure the system functions properly, including backup equipment, routine inspections, and reporting to the NJDEP. Mr. Stern opined that he was confident the system would function properly.
- e. The Applicant confirmed that the HOA would own the on-site system and contract with a service provider (NSU or the like) to operate and maintain the system. The Borough would have no responsibility or no liability with respect to the on-site treatment system.

15. The Applicant presented the testimony of Paul Phillips, P.P./AICP/MUP, the Applicant's Professional Planner, who reviewed the variance plans, reports, Borough zoning ordinance and master plan, and Affordable Housing Agreement. He testified as follows:

- a. With respect to the height variance, 34 of the proposed townhouse units have building heights in excess of the 36 foot height limit for the zone. The height of these units is 38.1 feet. The remaining 71 townhouses are compliant.
- b. Mr. Phillips testified that the addition of walk-out basements for townhouses in downslope areas results in less earthwork and site grading, including potentially less steep slope disturbance.
- c. The key mitigating factors are that the Applicant does not exceed the 2 ½ story limit and that the exposure of the rear elevations of these units is not to any internal street, so it is not visible from the front. Further, due to the slope of the roof, from the rear, the unit looks like a two story structure.
- d. Mr. Phillips opined that the variances qualified as a (c)1 hardship variance due to the existing topography of the property and a c(2) variance as the grant of the variance promotes the general welfare [purpose a], conserves open space and valuable resources with less grading and slope disturbance [purpose j] and promotes a desirable visual

environment [purpose i].

- e. As to steep slope disturbance, the rear area of the property is not being disturbed. The slope disturbance occurs in a centrally located area, where the slopes are man-made. There is no inherent benefit in protecting the man-made slopes. Again, Mr. Phillips opined that this relief could be granted under a c(1) hardship theory due to the topography and a c(2) variance rational in that the inclusionary development promotes the general welfare [purpose a], allows for sufficient space in appropriate locations for a variety of uses and open space [purpose g]; and allows for a more efficient use of the land [purpose m].
- f. As to the Stream Corridor Buffer, the project's intrusion into this buffer is small, consisting of a small portion of the internal road, one townhouse unit and the edge of the parking area for the apartment building. The Borough's 100-foot buffer limits extend well beyond the State regulated wetland areas, wetlands transition areas, and riparian zone, impacting the ability of the Applicant to meet the intent of the inclusionary affordable housing zone without there being some disturbance within this buffer area. There are no other areas on the site where alternative construction or disturbance could be achieved without moving the development closer to the property line as opposed to what is proposed – the center of the property that is not visible from adjacent properties.
- g. Mr. Phillips testified that the mitigating factor here is that the Applicant is also providing an additional forested conservation easement area consisting of approximately 14.6 acres on land beyond the municipal stream corridor buffer, extending to the easterly lot boundary that will connect with existing conservation easement areas on three (3) of the adjacent single family lots on adjoining Castle Court (2 of which have yet to be built) consisting of approximately 20.8 acres. In total between the on-site conservation easement and the adjoining conservation easement, there will be approximately 35 acres in a conservation easement.
- h. Mr. Phillips opined that the variance relief can be granted as a c(1) hardship given the man-made slope artificially extends the buffer otherwise required in a naturally occurring condition and under a c(2) rational since the relief: allows for adequate light, air and open space by preserving more developable land than disturbing of constrained land [purpose

c], provides sufficient space for a variety of uses [purpose g] and conserves open space and natural resources [purpose j].

- i. With respect to placing the underground recharge area in the Scenic Corridor buffer, the sewer expert testified that there is no other location on the tract with similar geologic/hydrologic features, specifically in terms of achieving acceptable levels of recharge/nitrate dilution, and the existing area is a meadow with limited vegetation.
- j. Mr. Phillips testified that there are several mitigating factors here, (i) the recharge area is located in a largely open lawn area so only a handful of mature trees will actually be removed; (ii) the Applicant is proposing extensive new plantings on all sides of the recharge area; and (iii) the Applicant can utilize the recharge area as an open, passive/recreational amenity for the entire development.
- k. Mr. Phillips opined that this would be a c(1) hardship variance and a c(2) flexible variance in that this is the ideal location for the recharge system and it is underground and has no visible impact to the scenic corridor.
- l. Mr. Phillips reminded the Board that COAH regulations require Board's do grant reasonable variances and relief for inclusionary developments such as this and that the justifications provided in his testimony makes the grant of there relief more than reasonable.

16. The Board reviewed with the Applicant the Board Engineer's review letters dated May 19, 2021, July 2, 2021, and November 5, 2021 as well as the Board Traffic Engineer's review letters dated August 27, 2021 and November 19, 2021. The Board also reviewed with the Applicant, the Board Planner's review letters dated July 5, 2021, August 2, 2021, November 23, 2021 and January 3, 2022.

17. An exception is required from the Residential Site Improvement Standards (RSIS), which requires sidewalks on both sides of the proposed streets, where sidewalks are proposed on one side of the streets, generally throughout the development. The TH6-IAR zone requirements permit sidewalks on one (1) side of the street.

18. Members of the public asked questions of all of the Applicant's witnesses and provided some comments opposing the project, particularly related to concerns of traffic, visual impacts, stormwater management and the on-site treatment facility.

19. One member of the public, Suzanne Voorhees, was represented by counsel, Arthur Owens, Esq. Mr. Owens presented his own planning expert, Barbara Wooley-Dillon.

20. Ms. Dillon testified as follows:

- a. Ms. Dillon is a licensed professional planner with most of her experience in "shore communities" though she had done some work as far north as Union City. She had never worked on a project or for a town in the Far Hills area.
- b. Ms. Dillon opined that several other variances were necessary because the individual townhouse lots did not conform to the overall bulk standards of the zone. However, on cross-examination, she acknowledged that Section Q of the TH-6-IAR Zone allows for the property to be subdivided with individual lots for the townhouses and the apartment building, but that the bulk standards would apply to the overall tract as opposed to the individual townhouse lots.
- c. Ms. Dillon raised concerns about traffic and environmental impacts. However, on cross-examination, she acknowledged she is not a civil engineer, a traffic engineer or an environmental expert. She also acknowledged that some of the mapping she relied upon for her exhibits from the NJDEP GeoWeb is not entirely accurate or reliable and that the NJDEP would perform a more site-specific review of the environmental factors she raised as part of the NJDEP permits being sought.
- d. Ms. Dillon testified that the project and relief was inconsistent with the 2003 Master Plan, but acknowledged that the 2019 amendment to the Housing Element and Fair Share Plan (which is part of the Master Plan) specifically called for the rezoning of this property for this project.

21. As a result of the foregoing, the Board agrees with the opinions of the Applicant's

Planner justifying the variances under c(1) variance and c(2) variance relief and adopts the same as its own. Given these findings, along with the importance of this inclusionary project to the Borough's affordable housing plan, the benefits of the project as whole with the deviations substantially outweighing any detriments, the Board finds that the Applicant satisfied the positive criteria for these variances. Further, the Board finds that the negative criteria of the variances have been satisfied. The granting of the relief will not cause a substantial detriment to the public good or have a substantial impact to the intent and purpose of the zone plan. The overall development is consistent with the zone plan as this site was specifically identified for this exact development proposed. The impacts are minimal as the height variance and scenic corridor variance have no visual impact to the public and the stream corridor and steep slope disturbance allow for minimal development in the center/rear of the property and limiting development closer to the property line, having less impact on the surrounding public.

**NOW, THEREFORE BE IT RESOLVED**, that for the reasons set forth above the application of Pulte Homes of NJ, Limited Partnership for preliminary and final major subdivision approval and preliminary and final major site plan approval (in accordance with the revised architectural plans) with variance relief and the exception as noted from the Residential Site Improvement Standards is hereby approved and granted subject to the following conditions:

1. Compliance to the satisfaction of the Board Engineer with the comments of the Borough Engineer in his May 19, 2021, July 2, 2021, and November 5, 2021 review letters.
2. Compliance to the satisfaction of the Board Planner with the comments of the Borough Planner in his review letters of July 5, 2021, August 2, 2021, November 23, 2021 and January 3, 2022.
3. Compliance to the satisfaction of the Board Traffic Engineer with the comments of the Board Traffic Engineer in his review letters of August 27, 2021 and November 19, 2021.
4. The Applicant shall provide "as built" plans from a licensed surveyor and furnish same to the Borough Engineer for review and approval. The as-built of the individual buildings shall be provided prior to the individual buildings receiving certificates of occupancy. The as-built of the infrastructure shall be provided by prior to 90% of the certificates of occupancy being issued for the project (90% of 134 total units equals 121 total units or 121 certificates of occupancy).



5. The Applicant shall obtain confirmation of the block and lot numbers of the property from the Tax Assessor and revise all plans as may be required.

6. Approval by the governing body of the street names.

7. The Applicant shall submit the following easements to the Borough Attorney and Borough Engineer and the Borough Planner. All easements to which the Borough is a party is subject to the review and approval of the Borough Attorney, the Borough Engineer and the Borough Planner:

- a. Scenic Corridor
- b. Stream Corridor
- c. Conservation Easement
- d. Utilities including sanitary, water, electric/telephone/cable
- e. Drainage
- f. Stormwater Maintenance
- g. Cross Agreements between Lots 4.01 and 4.02
- h. Driveway Sight Easements – Board Traffic Engineer shall also review

8. The Applicant shall obtain any necessary local, county, state or federal approvals for the project, particularly:

- a. All required NJDEP permits and approvals, including but not limited to wetlands, sewer service area, and TWA approval
- b. Somerset Union Soil Conservation District Approval
- c. Somerset County Planning Board Approval
- d. NJDOT approvals including an Access Permit

9. The Applicant shall prepare and submit the requisite number of prints of the final subdivision plat subject to the review and approval of the Borough Engineer

10. The Applicant shall submit engineering estimates and performance guaranteesecurity for all required improvements in accordance with the Municipal Land Use Law (“MLUL”), subject to the satisfaction of the Borough Engineer and the Borough Attorney.

11. The Applicant shall enter into a Developer Agreement with the Borough.

12. Taxes, municipal charges, escrows and other fees are to be paid and kept current in accordance with the MLUL.

13. The affordable housing apartment building materials will be the same as the townhouses with similar and compatible exterior architectural elements.

14. The Applicant shall submit a deed restriction, which shall be included in the HOA declaration of covenants, regarding the maintenance of the meadow area satisfactory to the Borough Attorney and the Borough Engineer.

15. Demolition and removal and/or disposal of any existing structures shall be in accordance with all laws and regulations.

16. Not by way of limitation, but to the extent not specified elsewhere or already satisfied, Applicant shall furnish, perform or otherwise satisfy those matters identified in the October 1, 2021 submission letter from Gladstone Design, Inc.

17. The Applicant shall install a conduit for laying of wiring of the electrical vehicle (EV) charging stations for nine (9) guest parking spaces for the apartment building and shall comply with the state's recently adopted EV supply equipment statute to the extent it is applicable. The location of the EV parking spaces shall be reviewed and approved by the Borough Engineer. The EV parking spaces shall be limited for use by only the residents and their guests of the development.

18. The Applicant shall submit Homeowner's Association (HOA) documents subject to the review and approval of the Borough Attorney and the Borough Engineer prior to obtaining a building permit.

19. The HOA shall be responsible for the maintenance of the common improvements, including the stormwater management system for the project.

20. The HOA shall be responsible for the operation and maintenance of the sewer treatment facility and system and will demonstrate adequate security for the benefit (no bonding) of the Borough in the form of the Reserve Schedule set forth in the HOA Annual Budget regarding continuing operations, proper maintenance and protection against the results of catastrophic failures.

21. The HOA shall be responsible for maintenance of any EV charging stations located in common areas and guest parking spaces. EV charging stations located on the affordable housing lot shall be maintained by the owner of that lot.

22. Before the movement of any soil (export/import) the Applicant shall schedule the times, routes, volumes, tracking pads, street cleaning with the coordination of the Borough Police Department and the Borough Engineer as part of a pre-construction meeting. The Applicant shall test all imported soil and provide sourcing information.

23. The Applicant shall furnish water main extension plans to the Borough Engineer for review and approval.

24. The Applicant shall obtain United States Postal Service and local postal office approval of the "ganged" mailboxes prior to issuance of the first certificate of occupancy.

25. Prior to any tree removal, the Applicant shall stakeout the clearing limits in the field which shall be subject to review and approval from the Board professionals. Tree removal shall be in accordance with NJDEP requirements as applicable and shall be reviewed and approved by the Borough Engineer and Borough Planner. Applicant shall avoid damage to trees to remain and shall avoid root compaction by restricting heavy equipment traffic within the dripline of trees to remain.

26. The Applicant shall provide satisfactory installation of appropriate protection for tree removal. The tree removal schedule to the extent practicable shall avoid erosion problems. During construction, the Borough Engineer may require the Applicant to install erosion control measures, such as double silt fencing, staked haybales, etc., where in the reasonable opinion of the Borough Engineer such measures are necessary to address possible erosion concerns and emergent weather conditions.

27. The Applicant or the HOA, as the case may be, shall test the emergency generator for wastewater treatment facility once per week, which shall be limited between the hours of 10:00 a.m. until 2:00 p.m. Tuesdays through Thursdays.

28. The Applicant shall amend its landscape plan to provide plan notes regarding maintenance and retention of the general wooded area along the front portion of the property. The walking path is to be natural and not be mowed.

29. The Borough Engineer and Planner shall review the proposed reforestation tree species to be planted and the Applicant agrees to accommodate any reasonable tree species replacements or substitutions that may be recommended by the Borough's professionals consistent with the NJDEP-approved list of tree species for reforestation.

30. The sewer treatment building will be constructed with the same materials and compatible designs and features as the townhouses and the affordable housing building.

31. The Applicant shall submit a plan for clearing to create sight easements at the access driveway. The execution of same shall be subject to review and approval of the Board's Traffic Engineer. Clearing for any sight easements and or required sight distance at the access driveway shall be subject to review and approval from the Board Traffic Engineer and Borough Planner. Supplemental plantings shall be provided as may be required outside the sight easements subject to review and approval from the Borough Planner.

32. The Applicant shall remove invasive species from the wooded area to remain along Route 202 frontage and within the conservation easement and reforestation area and this shall be coordinated with the Borough Engineer and the Borough Planner and subject to any NJDEP requirements.

33. Any adjustments to the site plan to address stormwater management comments of the Board Engineer or comments from the NJDEP shall not result in any changes to the layout of the buildings or the roadway network. Any such material change must be brought back to the Board for review as an amendment to the current approval.

34. The Applicant shall comply with the COAH phasing schedule for producing the affordable units, except as may be modified by the Borough in the Developer's Agreement since the market-rate for-sale townhouses are provided in 23 four- and five-unit buildings and the affordable units are rental apartments contained wholly within one building.

35. As noted on the Sales Trailer and Model Home Plot Plan, the hours for displaying and location of the feather flags shall be addressed as part of the Developer's Agreement. Sales trailer and model home plan improvements shall be removed no later than after marketing and sales are completed

with best efforts to conclude within three (3) years of the commencement of building construction

36. The Applicant's satisfaction of all comments and agreements made during testimony before the Board except as may be modified herein.

37. All conditions contained in this Resolution and in the record of proceedings in this matter including any agreements made by the Applicant were essential to the Board's decision to grant the approvals set forth herein.

38. The development of this Property shall be implemented in accordance with the plans submitted and as approved. In the event the Applicant shall make or propose any material changes to the Project or structures on the Property from those shown on the revised and approved plans and exhibits approved for this application, whether these changes are voluntarily undertaken or required by any regulatory agency, Applicant shall submit any such material changes to this Board for review, approval and/or determination as may be the case.

39. The Borough reserves the right to request additional reasonable and customary site improvements should actual field conditions vary from what is depicted on the Approved Plans and/or is indicated by the design.

40. Site work shall not commence prior to compliance with the terms and conditions set forth herein, except for those conditions that cannot be satisfied until after commencement of site work.

41. The granting of the site plan approval specified herein shall not be construed to include satisfaction of the Uniform Construction Code of the State of New Jersey.

42. The Applicant shall comply with all applicable affordable housing requirements as required by the Borough ordinances which have been adopted to implement UHAC regulations, including but not limited to income distribution, phasing in the affordable units (except as may be modified by the Borough), heating source, accessibility and adaptability, amenities, size of units and bedrooms.

- a. The 29 affordable rental units shall be comprised of 25 family units and 4 age-restricted units in accordance with the following bedroom mix and affordable income requirements.

Family Units	VLI	Low	Mod	Total	Req*
1BR	1	2	2	5	5
					0%
2BR	1	7	7	15	15
					0%
3BR	1	2	2	5	5
					0%
<b>Total</b>	<b>3</b>	<b>11</b>	<b>11</b>	<b>25</b>	

Age-Rest. Units	VLI	Low	Mod	Total
1BR	1	1	2	4

43. The Applicant shall engage an experienced affordable housing administrative agent responsible for affirmative marketing, tenant income verification and qualification. The Applicant shall obtain approval of the Affordable Housing Professional Services Agreement by the Borough Attorney and/or the Borough Planner. Affirmative marketing, prospective tenant income verification and tenant qualification activities shall ensure that a qualified pool of Applicants is established for building occupancy at the time a certificate of occupancy is issued for the affordable housing apartment building.

44. With respect to the affordability control period for the affordable units, the Applicant shall submit deed restrictions in accordance with UHAC. At the end of the affordability control period, nothing shall preclude the Borough from electing to release the affordability controls in accordance with applicable law.

45. Wheel turning movements for school buses need to be provided for review and approval to the Board's Traffic Engineer.

46. The emergency generator for the wastewater treatment plant shall be enclosed within a waterproof sound attenuating enclosure. Enclosure details shall be subject to review and approval by the Board Planner.

47. The Applicant has indicated a hot box is not required for the project. Should a water connection hot box be needed at some point in the future, design and installation will require amended site plan approval from the Board.

48. The Applicant agreed to provide a backup power source (battery pack) for the affordable housing building to ensure common areas and emergency lighting would have power during power outages. Details and/or notes for the backup power source shall be provided on the plans.

49. The Applicant shall maintain control of the construction site at all times to prevent unauthorized access to the site.

50. Applicant shall submit a Resolution Compliance Package itemizing and addressing each condition of approval, which must be satisfactorily completed prior to exercising the rights and privileges of this approval and the relief granted.

51. Applicant shall comply with all statutes, ordinances, rules and regulations of the United State of America, State of New Jersey, County of Somerset and Borough of Far Hills.

52. This Memorializing Resolution shall be recorded with the Somerset County Clerk's office. A copy of the recorded instrument shall be filed with the Borough Attorney, Borough Clerk and Planning Board Secretary.

53. It is acknowledged that the developer of the market-rate townhouses and the developer of the affordable rental building may be undertaken by separate entities. The conditions of this resolution are applicable to and binding upon all entities responsible for all aspects of the development.

54. The Applicant may appear before the Planning Board for a final determination to the extent there may be disagreement between the Applicant and the Borough's officials and professionals on satisfaction and/or implementation of any of the conditions of this approval.

55. The Applicant shall comply with the terms of the Affordable Housing Agreement with the Borough of Far Hills, as may be hereinafter amended and modified.

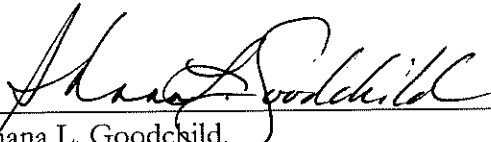
**NOW, THEREFORE BE IT FURTHER RESOLVED,** that this Resolution adopted on this 7th day of February, 2022 memorialized by the action of the Board as set forth above taken at its meeting of February 7, 2022.

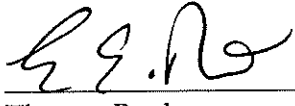
In Favor: Vice Chairman Rinzler, Mayor Vallone, Councilwoman Tweedie, Mr. Lewis, Mr. Koury, Ms. Layton, Ms. Humbert and Chairman Rochat

Eligible to Vote:

- Rinzler
- Vallone
- Tweedie
- Lewis
- Layton
- Koury
- Humbert
- Rochat

FAR HILLS PLANNING BOARD

  
\_\_\_\_\_  
Shana L. Goodchild,  
Planning Board Secretary

  
\_\_\_\_\_  
Thomas Rochat  
Chair

Dated: February 7, 2022

# EXHIBIT J



**DAY PITNEY LLP**  
 ONE JEFFERSON ROAD  
 Parsippany, New Jersey 07054  
 Craig M. Gianetti (036512003)  
 (973) 966-6300  
 Attorneys for Movant/Interested Party Melillo Equities, LLC

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IN THE MATTER OF THE APPLICATION OF THE BOROUGH OF FAR HILLS, COUNTY OF SOMERSET	: SUPERIOR COURT OF NEW JERSEY LAW DIVISION: SOMERSET COUNTY : DOCKET NO.: SOM-L-903-15 : : (CIVIL ACTION- <i>MOUNT LAUREL</i> ) : : <b>CERTIFICATION OF</b> : <b>ANTHONY MELILLO IN SUPPORT OF</b> : <b>MELILLO EQUITIES, LLC MOTION TO</b> : <b>INTERVENE AND MOTION TO</b> : <b>ENFORCE LITIGANT’S RIGHTS</b> :
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I, Anthony Melillo, of full age, hereby certifies as follows:

1. I am the Managing Member of Movant/Interested Party Melillo Equities, LLC (“*Melillo*”) in connection with the above-referenced matter. As such, I am fully familiar with the facts and circumstances set forth herein.
  
2. I make this Certification based on my personal knowledge and in support of Melillo’s Motion to Intervene and Motion to Enforce Litigant’s Rights.
  
3. Melillo, through a related entity, is the contract purchase of approximately 42.3 acres of property identified as Block 5, Lot 4, located at 220 Route 202 (the “*Property*”) in the Borough of Far Hill’s (the “*Borough*”) Townhouse Inclusionary Age-Restricted Residential Zone (“*TH-6 IAR Zone*”) – a zone created as part of the Borough’s affordable housing compliance plan.
  
4. Melillo originally approached the Borough with a proposal for the development of an inclusionary, residential rental and for sale development on the Property and the development of a mixed-use project on various sites referred to as the “Far Hills Proper Site.”

5. On October 9, 2018 the Borough and Melillo entered into a Memorandum of Understanding (the “*MOU*”) setting the general terms for the Project (“*Errico Acres*”) and development of the Far Hills Proper Site.

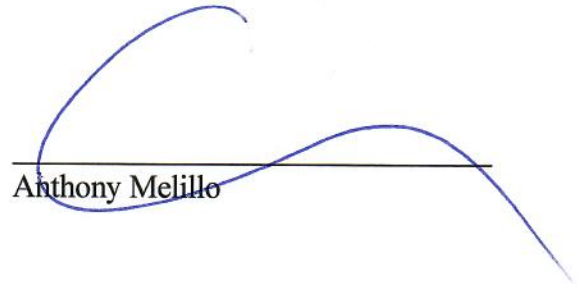
6. On December 9, 2019, the Borough and Melillo entered into an Affordable Housing Agreement (the “*AHA*”) to set forth the terms, conditions, responsibilities, and obligations for each respective party as it relates to the proposed developments, including but not limited to the Borough’s affordable housing payments to Melillo.

7. The parties agreed that the inclusionary, residential development of up to 134 total units, consisting of 25 non-age restricted family rental affordable housing units, 4 age-restricted rental affordable housing units, and up to 105 age-restricted market rate for sale units (the “*Inclusionary Project*”).

8. The Borough eventually rezoned the Property in accordance with the AHA.

9. Melillo has an agreement with Pulte Homes of NJ, Limited Partnership (“*Pulte*”) wherein Melillo would assign the contract to purchase the Property to Pulte and Melillo would retain the affordable apartment building as part of the Inclusionary Project developed by Pulte.

I hereby certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

  
Anthony Melillo

DATED: 2/21/23

# EXHIBIT K



BOSTON CONNECTICUT FLORIDA NEW JERSEY NEW YORK PROVIDENCE WASHINGTON, DC

**CRAIG M. GIANETTI**  
Attorney at Law

One Jefferson Road  
Parsippany, NJ 07054-2891  
T: (973) 966-8053 F: (973) 206-6273  
cgianetti@daypitney.com

February 14, 2024

**VIA E-MAIL and UPS**

Kimberly Coward  
Zoning Officer  
Borough of Far Hills  
6 Prospect Street  
Far Hills, NJ 07009

**Re: Pulte Homes of NJ, Limited Partnership (“Pulte”)  
Response to Notice of Violation  
Block 5, Lot 4; 220 Route 202, Far Hills, NJ (“Property”)**

Dear Ms. Coward:

This firm represents Pulte in connection with the development and construction of a multi-family inclusionary development consisting of 105 age-restricted townhouse dwellings and an apartment building consisting of 29 affordable apartments (25 family affordable units and 4 age-restricted affordable units) as well as other related site improvements (the “Development”) on the Property. The Development is included in the settlement agreement dated October 15, 2018 between the Borough and Fair Share Housing Center (“Settlement Agreement”) and is further the subject of the December 9, 2019 Affordable Housing Agreement for the Property. The Development is a critical component of the Borough’s court-approved Housing Element and Fair Share Plan to address the Borough’s affordable housing obligations. Please accept this letter as Pulte’s response to the Notice of Violation dated January 18, 2024 (“Notice of Violation”).

By way of background, Pulte filed an application for preliminary and final major site plan, preliminary and final major subdivision and variance relief relating to the Development (the “Application”), which Application was approved by Borough of Far Hills Planning Board (“Board”) Resolution adopted on February 7, 2022 (the “Resolution”). The Resolution approved site plans entitled “Preliminary and Final Major Site Development and Subdivision Plans, Residences at Overleigh” prepared by Gladstone Design, Inc. (“Gladstone”), dated March 19, 2021 (the “Site Plans”). The Site Plans already included retaining walls with heights in excess of six feet, which were specifically referenced by both the Board’s Planner, David Banisch, and the Board’s engineer, Paul Ferriero, who also serves as the Borough’s engineer, in their respective review letters dated July 5, 2021 (“Planner Review”), comment 17(f) on page 8, and July 2, 2021



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(“Engineer Review”), comment I.E(5) on page 4. Neither review letter noted that a design waiver was required for the proposed retaining walls.

Subsequent to obtaining the Resolution, Pulte completed resolution compliance by addressing the conditions of approval set forth in the Resolution. Gladstone revised the Site Plans to comply with the conditions of approval, inclusive of addressing the comments in the Planner Review and Engineer Review. Among the conditions of approval and the comments in the Engineer Review were requirements to address the stormwater management design, including comments received from the New Jersey Department of Environmental Protection (“NJDEP”), which could not impact the layout of roads or buildings (see Condition 33). In doing so, Pulte added retaining walls to the Site Plans, which are consistent in height with those retaining walls shown on the Site Plans as originally submitted and approved by the Board.

The Site Plans, as revised, were ultimately reviewed and approved by the Board professionals and signed by the Board Chairman, Board Secretary and Board Engineer on March 15, 2023. Gladstone further refined the stormwater management design to account for Property conditions during construction. The revised design was approved by the Board’s Engineer. At no time were the Site Plans modified to change the layout of the building or the roadway network; nor did the modifications to the Site Plans impact the approved relief from Ordinance requirements as set forth in the Resolution. Pulte reasonably relied upon the Resolution and signed Site Plans to obtain construction permits to construct the retaining walls shown on the Site Plans and commenced construction in May of 2023.

The Notice of Violation alleges that Pulte is in violation of the Borough’s Land Management Ordinance (“Ordinance”) and Planning Board conditions of approval set forth in the Resolution for the Development, a copy of which is attached hereto for reference. The Notice of Violation sets forth the following issues:

**1. Addendum to Notice of Violation, Section A. Retaining Walls in Excess of Six (6) Feet**

The Notice of Violation references the following design and improvement standard in Section 905.A.5, “[i]n all zoning districts, fences and walls shall be installed no higher than six feet (6’)” and indicates that it is applicable to the Development. Notwithstanding the foregoing, the Site Plans, as originally submitted, included retaining walls with varying heights up to 17 feet. This fact is specifically noted in both the Planner Review and Engineer Review. Neither review includes a statement that relief for retaining wall height is required. Further, Barbara Wooley-Dillon, a professional planner who testified in opposition to the Application at the December 6, 2021 Board meeting, specifically identified the retaining wall and its height without reference to the need for relief. The Site Plans were approved by the Board with this known condition. Design waiver relief should not be required for the additional retaining walls that were subsequently added to the Site Plans as part of redesigning the stormwater management improvements, which redesign was not only anticipated, but required, as part of the Resolution. The redesign of the stormwater



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management improvements was further approved by the Borough Engineer and the plans were signed by the Board on March 15, 2023. Additional Board approval should not be required.

## **2. Addendum to Notice of Violation, Section B. Planning Board Condition 33**

Condition 33 of the Resolution states, “Any adjustments to the site plan to address stormwater management comments of the Board Engineer or comments from the NJDEP shall not result in any changes to the layout of the building or the roadway network. Any such materials change must be brought back to the Board for review as an amendment to the current approval.” This condition is very clear as to when amended approval from the Board is required – when there are changes to the layout of the building or roadway network. The revisions made to the Site Plans to address the stormwater management design do not result in any change to the layout of the building or the layout of the roadway network. Modification of the grading does not change the layout of the buildings or roadway network. As such, the revisions do not require Board approval and are not in violation of Section 105 of the Ordinance.

## **3. Addendum to Notice of Violation, Section C. Effect of Grading Changes**

The Ordinance sets forth the following definition of “Building height”: “the vertical distance measured to the highest point of the building from the average elevation of the finished grade six (6) feet from the foundation.” (emphasis added). Grade changes that occurred after the conclusion of the Board hearings, which are the result of revisions to the stormwater management design in direct response to the Engineer Review and NJDEP comments, do not impact the calculation of building height or the variance relief previously granted by the Board for said building height. An application for amended site plan to the Board is not required.

## **4. Addendum to Notice of Violation, Section D. Issuance of Zoning Permits**

As set forth herein, Pulte should not be deemed to be in violation of the zoning provisions of the Ordinance. Further, Pulte reasonably relied upon the Resolution, signed Site Plans, Board engineer’s approval, zoning permits and construction permits issued by the Borough to commence construction of the Development. As such, the issuance of zoning permits should continue without delay.

Pulte should not be required to submit an application for amended site plan to the Board in connection with the revised Site Plans. Pulte reasonably relied, to its detriment, on permits that were issued by the Borough to construct the retaining walls. There is no doubt that the Borough’s expectation is that a developer will commence construction upon receipt of such permits in reliance thereupon. These permits were based on Site Plans, as revised, that were approved by the Board Chairman, Board Secretary, and Board Engineer. The Borough is estopped from rescinding permits or imposing additional requirements related thereto after Pulte relied upon those permits and constructed the improvements pursuant to the permits. Moreover, those multi-million dollar improvements were inspected and approved by the Borough Engineering inspectors after they were completed. As noted herein, the Development is an essential component of the Borough’s



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Settlement Agreement to satisfy the Borough's affordable housing obligation. Pursuant to the Affordable Housing Agreement, Pulte has an obligation to deliver the affordable housing units and to do so without unnecessary cost-generative measures being imposed on Pulte. An application for amended site plan would be just that.

As such, Pulte requests that the Notice of Violation be rescinded. Pulte looks forward to working with the Borough to continue constructing this Development to allow the Borough to remain in compliance with the Settlement Agreement and Affordable Housing Agreement. If the Notice of Violation is not rescinded by February 23, 2024, Pulte will exercise all of its rights at law and in equity, including but not limited to filing a legal action with the Court having jurisdiction of the Borough's Affordable Housing Compliance.

Thank you for your attention to this matter. Please contact me if you have any questions or if you require additional information.

Respectfully yours,

A handwritten signature in black ink, appearing to read 'C. M. Gianetti'.

Craig M. Gianetti

Enclosures

cc: Albert E. Cruz, Esq. Borough Attorney (via e-mail)  
Dorothy Hicks, Borough Clerk (via e-mail)  
Paul Ferriero, Borough Engineer (via e-mail)  
David Banisch, Borough Planner (via e-mail)  
Stephen Mahoney, Borough Construction Official (via e-mail)  
Jim Kyle, Court-appointed Special Master (via e-mail)  
Josh Bauers, Fair Share Housing Center (via e-mail)  
Pulte Homes of NJ, Limited Partnership (via e-mail)

2/15/24, 1:12 PM



*package id*  
0382513  
*ship date*  
Thu, Feb 15 2024  
*to*  
Kimberly Coward, Zoning  
Officer  
Borough of Far Hills  
6 Prospect Street  
Far Hills, NJ 07931-2793  
United States  
908.234.0611 ext. 18  
*residential address*  
No  
*return label*  
No  
*notification type*  
Label Creation  
Exception  
Delivery  
*notification recipients*  
lpontier@daypitney.com  
rmateus@daypitney.com

*from*  
Luke Pontier (4972)  
Day Pitney LLP  
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1st floor  
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2891  
US  
61-8714  
*billing*  
PULTE HOMES-  
KIMBOLTON AT FAR  
HILLS  
(785527-000140)  
Letter in Response to  
Notice of Violation Letter  
i...  
*operator*  
Roy Mateus  
61-8420  
rmateus@daypitney.com  
*create time*  
02/15/24, 1:12PM

*vendor*  
UPS  
*tracking number*  
1Z0812070192336345  
*service*  
UPS Next Day Air®  
*packaging*  
UPS Letter  
*courtesy quote*  
21.48  
  
*Quote may not reflect all  
accessorial charges, and may not  
reflect your account based  
discounts*





**BOROUGH OF FAR HILLS**  
6 Prospect Street, Far Hills, NJ 07931  
t. 908.234.0611 f. 908.234.0918  
[WWW.FARHILLSNJ.ORG](http://WWW.FARHILLSNJ.ORG)

January 18, 2024

[jim.mullen@pultegroup.com](mailto:jim.mullen@pultegroup.com)

James P. Mullen, Esq.  
Director of Land Entitlements  
Northeast Corridor Division  
C/O Pulte Group  
750 US Highway Route 202, Suite 500  
Bridgewater, New Jersey 08807

**SUBJECT:** Notice of Violation  
Kimbolton Development  
Block 5, Lot 4  
220 Route 202

Dear Mr. Mullen:

It has come to my attention, as the Borough of Far Hills Zoning Officer, that Pulte Homes of NJ, Limited Partnership, is in violation of the Borough's Land Management Ordinance and Planning Board conditions of approval for that development under construction by Pulte in the Borough known as Kimbolton.

This letter will serve as a Notice of Violation, along with the attached Addendum to Notice of Violation.

This Notice of Violation seeks compliance with the Borough Land Management Ordinance and the Planning Board conditions of approval.

As the Zoning Officer, I will expect that Pulte will comply with the Borough Land Management Ordinance and Planning Board conditions of approval. Otherwise, I will have no alternative but to pursue the remedies available to the Borough to enforce the Land Management Ordinance and Planning Board conditions of approval.

If you have any questions, I may be reached Tuesdays between 4:30-6:30pm or via email at [kcoward@farhillsnj.org](mailto:kcoward@farhillsnj.org).



Kimberly Coward  
Zoning Officer

Attachment-Addendum to Notice of Violation

Cc: Dorothy Hicks, Borough Clerk- Borough of Far Hills(via email) [dhicks@farhillsnj.org](mailto:dhicks@farhillsnj.org)  
Albert E. Cruz Esq.(email) [acruz@newjerseylaw.net](mailto:acruz@newjerseylaw.net)  
Paul Ferriero, Borough Engineer (via email) [pferriero@boswellengineering.com](mailto:pferriero@boswellengineering.com)  
David Banisch, Borough Planner (via email) [davidbanisch@banisch.com](mailto:davidbanisch@banisch.com)  
Stephen Mahoney, Borough Construction Official (via email) [smahoney@farhillsnj.org](mailto:smahoney@farhillsnj.org)

**ADDENDUM TO NOTICE OF VIOLATION**

This Notice of Violation is issued to Pulte Homes of NJ, Limited Partnership, for that development known as Kimbolton located on Route 202 North and shown as Block 5, Lot 4 on the Borough of Far Hills Tax Map in the TH-6-IAR zone.

**A. Retaining Walls in Excess of Six (6) Feet**

The TH-6-IAR Zone was created by Ordinance No. 2019-08. However, Ordinance No. 2019-08, Section 3.0, makes the Design and Improvement Standards in Article IX of the Land Management Ordinance of the Borough of Far Hills applicable to the TH-IAR Zone.

Article IX is titled "Design and Improvement Standards", Section 905 titled "Fences, Walls and Sight Triangles"; specifically, Section 905.A.5 requires that "[i]n all zoning districts, fences and walls shall be installed no higher than six feet (6")".

The application of Pulte to the Borough of Far Hills Planning Board for Kimbolton failed to seek a waiver of Section 905.A.5 for retaining walls more than six (6) feet in height and failed to seek design exception relief as required by N.J.S.A. 40:55D-51.a and b.

Additionally, the Site Plan only identified one (1) design waiver; namely, a de minimus design waiver from the Residential Site Improvement Standards for sidewalks on both sides of the

street, but not for the height of retaining walls.

Pulte is hereby given notice that it has thirty (30) days from the date of its receipt of this Notice of Violation to cure this violation. If the violation is not cured within this period, Pulte shall be liable under Section 304 of the Borough Land Management Ordinance.

**B. Planning Board Condition 33.**

Planning Board Condition 33 provides that:

Any adjustments to the site plan to address stormwater management comments of the Board Engineer or comments from the NJDEP shall not result in any changes to the layout of the buildings or the roadway network. Any such material change must be brought back to the Board for review as an amendment to the current approval.

Pulte, as part of its stormwater management plan, increased the grades throughout Kimbolton by as much as eleven (11) feet resulting in changes to the height of the roadway network at Kimbolton without returning to the Planning Board for amended site plan approval in violation of Planning Board Condition 33 and Section 105 of the Borough Land Management Ordinance requiring that new structures conform with the Ordinance.

Pulte is hereby given notice that it has thirty (30) days from the date of its receipt of this Notice of Violation to cure this violation by making an application to the Planning Board to amend Condition 33. If the violation is not cured within this period, Pulte shall be liable under Section 304 of the Borough

Land Management Ordinance.

**C. Effect of Grading Changes.**

Pulte sought and received a variance from the Planning Board for the height of the buildings with walkout basements from the maximum permitted height of thirty-six (36) feet to a proposed 38.07 feet. However, grade changes occurring after the conclusion of the Planning Board hearings will considerably alter the perception of building height and mass compared to what was approved. The buildings will be as much as eight (8) feet higher than was represented to the Planning Board at the hearing.

Pulte is hereby given notice that it has thirty (30) days from the date of its receipt of this Notice of Violation to cure this violation by making an application to the Planning Board. If the violation is not cured within this period, Pulte shall be liable under Section 304 of the Borough Land Management Ordinance.

**D. Issuance of Zoning Permits.**

Section 302.A of the Borough Land Management Ordinance provides that:

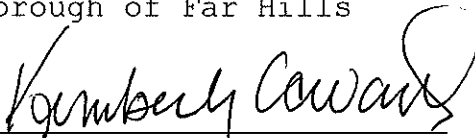
It shall be the duty of the Zoning Officer to administer and enforce the zoning provisions of this ordinance. No building permits shall be issued unless the plans are accompanied by an approved zoning permit. No zoning permit shall be issued unless the proposed structure, use, temporary activity and construction activities are in compliance with this ordinance.

Pulte is hereby given notice that no further zoning permits,

including zoning permits for individual buildings, will be issued for Kimbolton until the violations cited in this Notice of Violation are cured.

Dated: January 18, 2024

Borough of Far Hills

By:   
Kimberly Coward  
Zoning Official

# EXHIBIT L



**DiFrancesco Bateman**  
Kunzman, Davis, Lehrer & Flaum, P.C.

15 Mountain Boulevard  
Warren, New Jersey 07059

Telephone: (908) 757-7800  
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[www.newjerseylaw.net](http://www.newjerseylaw.net)

**Albert E. Cruz**  
Partner  
Extension 136  
[acruz@newjerseylaw.net](mailto:acruz@newjerseylaw.net)

February 27, 2024

**Via Email & Regular Mail**

Craig M. Gianetti, Esq.  
Day Pitney, LLP  
One Jefferson Road  
Parsippany, New Jersey 07054

James P. Mullen, Esq.  
Director of Land Entitlements  
Northeast Corridor Division  
c/o Pulte Group  
750 US Highway Route 202, Suite 500  
Bridgewater, New Jersey 08807

**Re: Notice of Violation  
Kimbolton Development  
Block 5, Lot 4, 220 Route 22  
File No. FH2003**

Dear Gentlemen:

After consulting with the Borough of Far Hills Zoning Officer, I am writing to clarify Section D of the Notice of Violation issued by the Zoning Office on January 18, 2024.

