

EXHIBIT “A”

WEST WINDSOR TOWNSHIP PLANNING BOARD

In the Matter of the Application of)	FINDINGS OF FACT
Bridge Point West Windsor, LLC for)	AND
<u>Preliminary and Final Major Subdivision,</u>)	CONCLUSIONS OF LAW
<u>Preliminary and Final Major Site Plan</u>)	File No. PB 21-15
<u>(Phase I) and Preliminary Major Site Plan</u>)	Block 8, Lots 1, 2, 3, 12, 16, 20, 28, 32.01, 39, 40, 41, 45, 46, 47, and 49 Block 15.14, Lots 18, 19, 20, 22, and
<u>Approval (Phase II) with Waivers</u>)	Approval granted: June 29, 2022
)	

Be it resolved by the Planning Board of the Township of West Windsor that the action of this Board on June 29, 2022 in this matter is hereby memorialized by the adoption of this written decision setting forth the Board's findings and conclusions.

BACKGROUND

1. The site ("Site") consists of 539 acres of a larger, irregularly shaped tract totaling 645 acres, constituting the entire Planned Commercial District ("PCD"), located near the southeasterly corner of the intersection of Route 1 and Quakerbridge Road (County Route (CR) 533). It is divided into two tracts of land bisected by Clarksville Road (County Route (CR) 638). The northwest tract is located along the northbound side of U.S. Route 1 and is generally bounded by U.S. Route 1 to the northwest, undeveloped land to the northeast, Quakerbridge Road to the southwest, and Clarksville Road to the southeast. The southeast tract is located along the northbound side of Clarksville Road and is generally bounded by Clarksville Road to the northwest, undeveloped land and the Princeton Terrace multifamily development to the northeast, Quakerbridge Road to the southwest, and the Amtrak Main Line to the southeast. Existing access to the former agricultural research campus on the tract was provided via driveways on Quakerbridge Road and on Clarksville Road.

2. Approximately 20 contiguous parcels make up the Site and bear several environmental constraints, including wetlands and associated buffers, streams and stream buffers, flood hazard areas, and the Township's Greenbelt. A portion of the Site contained the former buildings and structures of the American Cyanamid property that had been established in West Windsor as an Agricultural Research Facility in 1950. The facility was vacated in 2004 and the current owner was in the process of demolishing the remaining structures at the time of the hearing in this application.

3. Surrounding land uses consist, to the north, of the U.S. Route 1 corridor and the Nassau Park Passau Pavilion shopping center; to the east, undeveloped lands, open space and the Princeton Terrace multifamily development; to the south, undeveloped lands, the Windsor Ponds multifamily development and single-family developments; and to the west, the Quakerbridge Mall and other commercial developments located in Lawrence Township.

4. Settlement Agreement and Warehouse Concept Plan. The Township, in late 2020, entered into an agreement with Atlantic Realty ("Atlantic"), the owner of the property, to settle litigation over the zoning of the property. The prior property owner, the Howard Hughes Corporation, sued the Township when it could not get approval for a proposed mixed use, mostly residential development with approximately 2,000 units, which would have required a rezoning of the property. The Township was concerned about the impact of the proposed plan upon municipal services. Atlantic acquired the property in 2019 and, as part of the settlement, agreed to give up its right to pursue residential development of the property if the Township, upon due consideration by the West Windsor Township Council at a publicly held meeting, agreed to rezone the property to permit development in accordance with a concept plan presented by Atlantic for the construction of at least 5.5 million square feet of modern warehouse use and up to 150,000 s.f. of retail space. The terms of the agreement included that, if a conforming site plan was denied by the Board, then Atlantic could seek judicial review or other recourse to pursue residential development.

PROPOSED PLAN

5. The Applicant proposes to construct seven warehouse buildings totaling 5,563,117 s.f., and associated improvements. The development will occur in two phases, following subdivision of the Site:

Major Subdivision will involve first the consolidation of the 20 lots, which will then be subdivided into six lots to effectuate Phases I and II, and another five lots along the frontage of U.S. Route 1 and Quakerbridge Road for the development of retail and commercial at a later stage.

Phase I will consist of construction of the new roads and utilities, including the “Master Plan Road” providing an additional access through the development and connection to U.S. Route 1 at its north end and Quakerbridge Road at its south end at the intersection with Avalon Way in Lawrence Township, and construction of three warehouse buildings, Building B1, Building C1, and Building E1 with an approximate combined footprint of 3,010,099 s.f., and the construction of multiple storm water management facilities. These three warehouses will be located closest to Quakerbridge Road, on either side of Clarksville Road, which bisects the whole development from east to west.

Phase II will consist of the construction of the remaining four warehouse buildings, Building A1, Building B2-1, Building B2-2, and Building D1 with an approximate combined footprint of 2,553,018 s.f., and the construction of multiple storm water management facilities. These warehouses will be located on the other half of the development, further away from Quakerbridge Road and generally east of the proposed Master Plan Road, which bisects the development from north to south. Only Preliminary Site Plan Approval is sought for Phase II, so the Applicant will have to come back for final approval before beginning construction on these four warehouses.

Development of the five lots making up the remainder of the PCD is not part of this application but will be applied for in future. The Applicant indicated that it would be handled by Atlantic. Development of this phase will be located along the frontages of Quakerbridge Road, U.S. Route 1, and the northerly extent of the proposed Master Plan Road.

6. The proposed development is a permitted use in the PCD.

RELIEF SOUGHT

7. The applicant seeks preliminary and final subdivision approval, preliminary and final major site plan approval for Phase I of the project, and preliminary major site plan approval for Phase II of the project. The following 14 design waivers are sought, although as noted in the Waiver section below, only 12 of these are granted. 12 submission waivers are also requested.

Design waivers

Parking and Loading –

- From Section 200-28D(2)(b), requiring a waiver to exceed the required off-street parking and loading requirements, or 1,754 spaces, whereas 2,201 parking spaces (including 200 banked spaces) are proposed;
- From Section 200-27D(1), permitting 147 loading bays, whereas 910 loading bays are proposed;

Signage –

- From Section 200-32B(8)(c), which permits a maximum size of two s.f. for instructional signage, whereas instructional signage of 12 s.f. is proposed;
- From Section 200-32B(11)(b), which permits a maximum height of eight inches for street address signage, whereas street address signage with a height of 24 inches is proposed;
- From Section 200-32B(3)(b), which permits a maximum sign area, including structure, of 48 s.f. for monument signs, whereas monument signage of 60 s.f., including structure, is proposed;
- From Section 200-32B(3)(c), which permits a maximum sign height, including structure and sign area, of four feet, whereas monument signage 16 feet high, including structure and sign area, is proposed;

Landscape –

- From Section 200-13C(3)(e), requiring trees of five or more inches in caliper to be located and identified, whereas such trees are not being identified;
- From Section 200-91P(5)(b)[4], requiring one 4-inch caliper tree for every 40 linear feet of building perimeter for buildings over 10,000 s.f. to be planted within 75 feet of the building, whereas 4-inch caliper trees are proposed to be planted within 100 feet of the building;

Storm Water Management –

- From Section 200-91P(4)(a)[1][a], which requires stormwater detention areas to be graded “creatively to blend into the surrounding landscape and imitate a natural depression with an irregular edge,” whereas the proposed landscaping design does not conform strictly with this requirement;

- From Section 200-207.4U(7), which requires that “suitably landscaped and bermed stormwater basins” may be located within any yard setbacks or landscaped buffers provided that a maximum of 50% of the basin may be located within the buffer area, whereas eight stormwater basins located entirely within a buffer area are proposed;

Lighting –

- From Section 200-29G(1), requiring all parking areas to be lit to provide a minimum of 3.0 footcandles at driveway intersections with main roads and a total average illumination of 0.5 footcandle throughout the parking area, whereas an average light intensity for the parking areas of between 1.7 and 2.0 footcandles for passenger car parking, and between 2.2 and 2.4 for truck parking is proposed;
- From Section 200-31K(1), requiring light levels in parking lots to be an average of 0.5 footcandles throughout, whereas average illumination of passenger parking areas is proposed to be between 1.7 and 2.0 footcandles, with 0.5 footcandles being the minimum spot illumination, and average illumination of truck parking areas is proposed to be between 2.2 to 2.4 footcandles, with 0.5 being the minimum spot value;
- From Section 200-31K(2), requiring light levels at intersections to be 3.0 footcandles, whereas the proposed average light levels at intersections range from 3.1 to 4.4 footcandles.
- From Section 200-31K(3), requiring no more than a 1.0 intensity in footcandles at property lines, whereas greater intensity in footcandles at property lines is proposed at driveway intersections with Clarksville Road.

Submission waivers

Subdivision Checklist

- From Section 200-53C(1) (partial waiver), which requires a key map at a scale not smaller than 1" = 1,000' showing the relationship of the entire tract to the neighborhood at least 1,000 feet beyond its boundaries, whereas a map at a scale of 1" = 2,000' was provided;
- From Section 200-53C(4)(a) (temporary waiver), which requires at least two permanent bench marks to be established for each 50 acres of the tract to be subdivided, whereas bench mark information will be provided prior to construction;
- From Sections 200-53C(19) and (23), requiring submission of a New Jersey Department of Environmental Protection (NJDEP or DEP) Letter of Interpretation indicating the presence or absence of freshwater wetlands on the Site, whereas an application for Freshwater Wetlands permitting was pending at the time of this approval;

- From Section 200-54C (10)(partial waiver), requiring final construction plans showing proposed utility layouts and connections to existing or proposed utility systems, whereas such plans are not being submitted at this time as preliminary and final approval are being sought concurrently;
- From Section 200-54C(11)(a)(partial waiver), requiring a final drainage plan, whereas such plans are not being submitted at this time as preliminary and final approval are being sought concurrently;
- From Section 200-54C(12)(partial waiver), requiring a Soil Erosion Plan to be submitted, whereas such plans are not being submitted at this time as preliminary and final approval are being sought concurrently;
- From Section 200-54C(13)(a) and (b)(partial waivers), requiring a proposed grading plan to be submitted, whereas such plan will be provided upon completion of construction;
- From Section 200-54C(14)(partial waiver), requiring a copy of the preliminary approval resolution to be provided, whereas such resolution is not being provided as preliminary and final approval are being sought concurrently; and
- From Section 200-54C(18)(a) and (b)(partial waivers), requiring an as-built lot grading plan to be submitted, whereas such plans are not being submitted at this time as preliminary and final approval are being sought concurrently.

Site Plan Checklist

- From Section 200-14C(1)(a), requiring the approved preliminary site plan to be submitted, whereas such plans are not being submitted at this time as preliminary and final approval are being sought concurrently for Phase I;
- From Section 200-14C(1)(b)[1], requiring final plans to include construction details specified at the time of preliminary approval, whereas such details are not being submitted at this time as preliminary and final approval are being sought concurrently for Phase I; and
- From Section 200-14C(1)(b)[5], requiring a final landscape plan substantially conforming to the approved preliminary landscape plan to be submitted, whereas such plan is not being submitted at this time as preliminary and final approval are being sought concurrently for Phase I.

8. The Applicant also requests an initial vesting period of 10 years for the Preliminary and Final Site Plan and Subdivision approvals pursuant to *N.J.S.A. 40:55D-52(b)*, which permits a planning board to grant longer vesting periods for larger scale projects.

9. No variances are requested.

THE APPLICANT

10. The Applicant is Bridge Point West Windsor, LLC, which is leasing the property from the owner, Atlantic Realty.

NOTICE AND HEARING

11. The Applicant obtained a list of all property owners within 200 feet of the property that is the subject of this application from the West Windsor Township and Lawrence Township municipal offices.

12. The applicant filed an affidavit stating that the notice was given at least ten days in advance of the hearing date to the surrounding property owners and to the public entities required to be noticed. The applicant has also filed a proof of publication confirming that newspaper publication was made in accordance with legal requirements. Proper notice was given.

13. The notice and publication stated that the hearing would be held at the meeting of the Board scheduled for May 11, 2022. Jurisdiction was taken on such date as to the sufficiency of notice and service. The hearing was carried to and heard on May 18, 2022, May 25, 2022, June 1, 2022 and June 29, 2022, with no further notice being required.

14. At the hearing, the applicant and all other interested parties were given the opportunity to present evidence and to be heard.

PLANS PRESENTED

15. At the hearing, the Board reviewed the following plans:

- Plans entitled “Preliminary and Final Site Plan Application for Bridge Point 8 Industrial Park - Block 8, Lots 1, 2, 3, 12, 16, 20, 28, 32.01, 39, 40, 41, 45, 46, 47, & 49 and Block 15.14, Lots 18, 19, 20, 22 & 75- West Windsor Township, Mercer County, New Jersey” prepared by Langan (Christian Roche, P.E.), consisting of 295 sheets, dated December 3, 2021 and revised through March 30, 2022

- Plans entitled “Preliminary and Final Major Subdivision - Bridge Point 8 Industrial Park - Block 8, Lots 1, 2, 3, 12, 16, 20, 28, 32.01, 39, 40, 41, 45, 46, 47, & 49 and Block 15.14, Lots 18, 19, 20, 22 & 75- West Windsor Township, Mercer County, New Jersey” prepared by Langan Engineering and Environmental Sciences, Inc. (Joseph E. Romano, P.L.S.), consisting of 5 sheets dated November 12, 2021, revised through March 30, 2022
- Plans entitled “ALTA/NSPS Land Title Survey - Bridge Point 8 Industrial Park - Block 8, Lots 1, 2, 3, 12, 16, 20, 28, 32.01, 39, 40, 41, 45, 46, 47, & 49 and Block 15.14, Lots 18, 19, 20, 22, 26 & 75- West Windsor Township, Mercer County, New Jersey” prepared by Langan Engineering and Environmental Sciences, Inc. (Joseph E. Romano, PLS), consisting of 3 sheets dated November 12, 2021, revised through December 3, 2021
- Architectural drawings entitled “Proposed Elevations” prepared by Cornerstone Architects, LTD, consisting of 7 sheets, dated March 29, 2022
- Architectural drawings entitled “Proposed Floor Plan” prepared by Cornerstone Architects, LTD, consisting of 7 sheets, dated March 29, 2022
- Plans entitled “Stormwater Management Facilities Plan – Bridge Point 8 Industrial Park – West Windsor Township, Mercer County, New Jersey” prepared by Langan Engineering and Environmental Sciences, Inc. (Christian Roche, P.E.), consisting of 3 sheets dated March 30, 2022, unrevised

TOWNSHIP REPORTS

16. At the hearing, the Board considered the following reports presented by Township officials and bodies and consultants to the Board:

- Memorandum from David Novak, P.P., A.I.C.P. to the Board dated May 3, 2022
- Memorandum from Dan Dobromilsky, L.L.A. to the Board dated May 3, 2022
- Memorandum from Christopher B. Jepson, P.E. to the Board dated May 3, 2022
- Memorandum from Jeffrey A. L'Amoreaux, P.E. to the Board dated May 5, 2022
- Memorandum from Francis A. Guzik, P.E. to the Board dated May 4, 2022
- Memorandum from Chief Timothy M. Lynch to the Board dated May 4, 2022
- Memorandum from Gerald J. Muller, Esq. to the Board dated June 13, 2022

EXHIBITS AND APPLICANT'S REPORTS AND SUBMISSIONS

17. At the hearing, the Board considered the following reports and submissions prepared by the Applicant's consultants and advisors and the following exhibits that were introduced as evidence during the course of the hearing:

Exhibits

- Exhibit A-1 – Vicinity map
- Exhibit A-2 – Subdivision map
- Exhibit A-3 – Phase 1 rendering
- Exhibit A-4 – Plan Rendering Phase 1 and 2
- Exhibit A-5 – Constraints Exhibit Existing Condition
- Exhibit A-6 – Constraints Exhibit Proposed Condition
- Exhibit A-7 – Truck Auto Circulation
- Exhibit A-8 – Pedestrian Bicycle Circulation
- Exhibit A-9 – Sections
- Exhibit A-10 – Plant Palette
- Exhibit A-11 – Lighting
- Exhibit A-12 – Soundwall
- Exhibit A-13 – Peak Hour Truck/Auto Distribution
- Exhibit A-14 – Building B-1 Elevations
- Exhibit A-15 – Materials Board
- Exhibit A-16 – Proposed Elevations, Entry Perspective

Reports and submissions

- Report entitled “Environmental Impact Statement for Bridge Point 8 Industrial Park - Block 8, Lots 1, 2, 3, 12, 16, 20, 28, 32.01, 39, 40, 41, 45, 46, 47, & 49 and Block 15.14, Lots 18, 19, 20, 22 & 75- West Windsor Township, Mercer County, New Jersey” prepared by Langan Engineering and Environmental Sciences, Inc. (unattributed), dated March 30, 2022
- Report entitled “Overall Stormwater Management Report - Bridge Point 8 Industrial Park - West Windsor Township, Mercer County, New Jersey” prepared by Langan Engineering and Environmental Sciences, Inc. (William Boska, P.E. & Christian Roche, P.E.), dated November 12, 2021; revised through March 30, 2022
- Report entitled “Phase 1 Stormwater Management Report - Bridge Point 8 Industrial Park - West Windsor Township, Mercer County, New Jersey” prepared by Langan Engineering and Environmental Sciences, Inc. (William Boska, P.E. & Christian Roche, P.E.), dated March 30, 2022, unrevised
- Document entitled “Stormwater Maintenance Plan - Bridge Point 8 Industrial Park - West Windsor Township, Mercer County, New Jersey” prepared by Langan Engineering and Environmental Sciences, Inc. (William Boska, P.E. & Christian Roche, P.E.), dated November 12, 2021, unrevised (submitted as Appendix to Overall Stormwater Management Report)
- Report entitled “Traffic Impact Study - Bridge Point 8 Industrial Park - West Windsor Township, Mercer County, New Jersey” prepared by Langan Engineering and Environmental Sciences, Inc. (Karl A. Pehnke, P.E., P.T.O.E. & Kerry A. Pehnke, P.E.), dated November 12, 2021, revised through April 7, 2022
- Report entitled “Water System Engineer’s Report - Bridge Point 8 Industrial Park - Block 8, Lots 1, 2, 3, 12, 16, 20, 28, 32.01, 39, 40, 41, 45, 46, 47, & 49 and Block 15.14, Lots 18, 19, 20, 22 & 75- West Windsor Township, Mercer County, New