Section D of the NOV does not apply to Zoning Permits for the affordable housing building to be constructed by Pulte Homes of NJ, Limited Partnership, as part of the Kimbolton Development.

The Zoning Officer will review a Zoning Permit Application for this building in an expedited manner.



Page 2

All other terms and conditions of the NOV remain in effect.

Very truly yours,  
DiFrancesco, Bateman, Kunzman,  
Davis, Lehrer & Flaum, P.C.

*Albert E. Cruz*

Albert E. Cruz

AEC/jg

cc: Kimberly Coward, Zoning Officer  
Dorothy Hicks, Clerk  
Paul Ferriero, Engineer  
David Banisch, Planner  
Stephen Mahoney, Construction Official  
(All by email)

# EXHIBIT M



**Borough of Far Hills  
Land Management  
Ordinance Book**

**LAND MANAGEMENT  
ORDINANCE  
BOROUGH OF FAR HILLS  
SOMERSET COUNTY,  
NEW JERSEY**

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subdivision plat, site plan, planned development, conditional use, zoning variance or direction for issuance of a permit pursuant to N.J.S.A. 40:55D-34 or N.J.S.A. 40:55D-36.

Approving Authority - The Planning Board, unless a different agency is designated in the text of this ordinance, when acting pursuant to the authority of the Municipal Land Use Law.

Atrium home - A form of townhouse which is shaped and attached in such a way, using common or connecting walls in some cases, as to result in a private courtyard for each dwelling unit.

Basement - A story partly underground and having more than one-half (1/2) of its height above ground.

Bedroom - A room planned or used primarily for sleeping.

Billboard - Any structure or portion thereof on which lettered or pictorial matter is displayed for advertising purposes other than on a building or the grounds to which the advertising applies.

Board - The Planning Board of the Borough of Far Hills.

Building - A combination of materials to form a construction adapted to permanent, temporary or continuous occupancy and having a roof.

Building coverage - The area of a lot covered by the plan projection of all roofed areas on a lot including the area under the roof of any structure supported by columns or walls, as measured around the extremities of the roof.

Building height - The vertical distance measured to the highest point of the building from the average elevation of the finished grade six (6) feet from the foundation.

Camper - A self-propelled vehicular structure built as one (1) unit on a chassis or a portable vehicular structure built on a chassis designed to be towed by another vehicle, both designed for temporary living, containing cooking, sleeping and sanitary facilities; or a portable vehicular structure built on a chassis designed as a trailer with a flat top not more than four (4) feet above the ground which can be converted into a temporary tent erected above the four-foot level for camping activities.



1. Will result in appreciable harm to the environment or to the public health and safety;
  2. Has not been designed with a view toward the protection of natural resources; and
  3. Will place any excessive demand upon the total resources available for such project and for any future project.
- G. Conditions. The steps to be taken to minimize the adverse environmental impacts during construction and operation and the alternatives which may be approved by the Planning Board shall constitute conditions of the approval of the EIS, together with such other conditions as the Planning Board may impose. No certificate of occupancy shall be issued until compliance shall have been made with such conditions.

#### Section 905. Fences, Walls and Sight Triangles

- A. All permitted fences shall be situated on a lot in such a manner that the finished side of such fences shall face adjacent properties. No fence shall be erected of barbed wire, topped with metal spikes, nor constructed of any material or in any manner which may be dangerous to persons or animals, except that these provisions shall not apply to farms.
1. A tennis court area, where permitted, may be surrounded by a fence a maximum of fifteen feet (15') in height; said fence to be set back from any lot line the distance required for accessory buildings in the zoning district in which it is located.
  2. Buffer areas shall meet the requirements specified in Section 903.
  3. Off-street parking, loading and driveway access shall meet the requirements specified in Section 911.
  4. A private residential swimming pool area must be enclosed by a suitable fence with a self-latching gate at least four feet (4'), but no more than six feet (6'), in height, and a commercial swimming pool must have a fence at least six feet (6') in height.
- B. Sight triangle easements shall be required at intersections, in addition to the specified right-of-way widths, in which no grading, planting or structure shall be erected or maintained more than twelve inches (12") above the street centerline, except for street signs, fire hydrants and light standards. The sight triangle is defined as that area

	LMO Ordinance Index	Amends Section:
1992-09	Amending 1989-11 - The Land Management Ordinance	1989-11:1989-11:601,1989-11:602,1989-11:703.1,1989-11:803.A.7,1989-11:803.C.4,1989-11:703.E.1,1989-11:704.E.1
1997-11	Amending 1992-09 - The Land Management Ordinance	Section 201.C; 703.E.3; 704.E.4; 704.E; 705.E.3
2001-03	Amending 1989-11 - The Land Management Ordinance	Article X section 1005
2004-11	1998-08, 1999-07 Repealed in their entirety; Repealing Sec. 1 of ord. 1997-11; Replacing Subsec. 201.C./Art. II (Telecom)	1998-08, 1999-07 Repealed in their entirety; Repealing Sec. 1 of ord. 1997-11; Replacing Subsec. 201.C./Art. II (Telecom)
2004-12	Amending 2004-11 - The Land Management Ordinance (Revised Site Plan Requirements - Telecom)	Article IV section 405 subsection B
2005-06	Amending Article III of 1989-11 - The Land Management Ordinance	Article III section 305
2006-03	Amending 1989-11 - Section 501 of the Land Management - Fees	Section 501
2006-06	Amending Section 916 of 1989-11 - The Land Management Ordinance Entitled Stormwater Management	Article IX section 916
2006-08	Amending Section 905 of 1989-11 - The Land Management Ordinance Entitled Fences, Walls and Triangles	Article IX section 905
2007-07	Amending the Land Management Ordinance of the Borough of Far Hills to Increase Affordable Housing Development Fees in Accordance with New Jersey Council on Affordable Housing Regulations	Section 201.A
2007-09	Adopting Flood Damage Prevention Ordinance	-
2007-10	Amending Section 501 of the Land Management Ordinance of the Borough of Far Hills Entitled "Fees"	Article V - Section 501
2008-08	Amending Section 201, Definitions and Word Usage, Section 501 Fees, Section 915 Signs, of the Land Management Ordinance of the Borough of Far Hills	Article II - Section 201 Article V - Section 501.B Article IX - Subsection 915
2008-15	Amending the Far Hills Borough Land Management Ordinance to Require Recycling Plans to be Submitted as Part of Site Plan and Subdivision Applications	Article IV - Section 409
2008-20	Amending the Land Management Ordinance Concerning the Collection of Affordable Housing Development Fees in Accordance with New Jersey Council on Affordable Housing Regulations	201.A, Article V section 504,
2010-11	Address Requirements of COAH Regarding Compliance with the BOFH's Prior Round & Third Round Affordable Housing Obligations	-
2011-03	Requirement of an Escrow Agreement in Conjunction with Land Use Board Application	Article IV - Section 409
2011-11	Amending and updating the Provisions of Land Management Ordinances of the Borough of Far Hills, as Previously Modified by Ordinance No. 2008-08, with Regard to the Regulations and Procedures for the Placement of Temporary Signs Throughout the Borough of Far Hills	Article II - Section 201 Article V - Section 501 Article IX - Section 915 - Subsection A
2012-10	Amending the Land Management Ordinance of the Borough of Far Hills, to Amending the Zoning Permit Requirements and Fees, Including the Establishment of a New Permit Requirement for Changes of Commercial Use and Occupancy Within the Borough of Far Hills	Article III section 303
2014-06	Amending the Land Management Ordinance of the Borough of Far Hills, to Establish an Expiration Period for Variance Relief Granted by the Planning Board of the Borough of Far Hills	Article X section 1005
2015-04	Amending 2014-06 - The Land Management Ordinance - Zoning Permit Requirements and Fees, Including the Establishment of a New Permit Requirement for Changes of Non-Residential Use and Occupancy	Article III section 303

**BOROUGH OF FAR HILLS  
SOMERSET COUNTY, NEW JERSEY  
ORDINANCE NO. 2006-08**

**AN ORDINANCE AMENDING SECTION 905 OF THE  
LAND MANAGEMENT ORDINANCE OF THE  
BOROUGH OF FAR HILLS  
ENTITLED "FENCES, WALLS AND SIGHT TRIANGLES"**

**BE IT ORDAINED BY** The Borough Council of the Borough of Far Hills in the County of Somerset and State of New Jersey, that the Land Management Ordinance of the Borough of Far Hills adopted December 28, 1989, and thereafter amended, be further amended as follows:

**SECTION ONE. Purpose.** It is the purpose of this ordinance amendment to amend Section 905 of the Land Management Ordinance of the Borough of Far Hills to identify a maximum permitted height for fences in the Borough of Far Hills.

**SECTION TWO. Amend Section.** Section 905 entitled "Fences, Walls and Sight Triangles" of Article IX of the Land Management Ordinance of the Borough of Far Hills is hereby amended and supplemented by adding the following to Subsection A:

5. In all zoning districts, fences and walls shall be installed no higher than six feet (6').

**SECTION TWO. Severability:** If any section or portion of this Ordinance shall be adjudged unconstitutional or invalid, the same shall not affect, impair or invalidate any other provision of this Ordinance.

**SECTION THREE. Repealer:** All Ordinances or parts thereof inconsistent with this Ordinance are repealed to the extent of any inconsistency.

**SECTION FOUR.** This Ordinance shall take effect upon its final passage and publication as provided by law.

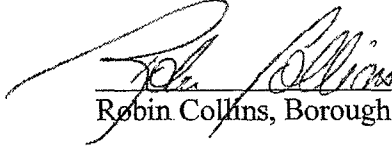
*First Reading and Introduction: May 8, 2006*

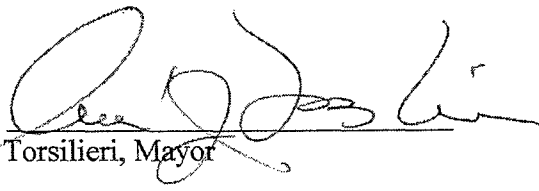
*First Publication: June 8, 2006*

*Second Reading and Adoption: June 12, 2006*

*Second Publication: June 15, 2006*

ATTEST:

  
\_\_\_\_\_  
Robin Collins, Borough Clerk

  
\_\_\_\_\_  
Carl J. Torsilieri, Mayor

SCHEDULE A

TABLE OF STREET DIMENSIONS  
(in feet unless otherwise indicated)

	(1) Minor Residential	(2) Collectors
Paving Widths:		
One lane with turnouts	12 (6)	-
No on-street parking, or with lots ½ acre or more	20	24
R.O.W. (Right of Way) Width:		
If no parking	50	60
If parking	50	70
Curb radii at intersections	30	35
Radii to inside curb on curves	100 (3) (4)	500
Sight distance minimum at centerlines	200	300
Sight line maximum at centerline	500	3000
Maximum dwelling units served	50 units	
- if cul-de-sac	25 units	
Assumed average speed	20 mph	40 mph
Size of letters on signs marking streets	4"	6"
Acceleration-Deceleration lanes (5)	-	200 (3)
Maximum centerline grades	10%	8%
Minimum centerline grades	1%	1%
Maximum grades at intersection - 3% for distance from cross street of	50 (3)	100 (3)
Cul-de-sac R.O.W. Diameter	100	
Cul-de-sac paving diameter - except for 40' diameter center circle	80	
Spacing of intersections	800	1200 (7) Extra 12' lane

- (1) Streets serving more houses or other types of residential living units than indicated must also follow "Collector" standards.
- (2) As designated by the Planning Board, or indicated on Master Plan, streets serving other than residential use must follow "Collector" minima.
- (3) In cases of difficult topography (i.e. where natural grade exceeds 10%), these may be adjusted downward by the Planning Board upon recommendation of the Municipal Engineer.
- (4) Where, because of shape of tracts to be subdivided or topography, it is not feasible to adhere to a minimum radius of 100 feet, the minimum pavement must be widened as the radius decreases, to accommodate the widened path of a turning vehicle, as follows:
 

Radius (in feet)	Added pavement width (in feet)
100 +	0
75-99	2
50-74	6
25-49	10
- (5) Required at intersections, and at all driveways to private property on Primaries.
- (6) In some extreme cases, e.g., where natural slope exceeds 15%, the Planning Board may consider the feasibility of a single-lane 12-foot pavement on one-way streets, with occasional turnouts, to avoid excessive cut and fill. Either retaining walls or other means of stabilizing slopes steeper than 2:1 may also be considered.
- (7) Bus Stops; An extra 12 ft. lane shall be provided in all business areas.
- (8) Driveways may not exceed 15% in grade.

-47-

-47-

7-1.7 Reserve Strips. There shall be no reserved strips or areas for controlling access to streets except where control and disposal of the land comprising such strips or areas have been delegated or conveyed to the Borough under conditions approved by the Planning Board.

7-1.8 Subdivisions on Existing Streets. When a subdivision abuts an existing street, the street shall be widened (if necessary) and improved to conform to this ordinance, up to the centerline of the street and to the boundaries of the tract. If the subdivision is only a small part of a longer run of a sub-standard street, and such improvement would produce a hazardous saw-tooth arrangement, the municipality on recommendation of the Planning Board may elect to receive a cash payment in lieu of the improvements, and to hold same in a separate escrow account until continuous improvement of the street can be accomplished.

7-1.9 Curved Minor Streets. Curved minor streets are preferred to discourage speed and monotony. The maximum straight line between points on the centerline shall not exceed those specified on Schedule A.

7-1.10 The Crown Slope. The slope of the crown in minor streets shall not be less than one-quarter inch per foot nor more than one-half inch per foot in order to provide for proper surface drainage.

7-1.11 Cut and Fill Slopes. To prevent gulleying and erosion, street cuts and streets on fill shall be provided with side slopes no steeper than one vertical to two horizontal, or shall be equipped with cribbing, loose concrete blocks, or other form of retaining wall as approved by the Borough Engineer. Such slopes, including cribbing and blocks, shall be suitably planted with perennial grasses or other vegetation in accordance with a plan approved by the Planning Board, and shall be maintained to the satisfaction of the municipal Engineer for a period of one year.

7-1.12 Limit of Improvements. The developer shall improve all streets to the limits of the subdivision.

7-1.13 Street Names. Street names and subdivision names shall not duplicate or nearly duplicate the names of existing streets or subdivisions in the municipality or surrounding communities. The continuation of an existing street shall have the same name. All proposed street names shall be subject to approval by the Planning Board.

## 7-2 Street Intersections.

7-2.1 Angle of Intersections. No more than two streets shall cross the same point. Street intersections shall be at right angles wherever possible, and intersections of less than 60 degrees (measured at the centerline of streets) shall not be permitted.

7-2.2 Approaches. Approaches of any collector street to any intersection of another collector or a primary shall follow a straight line course within 100 feet of the intersection.

7-13.2 All trees shall be a minimum 2-1/2 inch caliper, staked and guyed, and planted not more than 50 feet apart inside the right-of-way lines, as shown on Schedule C. Where desired for special interest or shelter purposes, evergreens may be substituted for deciduous plants on the north and northwest sides of streets, and smaller decorative trees, such as dogwoods, may be used in any situation.

7-13.3 At least two trees shall be planted in the center islands of all cul-de-sac turnarounds, unless existing trees are approved by the Planning Board.

7-14 Improvements.

7-14.1 Prior to the granting of final approval for site plans and subdivisions, the developer shall have installed or furnished performance guarantees for the ultimate installation of improvement within the time sequence of Subsections 5-9.3 and 6-7.4 and in accordance with the following:

Table of Required Improvements

<u>Improvement</u>	<u>Residential</u>	<u>Business</u>
(a) Paving & Marking	x	x
(b) Curbs	S	x
(c) Gutters	S	x
(d) Street Signs	x	x
(e) Sidewalks	S	x
(f) Bicycle Paths	S	S
(g) Street Lights	S	x
(h) Shade Trees	x	x
(i) Topsoil Protection	x	x
(j) Monuments	x	x
(k) Water Mains & Fire Plugs	S	x
(l) Storm Drainage System	S	x
(m) Sanitary Sewers	S	x
(n) Retaining Walls, Ground Cover, Cribbing - detention basins where required		x

S = Subject to review in each case.  
x = Required.

In general, concrete curbs and gutters may be omitted on flat stretches of road where volume and velocity of water is not conducive to ditch erosion. In other cases, concrete curbs may be combined with greater paving width, or paved swales, ditches or storm drains as required.

Concrete pipe is preferred to box culverts for drainage under roads. In such cases an easement of appropriate width extending at least 50 feet beyond the right-of-way line shall be granted on either side, and the pipe shall be covered for the full width of the right-of-way and 20 feet beyond.

7-14.13 Sanitary Sewers shall be installed leading to a municipal or Authority plant or an approved package plant in all cases where soil conditions are such that septic tanks or other means of on-site disposal are not feasible.

7-14.14 Additional Elements Necessitated by Topography. Retaining walls, cribbing, ground cover, diversionary swales, sodding and guard rails shall be installed as necessary to prevent erosion, hazard, and unusual problems of maintenance in steeply rolling terrain.

7-14.15 Electrical and Telephone Lines shall be underground or on rear property lines, and shall not be located on streets.

7-14.16 Variations. Wherever a variation in design standards shall exist between the Zoning Ordinance and this Ordinance, the more restrictive standard shall be deemed to apply.

7-14.17 Inspection and Approval. All of the above improvements shall be subject to inspection and approval by the municipal Engineer who shall be notified by the developer at least 24 hours prior to the start of construction. No underground installation shall be covered until inspected and approved by the proper municipal official or utility company.

#### 7-15 Design Standards for Business Districts.

7-15.1 Business Signs on Major Streets shall be sufficiently legible and intelligible to afford a motorist the opportunity to absorb the information, make a voluntary decision to turn or stop and enter the deceleration lane before slowing down. In the further interest of safety, they shall cause a minimum of confusion with other private and public signs and traffic lights. Accordingly, signs shall be of a professional quality and shall conform to the following:

a. The use of the colors red and green, and the use of arrows or the word "stop" in such a manner as to resemble traffic signs are not permitted.

b. Free-standing signs along State highways shall either be high enough to be read over cars and trucks (but not so high as to dominate the skyline) or low enough so as not to mask buildings. Signs may



**DAY PITNEY LLP**

ONE JEFFERSON ROAD

Parsippany, New Jersey 07054

Craig M. Gianetti (036512003)

(973) 966-6300

Attorneys for Defendant-Intervenor Pulte Homes of NJ, Limited Partnership

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IN THE MATTER OF THE APPLICATION OF THE BOROUGH OF FAR HILLS, COUNTY OF SOMERSET	: SUPERIOR COURT OF NEW JERSEY : LAW DIVISION: SOMERSET COUNTY : DOCKET NO.: SOM-L-903-15 : : (CIVIL ACTION- <i>MOUNT LAUREL</i> ) : : <b>CERTIFICATION OF</b> : <b>RONALD A. KENNEDY, P.E. IN</b> : <b>SUPPORT OF PULTE HOMES OF NJ,</b> : <b>LIMITED PARTNERSHIP MOTION TO</b> : <b>INTERVENE AND MOTION TO</b> : <b>ENFORCE LITIGANT’S RIGHTS</b>
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I, Ronald A. Kennedy, P.E, of full age, hereby certifies as follows:

1. I am the President of Gladstone Design, Inc. (“*Gladstone*”), which is the civil engineer retained by movant/interested party Pulte Homes of NJ, Limited Partnership (“*Pulte*”) in connection with the construction of a multi-family development consisting of 105 age-restricted townhouse dwellings and an apartment building consisting of 29 affordable apartments (25 family affordable units and 4 age-restricted affordable units) as well as other related site improvements (the “*Development*”) on property located at 220 Route 202, Far Hills, NJ (formerly Block 5, Lot 4) (the “*Property*”). I make this Certification based on my personal knowledge and in support of Pulte’s Motion to Intervene and Enforce Litigant’s Rights.

2. On behalf of Pulte, Gladstone prepared for the Development Preliminary and Final Major Site Development and Subdivision Plans, entitled “Residences at Overleigh” and dated March 19, 2021 (the “*Plans*”). The Plans were consistent with the conceptual site layout approved by the

Borough of Far Hills Council and included in the redevelopment ordinance adopted by the Borough of Far Hills (“*Borough*”).

3. Pulte submitted the Plans to the Borough’s Planning Board (the “*Board*”) for site plan and subdivision approval on April 9, 2021. Attached hereto as **Exhibit A** are true copies of the relevant pages of the Board approved and signed overall site plan sheet.

4. Due to the topography and environmental constraints on the Property, the Development could not be built without a number of retaining walls. The Plans expressly included such retaining walls, which needed to be in excess of six feet in height due to the aforementioned topography and other conditions. In fact, the retaining wall adjacent to the environmentally sensitive areas at the southern end of the site had a maximum height of 22-feet.

5. The retaining walls included in the Plans were specifically referenced by both the Board’s planner, David Banisch, and the Board’s engineer, Paul Ferriero, who also serves as the Borough’s engineer, in their respective review letters dated July 5, 2021, comment 17(f) on page 7 (“*Planner Review*”) and July 2, 2021 , comment I.E(5) on page 4 (“*Engineer Review*”). A true copy of the Planner Review is attached hereto as **Exhibit B**. A true copy of the Engineer Review is attached hereto as **Exhibit C**.

6. On July 21, 2021, Gladstone’s design team met with the Borough’s professionals to discuss the Planner Review and Engineer Review, as well as other comments generated during the public hearings. At no time during that meeting did the Borough’s professionals state that there were any issues with the proposed retaining walls, and certainly did not state that the proposed retaining walls violated the Land Management Ordinance of the Borough of Far Hills (the “*Ordinance*”) or required a design waiver.

7. Gladstone prepared revised Plans, dated October 1, 2021 and December 2, 2021, that included the retaining walls in excess of six feet. The aforementioned revised Plans were presented to the Board at the October 2021 and December 2021 meetings, and the Board did not indicate at those meetings that the proposed retaining walls violated the Ordinance or required a design waiver.

8. At the December 2021 Board meeting, a professional planner for an objector testified in opposition to the revised Plans, and specifically identified the retaining walls and their height in her comments, but did not state that a design waiver was required.

9. On February 7, 2022, the Board approved the Plans, which included retaining walls in excess of six feet, and issued a resolution granting preliminary and final major site plan and subdivision approval for the Development (the “*Resolution*”).

10. The Resolution, Engineer Review, and Planner Review contained certain conditions of approval and comments that required Pulte to address the stormwater management design, including comments received from the New Jersey Department of Environmental Protection (“NJDEP”). Condition 33 of the Resolution states, “Any adjustments to the site plan to address stormwater management comments of the Board Engineer or comments from the NJDEP shall not result in any changes to the layout of the building or the roadway network. Any such materials change must be brought back to the Board for review as an amendment to the current approval.”

11. To address the conditions in the Resolution and comments, Gladstone revised the Plans eight times, including by: (1) adjusting grade elevations across the site to direct stormwater flows to the appropriate locations and divert flow from concentrating along unwanted property boundaries; and (2) adding retaining walls (the “Retaining Walls”) that were consistent in design and height as the retaining walls already included in the Plans and previously approved by the Board. The Plans were initially revised on March 15, 2022 to address comments relating to stormwater

management. It was on this revision that the grading was adjusted and the subject Retaining Walls were added, which range in height from four feet to seventeen feet and are setback approximately 60 feet from the Property line with a landscape buffer in between. Attached hereto as **Exhibit D** is a true copy of the five (5) Grading Plan sheets for the Development prepared by Gladstone. Attached as **Exhibit E** is a true copying of plan depicting all of the retaining walls on the Property, including their height and if they were part of revised plans. The subject Retaining Walls are on the last page.

12. After March 15, 2022, each set of revised Plans contained the subject Retaining Walls. None of the revised Plans altered the layout of the road network or the locations of any buildings as set forth in the original Plans, nor did they change “building height,” as that term is defined in the Ordinance, for any of the structures.

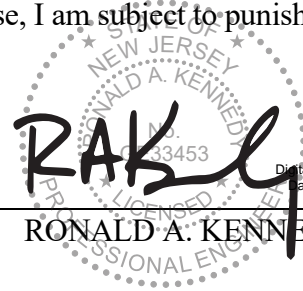
13. On at least three occasions (March 2022, December 2022, and March 2023), Gladstone prepared and submitted detailed response narratives for the Board and its professionals that explain how each condition of approval was met and what changes were made to address the technical review comments

14. In March 2023, Gladstone met with the Borough’s engineer to review construction relating to the stormwater management design system and retaining wall structural design set forth in the revised Plans. The Borough engineer did not state: (1) that the proposed retaining walls violated the Ordinance or required a design waiver; (2) that the proposed grading modifications altered the layout of the road network or the locations of any buildings; or (3) that the proposed grading modifications changed the height of any buildings.

15. On March 14, 2023, the Board Engineer issued its last resolution compliance letter and concluded that the revised Plans could be signed by the Board.

16. On March 15, 2023, the revised Plans containing the additional retaining walls and grading modifications referenced above were reviewed and approved by the Board professionals and signed by the Board Chairman, Board Secretary and Board Engineer.

I hereby certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.



Digitally signed by Ronald Kennedy  
Date: 2024.03.12 11:11:29-04'00'

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RONALD A. KENNEDY, P.E.

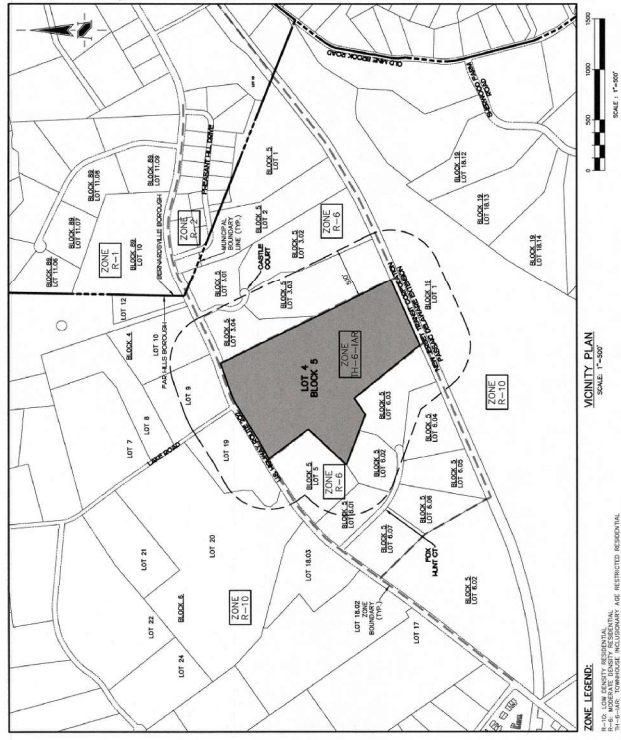
DATED: March 12, 2024

# EXHIBIT A

# KIMBOLTON

## BOROUGH OF FAR HILLS

### SOMERSET COUNTY, NEW JERSEY



**ZONE LEGEND:**  
R-1D: LOW DENSITY RESIDENTIAL  
R-2D: MEDIUM DENSITY RESIDENTIAL  
R-3D: RESIDENCE 50' FRONT YARD SETBACK (RESIDENTIAL)  
R-4D: RESIDENCE 40' FRONT YARD SETBACK (RESIDENTIAL)  
R-5D: RESIDENCE 30' FRONT YARD SETBACK (RESIDENTIAL)  
R-6D: RESIDENCE 20' FRONT YARD SETBACK (RESIDENTIAL)  
R-7D: RESIDENCE 15' FRONT YARD SETBACK (RESIDENTIAL)  
R-8D: RESIDENCE 10' FRONT YARD SETBACK (RESIDENTIAL)  
R-9D: RESIDENCE 5' FRONT YARD SETBACK (RESIDENTIAL)  
R-10D: RESIDENCE 0' FRONT YARD SETBACK (RESIDENTIAL)

### INDEX OF SUPPLEMENTAL DRAWINGS

SHEET NO.	DESCRIPTION
1	GENERAL NOTES
2	EXISTING UTILITIES
3	PROPOSED UTILITIES
4	PROPOSED DRIVEWAYS
5	PROPOSED DRIVEWAYS
6	PROPOSED DRIVEWAYS
7	PROPOSED DRIVEWAYS
8	PROPOSED DRIVEWAYS
9	PROPOSED DRIVEWAYS
10	PROPOSED DRIVEWAYS
11	PROPOSED DRIVEWAYS
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18	PROPOSED DRIVEWAYS
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20	PROPOSED DRIVEWAYS
21	PROPOSED DRIVEWAYS
22	PROPOSED DRIVEWAYS
23	PROPOSED DRIVEWAYS
24	PROPOSED DRIVEWAYS
25	PROPOSED DRIVEWAYS

### INDEX OF ARCHITECTURAL DRAWINGS

SHEET NO.	DESCRIPTION
1	GENERAL NOTES
2	EXISTING UTILITIES
3	PROPOSED UTILITIES
4	PROPOSED DRIVEWAYS
5	PROPOSED DRIVEWAYS
6	PROPOSED DRIVEWAYS
7	PROPOSED DRIVEWAYS
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22	PROPOSED DRIVEWAYS
23	PROPOSED DRIVEWAYS
24	PROPOSED DRIVEWAYS
25	PROPOSED DRIVEWAYS

### ZONING TABULATION

ZONE	AREA (SQ. FT.)	AREA (AC.)	PERCENTAGE OF TOTAL AREA
R-1D	42,120	0.96	1.1%
R-2D	1,152,000	26.36	31.2%
R-3D	1,152,000	26.36	31.2%
R-4D	1,152,000	26.36	31.2%
R-5D	1,152,000	26.36	31.2%
R-6D	1,152,000	26.36	31.2%
R-7D	1,152,000	26.36	31.2%
R-8D	1,152,000	26.36	31.2%
R-9D	1,152,000	26.36	31.2%
R-10D	1,152,000	26.36	31.2%

### BUILDING COVERAGE SUMMARY

DESCRIPTION	AREA (SQ. FT.)	AREA (AC.)	PERCENTAGE OF TOTAL AREA
EXISTING BUILDINGS	1,152,000	26.36	31.2%
PROPOSED BUILDINGS	1,152,000	26.36	31.2%
TOTAL	2,304,000	52.72	62.4%

### LOT COVERAGE SUMMARY

LOT NO.	AREA (SQ. FT.)	AREA (AC.)	PERCENTAGE OF TOTAL AREA
1	1,152,000	26.36	31.2%
2	1,152,000	26.36	31.2%
3	1,152,000	26.36	31.2%
4	1,152,000	26.36	31.2%
5	1,152,000	26.36	31.2%
6	1,152,000	26.36	31.2%
7	1,152,000	26.36	31.2%
8	1,152,000	26.36	31.2%
9	1,152,000	26.36	31.2%
10	1,152,000	26.36	31.2%

### BUILDING HEIGHT SUMMARY

DESCRIPTION	HEIGHT (FT.)
EXISTING BUILDINGS	10
PROPOSED BUILDINGS	10
TOTAL	10

### DESIGN WAIVER GRANTED

1. THE APPLICANT HAS BEEN ADVISED THAT THE PROPOSED DEVELOPMENT IS SUBJECT TO THE FOLLOWING CONDITIONS:

- THE APPLICANT SHALL MAINTAIN THE EXISTING UTILITIES AND DRIVEWAYS AS SHOWN ON THE SITE PLAN.
- THE APPLICANT SHALL MAINTAIN THE EXISTING UTILITIES AND DRIVEWAYS AS SHOWN ON THE SITE PLAN.
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### PROPERTY OWNERS WITHIN 200 FEET

BLOCK	LOT	PROPERTY OWNER
5 <td>6.02<td>FRANK B. BROWN</td></td>	6.02 <td>FRANK B. BROWN</td>	FRANK B. BROWN
5 <td>6.03<td>MARGARET ANNAMORE STREET &amp; CASSIDIA</td></td>	6.03 <td>MARGARET ANNAMORE STREET &amp; CASSIDIA</td>	MARGARET ANNAMORE STREET & CASSIDIA
5 <td>6.04<td>TERRANCE SPINALE &amp; KELLY KAHN</td></td>	6.04 <td>TERRANCE SPINALE &amp; KELLY KAHN</td>	TERRANCE SPINALE & KELLY KAHN
5 <td>6.05<td>WILLIAM BENJAMIN M.</td></td>	6.05 <td>WILLIAM BENJAMIN M.</td>	WILLIAM BENJAMIN M.
5 <td>6.06<td>FAR HILLS, NJ 07831</td></td>	6.06 <td>FAR HILLS, NJ 07831</td>	FAR HILLS, NJ 07831
5 <td>6.07<td>APPROPRIATE DEVELOPMENT</td></td>	6.07 <td>APPROPRIATE DEVELOPMENT</td>	APPROPRIATE DEVELOPMENT
5 <td>6.08<td>FAR HILLS, NJ 07831</td></td>	6.08 <td>FAR HILLS, NJ 07831</td>	FAR HILLS, NJ 07831
5 <td>6.09<td>FAR HILLS, NJ 07831</td></td>	6.09 <td>FAR HILLS, NJ 07831</td>	FAR HILLS, NJ 07831

### UTILITY COMPANIES

UTILITY COMPANY	ADDRESS
NJ TRANSIT RAIL OPERATIONS	200 WEST STREET, SUITE 300, NEWARK, NJ 07102
CONED POWER & LIGHT	200 WEST STREET, SUITE 300, NEWARK, NJ 07102
CONED POWER & LIGHT	200 WEST STREET, SUITE 300, NEWARK, NJ 07102
CONED POWER & LIGHT	200 WEST STREET, SUITE 300, NEWARK, NJ 07102
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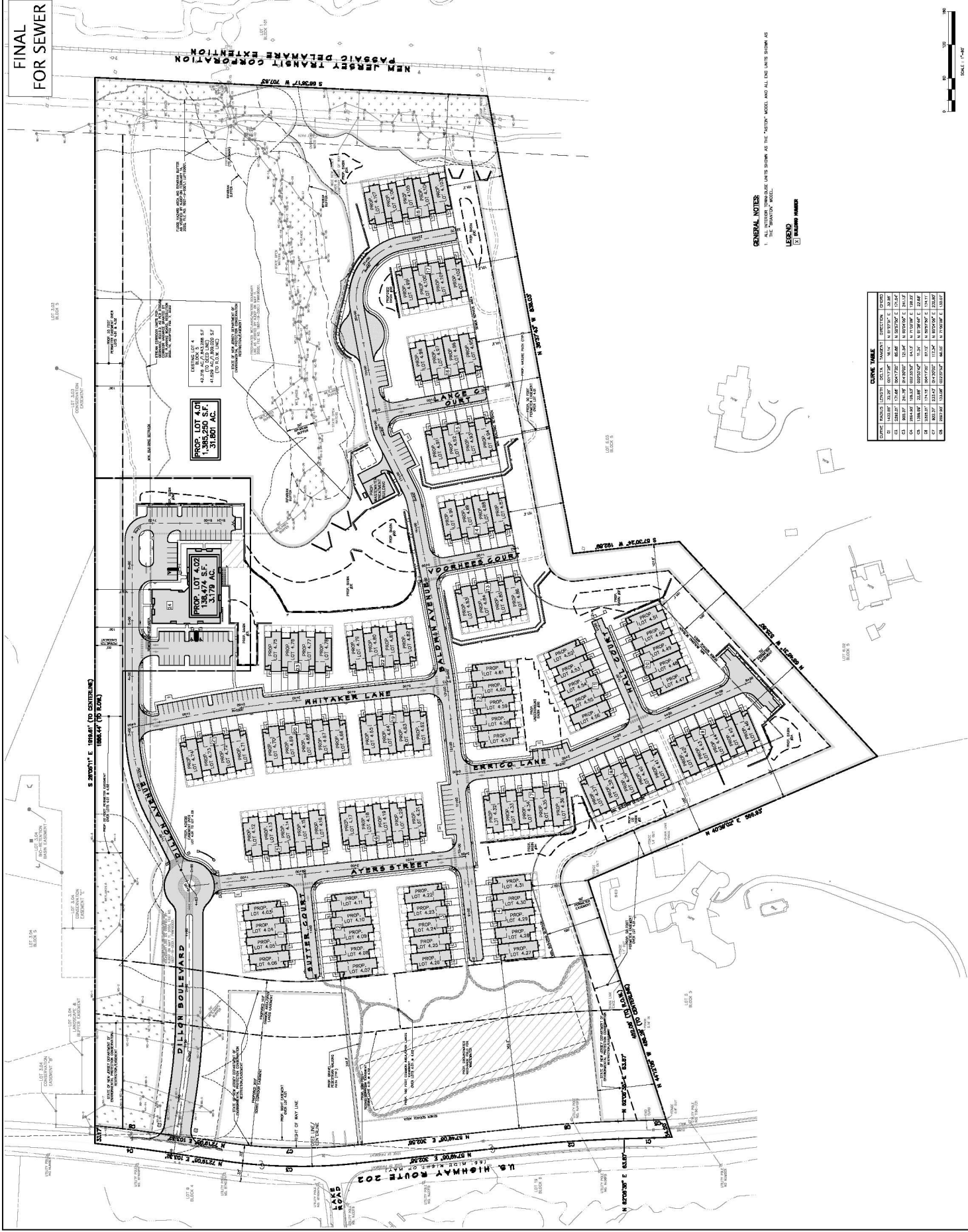
### PARKING SUMMARY

USE	NUMBER OF SPACES
1-4 RESIDENCE	195
5-8 RESIDENCE	24
9-12 RESIDENCE	30
13-16 RESIDENCE	36
17-20 RESIDENCE	42
21-24 RESIDENCE	48
25-28 RESIDENCE	54
29-32 RESIDENCE	60
33-36 RESIDENCE	66
37-40 RESIDENCE	72
41-44 RESIDENCE	78
45-48 RESIDENCE	84
49-52 RESIDENCE	90
53-56 RESIDENCE	96
57-60 RESIDENCE	102
61-64 RESIDENCE	108
65-68 RESIDENCE	114
69-72 RESIDENCE	120
73-76 RESIDENCE	126
77-80 RESIDENCE	132
81-84 RESIDENCE	138
85-88 RESIDENCE	144
89-92 RESIDENCE	150
93-96 RESIDENCE	156
97-100 RESIDENCE	162
101-104 RESIDENCE	168
105-108 RESIDENCE	174
109-112 RESIDENCE	180
113-116 RESIDENCE	186
117-120 RESIDENCE	192
121-124 RESIDENCE	198
125-128 RESIDENCE	204
129-132 RESIDENCE	210
133-136 RESIDENCE	216
137-140 RESIDENCE	222
141-144 RESIDENCE	228
145-148 RESIDENCE	234
149-152 RESIDENCE	240
153-156 RESIDENCE	246
157-160 RESIDENCE	252
161-164 RESIDENCE	258
165-168 RESIDENCE	264
169-172 RESIDENCE	270
173-176 RESIDENCE	276
177-180 RESIDENCE	282
181-184 RESIDENCE	288
185-188 RESIDENCE	294
189-192 RESIDENCE	300
193-196 RESIDENCE	306
197-200 RESIDENCE	312
201-204 RESIDENCE	318
205-208 RESIDENCE	324
209-212 RESIDENCE	330
213-216 RESIDENCE	336
217-220 RESIDENCE	342
221-224 RESIDENCE	348
225-228 RESIDENCE	354
229-232 RESIDENCE	360
233-236 RESIDENCE	366
237-240 RESIDENCE	372
241-244 RESIDENCE	378
245-248 RESIDENCE	384
249-252 RESIDENCE	390
253-256 RESIDENCE	396
257-260 RESIDENCE	402
261-264 RESIDENCE	408
265-268 RESIDENCE	414
269-272 RESIDENCE	420
273-276 RESIDENCE	426
277-280 RESIDENCE	432
281-284 RESIDENCE	438
285-288 RESIDENCE	444
289-292 RESIDENCE	450
293-296 RESIDENCE	456
297-300 RESIDENCE	462

### GENERAL NOTES

- THE APPLICANT SHALL MAINTAIN THE EXISTING UTILITIES AND DRIVEWAYS AS SHOWN ON THE SITE PLAN.
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<b>REVISIONS</b> NO. DATE BY DESCRIPTION 1. 10-21-20 10/21/2020 [Name] [Description] 2. 11-19-20 11/19/2020 [Name] [Description] 3. 01-21-21 01/21/2021 [Name] [Description] 4. 02-25-21 02/25/2021 [Name] [Description] 5. 03-25-21 03/25/2021 [Name] [Description] 6. 03-25-21 03/25/2021 [Name] [Description] 7. 03-25-21 03/25/2021 [Name] [Description] 8. 03-25-21 03/25/2021 [Name] [Description]		Pulte Homes 10000 N. Central Expressway Orlando, Florida 32817 P: (407) 351-2000 F: (407) 351-2001 www.pulte.com		Melillo Equities 10000 N. Central Expressway Orlando, Florida 32817 P: (407) 351-2000 F: (407) 351-2001 www.melillo.com		Gladstone Design, Inc. 10000 N. Central Expressway Orlando, Florida 32817 P: (407) 351-2000 F: (407) 351-2001 www.gladstone.com		Ronald A. Koenig, P.E. 10000 N. Central Expressway Orlando, Florida 32817 P: (407) 351-2000 F: (407) 351-2001 www.keneng.com	



**CLUMP TABLE**

CLUMP	AREA (S.F.)	PERCENT	PERCENT	PERCENT	PERCENT
C1	138,474	13.85	13.85	13.85	13.85
C2	138,474	13.85	13.85	13.85	13.85
C3	138,474	13.85	13.85	13.85	13.85
C4	138,474	13.85	13.85	13.85	13.85
C5	138,474	13.85	13.85	13.85	13.85
C6	138,474	13.85	13.85	13.85	13.85
C7	138,474	13.85	13.85	13.85	13.85
C8	138,474	13.85	13.85	13.85	13.85
C9	138,474	13.85	13.85	13.85	13.85
C10	138,474	13.85	13.85	13.85	13.85

**GENERAL NOTES**  
 1. ALL DIMENSIONS UNLESS SHOWN AS THE "GIVEN" MODEL AND ALL UNITS SHOWN AS "AS SHOWN" UNLESS SHOWN AS THE "GIVEN" MODEL AND ALL UNITS SHOWN AS "AS SHOWN".  
 2. ALL DIMENSIONS UNLESS SHOWN AS THE "GIVEN" MODEL AND ALL UNITS SHOWN AS "AS SHOWN".

**LEGEND**  
 [Symbol] BUILDING NUMBER

FINAL FOR SEWER



# EXHIBIT B

## Memorandum

To: Far Hills Planning Board

From: David J. Banisch, PP/AICP

Date: July 5, 2021

Re: Pulte Homes of NJ, Limited Partnership  
220 Route 202  
Block 5, Lot 4  
41.529-acres  
Preliminary and Final Major Subdivision and Major Site Plan Application  
Zone: TH-6-IAR Townhouse Inclusionary Age-Restricted Residential

---

We have reviewed preliminary and final site plan and subdivision plans and supporting documentation in preparation of this report.

This application is for preliminary and final major site plan and subdivision approval pursuant to Far Hills Borough's Court-approved third round affordable housing settlement agreement and settlement agreement with Melillo Equities, December 2019.

### General Description:

1. The application is for development of a mixed residential community on the 41.259-acre tract, consisting of develop 105 age-restricted for-sale townhouse units and a multifamily affordable rental apartment building consisting of 29 affordable rental apartment units with associated parking and improvements. The multi-family affordable apartment building is for 25 family units and 4 age restricted units. 34 of the 105 townhouses are proposed as "walk-out" units where topography permits rear walk out basements – **height variances for the 34 walk-out units are requested** (38.04' proposed height vs. 36' permitted height).
2. A new 12" public water main will be extended in Route 202 to the site with an 8" main water line extension from 202 to the site for water service. Sewer service will be provided by an on-site sewer treatment plant with an 85' x 400' groundwater recharge field. All units will be served by underground natural gas, electric, telephone and cable service that will be extended from Route 202 throughout the development.
3. This application is submitted pursuant to Far Hills' Third Round Affordable Housing compliance and the Borough's court-approved settlement agreement with the property owner. The Borough adopted Ordinance No. 2019-08, on December 12, 2019 that established the TH-6-IAR Zone pursuant to the court-approved settlement agreement. Proposed development in the TH-6-IAR Zone will address a substantial portion of the Borough's affordable housing obligations to comply with municipal

111 Main St., Flemington, NJ 08822

Tel. 908.782.0835; Fax: -7636

[davidbanisch@banisch.com](mailto:davidbanisch@banisch.com)

Page 1 of 12

affordable housing obligations and the development is responsive Housing Plan Element and Fair Share Plan of the Borough's Master Plan.

4. Block 5, Lot 4 is at 220 Route 202 and located opposite Lake Road. The north tract boundary is Route 202, the south tract boundary is the NJ Transit rail line and the Mine Brook, the east tract boundary is the Castle Court neighborhood and the west tract boundary adjoins a single-family dwelling (196 Route 202) and the Fox Hunt Court neighborhood. The tract is irregularly shaped, and is identified with 42.316-acres to the centerline of Route 202. Lot 4 is 42.529-acres after a right-of-way dedication 33' wide x 405' long across the frontage of the tract to the Route 202 center line.
5. The application identifies four existing dwellings units, an existing barn and several sheds that will be removed. The tract is primarily wooded with cleared areas located adjacent to existing dwellings and in fields on the west, north and northeast sides of the tract. An existing hedgerow along Route 202 screens the tract from public view..
6. Wetlands extend east to west across the south tract boundary and are situated within a 100' wide NJ Power & Light right-of-way that is located on tract. A narrow spline of wetlands and state open waters (tributary to the Mine Brook) reaches approximately 800' north into the site through a 40' deep ravine extending from the south tract boundary to approximately the mid-point of the tract between the south tract boundary and Route 202 to the north. There are approximately 1.5-acres of steep slopes identified at the head of the ravine at approximately the midpoint of the tract between the south tract boundary and Route 202.. Three wetland areas extend into Lot 4 near the northeast corner of the tract.
  - a. A 50' riparian buffer is identified on plans adjacent to the State Open Waters (Mine Brook Tributary).
  - b. Plans identified a 50' wetlands transition area adjacent to wetlands.
  - c. Plans identify the Borough's 100' Stream Corridor buffer (Section 803.B.) extending from the complex of wetlands and steep slopes adjacent to the Mine Brook Tributary. **A variance is requested from the 100' stream corridor** requirement.
7. The proposed development layout slightly differs from the settlement agreement concept plan, which is Exhibit A. in the agreement. The proposed road network, building locations and orientations vary from the concept plan; however, the layout appears to be substantially similar to the concept plan. Sec. 703.2.B.3. provides that "the overall layout and configuration is subject to Planning Board approval and therefore may not strictly conform to Exhibit A.
  - a. The environmental features identified on the site and subdivision plans and summarized above are labeled "approximate environmentally constrained areas" on the concept plan. The delineation of these features appears to account for the design differences between the concept plan and plans submitted for approval.
  - b. A proposed 85' wide x 400' long subsurface groundwater recharge field is located substantially within the Borough's 200' Scenic Corridor ordinance requirement applicable to the Route 202 frontage (Section 802.F.), which was apparently not indicated on the settlement agreement concept plan. A variance is required to locate the subsurface recharge field within the Borough's 200' scenic corridor setback requirement.

8. Settlement Agreement. Article I of the December 2019 Settlement Agreement (SA) identifies a series of terms, conditions and obligations for the parties and are summarized below.

SA Paragraph #      Summary of Settlement Agreement Requirement & Comment on plans

1.1.1 Density

Requirement: 134 total units, 29 affordable units  
 105-age restricted for-sale market-rate townhouses  
 25 family affordable rental units  
 4 age-restricted affordable rental units

Comment: Application proposes 134 units pursuant to the settlement agreement:  
 105 market-rate townhouse units, and  
 29 affordable rental units in one building including 25 family and 4 age-restricted affordable units. (conforms to Settlement Agreement and Sec. 703.2.B., Principal permitted uses for the TH-6-IAR Zone)

1.1.2 Height:

Requirement: Townhouses:  
 4-5 unit buildings, 2-1/2 story – 36’  
 Affordable apartment building:  
 3 stories with appearance of 2-1/1 stories – 42’

Comment: 71 proposed slab on grade townhouse units comply with proposed height of 32.6’ vs. 36’ permitted.  
 34 proposed “walkout” townhouse units do not comply with 36’ height limitation. Walk-out units have an exposed rear basement wall. The max. height proposed is 38.07’ vs. 36’ permitted. Variance required as per N.J.S.A. 40:55D-70.c.(1) or (2).  
 Affordable apt. building height – complies. A 41’ height on the walkout side (south) of building is proposed and a height of 31’-6” is proposed on north side of building vs. 42’ permitted.

1.1.3 Setbacks:

Requirement: Front yard: 300’  
 Side yard: 100’  
 Side yard tree buffer: 50’  
 Rear yard setback: 50’

Comment: Proposed development appears to comply with these setback requirements.  
 A 200’ deep Scenic Corridor Easement and 100’ Common Area / Open Lands Easement is identified across the frontage for a total of 300’ setback from Route 202 as required. Separately; however, a Scenic Corridor setback variance required for setback less than 200’ for ground water recharge field within the 200’ Scenic Corridor adjacent to Route 202.  
 A 50’ perimeter buffer is depicted along the east and west side tract lines for buffering adjacent residential properties. This should be depicted as an easement limited to buffer trees/plantings and the meandering pathway that is proposed for the community.

1.1.4 Age-restriction:

Requirement: 105 required/permitted

Comment: 105 age-restriction subject to Board and Borough Atty. review and approval.

1.1.5 Amenities:

Requirement: Walking path (private) to be provided.

Comment: A meandering walking path is proposed that extends around the perimeter of the tract. It is accessible from all stub-street sidewalks within the subdivision and the affordable apartment building parking lot. It meanders around the subsurface groundwater recharge field within the front yard and along and occasionally within the 50' perimeter buffer proposed on the east and west sides of the tract.

All residents of the community including those in the apartments on Lot 4.02 should be guaranteed access to the walking path.

If required by the Board, walking path signs could be provided marking the path "private"; however, all access to the path is limited to access points from the interior of the community, which may suggest that such signs are not needed.

Additional on-site recreation amenities are not required in lieu of municipal contribution from the developer to the Borough for off-site improvements.

As indicated in the Board Engineer's letter, the surface of the walking path should be identified on plans.

A variety of accessory use are permitted, including tennis courts, any form of outdoor recreation court or play field, tot lots and playground (Sec. 703.2C.4. i. & ii). Something for the affordable apartments should be provided.

1.1.6 Parking:

Requirement: As per Residential Site Improvement Standards (RSIS)

Comment: Plans identify 308 parking space required vs. 481 spaces proposed, as follows:

Townhouse: 252 required vs. 423 spaces proposed

210 in 2-car garage (105 units with garage x 2 spaces/garage)

158 driveway spaces

55 surface spaces

Apartment building: 58 spaces required vs. 58 provided in a parking lot adjacent to the apartment building.

RSIS Guest parking: 67 required vs. 113 provided.

1.17 Scenic Corridor / Open Land / Development Restrictions

Requirement: 200' Scenic Corridor  
100' Common Area/Open Land

Comment: Both the 200' Scenic Corridor and 100' Open Lands Restrictions are depicted on plans within which no above grade improvements are proposed. However, a proposed subsurface groundwater recharge field is proposed within 200' Scenic Corridor – Variance required (Sec. 802.F).

1.1.8 Sanitary Sewer

Requirement: On-site permitted and preferred.

Applicant has submitted evidence of application for site specific NJDEP wastewater management plan amendment by developer with on site flow-chart design.

Comment: In lieu of sewer line extension to site from the public sewer system, Applicant proposes an on-site wastewater treatment plant and disposal bed.

#### 1.1.9 Final Plans / Architectural Design

Requirement: Shall construct project in substantial compliance with concept plans – Attachment A of Settlement Agreement. To be refined in consultation with Borough (Planning Board)

Comment: Architectural plans submitted a base and several alternative exterior designs to be reviewed and discussed by the Board.

Alternative designs should be explained in testimony to the Board. Exterior designs selected by the Board should be made a condition of approval. (see additional comments below)

#### 1.1.10 Phasing of Development

Requirement: Affordable units to be provided in accordance with COAH schedule at N.J.A.C. 5:93-5.6(d) based on the percentage and number of market-rate units completed.

Comment: The number of affordable units to be provided are to be delivered under the rule in accordance with the number and percentage of market-rate units provided. Applicant should provide testimony explaining proposed affordable apartment delivery schedule relative to construction of the market-rate units. (see additional comments below)

9. The subdivision plan proposes to subdivide Lot 4, as follows:

- |   |  |
|---|--|
| a. Common area lot:                           | Lot 4.01 – 32.071-acres                    |
| b. Apartment building lot (affordable units): | Lot 4.02 – 2.909 acres (flag lot)          |
| c. Townhouses:                                | Lots 4.03 – 4.107 – (105 lots) 6.549-acres |

10. Variances:

- Height. 36' and 2.5 stories is permitted for townhouses and 38.07' is proposed (§ 703.2F.1) for 31 “walk-out” units (exposed basement in rear).
- Steep slope disturbance: 10% disturbance is permitted in slope category 15-25% vs. 43% disturbance is proposed (§ 803.A)
- Steep slope disturbance. 0% is permitted in slope category greater than 25% vs. 68% disturbance is proposed on slopes 25-35%, and 77% on slopes greater than 35% is proposed. (§ 803.A)
- Stream Corridor development. Variance to permit development within 100' stream corridor buffer where development within the corridor is not permitted. (§ 803.B)
- Scenic Corridor development. Variance to permit subsurface groundwater recharge field within 200' Scenic Corridor (§ Section 802.F.).

11. All variances may be granted by the Board in accordance with N.J.S.A. 40:55D-70.c.(1) and/or (2).

Testimony for each variance should be provided addressing the positive and negative criteria for each.

12. The Applicant should provide testimony regarding the overall site plan including an overview and explanation of (1) proposed site plan improvements, (2) parking and circulation, (3) proposed building improvements, including exterior materials, finishes and colors and (4) proposed vegetation and landscaping improvements.
13. The site plan appears to conform to the Area, Yard and Setback requirements for the TH-6-IAR Zone (Sec. 703.2.G.) (see Zoning Tabulation, Sheet 1 of Site Plan).
- a. Maximum permitted building coverage is 30%. Proposed building coverage is 12.5%
  - b. Maximum impervious coverage is 60%. Total proposed impervious coverage is 27.8%.
14. Roadway access. The development will be accessed from Route 202 via a proposed 450' long divided boulevard (Dillon Blvd.) with a 14' wide median that separates two 18' wide one-way travel lanes on the northeast side of the tract. The boulevard access road intersection with Route 202 is approximately 240' east of Lake Road and approximately 675' west of Castle Court. Boulevard setback from the east tract boundary varies between approximately 120'-150'.
- a. The 14' wide boulevard median begins approximately 30' from the existing edge of pavement on Route 202 and extends approximately 375' along the boulevard. It is curbed with Belgian block and is to be planted with grasses and flowering perennials.
  - b. The first proposed light pole on the boulevard is set back 60' from the existing edge of pavement on Route 202. It is a 14' high decorative light fixture that is typical of the fixtures proposed throughout the development. The light is on the north side of the boulevard.
  - c. Existing public utility pole #BT402FH is located approximately at the exit lane to the boulevard.
    - i. *The applicant should provide testimony as to whether a street light may be added to the utility pole to illuminate the boulevard intersection at Route 202.*
  - d. The boulevard transects two of the three isolated wetlands situated in the northeast corner of the tract.
  - e. There is no sidewalk access along the boulevard from Route 202.
15. Roads, curbs, sidewalks. The divided travel lane boulevard access road configuration terminates in a round-about on tract that is approximately 450' from Route 202. Two 24' wide two-way streets extend from the round-about, one south (Dillon Ave.), the other west (Ayers St.) for access into the rest of the local road network throughout the neighborhood.
- a. Roads have Belgian block curb.
  - b. From the round-about, all interior roads have sidewalks on one side of the road for pedestrian access throughout the tract.
  - c. Sidewalks are 4' wide with a 4' planting strip between the curb and sidewalk.
16. Townhouses. There are 23 proposed townhouse buildings with 4 and 5 dwelling units per building. The townhouses are located throughout the central, west and southwest areas of the site. All townhomes are set back at least 100' from a tract boundary. The proposed sewer treatment plant is located adjacent to the head of the ravine in the central portion of the site adjacent to proposed townhomes on the southwest side of the site.
- a. Each townhouse has a two-car garage and an 18' wide driveway, which is wide enough for two cars. Each driveway appears to be at least 23' in length between the townhouse and

- sidewalk vs. 24' required. Driveway lengths appear to conform to the minimum 20' length requirement for driveway parking (Sec. 703.2.H.1.vi.).
- b. The parking calculation on Sheet 1 indicates that there are 158 parking spaces in driveways. This should be explained to the Board and why two parking spaces per driveway aren't counted in the calculation.
  - c. Testimony should be provided identifying the model units and parking for the models.
    - i. Parking provided seems excessive in comparison to RSIS requirements, some of which appears to be parking for use by the sales models.
    - ii. Once parking for sales models is no longer needed, removal and reclamation of surface parking areas should be required by the Board.
  - d. Development phasing should be discussed in testimony to the Board.
    - i. Proposed phasing should be added to plans.
  - e. A proposed 12' wide x 45' long paved driveway provides access adjacent to the proposed sewer treatment plant.
    - i. Testimony should be provide explaining the type and frequency of service vehicle use of this driveway in conjunction with the schedule of maintenance identified in the wastewater management plan amendment application provided to the Board.
    - ii. The types of service vehicles providing service to the sewer plant and components of the wastewater treatment system should be identified and described to the Board.
17. Affordable apartment building. The affordable apartment building is located on the east side of the tract and is setback from the east property boundary a distance of 102.7'. It is set back from Route 202 approximately 915'. It is located on a 2.9-acre flag lot with a 50' wide access strip that extends from Route 202 frontage to the flag portion of the lot, which is approximately 306' x 280' (1.96-ac.).
- a. The access strip will not be used for access. It establishes frontage on a public road as required by law.
  - b. The apartment building is accessed from proposed Dillon Ave., which is the 24' wide road that extends south from the round-about at the end of the boulevard entrance.
  - c. Note 26 on Sheet 1 read: Multifamily building shall be equipped with a sprinkler system in accordance with all applicable building codes and central station alarm system for all the individual units in common area.
  - d. Parking is provided on the north, east and south sides of the building and conforms to the 15' setback between parking and the building (Sec. 703.2.H.1.vii.).
  - e. Proposed landscaping between surface parking spaces located opposite Lots 4.71-4.74 consist of trees, but no shrub screening, which should be provided.
    - i. All surface parking lots (i.e. visitor spaces) distributed throughout the development should include shrubs to blunt headlight glare to adjacent residential dwelling units.
  - f. On the south side of the affordable apartment building, the proposed 20 space paved parking lot is to be constructed over a subsurface stormwater detention basin that is built into grade with a retaining wall on the south side of the basin. The retaining wall attains a height of 17' and a 4' high fence is proposed along the retaining wall.
    - i. Given the proposed height of this retaining wall, a 6' fence is recommended for safety along the top of the retaining wall.



- g. The proposed dumpster for trash and recycling is situated at the west end of the south parking lot. It appears that this location will require the truck to back up approximately 120-140' each time dumpsters are emptied.
  - i. Testimony should be provided explaining how residents will dispose of trash and recycling (i.e. are common collection facilities proposed inside the building?).
  - ii. An access door is shown on the south side of the building; however, no sidewalk extends from this door to the parking lot and it is not clear whether residents will be able to use this door to carry trash and recycling to the dumpster, or if residents will have to carry trash out the front door on the east or north sides of the building.
    - 1. Testimony should be provided explaining whether this door may be used for residents removing trash from the building.
      - a. If so, and the dumpster remains in the location proposed, the sidewalk should be extended around the northeast corner of the south parking lot for a continuous sidewalk to the dumpsters. If not, an alternative location for the dumpster may be appropriate.
    - 2. Placement of the dumpster in the southeast corner of the driveway accessing the south parking lot, adjacent to the proposed walking path, would place it within the required 100' side yard setback, but outside of the 50' perimeter buffer; however, it may be possible that minimal backing would be required by the trash and recycling trucks thereby reducing noise in the area.
      - a. A reduction in back-up warning noise should be considered as a possible benefit to relocation of the dumpster.
      - b. We recommend that the Board investigate this alternate location with testimony from the applicant or a truck turning template shown on plans to determine whether the alternate location is feasible and would yield greater benefits (i.e. reduction in truck backing noise) than the location shown on the plans.
      - c. A variance would be required for an accessory structure within the 100' setback if the dumpster is relocated to the southeast corner of the driveway on the south side of the building.
- h. Cross access and maintenance agreements between Lots 4.01 and 4.02 are needed for vehicular and pedestrian access, for shared stormwater management and wastewater treatment facilities.
  - i. The agreements needed should be described to the Board, submitted for approval by the Planning Board and Borough Attorney and recorded with the County Clerk.
- i. The settlement agreement concept plan included area of the site potentially developable for informal open play areas that could be shared common facilities to the affordable apartments and townhouses.
  - i. The Board and applicant should discuss how and where an open play area can be provided on site (1) for apartment building residents, and (2) for younger visitors to the age-restricted townhouses who will invariably arrive for family visits.

18. Affordable housing requirement. The application includes the affordable housing agreement prepared by CGP&H who will administer the affordable housing program in compliance with UHAC and the terms of the settlement agreement. The applicant should provide testimony that the

proposed affordable housing component meets the requirements of the settlement agreement and UHAC including providing 15 low-income units, 14 moderate income units, 4 very-low-income units. The bedroom mix shall be provided in accordance with income level with a total of 6 one-bedroom units, 16 two-bedroom units and 6 three-bedroom units.

- a. Individual units should be identified as very low-, low- and moderate-income units on plans.
- b. The applicant is required to conform to affirmative marketing, income qualification, and annual recertification of occupants as to income eligibility.

19. In the previous plan it was conceivable that a more centralized open space area could provide outdoor recreational space for the residents of the development, however, with the new layout and location of the wetland areas, the open space has been subsumed in a large part to common lawn and meadow areas and proposed stormwater management facilities. Walking paths are provided around the perimeter of the development, as required. Since there are not common recreation facilities for residents, will the applicant be able to provide outdoor recreational areas for residents?
  - a. The applicant and the Board should discuss providing some level of facilities for the residents on site in addition to the walking path.
20. The off-street parking is provided through driveways and garages for the townhouses and a common lot for the apartment building. The ordinance requires adherence to RSIS standards for parking, which according to the parking summary on the site plan, identifies 308 required spaces with the applicant providing 481. The applicant should provide testimony regarding the parking and how the proposed parking will accommodate residents and visitor parking.
21. Utility Plan – Sheets 17-22.
  - a. A 12” water main is identified along Route 202 with an 8” water main extended onto the site to serve the development.
    - i. Testimony should be provided explaining the water main extension from the source to the site and the status of the proposed extension.
    - ii. Testimony should be provided explaining whether there are engineering reasons for the water main extension from the source to be a 12” water main vs. an 8” water main.
  - b. Testimony should be provide explaining whether an accessory structure for the water connection to the site is needed. If so, the exterior design of the structure should be submitted to the Board for review and comment.
    - i. when the , including whether the to be extended main along Route to match the capacity of the service line extending into the site – i.e. limit other potential water service hook-ups.
22. Landscaping Plan – Sheets 23 - 28
  - a. Proposed landscaping for the site and the Proposed Land Cover Map (Figure No. 5) in the Stormwater Management Report are substantially consistent.
    - i. Applicant should provide testimony explaining how the proposed Landscaping Plan plantings and ground cover are related to compliance with stormwater management.

- ii. It may be helpful to present Figure No. 5 (Proposed Land Cover Map) to provide a “big picture” view of proposed land cover management of the site in the post development condition.
- b. The Landscaping Plan identifies proposed tree removal and landscaping throughout the site including proposed perimeter buffer plantings, shade and ornamental streetscape trees, bioretention basin plantings (plant list on Sheet 41), reforestation, and areas proposed for management as meadow and lawn area plantings.
- c. Proposed perimeter buffer plantings are primarily evergreen supplemental tree planting along the north and west property lines to provide screening of the site from Route 202 and the residential neighborhood to the west (homes on Lot 5 and Fox Hunt Court).
- d. Shade and ornamental roadside streetscape trees are identified throughout development roads at approximately 30’ – 50’ intervals.
- e. Bioretention plantings are a component of stormwater management for the site.
  - i. Maintenance of the bioretention plant species proposed should be described to the Board.
- f. Reforestation is proposed within the 300’ setback of the front yard (approximately 1.25-acres), and on the east property line extending approximately 800’ from Route 202 within the 50’ wide Lot 4.02 flag stem). These are identified as “Woods (Good Condition)” on Figure No. 5 of the Stormwater Management Report for the site.
- g. Meadow and lawn areas are distributed throughout the townhouse development.
  - i. The limits of “lawn area” are confined to immediate adjacency to proposed townhouses and the apartment building.
  - ii. Meadow areas are identified adjacent to lawn areas and depicted over the surface and subsurface stormwater management facilities.
    - 1. Maintenance of meadow areas will require careful maintenance to be executed over the long term in the post development condition. This should be explained to the Board.
- h. Landscaping plan notes (Sheet 28):
  - i. Note 4. If during construction, it is determined by the applicant and Borough Engineer/ Planner that a tree can be preserved, said tree shall be protected in accordance with the Borough standards. Appropriate credit shall be given toward the tree replacement requirements if preserved.
  - ii. Note 5. If during construction, it is determined by the applicant and Borough Engineer/ Planner that a tree can be preserved, said tree shall be protected in accordance with the Borough standards. Appropriate credit shall be given toward the tree replacement requirements if preserved.
- i. Landscape buffering note on Sheet 1:
  - i. Note 21. The installed Landscaping shall be subject to inspection by the Borough's Planner. The applicant shall provide additional plantings or make other reasonable changes to the Landscaping as deemed necessary and appropriate by the Borough planner to improve screening of this site from adjoining residences.
    - 1. Applicant should provide testimony explaining whether this provision is intended to ensure that supplemental buffer planting for adjoining residential properties will be provided if the perimeter buffering on the plans requires supplementation to effectively screen development from off site.

2. We recommend that the provisions of Note 21 extend to the Route 202 frontage buffering where visibility of the development within the Scenic Corridor has previously been raised as a concern.
  - j. It appears that the number of plant symbols does not match the quantities called out on the plan (Sheet 26 between proposed Lots 4.83-4.86 and 4.52 & 4.61). Where such discrepancies may occur, the number of plants provided should coincide with the number of plant symbols represented on the plans.
  - k. Testimony should be provided explaining whether the species selections identified on the Landscaping Plan are appropriate to the Planting Zone for Far Hills (6b).
  - l. Hedgerows – The applicant should provide testimony identifying the existing vegetation and hedgerows and where proposed alteration of the existing hedgerows is proposed, include the removal of trees to establish required sight lines for the boulevard access road to the site and the remainder of the hedgerow along Route 202. These features are to be maintained to the greatest extent practicable in accordance with section 703..2.I.2.iii.
    - i. To the extent that the applicant wishes to remove invasive exotic trees, shrubs and vines, an explanation should be provided to the Board with a request to do so. If the Board is so inclined to allow alterations of the hedgerows not required for traffic safety, specific notes should be added to the landscaping plan identifying measures to be taken and tools and implements to be used.
23. Building Architecture Plans. Section 703.2. M. identifies architectural design standards.
- a. Subsection 2.i. provides that “The ordinance requires that the townhouses shall be designed utilizing exterior features such as traditional stone, or brick water tables, clapboard siding and other residential design elements commonly found in the village. Roof pitch, door and window style and placement, exterior trim and ornamentation, etc., should emulate and expand upon the traditional early 1900’s architecture of Far Hills Village.”
  - b. Subsection 2.ii. provides that “Townhouse and affordable rental apartment building exterior architectural design and materials should be coordinated, substantially consistent and harmonized among the buildings.”
  - c. The settlement agreement calls for consistency and refinement with the architectural designs included in the agreement.
  - d. Architectural plans submitted entitled “Residences at Overleigh”, prepared by Minno and Wasko, 04/09/2021, provide the following:
    - i. Exterior townhouse design examples for the front facade, and side and rear townhouse building elevations (Sheets 1 – 4),
    - ii. Townhouse floor plans (Sheets 5 & 6),
    - iii. Townhouse building section diagrams identifying typical building height (Sheet 7),
    - iv. Apartment building (multi-plex building) floor plans, façade elevations (Sheets 8, 9 and 10), and
    - v. Sewer treatment façade elevations (Sheet 11).
  - e. Townhouse front façade: The applicant should present the plans and testimony with an explanation of the townhouse building front elevations for Board review. The differences between the two designs should be detailed and explained.
    - i. Proposed exterior building materials should be detailed (roof, siding, trim, windows, water table), including proposed color pallet for the buildings.

- ii. The Board should consider whether the proposed exterior designs and materials to be used achieve the desired design aesthetic required by ordinance.
  - f. Townhouse side and rear High Visibility exterior wall finishes: The side and rear townhouse building elevations include “high visibility” exterior treatments that are identified for certain building side and rear exposures. They are depicted on a map of the subdivision to identify the high visibility locations where additional exterior detail is proposed.
    - i. We recommend adding Lots 4.47, 4.56 and 4.57 to Sheet 3 as high visibility side elevations.
    - ii. We recommend adding the rear exterior high visibility design treatment to all townhouse buildings that are oriented rear wall to rear wall.
  - g. Sewer Treatment Building – we recommend adding additional exterior window / louvre treatments to building elevations “C” and “D”.
- 24. Note 17 on Sheet 1 reads: The applicant proposes the hours of refuse collection shall be limited to occur between 7 a.m. and 7 p.m., and loading activities shall be limited to occur between 7 a.m. and 10 pm. Refuse collection and loading shall be limited to Monday through Friday only.
  - a. Testimony should be provide explaining why shorter evening hours are not proposed for refuse collection.
  - b. An explanation should be provided why loading activities are needed until 10 p.m. Monday through Friday.
- 25. Note 27 on Sheet 1 provides that “The permitted hours for construction activities shall be 7:00 a.m. to 7:00 p.m. Monday through Friday, and 8 a.m. to 5 p.m. on Saturday, construction activities are not permitted on Sundays and holidays.
- 26. The applicant should identify all outside agency approvals required and the status of each.
- 27. We expect that we will supplement the comments in this memorandum during the course of the public hearing on this matter.

We trust that the Board will find this information useful in its consideration of this matter.

- c. Shana Goodchild  
Steven Bolio, PE  
Paul W. Ferriero, PE, PP, CME  
Peter Henry, Esq.  
Day Pitney, LLP – Craig M. Gianetti, Esq  
Gladstone Design, Inc – Ron Kennedy, PE  
Matthew D. Draheim, LA  
Minno Wasko - Bruce Engleough, RA  
Anthony Melillo

# EXHIBIT C



Paul W. Ferriero, PE, PP, CME, LEED AP, CFM  
Robert C. Brightly, PE, PP, CME

Steven B. Bolio, PE, CME  
Mark S. Denisiuk, PE, CME, LEED AP  
Mark Kataryniak, PE, PTOE  
Joseph S. Kosinski, PG, CFM, LEED  
C. Richard Quamme, PE, CME  
Jess H. Symonds, PE

July 2, 2021

Thomas Rochat, Chairman  
Far Hills Borough Land Use Board  
6 Prospect Street  
Far Hills, New Jersey 07931

Re: Residences at Overleigh  
Block 5, Lot 4  
US Hwy Route 202  
Borough of Far Hills  
Our Project No. 21FH203

Dear Mr. Rochat:

The applicant for the above referenced project is seeking preliminary and final major site plan, preliminary and final major subdivision and variance approval to permit the construction of a multi-family residential development. The property is located in the TH-6-IAR Townhouse Inclusionary Age-restricted Residential zoning district and consists of approximately 41.5 acres. The existing property, known as Block 5 Lot 4 located on New Jersey State Route 202, contains several single family and multi-family residential buildings, with related site improvements. The applicant is proposing to construct a mixed residential development consisting of 105 age-restricted for-sale townhouse units and a multifamily apartment building consisting of 29 affordable units (25 non-age restricted rental affordable housing units and four age-restricted rental affordable housing units). Proposed site improvements include a walking path, roadways, parking areas, utilities, lighting, landscaping, stormwater management and associated improvements. The applicant is also proposing a subdivision of the property to create one lot for the apartment development and one lot for the townhouse development. The townhouse lot will be further subdivided into individual lots for each of the townhouse units. The proposed subdivision will result in the creation of 107 total lots. The following information has been submitted in support of the application:

- Cover letter prepared by Craig M. Gianetti, Day Pitney LLP, dated April 9, 2021.
- Land Development Application with Proposal.
- Disclosure of Corporate Ownership (affiliated with Pulte Homes of NJ, Limited Partnership (Applicant)).
- Checklist Details Required for Preliminary Major Subdivision Plats and Preliminary Major Site Plans.
- Checklist Details Required for Final Major Subdivision Plats and Final Major Site Plans.

• • •

■ 180 Main Street • P.O. Box 571 • Chester, NJ 07930 • 908-879-6209 • Fax: 908-879-6597  
□ 17 Model Avenue • P.O. Box 577 • Hopewell, NJ 08525 • 609-466-0002 • Fax: 609-466-2008  
mail@FerrieroEngineering.com

Ferriero Engineering, Inc.

July 2, 2021

Page 2

Re: Residences at Overleigh  
Block 5, Lot 4  
US Hwy Route 202  
Borough of Far Hills  
Our Project No. 21FH203

- Professional Services Agreement, Affordable Housing Services prepared by CGP&H, undated.
- Request for tax certification prepared by Nicole Magdziak, Day Pitney LLP, dated February 16, 2021.
- Preliminary and Final Major Site Development and Subdivision Plans, consisting of forty- two (42) sheets, dated March 19, 2021 prepared by Ronald A. Kennedy, PE, Gladstone Design, Inc.
- Boundary & Topographic Survey, consisting of one sheet, dated December 11, 2020 prepared by Kurt T. Hanie, PLS, Gladstone Design, Inc.
- Preliminary and Final Major Subdivision Plat consisting of two sheets dated March 19, 2021 prepared by Kurt T. Hanie, PLS.
- Sales Trailer and Model Home Plot Plan consisting of one sheet, dated March 19, 2021 prepared by Ronald A. Kennedy, PE.
- Architectural Plans consisting of twelve sheets dated April 9, 2021 prepared by Minno Wasko Architects and Planners, Lambertville, NJ.
- Stormwater Management Report dated March 19, 2021 prepared by Gladstone Design, Inc. (unsigned).
- Environmental Impact Statement dated April 8, 2021 prepared by EcolSciences, Inc., Rockaway, NJ.
- Certified 200 Foot Property List prepared by Edward L. Kerwin, Assessor dated March 10, 2020.
- County of Somerset Planning Board review letter dated April 29, 2021 and May 14, 2021.
- NJDOT Major Access Application Cover Letter dated December 15, 2020 prepared by Douglas J. Polyniak, PE, Dolan & Dean Consulting Engineers, LLC.
- Correspondence dated May 4, 2021 to Elaine Schwartz, NJDOT, prepared by Gary W. Dean, Dolan & Dean Consulting Engineers, LLC, unsigned.

A review of the above referenced documents results in the following comments for the Board's consideration.

#### I. Site Plan

##### A. Sheet 1 – Project Data/Vicinity Plan

1. General Note 19 indicates proposed street names for the project. These need to be revisited and evaluated by the emergency services departments. There are a number of similar names within the project (Ayers St, Ayers Ln) that are duplicative and Schley is a name currently used by another street within the Borough. This will lead to confusion with 911 response. All street names must be approved by the Borough Council after appropriate review.



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B. Sheet 2 – Environmental Constraints Map – No comments

C. Sheet 3 – Site Removals Plan

1. A note should be added to the plan that all foundations are to be removed completely below graded and backfilled with properly compacted material.
2. A note should be added to the plan stating that all underground tanks are to be removed and mitigated in accordance with NJDEP requirements.

D. Sheets 4 through 10 – Site Dimension Plans

1. The status of the WMQP management plan amendment for the sewer service area shown on the map should be provided to the Board.
2. A detail for the cobblestone pavers at the end of the boulevard should be provided.
3. Vehicle turning templates should be provided for delivery and emergency vehicles at the round about and all dead end areas.
4. Testimony should be provided regarding trash collection, mail delivery, etc. Will there be common mailbox locations? Will trash and recycling be held in individual units until collection? The layout will necessitate numerous backup movements for delivery and collection vehicles with the associated back up warning beepers on the vehicles. There may be future complaints from residents in this regard, however those would be solely the responsibility of the developer and HOA to address.
5. The engineer should confirm that the stormwater management calculations include the impervious surfaces associated with the optional patio/sunroom.
6. Recent trends show that townhouse owners are requesting permits for emergency generators, decks, patios, etc. The developer should discuss how these would be handled from an HOA approval perspective. The Board should consider if these would be site plan amendments that would need to return to the Board or if they could be handled simply by zoning and building permits. If the latter is the case, this should be specifically spelled out in the resolution to avoid future issues related to the permissibility of these improvements and the applicability of any setbacks.
7. The plans show a network of “maintained pedestrian walking paths”. The surface treatment of these paths should be included in the plans. If the surface is other than grass or meadow, the design engineer should confirm this was accounted for in the stormwater design.

E. Sheets 11 through 15 – Grading Plan

1. The grading along the northeast curb line of the Dillon Boulevard/Route 202 intersection needs to be examined. It appears there is a low point along the curb line that will not drain through the intersection. A drainage inlet may be required. There

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- is a similar issue at two points along the southwest curb line of the intersection of Dillon Boulevard and Ayers Street.
2. Additional spot elevations and grading needs to be provided between units 4.70 and 4.71. The area is flat and will be subject to poor drainage.
  3. Site light poles are shown penetrating into and very close to the underground stormwater system near the multifamily building. Details need to be provided as to how this will work with the pipe and stone stormwater system.
  4. There are a number of retaining walls throughout the site and many are in excess of 48" tall. These will all require site specific designs and construction permits.
  5. The underground stormwater system and bioretention system at the rear of the multifamily building is in close proximity to a retaining wall with heights up to 17 feet. Testimony should be provided regarding any anticipated hydrostatic loads these stormwater facilities may place on the walls and how the loads and potentially saturated soil would impact the choice of wall material.
  6. The engineer should re-evaluate the detailed tree removal. For example, between unit 4.31 and the property corner, there are a number of mature hardwood trees that are shown to be removed with no apparent disturbance in the area. Further towards the large recharge bed, there are more trees that seem to be removed because of conflicts with the proposed path and water line – both of which could be relocated to avoid the conflict. Additionally, the location of the existing trees should be checked because the plan shows an 18" oak tree in a shed on the adjacent lot behind unit 4.37.
  7. The retaining wall closest to 4.37 needs to have the proposed grades check. There are three locations shown. All have two bottom of wall elevations and one top of wall elevation and all are the same number – 269.0.
  8. Sheet 16 notes that there is a proposed net fill of 8,000 cubic yards. Testimony should be provided regarding the number of trucks anticipated for this work and the time period over which the fill will be delivered to the site.

F. Sheets 17 through 22 – Utility Plan

1. The plan shows the water main serving the site extending from Route 202 south. The location of the connection to the existing system should be discussed and plans prepared for the extension of the utility line.
2. Fire hydrant locations should be approved by the Fire Official.
3. No sewer laterals should be shown connecting to manholes. The laterals should connect to the main and downstream of the manhole if possible.
4. It is anticipated that the townhouse units will be served by natural gas. It is expected that the gas and electric meters for each of the townhouses will be mounted on the front of the units. This should be confirmed.

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5. The multifamily building is shown with a 4" sanitary sewer lateral with cleanouts. This needs to be upgraded to a minimum 6" line with manholes at each bend in the pipe to facilitate proper maintenance.
6. Utility Note 11 on sheet 22 states that a hot box may be required for the water service to the multifamily building. Testimony should be provided regarding the anticipated size and location of the structure. Screening should be provided.

G. Sheets 22 through 18 – Landscape Plan

1. The plan shows extensive areas of meadow around the site. Some of these are in close proximity to some of the townhouse units. The mechanism for keeping these areas as meadow should be described. It is anticipated that some of the townhouse owners may expect maintained lawn around their homes and this would be inconsistent with the plan and stormwater design. Some of the meadow areas, such as the narrow one between units 4.03-4.06 and the boulevard may be difficult to maintain as meadow. Other areas, like the proposed tree area between the townhouses and Route 202 and through the perimeter landscape buffers, show lawn under the trees where meadow may be more appropriate.
2. The plans show a plant schedule for a reforestation area that was designated on a map submitted to DEP. The location of this reforestation area should be provided to the Board.

H. Sheets 29 and 20 – Soil Erosion and Sediment Control Plan

1. This plan will need to be certified by the Somerset-Union Soil Conservation District.
2. It is recommended that haybales be placed in front of all outlet structures until the basins are stabilized.
3. Testimony needs to be presented in support of the steep slope variance and any efforts made to minimize these disturbances.