- Jersey" prepared by Langan Engineering and Environmental Sciences, Inc. (Dulce S. Miguel, P.E. & Christian Roche, P.E.), dated November 12, 2021, revised through March 30, 2022
- Report entitled "Sanitary Sewer Engineer's Report - Bridge Point 8 Industrial Park - Block 8, Lots 1, 2, 3, 12, 16, 20, 28, 32.01, 39, 40, 41, 45, 46, 47, & 49 and Block 15.14, Lots 18, 19, 20, 22 & 75- West Windsor Township, Mercer County, New Jersey" prepared by Langan Engineering and Environmental Sciences, Inc. (Dulce S. Miguel, P.E. & Christian Roche, P.E.), dated November 12, 2021, revised through March 30, 2022
 - Report entitled "Soil Logs and Permeability Test Results – Proposed Warehouse Development – Bridge Development Partners, LLC – West Windsor, Mercer County, New Jersey" prepared by Melick-Tully and Associates (Anthony G. DeZzeno, P.E., Christopher P. Tansey, P.E. and Mark R. Denno, P.E.), dated November 11, 2021 (submitted as Appendix to Overall Stormwater Management Report)
 - Photo Report prepared by Langan Engineering and Environmental Sciences, Inc., undated, consisting of 147 color photographs and a "Photo Map" showing the locations and view directions of the various photographs, dated November 12, 2021;
 - Document entitled "Engineer's Estimate – Bridge Point 8 Industrial Park – West Windsor Township, Mercer County, New Jersey – Overall Site Improvements" prepared by Langan Engineering and Environmental Sciences, Inc. dated February 15, 2022
 - Document entitled "Engineer's Estimate – Bridge Point 8 Industrial Park – West Windsor Township, Mercer County, New Jersey – Site Improvements Within Right-of-Way" prepared by Langan Engineering and Environmental Sciences, Inc. dated February 15, 2022
 - Document referenced "Authorization for Freshwater Wetlands Letter of Interpretation – Extension" issued by NJDEP under File No. 1113-10-0001.1, Activity Number: FWW150001 to Howard Hughes Corp., dated January 22, 2016, referencing each of the Block/Lots involved in this application plus Lot 26 in Block 15.14 and indicating an expiration date of December 19, 2020
 - Document referenced "Freshwater Wetlands Letter of Interpretation – Line Verification" issued by NJDEP under File No. 1113-10-0001.1, Activity Number: FWW-FWL14-100001 to General Growth Properties, Inc. / Former Wyeth Tract, dated December 20, 2010 referencing each of the Block/Lots involved in this application plus Lot 26 in Block 15.14 with the approved wetland delineation plans dated June 30, 2010, revised through November 12, 2010, consisting of a Key Plan and 7 detailed sheets
 - Application package for NJDEP Freshwater Wetlands General Permits, Transition Area Waiver (Buffer Averaging), Flood Hazard Area Verification (Methods 1 & 6) and Flood Hazard Area Individual Permit prepared by Langan, dated November 12, 2021, revised March 30, 2022
 - Application package dated November 11, 2021, revised March 29, 2022, including:
 - Application form with Rider
 - Site Plan and Subdivision Checklists
 - Green Development Practices Checklist
 - Ownership Certification

- Agreement to Pay for Professional Review and Inspections form and W-9
- Tax Collector's Certification that taxes are current
- Title Report

TESTIMONY AND PUBLIC INPUT

18. The testimony presented by and on behalf of the Applicant was given by the following persons:

Christopher H. DeGrezia, Esq. represented the Applicant. John Porcek, Executive Vice-President of Bridge Industrial; Karl Pehnke, P.E., its traffic engineer; John McDonough, L.A., P.P., its planner; Bryan Waisnor, P.E., its project engineer; Benjamin Mueller, P.E., its acoustical expert; and Michael Baumstark, R.A., its architect testified on the Applicant's behalf. The Applicant's witnesses' testimony is summarized below.

19. The following Township staff and professionals gave advice to the Board at the hearing:

David Novak, P.P.; Dan Dobromilsky, L.L.A.; Francis A. Guzik, P.E.; Jeffrey A. L'Amoreaux, P.E.; Christopher B. Jepson, P.E.; Gerald J. Muller, Esq. and Martina Baillie, Esq.

20. Fifty members of the public made statements during the course of the hearing. The statements are summarized as follows¹:

- Kip Cherry, Sierra Club, 145 Hanover Street, Trenton, noted that there are some economic benefits from the proposed project but also very concerning environmental impacts from the congestion. Ms. Cherry offered several conditions for the Board's consideration, including preparation of an access management plan, automated arrival and departure system, additional storm water management, additional solar and green infrastructure, and use of best practices to reduce diesel truck emissions.
- Doreen Garelick, 24 Indian Run Road, referred to the Stipulation of Settlement and Consent Order, noting the intent of the planned commercial district listed in Exhibit E, and urged the Board to consider other permitted uses for the Site.
- Lynda Benedetto, General Manager of Quaker Bridge Mall, representing Simon Property, noted an error in the Applicant's traffic testimony, that the number of parking spaces in the Mall is 5,545, not over 6,400. Ms. Benedetto commented that the landscaping along Quakerbridge Road is not adequate and would be unsightly. She commented that the plans

¹ The addresses of the speakers, where given by the speaker, are in West Windsor, except where noted. Where no address appears, it was either not given by the speaker or could not be discerned from the audio recording of the hearing.

presented to the Mercer County Board of Commissioners by Mercer County staff, entitled Bridge Point Eight Industrial Park West Windsor New Jersey, contained inaccuracies [the Applicant noted that it was not involved with the creation of that document and was not contacted about it], including that the incorrect designation of the flyover bridge connecting the Mall to U.S. Route 1 as State-owned, whereas it is privately owned by the Mall.

- James Mitchell, of Hambro & Mitchell, 12 Stulz Road, Dayton, appeared to represent the owners of Block 8, Lot 13, asked on behalf of his clients whether the proposed road improvements would in any way restrict the access to Lot 13. Mr. Pehnke clarified that the improvements along Clarksville Road would not extend to that property, and would not cause any restrictions. Mr. Mitchell also asked that the connector portion of the Duck Pond Interceptor be completed by the time of the first building permit. Mr. Guzik agreed to recommend this as a condition to the Board.
- Joanne Pannone, 215 Meadow Brook Road, Robbinsville, Chair of the New Jersey Sierra Club Mercer County, expressed concern about the dangers to pedestrians from the development, the air quality impact and need for more trees to help offset greenhouse gas emissions.
- John Mulcahy, 2 Hereford Drive, Princeton Junction, expressed concern about safety resulting from increased truck traffic particularly for children, and recommended banning trucks on Clarksville Road and other municipal roads and also having a speed bump in front of Maurice Hawk Elementary School.
- Warren Mitlak, 5 Stonlea Drive, stated that the proposed project would not be good for the residents or businesses of West Windsor, the increased trucks would make the roads more dangerous, and reduce the quality of life and make West Windsor less desirable.
- Bruce Perrine, Village Road West, expressed support for the project, commenting that it would not increase the tax burden or require more municipal services, and it will create more jobs and tax revenue.
- Leo Dias commented on the environmental and health damage from carbon emissions and asked whether the Applicant had provided any calculation of the potential air pollutants from the project and whether a more comprehensive look at the air quality impacts from the project had been done.
- Jeffrey Shore, 9 Strathmore Place, asked how old the storm water management studies that were done for the application were and what is being done to anticipate ever-changing climate conditions. He asked whether the project was not in violation of the terms of the ordinance and settlement agreement. Mr. Shore also expressed concern over road safety from increased truck traffic.
- Max Deetjan, 14 Indian Run Road, asked who owned the Clarksville Road Bridge over Amtrak and expressed concern over the detour that would occur during the reconstruction of the Bridge.

- Sophie Glovier, 31 Titus Mill Road, Pennington, Watershed Institute, asked how the project's proposed storm water management system would handle 9.3 inches of rain, the current the 100-year storm rainfall, and how it would handle extreme precipitation, and what would happen if the infiltration basins do not function and there is an overflow.
- Alexandria Iturriza, 31 Arnold Drive, requested clarification as to which roads the trucks could use and which jurisdiction would be responsible for maintenance of the improved Clarksville Road. She asked whether West Windsor had considered purchasing the Site for open space.
- Maya Kamath, 14 Shadow Drive, expressed concern over road safety and increased air pollution, and asked when the traffic studies were done.
- Anthony Eltvedt, 10 Windsor Drive, Princeton Junction, expressed concern about safety around the schools and other facilities and asked what safety measures would be in place on the Clarksville Road crossing.
- Jonathan Sasportas, Sapphire Drive, expressed concern about increased traffic as a result of the project and asked whether more solar infrastructure could be provided to offset the environmental impacts.
- Toby Arias, 20 Indian Run Road, Princeton Junction, expressed concern about trucks coming south on Clarksville Road, into the warehouse site and the impact on the schools in West Windsor of trucks going by.
- Jordan Hoogsteden, 2 Edith Court, Princeton Junction, requested clarification as to the length of widening of Clarksville Road, and whether there could be further widening. He expressed concern over the safety of the roads.
- Benjamin Trokenheim, 7 Fairway Drive, West Windsor, expressed concerns over the increased truck traffic, safety and potential for accidents.
- Gary Patton, 207 Trinity Court Apartment, West Windsor, compared the proposed plan to the Seabrook New Hampshire Nuclear Power Plant to illustrate “unrealistic optimism about possible benefits” of the proposed project.
- Khurram Waheed, 286 Clarksville Road, queried why the settlement agreement had been signed without any consideration of public opinion, whether any other business alternatives had been discussed with Atlantic regarding use of the property, and whether a feasibility report was done with respect to the tax impact of the project, and the cost of the new utilities.
- Benjamin Finkelstein, 43 Arnold Road, asked whether public opinion would be considered in this application and if any aspect could be put to a referendum.
- Stacy Karp, 37 Cartwright Drive, queried what consideration had been given to pedestrian safety and how the restriction of trucks on Clarksville Road would be enforced.

- Lakumi Dias, 19 Saratoga Drive, urged the Board to consider the health impacts of the development and consideration of an alternative open space acquisition.
- Stacey Fox, 29 Berrien Avenue, expressed concern about the manner of public hearing regarding the settlement agreement, about the lack of analysis of the impact of gas emissions on school children, and asked how much Clarksville Road would be widened to accommodate the project.
- Ajay Kaisth, 20 Haskel Drive, expressed concern about the negative impact of the project on the character of West Windsor, on property values and quality of life, and asked whether the trucks would be allowed on Village Road.
- Tirza Wahrman, 5 Stonlea Drive, asked about the status of the Applicant's DEP applications.
- Niyatendra Tripathy, 4 Plymouth Road, expressed concern over the impact of an increased labor pool on the housing stock, and over the effect of smaller supply trucks accessing the warehouse.
- Kristine Flynn, 8 Sapphire Drive, expressed concern over the affect of the project on emergency response times for emergency vehicles, and on how the limits on truck routes would be enforced.
- Catherine Bernard, 18 Birchwood Court, asked whether there had been any study of the impact of the project on home values and property taxes in the Township and commented that a councilwoman who ran alongside the Mayor in the last election had represented that no warehouses were planned for the Site.
- Kevin Ranallo, 106 Harris Road, asked for clarification on whether signage prohibiting trucks from turning onto Clarksville Road in the direction of West Windsor could be enforced by the Township, and also required what measures would be taken to increase safety for traffic coming off U.S. Route 1 onto Quakerbridge Road.
- Padma Katapalli, 41 Ketley Place, inquired whether the West Windsor school district administration was informed about the project and what consideration had been made with respect to pedestrian and bicycle safety along Clarksville Road, especially in the vicinity of the schools.
- Prathima Ignatius, 353 Clarksville Road, stated that the project would cause residents to leave West Windsor and urged the Board to deny the project.
- Paul Larson, 170 Darrah Lane, Lawrence Township, commented on the impact of the truck traffic from the project on Lawrence Township and expressed concern about certain historical monuments around Quakerbridge Road that had disappeared.
- Lynda Levy, 6 Lancashire Drive, commented that residents were not really aware at the planning stage of the project about the impact the trucks would have on West Windsor, and that the impact would cause a "mass exodus" out of West Windsor. She queried what impetus the county would have to prohibit truck traffic along Clarksville Road.

- Willa Inlender, 3 Carlisle Court, Princeton, expressed concern that if the Board approved the project, it would be hard for the County to stop its progress, the cons of the project outweigh the pros, and she urged the Board to consider the legacy of approving the project.
- Noah Levy, 6 Lancashire Drive, noted that he is an experienced transportation engineer, expressed disbelief over the proposal to construct four intersections within a two-mile portion of the Site, expressed skepticism that trucks would honor signage restricting traffic on Clarksville Road, and asked the Board to restrict use of jake breaks by the trucks due to their noise level.
- Amy Hoffman, 7 Fairway Drive, expressed skepticism that truck travel could be restricted on Clarksville Road, and urged the Board to consider the impact on safety of the project.
- Allison Miller, 41 Windsor Drive, expressed concern over pedestrian safety on Clarksville Road and the need for truck speed limits to be enforced, and asked how truck traffic could be kept away from the intersection of Cranbury Road and Clarksville Road.
- Judi Strober, 5 Quail Ridge, stated that she opposed the application and questioned why no other uses had been considered for the Site.
- Leslie Dias, 19 Saratoga Drive, asked whether consideration was given to other permitted uses on the Site and urged the Board to deny the application.
- Brunda Dias, 19 Saratoga Drive, urged the Board to consider the impact of the project on the homes of West Windsor residents.
- Florence Deetjen, 14 Indian Run Road, urged the Board to deny the application due to the impact on the residents and the town, and especially younger generations.
- John Vidulich, 27 Arnold Drive, urged the Board to consider the health and safety of the community.
- Ana Lomba, 2 Hereford Drive, expressed concern that the quality of life in the Township would go down as a result of the development.
- Paul Meers, 29 Berrien Avenue, expressed concern over the impact of diesel exhaust and emissions on the community.
- Francois Guillemin, 554 Meadow Road, expressed concern about the monolithic character of the project and lack of diversification of use.
- Justin Richmond queried how the Township would work with the County.
- David Cook commented on the value of open space.
- Victor Wei stated that the Mayor should not be permitted to vote on the application because he runs a warehouse and questioned the validity of the traffic counts and traffic analysis,

querying why traffic counts for Princeton Hightstown Road, Clarksville Road North and Village Road were not included.

- Sridhar Yada, 357 Clarksville Road, urged the Board to consider the residents' concerns and emphasized the importance of keeping trucks off Clarksville Road.

Testimony of Applicant Witnesses

John Porcek, Executive Vice-President of Development for Bridge Industrial

21. *Background and Qualifications*. The following testimony by Mr. Porcek, duly sworn, is summarized: Mr. Porcek testified that he has been in the construction development business for over 35 years, most of which has been in the industrial space. Bridge Industrial ("Bridge") was founded in 2000, now with several U.S. offices and most recently growth into the U.K., and has developed over 67 million s.f. of industrial space throughout the country. Bridge's focus is strictly industrial. It develops, leases and manages property, and also has an in-house property management division.

22. Mr. Porcek testified that West Windsor is "an extremely great location for industrial [development]" due to the robust roadway network and interconnectivity with the interstate and roadway network. He explained that this project is a collaboration with Atlantic, from which the property will be leased, with Bridge managing the property long term. Bridge will have a ground lease from Atlantic and will own the buildings, which will be rented to tenants.

23. Mr. Porcek stated that many meetings have taken place over the past nine months with the municipality's Technical Review Committee ("TRC") to discuss the plans and make modifications based on feedback, such as extensive landscaping (addressed more fully in Mr. Waisnor's testimony below), and other components of the project described below.

24. Mr. Porcek described the approach of building "on spec," meaning that tenants are attracted at some point during or after the construction, but generally not before. He testified that Bridge builds on spec because it gives it the ability to show prospective tenants how the facility will operate and look, as tenants do not necessarily have preconceived ideas of what they need. Examples of tenants include a company called Boxed at a storage/distribution facility along Route 78, the apparel company Uniqlo, a beverage distribution company called Mark Anthony Brands, and Scott's Lawn and Garden products. Bridge seeks financially stable and long-term tenants. The buildings are usually leased as soon as significant earth work and construction is

begun, at which point a leasing package is prepared. In other words, the building is already leased during construction. The buildings can be devised to accommodate multiple tenants, or a single tenant, with the minimum subdivision of a building being around 200,000 s.f. The proposed warehouses are contemplated as dry storage.

25. Mr. Porcek conjectured that Phase I could take two years to complete and Phase II would be another two years, with construction of the buildings to occur sequentially, from building to building. The intent would be to come back for Phase II final approval once construction on Phase I has begun.

26. Bridge would provide property management, including maintenance, landscaping, snow plowing, etc. Trash removal would be left to tenants. Mr. Porcek confirmed that the use would be strictly storage and distribution.

Bryan Waisnor, P.E., Langan Engineering and Environmental Services, Inc.

27. Qualifications and Background. The following testimony by Mr. Waisnor, duly sworn, is summarized: Mr. Waisnor testified that he is a licensed professional civil engineer in New Jersey whose license is current, with an M.S. in Civil Engineering from Virginia Tech and 25 years' experience at Langan practicing civil engineering on industrial projects. The Board accepted Mr. Waisnor as an expert witness.

28. Mr. Waisnor described the property with reference to an aerial photo in Exhibit A-1, including the configuration of tax lots, aspects of the prior facility operated by American Cyanamid (including now decommissioned wells and treatment plant), and the zoning, noting that warehouse and distribution uses are encouraged within the part of the district away from the U.S. Route 1 corridor, which is intended for the retail and commercial development.