I. Sheets 31 and 32 – Lighting Plan

1. In general, the lighting levels throughout the townhouse portion of the project are very low and do not provide enough illumination for the anticipated vehicular and pedestrian traffic through the site. It is expected that mail will be delivered to common boxes and pedestrians will be using the streets to access these boxes and for other reasons. For the most part, the streets have zero footcandles of illumination. Additional lighting is necessary. The amount of lighting will need to be balanced between the intrusion into the units and safe lighting levels on the ground surface. Based on the 14 foot height of the lighting source and the architectural plans, it appears the light sources will be below any bedroom windows at the front of the units and fully shielded so the glare should not be a major issue.

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2. The plan does not include any building mounted lights. Since these are generally in the control of the unit owners, they cannot be counted on for providing adequate illumination around the site.

J. Sheets 33 through 37 – Profiles

1. As noted above, there are curb lines with low spots that need to be addressed. It is recommended that the design engineer review the profiles of intersecting streets to determine where these conflicts exist and make the appropriate modifications to the grading and drainage plans.

K. Sheets 38 through 42 – Construction Details

1. The accessible curb ramp detail should clearly show that the curb through the ramp should be concrete to provide a smoother transition.
2. The guide rail notes that it is to be “rust colored”. It is recommended that the guiderail be brown powder coated to stained using “Natina” or a similar product. Weathering steel posts have proven problematic over time and are susceptible to corrosion.
3. As noted above, site specific wall designs will be required.

II. Stormwater Management Report

A. The following comments below are made relative to the stormwater report and other documents submitted. It should be noted that the comments below are preliminary only since the hydrogeologic report is stamped as “DRAFT”. Additional comments may be provided after the final version of this report is submitted. Further when the final report is filed, a cover letter should be included that identifies any changes between the draft report and the final report.

B. Stormwater comments:

1. The stormwater management report submitted with the drop box link was signed by the Engineer. The hard copy of the report that was submitted to our office was not signed. Signed and sealed stormwater reports need to be provided to our office and the Board Secretary for any future submittals.
2. A groundwater mounding analysis is required for each individual basin that infiltrates. It is unknown whether the basins will be negatively impacted as currently designed without the mounding analysis being provided.
3. The Low Impact Development Checklist (Appendix G), is blank. While pages 16 and 17 of the report provide a description of the Low Impact Development nonstructural strategies being incorporated into the design, the information within the checklist in Appendix G needs to be provided in order to help evaluate the strategies being

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- implemented. At this time, it is not clear whether the project complies with the use of nonstructural strategies.
4. The stormwater conveyance system has been designed for a 25-year storm event. The 100-year storm event needs to be checked to ensure the stormwater conveyance system has capacity without overtopping into other drainage areas. Hydraulic grade line calculations should be provided in the analysis. This is needed to ensure the design assumptions within the quantity (peak rate reduction) analysis is consistent with capacity of the stormwater conveyance system.
  5. Some of the drainage areas utilize a minimum time of concentration of 6.0 minutes. According to Chapter 5, dated November 2020, of the NJDEP BMP Manual, "There is no longer a minimum or default value that may be used for the time of concentration. Tc for pre- and post-construction conditions must be calculated based on the aforementioned requirements." The analysis needs to be revised accordingly.
  6. The total disturbance identified on page 2 of the report (26.1 acres) and the table at the top of page 9 (24.32 acres) are not consistent. The soil erosion and sediment control plans indicate 26.1 acres of disturbance is being proposed. Clarification is required.
  7. The allowable flow rate calculations are based upon 24.1 acres of disturbance. It appears the calculations should be revised utilizing the 26.1 acres of disturbance as noted on the soil erosion and sediment control calculations.
  8. Based on the mapped locations of the soil logs provided on the site plans, no soil testing was provided in the vicinity of Basins #3C (underground detention basin), 3D (designed with an underdrain), 3E (above ground detention basin), 3N and 3R (bio-retention basin designed with an underdrain). Additional information/soil testing should be provided to confirm separation to the estimated seasonal high ground water (and bedrock if applicable) elevations is being met for basins #3C, 3D, 3E, 3N, 3R.
  9. Only one soil test location was located within the infiltration area for Basin #3G (underground infiltration basin) and #3I (surface infiltration basin). The test pit logs (STP 14, STP 15 (outside basin 3I) and STP 20) are too shallow. The soil logs need to extend at least 8 feet below the lowest elevation of the BMP, or two times the maximum water depth in the basin, whichever results in a deeper depth. It is noted, according to Chapter 12, of the NJDEP BMP Manual, the depth is measured from any replacement soil that may be required below the bottom of the basin. This is the case for all types of stormwater basins. Additional soil testing should be provided to confirm groundwater elevations and separation to the estimated seasonal high ground water and bedrock elevations is being met for basins #3G and 3I in accordance with Chapter 12, Soil Testing criteria, of the NJDEP BMP Manual.

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10. The permeability testing for Basin 3I (STP14 and STP15) is above the bottom of the basin. Additional permeability testing in accordance with Chapter 12 of the NJDEP BMP Manual needs to be provided. It is also noted the infiltration rate being needs to be based on the lowest tested permeability rate (the lowest tested rate within STP 14 appears to be 3.0 in/hr (1.5 in/hr design rate), while the calculations were based on a tested rate of 4.7 in/hr (2.4 in/hr design rate).
11. No permeability testing was provided for Basin #3G. Page 15 of the stormwater report (Groundwater Recharge, 2nd bullet) indicates for Bioretention Basin 3G that “permeability testing was not provided for this basin location. However, the soils in the test pit within the vicinity of the basin displayed favorable soils for stormwater recharge.” Chapter 12 of the NJDEP BMP Manual specifies on Page 6. “Proximity of soil exploration(s) to the actual location of a BMP. The final location of a proposed BMP can differ from the location of a soil exploration. As long as the proposed BMP is within the same soil mapping unit, a new soil exploration is not required under the following circumstances:
  - If the soil explorations that have been performed are still within the infiltration area of the BMP at its new location or
  - If the new location of the BMP is within 25 feet, in any direction, of all of the original soil exploration location(s).
- Based on this, additional soil testing needs to be provided for Infiltration Basin 3G.
12. Test Pit Log STP17 is noted with a ground elevation of 268.0 while the elevation based on the location depicted on the grading plan appears to be approximately 256. In addition, STP4 is noted with a ground elevation of 275.5 while the grading plan elevation is approximately 259.0. Clarification is required.
13. It appears, based on the seepage noted within STP4, that the ESHGWT is above the basin floor of Bio-retention Basin #3L. Additional information is required on whether this basin can be constructed and function in accordance with the GI requirements (one-foot minimum separation is required to ESHGWT).
14. The test pit logs should specifically state whether groundwater and mottling were encountered. If encountered, then the ESHGWT should be provided in the test pit log. The summary of test pit information (Table 1) provided in the report indicates for STP4 that groundwater was greater than 12’ below grade, while the Test Pit Log for STP4 indicates seepage at 2.3 feet. Clarification is required.
15. The geo-technical section of the report should include a specific narrative on how each proposed BMP meets NJDEP requirements as it relates to separation to groundwater, bedrock (if applicable), and permeability (if applicable), and their suitability based on onsite soil conditions.

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16. The geo-technical section of the report should include a narrative with respect to the NRCS Soil Survey mapped soils and whether the mapped soils are accurate with respect to field observations and soil testing (NJDEP BMP Manual Chapter 12: Soil Testing Criteria, subsection 1c). If the soil survey is inaccurate with respect to field conditions, then soil testing to determine HSG or default HSG in accordance with Chapter 12 would need to be utilized for the analysis.
17. Two soil logs with permeability testing need to be provided within Bioretention Basin 3F. The test pit logs (STP26 and STP 27) are too shallow. The soil logs need to extend at least 8 feet below the lowest elevation of the bmp, or two times the maximum water depth in the basin, whichever results in a deeper depth (which is measured from any replacement soil that may be required below the bottom of the basin). Additional soil and permeability testing is required.
18. Only one test pit (STP12) was provided in the proximity (10' from the infiltration area) of Bioretention Basin #3H, and it is too shallow. The test pit log indicates rain infiltration at 4.0 feet (it is not clear what is meant by "rain infiltration"). It is noted that Chapter 12 of the BMP Manual specifies "Stormwater infiltration BMP's must not be installed in soils that exhibit artesian groundwater conditions." Clarification is required. In addition, no permeability testing has been provided for Bioretention Basin #3H (a minimum of two permeability tests is required in the infiltration area of the basin floor in the most restrictive soil horizon below the bottom of the basin). Additional soil and permeability testing is required.
19. Page 15 of the stormwater report (Groundwater Recharge, 3rd bullet) indicates for Bioretention Basin 3H that "permeability testing was not provided for this basin location. However, the soils in the test pit within the vicinity of the basin displayed favorable soils for stormwater recharge." Chapter 12 of the NJDEP BMP Manual specifies on Page 6. "Proximity of soil exploration(s) to the actual location of a BMP. The final location of a proposed BMP can differ from the location of a soil exploration. As long as the proposed BMP is within the same soil mapping unit, a new soil exploration is not required under the following circumstances:
  - If the soil explorations that have been performed are still within the infiltration area of the BMP at its new location or New Jersey Stormwater Best Management Practices Manual November 2020 Chapter 12: Soil Testing Criteria Page 16
  - If the new location of the BMP is within 25 feet, in any direction, of all of the original soil exploration location(s).

Based on this, additional soil testing needs to be provided for Bioretention Basin 3H.

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20. Page 15 of the stormwater report (Groundwater Recharge) indicates permeability testing was based on tube permeameter tests while Appendix H indicates double-ring infiltration tests were performed. Clarification is required.
21. Additional information should be provided in the report about the phasing techniques being utilized to minimize soil compaction (low impact development nonstructural strategy no. 6 on Page 16).
22. Additional information needs to be provided in the report on how the user defined rating table was calculated for Bioretention Basins #2A, 3A, 3B, 3D, 3L, 3N and 3R.
23. The outlet pipes were not modeled in the Bioretention Basin, Infiltration Basin, and Extended Detention Basin routing analysis. The outlet pipes should be modeled under inlet and outlet control conditions, as they may control runoff through the control structures at higher elevations in the basins. Also, interconnected basins need to be analyzed under tailwater conditions (instead of assuming free flow conditions).
24. Chapter 9.7 Small-Scale Bio-Retention Systems specifies on page 7 that “..on-line systems...the invert of the lowest quantity control outlet is set at the water surface elevation of the WQDS.” The lowest quantity outlet designed within Bio-retention Basins #2A, 3B need to be revised to meet this requirement.
25. Bioretention basin #3F does not utilize an infiltration rate within the quantity routing analysis, however the riser box that will control runoff for the higher storm events is set 3.35’ above the basin floor. This exceeds the 12” maximum runoff depth allowed in small-scale bioretention systems. It is noted the water quality storm elevation is 0.69’ above the basin floor. The routing needs to be revised to include a low-level outlet set at the water quality routed elevation (Chapter 9.7 Small-Scale Bio-Retention Systems page 7; Chapter 10.1 Large-Scale Bio-Retention Systems page 5). The NJDEP BMP Manual also notes the large scale Bioretention systems must not include exfiltration in the routing calculations.
26. Bioretention Basin #3H does not utilize an infiltration rate within the quantity routing analysis, however the riser box that will control runoff for the higher storm events is set 1.30’ above the basin floor. This exceeds the 12” maximum runoff depth allowed in small-scale bioretention systems. It is noted the water quality storm elevation is 0.65’ above the basin floor. The routing needs to be revised to include a low-level outlet set at the water quality routed elevation.
27. The total contributory drainage area to Bioretention Basin #3F exceeds 2.5 acres and therefore the does not meet the standards for Green Infrastructure (GI). According to 7:8-5.2 “Stormwater management measures for major development” Table 5.2 within paragraph (f) “Green Infrastructure BMPs for Stormwater Runoff Quantity (or for Groundwater Recharge and/or Stormwater Runoff Quality with a Waiver or Variance



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- from N.J.A.C. 7:8-5.3)” the basin will require a variance since it is being designed for groundwater recharge and stormwater runoff quality but does not meet the GI requirements for those measures.
28. According to 7:8-5.2 “Stormwater management measures for major development” Table 5.3 within paragraph (f) “BMPs for Groundwater Recharge, Stormwater Runoff Quality, and/or Stormwater Runoff Quantity only with a Waiver or Variance from N.J.A.C. 7:8-5.3” the use of extended detention basins will require variances. None of the proposed extended detention basins have been designed for groundwater recharge and they do not appear to have been designed for water quality. Basins 3C, 3E, and 3M are intended to be used for stormwater runoff quantity.
  29. Additional information needs to be provided to address whether it is technically impracticable to meet the green infrastructure standards. As currently designed, Bio-retention basin 3F does not meet GI for water quality and groundwater recharge, while Extended Detention Basins 3C, 3E, 3M do not meet GI for stormwater quantity. Additional information is required prior to confirming whether the other basins will meet the GI requirements. The Engineer shall provide a breakdown in the report for any variances being sought from the GI standards.
  30. Pretreatment is required for the runoff (roof area) that is tributary to underground infiltration basin 3I.
  31. Pretreatment is required for the direct runoff (80% TSS removal) that is tributary to underground infiltration basin 3G. Runoff from Bioretention Basin 3H that is tributary to Basin 3G will also need to be pretreated to 80% TSS removal if Basin 3H does not meet the GI requirements.
  32. The TR55 reference material included in the report (Appendix H) needs to be replaced with the Part 630 Hydrology National Engineering Handbook (Chapter 9 Hydrologic Soil-Cover Complexes and Chapter 15 Time of Concentration).
  33. The Engineer shall confirm whether the Tc calculations are consistent with the requirements of Part 630 Hydrology National Engineering Handbook (NEH) Chapter 15.
  34. The maximum Tc sheet flow coefficient that can be used for woods in New Jersey is 0.40. Revise the Tc calculations as applicable.
  35. The velocities provided as part of the shallow concentrated flow segments for EDA#1 (PDA#1), EDA#2 and EDA#3 appear to be faster based on the land cover and slope than would be calculated from Figure 15-4 of the NEH Chapter 15. Clarification is required.
  36. A second Tc flow path should be analyzed within EDA#3 to confirm the hydraulically most distance path is being analyzed. It is recommended a second Tc

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- path starting in the vicinity of the pool area towards the westerly side of the drainage area be provided.
37. Based on the topography, it appears a portion of EDA#3 and PDA#3 may be tributary to Lot 3.03 Block 5 (easterly property line). The Engineer should confirm the drainage boundaries.
  38. Based on the grading plan, it appears PDA#3A should be expanded to include the portion of Baldwin Avenue and any area tributary to Baldwin Avenue up to inlet 3B-8.
  39. It is not clear where the swale area at the cul-de-sac shoulder above Basin 3A will drain to.
  40. Additional information should be provided demonstrating how the area behind proposed lots 4.91 to 4.94 will drain. The entire area behind the units appears to be a low point. The plans indicate two bottom of wall elevations for the lower wall. The drainage area map indicates this area is split between being tributary to PDA3B and PDA3C.
  41. Based on the grading, it appears a large portion of PDA3C will be tributary to Baldwin Court which is tributary to PDA3B. Clarification is required.
  42. Additional spot elevations should be provided behind the sewerage treatment plant to confirm drainage patterns.
  43. Based on the grading, it appears the majority of the intersection of Errico Lane and Baldwin Avenue would be tributary to PDA3D and not PDA3F.
  44. Additional spot grades need to be provided to confirm drainage patterns between proposed lots 4.70 and 4.71.
  45. Additional spot grades need to be provided to demonstrate positive drainage along proposed lot 4.74.
  46. The 250 contour in the area of Bioretention Basin 3R does not appear to be correct. Additional spot grades should be provided to confirm drainage patterns.
  47. A low point in the corner of the parking lot across from Basin 3N (250.83) appears to bypass Basin 3R. Additional information needs to be provided to confirm the drainage boundary of Basin 3R.
  48. Based on the grading, it appears a portion of the rear parking lot of the multifamily building is tributary to Basin 3N and not Basin 3R. Additional information should be provided to confirm drainage boundaries.
  49. The intersection of the multifamily building parking lot and Dillon Avenue appears to be tributary to Basin 3N and not Basin 3L. Revise as necessary.
  50. The intersection of Ayers Street and Baldwin Avenue appears to be tributary to Basin 3F and not Basin 3H based on the grades provided. Revise as necessary.

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51. Confirm the drainage boundaries between Basin 3E, Basin 3L and the bypass area.
52. Based on the grading and the topography, it appears a portion of the area tributary to Basin 3C is tributary to Basin 3B just downstream of Basin 3F. Revise as necessary.
53. A low spot appears to be proposed at the corner of the patio behind Lot 4.83 that concentrates runoff from the rear of Lots 4.83 through 4.86. It appears a drainage structure/system may be needed in this area. The drainage area analysis includes this area with Basin 3E while it appears to be within the drainage area for Basin 3D. The drainage boundary needs to be confirmed.
54. The northerly boundary of the drainage area tributary to Basin 2A should be confirmed. Based on the grading and topography, it appears additional area may be tributary to Basin 2A. Revise as necessary.
55. Roof drainage calculations (gutters/downspouts/laterals) need to be sized for the 100-year storm event since if they were to overflow, the overflow may be tributary to different stormwater basins than what was used in the quantity analysis.
56. The capacity of the inlet grates should be provided and checked against the 100 year-storm event to confirm they will not overflow/bypass to different drainage areas.
57. The Engineer should confirm whether proposed Inlet 3C-4 (located within tributary drainage area 3D) should be changed to a manhole since the quantity analysis does not include surface runoff to the inlet (the inlet is tributary to Basin 3C).
58. The proposed land cover map (Figure 5 in the report) depicts meadow land cover between and adjacent to some of the townhouse buildings. These areas need to be deed restricted against their removal since they are part of the stormwater management system for the site. The maintenance of these areas will need to be included in an Operations and Maintenance Manual (which should be submitted once the stormwater management system has been approved).
59. The engineer should confirm the land cover being used for the walking path.
60. Review and approval of the soil erosion and sediment control calculations are deferred to the Somerset-Union Soil Conservation District.
61. Additional comments relative to the hydrology calculations, proposed quantity and water quality routings, drain time calculations, groundwater recharge calculations, emergency spillway calculations, and stormwater plan and details are deferred until additional information addressing the above comments are provided as the design of the stormwater management system may change.
62. The stormwater management system is fundamental to the project being able to function. Based on the above comments, it appears that the project does not meet the standards for stormwater management and mitigation is required based on the standards of NJAC 7:8-4.6(a). It does not seem that the standards for mitigation can

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be demonstrated based on the project. Significant additional information/redesign of the stormwater management system is required.

III. Sales Trailer and Model Home Plan

- A. The plan shows a substantial number of signs and feather flags. The Board should evaluate the appropriateness and number of the signs.
- B. The applicant should provide an estimate of the length of time these materials will be in place.
- C. Based on the notes, it appears the model homes will not have water and sewer service. This should be confirmed. Special provisions may be required for a certificate of occupancy in these circumstances.

IV. Preliminary and Final Subdivision Plan

- A. Deeds, descriptions and lot closure calculations should be submitted and approved as a condition of any approval by the Board.
- B. All lot numbers are to be approved by the tax assessor.
- C. All signatures by the applicant, surveyor, etc. will need to be on the plan before it is submitted for signature.

V. Boundary and Topographic Survey – No comment

VI. Architectural Plans – No comments

VII. Environmental Impact Statement

- A. The report references a traffic report by Dolan and Dean. This was not in the information provided for review.

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I trust the above comments are useful to the Board in its review of the application.

Very truly yours,

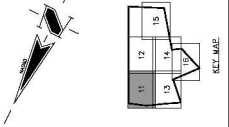


Paul W. Ferriero, PE, CME  
Borough Engineer

cc: Board Members  
Peter Henry, Esq.  
David Banisch, PP  
Kimberly Coward, Zoning Officer  
Steven Mahoney, Construction Official  
Ronald A. Kennedy, PE  
Craig M. Gianetti, Esq.

# EXHIBIT D

REVISIONS	
NO.	DESCRIPTION
1	ISSUE FOR PERMITS
2	ISSUE FOR PERMITS
3	ISSUE FOR PERMITS
4	ISSUE FOR PERMITS
5	ISSUE FOR PERMITS
6	ISSUE FOR PERMITS
7	ISSUE FOR PERMITS
8	ISSUE FOR PERMITS
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14	ISSUE FOR PERMITS
15	ISSUE FOR PERMITS



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 Dallas, Texas 75243  
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 F: (972) 711-3100  
 www.rakennedy.com

**PULTE HOMES - FAR HILLS**  
 BLOCK 5 LOT 4  
 PARCEL OF FAR HILLS SUBDIVISION  
 NEW ASSESSMENT

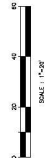
**GRADING PLAN**  
 PRELIMINARY AND FINAL MAP SUBMISSION PLANS

DATE: MARCH 19, 2021  
 SCALE: 1" = 20'  
 DRAWING NO.: 883-17  
 SHEET NO.: 11 OF 42

**FINAL FOR SEWER**



SEE SHEET 16 FOR GRADING NOTES AND ADA INSTRUCTIONS



PROP. LOT 401  
 33,071 S.F.  
 0.76 AC.

U.S. HIGHWAY ROUTE 202  
 (SEE RIGHT OF WAY)

LAKE ROAD

REVISIONS	
NO.	DESCRIPTION
1	ISSUE FOR PERMITS
2	REVISIONS
3	REVISIONS
4	REVISIONS
5	REVISIONS
6	REVISIONS
7	REVISIONS
8	REVISIONS
9	REVISIONS
10	REVISIONS
11	REVISIONS
12	REVISIONS
13	REVISIONS
14	REVISIONS
15	REVISIONS



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 PROFESSIONAL ENGINEER  
 LICENSE NO. 26326

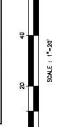
**PULTE HOMES - FAR HILLS**  
 BLOCK 5 LOT 4  
 PORTION OF FAR HILLS SUBDIVISION  
 NEW ASSOCIATION

**GRADING PLAN**  
 DATE: MARCH 19, 2021  
 TOTAL: 1" = 20'  
 SHEET NO. 893-17  
 OF 44



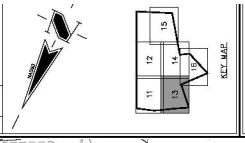
**FINAL FOR SEWER**

**SEE SHEET 16 FOR GRADING NOTES AND ADA INSTRUCTIONS**





NO.	DATE	REVISIONS
1	03-12-2024	REV FOR FINAL SUBMITTAL
2	03-12-2024	REV FOR FINAL SUBMITTAL
3	03-12-2024	REV FOR FINAL SUBMITTAL
4	03-12-2024	REV FOR FINAL SUBMITTAL
5	03-12-2024	REV FOR FINAL SUBMITTAL
6	03-12-2024	REV FOR FINAL SUBMITTAL
7	03-12-2024	REV FOR FINAL SUBMITTAL
8	03-12-2024	REV FOR FINAL SUBMITTAL
9	03-12-2024	REV FOR FINAL SUBMITTAL
10	03-12-2024	REV FOR FINAL SUBMITTAL



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 F: (215) 381-1201  
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**RONALD A. KENNEY, P.E.**  
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 LICENSE NO. 25383

**PULTE HOMES - FAR HILLS**  
 BLOCK 5 LOT 4  
 PORTION OF FAR HILLS  
 SUBDIVISION PLAN  
 NEW JERSEY

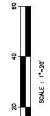
**GRADING PLAN**  
 SHEET TITLE  
 PRELIMINARY AND FINAL MAP  
 SUBDIVISION PLANS

DATE	MARCH 19, 2021
TOTAL	1" = 20'
DRAWN	THC
CHECKED	THC
DATE	03/12/2024
BY	CRF/APP
SHEET NO.	13 OF 44

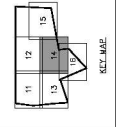


U.S. HIGHWAY ROUTE 202  
 (SEE MID-RIGHT OF WAY)

SEE SHEET 16 FOR  
 GRADING NOTES AND  
 ADA INSTRUCTIONS



REVISIONS	
NO.	DESCRIPTION
1	ISSUE FOR PERMITS
2	ISSUE FOR PERMITS
3	ISSUE FOR PERMITS
4	ISSUE FOR PERMITS
5	ISSUE FOR PERMITS
6	ISSUE FOR PERMITS
7	ISSUE FOR PERMITS
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11	ISSUE FOR PERMITS
12	ISSUE FOR PERMITS
13	ISSUE FOR PERMITS
14	ISSUE FOR PERMITS
15	ISSUE FOR PERMITS



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 Dallas, Texas 75243  
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 F: 972.381.1230

**RONALD L. KENNEY, P.E.**  
 PROFESSIONAL ENGINEER  
 LICENSE NO. 26326

**PULTE HOMES - FAR HILLS**  
 BLOCK 5 LOT 4  
 SUBDIVISION OF FAR HILLS  
 SUBDIVISION OF FAR HILLS  
 NEW ASSOCIATION

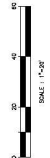
**GRADING PLAN**

DATE: MARCH 19, 2021  
 SCALE: 1" = 20'  
 SHEET NO.: 893-17  
 SHEET TITLE: GRADING PLAN

DATE: MARCH 19, 2021  
 SCALE: 1" = 20'  
 SHEET NO.: 893-17  
 SHEET TITLE: GRADING PLAN



SEE SHEET 16 FOR GRADING NOTES AND ADA INSTRUCTIONS



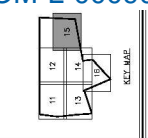
SCALE: 1" = 20'

**FINAL  
FOR SEWER**



PROPOSED LOT 1 OF  
1.397,010 SF  
32.071 AC.

NO.	DATE	REVISIONS
1	10-21-23	REV FOR PERMITS
2	11-15-23	REV FOR PERMITS
3	12-15-23	REV FOR PERMITS
4	1-2-24	REV FOR PERMITS
5	1-2-24	REV FOR PERMITS
6	1-2-24	REV FOR PERMITS
7	1-2-24	REV FOR PERMITS
8	1-2-24	REV FOR PERMITS
9	1-2-24	REV FOR PERMITS
10	1-2-24	REV FOR PERMITS



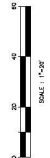
**GLADSTONE  
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Landscape Architect  
1000 Valley Road, Suite 200  
Orlando, Florida 32825  
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www.gladstone.com

**RONALD A. KENNEY, P.E.**  
Professional Engineer  
License No. 26343  
**PULTE HOMES -  
FAR HILLS**  
BLOCK 5 LOT 4  
PROJECT OF FAR HILLS  
SUBDIVISION PLAN  
NEW JERSEY

**GRADING PLAN**

DATE	MARCH 19, 2021
TOTAL	1" = 20'
REVISION	THIS
NO.	DATE
1	03/12/2024
2	03/12/2024
3	03/12/2024
4	03/12/2024
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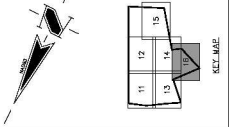
SEE SHEET 16 FOR  
GRADING NOTES AND  
ADA INSTRUCTIONS



SCALE: 1"=20'

SHEET NO.  
15 OF 44

NO.	DATE	REVISIONS
1	12-21-23	REV. FOR FIELD COMMENTS
2	1-22-24	REV. FOR FIELD COMMENTS
3	3-13-24	REV. FOR FIELD COMMENTS
4	6-2-24	REV. FOR FIELD COMMENTS
5	8-29-24	REV. FOR FIELD COMMENTS
6	10-23-24	REV. FOR FIELD COMMENTS
7	11-20-24	REV. FOR FIELD COMMENTS
8	12-10-24	REV. FOR FIELD COMMENTS
9	1-27-25	REV. FOR FIELD COMMENTS
10	2-11-25	REV. FOR FIELD COMMENTS



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 F: (972) 711-3120  
 www.rakennedy.com

**PULTE HOMES - FAR HILLS**  
 BLOCK 5 LOT 4  
 PARCEL OF FAR HILLS  
 SUBDIVISION  
 NEW JERSEY

**GRADING PLAN**  
 DATE: MARCH 19, 2021  
 SCALE: 1" = 20'  
 DRAWN: TBC  
 CHECKED: CTR/APP  
 SHEET NO.: 893-17  
 OF: 18 OF 42

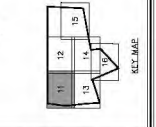


**GRADING NOTES**  
 ALL LOT SPOTS ARE FAIRWAY AND GRASS SHALL COVER.  
 1. GRADING SHALL BE TO MAINTAIN POSITIVE PITCH AWAY FROM BUILDINGS.  
 2. FINAL GRADING AND ELEVATIONS SHALL BE SUBJECT TO ADJUSTMENT BASED ON FIELD CONDITIONS.  
 3. THE PRESENT GRADING PLAN IS NOT INTENDED TO BE A FINAL GRADING PLAN FOR INDIVIDUAL PARCELS FOR CONSTRUCTION.  
 4. PARCELS INCLUDING UTILITIES, DRIVEWAYS, DRIVEWAYS, PATIOS, AND COURT YARDS SHALL BE GRADDED TO MATCH EXISTING AND ADJACENT GRADING.  
 5. ALL LOT SPOTS SHALL BE GRADDED TO MATCH EXISTING AND ADJACENT GRADING.  
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 10. ALL LOT SPOTS SHALL BE GRADDED TO MATCH EXISTING AND ADJACENT GRADING.

**ADDITIONAL NOTES TO CONTRACTORS**  
 1. ALL LOT SPOTS SHALL BE GRADDED TO MATCH EXISTING AND ADJACENT GRADING.  
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 10. ALL LOT SPOTS SHALL BE GRADDED TO MATCH EXISTING AND ADJACENT GRADING.

# EXHIBIT E

REVISIONS	
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1	ISSUE FOR PERMITS
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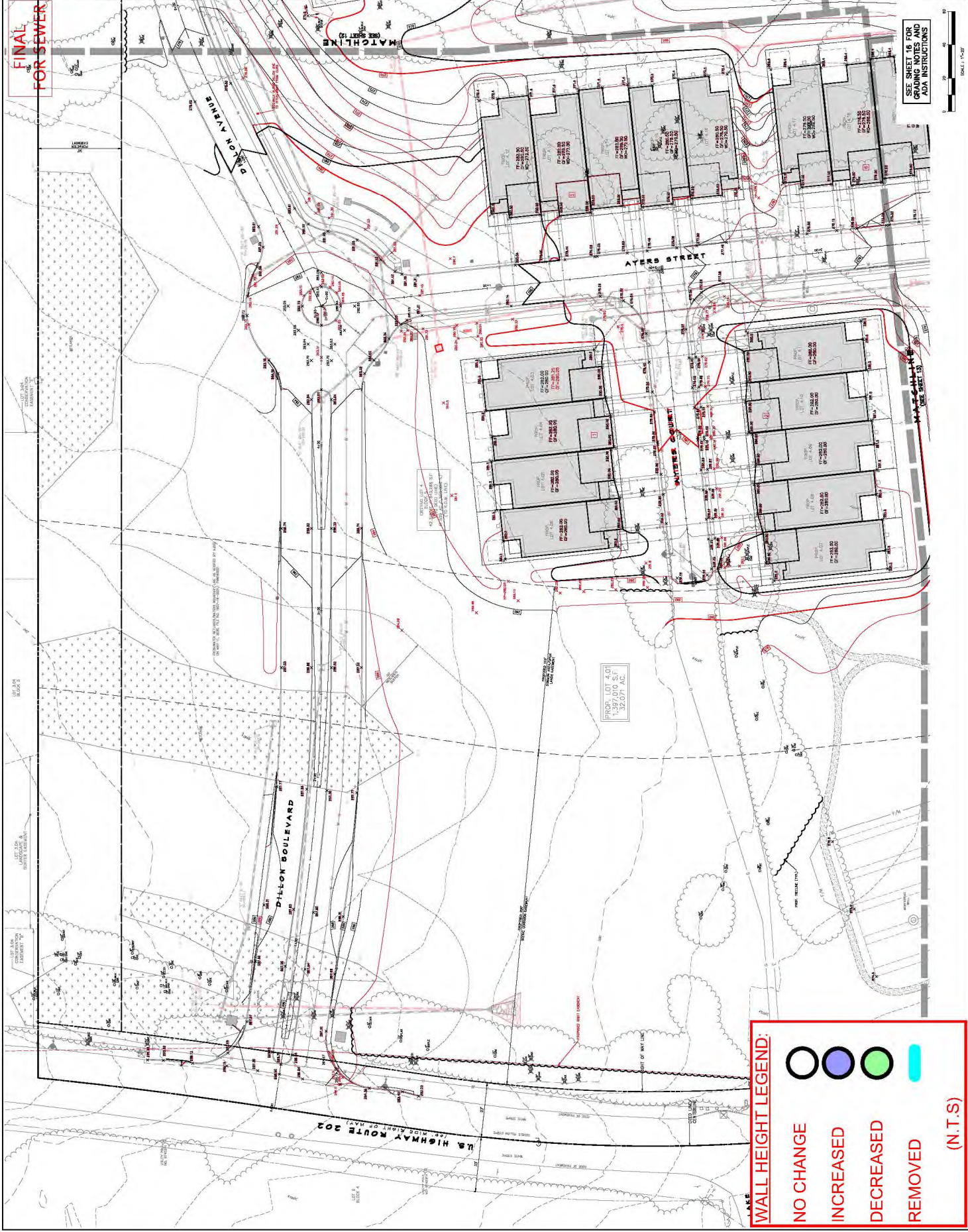
**GLADSTONE DESIGN, Inc.**  
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 Greenwood Village, CO 80120  
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 Greenwood Village, CO 80120  
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**PULTE HOMES - FAR HILLS**  
 BLOCK 5 LOT 4  
 BRIDGECREST FAR HILLS  
 SUBDIVISION  
 NEW JERSEY

**GRADING PLAN**  
 SHEET TITLE  
 PRELIMINARY AND FINAL MAJOR SUBMISSION PLANS

DATE: MARCH 15, 2021  
 SCALE: 1" = 20'  
 DRAWING: 11C  
 SHEET NO.: 683-17  
 TOTAL SHEETS: 11 OF 42

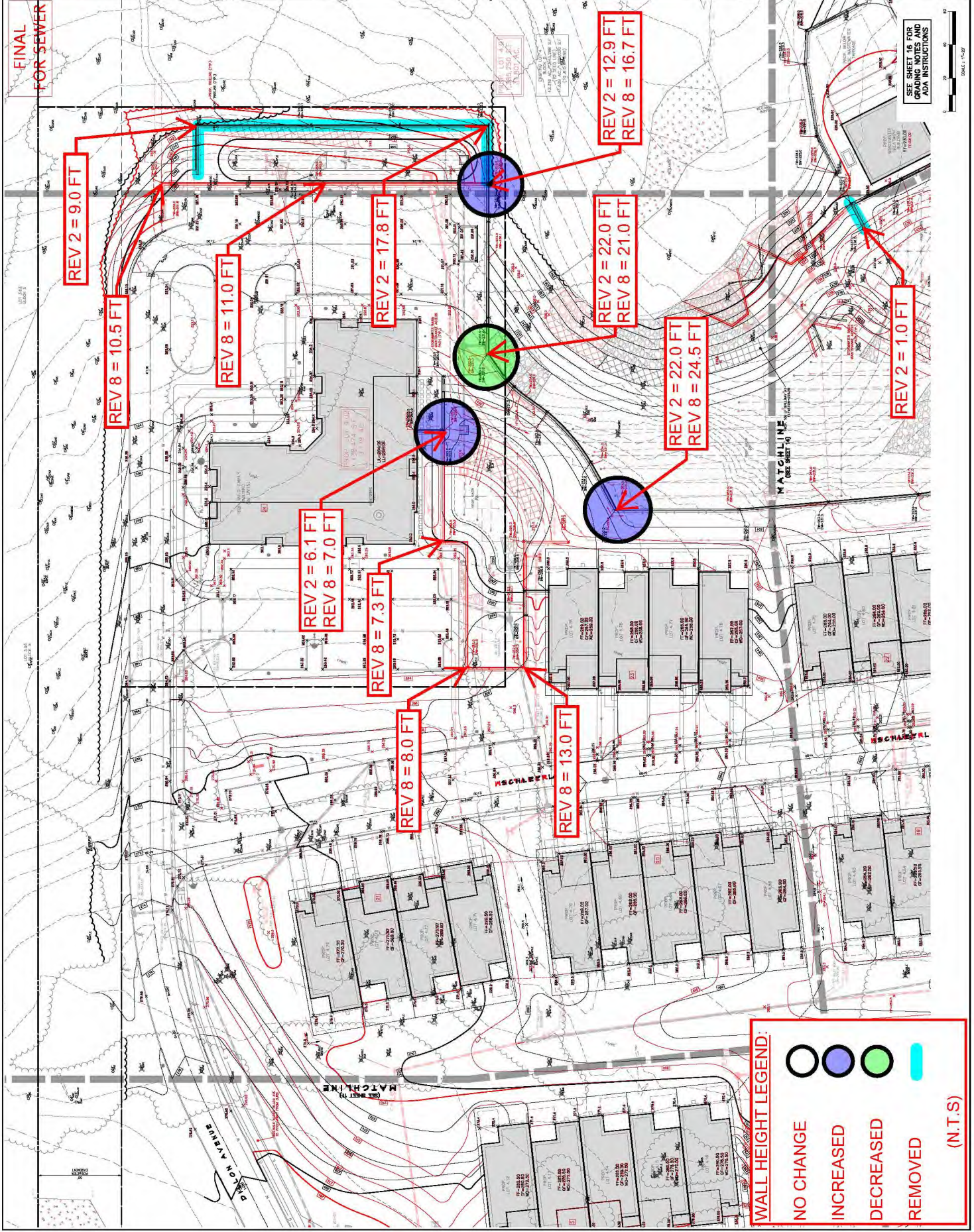


**WALL HEIGHT LEGEND:**

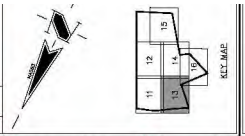
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- INCREASED (represented by a blue circle)
- DECREASED (represented by a green circle)
- REMOVED (represented by a red circle)

(N.T.S)

<p><b>REVISED</b></p> <table border="1"> <tr><th>NO.</th><th>DATE</th><th>BY</th><th>DESCRIPTION</th></tr> <tr><td>1</td><td>12-21-23</td><td>...</td><td>...</td></tr> <tr><td>2</td><td>1-10-24</td><td>...</td><td>...</td></tr> <tr><td>3</td><td>1-22-24</td><td>...</td><td>...</td></tr> <tr><td>4</td><td>2-1-24</td><td>...</td><td>...</td></tr> <tr><td>5</td><td>2-28-24</td><td>...</td><td>...</td></tr> <tr><td>6</td><td>3-1-24</td><td>...</td><td>...</td></tr> <tr><td>7</td><td>3-1-24</td><td>...</td><td>...</td></tr> <tr><td>8</td><td>3-1-24</td><td>...</td><td>...</td></tr> <tr><td>9</td><td>3-1-24</td><td>...</td><td>...</td></tr> <tr><td>10</td><td>3-1-24</td><td>...</td><td>...</td></tr> </table>		NO.	DATE	BY	DESCRIPTION	1	12-21-23	...	...	2	1-10-24	...	...	3	1-22-24	...	...	4	2-1-24	...	...	5	2-28-24	...	...	6	3-1-24	...	...	7	3-1-24	...	...	8	3-1-24	...	...	9	3-1-24	...	...	10	3-1-24	...	...			<p><b>Pulte HOMES</b></p> <p><b>MELILLO EQUITIES</b></p> <p><b>GDI</b></p> <p><b>GLADSTONE DESIGN, Inc.</b></p> <p>10000 W. ...                  ...                  ...                  ...</p>	<p><b>RONALD A. KENNERLY P.E.</b></p> <p>...                  ...                  ...</p>	<p><b>Pulte HOMES - FAR HILLS</b></p> <p>BLOCK 5 LOT 4</p> <p>BROUGHTON OF FAR HILLS SUBDIVISION NEW ASSOCIATION</p>	<p><b>GRADING PLAN</b></p> <p>DATE: MARCH 15, 2021                  SCALE: 1" = 20'                  DRAWING NO: 683-17                  SHEET NO: 12 OF 42</p>
NO.	DATE	BY	DESCRIPTION																																																
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10	3-1-24	...	...																																																



NO.	DATE	REVISIONS
1	03-12-2024	REV FOR BLOCK DEVELOPMENT
2	03-12-2024	REV FOR BLOCK DEVELOPMENT
3	03-12-2024	REV FOR BLOCK DEVELOPMENT
4	03-12-2024	REV FOR BLOCK DEVELOPMENT
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10	03-12-2024	REV FOR BLOCK DEVELOPMENT



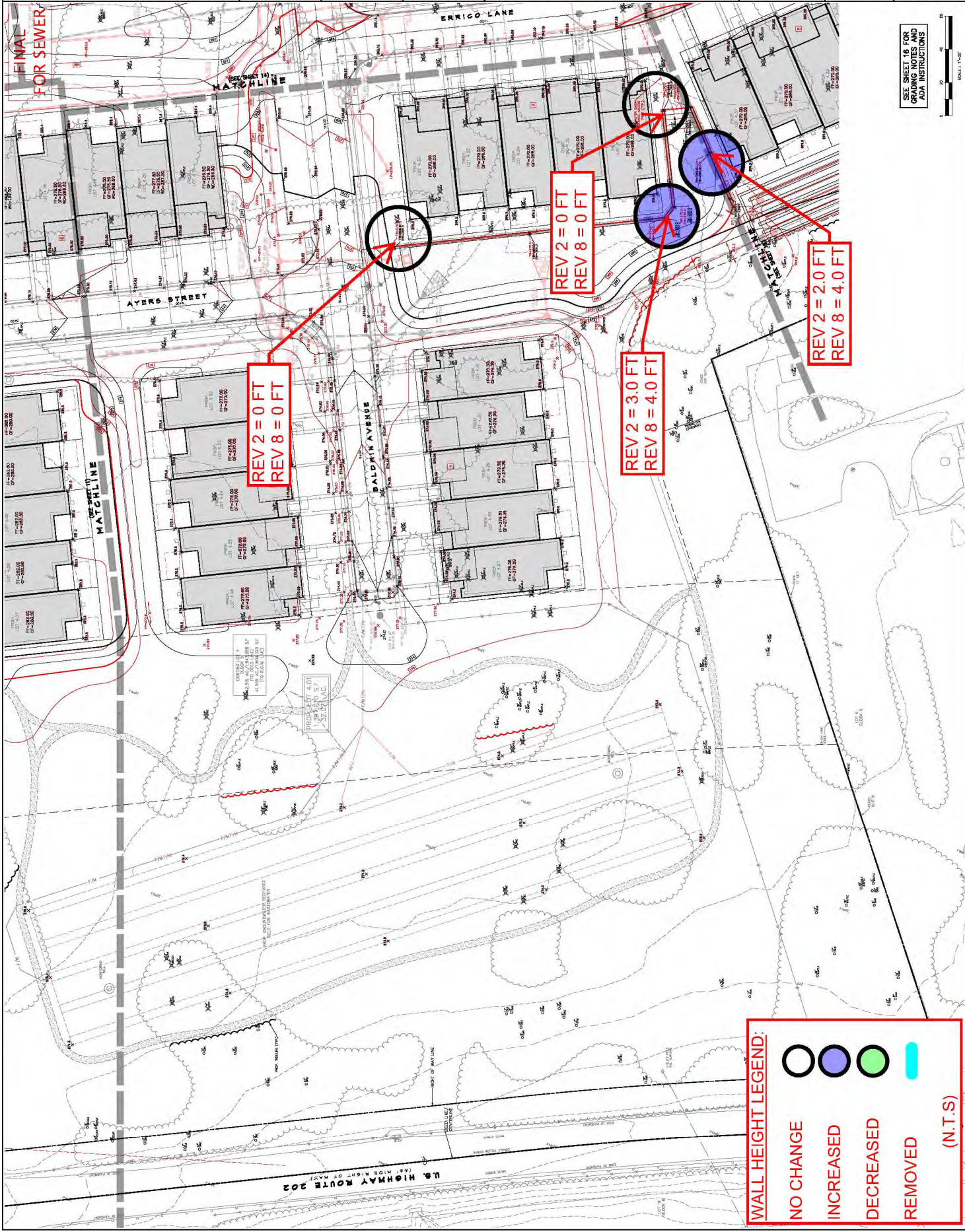
**GLADSTONE DESIGN, Inc.**  
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 P: (704) 516-2200  
 F: (704) 516-2201  
 www.rak-engineering.com

**PULTE HOMES - FAR HILLS**  
 BLOCK 5 LOT 4  
 BROADCHURCH FAR HILLS  
 SUBDIVISION  
 NEW ASSOCIATION

**GRADING PLAN**  
 PRELIMINARY AND FINAL MAJOR SUBDIVISION PLANS

DATE: MARCH 15, 2021  
 SCALE: 1" = 20'  
 DRAWING TITLE: GRADING PLAN  
 SHEET NO.: 683-17  
 TOTAL SHEETS: 13 OF 42



SEE SHEET 16 FOR GRADING NOTES AND ADA INSTRUCTIONS

**WALL HEIGHT LEGEND:**

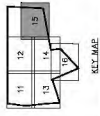
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- INCREASED
- DECREASED
- REMOVED

(N.T.S.)





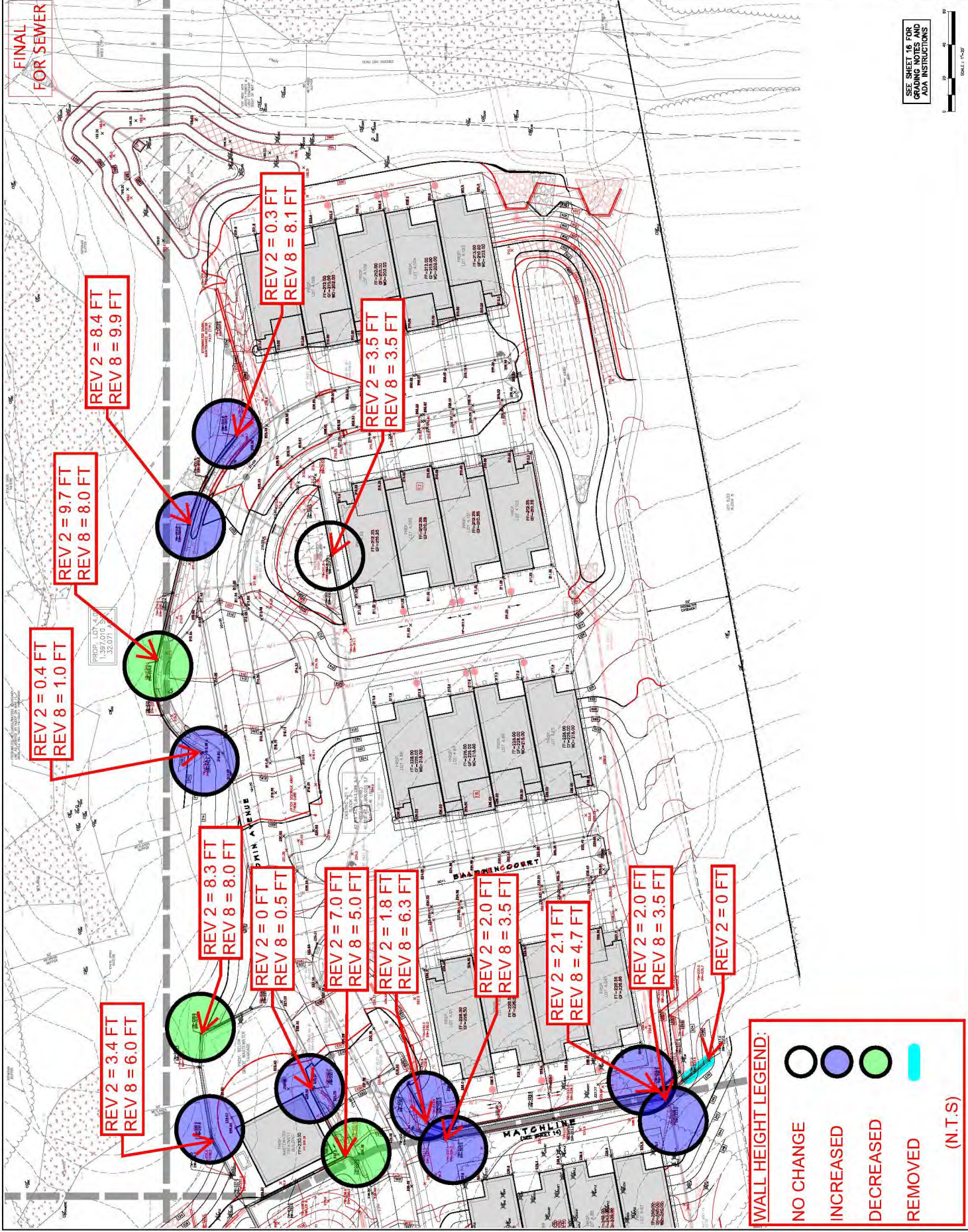
REVISIONS	
NO.	DESCRIPTION
1.	REV FOR BIDDING
2.	REV FOR PERMITS
3.	REV FOR CONSTRUCTION
4.	REV FOR FINAL
5.	REV FOR AS-BUILT
6.	REV FOR RECORD
7.	REV FOR ARCHIVE
8.	REV FOR LEGAL
9.	REV FOR TITLE
10.	REV FOR FINAL
11.	REV FOR AS-BUILT
12.	REV FOR RECORD
13.	REV FOR ARCHIVE
14.	REV FOR LEGAL
15.	REV FOR TITLE



**RONALD A. KENNERLY, P.E.**  
 LICENSE NO. 22030  
 PROJECT:  
**PULTE HOMES - FAR HILLS**  
 BLOCK 5 LOT 4  
 BROUGHAM OF FAR HILLS  
 SUBDIVISION  
 NEW ASSESSMENT

DATE: MARCH 15, 2021  
 SCALE: 1" = 20'  
 DRAWING: THE  
 SHEET NO.: 683-17  
 TOTAL SHEETS: 15 OF 42

PROJECT TITLE:  
 PRELIMINARY AND FINAL MAJOR  
 SUBDIVISION PLANS  
 GRADING PLAN



REV 2 = 0.4 FT  
 REV 8 = 1.0 FT

REV 2 = 9.7 FT  
 REV 8 = 8.0 FT

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 REV 8 = 9.9 FT

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 REV 8 = 8.1 FT

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 REV 8 = 3.5 FT

REV 2 = 8.3 FT  
 REV 8 = 8.0 FT

REV 2 = 0 FT  
 REV 8 = 0.5 FT

REV 2 = 7.0 FT  
 REV 8 = 5.0 FT

REV 2 = 1.8 FT  
 REV 8 = 6.3 FT

REV 2 = 2.0 FT  
 REV 8 = 3.5 FT

REV 2 = 2.1 FT  
 REV 8 = 4.7 FT

REV 2 = 2.0 FT  
 REV 8 = 3.5 FT

REV 2 = 0 FT

REV 2 = 3.4 FT  
 REV 8 = 6.0 FT

REV 2 = 0 FT

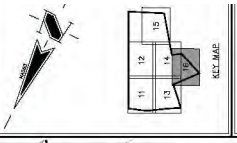
REV 2 = 0 FT

REV 2 = 0 FT

REV 2 = 0 FT



NO.	DATE	DESCRIPTION
1	03-12-2024	ISSUED FOR PERMITS
2	03-12-2024	ISSUED FOR PERMITS
3	03-12-2024	ISSUED FOR PERMITS
4	03-12-2024	ISSUED FOR PERMITS
5	03-12-2024	ISSUED FOR PERMITS
6	03-12-2024	ISSUED FOR PERMITS
7	03-12-2024	ISSUED FOR PERMITS
8	03-12-2024	ISSUED FOR PERMITS
9	03-12-2024	ISSUED FOR PERMITS
10	03-12-2024	ISSUED FOR PERMITS
11	03-12-2024	ISSUED FOR PERMITS
12	03-12-2024	ISSUED FOR PERMITS
13	03-12-2024	ISSUED FOR PERMITS
14	03-12-2024	ISSUED FOR PERMITS
15	03-12-2024	ISSUED FOR PERMITS



**GLADSTONE DESIGN, Inc.**  
 Landscape Architects  
 10000 N. Central Expressway, Suite 100  
 Dallas, Texas 75243  
 P: (972) 353-1234  
 F: (972) 353-1235  
 www.gladstone-design.com

**RONALD A. KENNEDY, P.E.**  
 Professional Engineer  
 License No. 10000  
 10000 N. Central Expressway, Suite 100  
 Dallas, Texas 75243  
 P: (972) 353-1234  
 F: (972) 353-1235  
 www.rakennedy.com

**PULTE HOMES - FAR HILLS**  
 BLOCK 5 LOT 4  
 BOROUGH OF FAR HILLS  
 SUBDIVISION PLAN  
 NEW JERSEY

**GRADING PLAN**  
 PRELIMINARY AND FINAL MAJOR SUBDIVISION PLANS

DATE	MARCH 15, 2021
SCALE	1" = 20'
DRAWN BY	THC
CHECKED BY	THC
DATE	03-12-2024
PROJECT NO.	683-17
SHEET NO.	16 OF 42

**GENERAL NOTES:**  
 1. ALL EXISTING AND PROPOSED WALLS SHALL BE CONSTRUCTED TO THE FINISH GRADE SHOWN UNLESS OTHERWISE NOTED.  
 2. WALLS SHALL BE CONSTRUCTED TO THE FINISH GRADE SHOWN UNLESS OTHERWISE NOTED.  
 3. WALLS SHALL BE CONSTRUCTED TO THE FINISH GRADE SHOWN UNLESS OTHERWISE NOTED.  
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 18. WALLS SHALL BE CONSTRUCTED TO THE FINISH GRADE SHOWN UNLESS OTHERWISE NOTED.  
 19. WALLS SHALL BE CONSTRUCTED TO THE FINISH GRADE SHOWN UNLESS OTHERWISE NOTED.  
 20. WALLS SHALL BE CONSTRUCTED TO THE FINISH GRADE SHOWN UNLESS OTHERWISE NOTED.

**WALL HEIGHT LEGEND:**

- NO CHANGE
- INCREASED
- DECREASED
- REMOVED

(N.T.S.)

**DAY PITNEY LLP**

ONE JEFFERSON ROAD  
 Parsippany, New Jersey 07054  
 Craig M. Gianetti (036512003)  
 (973) 966-6300  
 Attorneys for Defendant-Intervenor  
 Pulte Homes of NJ, Limited Partnership

---

IN THE MATTER OF THE APPLICATION OF THE BOROUGH OF FAR HILLS, COUNTY OF SOMERSET	: SUPERIOR COURT OF NEW JERSEY : LAW DIVISION: SOMERSET COUNTY : DOCKET NO.: SOM-L-903-15 : : (CIVIL ACTION- <i>MOUNT LAUREL</i> ) : : <b>CERTIFICATION OF</b> : <b>JAMES P. MULLEN IN SUPPORT OF</b> : <b>PULTE HOMES OF NJ, LIMITED</b> : <b>PARTNERSHIP MOTION TO</b> : <b>INTERVENE AND MOTION TO</b> : <b>ENFORCE LITIGANT’S RIGHTS</b>
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I, James P. Mullen, of full age, hereby certifies as follows:

1. I am the Vice President of Pulte Home Corporation of the Delaware Valley, the general partner of Movant/Interested Party Pulte Homes of NJ, Limited Partnership (“*Pulte*”). I make this Certification based on my personal knowledge and in support of Pulte’s Motion to Intervene and Motion to Enforce Litigant’s Rights.

2. After Melillo Equities LLC (“*Melillo*”) entered into an October 9, 2018 memorandum of understanding (“*MOU*”) with the Borough of Far Hills (“*Borough*”) relating to the development of approximately 42.3 acres of property formerly identified as Block 5, Lot 4, located at 220 Route 202 (the “*Property*”), Pulte became the contract purchaser of the Property. The Property was conveyed to Arroyo Cap III-2, LLC (“*Arroyo*”) on March 30, 2023 and Pulte simultaneously entered into an Option Agreement with Arroyo in which Pulte is scheduled to purchase each of the twenty-three (23) townhouse buildings in separate closings. Pulte also has a contractual obligation to build the twenty-

nine (29) unit affordable apartment building on new Lot 4.02 of the Property, which is owned by Melillo. As such, I am fully familiar with the facts and circumstances set forth herein.

3. On April 9, 2021, Pulte applied to the Borough's Planning Board (the "*Board*") for site plan and subdivision approval relating to an inclusionary, residential development at the Property of up to 134 total units, consisting of 25 non-age restricted family rental affordable housing units, 4 age-restricted rental affordable housing units, and up to 105 age-restricted market rate for sale townhouse units (the "*Development*").

4. At the December 2021 Board meeting relating to the Development, a professional planner for an objector testified in opposition to the revised site plans prepared by Pulte's civil engineer for the Development, Gladstone Design, Inc. ("*Gladstone*"), which included proposed retaining walls. The objector's planner specifically identified the retaining walls and mentioned that one in particular was seventeen (17) feet in height. However, she did not state that a design waiver was required.

5. Pulte received preliminary and final major site plan and subdivision approval from the Planning Board to construct the Development via Resolution No. 2022-10 dated February 7, 2022 (the "*Resolution*"). The site plans that were approved by the Board contained numerous retaining walls in excess of six (6) feet in height.

6. Subsequent to obtaining the Resolution, Pulte, with assistance from Gladstone, completed resolution compliance by addressing the conditions of approval set forth in the Resolution. To that end, Gladstone revised the site plans for the Development producing six (6) different versions to, among other things, comply with the conditions of approval to address the stormwater management design. In doing so, Gladstone modified the retaining walls that were shown on the site plans approved by the Board and added new retaining walls (the "*Retaining Walls*") to the plans,

which are consistent in height with the retaining walls depicted on the original site plans originally submitted and approved by the Board.

7. Each time Pulte submitted revised site plans for Resolution compliance, the Board Engineer reviewed the revised Plans and issued a “resolution compliance” letter specifically identifying the further changes that were needed. A design waiver for wall height was not mentioned in any of those letters. Finally, pursuant to letters dated July 31, 2023 and August 8, 2023, the Board Engineer approved the final plans and designs for all of the retaining walls (including the subject Retaining Walls) on the Property. Attached hereto as **Exhibit A** is a true copy of the Borough’s engineers July 31, 2023 letter. Attached hereto as **Exhibit B** is a true copy of the Borough’s engineers August 8, 2023 letter.

8. On March 15, 2023, revised site plans, which included the Retaining Walls, were approved by the Board’s professionals and signed by the Board Chairman, Board Secretary and Board Engineer.

9. As part of Resolution compliance, Pulte also entered into a “Developers Agreement” with the Borough dated March 17, 2023. Attached hereto as **Exhibit C** is a true copy of the Developers Agreement.

10. Based on the Resolution, Developers Agreement, and signed Plans (as revised), the Borough issued Construction Permit #23-00054 dated July 28, 2023 and Construction Permit #23-00060 dated August 21, 2023, to Pulte to specifically commence construction of the Retaining Walls. A true copy of Construction Permit #23-00054 is attached hereto as **Exhibit D**. A true copy of Construction Permit #23-00060 is attached hereto as **Exhibit E**.

11. In reliance on those permits, Pulte commenced construction in July 2023. Pulte completed its construction of a majority of the Retaining Walls prior to November 1, 2023, and spent approximately \$1,354,000.00 on that construction.

12. Pulte took title to one (1) townhouse building on new Lots 4.12-4.16 of the Property on October 27, 2023 and soon thereafter commenced construction of the first five (5) townhouses. As of the date of this Certification, those five (5) townhouses are more than 65% constructed.

13. Up until December 6, 2023, no person or entity affiliated with the Borough ever advised Pulte that the Retaining Walls violated the Land Management Ordinance of the Borough of Far Hills (the "*Ordinance*") or that a design waiver was needed for the retaining walls. The first time I learned of an issue with the height of a retaining wall was during a telephone call from the Board Engineer on December 6, 2023, during which the engineer stated that the owner of property on Fox Hunt Court (the "*Neighbor*"), which is adjacent to the Property, requested that a retaining wall be screened from his view. The subject retaining wall is approximately 60-feet from the Neighbor's property line with a 50-foot wide landscaped buffer in between, and the Neighbor's house is 210-feet from the retaining walls with woods in between. Notwithstanding, Pulte was then and is still as of the date of this Certification willing to supplement the landscaping screening of that wall. Thereafter I received a telephone call from Albert Cruz, Esq., the Borough's attorney, during which Mr. Cruz stated that the retaining wall exceeded the height limit in the Ordinance and needed to be screened. On December 19, 2023, I attended a meeting at Borough Hall to discuss the height of the retaining wall adjacent to the Neighbor's property, a method to screen same, and the request by Albert Cruz, Esq. to return to the Board for a variance. (It was clear at that time that the Borough representatives did not even know which section of the Ordinance was in question since a variance is not required for a deviation from a design standard). In attendance were Mayor Welsh, Paul Ferriero, PE, Borough

Engineer, Albert Cruz, Esq., David Banisch, PP, Borough Planner, Dorothy Hicks, Borough Administrator, Peter Coccoziello, member of the Borough Council, and Tom Ruggeri and Joel Lipman both of Pulte. No agreement was reached at this meeting, so a follow-up meeting was scheduled for January 11, 2024 in Borough Hall. Prior thereto, Gladstone provided the Borough representatives with a Retaining Wall Comparison Plan. On January 11, 2024, I attended another meeting at Borough Hall to discuss the height of the retaining walls. In attendance were, Mayor Welsh, Paul Ferriero, PE, Albert Cruz, Esq., David Banisch, PP, Dorothy Hicks, Peter Coccoziello, another engineer hired by the Borough from Carroll Engineering, and Ron Kennedy, PE, Robert Moschello, PE and Matthew Draheim, CLA all of Gladstone. A discussion of the method of screening the wall adjacent to the Neighbor's property occurred. Pulte again offered to enhance the landscape buffer, but the issue was not resolved. Gladstone explained in detail the Resolution compliance process and described the Retaining Wall Comparison Plan. It was clear that the height of the retaining walls was evident to the Board and the Board professionals during the Planning Board hearings and throughout the Resolution Compliance process. The Borough representatives again insisted that Pulte return to the Board, this time for a design waiver for the walls over six (6) feet tall. Pulte insisted that the retaining walls were either approved by the Board and/or its authorized representatives and advised that it would not return to the Board.

14. A final issue was discussed at the meeting having to do with installation of the water line on Route 202 by New Jersey American Water Company ("NJAW"). The water line will serve the Property, but was being undertaken in the NJDOT Right-of-Way by NJAW. NJDOT required the work to be done at night to cause the least amount of disruption to Route 202 traffic. NJAW requested that Pulte allow it to stage material and equipment on the Property while it did the night installation. The Developers Agreement contained a provision limiting work on the Property to



between the hours of 7:00am and 5:30pm. Even though no work to improve the Property would be done by NJAW, the Borough refused to allow NJAW to stage material and equipment on the Property. Since Pulte is paying for the water line installation, the inability to stage material and equipment on the Property resulted in increased costs to Pulte. The Borough Engineer even sent an email prohibiting work by NJAW in the NJDOT Right-of-Way of Route 202 at night. Only after NJAW and NJDOT reminded the Borough that it did not have jurisdiction of Route 202 did it relent. This is just another example of the efforts by the Borough to delay, obstruct and ultimately avoid the construction of affordable housing on the Property.

15. On January 18, 2024, Kimberly Coward, a Zoning Officer for the Borough, sent Pulte a letter enclosing a Notice of Violation alleging that Pulte is in violation of the Borough's Ordinance and Planning Board conditions of approval for the Development (the "*Notice of Violation*"). A true copy of the Notice of Violation is attached hereto as **Exhibit F**.

16. On February 27, 2024, the Borough Attorney, Albert Cruz, Esq., sent an email to Pulte advising the "Notice of Violation does not apply to Zoning Permits for the affordable housing building to be constructed by Pulte Homes." He provided no reason for excluding the affordable housing building, even though there are numerous retaining walls higher than six (6) feet on Lot 4.02, which will contain the affordable housing building. A true copy of the letter is attached hereto as **Exhibit G**. This is an admission by the Borough's attorney that the Notice of Violation has nothing to do with Zoning or the health, safety and welfare of the citizens of Far Hills, and instead is designed to delay, obstruct and ultimately avoid the construction of affordable housing on the Property. The Borough's Attorney knows that if the market rate homes are not constructed neither will the affordable housing.

17. On March 4, 2024, the Borough's attorney, Albert E. Cruz, sent Pulte a notice of default of the Developers Agreement (the "*Notice of Default*") because it allegedly had not cured the

Notice of Violation by the deadline set forth therein. A true copy of the Notice of Default is attached hereto as **Exhibit H**.

18. As of the date of this Certification, Pulte has only received building permits for one townhouse building consisting of five residential units, which is currently under construction. Pulte has not applied for a certificate of occupancy as of the date of this Certification.

19. The Notice of Violation is only the latest in a series of efforts by the Borough to delay the Development since the prior Mayor resigned in 2022 and Charles Schwester, the main objector during the Board hearings on the Development application, was elected to the Council. By way of example, towards the end of 2022 while Pulte was in Resolution compliance, the Borough refused to: (a) execute a Developers Agreement with Pulte, and (b) approve easements *that Pulte was granting to the Borough for its benefit*. This was done because without the Developers Agreement and approved easements, Pulte could not obtain building permits. In addition, Mr. Schwester has repeatedly trespassed onto the Property both during and after working hours. He has also driven his car into the restricted work area on Route 202 at night during the installation of the water line. In all those cases, Mr. Schwester is placing himself and the workers in danger of injury. Attached hereto as **Exhibit I** is a true copy of a February 20, 2023 article published on newjerseyhills.com regarding an incident relating to Mr. Schwester's opposition to the Development and behavior during a Borough Council meeting concerning the Development that resulted in his arrest.

I hereby certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

  
James P. Mullen

DATED: 3.11.24

# EXHIBIT A



Paul W. Ferriero, PE, PP, CME, LEED AP, CFM  
Robert C. Brightly, PE, PP, CME

Steven B. Bolio, PE, CME  
Joseph P. Byrne, PE  
Candice J. Davis, PE, CME  
Mark S. Denisiuk, PE, CME, LEED AP  
Mark W. Kataryniak, PE, PTOE  
Joseph S. Kosinski, PG, CFM, LEED AP  
C. Richard Quamme, PE, CME  
Jess H. Symonds, PE

July 31, 2023

Steve Mahoney, Construction Official  
Borough of Far Hills  
6 Prospect Street  
Far Hills, NJ 07931

Re: Retaining wall design review  
Pulte Homes  
Borough of Far Hills  
FEI Project No.: 23FH602

Based on a review of the submission for Far Hills Retaining Wall – Package 1 consisting of the following:

- Plans for Walls #s 1, 2, 5 and 13 consisting of fifteen (15) sheets dated May 15, 2023, revised July 21, 2023 prepared by SESI Consulting Engineers
- Calculations for the Far Hills Retaining Walls (Package 1) dated July 17, 2023 prepared by SESI Consulting Engineers
- Supplemental Plans for Walls #s 1, 2, 5 and 13 consisting of two (2) sheets dated May 15, 2023, revised July 21, 2023 showing grid lengths prepared by SESI Consulting Engineers.
- Colorized cut-fill plan, one (1) sheet, not titled

The plans and calculations for walls 1, 2, 5 & 13 have been reviewed and substantially conform to the standards set forth by the National Concrete Masonry Association Segmental Retaining Wall Best Practices Guide.

Building permits may be issued upon payment of the required fees and wall construction may begin. Upon completion the wall shall be certified by a geotechnical consultant prior to final approval.

This approval should be subject to the following two conditions:

- Prior to the placement of the compacted granular-base leveling pad for any wall, the on-site geotechnician should provide a copy of their daily report indicating that the wall foundation is virgin soil or and engineered fill with an adequate allowable bearing capacity.

• • •

■ 180 Main Street • P.O. Box 571 • Chester, NJ 07930 • 908-879-6209 • Fax: 908-879-6597  
□ 17 Model Avenue • P.O. Box 577 • Hopewell, NJ 08525 • 609-466-0002 • Fax: 609-466-2008  
mail@FerrieroEngineering.com

Ferriero Engineering, Inc.

July 31, 2023

Page 2

Re: Retaining wall design review

Pulte Walls

Borough of Far Hills

FEI Project No.: 23FH602

- Any plot plan or lot survey for a lot that contains a wall or wall grid shall show the location of the wall and any associated geosynthetic grids.

Should you have any questions or need additional information, please do not hesitate to contact this office.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Jess Symonds', written in a cursive style.

Jess Symonds, PE

# EXHIBIT B



Paul W. Ferriero, PE, PP, CME, LEED AP, CFM  
Robert C. Brightly, PE, PP, CME

Steven B. Bolio, PE, CME  
Joseph P. Byrne, PE  
Candice J. Davis, PE, CME  
Mark S. Denisiuk, PE, CME, LEED AP  
Mark W. Kataryniak, PE, PTOE  
Joseph S. Kosinski, PG, CFM, LEED AP  
C. Richard Quamme, PE, CME  
Jess H. Symonds, PE

August 8, 2023

Steve Mahoney, Construction Official  
Borough of Far Hills  
6 Prospect Street  
Far Hills, NJ 07931

Re: Retaining wall design review package 2  
Pulte Homes  
Borough of Far Hills  
FEI Project No.: 23FH602

Based on a review of the submission for Far Hills Retaining Wall – Package 2 consisting of the following:

- Plans for Walls #s 3, 4, 4A, 6, 7, 8, 9, 10, 11A, 11B, 12, 14, 15 and 16 consisting of fourteen (14) sheets dated July 7, 2023, revised July 25, 2023 prepared by SESI Consulting Engineers
- Calculations for the Far Hills Retaining Walls (Package 2) dated July 25, 2023 prepared by SESI Consulting Engineers
- Supplemental Plans for Walls #s 3, 4, 4A, 6, 7, 8, 9, 10, 11A, 11B, 12, 14, 15 and 16 consisting of three (3) sheets dated July 7, 2023, revised July 25, 2023 showing grid lengths prepared by SESI Consulting Engineers.

The plans and calculations for walls 3, 4, 4A, 6, 7, 8, 9, 10, 11A, 11B, 12, 14, 15 and 16 have been reviewed and substantially conform to the standards set forth by the National Concrete Masonry Association Segmental Retaining Wall Best Practices Guide.

Building permits may be issued upon payment of the required fees and wall construction may begin. Upon completion the wall shall be certified by a geotechnical consultant prior to final approval. **Prior to beginning wall construction the design engineer shall provide a letter that the wall sections analyzed in the calculations were at the critical point in each wall and the areas of the walls with the modified backfill should be shown on the supplemental plans.**

This approval should be subject to the following two conditions:

• • •

■ 180 Main Street • P.O. Box 571 • Chester, NJ 07930 • 908-879-6209 • Fax: 908-879-6597  
□ 17 Model Avenue • P.O. Box 577 • Hopewell, NJ 08525 • 609-466-0002 • Fax: 609-466-2008  
mail@FerrieroEngineering.com

Ferriero Engineering, Inc.

August 8, 2023

Page 2

Re: Retaining wall design review

Pulte Walls

Borough of Far Hills

FEI Project No.: 23FH602

- Prior to the placement of the compacted granular-base leveling pad for any wall, the on-site geo-technician should provide a copy of their daily report indicating that the wall foundation is virgin soil or and engineered fill with an adequate allowable bearing capacity.
  
- Any plot plan or lot survey for a lot that contains a wall or wall grid shall show the location of the wall and any associated geosynthetic grids.

Should you have any questions or need additional information, please do not hesitate to contact this office.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Jess Symonds', written in a cursive style.

Jess Symonds, PE



# EXHIBIT C



**SOMERSET COUNTY**  
**DOCUMENT COVER SHEET**

Steve Peter, County Clerk  
**Electronically Recorded Somerset County, NJ**  
 2023 Apr 12 12:32 PM  
 BK: 7501 PGS: 337-383  
 Instrument # 2023009124  
 Fee: \$493.00 Doc Type: AGTDEED

HON. STEVE PETER  
 SOMERSET COUNTY CLERK  
 PO BOX 3000  
 20 GROVE STREET  
 SOMERVILLE, NJ 08876

WWW.CO.SOMERSET.NJ.US

*(Official Use Only)*

DATE OF DOCUMENT: 2023-04-12	TYPE OF DOCUMENT: AGREEMENT DEED
FIRST PARTY <i>(Grantor, Mortgagor, Seller or Assignor)</i>	SECOND PARTY <i>(Grantee, Mortgagee, Buyer, Assignee)</i>
Borough of Far Hills	Pulte Homes of NJ Limited Partnership a Michigan limited partnership
ADDITIONAL PARTIES:	

**THE FOLLOWING SECTION IS REQUIRED FOR DEEDS ONLY**

MUNICIPALITY: Far Hills	MAILING ADDRESS OF GRANTEE:
BLOCK:	
LOT:	
CONSIDERATION:	

**THE FOLLOWING SECTION IS FOR ORIGINAL MORTGAGE BOOKING & PAGING INFORMATION FOR ASSIGNMENTS, RELEASES, SATISFACTIONS, DISCHARGES & OTHER ORIGINAL MORTGAGE AGREEMENTS ONLY**

BOOK	PAGE	INSTRUMENT #	DOCUMENT TYPE
		0	AGREEMENT DEED

**DO NOT REMOVE THIS PAGE**  
**THIS DOCUMENT COVER SHEET IS PART OF THE SOMERSET COUNTY FILING RECORD**  
**RETAIN THIS PAGE FOR FUTURE REFERENCE**

## DEVELOPER'S AGREEMENT

This AGREEMENT made on this 17<sup>th</sup> day of MARCH, 2023 (the "Agreement") between the BOROUGH OF FAR HILLS, a municipal corporation of the State of New Jersey, having its principal offices at 6 Prospect Street, Far Hills, New Jersey 07931, hereinafter called the "Borough" or "Far Hills"; and PULTE HOMES OF NJ, LIMITED PARTNERSHIP, a Michigan limited partnership, having offices at 150 Allen Road, Suite 303, Basking Ridge, New Jersey 07920, hereinafter called the "Developer".

### WITNESSETH:

WHEREAS, the Developer is the contract purchaser for a portion of the property identified as Block 5, Lot 4 on the Tax Maps of the Borough of Far Hills, located at 220 Route 202 (prior to subdivision) (the "Property"), which will be identified as the newly subdivided Lots 4.01 and 4.03 through and including 4.107 in Block 5, as shown on the Final Subdivision Plan to be recorded in the Office of the Somerset County Clerk (the "Townhouse Property"); and

WHEREAS, the Developer will be developing the improvements on the Property, which includes the newly subdivided Lot 4.02 in Block 5, as shown on the Final Subdivision Plan to be recorded in the Office of the Somerset County Clerk (the "Affordable Housing Property"), pursuant to the terms of the Approval herein defined below (collectively the Townhouse Property and Affordable Housing Property are referred to as the "Property"); and

WHEREAS, the Borough entered into a Settlement Agreement with Fair Share Housing Center, Inc. ("FSHC") dated October 15, 2018 (the "Settlement Agreement"), which Settlement Agreement and subsequent amendments identified the Property as part of the Borough's Housing Element and Fair Share Plan (the "Fair Share Plan"); and

WHEREAS, pursuant to the Settlement Agreement and the Fair Share Plan, the Property is to be developed as an age-restricted townhome and multi-family inclusionary residential development; and

WHEREAS, the Developer has agreed to construct certain improvements on the Townhouse Property and the Affordable Housing Property in compliance with the preliminary and final major site plan and subdivision approval, with variance relief and design waivers, from the Far Hills Borough Planning Board (the "Board") for the inclusionary development consisting of 105 age-restricted townhouse dwellings (the "Community") and an apartment building consisting of 29 affordable apartments (25 family affordable units and 4 age-restricted affordable units), along with related roadways, parking areas, stormwater drainage facilities, on-site sanitary sewer facilities, landscaping and related site improvements (the "Approval"), which Approval was memorialized in the Resolution No. 2022-10, adopted by the Board on February 7, 2022 (the "Resolution") a copy of which is annexed hereto as **Exhibit A**; and

WHEREAS, the Approval was granted subject to the execution of this Agreement between the Borough and the Developer, memorializing the Developer's compliance with all conditions of the Approval, as more fully set forth in the Resolution, along with the application, plans and reports considered by the Board in connection with same, including the testimony presented to the Board at the public hearings held on July 5, 2021, August 2, 2021, August 14, 2021, September 22, 2021,

October 4, 2021, November 1, 2021, November 23, 2021, December 6, 2021, January 3, 2022, and February 7, 2022, which shall include but not be limited to, testimony representations, commitments, matters of fact and matters of law which constitute the file and record of the Board as contained in and circumscribed by the Resolution, which is made a part of this Agreement by reference hereto as though fully set forth herein, in this matter and it will faithfully discharge all of the obligations and commitments thereof (the "Application Documents"), as well as compliance with the ordinances of the Borough of Far Hills, the obligations set forth by FSHC, the terms of this Agreement, and the laws of the State of New Jersey regarding development of the Property; and

NOW THEREFORE, the Borough and the Developer (the "Parties"), for and in consideration of the foregoing, and the payment of the sum of One (\$1.00) Dollar lawful money of the United States of America, each to the other in hand paid, at or before the signing of this Agreement, the receipt whereof is hereby acknowledged by each party, and in consideration for the mutual covenants, agreements, conditions, understandings and undertakings hereinafter contained and set forth, the Parties hereto hereby agree for themselves, their successors and assigns, or any such lien holders or anyone who acquires from such lien holder, as follows:

1. RECITALS. The foregoing WHEREAS clauses are incorporated herein by reference and made a part hereof.

2. APPLICATION OF AGREEMENT. The terms and conditions of this Agreement shall be applicable to the Property, as herein described above, and any and all improvements included in the Approval.

3. DEVELOPER BOUND. The Developer, in accordance with the Resolution and the Application Documents, agrees to be bound by same, and that it will faithfully discharge all of the obligations and commitments thereof. To the extent required thereby, to be performed consistent with the requirements established by the Resolution, Developer shall install the public site improvements as shown on the Approval, Resolution, the Borough Code, and any applicable County, State or otherwise agency required approvals.

4. CONSTRUCTION SUBJECT TO ORDINANCE. The Developer shall construct and design all improvements strictly in accordance with the Application Documents, Resolution, the Land Use Ordinance of the Borough of Far Hills, and this Agreement, in a manner satisfactory (within the intent expressed by the Board and as set forth in the Resolution) to the Borough Engineer and in accordance with the improvements set forth on the approved plans. Developer shall perform all work in full compliance and observation of all ordinances of the Borough. The Developer shall be responsible for securing any and all permits required by law including, but not limited to, road opening permits and any and all other permits required by the ordinances of the Borough, the laws of the State of New Jersey and Somerset County and to pay the requisite fees as provided for in the Municipal Land Use Law with the recommendation of the Borough Planner and Engineer.

5. GUARANTEES: The roadways, parking areas, stormwater drainage facilities, on-site sanitary sewer facilities, landscaping and related site improvements contemplated in this Agreement (the "Improvements"), unless otherwise specified, shall be performed within three (3) years from the date of this Agreement in accordance with NJSA 40:55D-53 or such additional

periods as may be granted by the Borough. The failure of the Borough to declare the Developer in default, or the issuance of any permits or certificate of occupancy, within the time period, shall not be deemed a waiver for defects in improvements or any waiver of the Borough's rights under this Agreement ascertained during such period or subsequent thereto. The Borough may annually review the amount of the Guarantees with regard to sufficiency to ensure faithful completion of the Improvements, and may require the Developer to increase the amount of Guarantee. In the event the project or any part thereof is sold or otherwise conveyed by the Developer prior to the installation of all Improvements and final certificate of occupancy, the Developer shall have the right to assign both of the performance guarantees for the applicable portion of the project to a subsequent qualified developer with the requirement that the subsequent qualified developer assume the same, in writing, and in a form that is acceptable to the Borough Attorney. The amount of the performance guarantee attributable to the portion of the project transferred to a subsequent developer shall be subject to the review and approval of the Borough Engineer. In the event the subsequent developer tenders new guarantees to the Borough, they shall be reviewed by the Borough Attorney as to form and content prior to acceptance and release of the Developer's performance guarantees. Upon such qualification of the subsequent developer, the signatory Developer, hereon, shall be deemed released hereunder, whether or not there is a filing confirming same. Guarantees shall be provided as required by the Borough Ordinances and N.J.S.A. 40:55D-53 *et seq.*

6. BONDS: a. To insure that there is performance under this Agreement by the Developer, the Developer shall post a cash or a surety bond, in the amount of One Hundred Fifty Three Thousand Six Hundred and Sixty and 00/100 Dollars (\$153,660.00) being the equivalent of 120 percent of the total performance guarantee for Buffer Landscaping as required pursuant to the Approval. Said amounts represent the total obligation of the Developer as estimated by the Developer's Engineer and approved by the Board Engineer, all in accordance with the formula set forth in *N.J.S.A. 40:55D-53a(1)(b)* and as reflected in Exhibit B (the "Performance Guarantee for Buffer Landscaping"):

b. Developer has posted a safety and stabilization bond in the amount of Sixty Five Thousand, Eight Hundred Six and 15/100 (\$65,806.15) solely for the purpose of guaranteeing the return of that portion of the Property that has been disturbed to a safe and stable condition or otherwise implementing measures to protect the public from access to an unsafe or unstable condition per *N.J.S.A. 40:55D-53a(1)(d)*, in accordance with, and as estimated by the Developer's Engineer and approved by the Borough Engineer, ("the safety and stabilization measures"). If the Developer has commenced improvements and thereafter all work on the Property has ceased for a period of at least 60 consecutive days following such commencement for reasons other than force majeure and the work has not recommenced within 30 calendar days following the provision of written notice by the Borough to the Developer of the Borough's intent to claim payment under the safety and stabilization guarantee, then the Borough shall have the right to access the safety and stabilization guarantee in the amount necessary and apply the proceeds thereof to the cost of the Borough's undertaking. If the cost of the Borough's undertaking and completion is less than the amount of said safety and stabilization guarantee, the difference shall not be drawn by the Township, and the Borough, upon completion of the safety and stabilization measures and settlement of claims, shall authorize the cancellation of the safety and stabilization guarantee or reduction therein, whichever is applicable. However, if the Borough's cost of undertaking to complete safety and stabilization measures required exceeds the amount of the safety and stabilization guarantee, the Borough shall provide the Developer with written notice of the excess

amount, and the Developer shall reimburse the Borough said deficiency amount within 30 days from the date of the deficiency notice. In the event of a default by the Developer, the Borough shall have the right to draw against the safety and stabilization guarantee to their fullest extent during the term of this Agreement or any extension thereof notwithstanding that the Borough may not have completed the installation of the safety and stabilization measures or settlement of claims by the time set forth in Paragraph 1 herein.