29. Mr. Waisnor described the proposed subdivision with reference to Exhibit A-2, distinguishing the warehouse lots from the five "red" lots along Quakerbridge Road and Route 1 for commercial development at a later stage. In addition, two lots will be created to allow for the construction of the Master Plan Road that will transverse the development. Preliminary names for the two portions of the road are Coleman Drive and Doherty Drive, in recognition of two local farmers. The road will be privately owned but open to the public, and may be dedicated for public use in future.

30. Mr. Waisnor took the Board through Exhibit A-3, showing Phase I of the development. The buildings are called “cross dock buildings” because there are loading docks on the two longer sides and auto/employee parking at the two ends of the building. Each is designed with office space in each of the corners to provide for the possibility of more than one tenant, with parking adjacent to the offices. The design builds in flexibility, providing good circulation so as to be able to access all ends of the building. The idea would be to work with prospective tenants to determine their office needs. Exterior features of all building corners will be the same regardless of office needs.

31. Mr. Waisnor testified that the infrastructure required for the entire project is being built as part of Phase I, with the exception of the New Jersey Department of Transportation (NJDOT or DOT) driveway to U.S. Route 1 because the DOT takes a long time and if the permit is not completed by the time Phase I is done, then the Master Plan Road would be built up to the end of Building E-1 (the warehouse closest to U.S. Route 1), whereas all the service would be provided off of Clarksville Road. Discussion of this aspect and concerns expressed by Board members as to the timing of the DOT access point was deferred to the traffic engineer’s testimony. It was also made clear to the Board members that exclusion of the U.S. Route 1 intersection was not previously discussed with the Board’s professionals nor raised at any of the TRC meetings.

32. With reference to Exhibit A-4, Mr. Waisnor described the full build out of the Bridge Point project at the completion of Phase II, pointing out that all seven warehouse buildings are compliant with height, setback and coverage requirements. He clarified that a certain amount of infrastructure that would be anticipated for the eventual commercial development along Quakerbridge Road, such as traffic, water and sewer, is being “baked into the warehouse development.”

33. Mr. Waisnor described the environmental constraints, as shown in Exhibit A-5, such as the Greenbelt located in the northeast corner, wetlands as confirmed by a DEP LOI (in connection with which an application was filed prior to the current LOI expiring in March 2022) and much of which overlaps with the Greenbelt, groves of trees south of Clarksville Road, a flood hazard area at Duck Pond Run, and a Ground Water Classification Exception Area (CEA). Using DEP and FEMA models as a baseline, the flood hazard elevations were modelled to show the extents. Mr. Waisnor noted that the DEP determined there to be no threatened or endangered species on the site. Exhibit A-6 shows the environmental constraints overlaid on top of the site plan, and that the location of the Master Plan Road was driven by the constraints. Mr. Waisnor emphasized that avoiding the environmentally sensitive areas was of paramount importance.

There are minimal crossings where the Master Plan Road runs through the Site. Some floodplain impact is expected with respect to the widening of Clarksville Road, and there will be storm water outfalls, but the Applicant had applied for DEP permits to impact the wetlands and put in these outfalls. So that's all part of the DEP application that's pending that was submitted in March.

34. Mr. Waisnor explained that minor disturbance is expected from the sewer line being put in as part of the Duck Pond Run Sewer Interceptor, which will provide a possible sewer connection for the athletic club east of the Site, and the installation of a walking trail shown in the Master Plan that would connect with other potential walking trails in the Duck Pond Run watershed area. 173 acres out of the 539 acres being developed will be completely untouched, about a third.

35. Mr. Waisnor described the Truck Auto Circulation exhibit, A-7, illustrating the parking areas and circulation, and how traffic will flow through the site, as further discussed by Mr. Pehnke, summarized below. The Master Plan Road is envisioned as one lane in each direction with a center median or turn lane for turning movements all the way down to Avalon, and shoulders. Each building will have circulation driveways around it that could be shared by cars and trucks, but there are also dedicated truck driveways for trucks only as it is preferable to keep automobiles and trucks separate. Mr. Waisnor explained that the colors on the Exhibit show the different areas for car versus truck parking, and pink areas are trailer parking areas. He illustrated the movement of trucks waiting to go into the dock or being stored, waiting to get loaded up. The green areas are the loading docks, where the trucks would back up so that product is either loaded on or off the trucks. The yellow areas are the land banked parking spaces, of which there will be 200, and which will be left as lawn and if they are needed for parking later on, permission to build will be requested. The banked spaces were built into the impervious cover calculation even though they will not be paved. Mr. Waisnor testified that the proposed number of parking spaces, 2,201, was based on the industry standard of approximately one space per 2,500 s.f. of warehouse space, significantly higher than the ordinance standard of one space per 5,000 s.f. of warehouse space, which is a set standard, not a minimum or maximum, and that the proposed number was worked out with municipal staff. The parking is allocated proportionally to each building. By land banking 200 spaces, the proposed number of parking spaces is actually closer to the ordinance standard.

36. Mr. Waisnor described two additional driveways proposed for Building D1 on the north side of Clarksville Road and one on the south side of Clarksville Road for Building B2-1. These

would not permit left turns out onto Clarksville Road, only left turns in and right turns in, and right turns out. Mr. Waisnor testified that there would be no restriction on cars and trucks entering any specific driveway shown on the plan. He conjectured that for Buildings C1 and E1, because the driveways onto Clarksville Road align with the auto parking, they are more apt to be used by automobiles than trucks, which would more likely use the traffic signal at the Master Plan Road/Clarksville Road intersection to access the loading docks because they could do so without going through auto parking areas. It is noted that the Board imposed several conditions with respect to this aspect of the plan, as noted in the Findings below.

37. Mr. Waisnor testified that a 10-foot-wide bike path would be constructed in accordance with the County Mobility Plan and would run the length of frontage along Clarksville Road and along Quakerbridge Road up to the U.S. Route 1 interchange. In response to a Board member's question, he agreed that the Applicant would look into having the path commemorated in some way and connecting it to the existing sidewalk that crosses the Amtrak line.

38. Storm water management. Mr. Waisnor described the stormwater management plan in some detail, with reference to Exhibit A-4. Mr. Waisnor described the plan as a "very robust storm water system" due to the significant amount of environmentally sensitive areas and the fact that the Site uniquely drains both to the northeast to Duck Pond Run and to the south east Shipetaukin Creek. The following are proposed: 104 storm water features on the Site. That includes 82 small scale bioretention basins, of which 64 recharge directly into the ground and 18 have under drains. Three large scale infiltration surface basins are proposed, the locations of which were determined by the existing conditions and the way the storm water flows. Two constructed wetlands; two large scale subsurface basins and 15 different areas of permeable pavement that cover approximately 11.5 acres. That permeable pavement is about 70% of the trailer parking, meaning the trailer portion of the trucks, not the trucks themselves. It would be concrete, but the water that runs onto it would either recharge into the ground or recharge by filtering through an under-drain that would take it to another one of the features.

39. This proposed storm water management plan "significantly exceeds" the DEP and the Township's recharge quality and quantity requirements. It was calculated that 10 million cubic feet of water falls and goes into the ground annually, whereas 12,300,000 cubic feet of water would be recharged annually with this project – about 23% more – by capturing the water and putting it in certain areas to be able to percolate into the ground.

40. In terms of quality, DEP regulations require 80% of “total suspended solids” (“TSS”) to be removed, DRCC requires removal of 95% of TSS during the water quality storm event, and the project is actually removing 100% of TSS from what goes to the Delaware and Raritan Canal. This is achieved by building oversized basins that will soak up all the water so that there is no discharge to the system from the water quality storm. “We’re essentially absorbing the water quality storm instead of sending it off site.” That is achieved through bio-retention basins and large infiltration basins and through permeable pavement.

41. While some storm water facilities will be shared by Phase I and Phase II, all of the Phase I infrastructure being built will be compliant with recharge, quality and quantity requirements.

42. In terms of quantity, which has to be measured as well, the proposed storm water infrastructure will decrease the volume of storm water that goes into Duck Pond Run by 80% by directing it into the basins and into the ground. The standard reductions required for the 2-, 10- and 100-year storms will be exceeded. For example, on the north side of the Site, for the 100-year storm, only 12% of what goes there today will be discharged, compared to the 80% permitted.

43. Mr. Waisnor commented on the two storm water-related waivers being requested with respect to the shape of the basins and limit on how much of the basin may be within the front yard buffer. Regarding the shape of the basins, while not in strict compliance, the proposed plan meets the intent of the ordinance because the basins will be planted with many shrubs and trees within the basin itself. So, while they will function as basins, they will not appear as unnatural rectilinear features dotted throughout the project. With respect to the buffers, the reasons that the basins along Clarksville Road fall more than 50% within the buffer is that they will be taking runoff from Clarksville Road into the basins, treating the storm water at the source, rather than having to move the water across the site. In addition, a lot of planting and berms are proposed between Clarksville Road and the building, which would not be possible if the runoff had to be redirected. So, there will be a sufficient buffer and the basins will serve an important storm water function in their proximity to Clarksville Road, meeting the intent and spirit of the ordinance.

44. Landscaping. Mr. Waisnor described the landscaping plan with reference to Exhibit A-9, showing cross-sections of Clarksville Road, the berms and basins on either side, and the front yard buffers. He said particular emphasis was given to shielding views along the public corridors and creating a holistic and attractive facility from all perspectives. Berms ranging from 10-17 feet high will be installed on either side of Clarksville Road, and vegetation will be planted on

top of those. For Quakerbridge Road, although the development along the road is not known at this time, for now both landscaping and a fence was proposed, but that will most likely be obscured by the commercial development there.

45. In total, over 20,000 new trees and 24,000 shrubs are being planted, plus many acres of meadow mix. Much of the former agricultural fields are being “reclaimed” rather than landscaped, which will be by a combination of trees and shrubs. This will actually provide more potential habitat and foraging areas for birds and wildlife in the area compared to the large farm fields there now.

46. Mr. Waisnor addressed the tree-related waivers, first with respect to the requirement to identify all trees over five-inch caliper. Rather than do this for all of the many trees on a 645-acre property, the Applicant worked with the Township to grid out a certain area to estimate the number of trees on site that would be disturbed by the project. This will provide a way to quantify the number of trees. With respect to the requirement to put four-inch caliper trees every 40 feet along the perimeters of the buildings, what is proposed are larger caliper trees planted 100 feet from the buildings, which will be proportional with the size of the buildings.

47. Lighting. With reference to Exhibit A-11, Mr. Waisnor described the proposed lighting plan. Site lighting, whether free-standing or on the building, will be 25 feet high, LED fixtures. Exhibit A-11 shows the light intensity by color, with blue along the perimeters being zero, and a few red areas being the highest intensity. There will be zero footcandles along most of Clarksville Road, where the berms will buffer the structures from the road, whereas more lighting is needed at the intersections. The parking lot areas and truck courts will have a minimum of 0.5 footcandles, as recommended by the Illumination Engineering Society of North America. The average is higher than the ordinance standard, triggering a waiver request.

48. Mr. Waisnor testified that without knowing who the tenants will be, it was hard to determine specific hours of operation and so it was not possible to state whether certain lights can be shut off. However, the overall lighting of the site is very insulated, with zero light spillage around the perimeter of the individual building lot lines. Even for Building A1 in the south eastern corner there are a few hundred feet of woods buffering the distance to the next property and no light impact on the surrounding properties is expected.

49. Utilities. The utility infrastructure will consist of a new water line that will run from U.S. Route 1 through the Site across Clarksville Road, down the Master Plan Road and to the

connection with Quakerbridge Road and Avalon Way. A replacement main that will be dedicated for public use is being installed along Clarksville Road, which is being coordinated with New Jersey American Water. Fire hydrant locations are subject to the review and approval of the municipal fire official. In terms of sewer, the Applicant will be constructing the Duck Pond Run Sewer Interceptor, which runs from just south of U.S. Route 1 to a point just north and east of the Site. The pipes will be designed to take flow from the full buildup of Phases I and II, but also the adjacent commercial space. Two pump stations are being installed. The sewer system will be privately owned and maintained, but the Duck Pond Run Sewer Interceptor will be built to Township standards and dedicated as it will serve other sites as well. All other utilities on Site, i.e., gas and electric, will be underground. The existing utility lines along Clarksville and Quakerbridge Roads will remain and be relocated.

Benjamin Mueller, P.E., Acoustical Consultant

50. Qualifications and Background. The following testimony by Mr. Mueller, duly sworn, is summarized: Mr. Mueller testified that he is a licensed Professional Engineer in New Jersey and Oregon. He has a graduate degree in mechanical engineering with a concentration in noise and vibration control from the Stevens Institute of Technology. He is with the firm of Ostergaard, an independent acoustic consultancy that specializes in noise and assisting in a variety of projects such as warehouses, generators, and dog kennels. The Board accepted Mr. Mueller as an expert witness.

51. Methodology. Mr. Mueller testified that his firm was retained to provide more detail requested by municipal staff about the noise impact of the project. He explained that he first looks for “areas of concern,” does analysis and tries to forecast what future sound emissions might be. Mr. Mueller identified as the main areas of concern the two pockets of residences to the south of the Site, both beyond the active Amtrak railroad, and a pocket of dense residences to the east.

52. Mr. Mueller described the daytime and nighttime noise State regulations, which are mirrored by West Windsor’s ordinance. From 7AM – 10PM, the permitted noise level is 65 dBs; from 10PM – 7AM, it goes down to 50 dBs.

53. Given these limits, Mr. Mueller assessed the impact of the main noise sources on site, HVAC and truck activity, starting with Phase I analysis. For Phase I, with respect to HVAC noise, assuming the system runs 24/7, Mr. Mueller testified that these do not raise a concern

given the distances of the residential dwellings from the noise source: the closest is 900 feet to the west; 1,500 feet to the south and over 2,000 feet to the east. Given those distances and taking all buildings together, Mr. Mueller testified that the levels would be below 40 dBs. With respect to the truck activity, the types of noise varies much more. There is coupling, when the trailers connect and disconnect; air brakes; backup alarms; and truck driving, a more broadband frequency. Truck court noise is estimated at roughly 74-79 dBs at a 50-foot distance. Taking Building C1, with a distance of 900 feet to the closest residences, the noise level would be fully compliant. The three buildings in Phase I are in the middle of the property, not close to any off-site receptors and virtually nothing changes as a result of the development with respect to noise impact on those properties. No mitigation would be needed.

54. With respect to Phase II, the main area of concern is Building A1 in the south eastern corner of the Site. The trailer court, the area deemed the closest position a truck of high activity would be, is about 300 feet from the nearest residence to the east, with sound levels estimated to be in the high 50s dBs without the sound barrier. The distance is about 800 feet to the nearest residence to the south across the railroad, with sound levels of about 53 dBs without the sound wall. With reference to Exhibit A-12, Mr. Mueller testified as follows: on the east side of the building at a distance of 300 feet from the nearest residences, the Applicant will be installing an approximately 470-foot-long, 20-foot-high sound wall around the trailer parking area; on the south side of the building, approximately 800 feet from the nearest residences will be a 530-foot-long 15-foot-high sound wall. With the sound wall, the sound emissions from truck activity in the truck court and dock area will be reduced to below 50 dBs. In other words, the application would be within compliance with respect to those developments. The proposed walls will not be visible to those developments. The walls will be made of concrete (or approved acoustical equal), gray in color, sufficiently dense to block sound from going through it, and tall enough to prevent sound going over in the flanking paths. The wall would not in any way amplify the sound of the passing trains. The walls are, in Mr. Mueller's view, the "safest and most uniform" type of sound mitigation measures.

55. Mr. Mueller clarified that the proposed sound walls are to address truck noise only, not the HVAC on top of the buildings. The off-site sound emission from HVAC for Phase 2 is below 40 dBs, not the same order of magnitude as intermittent truck activity. Also, the noise levels are logarithmic. To illustrate, if the HVAC of a building is 35 dBs and another building is added with the same db level of HVAC, the result is not 70 but more like 38 dBs.

Karl Pehnke, P.E. (Langan Engineering and Environmental Services, Inc.), Traffic Engineer

56. Qualifications and background. The following testimony by Mr. Pehnke, duly sworn, is summarized: Mr. Pehnke testified that he is Vice President with the firm of Langan Engineering and Environmental Services, Inc., a licensed Professional Engineer in New Jersey and numerous other states whose license is current and has 35 years of experience in traffic engineering. The Board accepted Mr. Pehnke an expert in traffic engineering.

57. Mr. Pehnke testified that he was “very familiar with the Site” and had worked with different owners of the property on planning of the Site for “probably over 17 years” and so had accumulated a lot of information about it and with the surrounding roadways. He indicated that he was also familiar with the Site because it is part of his daily commute, so he is personally familiar with the traffic patterns, flows and regulatory signs and conditions that surround the Site.

58. Traffic study. Mr. Pehnke explained that the purpose of the Traffic Impact Study is to evaluate the design and development of safe access from both an operational and geometric standpoint, and to evaluate the distribution of traffic and impact on surrounding roadways.

59. Mr. Pehnke testified that although the COVID-19 pandemic has created a “new normal” in terms of traffic volume data and that current traffic counts are still down, a significant amount of data was used to prepare the traffic study, including data from 2005, and it covers several years, including data from 2021. Mr. Pehnke clarified that pre-COVID traffic numbers were used to come up with a “very conservative look” at the projected traffic flows. Explaining the methodology, he testified that a sampling of the traffic flow was based on data from several traffic engineering sources, including for example the nearby Costco site, Quakerbridge Mall development, data collected over the years by the Delaware Raritan Regional Planning Commission (DVRPC), and the DOT. This data is then used to project the amount of traffic likely to be generated, with reference to a “source document” known as the “Trip Generation Manual,” a national database managed and published by the Institute of Transportation Engineers and relied upon by transportation professionals to prepare traffic projections for new developments. The Trip Generation Manual is based on an accumulation of traffic counts conducted at similar facilities. He explained that he then looks at existing traffic patterns and estimates where the traffic for the new project might come from, taking into account “five cardinal directions” in which traffic will dissipate and using demographic data to estimate where workers may be travelling from. Finally, the traffic is modelled to evaluate the operation of a roadway based upon its geometry. The data and projections are plugged into the model to come

up with an assessment of the relative impact of traffic from the proposed project, taking into account the different conditions projected to exist at both Phase 1 and Phase 2 so that the proposed roadway system and access will work for a full buildout. Mr. Pehnke explained that the traffic study also addresses the buildout of the commercial uses to be developed later on (but which are not part of this application).