If the private site improvements are not constructed and installed in all respects in accordance with this Agreement and all claims for damages settled, then, upon the certification of the Borough Engineer to such facts, the Borough, through its attorney, shall authorize whatever actions necessary to use the safety and stabilization guarantee.

c. A partial or full cancellation of the safety and stabilization guarantee as portions of the private site improvements are completed will be made when (1) the Developer requests a reduction or release; (2) the Borough Engineer approves it; and (3) a resolution is adopted by the Borough Council authorizing said reduction and release, all actions in accord with the time frames and conditions set forth in *N.J.S.A. 40:55D-53*. However, the Borough shall be entitled to draw and retain all amounts necessary to pay for the cost of inspection incurred by the Township Engineering Department and consultants authorized by said Department.

d. Inspection Fees in accordance with Paragraph 7 of this Agreement, captioned "Engineering Escrows and Legal Fees", in the amount of Two Hundred Forty Thousand Three Hundred Fifty-Four and 43/100 (\$240,354.43) Dollars, which includes inspection of installation of items subject to the Performance Guarantee and private engineering items required to be installed. These fees may be paid in installments in accordance with *N.J.S.A. 40:55D-53*.

The Guarantee estimates set forth herein are effective only if approved bonds are posted and cash deposits made within twenty (20) days of the date of the execution of the within Agreement. Thereafter, the estimates are subject to revision. The cash deposit shall be released proportionately to the bonds by the Borough. Every performance guaranty bond, whether cash or surety, shall contain a clause to the effect that a determination made by the Borough Engineer that the principal has defaulted in the performance obligations shall be binding and conclusive upon the surety and the principal. The cash portion may be utilized by the Borough upon default of the Developer and failure to cure any defect or breach under this Agreement. Sureties shall be required to indicate that the guarantee automatically continues if the work is not completed by the stated expiration date. In addition, all taxes, assessments, escrows, and fees for the Property must be paid prior to the release of Performance Guarantee.

The Developer shall provide and file with the Borough Engineer two (2) complete sets in hard copy and in digital format of as-built improvement plans and profiles for the bonded improvements in accordance with Borough standards., showing actual construction, as approved, prior to release of Guarantees. A final outbound survey of the Property must also be submitted at the time of request for Certificate of Occupancy.

All of the above must be in a form acceptable to the Borough Attorney and Engineer, and in accordance with the estimates issued by the Borough Engineer and attached hereto as **Exhibit C** and made a part hereof, which describes the improvements the completion of which is assured by the Guarantee.

7. REPLACEMENT BOND. In the event that any insurance company, financial institution or other entity issuing any Guarantee hereunder shall be subject to a reorganization, rehabilitation, other action whereby a state or federal agency has taken over management of the entity, or, if in the reasonable opinion of the Borough, the circumstances and condition of the entity results in the Borough declaring that it believes that its interests are jeopardized, within thirty (30) days of such written notification, the Developer shall replace the Guarantee(s). If requested by the Developer, the Borough shall adopt a resolution conditionally releasing the jeopardized Guarantee(s) subject to the posting of satisfactory substitute guarantee(s).

In the event any Guarantee shall lapse, be cancelled or withdrawn or otherwise not remain in full force and effect, the Developer, until an approved Replacement Guarantee has been deposited with the Borough, will cease and desist any and all work unless the required improvements covered by the Guarantee under the Board approval and this Agreement have been completed and approved by the Borough Engineer.

8. ENGINEERING ESCROWS AND LEGAL FEES. The Developer has deposited with the Borough the inspection fees for the Approval, in the amount of Sixty Thousand, Eighty-eight and 61/100 (\$60,088.61) Dollars, in accordance with the Borough's written request therefore, representing the first of four installments, which total shall not exceed 5% of the cost of all site improvements. Said escrow deposit shall be utilized to cover the legal costs associated with the Application, and for the review and preparation of this Agreement, and any necessary correspondences with Developer, Developer's professionals, the Borough and or its professional personnel, including, but not limited to, the Borough Engineer; and to cover the costs associated with services to be rendered by the Borough Engineer or his/her authorized representatives or other approving authority in connection with the inspections of the Improvements pursuant to the Approval, through and including the date of full execution hereof, and Developer's costs and fees going forward from the date of execution. The Borough professionals will bill the Developer for further services rendered to the Borough at the same hourly rate and in the same manner as it bills the Borough for other Borough matters. Said monies will be held and administered in accordance with Section 53.1 and 53.2 of the MLUL.

If the escrow is paid in installments as provided for by NJSA 40:55D-53 (h) et seq. then before the escrow deposit dips below 10% the developer shall provide the next installment as certified by the Borough Chief Financial Officer. Should the Developer fail to post funds for the escrow account sufficient to pay the costs of any invoice for professional services rendered and continue to fail to post the required funds within ten (10) days after written notice to the Developer of such deficiency by the Borough, the Borough may issue a stop work order halting all work at the Property until such time as the Developer brings the escrow account balance current. Upon completion of all improvements pursuant to the Approval to the satisfaction of the Borough Engineer, should any deposit monies be left over in escrow, the unused balance shall be paid in accordance with Section 53.2 of the MLUL.

Should the Borough determine that the amount in escrow for the payment of inspection fees as calculated pursuant to NJSA 40:55D-53(h) is insufficient to cover the cost of additional required inspections, the Borough may require within thirty (30) days written notice to the Developer, the Developer to deposit additional funds in escrow provided the Borough delivers to the Developer a written inspection escrow deposit request, signed by the Borough Engineer, which informs the Developer of the need for additional inspections, details the items or undertakings that

require inspection, estimates the time required for those inspections and estimates the cost of performing those inspections.

9. UTILITY CONNECTIONS. The Developer is to be solely responsible for all costs associated with the installation of any and all new utility connections to the Improvements on the Property. In addition to the extent that any utility connections for the Improvements on the Property must be terminated, the Developer, in accordance with the Approval, must disconnect and abandon all such existing utilities to be disconnected in accord with applicable regulations and connect the new buildings to public utilities as shown on the approved plans.

10. ELECTRIC VEHICLES CHARGING STATIONS. Developer shall install a conduit for laying of wiring of the electric vehicle charging stations for nine (9) guest parking spaces for the apartment building to be constructed on the Affordable Housing Property; and shall comply with the State's recently adopted electric vehicle supply equipment statute to the extent it is applicable. Developer shall comply with the State's recently adopted electric vehicle supply equipment statute to the extent it is applicable to the development of the age-restricted townhouses on the Townhouse Property. The location of the electric vehicle charging parking spaces shall be reviewed and approved by the Borough Engineer.

11. OFF-TRACT IMPROVEMENTS. All utility work contemplated by the Resolution and Approval, and all improvements to be made in any streets will be as required by the Borough Engineer and shall be the obligation of the Developer. Any damage done to municipal or county roadways by the Developer shall be repaired at the Developer's expense. Specifically with regard to the water main extension, the Developer shall comply with all applicable laws, regulations and ordinances, which shall be in compliance with the approved Water Main Extension Plans, with any and all work to be completed within the public right-of-way to be compliant with all road opening requirements, with prior notice of any such work being performed to be provided to the Borough Engineer.

12. SANITARY SEWER. Developer, at its sole cost and expense, shall construct, operate and maintain an on-site sanitary sewer treatment facility (the "Treatment Facility") on the Townhouse Property in accordance with the Approval, and in compliance with any and all local, County and State laws, regulations, and ordinances, including, without limitation, regulations of the New Jersey Department of Environmental Protection ("NJDEP"), the NJPDES-DGW Permit No. NJ0320382 (which is the Permit to Operate the Treatment Facility) and Treatment Works Approval No. 22-0355. The Treatment Facility shall service the entire development of the Property. Upon reaching an average flow of 10,000 GPD (the equivalent of 33% of the design flow, which is anticipated to be when forty-five (45) Units are occupied), Developer or the Association will instruct the Treatment Facility operator to advise the NJDEP that the Treatment Facility has commenced operation, as required by the NJPDES-DGW Permit. Prior to the date of commencement of operation of the Treatment Facility, the Treatment Facility operator will dispose of the wastewater via a pump and haul process. The Developer and subsequent homeowner's association shall provide for adequate security in the form of the Operating and Reserve Fund accounts and insurance set forth in the homeowner's association's annual budget regarding continuing operations, proper maintenance, replacement of equipment and protection against the results of catastrophic failures of the Treatment Facility pursuant to the terms of Section 13 below. The Developer and subsequent homeowner's association shall test the emergency generator for the Treatment Facility once per week, which shall be limited between the hours of 10:00 a.m. until



2:00 p.m., Tuesdays through Thursdays. The Developer, and any subsequent homeowner's association, shall notify the Borough prior to any change to the service provider handling the operation and maintenance of the Treatment Facility servicing the Projects. The Developer specifically acknowledges and agrees that the Borough shall have no existing or future obligation whatsoever relating to the construction, operation, maintenance, repair, or replacement of the Treatment Facility servicing the Property. The operation and maintenance procedures and schedule ("Treatment Facility Maintenance Agreement") shall be further provided to the Borough Engineer and copied to the Borough Attorney for final approval, such approval not to be unreasonably withheld or delayed. The Treatment Facility Maintenance Agreement shall include but not be limited to inflow and infiltration reporting, repair activity logs, any outside agency filings, defaults and violation notice procedures, scope of service contracts, emergency procedures, self-help provisions, right of entry, escrow inspection requirements, and any certifications to ensure the health and safety of the Property.

13. HOMEOWNER'S ASSOCIATION. The Developer shall form a homeowner's association and will register the Community with the New Jersey Department of Community Affairs (the "DCA"), pursuant to N.J.S.A. 45:22A-21 et seq. and the applicable Regulations adopted pursuant thereto (the "PREDFDA") to be responsible for the maintenance of the common improvements, including, without limitation, the stormwater management system, the Treatment Facility, the guest parking spaces, and the electronic vehicle charging stations. The homeowner association will be known as Kimbolton Homeowners Association, Inc. (the "Homeowners Association"), which will also be the name of the age-restricted townhouse Community. The parties acknowledge that the electronic vehicle charging stations to be located on the Affordable Housing Property shall be owned and maintained by the ultimate owner of said lot and not the homeowner's association. Developer shall cause to be recorded with the Somerset County Clerk's office, a Declaration and other documentation required by the DCA, creating the Homeowners Association and containing the common property maintenance requirements, including the provisions set forth in Section 12 above and in this Section 13.

Specifically with regard to the Treatment Facility, the Homeowners Association documents shall provide that the annual budget of its operations, (including all operating expenses and reserve funds), must specifically account for the costs to operate, maintain, repair and replace the Treatment Facility. The reserve account will include funds dedicated for the Treatment Facility, all in accordance with the PREDFDA and the DCA Rules. The initial annual budget will be included in the application for registration submitted to the DCA in accordance with PREDFDA and the DCA Rules and will be included in the Public Offering Statement registered by the DCA. For the common improvements and facilities for which the Homeowners Association will be responsible, the Homeowners Association will create a separate Reserve Fund Account for those common improvements and facilities with useful lives up to and including 30 years as required by PREDFDA and the DCA Rules. The amount shall be determined by an independent licensed engineer. The portion of the Reserve Fund Account dedicated for the Treatment Facility, like the other common improvements and facilities for which the Homeowners Association is responsible, shall be funded by the homeowners of the Community, from their monthly maintenance fee payments and a contribution from the Affordable Apartment occupants. As with each common improvement and facility, funding for Reserves for the on-site sanitary sewer system shall commence no later than in the year the Treatment Facility becomes operational. The Reserve Fund Account shall account for the anticipated repair and/or replacement costs, including any necessary

costs to replace the Treatment Facility at the end of its useful life. In the event of the failure of the Treatment Facility early than its 30 year useful life, the Homeowners Association will use the Reserve Account Fund to make the repair and will collect a Special Assessment from all of its members, in accordance with the Homeowner Association governing documents, for any shortfall. Periodically, typically every three (3) years, the Homeowners Association will hire an independent licensed engineer to reevaluate the Reserve Fund Account and it will be adjusted in accordance with the recommendation of the independent licensed engineer at the sole discretion of the Board of Trustees of the Homeowners Association. Notwithstanding the foregoing, the Developer and subsequent Homeowner's Association specifically acknowledge and agree that the Borough shall have no existing or future obligation whatsoever relating to the construction, operation, maintenance, repair, or replacement of the Treatment Facility. The provisions of this Section shall be set forth and included in the Homeowner's Association governing documents and/or by-laws, as well as to be included in a Deed Notice to be recorded with the Somerset County Clerk's office, which cannot be amended or removed without the Borough's prior written consent. The form of Homeowner Associations governing documents and by-laws and the Deed Notice shall be reviewed by the Borough Attorney and Borough Engineer as to form and content prior to filing with the DCA, such review not to be unreasonably withheld or delayed. This Deed Notice shall be recorded with the Somerset County Clerk's office prior to the issuance of any building permit for the improvements authorized by the Approval.

Developer shall, in addition to requiring the owner of the Affordable Housing Property to record with the Somerset County Clerk's Office the affordable housing deed restrictions pursuant to Section 23 herein, cause to be recorded with the Somerset County Clerk's office the Homeowner Association Declaration and a Deed Restriction requiring the Community to be occupied by persons in compliance with the age restriction requirements of the Housing for Older Persons exemption from the Federal Fair Housing Amendments Act of 1988. The Developer shall include in the recorded Homeowners Association Declaration that all subsequent sales or transfers of dwelling units within this age restricted community will be in compliance with the Approval. The Homeowner Association Declaration and Deed Restriction shall be subject to review and approval by the Borough Attorney. The Homeowner Association Declaration shall be recorded with the Somerset County Clerk's office prior to the issuance of any Certificate of Occupancy; and the Deed Restriction shall be recorded with the Somerset County Clerk's office prior to the issuance of any building permit for the improvements authorized by the Approval.

14. PHASING OF DEVELOPMENT. Developer shall comply with the applicable affordable housing phasing schedule for producing the affordable units, except as modified herein, since the market-rate for-sale townhouses are provided in twenty-three (23) four-unit and five-unit buildings, and the affordable units are rental apartments contained wholly within one apartment building. Subject to review and approval by the Superior Court having jurisdiction over the Borough's affordable housing compliance, the Developer is required to construct the affordable units in accordance with the following schedule: (a) obtain a building permit for the affordable apartment building on or before the issuance of a certificate of occupancy for the tenth (10<sup>th</sup>) market-rate for-sale townhouse; (b) complete the installation of the foundation of the affordable apartment building, as evidenced by the written confirmation of same by the Borough building inspector, on or before the issuance of a certificate of occupancy for the fiftieth (50<sup>th</sup>) market-rate for-sale townhouse; and (c) complete (that is, obtain certificates of occupancy) all twenty-nine (29) affordable housing units on or before the issuance of a certificate of occupancy

for the 65<sup>th</sup> market-rate for-sale townhouse. The Parties acknowledge that this phasing has been reviewed and approved by FSHC.

15. ACCEPTANCE OF PUBLIC IMPROVEMENTS. The Developer shall notify the Borough upon completion of the public improvements, if any, as provided for in MLUL 40:55D-53 et seq., and the Borough Engineer shall provide a report and the Borough Council shall vote on acceptance of all, part, or none of the improvements as provided for in that section. It is specifically acknowledged and agreed that the on-site sanitary sewer facilities set forth in the Approval shall not be considered a public improvement and not to be dedicated or otherwise transferred to the Borough. Such on-site sanitary sewer facilities, including the operation, maintenance and repairs and/or replacement of same, shall be the sole responsibility of the Developer and subsequent Homeowners Association.

16. ISSUANCE OF CERTIFICATES OF OCCUPANCY. Prior to the issuance of a permanent Certificate of Occupancy for a particular townhouse or apartment unit, the Developer shall have installed all of the improvements needed to service the townhouse or apartment unit for which the Certificate of Occupancy is requested, required by and in accordance with the Approval and all applicable governmental agency approvals with the exception of landscaping, the top coat of paving and sidewalks. The Certificate of Occupancy for the final townhouse unit shall not be granted until all of the improvements required by and in accordance with the Approval, including all applicable governmental agency approvals, have been completed, with the exception of the landscaping, the top coat of paving and sidewalks.

17. RELEASE OF BOND AND MAINTENANCE GUARANTEES. Prior to the release of the Guarantees pursuant to Sections 5 and 6 herein, Developer shall post Maintenance Guarantees with the Borough, in accordance with Section 53 of the MLUL, appropriately secured in form and amount satisfactory to the Borough Attorney, conditioned on the Developer maintaining all improvements covered by the Maintenance Guarantees, as set forth in the Resolution, for a period of two (2) years therefrom. Upon posting and acceptance of said Maintenance Guarantee, the Guarantee shall be released by the Borough. A Maintenance Guarantee, equal to 15% of the costs of the installation of the improvements which are being released, shall be posted to cover all items dedicated to the public and included in the Guarantee, including perimeter buffer landscaping, and shall be for a period of two years. In addition, a Maintenance Guarantee shall cover 15% of the cost of installation of private site improvements limited to stormwater management basins, in-flow and water quality structures within the basin, and the outflow pipes and structures of the stormwater management systems, if any. The two (2) year period shall commence upon posting of the maintenance bond and be based on a report of the satisfactory condition of the facilities upon substantial completion of the Buffer Landscaping of the Projects. At the Developer's option, the cash portion of the Guarantees may be held as a Maintenance Guarantee or, Developer may post a suitable maintenance bond in accordance with the Municipal Land Use Law, whereupon the cash deposit shall be returned to Developer.

18. BOROUGH STREETS. The Developer shall be responsible and agrees to keep any Borough streets used by vehicles or equipment of the Developer, or its agents, broom clean and free of any accumulation of dirt and debris and they also agree to use every effort to install approved material to prevent dust from blowing onto other properties in the Borough during excavation and construction. Should the Developer fail or neglect to perform any item as stated in this Paragraph, upon twenty-four (24) hours written notice from the Borough Engineer,

Construction Official or Police Department informing it of failure to do so, and then further neglects to so perform, the Borough may perform such work and Developer agrees to reimburse the Borough for same. This Paragraph is not intended to relieve the Developer of duties or obligations under any existing municipal ordinance or approval but rather is intended to provide an additional remedy to the Borough and to permit the Borough to recover the costs of such compliance. If the Developer shall permit dirt, dust, debris, mud, rock, brush, branches, trees, construction materials or similar material to accumulate or remain upon any Borough street at any time, in addition to being responsible for cleanup, it shall remain subject to action in the Municipal Court for violation of appropriate Borough ordinances.

19. **SITE MAINTANCE.** During the course of construction, the Developer shall: (1) keep the site reasonably free of excess dirt, stone, rubbish, yard waste, mud and other debris beyond that generated by the industry standard construction operations; (2) maintain and keep all storm drainage within the site free from accumulation of debris and leaves; and (3) shall utilize a snow fence to protect those areas which will remain undisturbed throughout the construction. The Developer shall provide to the Borough Engineer, for approval, a plan indicating the location of bathrooms, parking for the use of all persons employed in the construction of all of the aforesaid improvements, refuse containers, site lighting and material storage. Developer agrees to provide easily accessible portable toilets. Such toilet facilities shall be installed immediately at the time required, and their use shall be regulated by the Board of Health and shall be terminated upon approval of the Board of Health within twenty-four (24) hours of the time work has been fully completed. Said portable toilet facilities shall be located and shall not otherwise interfere with or affect adjoining residential property or be visible as determined in the sole discretion of the Construction Official or Health Officer. Hours of work shall be 7:00 am - 5:30 pm Monday-Saturday, except holidays. Changes in hours must be approved by the Township Engineer and Borough Attorney. If any access to the roads and/or deliveries need, in the Borough Engineer's discretion, safety controls, the Developer shall contact the Far Hills Borough Police Department for such work to be performed. The Developer shall provide ten (10) days' notice to the Borough Engineer prior to the commencement of clearing, grading, construction, or other work at the site pursuant to Far Hills Borough Code. If there is a delay relating to the clearing, grading, construction or other work is halted for a period of thirty (30) consecutive days or longer, then a new notice shall be required. In addition, there shall be a preconstruction meeting with the Township Engineer prior to the commencement of any construction affecting public improvements, easement areas and right of ways. Progress meetings may also be required as necessary in accordance with Section 25 of this Agreement.

20. **BUILDING PERMITS.** The Developer shall not receive Building Permits until the Developer has posted all items set forth in Sections 5, 6, 7 and 8 hereof, including the required deed notice(s) and/or restriction(s) in Section 12, 13 and 23, and the Borough Engineer and Attorney has certified compliance with all of the other terms and conditions contained herein, set forth in the Resolution, and pursuant to the terms of the Approval, in each instance that are conditions precedent to issuance of Building Permits, unless a different time is specifically designated for compliance within this Agreement. The Developer shall complete all of the required landscaping to be located within the fifty foot (50') wide strip of land from the edge of pavement into the Scenic Corridor Easement as identified on the approved Landscaping Plan in the Approval to the satisfaction of the Borough Engineer prior to the issuance of the tenth (10<sup>th</sup>) certificate of occupancy for the townhomes, weather permitting. The remainder of the required landscaping will

be installed/planted in the balance of the Scenic Corridor promptly after the installation of all improvements, including but not limited to the groundwater recharge field for wastewater, the nature path, utility lines and the roadway.

21. FUTURE TRANSFERS. The Developer is hereby given the right and privilege to transfer its respective interests in this Agreement to the name of any individual, corporation, partnership, or Limited Liability Company, who acquires title to the Property, and said new owner shall have the rights and obligations afforded by this Agreement, and the right to transfer their interest(s) subject to the rights and obligations imposed on the Developer by this Agreement and the terms of the Approval. It is understood and agreed that, as part of any said transfer the grantee by acceptance of a deed to the Property shall be bound by all of the terms and conditions of this Agreement and agrees to assume all obligations hereunder. In the event that the Developer transfers or assigns less than its entire interest, the grantee shall nonetheless be liable to complete and/or comply with the obligations of the Developer herein. A partial transfer of the any portion of the Property shall not relieve the Developer or its successors or assigns of its obligations under this Agreement. It being the intention that all obligations undertaken herein in accordance with this Agreement be completed as provided by the Resolution and Application Documents. The obligations contained herein shall run with the land and no transfer shall affect the Borough's ability to satisfy its prior and current round obligation as it pertains to the Property in the Settlement Agreement.

22. COMPLIANCE WITH RESOLUTION CONDITIONS AND APPLICABLE LAWS. It is further understood and agreed between the parties hereto, subject to the terms and provisions of the Resolution, as follows:

a. The Developer shall comply with the Ordinances of the Borough and all other applicable laws in the State of New Jersey and outside agencies with jurisdiction over the Approval and the Property.

b. Developer agrees to place any new utilities required by the Approval underground as directed by any relevant utility companies with respect to the improvements on the Property.

c. In the event any road excavation or grading operations are required by the Approval, same shall be in accordance with plans prepared by a licensed professional engineer, and approved by the Borough Engineer, to ensure that rainfall run-off will not create problems of erosion, flooding or the deposit of mud and debris on abutting properties. Said engineer shall advise the Developer's Engineer of the measures to be taken which will afford this protection and all plans shall be approved by the Borough Engineer and the Office of the Somerset-Union Soil Conservation District.

d. The Developer, its successor, assign or subsequent owner of any portion of the Property, shall pay all taxes, fees and required escrow deposits, that may be due and owing prior to the issuance of any building permits for the improvements on the Property.

e. The Developer shall be required to obtain any and all other approvals, licenses and permits required by any other board, agency or entity having jurisdiction over the application or over the Property and/or the improvements authorized by the Approval; including but not limited to Somerset County Planning Board Approval, Somerset Union Soil Conservation District, New Jersey DOT, and NJDEP.

f. All conditions of the Resolution shall be complied with and acted upon by the Developer unless otherwise amended by formal action of the Planning Board.

g. Pursuant to Condition #35 of the Resolution and the approved Sales Trailer and Model Home Plot Plan, the feather flags shall only be located along Dillon Boulevard, with a maximum total of six (6) flags permitted to be displayed at any time. The feather flags shall only be allowed to be displayed after the first building permit is obtained; with all such flags to be removed no later than after marketing and sales are completed with best efforts to conclude within three (3) years of the commencement of building construction.

h. In connection with dedications of property or easements as revealed on the plat approval that are to be conveyed by Developer after it takes title to its portion of the Property, Developer shall provide to the Borough such documents, including but not limited to deeds, affidavits of title, corporate resolutions to convey, and a letter from the title insurance company which letter shall certify to the Borough that the Grantor is the fee owner of such property and has the ability to transfer the interest conveyed without encumbrances as are necessary to convey a valid, marketable and insurable easement(s) or fee title, as the case may be.

23. **AFFORDABLE HOUSING COMPLIANCE.** The Developer, or its successor in interest, shall construct the affordable housing units and all associated site improvements on the Affordable Housing Property pursuant to authority granted to Developer by the owner of the Affordable Housing Property. Developer acknowledges that as a condition of the Approval, the owner of the Affordable Housing Property shall comply with all applicable affordable housing requirements of the Borough's Ordinances, the Borough's Judgment of Compliance and Repose, as well as the terms of the Borough's Court-approved Settlement Agreement with FSHC, and the Uniform Housing Affordability Control ("UHAC") regulations, including but not limited to phasing, bedroom count, heating source, accessibility and adaptability, amenities, size of units and bedrooms distribution across income levels. The Developer further acknowledges that as a condition of the Approval the owner of the Affordable Housing Property shall engage an experienced affordable housing administrative agent responsible for affirmative marketing, tenant income verification and qualification, subject to review and approval by the Borough Attorney, Borough Affordable Housing Attorney and/or Borough Planner. The Developer shall require the owner of the Affordable Housing Property to submit and record prior to the issuance of any Certificate of Occupancy for the affordable housing units, the deed restrictions to maintain affordability controls for the affordable units contemplated in this Agreement as provided for and in accordance with UHAC regulations, N.J.A.C. 5:80-26.5 and – 26.11, for at least a thirty (30) year period from the date of initial occupancy of each affordable unit, which controls may be extended or released by the Borough, in its sole discretion, in accordance with UHAC and applicable law after at least thirty (30) years.

24. **DRAINAGE AND GRADING.** The drainage and grading of the Property shall be constructed substantially in accordance with the Approval and as required by NJDEP.

25. **COMPLETION OF IMPROVEMENTS.** All Improvements to be covered by the Performance Guarantees and the Maintenance Guarantees contemplated in this Agreement and in the Resolution shall be performed and completed to the satisfaction of the Borough Engineer and Construction Code Official within a period of three (3) years from the date of the issuance of the first building permit or site disturbance, or such additional periods of time as may be granted by the Borough in accordance with Section 53 of the MLUL, pursuant to the terms and conditions of

the Approval. In the event of an extension, the Borough may annually review the amount of the Performance Guarantee with regard to its sufficiency to insure faithful completion of remaining required Improvements and if found insufficient, may require the Developer to increase the amount of the Performance Guarantee. In the event the aforesaid Improvements are not completed within that period, the Borough reserves the right to not issue any certificate(s) of occupancy or building permit(s) for the subject property, and the Developer hereby authorizes the Borough to utilize so much of the Performance Guarantee deposited herewith to complete all of the Improvements described in **Exhibit B** in accordance with the applicable ordinances, rules, regulations, standards, and specifications of the Borough. In the event the cost of completing said improvements exceeds the amount deposited herewith, the Developer shall be liable to the Borough for any such excess and its obligations under the within Agreement shall continue in full force and effect until full payment is made. The issuance of any certificate of occupancy by the Borough within the three (3) year period shall not be deemed a waiver for defects ascertained during said period or subsequent thereto.

26. **ON-SITE SUPERVISION.** The Developer shall appoint a job superintendent, whose name, office phone number, mobile phone number, beeper number, home address and home phone number shall be furnished to the Borough Clerk, Borough Engineer, Fire and Rescue Department and Police Department for emergencies of a health or safety nature. The Developer or its job superintendent or designated agent shall respond to any said emergency within one-half (1/2) hour from notification, twenty-four (24) hours per day, seven (7) days per week.

27. **PROJECTS MEETING.** Prior to the commencement of site work, the Developer shall meet with the Borough Engineer and the Construction Official for a pre-construction conference to discuss the anticipated construction schedule, procedures of construction, and any particular requirements of the Engineer and Construction Official, which shall be subject to the satisfaction and approval of the Borough Engineer and Construction Official.

28. **INSPECTION BY BOROUGH.** The Borough, its consultants, employees, and agents shall be given free access to the site, and among other items, to observe construction, landscaping for buffer areas and all Improvements associated with the Approval. The purpose of such observations shall be limited to providing the Borough with an opportunity to determine that such improvements will be constructed in accordance with the Approval and the Resolution. The Borough or its representatives, consultants, employees or agents shall not supervise, direct or have control over the Developer's work during such observations or as a result thereof, nor shall they have responsibility and/or liability for the means, methods, techniques, sequences or procedures of construction selected by the Developer for safety precautions and programs incident to the work of either or for any failure of either to comply with applicable laws, rules, regulations, ordinances, code or orders. Borough agrees that its Building Inspector and/or Borough Engineer shall promptly make all of the required inspections necessary under the terms of this Agreement and required under any other Ordinances of the Borough, which inspections shall include inspection of any buildings to be erected and landscape improvements to be made on the said Property. Developer agrees that no person or entity shall occupy any buildings erected and constructed on the Property until the construction of that portion of the Improvements authorized by the Approval, including that portion of the road, associated with the buildings to be occupied, are completed except for the placement of the pavement wearing course and a written certificate of occupancy for said building is issued by Borough. Notwithstanding anything to the contrary provided herein, Developer may

obtain building permits for any and all townhouses and apartment complex and the Borough will inspect same prior to the installation of base course bituminous concrete provided the Borough has adequate access to inspect the townhouses and apartment complex as it is being constructed.

## 29. INSURANCE REQUIREMENTS:

a. Commercial General Liability Insurance. During the life of this Agreement the Developer shall procure and maintain Commercial General Liability Insurance on an "Occurrence Basis" with limits of liability no less than \$1,000,000.00 insurance per occurrence and/or aggregate combined single limit of \$3,000,000, Personal Injury, Bodily Injury and Property Damage. Coverage shall include the following (i) Contractual Liability; (ii) Products and Completed Operation; (iii) Independent Contractors Coverage; (iv) Broad Form General Liability Extensions or equivalent; (v) Deletion of all Explosion, Collapse, and Underground Exclusions.

b. Motor Vehicle Liability Insurance. During the life of this Agreement the Developer shall procure and maintain Motor Vehicle Liability Insurance, including applicable No-Fault coverage, with limits of liability of \$1,000,000.00 per occurrence per accident combined single limit bodily injury and Property Damage of \$1,000,000.00. Coverage shall include all owned vehicles, all non-owned vehicles, and all hired vehicles.

c. Notice of Cancellation. Commercial General Liability Insurance, Motor Vehicle Insurance and Workers Compensation Insurance, as described above, shall provide:

"Thirty (30) days advance written notice of cancellation, non-renewal, and/or reduction to the Borough Manager, Borough of Far Hills, 6 Prospect Street, Far Hills, New Jersey 07931. If an insurance notice is sent indicating the lapse in coverage or cancellation of coverage and no substitute policies have been provided, all work shall immediately cease until same is rectified to the satisfaction of the Borough Business Administrator and its attorney."

d. Proof of Insurance Coverage. The Developer shall provide the Borough at the time the Agreement is executed, Certificates of Insurance and/or policies acceptable to the Borough as listed below:

- Two copies of Certificates of Insurance for Commercial General Liability and Workers Compensation.

e. Continuation of Coverage. If any of the above coverages expire during the term of this Agreement, the Developer shall deliver renewal Certificates and/or policies to the Borough at least ten (10) days prior to the expiration of this Contract.

f. Workmen's Compensation. The Developer agrees to obtain Worker's Compensation Insurance with a minimum \$1,000,000.00 insurance coverage.

g. For the purposes of this Insurance Requirements section of the agreement the Developer may designate its sub-contractors to secure and provide the required insurance protections in forms suitable to the Borough however, the Developer shall remain obligated to ensure that such insurance is maintained throughout the term of the agreement, and should its sub-contractors fail to procure or maintain the required insurance Developer shall be required to provide same.



30. **STORMWATER FACILITIES MAINTENANCE.** The Developer, its successors and assigns, will maintain, at its sole cost and expense, the stormwater facilities on site, as well as above ground basins, underground detention systems and storm filter systems, and all NJDEP BMP-approved stormwater facilities as shown on the approved plans. The Developer shall provide the operations and maintenance manual for its stormwater facilities to the Borough Engineer for review, which is being recorded as an exhibit to the Stormwater Drainage Maintenance Easement being granted to the Borough as a condition of the Approval. Developer shall deliver a copy of the manual to the Homeowners Association management company. The Developer, its successors, heirs, and assigns, shall be responsible for maintenance and operation of the onsite stormwater facilities in compliance with same. The Borough retains the right to inspect and maintain such facilities but has no obligation to do so. The Developer, its successors and/or assigns agree to reimburse the Borough for any costs incurred should the Borough exercise its right to maintain these facilities in the event the Developer, its successors, heirs and assigns fails to adequately maintain these facilities following written notice of same from the Borough and an opportunity to cure such failure. The Developer and/or its successors or assigns will be responsible for reimbursement of all costs so incurred by the Borough. Should the Developer and/or its successors or assigns fail to reimburse the Borough for any such costs, at the Borough's discretion, they shall be charged to the Property as a tax lien.

31. **COMPLIANCE.** The Developer, and/or their successors and/or assigns shall be responsible for compliance with all applicable Borough Ordinances and for compliance with the Resolution of approval, including all conditions thereof.

32. **REIMBURSEMENT.** The reimbursement provisions of this Agreement shall reflect reasonable actual costs incurred by the Borough including attorneys' fees and costs.

33. **COMPLIANCE WITH APPLICABLE LAWS AND ENVIRONMENTAL MATTERS.** The Developer shall comply with all laws and regulations of the State of New Jersey, County of Somerset and Borough of Clark. DEVELOPER WAIVES ANY AND ALL CLAIMS AGAINST THE BOROUGH FOR ENVIRONMENTAL HAZARDS AND AGREES TO BE RESPONSIBLE FOR SAME IN ACCORDANCE WITH ITS OWNERSHIP OF THE PROPERTY. DEVELOPER WILL COMPLY WITH ALL ENVIRONMENTAL LAWS APPLICABLE TO THE PROPERTY. Failure to comply with these laws and any violations thereof shall be deemed to be a breach of this Agreement. To the extent the Borough must bring an action for compliance with this Agreement, defend or participate in any litigation with regard to said laws or regulations related to the Property and/or actions, whether purposeful or negligent, any such action shall be subject to the provisions set forth hereinbelow.

34. **DEVELOPER'S DEFAULT.** In the event that the Developer materially defaults under its obligations as set forth herein, the Borough Engineer shall send written notice to the Developer advising of its failure to comply. If the Developer has neither complied with the notice to correct, nor taken affirmative steps toward correcting such default, within thirty (30) days following receipt of the written notice (excluding Saturdays and Sundays) (and subject to an additional ninety (90) days to cure if such cure cannot be reasonably effectuated within such initial thirty (30) day period and Developer is using commercially reasonable efforts to prosecute such cure to completion), the Borough may perform the necessary work to achieve compliance (excluding completion of improvements to the Property that are not subject to the Performance Guarantee), and Developer shall reimburse the Borough for the cost to perform such work.

Developer authorizes the Borough to deduct from the sums posted to secure performance hereunder the reasonable Court costs and attorneys' fees incurred by Borough as a result of such default. In the event that said Court costs and attorney's fees exceed the amount deposited herewith, the Developer shall be liable to the Borough for any such excess and the Developer's respective obligations under the within Agreement shall continue in full force and effect until payment is made. Developer further understands and agrees in the event it remains in material violation, after thirty (30) days written notice and opportunity to cure (and subject to an additional ninety (90) days to cure if such cure cannot be reasonably effectuated within such initial thirty (30) day period and Developer is using commercially reasonable efforts to prosecute such cure to completion), of any of the material terms of this Agreement, and the Borough has not elected to exercise self-help as described herein, the Borough may, in its discretion, withhold the issuance of any further building permit(s) and/or certificate(s) of occupancy until the material violation has been corrected. Developer understands and acknowledges that all conditions contained in the record of proceedings in this matter, including any agreements made by the Developer, were essential to the Board's decision to grant the approval set forth herein.

35. **RELEASE OF PLANS.** Subject to issuance of building permits as set forth herein, any payments, posting of bonds or other financial obligation required to be performed by the Developer in this Agreement, unless specifically set forth herein otherwise, shall be done and/or performed prior to the signing of the subdivision plans for release to the Developer.

36. **INDEMNIFICATION AND ATTORNEY'S FEES.** Developer agrees to indemnify and hold harmless the Borough, its officials, officers, agents, servants, representatives, employees and the Borough Engineer, and its officers, employees, agents and servants, from and against any and all claims, liabilities, fees, damages, judgments, penalties, costs or expenses of every kind and nature, including, but not limited to court costs and reasonable attorneys fees, arising from Developer's performance of their respective obligations pursuant to this Agreement, the failure by Developer to perform such obligations, any action or failure to act by the Developer with respect to the project to which this Agreement is applicable or in connection with any allegation of any of the foregoing. Such indemnification and/or hold harmless obligation shall extend not only to any damages but to costs and expenses of litigation, including, but not limited to, expenses and fees in connection with the engagement or utilization of any fact or expert witnesses, court costs and reasonable attorney's fees, except where the Borough, or its agents including all professionals hired or employed by the Borough, shall be determined to be at fault, regardless of whether by negligence or willful misconduct. When requested by the Borough, the Developer agree to aid and/or defend the Borough, its officials, officers, agents, servants, representatives, and employees, in the event any or all of same are named as a defendant or defendants in any action relating to activities or obligations of the Developer arising under this Agreement or in connection with the project to which this Agreement applies. In the event the Borough is involved in any litigation, or other similar action, whether initiated by the Borough or others, which action relates in any way to the terms of this Agreement or the Developer's performance hereunder, the Developer agree to pay and reimburse the Borough for any and all costs and expenses, including, but not limited to, reasonable attorney's fees, court costs and expert witness fees, except where the Borough, or its agents including all professionals hired or employed by the Borough, shall be determined to be at fault regardless of whether by negligence or willful misconduct. The Borough shall have the option of having such fees taxed in the underlying action or maintaining a separate action for same. This stipulation shall not apply to any actions or

litigation filed against the Borough where the litigation is attributable to wrongful acts or omissions on the part of itself, its agents, or employees. The within indemnification shall not be binding on a successor owner of the Property as to claims arising out of events occurring prior to the transfer of ownership. Notwithstanding the foregoing, the indemnity provided by Developer herein shall not apply to any other agreement between the Borough and other entity relating to the Affordable Housing Property.

37. **RELIANCE OF BOROUGH.** The Developer further acknowledge and understands all of the conditions contained in this Agreement and the record of the proceedings in this matter, as incorporated in the Resolution and the Approval, are hereby deemed to be essential to the Borough's decision to enter into this Agreement. A breach of any such conditions, the failure of the Developer to adhere to the material terms of any agreement incorporated within the Resolution or this Agreement or any material deviation from the board-approved plans, except where same has been agreed to between the parties, shall be deemed a material breach of this Agreement and the Borough shall have the right to withhold Building Permits and Certificates of Occupancy as a temporary measure until such breach has been resolved by the Parties in accordance with the terms and cure provisions of Section 34.

38. **RECORDING OF THIS AGREEMENT.** After full execution by the Developer and the Borough, the Borough Attorney shall record this Agreement in the Somerset County Clerk's Office. All recording costs shall be borne by the Developer.

39. **SEVERABILITY.** If any terms or conditions herein are determined invalid by a court of competent jurisdiction, the remainder shall remain in full force and effect.

40. **INTERPRETATION OF LAW.** This Agreement shall be interpreted under and governed by the laws of the State of New Jersey.

41. **NOTICES.** All notices required or permitted under this Agreement shall be in writing by certified mail, return receipt requested, to the addresses set forth herein or as otherwise designated by the parties in writing.

42. **SUCCESSORS.** This Agreement shall run with the land and inure to the benefit of and shall be binding upon any successors and assigns of the respective parties hereto.

43. **NON-RELIANCE.** Developer acknowledges that it has not relied upon any cost estimates or opinions furnished by the Borough, including the Borough Engineer or Consulting Engineer(s), if applicable, and the Developer has satisfied itself as to the anticipated construction costs of the improvements set forth herein prior to the execution of this Agreement.

44. **ESTOPPEL.** It is understood and agreed that the obligations imposed upon the Developer under this Agreement shall not constitute an estoppel against the Board, the Borough or the Borough Council nor relieve the Developer from complying with all other federal, state, county and local requirements.

45. **EXHIBITS.** The following exhibits are attached hereto and made a part of this Agreement:

Exhibit A – Borough of Far Hills Planning Board Resolution

- Exhibit B – Engineer’s Cost Estimate
- Exhibit C - Engineer’s Inspection Escrow Estimate

46. CERTIFICATION. In connection with the sale, financing or lease of the Property by Developer or its successors, the Borough agrees that it shall within a reasonable time of written request from Developer, or its successors, provide a written statement directed to the Developer, prospective purchaser, mortgagee or tenant of the Property as may be requested, a statement of compliance or non-compliance with the terms of this agreement including a summary of any known claims for funds due to the Borough or for indemnity and confirmation that such claims have not been asserted or are not known to exist except as disclosed.

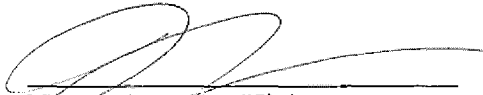
47. ENTIRE AGREEMENT. This Agreement contains the entire agreement between the parties hereto and no statement, promises or endorsement made by any party hereto, or agent of any party hereto, which is not contained in this written contract or the instruments incorporated herein by reference shall be valid and binding. This Agreement may not be enlarged, modified, or altered except in writing, signed by the parties and endorsed thereon. Nothing herein shall be deemed a waiver of other existing municipal construction requirements or any conditions contained in the Resolution or Approval of the Far Hills Planning Board.

[Signature Pages to Follow]

IN WITNESS WHEREOF, the Borough and Developer have caused these presents to be signed and attested by their respective corporate officers and their respective seals to be affixed hereto the day and year first above written.

ATTEST:

BOROUGH OF FAR HILLS



Name: Dorothy Hicks  
Title: Borough Clerk

By: 

Name: Kevin P. Welsh  
Title: Mayor

Dated: March 17, 2023

STATE OF NEW JERSEY )

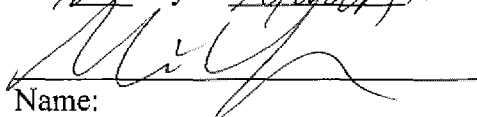
) ss.:

COUNTY OF SOMERSET )

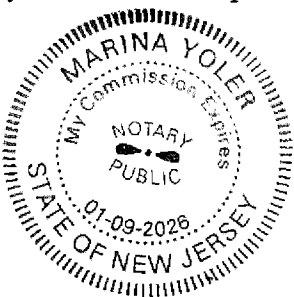
I CERTIFY that on March 17, 2023, Dorothy Hicks personally came before me and this person acknowledged under oath, to my satisfaction, that:

- (a) this person is the Clerk of the BOROUGH OF FAR HILLS, the municipal corporation named in the attached document;
- (b) this person is the attesting witness to the signing of this document by the proper municipal officer who is Kevin P. Welsh, Mayor of the municipal corporation;
- (c) this document was signed and delivered by the municipal corporation as its duly authorized voluntary act;
- (d) this person knows the proper seal of the municipal corporation which was affixed to this document; and
- (e) this person signed this proof to attest to the truth of these facts.

Signed and sworn to before me on this 17<sup>th</sup> day of March, 2023.



Name:  
Notary Public of the State of New Jersey  
My Commission expires on \_\_\_\_\_





## BOROUGH OF FAR HILLS

## PLANNING BOARD

## RESOLUTION NO. 2022-10

Case No.: PB 2021-07  
220 Route 202  
Block 5, Lot 4

WHEREAS, Pulte Homes of NJ, Limited Partnership (referred to herein as the "Applicant") has applied to the Borough of Far Hills Planning Board (the "Board") seeking preliminary and final major site plan and subdivision approval to construct a multi-family development consisting of 105 age-restricted townhouse dwellings and an apartment building consisting of 29 affordable apartments (25 family affordable units and 4 age-restricted affordable units) as well as other related site improvements and variance relief. All of the foregoing relates to the property located at 220 Route 202, presently designated Block 5, Lot 4 on the Borough of Far Hills Tax Map (the "Property"); and

WHEREAS, public hearings were held on July 5, 2021, August 2, 2021, August 14, 2021 (a publicly noticed site visit), September 22, 2021, October 4, 2021, November 1, 2021, November 23, 2021, December 6, 2021, January 3, 2022, and February 7, 2022 during which the Board reviewed the application and supporting materials filed by the Applicant and from witnesses on behalf of the Applicant, reviewed and received exhibits, heard oral argument offered by Applicant's counsel, reviewed municipal reports, heard comments from its consultants, attended a noticed site visit, and gave members of the public an opportunity to be heard; and

WHEREAS, the following exhibits were submitted into the record as evidence during the hearing, are on file with the Board, and are part of the record in this matter:

- A-1 Neighborhood Aerial Image
- A-2 Site Aerial Image
- A-3 Environmental Site Constraints
- A-4 Site Rendering

- A-5 Storm Water Management Exhibit
  - A-6 Water Main Extension
  - A-7 Lighting Plan
  - A-8 Grading and Utility Rendering
  - A-9 Aerial Perspective
  - A-10 Architectural Renderings
  - A-11 Street Scape Perspective
  - A-12 Architectural Imager
  - A-13 Sewer Treatment Building Façade Elevations
  - A-14 Overall Site Rendering dated
  - A-15 Stormwater Management Systems Exhibit
  - A-16 Landscape Plan
  - A-17 Stream Buffer Exhibit
- 
- O-1 NJ-GeoWeb Map
  - O-2 Map of Contaminated Sites
  - O-3 Historical and Archeological Resources Map
  - O-4 Critical Habitats Map
  - O-5 Overall Site Concept Map
  - O-6 Figure 2 from the Borough's 2003 Master Plan Report
  - O-7 2003 Master Plan, Figure A-9
  - O-8 2003 Master Plan, Figure A-10
  - O-9 2003 Master Plan Report, Figure A-13

WHEREAS, the Board has considered all of the application materials, the testimony, reports, exhibits, comments of the Board's consultants, legal argument of counsel for the Applicant, presentation by Arthur Owens, Esq., attorney for Objector Suzanne Voorhees and comments and questions made by members of the public; and

NOW, THEREFORE BE IT RESOLVED, by the Planning Board of the Borough of Far Hills that based upon the foregoing the following findings of fact and conclusions of law are made.

1. This is an application for Preliminary and Final Major Site Plan, Preliminary and Final Major Subdivision and variance approval to permit the construction of a proposed multi-family residential development on Lot 4, Block 5 which is a primarily wooded 42.304 ± acre lot situated along the northbound U.S. Route 202 lying generally across from Lake Road and within the Borough's Townhouse Inclusionary Age-Restricted Residential Zone ("TH-6-IAR Zone").

2. The TH-6-IAR Zone was created as part of the Borough's affordable housing



settlement agreement with Fair Share Housing Center and an affordable housing settlement agreement with the Melillo Equities, LLC dated December 9, 2019, with both agreements approved by the Court. The zoning is part of the Borough's affordable housing plan that has been approved by the Court.

3. There is residential development to the north, east, west and south of the site; Far Hills Village is located to the west of the property, Far Hills Country Day School located to the northeast of the property, and NJ Transit railroad located to the south of the property.

4. The tract contains three residential structures and apartments located in the center of the property comprising approximately 6 residential units. The buildings are clustered near the original agricultural uses of the original estate property, with the apartments in out-buildings and small accessory structures for agriculture. The remainder of the property is wooded with an area of fallow agriculture field in the northeast portion of the property. The site is characterized by upland and successional fields, upland forest areas, wetlands and maintained landscaped areas.

5. The proposed development represents a significant portion of the Borough's affordable housing plan, which addresses the Borough's constitutional affordable housing obligation and insulates the Borough from builder's remedy lawsuits.

6. The proposed site plan is consistent with the TH-6-IAR Zone and the site plan and architectural drawings that are exhibits to the affordable housing agreement between Melillo Equities and Far Hills dated December 9, 2019 (the "Affordable Housing Agreement").

7. Consistent with COAH regulations and the affordable housing agreement, the Board may grant reasonable variances and relief associated with the inclusionary development.

8. Portions of Lot 4 are encumbered by environmental constraints despite its large area, and the environmental constraints include the following:

- a. The site topography ranges from gently sloping near the Route 202 frontage to very steeply sloping towards the rear of the property, the NJ Transit railroad and the Mine Brook.

- b. The site ranges from approximately elevation 300 in the northeast corner of the site near Route 202 to approximately elevation 180 at the southern property boundary.
- c. Steep slopes are generally manmade in the areas around the existing development and along the on-site stream.
- d. There are NJDEP regulated areas on the property, which have been verified by NJDEP Freshwater Wetlands Letter of Interpretation and Flood Hazard Area and Riparian Zone Verification.
- e. Freshwater wetlands are present in two main locations on the site: near the northeast portion of the property near the proposed entrance and adjacent to the state open water that bisects the southern portion of the property.
- f. Both areas of wetlands were deemed intermediate resource value and therefore subject to 50-foot transition areas.
- g. The Mine Brook is located just south of the railroad right-of-way along the southern property boundary and is a tributary to the North Branch of the Raritan River.
- h. A portion of the flood hazard area of the Mine Brook encroaches in the southeast corner of the property.
- i. The on-site water feature meets the definition of a stream and is subject to the Borough stream corridor buffer.

9. The Applicant was represented by Craig M. Gianetti, Esq., of the law firm Day Pitney LLP. He presented the testimony of Jim Mullen and Rob Holmes of Pulte Homes, Ron Kennedy, P.E., Bruce Englebaugh, AIA, Adam Stern, P.E., Wastewater Planning Engineer, Gary Dean, P.E., Traffic Engineer and Paul Phillips, P.P.

10. The Applicant presented the testimony of Jim Mullen, Director of Land Entitlements for the Applicant and Rob Holmes, Vice President, Northeast Corridor Division, of Pulte Homes. They

testified as follows:

Resolution 2022-10

- a. The Applicant is a national home builder based in Atlanta, Georgia with 40 divisions throughout 23 states in the United States.
  - b. The Northeast Corridor Division located in Basking Ridge, New Jersey has been in existence since 1997, and closed 360 homes in 2020.
  - c. The Applicant is the contract purchaser of the property and is proposing to build 105 age-restricted townhomes. A condominium association will be created and all the homeowners will be members.
  - d. The affordable housing apartment building will have 25 non-age restricted and 4 age-restricted rentals to help the Borough satisfy its COAH requirement. These units will be owned and managed by Melillo Equities.
  - e. Though the Applicant could not commit to a minimum sales price for the market-rate senior townhouse units, the Applicant did believe, in the current real estate market, they would expect these units to sell for about \$850,000. However, in the end, the sales price will be dependent upon the real estate market at the time the units are sold, which could be a few years from now.
11. The Applicant presented the testimony of Ronald Kennedy, P.E. of Gladstone Design, the Applicant's Civil Engineer, who prepared the site plan set and reports. He testified as follows:
- a. The proposed multi-family residential development is comprised of 24 residential buildings and one utility structure. The residential buildings are broken into 23 four-bedroom townhouse buildings with a total of 105 townhouses units. One multi-family building will consist of 29 apartment units varying between one and three bedrooms.
  - b. The associated development includes access streets in compliance with New Jersey Residential Site Improvement Standards ("RSIS"). The streets are low intensity residential and multi-family courts. Sidewalks are provided on one side of the street internal to the development. Guest parking areas are provided throughout the development for the townhouses and two main parking lots are provided around the apartment building. Walking paths are provided around the perimeter of the development. There is a sewage treatment building and associated groundwater recharge field in connection with the on-

site treatment facility for sanitary sewerage.

- c. The subdivision of the tract will involve 105 individual lots for each market rate townhouse, a common elements lot associated with the townhouse community and a lot for the apartment building.
- d. The 105 market-rate age-restricted townhouses will have two different model types with four bedrooms each. The townhouses will be two stories, though some units, due to the topography and grading are two stories with a walk-out basement in the rear. Each unit will have a two-car garage and a two-car driveway, with each building containing 4-5 units.
- e. Four of the units in the apartments would be affordable age-restricted rental units. The remaining 25 will be affordable family rental units. The three-story multi-family building will contain a total of 29 affordable units; 9 one-bedroom units, 15 two-bedroom units, and 5 three-bedroom units. The main boulevard entrance at Route 202 off of the traffic circle leads to the multi-family parking lots, and there are 58 spaces within the parking lot, inclusive of 3 ADA spaces.
- f. Sidewalks are to be provided on one side of the road throughout the proposed development, with one exception being along Dillon Boulevard, where no sidewalk is proposed.
- g. The proposed development is designed to take advantage of the existing grades on the property, with roadways graded between 1% and 7% and walkout basements provided on most down-slope townhouse units. The multi-family building is stepped into the grade to take advantage of the site topography and to minimize the visual impact along the roadway.
- h. The total amount of tree removal for the project is 610 trees. The total area of disturbance for construction is 25.7 acres. The Applicant is planting 959 trees, wherein 357 will be evergreen trees and 602 will be deciduous and ornamental trees. Perimeter landscaping is provided to buffer the development from surrounding roads and residential neighbors with shrubs, groundcovers, and grasses that are proposed throughout the development.

- i. The proposed site signage includes 1 identification sign at the traffic circle internal to the site, which will be a ground mounted sign that is 8 square feet in size and 2.5 feet high. All signs will comply with ordinance standards.
- j. A total of 43 pole mounted lights are proposed for the internal roads and parking lots with a mounting height of 14 feet. Lights will remain on from dusk to dawn and the proposed plan complies with ordinance requirements for lighting levels.
- k. The proposed development is considered a major development under N.J.A.C. 7:8 stormwater regulations as it is over ¼ acre of new impervious surfaces and disturbs more than 1 acre of land. The proposed development will manage the stormwater utilizing low impact, green infrastructure practices including several small-scale bio-retention basins, underground infiltration basins and a detention basin as described in the stormwater management report. There are a total of 12 basins on the property designed to treat, recharge, and attenuate the runoff for the proposed development.
- l. A gravity system from the entire project shall be utilized as the sanitary sewer collection system, which will drain to the sewer treatment building in the southern portion of the development. A force main will connect the sewer treatment building to the groundwater recharge field at the front portion of the site. The total flow from the project is 29,850 gallons per day. The recharge field is located in an open meadow which has limited vegetation. This area was identified as having the best soils for this type of recharge.
- m. As to potable water, the Applicant is working with New Jersey American Water Company (NJAWC) on the design of the water system, with fire hydrants being reviewed by the Fire Official. The multi-family units will have sprinklers while the townhouse units will not. The total domestic water demand is approximately 29,206 gallons per day. PSE&G looped gas lines will be installed throughout the townhouse roads, and all electric and telecommunications lines will be underground.
- n. Mr. Kennedy also testified as to the sales trailer and temporary signage plan, which will be temporary during construction and sales of the townhouse units. The Applicant indicated that the sales trailer and sales signage would remain for as long as the Applicant is selling townhomes. The Applicant anticipates that it will sell all of the townhomes

within 3 years of the date it obtains the first building permit.

- o. Mr. Kennedy testified that based upon board member and board professional comments, that the plans were revised to add a recreation area.
- p. Mr. Kennedy testified, from an engineering perspective, to the justifications for some of the variance relief the Applicant is seeking, particularly, variance relief for steep slope disturbance, stream corridor buffer and scenic corridor.
- q. With respect to the steep slope disturbance, the Applicant is proposing to disturb approximately 27,793 sq. ft. of steep slopes in the 15% to 25% category where only 6,520 sq. ft. of such steep slopes may be disturbed per Ordinance. The Applicant is also proposing to disturb approximately 8,672 sq.ft. of steep slopes in the 25% to 35% slope category where none is permitted per Ordinance and proposing to disturb approximately 5,395 sq. ft. of steep slopes in the 35% and greater category where none is permitted per Ordinance.
- r. Mr. Kennedy noted that most of these steep slopes are located toward the rear of the existing development and are “man-made” as opposed to naturally occurring within the Mine Brook stream corridor, therefore, their intrinsic value is not as high as naturally occurring steep slopes. Most of the disturbance associated with the development is due to grading towards the rear of the property and the two stormwater management basins towards the rear of the development.
- s. With respect to the Stream Corridor Buffer, Mr. Kennedy noted that the project complies with the NJDEP stream buffer requirements. However, the Borough’s stream corridor ordinance buffer requirement measures from the bank of the watercourse and the edge of contiguous wetlands and slopes greater than 12%. Therefore, the Borough’s stream corridor buffer extends significantly beyond the NJDEP’s stream corridor buffer. This is mostly due to the man-made slopes on the property near the stream corridor. Only one of the townhouse units, small portions of the internal roadways for the townhouses and the edge of the parking lot for the apartment building are within the Borough’s stream corridor as defined by ordinance.
- t. Mr. Kennedy stated the layout could be revised to place some of the townhouse units

and roadways closer to the property line, but from a buffering perspective with the adjacent property owners, this minimal disturbance in the center of the property is more appropriate. Further, the Applicant is offering to designate a significant wooded area, located towards the rear of the property that is not wetlands nor located in a regulated area, as a conservation easement.

- u. With respect to the scenic corridor ordinance variance relief sought, the Applicant is proposing to locate the recharge field for the on-site treatment facility within the 200 ft. scenic corridor buffer along Route 202. This location was selected because it had the best geologic and hydrologic features for groundwater recharge. The area is primarily an existing meadow area with minimal tree and forest vegetation. The entire system is underground so it is not visible and does not impact the scenic corridor in anyway.
- v. The project includes a major subdivision. Proposed Lot 4.01 consists of approximately 31.8 acres, has frontage along Route 202, and generally includes the improvements and open areas associated with the Townhouse Development. Proposed Lot 4.02, which includes a 50' stem to Route 202, consists of approximately 3.17 acres and includes the apartment building and associated improvements. Proposed Lots 4.03 through 4.107 include 105 fee simple age restricted townhouse lots of varying size.

12. The Applicant presented the testimony of Bruce E. Englebaugh, AIA of Minno & Wasko, the Applicant's Architect, who prepared the architectural plans. He testified as follows:

- a. The general architectural character of the proposed development is a contemporary interpretation of a Farmhouse. This includes traditional style features such as gable roofs, sloped roofs with turned accent gables, roof dormers, siding, gooseneck light fixtures, metal pent roofs as accents, eave supports with brackets and exposed beams, and gutters and accent details being black/dark grey.
- b. Mr. Englebaugh outlined how the materials proposed for the project are envisioned to look when constructed by comparison to an actual photograph. This involved a discussion of the dimensional shingles, fascia and shadow board (rake board), horizontal and board and batten siding, standing seam metal roof accent (pent roofs), oversize 5 inch black "K" style gutter, window and corner trims, gooseneck lighting fixture, and full

brick wainscoat.

- c. Mr. Englebaugh outlined the Applicant's interior products and options, including ceiling treatments, wall finishes, stairs and railings, kitchen finishes and appliances, and bathroom finishes.
- d. Mr. Englebaugh described the proposed design for the sewer treatment building, such as an increased roof slope, the addition of secondary "turned" gables, addition of roof dormers, addition of a cupola, and the addition of a retaining wall.
- e. In response to Board member comments about the architectural features, Mr. Englebaugh revised the plans so that more buildings will have side and rear enhanced "high visibility treatments". The elevation of the structures was revised to provide a unique and modern farm house style look with dark and light colors and a "saw-tooth" type layout to create depth and dimension from a visual perspective. The sewer treatment facility building was also significantly enhanced from a visual perspective to ensure it was in harmony with the rest of the development. Details of the proposed alternative architectural treatments are identified in Exhibit A-12 "Architectural Imager" and in the revised architectural plans dated October 19, 2021 submitted to the Board.
- f. Mr. Englebaugh identified that 34 of the townhouse units, which have walkout basements, would require a height variance for having a height of 38.1 ft. where a maximum height of 36 ft. is permitted per Ordinance. Mr. Englebaugh noted that the height variance is a function of the Borough's definition of height and how it is measured in relation to the topography of the site. The 34 units with walk-out basements have an attractive exterior appearance coordinated with the existing site topography. He noted that the units could conform without reducing the physical height with more grading (which is not desirable) and having exposed basements without a walk out design, but that would not be as attractive or as desirable as the walk-out units proposed.

13. The Applicant presented the testimony of Gary Dean of Dolan & Dean, the Applicant's Traffic Engineer, who prepared the Traffic Impact Assessment for the project. He testified as follows:

- a. Site access is proposed via a single full-movement driveway along northbound Route 202,



approximately 365 feet to the north of Lake Road. This driveway location and design meets NJDOT standards and is subject to its review and approval of a highway access permit. The design also meets the requirements under RSIS for a divided roadway to the first intersection to provide an alternate means of emergency vehicle access.

- b. The property is located near US State Route 202, a highway under NJDOT jurisdiction, and Lake Road, a local roadway with a general northwest/southeast orientation.
- c. All movements at the Lake Road intersection would typically operate at Level of Service "D" or better during both peak hours.
- d. The site development proposes 134 residential units with off-street parking to be provided in compliance with RSIS standards. Using the industry-standard ITE trip generation rates for "Multi-Family Housing (Low Rise)" and "Senior Adult Housing-Attached," the projected total trip generation for the proposed development is 36 trips in the morning peak hour, and 48 trips in the evening peak hour.
- e. The proposed access design will adequately accommodate peak hour traffic associated with the traffic volume projections and he confirmed that extensive on-site queuing will not occur.
- f. The RSIS requires a total of 310 on-site parking spaces, whereas 481 spaces are proposed. The proposed parking supply will adequately provide available spaces during peak demand periods.

14. The Applicant presented the testimony of Adam Stern of NSU, the Applicant's Sanitary Sewer Engineer, who prepared the on-site sewer treatment plans. He testified as follows:

- a. Mr. Stern discussed the background of NSU and his company's significant experience with on-site treatment facilities.
- b. Mr. Stern described the regulatory basis for the provision of on-site sewer to the proposed development, in particular with the NJDEP. This type of on-site sewer treatment is becoming more common in residential developments, throughout the country, including New Jersey.

- c. He described several similar systems in Somerset and Morris Counties, including how the systems operate and the reliability of these systems.
- d. Mr. Stern testified as to the safety of the system and all of the redundancies to ensure the system functions properly, including backup equipment, routine inspections, and reporting to the NJDEP. Mr. Stern opined that he was confident the system would function properly.
- e. The Applicant confirmed that the HOA would own the on-site system and contract with a service provider (NSU or the like) to operate and maintain the system. The Borough would have no responsibility or no liability with respect to the on-site treatment system.

15. The Applicant presented the testimony of Paul Phillips, P.P./AICP/MUP, the Applicant's Professional Planner, who reviewed the variance plans, reports, Borough zoning ordinance and master plan, and Affordable Housing Agreement. He testified as follows:

- a. With respect to the height variance, 34 of the proposed townhouse units have building heights in excess of the 36 foot height limit for the zone. The height of these units is 38.1 feet. The remaining 71 townhouses are compliant.
- b. Mr. Phillips testified that the addition of walk-out basements for townhouses in downslope areas results in less earthwork and site grading, including potentially less steep slope disturbance.
- c. The key mitigating factors are that the Applicant does not exceed the 2 ½ story limit and that the exposure of the rear elevations of these units is not to any internal street, so it is not visible from the front. Further, due to the slope of the roof, from the rear, the unit looks like a two story structure.
- d. Mr. Phillips opined that the variances qualified as a (c)1 hardship variance due to the existing topography of the property and a c(2) variance as the grant of the variance promotes the general welfare [purpose a], conserves open space and valuable resources with less grading and slope disturbance [purpose j] and promotes a desirable visual

environment [purpose i].

- e. As to steep slope disturbance, the rear area of the property is not being disturbed. The slope disturbance occurs in a centrally located area, where the slopes are man-made. There is no inherent benefit in protecting the man-made slopes. Again, Mr. Phillips opined that this relief could be granted under a c(1) hardship theory due to the topography and a c(2) variance rational in that the inclusionary development promotes the general welfare [purpose a], allows for sufficient space in appropriate locations for a variety of uses and open space [purpose g]; and allows for a more efficient use of the land [purpose m].
- f. As to the Stream Corridor Buffer, the project's intrusion into this buffer is small, consisting of a small portion of the internal road, one townhouse unit and the edge of the parking area for the apartment building. The Borough's 100-foot buffer limits extend well beyond the State regulated wetland areas, wetlands transition areas, and riparian zone, impacting the ability of the Applicant to meet the intent of the inclusionary affordable housing zone without there being some disturbance within this buffer area. There are no other areas on the site where alternative construction or disturbance could be achieved without moving the development closer to the property line as opposed to what is proposed – the center of the property that is not visible from adjacent properties.
- g. Mr. Phillips testified that the mitigating factor here is that the Applicant is also providing an additional forested conservation easement area consisting of approximately 14.6 acres on land beyond the municipal stream corridor buffer, extending to the easterly lot boundary that will connect with existing conservation easement areas on three (3) of the adjacent single family lots on adjoining Castle Court (2 of which have yet to be built) consisting of approximately 20.8 acres. In total between the on-site conservation easement and the adjoining conservation easement, there will be approximately 35 acres in a conservation easement.
- h. Mr. Phillips opined that the variance relief can be granted as a c(1) hardship given the man-made slope artificially extends the buffer otherwise required in a naturally occurring condition and under a c(2) rational since the relief: allows for adequate light, air and open space by preserving more developable land than disturbing of constrained land [purpose

c], provides sufficient space for a variety of uses [purpose g] and conserves open space and natural resources [purpose j].

- i. With respect to placing the underground recharge area in the Scenic Corridor buffer, the sewer expert testified that there is no other location on the tract with similar geologic/hydrologic features, specifically in terms of achieving acceptable levels of recharge/nitrate dilution, and the existing area is a meadow with limited vegetation.
- j. Mr. Phillips testified that there are several mitigating factors here, (i) the recharge area is located in a largely open lawn area so only a handful of mature trees will actually be removed; (ii) the Applicant is proposing extensive new plantings on all sides of the recharge area; and (iii) the Applicant can utilize the recharge area as an open, passive/recreational amenity for the entire development.
- k. Mr. Phillips opined that this would be a c(1) hardship variance and a c(2) flexible variance in that this is the ideal location for the recharge system and it is underground and has no visible impact to the scenic corridor.
- l. Mr. Phillips reminded the Board that COAH regulations require Board's do grant reasonable variances and relief for inclusionary developments such as this and that the justifications provided in his testimony makes the grant of therelief more than reasonable.

16. The Board reviewed with the Applicant the Board Engineer's review letters dated May 19, 2021, July 2, 2021, and November 5, 2021 as well as the Board Traffic Engineer's review letters dated August 27, 2021 and November 19, 2021. The Board also reviewed with the Applicant, the Board Planner's review letters dated July 5, 2021, August 2, 2021, November 23, 2021 and January 3, 2022.

17. An exception is required from the Residential Site Improvement Standards (RSIS), which requires sidewalks on both sides of the proposed streets, where sidewalks are proposed on one side of the streets, generally throughout the development. The TH6-IAR zone requirements permit sidewalks on one (1) side of the street.

18. Members of the public asked questions of all of the Applicant's witnesses and provided some comments opposing the project, particularly related to concerns of traffic, visual impacts, stormwater management and the on-site treatment facility.

19. One member of the public, Suzanne Voorhees, was represented by counsel, Arthur Owens, Esq. Mr. Owens presented his own planning expert, Barbara Wooley-Dillon.

20. Ms. Dillon testified as follows:

- a. Ms. Dillon is a licensed professional planner with most of her experience in "shore communities" though she had done some work as far north as Union City. She had never worked on a project or for a town in the Far Hills area.
- b. Ms. Dillon opined that several other variances were necessary because the individual townhouse lots did not conform to the overall bulk standards of the zone. However, on cross-examination, she acknowledged that Section Q of the TH-6-IAR Zone allows for the property to be subdivided with individual lots for the townhouses and the apartment building, but that the bulk standards would apply to the overall tract as opposed to the individual townhouse lots.
- c. Ms. Dillon raised concerns about traffic and environmental impacts. However, on cross-examination, she acknowledged she is not a civil engineer, a traffic engineer or an environmental expert. She also acknowledged that some of the mapping she relied upon for her exhibits from the NJDEP GeoWeb is not entirely accurate or reliable and that the NJDEP would perform a more site-specific review of the environmental factors she raised as part of the NJDEP permits being sought.
- d. Ms. Dillon testified that the project and relief was inconsistent with the 2003 Master Plan, but acknowledged that the 2019 amendment to the Housing Element and Fair Share Plan (which is part of the Master Plan) specifically called for the rezoning of this property for this project.

21. As a result of the foregoing, the Board agrees with the opinions of the Applicant's

Planner justifying the variances under c(1) variance and c(2) variance relief and adopts the same as its own. Given these findings, along with the importance of this inclusionary project to the Borough's affordable housing plan, the benefits of the project as whole with the deviations substantially outweighing any detriments, the Board finds that the Applicant satisfied the positive criteria for these variances. Further, the Board finds that the negative criteria of the variances have been satisfied. The granting of the relief will not cause a substantial detriment to the public good or have a substantial impact to the intent and purpose of the zone plan. The overall development is consistent with the zone plan as this site was specifically identified for this exact development proposed. The impacts are minimal as the height variance and scenic corridor variance have no visual impact to the public and the stream corridor and steep slope disturbance allow for minimal development in the center/rear of the property and limiting development closer to the property line, having less impact on the surrounding public.

**NOW, THEREFORE BE IT RESOLVED**, that for the reasons set forth above the application of Pulte Homes of NJ, Limited Partnership for preliminary and final major subdivision approval and preliminary and final major site plan approval (in accordance with the revised architectural plans) with variance relief and the exception as noted from the Residential Site Improvement Standards is hereby approved and granted subject to the following conditions:

1. Compliance to the satisfaction of the Board Engineer with the comments of the Borough Engineer in his May 19, 2021, July 2, 2021, and November 5, 2021 review letters.
2. Compliance to the satisfaction of the Board Planner with the comments of the Borough Planner in his review letters of July 5, 2021, August 2, 2021, November 23, 2021 and January 3, 2022.
3. Compliance to the satisfaction of the Board Traffic Engineer with the comments of the Board Traffic Engineer in his review letters of August 27, 2021 and November 19, 2021.
4. The Applicant shall provide "as built" plans from a licensed surveyor and furnish same to the Borough Engineer for review and approval. The as-built of the individual buildings shall be provided prior to the individual buildings receiving certificates of occupancy. The as-built of the infrastructure shall be provided by prior to 90% of the certificates of occupancy being issued for the project (90% of 134 total units equals 121 total units or 121 certificates of occupancy).

5. The Applicant shall obtain confirmation of the block and lot numbers of the property from the Tax Assessor and revise all plans as may be required.

6. Approval by the governing body of the street names.

7. The Applicant shall submit the following easements to the Borough Attorney and Borough Engineer and the Borough Planner. All easements to which the Borough is a party is subject to the review and approval of the Borough Attorney, the Borough Engineer and the Borough Planner:

- a. Scenic Corridor
- b. Stream Corridor
- c. Conservation Easement
- d. Utilities including sanitary, water, electric/telephone/cable
- e. Drainage
- f. Stormwater Maintenance
- g. Cross Agreements between Lots 4.01 and 4.02
- h. Driveway Sight Easements – Board Traffic Engineer shall also review

8. The Applicant shall obtain any necessary local, county, state or federal approvals for the project, particularly:

- a. All required NJDEP permits and approvals, including but not limited to wetlands, sewer service area, and TWA approval
- b. Somerset Union Soil Conservation District Approval
- c. Somerset County Planning Board Approval
- d. NJDOT approvals including an Access Permit

9. The Applicant shall prepare and submit the requisite number of prints of the final subdivision plat subject to the review and approval of the Borough Engineer

10. The Applicant shall submit engineering estimates and performance guarantees security for all required improvements in accordance with the Municipal Land Use Law (“MLUL”), subject to the satisfaction of the Borough Engineer and the Borough Attorney.

11. The Applicant shall enter into a Developer Agreement with the Borough.

12. Taxes, municipal charges, escrows and other fees are to be paid and kept current in accordance with the MLUL.

13. The affordable housing apartment building materials will be the same as the townhouses with similar and compatible exterior architectural elements.

14. The Applicant shall submit a deed restriction, which shall be included in the HOA declaration of covenants, regarding the maintenance of the meadow area satisfactory to the Borough Attorney and the Borough Engineer.

15. Demolition and removal and/or disposal of any existing structures shall be in accordance with all laws and regulations.

16. Not by way of limitation, but to the extent not specified elsewhere or already satisfied, Applicant shall furnish, perform or otherwise satisfy those matters identified in the October 1, 2021 submission letter from Gladstone Design, Inc.

17. The Applicant shall install a conduit for laying of wiring of the electrical vehicle (EV) charging stations for nine (9) guest parking spaces for the apartment building and shall comply with the state's recently adopted EV supply equipment statute to the extent it is applicable. The location of the EV parking spaces shall be reviewed and approved by the Borough Engineer. The EV parking spaces shall be limited for use by only the residents and their guests of the development.

18. The Applicant shall submit Homeowner's Association (HOA) documents subject to the review and approval of the Borough Attorney and the Borough Engineer prior to obtaining a building permit.

19. The HOA shall be responsible for the maintenance of the common improvements, including the stormwater management system for the project.

20. The HOA shall be responsible for the operation and maintenance of the sewer treatment facility and system and will demonstrate adequate security for the benefit (no bonding) of the Borough in the form of the Reserve Schedule set forth in the HOA Annual Budget regarding continuing operations, proper maintenance and protection against the results of catastrophic failures.

21. The HOA shall be responsible for maintenance of any EV charging stations located in common areas and guest parking spaces. EV charging stations located on the affordable housing lot shall be maintained by the owner of that lot.

22. Before the movement of any soil (export/import) the Applicant shall schedule the times, routes, volumes, tracking pads, street cleaning with the coordination of the Borough Police Department and the Borough Engineer as part of a pre-construction meeting. The Applicant shall test all imported soil and provide sourcing information.

23. The Applicant shall furnish water main extension plans to the Borough Engineer for review and approval.

24. The Applicant shall obtain United States Postal Service and local postal office approval of the "ganged" mailboxes prior to issuance of the first certificate of occupancy.

25. Prior to any tree removal, the Applicant shall stakeout the clearing limits in the field which shall be subject to review and approval from the Board professionals. Tree removal shall be in accordance with NJDEP requirements as applicable and shall be reviewed and approved by the Borough Engineer and Borough Planner. Applicant shall avoid damage to trees to remain and shall avoid root compaction by restricting heavy equipment traffic within the dripline of trees to remain.



26. The Applicant shall provide satisfactory installation of appropriate protection for tree removal. The tree removal schedule to the extent practicable shall avoid erosion problems. During construction, the Borough Engineer may require the Applicant to install erosion control measures, such as double silt fencing, staked haybales, etc., where in the reasonable opinion of the Borough Engineer such measures are necessary to address possible erosion concerns and emergent weather conditions.

27. The Applicant or the HOA, as the case may be, shall test the emergency generator for wastewater treatment facility once per week, which shall be limited between the hours of 10:00 a.m. until 2:00 p.m. Tuesdays through Thursdays.

28. The Applicant shall amend its landscape plan to provide plan notes regarding maintenance and retention of the general wooded area along the front portion of the property. The walking path is to be natural and not be mowed.

29. The Borough Engineer and Planner shall review the proposed reforestation tree species to be planted and the Applicant agrees to accommodate any reasonable tree species replacements or substitutions that may be recommended by the Borough's professionals consistent with the NJDEP-approved list of tree species for reforestation.

30. The sewer treatment building will be constructed with the same materials and compatible designs and features as the townhouses and the affordable housing building.

31. The Applicant shall submit a plan for clearing to create sight easements at the access driveway. The execution of same shall be subject to review and approval of the Board's Traffic Engineer. Clearing for any sight easements and or required sight distance at the access driveway shall be subject to review and approval from the Board Traffic Engineer and Borough Planner. Supplemental plantings shall be provided as may be required outside the sight easements subject to review and approval from the Borough Planner.

32. The Applicant shall remove invasive species from the wooded area to remain along Route 202 frontage and within the conservation easement and reforestation area and this shall be coordinated with the Borough Engineer and the Borough Planner and subject to any NJDEP requirements.

33. Any adjustments to the site plan to address stormwater management comments of the Board Engineer or comments from the NJDEP shall not result in any changes to the layout of the buildings or the roadway network. Any such material change must be brought back to the Board for review as an amendment to the current approval.

34. The Applicant shall comply with the COAH phasing schedule for producing the affordable units, except as may be modified by the Borough in the Developer's Agreement since the market-rate for-sale townhouses are provided in 23 four- and five-unit buildings and the affordable units are rental apartments contained wholly within one building.

35. As noted on the Sales Trailer and Model Home Plot Plan, the hours for displaying and location of the feather flags shall be addressed as part of the Developer's Agreement. Sales trailer and model home plan improvements shall be removed no later than after marketing and sales are completed

with best efforts to conclude within three (3) years of the commencement of building construction

36. The Applicant's satisfaction of all comments and agreements made during testimony before the Board except as may be modified herein.

37. All conditions contained in this Resolution and in the record of proceedings in this matter including any agreements made by the Applicant were essential to the Board's decision to grant the approvals set forth herein.

38. The development of this Property shall be implemented in accordance with the plans submitted and as approved. In the event the Applicant shall make or propose any material changes to the Project or structures on the Property from those shown on the revised and approved plans and exhibits approved for this application, whether these changes are voluntarily undertaken or required by any regulatory agency, Applicant shall submit any such material changes to this Board for review, approval and/or determination as may be the case.

39. The Borough reserves the right to request additional reasonable and customary site improvements should actual field conditions vary from what is depicted on the Approved Plans and/or is indicated by the design.

40. Site work shall not commence prior to compliance with the terms and conditions set forth herein, except for those conditions that cannot be satisfied until after commencement of site work.

41. The granting of the site plan approval specified herein shall not be construed to include satisfaction of the Uniform Construction Code of the State of New Jersey.

42. The Applicant shall comply with all applicable affordable housing requirements as required by the Borough ordinances which have been adopted to implement UHAC regulations, including but not limited to income distribution, phasing in the affordable units (except as may be modified by the Borough), heating source, accessibility and adaptability, amenities, size of units and bedrooms.

- a. The 29 affordable rental units shall be comprised of 25 family units and 4 age-restricted units in accordance with the following bedroom mix and affordable income requirements.

Family Units	VLI	Low	Mod	Total	Req*	
1BR	1	2	2	5	5	0%
2BR	1	7	7	15	15	0%
3BR	1	2	2	5	5	0%
<b>Total</b>	<b>3</b>	<b>11</b>	<b>11</b>	<b>25</b>		

Age-Rest. Units	VLI	Low	Mod	Total
1BR	1	1	2	4

43. The Applicant shall engage an experienced affordable housing administrative agent responsible for affirmative marketing, tenant income verification and qualification. The Applicant shall obtain approval of the Affordable Housing Professional Services Agreement by the Borough Attorney and/or the Borough Planner. Affirmative marketing, prospective tenant income verification and tenant qualification activities shall ensure that a qualified pool of Applicants is established for building occupancy at the time a certificate of occupancy is issued for the affordable housing apartment building.

44. With respect to the affordability control period for the affordable units, the Applicant shall submit deed restrictions in accordance with UHAC. At the end of the affordability control period, nothing shall preclude the Borough from electing to release the affordability controls in accordance with applicable law.

45. Wheel turning movements for school buses need to be provided for review and approval to the Board's Traffic Engineer.