60. In terms of assumptions about the proposed use of the facilities, Mr. Pehnke testified that the proposed warehouses fall into a category referred to as “high cube transload warehouse distribution facilities,” which are highly mechanized buildings generally requiring low levels of employment and parking, a category that “is a relatively low traffic type generator.” For the traffic study analysis to be conservative, Mr. Pehnke explained that data under land use code 150 (warehousing) was used (as published by the ITE Trip Generation), which is actually a higher level use than what is being proposed, to ensure that the road system will work and could accommodate some variation in employment levels.

61. Traffic counts. Mr. Pehnke provided the following approximate traffic counts from the traffic study, at full buildout of the 5.5 million square foot of warehouse space:

A.M. peak - 7:30-8:30*	720/hr	Vehicles travelling to the Site
	200/hr	Vehicles travelling from the Site
P.M. peak – 4:30-5:30*	280/hr	Vehicles travelling to the Site
	721/hr	Vehicles travelling from the Site

*Mr. Pehnke explained that the peak periods can vary from day to day. The evening, peak, for example, can also be 4:45-5:45PM. But the peak is generally only an hour-long window.

62. Mr. Pehnke acknowledged concerns expressed by the Board and the public about the large size of the project. In this respect, Mr. Pehnke provided some comparables to help put things in perspective. The Site, he conjectured, is probably larger than Quakerbridge Mall, Mercer Mall and Nassau Park *combined*; yet, whereas the project proposes approximately 2,200 parking spaces, Nassau Park has 4,900 parking spaces; Quakerbridge Mall has 6,650²; Mercer Mall has 2,300, and Costco has just over 750 spaces. Whereas the proposed project is expected to generate approximately 4,000-4,100 trips a day by vehicles both entering and exiting, Nassau Park generates around 19,000 vehicles entering and exiting per day; Quakerbridge Mall, when

² A correction of this figure was given by Lynda Benedetto, General Manager of the Quakerbridge Mall, who indicated in her public comments at the June 1, 2022 meeting that the number is actually 5,545 parking spaces.

fully occupied, generates over 17,000 such trips per day; Mercer Mall generates 10,000 trips per day; and Costco around the same as the proposed project, 4,000 per day entering and existing. These numbers were offered with the caveat that they do not break out the numbers of trucks going to these sites, which also are mostly retail, and Mr. Pehnke conceded that the truck numbers are not on the order of a logistics center such as the proposed project.

63. Mr. Pehnke broke down the types of vehicular traffic in terms of both trucks and automobiles, with reference to Exhibit A-13, "Peak Hour Truck/Auto Distribution," which shows both AM (blue) and PM (purple) estimates at various locations around the Site and surrounding roadways. He noted the following: in the morning peak hour heading west, 114 automobiles and 11 trucks are estimated heading towards the Site from West Windsor down Clarksville Road. In the evening in the same direction, the estimate is 33 automobiles and 17 trucks. In the opposite direction (outbound), in the morning peak hour, 29 automobiles and 11 trucks are estimated and in the evening peak hour, 109 automobiles (the highest egress of automobiles) and 16 trucks. Mr. Pehnke took the Board through several other estimates as shown in the Exhibit.

64. In answer to a Board member's question whether there is a "rush hour" for trucks, Mr. Pehnke explained that the general magnitude of the trucking distribution throughout the day is in line with the hourly basis numbers provided in Exhibit A-13, i.e. there is no truck "rush hour" so to speak, as the truck operations are fluid and flow in a more "continuous movement" throughout the day. He testified that the variable nature of the expected warehouse operations, reflecting the tenants' different operations and work shifts, will likely spread out the traffic throughout the day, "an extreme advantage" in his view. He also explained, in response to a Board member's question, that "hour by hour" data is difficult to obtain for this kind of site and traffic engineers tend to be more focused on peak hour distributions. The "hour by hour" truck traffic, he explained, would "ebb and flow" around the projected volumes provided in the traffic study.

65. A Board member expressed concern that Mr. Pehnke's traffic estimates were "optimistic" and that, given how little is known about where the trucks will be coming from and going to, if the estimated numbers of trucks travelling along Clarksville Road were slightly higher, the result would be a truck passing Maurice Hawk Elementary School "every minute," which would be "unacceptable." In response, Mr. Pehnke reiterated that the estimated distributions are "reasonably indicative" of what can be expected and opined that they are even "on the high side." He further explained that Clarksville Road is a "600 series County Route," which means that it is a permitted truck access route and that under New Jersey law, trucks are permitted to use the quickest route to the national highway access road. He testified that although there is

currently an 18-ton restriction on the road, that restriction is expected to be lifted upon the reconstruction by DOT of the bridge over Amtrak sometime in the next several years, but this expected change was factored into the traffic study. He testified that the replacement of the bridge and lifting of the 18-ton weight restriction would probably be coincident with the completion of the Applicant's first or second building. Until the restriction is lifted, trucks over 18 tons cannot travel on Clarksville Road.

66. Mr. Pehnke reiterated that the estimates presented in Exhibit A-13 are based on ITE standards and demographic data as to where people live and come to work at this location. The truck estimates also factor in the "positioning of this [project] in the market," with some interaction anticipated with industry in Cranbury, connectivity to Route 33 and shore points of Manalapan and Freehold and the I-295 corridor. He concluded, "you can see quickly how that 700 or 800 vehicles dissipates to the road system relatively quickly, which starts to minimize and reduce the point load of traffic impacts of this project," one of the advantages of the location of the site. The projected traffic flows as shown on Exhibit A-13, while there could be some variation as with any project, are a "reasonable estimate" and the "general orders of magnitude [and] distributions are based upon the best available data and are reasonably representative of what we can expect of this project."

67. *Road Improvements.* Mr. Pehnke testified that the Applicant had met with DOT and submitted an access and street permit application; had met with and submitted an application to Mercer County; and met with municipal staff professionals and incorporated their feedback into the project design and proposed road improvements. He indicated that elements of the County mobility plan were also incorporated, such as the bicycle plan, as illustrated by Exhibit A-4. These elements also include the widening of Clarksville Road along the Site frontage, which is about a mile long, to accommodate five lanes plus shoulders so that there will be a center turn lane with grass medians at appropriate locations, two travels lanes along Clarksville Road leading to and from the Site, and a 10-foot shoulder on either side of the road. Bicycle and pedestrian traffic will be accommodated by 5-foot grass strip and 10-foot path along both sides of Clarksville Road. Additional widening of Quakerbridge Road is proposed to address substandard conditions at the intersection of Quakerbridge and Clarksville Roads, such as the left turn onto Clarksville Road. A third lane will be added along Quakerbridge Road with a 10-foot shoulder along the entire frontage, and further widening to add a bicycle/pedestrian path.

68. The Quakerbridge Road signals at the intersections with Clarksville Road and Avalon Way will be reconstructed to modern standards, to properly accommodate pedestrian crossing.

The intersection of Quakerbridge and Clarksville Roads will be improved by lengthening the left turn storage lane and creating a double left turn, which will result in better operation. Mr. Pehnke testified that the current Level of Service (“LOS”) at the Clarksville Road and Quakerbridge Road intersection is LOS E, although there are some LOS F for the left turn movement onto Clarksville during peak hours, with LOS F being the worst and LOS A the best. The proposed widening and reconfiguration of that intersection and reconstruction of the signal will bring the operation to LOS C and D, and the LOS F at the left turn movement will be eliminated.

69. No new traffic signals along Quakerbridge Road are proposed, although Mr. Pehnke noted that the traffic study addresses a potential signalization at the Lawrence Station Road intersection, which is affected by a pending separate land use application.

70. Master Plan Road/Route One Access Point. The summary of the following testimony by Mr. Pehnke is prefaced by noting that the Board imposed several conditions with respect to truck traffic on Clarksville Road and the timing of the Master Plan Road connection that materially modifies the proposed plan as described by Mr. Pehnke.

71. Mr. Pehnke testified that the service road on the northbound side of U.S. Route 1 that ends just south of the Nassau Park “jug handle” is being extended about 2,000 feet north just past the Extended Stay America Hotel on U.S. Route 1, creating over half a mile of an auxiliary lane coming out of the Quakerbridge Road interchange. An acceleration/deceleration lane will be constructed between the acceleration lane at Quakerbridge Road and the deceleration lane at the Master Plan Road.

72. A signal will be constructed at the intersection of Clarksville Road and the Master Plan Road for the safe movement of traffic in and out of the Mater Plan Road, which will serve as a right-in/right-out for U.S. Route 1 access. Mr. Pehnke stated that the main access connections for the Site are Clarksville Road and Quakerbridge Road, which service the regional roadway network. He explained that some driveway connections from the warehouses onto Clarksville Road are proposed, which would permit only left turns in and right-turn out, but no left turns out.

73. Mr. Pehnke testified that the Applicant intended to build once approvals for the proposed roadway infrastructure had been obtained but, in his view, not all the infrastructure was needed on day one. The DOT approval, he indicated, could take anywhere from one to three years. He testified that the Clarksville and Quakerbridge interchange “can handle full build out of Phase 1 and Phase 2 without the connection to Route 1,” a connection that becomes more important with the construction of the offices and hotel anticipated in Phase 3, (which is not part of this

application). This would avoid the Applicant being held up from starting any buildings “subject to an agency [DOT] that has no time clock.” He testified that this would not change the traffic estimates [as shown on Exhibit A-13] as the traffic would instead use the Quakerbridge Road interchange, and that intersection was tested to confirm it could continue to operate at the expected levels, information that was provided to Mr. L’Amoreaux, the municipal traffic consultant, to be verified. In other words, according to Mr. Pehnke, there would be no spillover on Clarksville Road if the Master Plan Road connection were not available, as trucks would “come down and use Quakerbridge Road and use the slip ramp onto U.S. Route 1 north instead of direct right out.”

74. When pressed by a Board member on his opinion that the facility could still operate without the U.S. Route 1 connection even though trucks would take the next most direct path to a terminal, Mr. Pehnke denied that it would make much difference not to have the U.S. Route 1 access for a full Phase 1 and Phase 2 buildout. He stated that this is because, in terms of percentage, that component of the traffic flow does not represent a large impact. Without the Master Plan Road, trucks would come down Clarksville Road and instead use the Quakerbridge Road interchange “until such time as we get the connection completed.” Trucks coming from the east side of the development would use the Avalon Way connection at Quakerbridge Road and travel across Quakerbridge Road. “[B]ut the volumes that we’re looking at and evaluating just won’t change the needle in terms of operations.”

75. Mr. Pehnke denied that without the U.S. Route 1 access completed all the truck traffic would be forced onto Clarksville Road. He stated, “[t]here’s no argument that [the Master Plan Road-U.S. Route 1 access] is part of the ultimate design and solution of the project we’ve embraced that we agree to but it is not the primary point of access to this property and it is not a critical component to the development of this property....If you don’t have the Route 1 access, this project still works.” He went on to explain, “[t]he problem is the development timing. It takes time to get permits, particularly for some particular agencies....So all we’re requesting is the recognition and the ability to move forward with construction while we pursue those permits....” In operational terms, this means that, until the Amtrak Bridge is reconstructed and the 18-ton restriction on Clarksville Road is lifted, 100% of the traffic will go west on Clarksville Road towards Quakerbridge Road because there is no other way out of the Site.

76. When asked whether there was a chance that the DOT would deny the U.S. Route 1 access permit, Mr. Pehnke testified that while the Commissioner of Transportation reserves the right to deny access on a highway, even if a developer is entitled from the frontage, a decision

that trumps local jurisdictions, this developer has 1,800 feet of U.S. Route 1 frontage and it meets all their criteria for access along Route 1. So, “there is really no reason to deny a permit.”

77. Clarksville Road. Several Board members stated that they did not wish to see trucks coming from the Site and going through West Windsor Township. The Board Chair, Mr. O’Brien, summarized the concern: “I would say categorically, we do not want the trucks from this project going northbound [sic – the direction is actually eastbound] onto Clarksville Road and passing an elementary school and a high school and many private residences.” He asked the Board Attorney, Mr. Muller, to comment on the potential to prohibit truck movement from the development onto Clarksville Road. Mr. Muller indicated that the Board has jurisdiction over the access points with respect to the site plan and has the power to impose conditions establishing the directions that trucks can go from the site, so that trucks could be prohibited from turning eastbound onto Clarksville Road out of the development. Mr. Muller indicated that the best course of action would be for the Township to adopt an ordinance to this effect.

78. Mr. Pehnke stated that the County would have to agree to such a restriction as the County has jurisdiction over Clarksville Road. He testified that, if for some reason the County did not concur with a restriction, then the Applicant would be “caught between two jurisdictions.” It would require action from both the Township Council and the County governing body. He testified that the Applicant would agree to signage restricting truck access on Clarksville Road and to Title 39 enforcement, but it would be up to the Council and the County to adopt implementing resolutions. The concern, he explained, was that restricting truck movement on Clarksville Road could lead to “unintended consequences” of trucks travelling in a way that was not in the proposed design. In his view, there is “really no safe way to try to start physically prohibiting trucks from turns.” You would have “trucks that start to do maneuvers that are unsafe and you’ll have trucks that end up overturning and or running over the curb.” He also testified, in response to questions from Board members about whether traffic in the other direction, i.e. coming from Princeton-Hightstown Road down Clarksville into the Site, could be restricted, that this aspect could not be controlled by the Applicant, only the outbound traffic could be controlled. “[T]here is really no way to control the inbound traffic,’ he testified.

79. Site circulation and parking. Regarding access driveways from the Master Plan Road and separation of auto parking from the functional aspects of the warehouse, Mr. Pehnke referred to the testimony of Mr. Waisnor, describing it as “very standard and typical.” He elaborated on the proposed number of parking spaces, where 2,201 spaces are proposed, of which 200 will be

banked, whereas a maximum of 1,754 are permitted under the ordinance. Mr. Pehnke stated that the ordinance is “a little bit on the lower end of what generally is done,” and the greater number is designed to provide flexibility for the various types of tenants that could be expected at the site. Using ITE data, the projected number of parking spaces would be 2,170, close to the 2,201 proposed, which will provide for greater safety and a more successful project. Mr. Pehnke confirmed that the Applicant is meeting the required number of Electric Vehicle (EV) charging stations and handicap accessible spaces.

Michael Baumstark, R.A., Architect

80. Qualifications and Background. The following testimony by Mr. Baumstark, duly sworn, is summarized: Mr. Baumstark testified that he is a principal at Cornerstone Architect, is a registered architect in New Jersey whose license is current, and has appeared before 20-25 agencies. The Board accepted Mr. Baumstark as an expert witness.

81. Mr. Baumstark described the proposed design with reference to an Exhibit showing Building B1 in color. He explained that the buildings were designed for “high institutional grade quality” to attract high quality tenants and longer leases. The buildings will be LEED certified, with lighting to be LED and all HVAC equipment to be code compliant and energy efficient. The buildings will be solar ready, which Mr. Baumstark explained meant that the buildings will be designed to hold solar panels at 100% of areas not used for other equipment such as air conditioners, exceeding the 40% required by regulation. He testified that the actual incorporation of the solar systems will be evaluated as tenants are identified.

82. Mr. Baumstark described the interior construction with reference to a material board Exhibit A-15. Each building is designed with pre-cast insulation and will be constructed with insulated concrete pre-cast panels. There will be vertical and horizontal reveals with bump out features on all sides. The color scheme will be shades of gray and there will be glass corner features at the location of the offices. The installation of clear story windows will provide natural light throughout the facility. The loading docks will be insulated by a seal so that when trucks back into them no air will escape from the building.

83. Mr. Baumstark testified that there would be three types of signage, monument, instructional and building/address signage. The monument and instructional signage will be on a concrete pedestal base, with masonry features and metal. The raised lettering will be metal or plastic and the signs will be illuminated. The signage on the building will be determined by the

tenants and could be plastic or metal but will not be illuminated. Tenants would be expected to conform to the sign plan proposed with this application, and such tenants would only need to seek additional approval if they wanted something different from the proposed format in this application.

John McDonough, L.A., P.P., Planner

84. *Qualifications and Background.* The following testimony by Mr. McDonough, duly sworn, is summarized: Mr. McDonough testified that he is a project planner, licensed as a Professional Planner in New Jersey, current and in good standing, and is a member of the American Institute of Certified Planners. The Board accepted Mr. McDonough as an expert witness.

85. Mr. McDonough stated that there are “many positives” of this application: the fact that it is a variance free application and one that conforms to the Planned Commercial District requirements; its full compliance with use and all bulk standards, including lot and yard dimensions, area, frontage, width and depth, coverage and height; its relatively modest impact by comparison to the potential residential development once contemplated for the Site, and the economic value of the proposed use, reflecting New Jersey’s “excellent transportation system,” access to major metropolitan areas (New York and Philadelphia) and to ports, and the significant increase in container activity, which began pre-COVID and has only increased with the increased ease of online shopping. The application, according to Mr. McDonough, meets the “intent of the zone,” and bulk requirements, requiring only “relatively modest” relief from the design standards. The Board Planner generally agreed with Mr. McDonough’s testimony.

86. *Waivers.* Mr. McDonough testified as follows with respect to each of the requested design waivers, with the predicate of all the testimony on the record:

a. *Parking spaces.* 2,201 spaces are being proposed, including 200 banked spaces, versus the 1,754 spaces required by ordinance (which is an absolute standard, not a maximum permitted). The proposed number of parking spaces meets the operator experience level. The Applicant is an experienced operator that has managed many similar facilities. The Applicant’s experience is relevant for the Board’s consideration of what is reasonable and appropriate. The industry standard also supports the proposed ratio of approximately one parking space per 2,500 s.f. The increased parking does not trigger excessive coverage or runoff. The Applicant

appropriately balances the required impervious coverage and number of parking spaces to create operational efficiencies essential for this land use.

b. *Loading docks.* 910 loading docks are proposed versus 147 required by ordinance (again, an absolute standard, not a maximum or minimum). Similar to the parking requirement for which the industry standard exceeds the municipal standard, the industry standard in this case is one loading dock per 5,000 s.f. The proposed number of loading docks does not trigger additional impervious coverage and is needed for quick and efficient delivery operations, which is essential to the proposed use.

c. *Shape of detention basins.* The Applicant proposes regularly-shaped detention basins whereas the ordinance requires naturally/irregularly-shaped basins. The need for the “more gridded pattern as opposed to curvilinear pattern” relates to the nature of the use and layout of buildings, the drainage patterns and land form. The “form follows the function here and results in those operational efficiencies that trigger the [rectangular] basin shape.”

d. *Location of basins within buffer.* Eight of the proposed basins exceed the ordinance requirement permitting only up to 50% of the basin to be in the buffer. The key justification and mitigation for that is that the basins are going to be planted, so that visually they will blend with the environment and serve the purpose of a buffer by providing a soft green edge to the perimeter of the development.

e. *Identification of trees.* The ordinance requires identification of trees 5-inches caliper or greater from which relief is being requested. The justification is that a sample will be provided in order to extrapolate an overall number of such trees.

f. *Trees of 4-inch caliper for every 40 feet of building planted within 75 feet.* Four-inch caliper trees must be planted within 75 feet for every 40 feet of building. Mr. McDonough noted that the waiver is needed due to the building design and the locations of loading and circulation areas. The Applicant will meet that standard within 100 feet with the planting of 350 trees and an exception is requested for the caliper to be 2.5-3 inches. Over 20,000 trees are being incorporated into the property and the development will be “substantially green.” It will be substantially landscaped and beautifully designed to create biomass.

g. *Minimum footcandle of 3.0 at driveway intersections and 0.5 average.* The Applicant proposes to exceed the average around the property. The interest of public safety supports this

waiver and there will be no light spillage beyond the perimeter or objectionable glare impacting any surrounding neighborhood. With respect to lighting, Mr. Waisnor in his testimony noted that the intent was for the lights in the loading and parking areas to remain on from dusk until dawn until the tenants are known and what operational needs and shifts they may have.

h. Average footcandle of 0.5 throughout parking areas. The Applicant proposes average light intensity for various parking areas of 1.72 footcandles for car parking and between 2.2 and 2.4 footcandles for truck parking. These are justified by the need for safety and maintaining a safe, efficient circulation flow and function around the property. The main concern with lighting is the impact beyond the perimeter and that standard is being met.

i. Signage. The Applicant seeks to exceed the permitted height and size of certain signage. The basis for this requested relief is “essentially the sheer size of the development.” It is designed as a planned integrated industrial development with multiple buildings. The signage relief is essential for safety to provide for safe navigation and visual cues. The proposed monument sign is 60 square feet, where 48 is the maximum, a typical proportion for this type of branding. The proposed scale will provide brand familiarity as part of an integrated model, and serves a safety and way finding function as well. The proposed height of the sign will serve the same purpose, with 16 feet being proposed whereas up to 4 feet is permitted. The sign will include branding, site identification, and the address and number of the building. Relief is also requested to permit street address signage with a height of 24 inches versus the permitted 8 inches. Given the sheer size of the buildings, an eight-inch number on a 100 million square foot building does not make practical sense from a planning standpoint. The proposed size of signs is appropriately proportioned. Finally, the instructional signage is proposed to be 12 feet versus 2 feet permitted. These are wayfinding signs throughout the development. They are reasonable because there is a significant amount of negative space or “backdrop” space, so granting the relief will not create excessive signage, visual clutter and over branding. Their function is to aid safety and navigation, more than advertising.

j. Ten-year vesting. The Applicant requested 10-year vesting of the final approval of Phase 1 and preliminary approval of Phase 2, which is reasonable and appropriate given the size of the project, which will take time to complete. Mr. Muller clarified that if the beginning of construction had not concluded in 10 years from the date of final approval, then an extension would have to be requested.

Testimony of Municipal Staff and Consultants

David Novak, P.P., A.I.C.P., Burgis Associates, Inc., Township Planner

87. The following testimony by Mr. Novak, duly sworn, is summarized:

88. Mr. Novak recapped the history of the Site, including its former ownership by American Cyanamid, which vacated the Site in 2014. The Site was, until the Settlement Agreement, located in the ROM-1 District, which permitted research testing analytics and product development, general corporate, administrative, professional offices, data processing and computer centers, limited manufacturing, farming and agricultural uses, mixed uses such as research and development and other business uses, and affordable housing. It was acquired by the Howard Hughes Corporation in 2010, which in 2017 presented to the Board a concept plan for development of approximately 2,000 residential units. Concerns were expressed over this project, which led to litigation in 2018. Atlantic acquired title in 2019 and entered into a settlement agreement with the Township, which contemplated development of 5.5 million s.f. of warehouse space, and up to 150,000 s.f. of retail space. The 2020 Land Use plan was crafted to reflect that settlement agreement and to promote a unified, attractive design on the site while also encouraging a high level of investment. The Land Use Plan sought to push the warehouse and distribution centers towards the interior of the Site and stressed that the retail uses be located along Quakerbridge Road and U.S. Route 1 to maintain the character of that corridor and provide additional screening of the warehouses. Mr. Novak noted that the Land Use Plan placed “large importance” on the construction of the Master Plan Road that would extend through the Site and connect to U.S. Route 1. The PCD zoning ordinance was subsequently drafted to reflect the 2020 Land Use Plan.

89. Board Chair Mr. O’Brien asked Mr. Novak to comment on the fact that the Land Use Element of the Master Plan, with respect to the PCD, recommends that warehouse and distribution centers be limited to the south of Clarksville Road, given that in the proposed development, warehouses would be on both south and north sides of Clarksville Road. Mr. Novak responded that the Settlement Agreement and PCD zoning ordinance enacted pursuant to it controlled the location of the warehouse spaces based on the utilization of setbacks from Quakerbridge Road, from U.S. Route 1 and from residential districts, and allows for warehouses on both sides of Clarksville Road.

90. Mr. Novak requested an update on the future Phase III plans (which are not part of this application), which Mr. DeGrezia addressed by noting that Atlantic was working through some

concept plans, but there was no specific information on that. Mr. DeGrezia noted however that when reviewing the Site for the present application, the Applicant and its experts evaluated the property in terms of maximums permitted under the ordinance to evaluate overall impact.

91. Mr. Novak testified that he had no objection to the Applicant's proposed number of parking spaces or loading spaces, or to the requested signage waivers. With respect to the number of parking spaces, he indicated agreement with the Applicant's expert testimony that the rationale for the proposed number was based on past industry experience as well as ITE standards.

92. With respect to the proposed number of loading docks, Mr. Novak noted that the ordinance standard contained in Section 200-27d(1) of the ordinance lumps together the same loading requirements and standards for retail stores, financial institutions, educational facilities, restaurants, wholesale, warehouse, general service, manufacturing and industrial establishments. Thus, the loading berth requirements cover a wider variety of land uses that group together disparate uses such as warehousing facilities and restaurants.

93. One Board member enquired whether the number of loading docks, if reduced, would result in less truck traffic and turnover on the Site. In reply, the Applicant's traffic expert, Mr. Pehnke, testified that there is no correlation between the number of trips and the loading docks, and it is more the size of the building and tenancy that determines the type of activity and turnover. The "loading docks," he testified, "really relate to the internal operations of the building." Reducing the number of loading docks, he emphasized, does not affect the number of trucks. Reducing the number of loading docks "actually creates operational difficulties both internal and external to the building and actually would really not be consistent with what the logistic buildings are that are being designed and constructed" by the Applicant.

Francis Guzik, P.E., Township Engineer

94. The following testimony by Mr. Guzik, duly sworn, is summarized:

95. Mr. Guzik discussed the comments in his report dated May 4, 2022. He indicated that he had no objection to the requested checklist waivers, some of which will be addressed through resolution compliance. He noted that the application was under review by the Mercer County Planning Board, and that if the County made changes to the proposed plan, then there was a

potential that the Applicant would have to come back to the Planning Board for amended approval.

96. Mr. Guzik requested testimony regarding the CEA for groundwater contamination on a portion of the former American Cyanamid operations. Mr. Porcek testified that there is a small environmental area on the southeast portion of the Site where previously there was a research facility involving pesticide research. The area is being monitored with monitoring wells and there are no issues, according to Mr. Porcek. Samples are being submitted to DEP as part of a remedial action plan and the Applicant is "in full compliance." The Applicant agreed as a condition of approval that the monitoring wells will be adjusted to whatever the proposed grade is and would remain in place.

97. In terms of traffic, Mr. Guzik recommended that the pedestrian crossing for the Master Plan Road be provided with a rectangular flashing beacon for pedestrian safety. Mr. Pehnke testified that, upon review of that intersection, it was determined that such a safety feature for pedestrians was not warranted at that crossing due to the low anticipated volume of pedestrian traffic, but the Applicant agreed, as a condition of approval, to install such a beacon if warranted.

98. Mr. Guzik enquired whether there were plans for New Jersey Transit stops to be installed. Mr. Pehnke testified in response that there were not, as the process with NJ Transit is that the determination to install transit stops is usually made after a development is built, based on need, but that the Applicant was continuing talks with NJ Transit as it moved forward with construction and that the Applicant would be willing to work with NJ Transit and become a sponsor, meaning it would own the shelter if it is on private property. Mr. Guzik requested that the Applicant take responsibility for installing and maintaining a bus shelter, even if it is in the public right-of-way (e.g. Clarksville Road). The Applicant agreed to take responsibility for the shelter if the County was not willing to do so and to provide typical construction details for bus turnouts with sidewalks and shelters on the drawings.

99. Regarding the U.S. Route 1 access connection, Mr. Guzik recommended that all construction traffic should be primarily focused to the U.S. Route 1 intersection rather than Clarksville or Quakerbridge Road, and that this be a condition of approval.

100. With respect to storm water management, Mr. Guzik noted that the Applicant would have to obtain DEP, Mercer County Soil Conservation District and DRCC permits, all of which are conditions of approval.

101. With respect to utilities, Mr. Guzik noted that one of the goals of the Master Plan Utility Element is the extension of the south branch of the Duck Pond Run Sewer Interceptor, and that the Applicant had agreed to provide a stable access way to the remote and environmentally sensitive portion of the sewer line system, to the extent permitted by DEP.

102. With respect to the lighting plan, Mr. Guzik testified that he had no objections to the testimony of Mr. Waisnor and Mr. McDonough in support of the lighting plan and waivers. Mr. Guzik requested clarification of the Applicant's plans to retrofit the lighting given that the buildings were being constructed on spec and there may be little incentive for tenants, once the lighting is installed, to reduce or alter the lighting. In response, Mr. Porcek testified that lighting is installed based on security and safety and then depending on a particular tenant's operations, but until the tenant is identified and its operations known, it was hard to know what those needs are. Mr. Porcek testified that the lighting to be installed will be a type of down light that is anti-glare, so it is very sensitive with respect to spillover. Mr. Guzik indicated that he was comfortable with that testimony.

Dan Dobromilsky, L.L.A, Township Landscape Architect

103. The following testimony by Mr. Dobromilsky, duly sworn, is summarized:

104. Mr. Dobromilsky noted that over 200 acres of land on Site is not being developed and will be conserved and become part of the Township's Greenbelt.

105. With respect to air quality, Mr. Dobromilsky explained that the Applicant had provided supplementary data and analysis prepared by Dynamic Engineering that concluded that the existing prevailing winds would be dissipated before they reached other properties, and air pollution would be further mitigated by the extensive plantings and preservation of existing trees, a conclusion Mr. Dobromilsky found satisfactory. He noted that air emissions data are not specifically required to be provided and it is typical for a more general analysis to be provided in land use applications, which had been provided here. In requesting more specific information in this respect, Mr. Dobromilsky testified that the idea was for the Applicant to be able to show that the preservation of existing trees and planting of new trees would provide some carbon sequestration and air oxygen production to offset the impacts of the trucks and vehicles on the Site. But it is not possible to provide more localized detail without a "significant study," which is not required to be submitted. In this context, Mr. DeGrezia commented that the Applicant complied fully with the applicable clean air standards and emissions standards for vehicles.

Asked by a Board member whether air quality is actually monitored, Mr. Dobromilsky explained that the Township does not, the DEP does but on a more regional basis.

106. With respect to landscaping, Mr. Dobromilsky indicated that the Applicant provided a landscape plan in accordance with code requirements and the Township's recommendations during the technical review process. He stated that he supports the waiver requested with respect to the design of the storm water basins based on the level of planting that is proposed in the basins in that it meets the general intent of the code, if not the letter of the law. Mr. Dobromilsky requested more clarity regarding the Applicant's intentions with respect to the waiver from the requirement for trees to be planted within 75 feet of the building and must be 4-inch in caliper. Mr. Waisnor testified that because of the way the buildings operate, there is not much good planting area immediately adjacent to the buildings within the required 75 feet, so the Applicant, working with staff, proposed 362 trees within 100 feet of the building and that 362 trees would be planted, which will be upsized to be 4-inch caliper to meet the intent of the ordinance to have larger trees closer to the building. Mr. Dobromilsky indicated that he found this to be a reasonable compromise taking into consideration the building type being proposed and the overall site design.

107. Mr. Dobromilsky commented on the uniformity of color of the buildings, and asked whether there could be more variation in this aspect of the design. Mr. Porcek testified that the Applicant could not agree because the uniformity is by design, part of the brand.

108. In response to a request by Mr. Dobromilsky to clarify whether the berms along Clarksville Road would be constructed during Phase I or Phase II of the development, the Applicant clarified that it would be Phase I.

109. Mr. Dobromilsky requested a schedule to be provided to staff with respect to the removal of demolition material on Site, which the Applicant agreed to do as a condition of approval.

110. Finally, Mr. Dobromilsky requested clarification of the type of warehouse actually being proposed – fulfillment center, high cube transload, high cube warehouse – and raised the question of whether there should be a condition specifying, for the benefit of future zoning officers, which type it is. In reply, Mr. Pehnke testified that these terms are interchangeable, and for purposes of the traffic analysis, a “higher level” of traffic data documented for warehouses was used. Mr. Pehnke reminded the Board that the buildings were being designed on spec to be

“highly mechanized,” which means low levels of parking and unlikely to attract high levels of employment with correspondingly high parking needs. “So it’s really the parking that is going to control the types of tenants that come into the Site.” Mr. Pehnke explained that the term “fulfillment center” does not necessarily correlate to a certain type of employment. Cold storage, for example, is not envisioned, nor is any kind of assembly or production of any type.

Christopher Jepson, P.E., Van Cleef Engineering, Township Environmental Consultant

111. The following testimony by Mr. Jepson, duly sworn, is summarized:

112. Mr. Jepson commented on the scale of the project, noting that it is the largest storm water management system in West Windsor, with over five million square feet of impervious surface. However, concern with respect to total suspended solids is lessened because the project will have groundwater recharged, as opposed to surface water discharge.

113. Mr. Jepson testified that he did not believe the development would negatively impact any endangered species, or majorly impact wildlife or the natural habitat.

Jeffrey L'Amoreaux, P.E., Arora and Associates, P.C., Township Traffic Consultant

114. The following testimony by Mr. L'Amoreaux, duly sworn, is summarized:

115. With respect to updating traffic counts, Mr. L'Amoreaux recommended that traffic count updates be done at the conclusion of each phase of development and then annually for three years after that, to establish the cumulative effect of the full warehouse buildout. The Applicant agreed to this as a condition of approval.

116. Mr. L'Amoreaux confirmed his understanding that most or all of the roadway construction, i.e. improvements required to accommodate both Phase I and Phase II, would be done commensurate with the conclusion of Phase 1. Mr. Pehnke noted that there could be some minor future improvement associated with future development that may be phased beyond Phase I but most of the improvements would be done upfront with Phase I.

117. With respect to the evaluation of a roundabout at Clarksville Road and Meadow Road, Mr. L'Amoreaux asked the Applicant to provide NJDOT hourly traffic volume projections at that intersection, to which the Applicant agreed.

118. Mr. L'Amoreaux recommended that Quakerbridge Road across the frontage at the intersection with Lawrence Station Road be constructed and engineered so that there can eventually be a connection to Lawrence Station Road, which the Applicant agreed to. In this context, Mr. Penhke indicated that the Applicant would be working with the County to re-coordinate the signals along Quakerbridge Road as part of the development, with the aim of reducing queue length and to keep the left turn movement going, information contained in the Applicant's traffic study.

FINDINGS AND CONCLUSIONS RE: PRELIMINARY AND FINAL MAJOR SITE PLAN APPROVAL AND SUBDIVISION APPROVAL (PHASE I) AND PRELIMINARY MAJOR SITE PLAN APPROVAL (PHASE II)

119. It is not often that a board considers an application for land use development of the scale and involving the complexity of issues presented here. The sheer size of the project, five-and-a-half million square feet of warehouse space that will cover a substantial portion of a 650-acre site, has profound local and regional implications that the Board had to consider, along with real and legitimate concerns expressed by local residents opposing the project, and many of whom attended the hearing and voiced those concerns publicly. Over the course of five long meetings, the Board heard extensive testimony from the Applicant and its expert witnesses and the Township's own staff, as well as from the public, to whom one entire meeting was devoted and all of whose comments expressed at that meeting are summarized in this resolution. In addition, many communications, reports, comments and questions from members of the public were received that became part of the public record, up to the point when the Board determined to close the public comment period after the June 1 meeting, as was publicly announced in advance that it would be. As the Board Attorney later indicated, although comments and questions continued to be communicated and received after the June 1 meeting, these could not be made part of the record for the same reason that public comments could no longer be heard after the June 1 meeting. In approving this application by a vote of 6 to 2, with two Board members voting no, the Board has endeavored to address most of the concerns and issues raised by the residents, as most were shared in some way by the Board members as well as staff, as set forth in more detail below.

120. For the reasons set forth below, and on the basis of the testimony and submissions provided by the Applicant and municipal staff, the Board finds that the merits of this application justify approval and outweigh the concerns, which are mitigated by the conditions of this approval.