46. The emergency generator for the wastewater treatment plant shall be enclosed within a waterproof sound attenuating enclosure. Enclosure details shall be subject to review and approval by the Board Planner.

47. The Applicant has indicated a hot box is not required for the project. Should a water connection hot box be needed at some point in the future, design and installation will require amended site plan approval from the Board.

48. The Applicant agreed to provide a backup power source (battery pack) for the affordable housing building to ensure common areas and emergency lighting would have power during power outages. Details and/or notes for the backup power source shall be provided on the plans.

49. The Applicant shall maintain control of the construction site at all times to prevent unauthorized access to the site.

50. Applicant shall submit a Resolution Compliance Package itemizing and addressing each condition of approval, which must be satisfactorily completed prior to exercising the rights and privileges of this approval and the relief granted.

51. Applicant shall comply with all statutes, ordinances, rules and regulations of the United State of America, State of New Jersey, County of Somerset and Borough of Far Hills.

52. This Memorializing Resolution shall be recorded with the Somerset County Clerk's office. A copy of the recorded instrument shall be filed with the Borough Attorney, Borough Clerk and Planning Board Secretary.

53. It is acknowledged that the developer of the market-rate townhouses and the developer of the affordable rental building may be undertaken by separate entities. The conditions of this resolution are applicable to and binding upon all entities responsible for all aspects of the development.

54. The Applicant may appear before the Planning Board for a final determination to the extent there may be disagreement between the Applicant and the Borough's officials and professionals on satisfaction and/or implementation of any of the conditions of this approval.

55. The Applicant shall comply with the terms of the Affordable Housing Agreement with the Borough of Far Hills, as may be hereinafter amended and modified.

**NOW, THEREFORE BE IT FURTHER RESOLVED**, that this Resolution adopted on this 7th day of February, 2022 memorialized by the action of the Board as set forth above taken at its meeting of February 7, 2022.

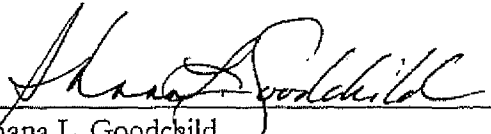
In Favor: Vice Chairman Rinzler, Mayor Vallone, Councilwoman Tweedie, Mr. Lewis, Mr. Koury, Ms. Layton, Ms. Humbert and Chairman Rochat


Eligible to Vote:

Rinzler  
Vallone  
Tweedie  
Lewis  
Layton  
Koury  
Humbert  
Rochat

Resolution 2022-10

FAR HILLS PLANNING BOARD

  
\_\_\_\_\_  
Shana L. Goodchild,  
Planning Board Secretary

  
\_\_\_\_\_  
Thomas Rochat  
Chair

Dated: February 7, 2022

**Exhibit B**

**Engineer's Cost Estimate Buffer Landscaping**

<b><u>VIII. LANDSCAPING AND LIGHTING</u></b>						
	69	DECIDUOUS TREES	196	EA.	\$300.00	\$58,800.00
-	70	EVERGREEN TREES	263	EA.	\$200.00	\$52,600.00
-	71	ORNAMENTAL TREES	111	EA.	\$150.00	\$16,650.00
-						\$128,050.00

Inspection Estimate  
 Site Improvements  
 Pulte Homes - Far Hills  
 Borough of Far Hills, Somerset County, NJ

Page 1 of 2

Project No. 21FH203

February 16, 2023

Based on plans revised through December 20, 2020

Item	Description	Unit Price	U/M	Quan.	Total
1	Clearing Woods	\$ 6,500.00	AC	7	\$45,500.00
2	Strip Topsoil (6" Thick)	\$ 4.75	CY	20,732	\$98,477.00
3	Snow Fence	\$ 2.00	LF	3,985	\$7,970.00
4	Silt Fence	\$ 5.00	LF	7,498	\$37,490.00
5	Stone Tracking Pad	\$ 2.50	SY	400	\$1,000.00
6	Rip-Rap Apron	\$ 75.00	CY	216	\$16,200.00
7	Stabilized Rip Rap Emergency Spillway	\$ 100.00	CY	143	\$14,300.00
8	18" Thick Soil Planting Bed (Bio-Basin w/U.G.)	\$ 18.00	CY	1,888	\$33,984.00
9	6" Thick Sand (Bio-Basin w/U.G.)	\$ 10.00	CY	630	\$6,300.00
10	1' Thick Gravel (Bio-Basin w/U.G.)	\$ 15.00	CY	1,259	\$18,885.00
11	Filter Fabric (Bio-Basin w/U.G.)	\$ 2.00	SY	198	\$396.00
12	18" Thick Soil Planting Bed (Bio-Basin)	\$ 18.00	CY	618	\$11,124.00
13	6" Thick Sand (Bio-Basin)	\$ 10.00	CY	206	\$2,060.00
14	Filter Fabric (Bio-Basin)	\$ 2.00	SY	4,556	\$9,112.00
15	Outlet Structure (Bio-Basin)	\$ 4,000.00	UNIT	10	\$40,000.00
16	Underground Outlet Structure (Basin)	\$ 5,000.00	UNIT	2	\$10,000.00
17	PVC Cleanouts	\$ 75.00	UNIT	60	\$4,500.00
18	6" Perforated Underdrain	\$ 15.00	LF	1,741	\$26,115.00
19	PVC Cleanouts	\$ 75.00	UNIT	134	\$10,050.00
20	6" Perforated Underdrain	\$ 15.00	LF	3,706	\$55,590.00
21	6" PVC	\$ 15.00	LF	388	\$5,820.00
22	8" PVC	\$ 20.00	LF	660	\$13,200.00
23	12" PVC	\$ 25.00	LF	189	\$4,725.00
24	12" RCP	\$ 25.00	LF	784	\$19,600.00
25	15" RCP	\$ 30.00	LF	4,309	\$129,270.00
26	18" RCP	\$ 35.00	LF	956	\$33,460.00
27	24" RCP	\$ 40.00	LF	1,828	\$73,120.00
28	30" RCP	\$ 55.00	LF	201	\$11,055.00
29	36" RCP	\$ 65.00	LF	302	\$19,630.00
30	42" RCP	\$ 75.00	LF	28	\$2,100.00
31	Storm Manhole	\$ 1,500.00	UNIT	18	\$27,000.00
32	8" Flared End Section	\$ 1,000.00	UNIT	1	\$1,000.00
33	15" Flared End Section	\$ 1,200.00	UNIT	3	\$3,600.00
34	18" Flared End Section	\$ 1,500.00	UNIT	2	\$3,000.00
35	24" Flared End Section	\$ 1,800.00	UNIT	4	\$7,200.00
36	Headwall	\$ 1,800.00	UNIT	11	\$19,800.00
37	Drainage Inlet, Type B	\$ 1,500.00	UNIT	56	\$84,000.00
38	Drainage Inlet, Type E	\$ 1,500.00	UNIT	42	\$63,000.00
39	StormTech Chamber System	\$ 10,000.00	UNIT	2	\$20,000.00
40	Underground Basin Bedding	\$ 25.00	CY	1,734	\$43,350.00
41	8" DIP Water Main	\$ 44.00	LF	6,269	\$275,836.00
42	Valve	\$ 1,000.00	UNIT	143	\$143,000.00
43	Hydrant Assembly	\$ 3,000.00	UNIT	13	\$39,000.00
44	FDC Connection	\$ 3,000.00	UNIT	1	\$3,000.00
45	1" Water Service	\$ 25.00	LF	4,622	\$115,550.00
46	8" DIA PVC Pipe	\$ 35.00	LF	3,828	\$133,980.00
47	4" Dia. PVC Laterals	\$ 15.00	LF	5,111	\$76,665.00
48	6" Dia. PVC Laterals	\$ 25.00	LF	460	\$11,500.00

Inspection Estimate  
 Site Improvements  
 Pulte Homes - Far Hills  
 Borough of Far Hills, Somerset County, NJ

Page 2 of 2

Project No. 21FH203

February 16, 2023

Based on plans revised through December 20, 2020

49	Precast Sanitary Manhole	\$ 2,000.00	UNIT	27	\$54,000.00
50	Pipe Bedding 3/4 Clean Crushed Stone	\$ 20.00	CY	188	\$3,760.00
51	4" PVC Cleanouts	\$ 34.00	UNIT	210	\$7,140.00
52	Testing the S.S. Main	\$ 3.00	LF	5,105	\$15,315.00
53	2" Dia. PVC Force Main	\$ 10.00	LF	1,277	\$12,770.00
54	Dense Graded Aggregate (6" Thick) - Roadway	\$ 90.00	TON	2,308	\$207,720.00
55	Hot Mix Asphalt 9.5M64 Surface Course, 2" Thick - Roadway	\$ 130.00	TON	1,231	\$160,030.00
56	Hot Mix Asphalt 19M64 Base Course, 4" Thick - Roadway	\$ 120.00	TON	2,461	\$295,320.00
57	Dense Graded Aggregate (4" Thick) - Parking Lot and Driveway	\$ 90.00	TON	1,866	\$167,940.00
58	Bituminous Concrete Surface Course, NJDOT, Mix I-5 (1-1/2" Thick)- Parking Lot and Driveway	\$ 130.00	TON	885	\$115,050.00
59	Bituminous Concrete Base Course, NJDOT, Mix I-2 (3" Thick)- Parking Lot and Driveway	\$ 120.00	TON	1,769	\$212,280.00
60	Driveway Apron (Conc.)	\$ 30.00	SY	281	\$8,430.00
61	Concrete Sidewalk	\$ 20.00	SY	247	\$4,940.00
62	Belgian Block Curb	\$ 16.00	LF	12,280	\$196,480.00
63	Paver Apron	\$ 35.00	SY	2,414	\$84,490.00
64	Stabilized Turf	\$ 30.00	SY	3,173	\$95,190.00
65	Topsoil, Fertilizing & Seeding	\$ 3.15	SY	61,000	\$192,150.00
66	Block Retaining Wall	\$ 26.00	SF	23,106	\$600,756.00
67	4' High Decorative Fence	\$ 15.00	LF	3,611	\$54,165.00
68	Guiderail	\$ 20.00	LF	923	\$18,460.00
69	Deciduous Trees	\$ 300.00	UNIT	804	\$241,200.00
70	Evergreen Trees	\$ 200.00	UNIT	414	\$82,800.00
71	Ornamental Trees	\$ 150.00	UNIT	174	\$26,100.00
72	Pole Lights	\$ 2,500.00	UNIT	43	\$107,500.00
73	Parking Lot Striping	\$ 0.50	LF	1,785	\$892.50
74	Crosswalk Striping (24" Wide)	\$ 2.00	LF	348	\$696.00
75	Traffic Control Signs	\$ 250.00	UNIT	30	\$7,500.00
76	Identification Signs	\$ 2,500.00	UNIT	1	\$2,500.00
Grand Total					\$4,807,088.50
Inspection Escrow (5% of Grand Total)					\$240,354.43



# EXHIBIT D

Far Hills Construction Office  
6 Prospect St  
Far Hills NJ 07931  
(908)234-0611



# CONSTRUCTION PERMIT

Date Issued 07/28/2023

Permit # 23-00054

**IDENTIFICATION** Block 5 \_\_\_\_\_ Lot 4 \_\_\_\_\_ Qualifier \_\_\_\_\_

Work 1 Site 220 ROUTE 202 Contractor PULTE HOMES OF NJ, LP  
Far Hills Boro, NJ 07931 Address 750 US HWY SOUTH RT.202  
Owner in Fee ARROYO CAP III-2, LLC BRIDGEWATER, CA 08807  
Address 18575 JAMBOREE ROAD, SUI Telephone (862) 200-4882  
IRVINE, CA 92612 Lic./Reg. No. \_\_\_\_\_  
Telephone (862) 200-4882

## V. FEE SUMMARY (Office Only)

1. Building	\$6,480.00
2. Electrical	\$0.00
3. Plumbing	\$0.00
4. Fire Protection	\$0.00
5. Mechanical	\$0.00
6. Elevator	\$0.00
7. Plan Review	\$0.00
8. Subtotal	\$6,480.00
9. DCA State Fee	\$456.00
10. Subtotal	\$6,936.00
11. Certificate	\$0.00
12. Subtotal	\$6,936.00
13. Exemption	\$0.00
<b>TOTAL</b>	<b>\$6,936.00</b>

### Is hereby granted permission to perform the following work:

BUILDING       PLUMBING       LEAD HAZARD ABATEMENT  
 ELECTRICAL       FIRE PROTECTION       DEMOLITION  
 ELEVATOR DEVICES       ASBESTOS ABATEMENT       MECHANICAL

### DESCRIPTION OF WORK:

RETAINING WALL

NOTE: If construction does not commence within one (1) year of date of issuance, or if construction ceases for a period of six (6) months, this permit is void.

Estimated Cost of Work for Selected Subcode(s) \$240,000

*[Signature]*  
Construction Official

7/28/2023  
Date

## REQUIRED INSPECTIONS

Construction work must be inspected in accordance with the State Uniform Construction Code Regulation N.J.A.C. 5:23-2.18. This agency will carry out such periodic inspections during the progress of work as are necessary to insure that work installed conforms to the requirements of the Uniform Construction Code.

The owner or other responsible person in charge of work must notify this agency when work is ready for any required inspections specified below. Requests for inspections must be made at least 24 hours prior to the time the inspection is desired. Inspections will be performed within three business days of the time for which they are requested. The work must not proceed in a manner which will preclude the inspection until it has been made and approval given.

- Required inspections for all subcodes for one and two family dwellings are the following:
1. The bottom of footing trenches before placement of footings, except that in the case of pile foundations, inspections shall be made in accordance with the requirements of the building subcode.
  2. Foundations and all walls up to grade level prior to back filling.
  3. Utility services, including septic.
  4. All structural framing, connections, wall and roof sheathing and insulation; electrical rough wiring, panel and service installation; rough plumbing. The framing inspection shall take place after the rough electrical and plumbing inspections and after the installation of the heating, ventilation and/or air conditioning duct system. The insulation inspection shall be performed after all other subcode rough inspections and prior to the installation of any interior finish material.
- Additional required inspections for all subcodes of construction, for other than one- and two-family dwellings, are fire suppression systems, heat producing devices and Barrier Free subcode accessibility, if applicable.
- Required special inspections. The applicant by accepting the permit will be deemed to have consented to these requirements:
- A final inspection is required for each applicable subcode area before a final Certificate of Occupancy or Approval may be issued. The final inspections include the installation of all interior and exterior finish materials, sealing of exterior joints, mechanical system and any other required equipment; electrical wiring, devices and fixtures; plumbing pipes, trim and fixtures; tests required by any provisions of the adopted subcodes; Barrier Free accessibility, if applicable; and verification of compliance with NJAC 5.23-3.5, "Posting Structures".
- A complete copy of released plans must be kept on the job site.



Far Hills Construction Office  
6 Prospect St  
Far Hills NJ 07931  
(908)234-0611

# Receipt of Payment

**Receipt No:** 795347  
**Payment Date:** 07/28/23  
**Total Payment Amount:** \$6,936.00

**Reference:**

Block/Lot/Qualifier: 5/4 (FAR HILLS BORO)  
Owner In Fee: ARROYO CAP III-2, LLC  
Application No: 00064-23  
Permit No: 23-00054  
Permit Applicant: ARROYO CAP III-2, LLC

**Payment Details:**

Permit Fee

By Check: \$6,936.00  
Check # 0085314793  
Check Amount: \$6,936.00

Total Payment: **\$6,936.00**

**Received by:**

HP

**Comments:**

Far Hills Construction Office  
6 Prospect St  
Far Hills NJ 07931  
(908)234-0611



Date Issued 07/28/2023  
Control # 00064-23  
Permit # 23-00054

## CONSTRUCTION PERMIT NOTICE

Block 5 Lot 4 Qualification Code \_\_\_\_\_

Worksite Location: 220 ROUTE 202  
Far Hills Boro, NJ 07931

**AUTHORIZED FOR:**

- |  |   |
|--|---|
| <input checked="" type="checkbox"/> <b>BUILDING</b>                | <input type="checkbox"/> <b>ELECTRICAL</b>      |
| <input type="checkbox"/> <b>PLUMBING</b>                           | <input type="checkbox"/> <b>FIRE PROTECTION</b> |
| <input type="checkbox"/> <b>ELEVATOR DEVICES</b>                   | <input type="checkbox"/> <b>MECHANICAL</b>      |
| <input checked="" type="checkbox"/> <b>OTHER</b> <u>Alteration</u> |   |

Description of Work:  
RETAINING WALL

**This notice shall be posted conspicuously at the work site and shall remain so until issuance of a certificate.**

UCC F180

^ Cut or Fold Along This line ^

# EXHIBIT E

Far Hills Construction Office  
6 Prospect St  
Far Hills NJ 07931  
(908)234-0611



# CONSTRUCTION PERMIT

Date Issued 08/21/2023

Permit # 23-00060

**IDENTIFICATION** Block 5 \_\_\_\_\_ Lot 4 \_\_\_\_\_ Qualifier \_\_\_\_\_

Work 1 Site 220 ROUTE 202 Contractor PULTE HOMES OF NJ, LP  
Far Hills Boro, NJ 07931 Address 750 US HWY SOUTH RT.202  
 Owner in Fee ARROYO CAP III-2, LLC BRIDGEWATER, CA 08807  
 Address 18575 JAMBOREE ROAD, SUI Telephone (862) 200-4882  
IRVINE, CA 92612 Lic./Reg. No. \_\_\_\_\_  
 Telephone (862) 200-4882

## V. FEE SUMMARY (Office Only)

1. Building	\$1,190.00
2. Electrical	\$0.00
3. Plumbing	\$0.00
4. Fire Protection	\$0.00
5. Mechanical	\$0.00
6. Elevator	\$0.00
7. Plan Review	\$0.00
8. Subtotal	\$1,190.00
9. DCA State Fee	\$66.50
10. Subtotal	\$1,256.50
11. Certificate	\$0.00
12. Subtotal	\$1,256.50
13. Exemption	\$0.00
<b>TOTAL</b>	<b>\$1,257.00</b>

### Is hereby granted permission to perform the following work:

BUILDING       PLUMBING       LEAD HAZARD ABATEMENT  
 ELECTRICAL       FIRE PROTECTION       DEMOLITION  
 ELEVATOR DEVICES       ASBESTOS ABATEMENT       MECHANICAL

### DESCRIPTION OF WORK:

Retaining Wall Package # 2

NOTE: If construction does not commence within one (1) year of date of issuance, or if construction ceases for a period of six (6) months, this permit is void.

Estimated Cost of Work for Selected Subcode(s) \$35,000

Construction Official

8/21/2023  
Date

## REQUIRED INSPECTIONS

Construction work must be inspected in accordance with the State Uniform Construction Code Regulation N.J.A.C. 5:23-2.18. This agency will carry out such periodic inspections during the progress of work as are necessary to insure that work installed conforms to the requirements of the Uniform Construction Code.

The owner or other responsible person in charge of work must notify this agency when work is ready for any required inspections specified below. Requests for inspections must be made at least 24 hours prior to the time the inspection is desired. Inspections will be performed within three business days of the time for which they are requested. The work must not proceed in a manner which will preclude the inspection until it has been made and approval given.

- Required inspections for all subcodes for one and two family dwellings are the following:
1. The bottom of footing trenches before placement of footings, except that in the case of pile foundations, inspections shall be made in accordance with the requirements of the building subcode.
  2. Foundations and all walls up to grade level prior to back filling.
  3. Utility services, including septic.
  4. All structural framing, connections, wall and roof sheathing and insulation; electrical rough wiring, panel and service installation; rough plumbing. The framing inspection shall take place after the rough electrical and plumbing inspections and after the installation of the heating, ventilation and/or air conditioning duct system. The insulation inspection shall be performed after all other subcode rough inspections and prior to the installation of any interior finish material.
- Additional required inspections for all subcodes of construction, for other than one- and two-family dwellings, are fire suppression systems, heat producing devices and Barrier Free subcode accessibility, if applicable.
- Required special inspections. The applicant by accepting the permit will be deemed to have consented to these requirements:
- A final inspection is required for each applicable subcode area before a final Certificate of Occupancy or Approval may be issued. The final inspections include the installation of all interior and exterior finish materials, sealing of exterior joints, mechanical system and any other required equipment; electrical wiring, devices and fixtures; plumbing pipes, trim and fixtures; tests required by any provisions of the adopted subcodes; Barrier Free accessibility, if applicable; and verification of compliance with NJAC 5.23-3.5, "Posting Structures".
- A complete copy of released plans must be kept on the job site.

Far Hills Construction Office  
6 Prospect St  
Far Hills NJ 07931  
(908)234-0611



Date Issued 08/21/2023  
Control # 00069-23  
Permit # 23-00060

## CONSTRUCTION PERMIT NOTICE

Block 5 Lot 4 Qualification Code \_\_\_\_\_

Worksite Location: 220 ROUTE 202  
Far Hills Boro, NJ 07931

**AUTHORIZED FOR:**

- |  |   |
|--|---|
| <input checked="" type="checkbox"/> <b>BUILDING</b>                | <input type="checkbox"/> <b>ELECTRICAL</b>      |
| <input type="checkbox"/> <b>PLUMBING</b>                           | <input type="checkbox"/> <b>FIRE PROTECTION</b> |
| <input type="checkbox"/> <b>ELEVATOR DEVICES</b>                   | <input type="checkbox"/> <b>MECHANICAL</b>      |
| <input checked="" type="checkbox"/> <b>OTHER</b> <u>Alteration</u> |   |

**Description of Work:**

Retaining Wall Package # 2

**This notice shall be posted conspicuously at the work site and shall remain so until issuance of a certificate.**

UCC F180

^ Cut or Fold Along This line ^



Far Hills Construction Office  
 6 Prospect St  
 Far Hills NJ 07931  
 (908)234-0611

## Receipt of Payment

**Receipt No:** 795829  
**Payment Date:** 08/16/23  
**Total Payment Amount:** \$1,257.00

**Reference:**

Block/Lot/Qualifier: 5/4 (FAR HILLS BORO)  
 Owner In Fee: ARROYO CAP III-2, LLC  
 Application No: 00069-23  
 Permit No: 23-00060  
 Permit Applicant: ARROYO CAP III-2, LLC

**Payment Details:**

Permit Fee

By Check: \$1,257.00  
 Check # 0085314905  
 Check Amount: \$1,257.00

Total Payment: **\$1,257.00**

**Received by:**

HP

**Comments:**



# EXHIBIT F



**BOROUGH OF FAR HILLS**  
6 Prospect Street, Far Hills, NJ 07931  
t. 908.234.0611 f. 908.234.0918  
[WWW.FARHILLSNJ.ORG](http://WWW.FARHILLSNJ.ORG)

January 18, 2024

[jim.mullen@pultegroup.com](mailto:jim.mullen@pultegroup.com)

James P. Mullen, Esq.  
Director of Land Entitlements  
Northeast Corridor Division  
C/O Pulte Group  
750 US Highway Route 202, Suite 500  
Bridgewater, New Jersey 08807

**SUBJECT:** Notice of Violation  
Kimbolton Development  
Block 5, Lot 4  
220 Route 202

Dear Mr. Mullen:

It has come to my attention, as the Borough of Far Hills Zoning Officer, that Pulte Homes of NJ, Limited Partnership, is in violation of the Borough's Land Management Ordinance and Planning Board conditions of approval for that development under construction by Pulte in the Borough known as Kimbolton.

This letter will serve as a Notice of Violation, along with the attached Addendum to Notice of Violation.

This Notice of Violation seeks compliance with the Borough Land Management Ordinance and the Planning Board conditions of approval.

As the Zoning Officer, I will expect that Pulte will comply with the Borough Land Management Ordinance and Planning Board conditions of approval. Otherwise, I will have no alternative but to pursue the remedies available to the Borough to enforce the Land Management Ordinance and Planning Board conditions of approval.

If you have any questions, I may be reached Tuesdays between 4:30-6:30pm or via email at [kcoward@farhillsnj.org](mailto:kcoward@farhillsnj.org).



Kimberly Coward  
Zoning Officer

Attachment-Addendum to Notice of Violation

Cc: Dorothy Hicks, Borough Clerk- Borough of Far Hills(via email) [dhicks@farhillsnj.org](mailto:dhicks@farhillsnj.org)  
Albert E. Cruz Esq.(email) [acruz@newjerseylaw.net](mailto:acruz@newjerseylaw.net)  
Paul Ferriero, Borough Engineer (via email) [pferriero@boswellengineering.com](mailto:pferriero@boswellengineering.com)  
David Banisch, Borough Planner (via email) [davidbanisch@banisch.com](mailto:davidbanisch@banisch.com)  
Stephen Mahoney, Borough Construction Official (via email) [smahoney@farhillsnj.org](mailto:smahoney@farhillsnj.org)

**ADDENDUM TO NOTICE OF VIOLATION**

This Notice of Violation is issued to Pulte Homes of NJ, Limited Partnership, for that development known as Kimbolton located on Route 202 North and shown as Block 5, Lot 4 on the Borough of Far Hills Tax Map in the TH-6-IAR zone.

**A. Retaining Walls in Excess of Six (6) Feet**

The TH-6-IAR Zone was created by Ordinance No. 2019-08. However, Ordinance No. 2019-08, Section 3.0, makes the Design and Improvement Standards in Article IX of the Land Management Ordinance of the Borough of Far Hills applicable to the TH-IAR Zone.

Article IX is titled "Design and Improvement Standards", Section 905 titled "Fences, Walls and Sight Triangles"; specifically, Section 905.A.5 requires that "[i]n all zoning districts, fences and walls shall be installed no higher than six feet (6")".

The application of Pulte to the Borough of Far Hills Planning Board for Kimbolton failed to seek a waiver of Section 905.A.5 for retaining walls more than six (6) feet in height and failed to seek design exception relief as required by N.J.S.A. 40:55D-51.a and b.

Additionally, the Site Plan only identified one (1) design waiver; namely, a de minimus design waiver from the Residential Site Improvement Standards for sidewalks on both sides of the

street, but not for the height of retaining walls.

Pulte is hereby given notice that it has thirty (30) days from the date of its receipt of this Notice of Violation to cure this violation. If the violation is not cured within this period, Pulte shall be liable under Section 304 of the Borough Land Management Ordinance.

**B. Planning Board Condition 33.**

Planning Board Condition 33 provides that:

Any adjustments to the site plan to address stormwater management comments of the Board Engineer or comments from the NJDEP shall not result in any changes to the layout of the buildings or the roadway network. Any such material change must be brought back to the Board for review as an amendment to the current approval.

Pulte, as part of its stormwater management plan, increased the grades throughout Kimbolton by as much as eleven (11) feet resulting in changes to the height of the roadway network at Kimbolton without returning to the Planning Board for amended site plan approval in violation of Planning Board Condition 33 and Section 105 of the Borough Land Management Ordinance requiring that new structures conform with the Ordinance.

Pulte is hereby given notice that it has thirty (30) days from the date of its receipt of this Notice of Violation to cure this violation by making an application to the Planning Board to amend Condition 33. If the violation is not cured within this period, Pulte shall be liable under Section 304 of the Borough

Land Management Ordinance.

**C. Effect of Grading Changes.**

Pulte sought and received a variance from the Planning Board for the height of the buildings with walkout basements from the maximum permitted height of thirty-six (36) feet to a proposed 38.07 feet. However, grade changes occurring after the conclusion of the Planning Board hearings will considerably alter the perception of building height and mass compared to what was approved. The buildings will be as much as eight (8) feet higher than was represented to the Planning Board at the hearing.

Pulte is hereby given notice that it has thirty (30) days from the date of its receipt of this Notice of Violation to cure this violation by making an application to the Planning Board. If the violation is not cured within this period, Pulte shall be liable under Section 304 of the Borough Land Management Ordinance.

**D. Issuance of Zoning Permits.**

Section 302.A of the Borough Land Management Ordinance provides that:

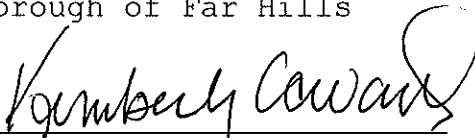
It shall be the duty of the Zoning Officer to administer and enforce the zoning provisions of this ordinance. No building permits shall be issued unless the plans are accompanied by an approved zoning permit. No zoning permit shall be issued unless the proposed structure, use, temporary activity and construction activities are in compliance with this ordinance.

Pulte is hereby given notice that no further zoning permits,

including zoning permits for individual buildings, will be issued for Kimbolton until the violations cited in this Notice of Violation are cured.

Dated: January 18, 2024

Borough of Far Hills

By:   
\_\_\_\_\_  
Kimberly Coward  
Zoning Official

# EXHIBIT G





**DiFrancesco Bateman**  
Kunzman, Davis, Lehrer & Flaum, P.C.

15 Mountain Boulevard  
Warren, New Jersey 07059

Telephone: (908) 757-7800  
Fax: (908) 757-8039  
[www.newjerseylaw.net](http://www.newjerseylaw.net)

**Albert E. Cruz**  
Partner  
Extension 136  
[acruz@newjerseylaw.net](mailto:acruz@newjerseylaw.net)

February 27, 2024

**Via Email & Regular Mail**

Craig M. Gianetti, Esq.  
Day Pitney, LLP  
One Jefferson Road  
Parsippany, New Jersey 07054

James P. Mullen, Esq.  
Director of Land Entitlements  
Northeast Corridor Division  
c/o Pulte Group  
750 US Highway Route 202, Suite 500  
Bridgewater, New Jersey 08807

**Re: Notice of Violation  
Kimbolton Development  
Block 5, Lot 4, 220 Route 22  
File No. FH2003**

Dear Gentlemen:

After consulting with the Borough of Far Hills Zoning Officer, I am writing to clarify Section D of the Notice of Violation issued by the Zoning Office on January 18, 2024.

Section D of the NOV does not apply to Zoning Permits for the affordable housing building to be constructed by Pulte Homes of NJ, Limited Partnership, as part of the Kimbolton Development.

The Zoning Officer will review a Zoning Permit Application for this building in an expedited manner.

Page 2

All other terms and conditions of the NOV remain in effect.

Very truly yours,  
DiFrancesco, Bateman, Kunzman,  
Davis, Lehrer & Flaum, P.C.

*Albert E. Cruz*

Albert E. Cruz

AEC/jg

cc: Kimberly Coward, Zoning Officer  
Dorothy Hicks, Clerk  
Paul Ferriero, Engineer  
David Banisch, Planner  
Stephen Mahoney, Construction Official  
(All by email)

# EXHIBIT H



DiFrancesco Bateman  
Kunzman, Davis, Lehrer & Flaum, P.C.

15 Mountain Boulevard  
Warren, New Jersey 07059

Telephone: (908) 757-7800  
Fax: (908) 757-8039  
www.newjerseylaw.net

Albert E. Cruz  
Partner  
Extension 136  
[acruz@newjerseylaw.net](mailto:acruz@newjerseylaw.net)

March 4, 2024

**Via Email & Regular Mail**

Craig M. Gianetti, Esq.  
Day Pitney, LLP  
One Jefferson Road  
Parsippany, New Jersey 07054

James P. Mullen, Esq.  
Director of Land Entitlements  
Northeast Corridor Division  
c/o Pulte Group  
750 US Highway Route 202, Suite 500  
Bridgewater, New Jersey 08807

Re: Notice of Default  
Kimbolton Development  
Block 5, Lot 4, 220 Route 22  
File No. FH2003

Dear Gentlemen:

Attached is a Notice of Default pursuant to Paragraph 34 of that Developer's Agreement between the Borough of Far Hills and Pulte Homes of NJ, Limited Partnership, for the Kimbolton Development.

Very truly yours,  
DiFrancesco, Bateman, Kunzman,  
Davis, Lehrer & Flaum, P.C.

*Albert E. Cruz*

Albert E. Cruz

AEC/jg

cc: Kimberly Coward, Zoning Officer  
Dorothy Hicks, Clerk  
Paul Ferriero, Engineer  
David Banisch, Planner  
Stephen Mahoney, Construction Official  
(All by email)

{A1661328.1}

NOTICE OF DEFAULT

The Borough of Far Hills Zoning Officer issued Pulte Homes of NJ, Limited Partnership, a Notice of Violation on January 18, 2024, arising from construction of the Kimbolton Development within the Borough. The cure period provided for by the Notice of Violation expired.

This Notice of Default is issued pursuant to Paragraph 34 of that Developer's Agreement between the Borough and Pulte.

The Developer's Agreement required that Pulte construct the Kimbolton in accordance with the Application Documents identified in the last WHEREAS clause on page 1 and at the top of page 2. Additionally, Paragraph 2 titled "Application of Agreement"; Paragraph 3 titled "Developer Bound by Approval"; Paragraph 22 titled "Compliance with Resolution Conditions and Applicable Laws"; and Paragraph 37 titled "Reliance of Borough" all require that Kimbolton be constructed in accordance with Application Documents.

For the reasons described in the Notice of Violation, Kimbolton is not being constructed in accordance with the Application Documents and Pulte is in default of the Developer's Agreement.

Accordingly, the Borough declares a default and will seek indemnification for all costs and expenses, including professional fees, from Pulte in enforcing the Developer's Agreement.

Dated: March 4, 2024

*Albert E. Cruz*

Albert E. Cruz, Borough  
of Far Hills Attorney

# EXHIBIT I

[https://www.newjerseyhills.com/bernardsville\\_news/news/tempers-flare-over-housing-project-at-far-hills-council-meeting/article\\_ce91d296-b159-11ed-ace1-df12d4305682.html](https://www.newjerseyhills.com/bernardsville_news/news/tempers-flare-over-housing-project-at-far-hills-council-meeting/article_ce91d296-b159-11ed-ace1-df12d4305682.html)

FAR HILLS BOROUGH COUNCIL

# Tempers flare over housing project at Far Hills Council meeting

Resident arrested for 'menacing comments'

By W. JACOB PERRY Staff Writer

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**FAR HILLS** – A critic of the borough’s affordable housing plans was arrested and charged with harassment after allegedly making “menacing comments” to officials at a public meeting on Monday, Feb. 13.

The man, Charles Schwester of Lake Road, a persistent critic of the proposed 134-unit Residences At Overleigh development on Route 202, was arrested at the end of the Feb. 13 Borough Council meeting, according to Police Chief Michael DeCarolis.

Schwester clashed with officials during the meeting when various aspects of the development plan were discussed.

“Schwester spoke in offensively coarse language, made menacing comments as well as exhibiting aggressive behavior and threatening gestures towards” members of the council, said Chief DeCarolis, who issued the charges.

He was released with a court date pending.

In a statement to this newspaper on Tuesday, Feb. 21, Mayor Kevin Welsh said “there has been a lot of stress to the residents and council members alike” over the project.

“We have been working very hard to meet our affordable housing obligations,” he said.

“Unfortunately, on 2/13 we had an attendee, misbehaving. The behavior was highly inappropriate and unacceptable. The words were threatening and harassing. I will not tolerate this behavior from any member of the public. We will continue to hold the meetings with proper decorum.

“The council and Mayor welcome comments from the public and have listened to many comments over the years related to this topic. This is how we make progress to a better end for all. I look forward to working as a team to protect the best interest of Far Hills.”

On Tuesday, Schwester referred questions about the incident to his lawyer, Mark Sobel.

“Mr. Schwester exercised his appropriate rights as a citizen at a public meeting, voicing his concerns regarding certain activities being considered by the borough,” Sobel said. “He did nothing improper and looks forward to the matter being heard by an independent tribunal for a fair adjudication of the matter.”



Concerns about the project dominated the meeting.

At one point Schwester warned Mayor Welsh and two councilwomen that they were “going down” due to their actions.

Schwester has long opposed the project, which will include 105 market-rate, age-restricted for-sale units and 29 income-restricted rentals on 42 acres opposite Lake Road.

Schwester accused the council of trying to expedite the project when Borough Clerk Dorothy Hicks broke in to inform him that he was down to the last minute of his permitted speaking allotment.

“You’re not going to shut me off,” Schwester responded.

“Well,” Hicks said, “I’m telling you your time.”

Schwester retorted, “Keep your mouth shut. I don’t want to hear from you.”

That drew objections from the governing body.

“That is out of line, out of line,” said Councilwoman Mary Chimenti.

“You are done,” Mayor Welsh said. “You’re not speaking to any member in that manner.”

Schwester persisted and broadened his verbal attack to include Chimenti and Councilwoman Sheila Tweedie.

“These two women that support you, they’re nice ladies on the council, vote lockstep with you,” he told Welsh. “Thank God we have these four men that stop this,” he added, apparently referring to Councilmen David Karner, Joseph Carty, Rick Rinzler and Peter Coccoziello Jr.

Chimenti told Schwester she found his tone “aggressive and uncalled for.”

“Too bad,” Schwester shot back. “It’s about time somebody told you ... It’s not going to end here. Trust me. The storm is coming. You’re going down, all three of you.”

“Is that a threat?” asked Chimenti.

"You're going down politically," Schwester said. "You're going down ... I'm so sick of this, with you three."

Moments after Mayor Welsh adjourned the public portion of the meeting to go into closed session, Schwester could be heard addressing the council again.

"Thank you David, thank you Richard, thank you Peter, thank you Joseph for being Far Hills patriots," he said.

Then, addressing the others on the governing body, he added, "You three are going to be exposed, and the storm is coming."

### ***Mandated Housing***

The project grew out of the borough's state-mandated, "Round III" obligation to provide 65 affordable housing units through 2025.

A court administered the mandate in a settlement approved in December 2019.

In conjunction with the settlement, the so-called "Errico Acres" site on Route 202 was rezoned by the council in December 2019 to allow multi-family housing. A site plan for the project received Planning Board approval in February 2022 after nine hearings.

Pulte Homes would build and sell the 105 market-priced townhouse units while Melillo Equities of Peapack-Gladstone would manage the income-restricted rental units. Construction has yet to start.

Two items on the Feb. 13 council agenda led a number of project critics to turn out for the meeting.

One involved a review of a report by the Otteau Group, a Matawan-based real estate consultant that was hired by the council to evaluate the project's potential financial impacts.

Back in 2019, in response to concerns that the project would generate schoolchildren and higher taxes, the borough struck a deal to have Pulte put an age restriction on the market-priced homes. In exchange, the borough agreed to pay Pulte \$6.9 million over a decade or so.

But questions about the project's fiscal impact continued to linger, with borough officials saying each townhouse unit would need to sell for at least \$800,000 to generate enough tax revenue to offset municipal service costs.

The Otteau Group was hired to evaluate the situation. But a review of the Otteau report was pulled from the agenda prior to the start of the Feb. 13 meeting, with Welsh saying the council needed more preparation time.

Schwester questioned the council's motives, saying that it initially put the report on the agenda "real quick to try to ramrod this.

"Why are you so hellbent on trying to get this project through?" he asked Welsh.

Schwester said when Errico Acres was zoned for 10-acre housing, "it wasn't worth a dime" because it didn't have percolation to support four homes, yet the council rezoned it to allow multi-family housing.

"All of a sudden, you've become alchemists for the developer," he said, at which point Hicks cited the speaking time limit.

The other project-related item on the agenda was the proposed introduction of an ordinance that would authorize the borough to accept easements within the site for a perimeter buffer, stream corridor, scenic corridor, stormwater drainage maintenance, "100-foot common area/open land," nature path and site triangle.

The council ultimately delayed the introduction vote at the urging of residents, who argued that a Feb. 27 public hearing date would not give them enough time to review the easements.

### ***Safety Concerns***

During the meeting, the council was addressed by 11 residents, most of whom reside on nearby Lake Road, Fox Hunt Court and Castle Court.

Jamie Morais of Bernardsville voiced concerns about Route 202 traffic at the site and the possibility that an easement could allow a path along the highway.

She said five years ago, she and her daughter were in a vehicle that flipped over on Route 202 near the site after they were hit head-on by a young female driver who died from her injuries.

"It really, really frightens me that we're adding more cars and a possible easement for people to walk on," Morais told the council. "It's so dangerous."

"There's too many cars on that road already," she added. She said there have been 10 fatalities or Medevac responses since 2013 on the 4.4 miles of Route 202 between Far Hills and Bernardsville.

"You can't put more cars on that road," Morais said, her voice filled with emotion. "I'm afraid. What happened to me was horrible."

Viral Patel of Castle Court said 134 homes on the site was "too many," especially considering that he moved in believing no more than four homes could be built there.

Steve Newman of Lake Road said he purchased his home in March 2021 and neither his broker nor his closing lawyer informed him of the Pulte project.

"No one has ever said a word to us," he said. "There's been no transparency."

Suzanne Voorhees of Castle Court said she bought her home in June 2021 and the listing agent never told her about the Pulte project.

She noted that police officers already park at the top of the hill to catch speeders.

"Can you imagine what's going to go past them now?" she asked. "It's just too much. If it was just affordable housing, it would be wonderful."

#### MORE INFORMATION



## Judge puts challenger back on Far Hills council ballot