Background – Settlement Agreement and Rezoning

121. The Settlement Agreement and rezoning contemplated by it (summarized in paragraph 3 and in testimony provided by Mr. Novak) could, but was not required to, be done. It was done and preceded the Planning Board’s review of this application. It bears mention because although the terms of the Agreement do not govern the Board’s review or bind it, a conceptual site plan of the warehouse development broadly consistent with the plan in this application formed the basis of that Agreement and the rezoning of the Site (and as recommended by the 2020 Land Use Element), to permit warehousing and distribution centers on the Site. This background informs the Board’s consideration of the intent and purposes of the PCD as it applies to this application because, while the Board reviews this application on its merits against the ordinance requirements, as it must all applications, it is also clear that the PCD was created to effectuate this project. The settlement reflects the governing body’s view that this project represents a better alternative to the high-density multi-unit residential development that Atlantic’s predecessor had proposed, a plan that would have impacted the neighborhood in far more reaching and potentially negative ways as a result of increased density, traffic and stress on municipal infrastructure.

122. This background also informs the Board’s understanding of the importance and function of the Master Plan Road as presented in the present site plan before the Board. Board members and the Applicant disagreed not only over the timing of the construction of the Master Plan Road, but over whether the road was needed at all for proper and efficient site circulation. As further discussed below and addressed by several conditions of this approval, the Board finds that the Master Plan Road is a critical aspect of site circulation that needs to be fully constructed before occupancy of any of the warehouses with guaranteed access to U.S. Route 1 such that DOT approval must be obtained prior to any warehouse construction.

Zoning Considerations

123. The Planned Commercial District, consisting of the entirety of the Site, was created to permit “warehousing and distribution facilities,” among a variety of other non-residential uses. In supporting such uses, the intent is also to ensure that a permitted development “will be complementary to the surrounding area, protect existing environmental constraints, minimize undue strain on the Township’s community facilities, and avoid any substantial adverse impacts to the existing traffic and circulation patterns of Clarksville Road, Quakerbridge Road and the U.S. Route 1 corridor.” Section 200-207.3A. Retail, service commercial, entertainment and

hospitality uses are to be located along Quakerbridge Road and U.S. Route 1, whereas “[w]arehouse and distribution uses *are encouraged within the remainder of the district*” (emphasis added). *Id.*

124. While several members of the public questioned why other permitted uses were not considered for the Site (or whether they were considered at all), a question that the Board’s narrowly prescribed statutory powers and more limited jurisdiction would not have permitted it to address in any case, the Board finds that the proposed project is well within the scope of intended uses in the PCD, particularly given that warehouses “are encouraged” on the Site. It is “complementary to the surrounding area” in that it forms part of the commercial U.S. Route 1 corridor and is generally consistent with the character of surrounding commercial, retail and industrial land uses, while none of the warehouse buildings are immediately adjacent to any residential properties and will be substantially buffered from neighboring properties through proposed landscaping, setbacks and natural buffers. It will preserve and “protect existing environmental constraints” in that almost a third of the Site, the northerly portion consisting of the Township Greenbelt and environmentally sensitive areas, will remain undisturbed by the development, and no threatened or endangered species were determined to be present on the site. It will “minimize undue strain on the Township’s community facilities” as it does not generate significant demand, if any, for additional infrastructure such as schools, public transportation or emergency services. Finally, for the more qualified reasons set forth below, the Board finds that the proposed development, subject to the conditions of this approval, particularly with respect to the construction of the U.S. Route 1 access and restricted truck turns onto Clarksville Road, will avoid “substantial adverse impacts to the existing traffic and circulation patterns of Clarksville Road, Quakerbridge Road and the U.S. Route 1 corridor.”

125. The proposed development meets the bulk standards and most of the area regulations, with only waiver relief being requested, most of which seek modest exceptions from the ordinance, as addressed in the Waiver section below. Importantly, the plan is fully conforming with the zoning ordinance, no variances being required.

Master Plan Considerations

126. Land Use Element. The 2020 Land Use Plan Element recommended the establishment of the PCD consisting of the Site. The Township Council subsequently created the PCD in accordance with this recommendation, incorporating substantially the same criteria, intent and purposes for the District as set forth in the Land Use Plan, as detailed above. Importantly, the

Land Use Element establishes the Master Plan Road as a public roadway extending from Quakerbridge Road at its intersection with Avalon Way to U.S. Route 1 at its intersection with Nassau Park Boulevard. It also encourages the incorporation of a bicycle and pedestrian path linking Mercer County Park to the south and the D&R Canal to the north. The Board finds that the proposed project meets the Master Plan goals.

127. *Circulation Plan Element.* The 2021 Circulation Plan Element similarly recommends the concept of the Master Plan Road, adding that the roadway “should be designed with consideration for the Township’s future Bus Rapid Transit (BRT) routes” and for bicycle and pedestrian safety. That plan also supports construction of a multi-use path extending from Clarksville Road through the Site and through the adjoining Garden Homes (Duck Pond, now known as Meridian Walk) development and Carnegie Center Office Complex. Mr. Pehnke testified that elements of the County mobility plan, such as the shared use paths for pedestrians and bicycles along the project frontages on Clarksville Road and Quakerbridge Road, were incorporated into the Site design, as shown on Exhibit A-4. The Applicant also agreed, as a condition of approval, to construct the trail connection towards Bear Brook Road in accordance with the Circulation Plan Element, and that it will work with NJ Transit to pursue bus routes adjacent to or within the development. With respect to the potential for bus stops, Mr. Pehnke explained that the determination to install transit stops is usually made after a development is built, based on need, but that the Applicant was in talks with NJ Transit to determine whether bus stops would be installed. The Board finds that the proposed project meets the goals of the Circulation Plan Element.

Traffic

128. Perhaps the greatest concern with this application for the Board and also the public was the projected increase of truck traffic that will result from the warehouse development, especially along Clarksville Road through West Windsor Township. Described by one local resident as the “heart of West Windsor,” Clarksville Road extends from the Site all the way through town, populated on either side by residential properties and other community uses, including two large schools, Maurice Hawk Elementary School and High School South. A certain amount of Site traffic will use Clarksville Road. The Board gave considerable thought to ways in which the impact of truck traffic generated by the project could be mitigated. In approving this application and granting the waiver relief, the Board imposed several conditions that materially do so. In particular, (i) trucks (though not passenger vehicles) will be prohibited, through signage and geometry changes at the intersection of Clarksville Road and the Master Plan Road and the

prohibition of curb cuts (except for at least one emergency vehicle access point) along the rest of Clarksville Road, from turning eastbound out of the Site at that intersection, in the direction of Town³; and (ii) no warehouses may be constructed until both the U.S. Route 1 access for the Master Plan Road and the Avalon Road/Quakerbridge Road signalized intersection are approved, while no certificates of occupancy may be issued until both of those improvements are fully constructed and operational in accordance with approved plans. The prohibition of eastbound truck turns increases the need for alternative ways out of the Site, such as via the Master Plan Road. These two sets of conditions are therefore closely intertwined. Their importance in justifying the Board's approval of this application cannot be overstated and the Board makes the following findings with respect to them:

129. *Traffic Study.* Mr. Pehnke, a licensed professional engineer with 35 years of experience in the field, who testified that he was "very familiar with the Site" from having worked with its different owners for "probably over 17 years" as well as from his own commute, provided extensive testimony on the expected traffic impact of the project and the methodology behind the Traffic Impact Study, dated November 12, 2021, revised April 7, 2022. He explained how a significant amount of data, covering several years from 2005 onwards, and based on multiple traffic engineering sources, including nearby traffic hubs such as Costco and the Quakerbridge Mall development, was used to prepare the study and project traffic flows. This was done with reference to the Trip Generation Manual, the authoritative national database published by the Institute of Transportation Engineers and used by traffic engineers nation-wide to project traffic patterns for new developments. The data and projections are then plugged into a model to evaluate the operation of the Site and project traffic flows on the surrounding roadways. This, he explained, was done on the basis of a full buildup of both Phase 1 and Phase 2 of the project. Mr. Pehnke testified that he employed a conservative approach by using ITE data for land use code 150 (warehousing), a higher-level use than what is proposed, to ensure that the road system will work and can accommodate some variation in employment levels at the warehouses. The methodology and input sources are described in extensive detail in the Traffic Impact Study.

130. With reference to Exhibit A-13, the Peak Hour Truck/Auto Distribution, Mr. Pehnke presented the projected number of truck and automobile trips per peak hour, generally 7:30-8:30AM for the morning and 4:30-5:30PM in the evening, from various points in and out of the Site, including Clarksville Road. Taking just truck counts, for example, Mr. Penhke testified that a projected 11 trucks per hour during the morning peak would travel westbound down

³ Trucks exiting Buildings C1 and E1 onto Clarksville Road just west of the Master Plan Road will be able to turn eastbound for the short distance from those buildings to the Master Plan Road.

Clarksville Road into the Site, whereas 17 trucks per hour were projected in the same direction during the evening peak hour, with more-or-less identical numbers projected for the outbound (eastbound) trips during the evening peak hour (see Exhibit A-13). As discussed further below, this suggests that the condition prohibiting eastbound truck turns onto Clarksville Road from the Site would roughly halve the amount of truck traffic on Clarksville Road. While the projections represent the peak numbers that could be expected during any given hour, Mr. Pehnke explained that the variable nature of the expected warehouse operations, reflecting different tenants' different operations and work shifts, made it difficult to provide "hour by hour" projections for this kind of site. However, he testified that this variable aspect of operations is actually an "extreme advantage," as it will likely cause traffic to be spread out more throughout the day. He concluded that the estimated distributions are "reasonably indicative" of what can be expected for this project, and if anything, are "on the high side." Based on Mr. Penhke's testimony, as further substantiated by the very thorough Traffic Impact Study, the Board finds that the traffic estimates are robust and establish a reliable basis on which the Board could consider the overall impact of this application and impose conditions accordingly.

131. Clarksville Road. Clarksville Road is a County Road, which means the County has jurisdiction over it and generally determines its traffic characteristics. It is also a "600 series county route," as Mr. Pehnke explained, which means that it is a permitted truck access route and although there is currently an 18-ton restriction on the road, that restriction is expected to be lifted upon the reconstruction by DOT of the bridge over Amtrak. Until the restriction is lifted, trucks over 18 tons cannot travel on Clarksville Road.

132. The Board has jurisdiction over the site plan and its access points, and its power to impose conditions of approval is incident to its broad quasi-judicial powers. Valid conditions of approval are those that (1) do not offend against any provision of the zoning ordinance; (2) do not require illegal conduct on the part of the permittee; (3) are in the public interest; (4) are reasonably calculated to achieve some legitimate objective of the zoning ordinance; and (5) are not unnecessarily burdensome to the landowner. *Orloski v. Planning Bd. of Borough of Ship Bottom*, 226 N.J. Super. 666, 672 (Law Div. 1988), aff'd o.b. 234 N.J. Super. 1 (App.Div.1989). The condition restricting eastbound turns onto Clarksville Road clearly meets these requirements: (1) It does not offend any provision of the zoning ordinance nor (2) require illegal conduct; (3) it is overwhelmingly in the public's interest, health and safety, as it will significantly reduce the amount of truck traffic going through the Township's densely populated, already heavily-travelled main thoroughfare; (4) it is reasonably calculated to achieve the legitimate objective of the zoning ordinance in that it will significantly reduce "adverse impacts

to the existing traffic and circulation patterns” and makes the project possible as, without the condition, the Board would not likely have approved the application; and (5) is not unnecessarily burdensome to the landowner as there are several other ways for trucks to leave the Site, especially with the construction of the Master Plan Road, which will provide direct access to U.S. Route 1 and Quakerbridge Road.

133. With respect to (5), requiring the condition to not unnecessarily burden the landowner, the Board was not persuaded by Mr. Penhke’s testimony that restricting truck movement eastbound on Clarksville would lead to dangerous “unintended consequences” of trucks travelling in a way that was not in the proposed design, or that there is “really no safe way to try to start physically prohibiting trucks from turns” because trucks will “start to do maneuvers that are unsafe and you’ll have trucks that end up overturning and or running over the curb.” The fact that the Applicant itself proposed prohibiting left turns out of the warehouse driveways onto Clarksville Road strongly suggests that certain turns by trucks can be safely prohibited and trucks can be safely directed to other exits even without geometric restrictions (which the Applicant did not propose in that particular context). The trucks are not being required to do anything illegal or impossible, merely refrain from turning eastbound on Clarksville Road, as will be clearly communicated to drivers through signage and geometry changes designed to prevent any dangerous or unintended consequences. They will have several other ways to leave the Site via the Master Plan Road or Quakerbridge Road to points north-south and east-west. As shown in Table 5 of the Traffic Impact Study summarizing arrival and departure trip distributions, 70% of all truck traffic going north and south to and from the Site is projected to use U.S. Route 1, with 20% of that going north. The projected 20% of north-bound traffic that uses Clarksville Road would have to reroute, but in this respect, the Master Plan Road benefits site-specific traffic by allowing trucks to access the regional transportation routes without going through West Windsor Township, thereby avoiding the congestion and heightened safety concerns of driving through the Town on a shared commuter route past schools and residences. The Township Engineer and Traffic Consultant did not object to the condition restricting eastbound truck access onto Clarksville Road or echo the concerns of Mr. Penhke with respect to safety issues arising from the restriction.

134. While some inconvenience may be felt as a result of the eastbound truck turn restriction on Clarksville Road, there is no law requiring trucks to take the fastest route, and the Board concludes that the Applicant and its warehouse tenants will not be “unnecessarily” burdened thereby. The benefits to the community, on the other hand, are substantial. The interests of public

safety and wellbeing justify imposing the condition and far outweigh any inconvenience that may be felt by truckers and other stakeholders.

135. *County versus Township Jurisdiction.* It is anticipated that the County will have to agree to the Clarksville Road eastbound truck turn restriction as part of its approval process for this application (which approval is itself also a condition herein), and a further condition of this approval requires the Applicant to work together with the Township to obtain that approval specifically with respect to the restriction of turns eastbound by trucks onto Clarksville Road. Without the County's approval, the Applicant could not proceed with the project as approved by the Board. Without speculating as to what may happen in such eventuality, the restriction on eastbound truck turns onto Clarksville Road remains non-negotiable for this Board.

136. The Board's jurisdiction does not extend to restricting truck traffic in-bound into the Site from the other end of town, at the intersection of Clarksville Road and Route 571 (Princeton-Hightstown Road). The imposition of any such restriction must be left to the County and Township Council. However, in the spirit of cooperation and consideration for the residents of West Windsor, the Applicant agreed to work with the Township to apply for no turns by trucks onto Clarksville Road at that intersection (see condition p).

137. For the foregoing reasons, the Board finds that the condition prohibiting eastbound truck turns onto Clarksville Road is reasonable and will substantially reduce the impact to West Windsor residents of truck traffic generated by the Site.

138. *The Master Plan Road and U.S. Route 1 Access.* The Master Plan Road transverses the Site north-south (to become Coleman Drive), with an east-west (to become Doherty Drive) extension to Quakerbridge Road, providing driveway connections for each of the warehouse buildings except A1 in the far east corner of the Site, which will be connected to Doherty Drive via its own access road, and therefore actually depends upon it for access to Quakerbridge Road. Most importantly, it provides direct access to and from the Site to U.S. Route 1 and Quakerbridge Road, two of the three busiest roadways facilitating traffic to and from the Site, Clarksville Road being the other. It was envisioned by the Master Plan and the concept plan in the Settlement Agreement, and was incorporated as envisioned into the site plans and traffic study that informed the municipal staff's review of the application. In short, it is a critical element of the site plan that has been envisioned from the earliest conception of the project and materially informed the understanding of Township staff and consultants in their technical review of the application, as well as of the Board in its own review. The condition prohibiting

eastbound truck turns on Clarksville Road increases the need for the Master Plan Road even more.

139. The Applicant requested permission to start vertical development of the Phase I warehouses without first obtaining the DOT access permit required to connect the Master Plan Road to U.S. Route 1 due to the anticipated traffic counts and lengthy timing of the DOT U.S. Route 1 access permit review process. In doing so, it took the position that, as Mr. Pehnke testified, the Clarksville Road and Quakerbridge Road interchange “can handle the full buildout of Phase I and Phase II without the [Master Plan Road’s direct] connection to U.S. Route 1.” Mr. Pehnke asserted that this is because the percentage of overall traffic actually using the Master Plan Road’s direct connection to/from U.S. Route 1 “does not represent a large impact” and, that, without that direct connection, trucks would use the Clarksville Road and Quakerbridge Road interchange “until such time as we get the connection completed.” The Board was not convinced and remained concerned about the traffic impacts to Clarksville Road if the Master Plan Road connection to U.S. Route 1 is delayed, or even denied. Notwithstanding the significant degree of this Board’s reliance upon Mr. Pehnke’s extensive professional expertise, experience and credibility, and on most of the testimony he so cogently provided in support of this application, the Board did not accept his conclusion as to the timing of the Master Plan Road connection to U.S. Route 1 and rejected the Applicant’s request to link the DOT access permit to Phase II of the development.

140. The Board is not insensitive to the Applicant’s concerns with respect to the timing of the DOT access permit. According to Mr. Penhke, the approval process can take anywhere from a year to three years. Faced with that kind of timeline, any applicant would understandably want to proceed with warehouse construction while waiting for the DOT to approve the U.S. Route 1 access permit, as the Applicant requested here. As Mr. Pehnke testified, referring to the DOT, “[t]he problem is the development timing. It takes time to get permits, particularly for some agencies....So all we’re requesting is the recognition and the ability to move forward with construction while we pursue those permits....” This, he explained, would avoid the Applicant being held up from starting any buildings “subject to an agency that has no time clock.” But arguing that the Master Plan Road connection to U.S. Route 1 is not needed did not convince the Board that warehouse construction should be allowed to proceed before the Applicant has obtained DOT access approval to/from U.S. Route 1. On the contrary, the Board finds that the Master Plan Road is an essential component of the site plan and would impose the same conditions of approval even if the Applicant agreed that it is indispensable for the full buildout. Moreover, from several exchanges between Board members, the Applicant’s witnesses and

Board professionals, it became clear that the exclusion of the U.S. Route 1 intersection was not previously discussed with the Board's professionals, nor raised at any of the Technical Review Committee meetings before the hearing.

141. The risks of proceeding with warehouse construction without the DOT access permit in place are not merely the Applicant's. If warehouse construction were permitted to proceed, and then the permit is denied, a perhaps low but still real possibility, this would not be the project the Board approved and the Applicant could obviously not proceed with it as proposed. The consequences of that awkward scenario need not be imagined here. But for all the foregoing reasons, the Board finds it reasonable and prudent to require that no warehouse construction begin unless and only until the DOT U.S. Route 1 access permit is approved.

142. *Automobile traffic.* The majority of projected trip generation to and from the Site will be by passenger cars. Table 4 of the Traffic study shows the total AM peak hour trip generation estimate to be 835 cars, and exactly the same number for PM peak hour trips. To provide some perspective on these numbers, Mr. Pehnke offered comparisons of the proposed automobile parking spaces with the parking spaces of nearby commercial centers Quakerbridge Mall, Mercer Mall and Nassau Park, the *combination* of which sites he conjectured is smaller than the warehouse Site. Whereas 2,200 parking spaces are proposed with this application, Nassau Park has 4,900 parking spaces; Quakerbridge Mall has 5,545,⁴ and Mercer Mall has 2,300. Nearby Costco has 750. Whereas projected daily trips entering and exiting the Site are 4,000-4,100 (including trucks), by comparison, Nassau Park generates around 19,000 vehicles entering and exiting per day; Quakerbridge Mall is about 17,000 trips, Mercer Mall is 10,000 trips per day and Costco, on a far smaller site, is roughly on par with the project at 4,000 trips per day. While these numbers do not break out the numbers of trucks versus cars, and also compare retail facilities with a warehouse facility, they do help to see that the proposed facility is not expected to generate nearly as much traffic as those nearby commercial centers, even though it covers a much larger geographic area. Table 5 (Phase 2 Arrival and Departure Trip Distributions) of the Traffic Study also helps to show that, unlike the truck distributions to and from the Site, the passenger vehicle distributions are more dispersed among the network of adjacent roadways, with the majority (30%) projected to go southward on U.S. Route 1. As Mr. Penhke testified, the traffic volumes to and from the Site "dissipates to the road system relatively quickly, which starts to minimize and reduce the point load of traffic impacts of this project."

⁴ As corrected by Lynda Benedetto, the General Manager of the Quakerbridge Mall, in her public comments at the June 1, 2022 meeting.

143. Based on Mr. Pehnke's testimony and rigorously prepared Traffic Study, the Board finds that the passenger vehicle estimates are reasonable and will not have an overall adverse impact on the surrounding areas.

Environmental and Air Quality

144. Approximately 200 acres of land on the Site is not being developed. Over 20,000 new trees are proposed to be planted as part of landscaping throughout the Site and a large-scale reforestation of existing fields on the south side of Clarksville Road, while approximately 2,000 existing mature trees over 5" in caliper are to remain on-site. The Township's Environmental Consultant, Mr. Jepson, testified that he saw no major impacts on wildlife from the proposed development, as much of the Site was developed and used for industrial activity before, and there is not much woodland left as a result. No endangered species were established to be present on Site.

145. The Applicant's Environmental Impact Statement (EIS), prepared by Langan Engineering and Environmental Services, indicates that environmentally sensitive surface waters identified at the Site include the Duck Pond Run unnamed tributary and the Shipetaukan Creek along the eastern lot line. It concludes that environmentally sensitive areas do not significantly overlap the improvement area and the project does not result in an adverse impact on environmentally sensitive areas of the project site. Mr. Waisnor testified that the extent of wetlands was confirmed by a DEP LOI in connection with which an application was filed prior to the current LOI expiring in March 2022.

146. In its Air Quality Statement dated May 25, 2022, by Daniel T. Sehnal, P.E. and Brett W. Skapinetz, P.E. (Dynamic Engineering Consultants, P.C.), the Applicant provided data estimating the amount of oxygen that could be produced by the 22,000 mature trees ultimately anticipated on the Site and showing that they will be capable of mitigating the negative air quality effects of "1,856 trucks traversing the site each day." It concludes that the development is expected to provide 177% of the number of mature trees required to offset potential detrimental air quality effects provided by the maximum expected daily truck trips. It further concludes that concentrations of air pollutants dilute rapidly when traveling along open routes, such as fields and wooded areas, as opposed to closed routes, and that with prevailing winds originating from the west, "air pollutants generated on-site will travel eastward or over open/landscaped and wooded terrain, allowing for ample particle dispersion and return to background concentration levels in the vicinity of the residential uses without negative impact."

The report concludes that “the anticipated air quality benefit of the proposed development outweighs the air quality detriments produced by on-site truck emissions.”

147. Mr. Dobromilsky, the Township Landscape Architect, testified that he found these conclusions satisfactory. It is noted, as Mr. Dobromilsky pointed out, that air emission data is not specifically required in land use applications. A more intensive study would be needed to provide more localized details of air emissions, which are difficult to measure accurately. The supplemental data provided in the Air Quality Statement was intended to provide a good indication that the proposed new plantings and preservation of existing trees will provide enough “carbon sequestration” and air oxygen production to offset the air pollution from trucks and vehicles on the Site. The Applicant agreed, as a condition of approval, to provide further air quality studies just after construction and post-occupancy, including measures of particulate matter and solids. Based on the Applicant’s report and the testimony provided, and subject to this and other conditions of approval, the Board finds that the proposed development will not unduly negatively impact the environment or air quality.

Storm Water Management

148. A robust storm water management plan was presented with testimony that runoff from the property will be mitigated and treated by new on-site stormwater management basins to meet peak rate reduction requirements and provide a minimum of 80 percent total suspended solids removal, with many areas achieving 95% removal from the water quality storm before entering the nearest stream off property. The plan consists of 104 storm water features, including 82 small scale bio-retention basins, 64 of which recharge directly into the ground while 18 have under drains. As Mr. Waisnor testified, three large scale infiltration surface basins are proposed, whose locations were determined by the existing conditions and storm water flow. There will be two constructed wetlands and two large scale subsurface basins.

149. At 44% impervious coverage, the Site is well below the maximum permitted 70%. Approximately 11.5 acres of permeable pavement is proposed, a significant portion of which will be for truck trailer parking. Permeable pavement means concrete that allows water to recharge into the ground or by filtering through an under-drain. Mr. Waisnor testified that the storm water management system “significantly exceeds” the DEP and Township’s recharge quality and quantity requirements, and will remove up to 100% of total suspended solids from the water quality storm from what goes to the Delaware and Raritan Canal through the construction of

oversized basins that will soak up the water rather than discharge it off site. In terms of quality, the standard reductions required for the 2, 10, and 100-year storms will be exceeded.

150. A condition of approval requires the Applicant to address deficiencies in its Storm Water BMP (Best Management Practices) Plan. Mr. Guzik explained that the deficiencies referred to items that the DEP requires in the maintenance plan that are typically provided after site plans are finalized, but do not mean that elements of the plan themselves are deficient. Mr. Guzik found the Applicant's storm water management plan to be in full compliance with the Township's storm water control ordinance. Based on the foregoing, the Board finds the proposed storm water management plan to be acceptable.

Noise

151. The Applicant's noise consultant, Benjamin Mueller, P.E., testified that no noise mitigation measures would be needed in connection with Phase I of the project as the three buildings in this phase are in the middle of the property and not close to any off-site receptors, so "virtually nothing changes" as a result of the development's Phase I with respect to noise impact on any neighboring properties.

152. With respect to Phase II, for which only preliminary approval is sought here, the main area of concern is Building A1 in the south eastern corner of the Site, which, at the closest point, is about 300 feet from the nearest residence to the east, the Princeton Terrace Apartment Buildings. To the south of Building A1 across the railroad lie the Windsor Ponds Condominiums, about 800 feet away. The main sound emissions include coupling, when trailers connect and disconnect their brakes, backup alarms, truck driving and HVAC. Mr. Mueller testified that sound levels at the property line of Building A1 are estimated to be in the high 50 dBs. The daytime (7AM-10PM) noise limit is 65 dBs; the nighttime (10PM-7AM) limit is 50 dBs. The Applicant proposes to install a 470-foot long, 20-foot-high sound wall around the trailer parking area of Building A1 300 feet from the nearest residences. A 530-foot long, 15-foot-high sound wall is to be installed along the south-facing property line 800 feet from the nearest residences on that side. With the walls installed, the sound emissions from the truck activity in the truck court and dock area of Building A1 is expected to fall below 50 dBs, well in compliance with both daytime and nighttime limits. The walls will not be visible to any of the neighboring developments, and will be sufficiently dense to block sound from going through it.

153. The Board is satisfied that the proposed measures will adequately mitigate sound emissions from the property with respect to the closest neighbors in the area surrounding Building A1, but several conditions of approval are imposed to go further to ensure that the project will comply with noise regulations. The Applicant agreed to allow for a post-construction sound study (see condition mm). The Board will therefore have another chance, at the stage of final approval for Phase II, to review the Applicant's sound mitigation plan. Also, the Township will have the ability to test noise levels at any time, without notice, upon completion of any Phase I and II building or improvement, and if tests indicate that state or local noise limits are violated, the Applicant will have to take corrective measures. For now, based on the foregoing, the Board is satisfied with the testimony provided that the project will not have an adverse impact in terms of sound emissions.

Utilities

154. The proposed project meets the Master Plan Utility Element goal in that a 20-foot-wide easement is being provided along the extension of the sewer line along the north edge of the property, as well as a stable access way to the remote and environmentally sensitive portion of the Duck Pond Run Sewer Interceptor. Based on the conditions addressing this and other aspects of the proposed utility plan, the testimony provided by the Applicant's witnesses and Mr. Guzik, the Board finds the proposed utility plan acceptable.

Lighting

155. The closest residential neighbors to the property are 300 feet away on the south easterly corner, near Building A1, which is part of Phase II. The lighting plan with respect to Phase II will be provided with submissions for its final approval. The greatest light intensity for Phase I is along the Master Plan Road, which is surrounded on both sides by warehouses, while the perimeter lighting is zero. Thus, no residential properties are impacted by the proposed lighting for Phase I. The Board finds the lighting plan to be acceptable.

Public Testimony

156. The impassioned voices and legitimate concerns of residents and other stakeholders opposing this project were deeply felt and heard throughout the process of this application. Many expressed concern over the impact of truck traffic, especially along Clarksville Road and in the vicinity of the schools, Maurice Hawk Elementary and High School South. Concerns for the

safety of school children and pedestrians ran through many of the public comments and input. Concerns over the environmental impact of the project were also writ large, with several questioning why no air emissions studies were done (the Applicant did provide one dated May 25, 2022), or questioning the impact of the project on storm water management. Several questioned the planning and settlement process that preceded the Board's consideration of this application, expressing concern about a perceived lack of transparency. There were comments about the potential negative economic impact of the project on property values and on the character of West Windsor which many residents felt would be compromised by the project. Finally, several noted the issuance by the State Planning Commission, on June 10, 2022 of draft Warehouse Siting Guidance and asked the Board to consider the application in light of the recommendations, with a request by counsel retained by one interested individual that the Board reschedule its vote on account of the draft Guidelines.

157. The Board members too live in West Windsor and share these concerns. In approving this application, the Board has endeavored to address and mitigate the concerns as far as possible through the conditions imposed, especially the one prohibiting eastbound truck turns onto Clarksville Road. That condition will substantially reduce the amount of truck traffic through West Windsor, while the condition requiring the Master Plan Road-U.S. Route 1 access permit to be approved before warehouse construction can begin and the Master Plan Road to be fully constructed and operational prior to any warehouse certificates of occupancy will ensure that Site-specific traffic can optimize use of the Master Plan Road for ingress and egress from the regional roadways. The condition prohibiting curb cuts on Clarksville Road except at its intersection with the Master Plan Road (and for at least one emergency vehicle access point) will further ensure that trucks cannot violate the prohibition against eastbound turns. The condition requiring the Applicant to provide traffic reports, including traffic counts for the full length of Clarksville Road, for three consecutive years after full occupancy will help ensure that the representations and traffic report upon which the Board relied to approve this application remain valid and accurate, or provide a basis for modifications to be considered if necessary. In a similar vein, the Applicant agreed, as part of the final site plan submissions for Phase II, to work with the Township Engineer and Traffic Consultant to review ways in which truck traffic may be further limited on Clarksville Road.

158. With respect to the environment and air quality considerations, the Applicant agreed to provide air quality studies both after construction (to provide a base line) and post occupancy, which are to include measures of particulate matter/solids. All roof areas other than those on which equipment will be located are to be made solar-ready. Anti-idling signage must be

provided on the Site and will be enforceable by the Township. These are just some of the many conditions imposed to justify approving this application and the waiver relief. Prior to the Board's deliberation of the application, which occurred on June 29, 2022, a list of all of the Board's proposed conditions and the Applicant's requested waiver relief were publicly posted on the West Windsor website, together with the Applicant's comments on the conditions. The Board then discussed every single condition and waiver with reference to these documents. Additional conditions were added at the June 29, 2022 meeting.

159. No Conflicting Testimony. It is noted that while many people voiced opposition to the project and attended the hearing, and one interested party retained counsel who, in a letter dated June 17, 2022 to the Board Attorney, raised objections on the basis of the issuance of the draft Warehouse Siting Guidance from the State Planning Commission, no member of the public actually appeared through counsel at the hearing to formally object or present any opposing witnesses. This is unfortunate from the perspective of the potential value to the Board of being able to consider and weigh conflicting probative expert testimony, especially with an application as wide reaching as this one. But no conflicting expert testimony was presented, and while the Board draws no conclusion from this, it does obviate the procedural need to explain a board's choice of testimony in support of an approval when presented with conflicting expert views. In this case, the Board itself disagreed with aspects of the Applicant's testimony that it did not find convincing, as discussed above, and provided its reasons for that disagreement.

Waiver relief

160. The Applicant requested 14 design waivers, of which the Board approved 12, denying two sign-related requested. The Applicant also requested 12 submission checklist waivers, some of which were partial and some of which were temporary relief to be addressed through resolution compliance. The reasons for granting the waivers as well as for denying the two design waivers are provided below in the Waiver section.

The Vote

161. The Board voted 6 to 2 in favor of the application, enough to approve it, with two Board members voting no. Only Mr. Schectel provided a statement explaining his vote to deny the application, expressing concern over the sheer size of the project and its implications for the safety of school children, pedestrians, and other West Windsor residents.

Vesting

162. The Board finds that the application meets the MLUL threshold for granting extended vesting on the basis of the size and complexity of the development, and due to the amount of time it will likely take for the Applicant to obtain various other approvals, including potentially significant time for the DOT's U.S. Route 1 access permit, the securing of which this Board has made a precondition of any warehouse construction. If the beginning of construction has not concluded in 10 years from the date of final approval, an extension would have to be requested.

163. Findings and conclusions re: Preliminary and Final Major Subdivision Approval, Preliminary and Final Site Plan Approval (Phase I) and Preliminary Major Site Plan Approval (Phase II). The Board finds that, with the waivers granted and conditions imposed, the Applicant has met the Township's major subdivision standards, major site plan standards with respect to Phase I, and preliminary major site plan standards with respect to Phase II. Accordingly, preliminary and final major subdivision approval, preliminary and final major site plan approval for Phase I, and preliminary major site plan approval for Phase II are granted.

FINDINGS AND CONCLUSIONS RE: WAIVERS

164. The application necessitates 14 design waivers and 12 submission waivers. The waivers and Board's action on them are as follows:

Design waivers

Parking and Loading –

a. Waiver: From Section 200-28D(2)(b), requiring a waiver to exceed the required off-street parking and loading requirements, or 1,754 spaces, whereas 2,201 parking spaces (including 200 banked spaces) are proposed.

Waiver granted. The Applicant's Engineer, Mr. Waisnor, testified that the proposed number of parking spaces, 2,201, was based on the industry standard of approximately one space per 2,500 s.f. of warehouse space, a standard that Mr Pehnke testified was "very standard and typical" and very close to the projected number of spaces using ITE data, which would be 2,170. This preferred industry standard is double the ordinance standard of one space per 5,000 s.f. of

warehouse space, a standard that provides no flexibility as it is an absolute number and is, according to Mr. Pehnke, considered by the industry to be on the “lower end” of what is typically done in the industry. The Applicant is an experienced operator in the management of warehouse facilities. The number of proposed spaces, Mr. Pehnke explained, is designed to provide flexibility for the various types of tenant that could be expected at the site, which is not known at this time. He testified that this would provide for greater safety on site, which will be used both by trucks and passenger automobiles, and an overall more successful project.

The parking is allocated proportionally to each building and, although conservatively estimated, is not, in the Board’s view, excessive, particularly given that 200 of the spaces are being banked, for which a condition of this approval is that the Applicant would need to consult with Township staff as to their location, and the staff could “require that some or all of the banked spaces be installed” (condition dd). The Applicant remains well within the limit of impervious coverage, which is not significantly increased by the proposed number of parking spaces as a proportion of overall coverage. Moreover, the proposed number of parking spaces was vetted and worked out with municipal staff during the technical review process, and the Township Planning expert, Mr. Novak, testified that he did not object to the proposed number and agreed with the rationale based on industry and ITE standards. The Applicant is also meeting the required number of Make-Ready/electric vehicle charging stations and handicap accessible spaces. For the foregoing reasons, the Board finds this waiver request to be reasonable and within the general purpose and intent of the ordinance, which is to ensure adequate parking, and adequate parking is being provided. Literal enforcement of this requirement would exact undue hardship on the Applicant by preventing it from providing parking that is adequate for the proposed size of the facility. Subject to the Applicant meeting the conditions of this approval, this waiver is therefore granted.

b. *Waiver*: From Section 200-27D(1), permitting 147 loading bays, whereas 910 loading bays are proposed.

Waiver granted. The loading docks allow trucks to load up or off-load product from and into the warehouses. They are an essential element of the facility’s function and efficiency of operation: without loading bays, an industrial-scale warehouse would probably not be a warehouse. The proposed number, like the proposed number of parking spaces, exceeds the ordinance standard, which is, like the parking standard, an absolute number based on building square footage, providing neither minimum nor maximum thresholds for different uses. As Mr. Novak testified, the ordinance applies the same loading dock standard to a wide variety of

different uses: retail stores, financial institutions, educational facilities, restaurants, wholesale, warehouse, general service, manufacturing and industrial establishment. This, he explained, makes the standard “somewhat general in nature” insofar as it tends to narrow the function of loading berths to a kind of accessory feature of commercial and industrial buildings, rather than as an integral element of the use itself. Mr. McDonough testified that the proposed number of loading docks is based on an industry standard of one loading dock per 5,000 s.f. Mr. Novak indicated that he did not object to this standard or the number of proposed loading bays.

Asked by a Board member whether the number of loading docks, if reduced, would result in less truck traffic and turnover on the Site, Mr. Pehnke testified that “there is no correlation between the number of trips and the [number of] loading docks;” rather, he explained, it is the size of the building and tenancy type that determines the type of activity and turnover while the “loading docks really relate to the internal operations of the building.” Reducing the number of loading docks, on this basis, would not affect the number of trucks but rather create “operational difficulties both internal and external to the building” that, in Mr. Pehnke’s view, would not be consistent with the purpose and intent of the use and site design being proposed. This makes certain logical sense, and the Board finds Mr. Pehnke’s testimony persuasive. The use is a permitted use and the size of the facility is permitted. It is reasonable that the Applicant should want to optimize the utility by providing loading bays in proportion to the facility’s size to allow for proper function. That would not be possible without this waiver. Reducing the number of loading bays, on the other hand, would not make sense without reducing, quite drastically, the size of the facility, raising the murky question of how great a reduction and what number of loading docks would be appropriate, or indeed whether a warehouse facility could be scaled differently at all in such a way as to remove or significantly reduce the degree of the design waiver. The Board is not qualified or authorized to determine such questions. Reconfiguring the site design to achieve such reductions would clearly go beyond the Board’s jurisdiction and amount to a constructive denial of the application. As advised by the Board Attorney in a June 13, 2022 Memo to the Board, which was publicly posted on the Township’s website prior to the Board’s deliberation of the application, if this waiver is not granted, “the plans as presently constituted cannot be realistically adjusted by reducing the number of loading spaces to avoid the need for the waiver.”

The Board determines that, under the circumstances, the waiver is reasonable and justified, given the conditions of approval that mitigate impacts due to the size of the project and its traffic impacts, such as the prohibition of eastbound truck traffic exiting the Site onto Clarksville Road and the requirement of the Master Plan Road connection to U.S. Route 1,

conditions m-q and jj. Without these protective conditions, which form the basis for the waiver, the waiver is not justified, and, should the conditions be struck down, the waiver must be denied and, with it, the application. For the foregoing reasons, granting the waiver is reasonable and within the general purpose and intent of the ordinance, which is to ensure that adequate loading facilities are provided without a negative impact on the road system, particularly Clarksville Road, and the community, and, more broadly, to encourage warehouse and distribution uses in the district. Literal enforcement of this requirement would be impracticable as, without it, the project could not be approved. Subject to the Applicant meeting the aforesaid conditions, this waiver is therefore granted.

Signage –

c. *Waiver*. From Section 200-32B(8)(c), which permits a maximum size of two s.f. for instructional signage, whereas instructional signage of 12 s.f. is proposed.

Waiver granted. The proposed instructional signage is to provide street address identification and way finding, its primary purpose. Mr. McDonough testified that the proposed size is required for proportionality with the scale of the facility. The Site will consist of multiple industrial-sized buildings connected via roadways and access drives, for which larger signs than are permitted by ordinance are critical for safe and efficient navigation. Relative to the amount of space that the buildings will occupy, the proposed signage will not be excessive or create visual clutter or over branding. For these reasons, the Board finds this waiver request reasonable and within the general purpose and intent of the ordinance, which is to ensure that adequate but not excessive or oversized signage is provided. Literal enforcement of this requirement would exact undue hardship on the Applicant by preventing it from enhancing the visibility and accessibility, and therefore the safety, of the Site. Accordingly, this waiver is granted.

d. *Waiver*. From Section 200-32B(11)(b), which permits a maximum height of eight inches for street address signage, whereas street address signage with a height of 24 inches is proposed.

Waiver granted. This waiver is granted for reasons similar to those given for waiver "c." Larger signage requires proportionally larger lettering; one does not make sense without the other. The larger lettering, like the sign size, will assist truck drivers and passenger vehicles in efficiently and safely locating the buildings on site. Accordingly, this waiver request is reasonable and within the general purpose and intent of the ordinance, which is to ensure there is adequate, but not excessive or oversized signage. Literal enforcement of the ordinance provision

would work an undue hardship on the Applicant by preventing it from providing signs that are adequately visible and functional. This waiver is therefore granted.

e. Waiver. From Section 200-32B(3)(b), which permits a maximum sign area, including structure, of 48 s.f. for monument signs, whereas monument signage of 60 s.f., including structure, is proposed.

Waiver denied. The Board voted 8-0 to deny this waiver. The Applicant did not provide adequate proofs to support granting a waiver for the proposed size of the monument signs. The Board finds that the scale and size of the buildings will be large enough to be visible to anyone trying to locate it, obviating the need for such enlarged monument signs. Unlike the proposed instructional signage for which the Board found waivers to permit a larger size to be justified, monument signage provides a less critical wayfinding function than instructional signage, and while it serves legitimate branding and advertising purposes, the significantly greater visual impact of a free-standing monument sign must be taken into consideration. In this case, a 60 s.f. sign would be excessive and unnecessary, in the Board's view, and does not come within the intent and purpose of the ordinance, which, as noted above, is to ensure that there is adequate, but not excessive or oversized signage. The Applicant's branding and advertising objectives can be more appropriately served with a conforming monument sign. For these reasons, this waiver is denied.

f. Waiver. From Section 200-32B(3)(c), which permits a maximum sign height, including structure and sign area, of four feet, whereas monument signage 16 feet high, including structure and sign area, is proposed.

Waiver denied. The Board voted 8-0 to deny this waiver for the same reasons it denies waiver "e" above.

Landscaping –

g. Waiver. From Section 200-13C(3)(e), requiring trees of five or more inches in caliper to be specifically located and identified, whereas such trees are not being identified.

Waiver granted. The sheer size of the Site, at 645 acres with many trees, would make the task of identifying all trees with five or more-inch caliper an extremely onerous one, and not necessarily meaningful for purposes of the ordinance, as, about a third of the Site will remain

completely untouched and the purpose of the ordinance is to locate and quantify the number of trees being disturbed by a development. Instead, the Applicant agreed to work with the Township to grid out a certain area of the Site to estimate the number of trees that would be disturbed by the project and quantify the overall number of trees. Subject to this commitment, the Board finds this waiver request to be reasonable and within the general purpose and intent of the ordinance, which is to ensure a tree inventory is established to keep track of how many trees will be disturbed and such inventory is being established through the sampling of trees in certain areas of the Site for purposes of quantifying the overall number in accordance with the ordinance. Literal enforcement of this requirement would exact undue hardship on the Applicant by requiring an overly burdensome tree count whereas the intent and purpose of the ordinance can reasonably be met with alternative sampling approach that has been proposed. Accordingly, this waiver is granted.

h. Waiver. From Section 200-91P(5)(b)[4], requiring one 4-inch caliper tree for every 40 linear feet of building perimeter for buildings over 10,000 s.f. to be planted within 75 feet of the building, whereas 4-inch caliper trees are proposed to be planted within 100 feet of the building.

Waiver granted. Mr. Waisnor testified that due to the buildings' design and operation there is not much good planting area immediately adjacent to the buildings within the required 75 feet. Working with municipal staff to find a solution that would meet the spirit and intent of the ordinance, which is to have sufficient buffering of trees around large buildings, the Applicant proposed to plant 362 trees within 100 feet of the building, which will be upsized to be 4-inch caliper. As Mr. McDonough testified, the increased distance for these plantings will be more proportional to the size of the buildings. Mr. Dobromilsky had no objection to the proposed approach, finding it to be a "reasonable compromise" given the scale of the project and proposed use. For these reasons, the Board finds this waiver to be reasonable and within the general purpose and intent of the ordinance, which is to ensure that large buildings are adequately buffered by trees, and adequate buffering by trees is being provided. Literal enforcement of this requirement would exact undue hardship on the Applicant by requiring it to plant trees in suboptimal conditions for purposes of complying with the ordinance for no obvious benefit, and possible detriment to the landscape plan. Subject to the Applicant meeting the condition of approval with respect to this waiver, this waiver is, accordingly, granted.

Storm Water Management –

i. *Waiver.* From Section 200-91P(4)(a)[1][a], which requires storm water detention areas to be graded “creatively to blend into the surrounding landscape and imitate a natural depression with an irregular edge,” whereas the proposed landscaping design does not conform strictly with this requirement.

Waiver granted. The Applicant proposes geometrically-shaped detention basins whereas the ordinance requires naturally/irregularly-shaped basins to give a more natural appearance. Mr. Waisnor and Mr. McDonough testified that the need for the “more gridded pattern as opposed to curvilinear pattern” relates to the nature of the use and layout of buildings, the drainage patterns and land form. Mr. Waisnor testified, moreover, that while not in strict compliance, the proposed plan meets the intent of the ordinance because the basins will be planted with many shrubs and trees within the basin itself. So while they will function as basins, they will not appear as unnatural rectilinear features throughout the project as they will be buffered and planted by shrubs and trees to appear natural and consistent with the overall design even though the shape of the basins will be more rectilinear. For these reasons, the Board finds this waiver to be reasonable and within the general purpose and intent of the ordinance, which is to ensure that storm water management features blend naturally with the surrounding landscape. Literal enforcement of this requirement would exact undue hardship on the Applicant by requiring it to alter the storm water management design for mainly aesthetic reasons that could interfere with their functionality and serves no purpose that cannot be served by the proposed design. Accordingly, this waiver is granted.

j. *Waiver.* From Section 200-207.4U(7), which permits stormwater basins to be located within any yard setbacks or landscaped buffers provided that a maximum of 50% of the basin may be located within the buffer area, whereas eight stormwater basins located entirely within a buffer area are proposed.

Waiver granted. Mr. Waisnor testified that the reasons that the basins along Clarksville Road fall more than 50% within the buffer area is that they will be taking runoff from Clarksville Road that will flow into the basins, thereby treating the storm water at the source, rather than having to move the water across the Site. In addition, substantial plantings and berms of 10-17 feet high are proposed between Clarksville Road and the building, which would not be possible if the runoff had to be redirected, and which will also visually blend with the environment and soften the perimeter design of the development. So there will be a sufficient buffer and the basins will serve an important storm water function in their proximity to Clarksville Road and within the buffer area. In addition, there is additional green area between the basins and the front façade

of the buildings. For these reasons, the Board finds this waiver to be reasonable and within the general purpose and intent of the ordinance, which is to ensure that buffer space dedicated for landscaping is not occupied by storm water basins. Literal enforcement of this requirement would exact undue hardship on the Applicant by requiring it to relocate and redesign a significant number of storm water basins in a way that is less effective than the proposed design, whereas as the proposed design meets the spirit of the ordinance. Accordingly, this waiver is granted.

Lighting –

k. *Waiver*. From Section 200-29G(1), requiring all parking areas to be lit to provide a minimum of 3.0 footcandles at driveway intersections with main roads and a total average illumination of 0.5 footcandle throughout the parking area, whereas an average light intensity for the parking areas of between 1.7 to 2.0 footcandles for passenger car parking, and between 2.2 and 2.4 for truck parking is proposed.

Waiver granted. The parking lot areas and truck courts will have a minimum of 0.5-foot candles, whereas higher averages for both cars and trucks are proposed. Mr. Waisnor testified that the proposed minimum is in accordance with the recommendations of the Illumination Engineering Society of North America but exceeds the ordinance requirement of an average of 0.5 footcandles. The proposed higher averages are designed to enhance safety of site circulation and are consistent with industry standards, which can withstand and require higher intensity lighting for security and circulation reasons. Importantly, no neighboring residential properties will be impacted by the increased lighting intensity on site. For these reasons, the Board finds this waiver request to be reasonable and within the general purpose and intent of the ordinance, which is ensure that lighting is sufficient without adversely impacting residential uses. Literal enforcement of the ordinance provision would work an undue hardship on the Applicant by requiring it unnecessarily to alter its lighting plan for no obvious benefit but a downside of lessening the optimal illumination for the Site. This waiver is therefore granted.

l. *Waiver*. From Section 200-31K(1), requiring light levels in parking lots to be an average of 0.5 footcandles throughout, whereas average illumination of passenger parking areas is proposed to be between 1.7 to 2.0 footcandles, with 0.5 footcandles being the minimum spot illumination, and average illumination of truck parking areas is proposed to be between 2.2 to 2.4 footcandles, with 0.5 being the minimum spot value.

Waiver granted. This ordinance requirement substantially overlaps with Section 200-29G(1) in connection with waiver “k” above, and this waiver is granted for the same reasons.

m. *Waiver.* From Section 200-31K(2), requiring light levels at intersections to be 3.0 footcandles, whereas the proposed average light levels at intersections range from 3.1 to 4.4 footcandles.

Waiver granted. This waiver is granted for similar reasons as for waivers k and l above, except that the ordinance standard in this case is an absolute one whereas the proposed illumination is an average, meaning some points of illumination will be higher and some lower, but the proposed average only minimally exceeds the ordinance standard. Lighting at intersections generally needs to be higher than at other site locations given the increased usage and potential for interaction among vehicles going in different directions. Again, the proposed illumination will not impact any neighboring residential properties. Thus, the Board finds this waiver request to be reasonable and within the general intent and purpose of the ordinance, which is ensure that lighting is sufficient without adversely impacting residential uses. Literal enforcement of the ordinance provision would work an undue hardship on the Applicant by requiring it unnecessarily to alter its lighting plan for no obvious benefit and possible downside by lessening the optimal illumination for the Site. This waiver is therefore granted.

n. *Waiver.* From Section 200-31K(3), requiring no more than a 1.0 intensity in footcandles at property lines, whereas greater intensity in footcandles at property lines is proposed at driveway intersections with the widened Clarksville Road.

Waiver granted. All of the perimeter lighting is zero, as shown by the blue shaded areas on Exhibit A-11 (Lighting Exhibit) except for minimal points at driveway intersections with the widened Clarksville Road. Although east-bound turns by truck onto Clarksville Road are prohibited, curb cuts are permitted at the intersection of Clarksville and the Master Plan Road and for at least one emergency vehicle access point, and lighting will need to exceed 1.0 intensity in footcandle at those points to ensure safety. This waiver is triggered by the fact that Clarksville Road is County property, but no residential properties or other neighbors are impacted by any light spillage from the site. Thus, the Board finds this waiver request to be reasonable and within the general purpose and intent of the ordinance, which is ensure that lighting is sufficient without adversely impacting residential uses. Literal enforcement of the ordinance provision would work an undue hardship on the Applicant by requiring it unnecessarily to alter its lighting plan for no

obvious benefit but a downside of lessening the optimal illumination for the Site. This waiver is therefore granted.

Submission waivers

o. Twelve submission waivers, most partial and relating to the fact that preliminary and final approvals are being sought concurrently, are sought as described below. The Board finds these waiver requests to be reasonable and within the general purposes and intent of the ordinance for the reasons set forth below. Literal enforcement of these requirements would exact undue hardship upon the Applicant by requiring information that is being provided by the Applicant at the appropriate time, or has been sufficiently provided. Accordingly, these waivers are granted.

Subdivision checklist

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| <p>1 <u><i>Waiver (partial)</i></u>: From Section 200-53C(1), which requires a key map at a scale not smaller than 1" = 1,000' showing the relationship of the entire tract to the neighborhood at least 1,000 feet beyond its boundaries, whereas a map at a scale of 1" = 2,000' was provided.</p> | <p><u><i>Partial waiver granted</i></u>. Due to the size of the development and clear visibility of existing conditions on the key map that was provided, the intent of this checklist requirement is met.</p> |
| <p>2 <u><i>Waiver (temporary)</i></u>: From Section 200-53C(4)(a), which requires at least two permanent bench marks to be established for each 50 acres of the tract to be subdivided, whereas no bench marks are provided on the subdivision plat.</p> | <p><u><i>Temporary waiver granted</i></u>. The required permanent bench marks will be provided at the time of compliance review.</p> |
| <p>3 <u><i>Waiver (temporary)</i></u>: From Sections 200-53C(19) and (23), requiring submission of an NJDEP Letter of Interpretation (LOI) indicating the presence or absence of freshwater wetlands on the Site, whereas such LOI was not provided.</p> | <p><u><i>Temporary waiver granted</i></u>. An LOI Extension document with an expiration date of December 19, 2020 was provided, the validity of which is extended until March 16, 2022 due to the COVID-19-related Permit Extension Act. An application for Freshwater Wetlands permitting was submitted to the NJDEP prior to the expiration date. Obtaining the required NJDEP permits is a condition of this approval, as provided in the Conditions section below.</p> |

4. *Waiver (partial)*: From Section 200-54C(10), requiring final construction plans showing proposed utility layouts and connections to existing or proposed utility systems, whereas such plans are not being submitted at this time.

Waiver granted. This item relates to a situation where preliminary and final major subdivision plan approvals are sought separately, whereas concurrent approvals are sought in this application.

5. *Waiver (partial)*. From Section 200-54C(11)(a), requiring a final drainage plan, whereas a final plan is not being provided at this time.

Waiver granted. This item relates to a situation where preliminary and final major subdivision plan approvals are sought separately, whereas concurrent approvals are sought in this application.

6. *Waiver (partial)*. From Section 200-54C(12), requiring a Soil Erosion Plan to be submitted, whereas such plan is not being provided at this time.

Waiver granted. This item relates to a situation where preliminary and final major subdivision plan approvals are sought separately, whereas concurrent approvals are sought in this application.

7. *Waivers (partial)*. From Section 200-54C(13)(a) and (b), requiring a proposed grading plan to be submitted, whereas such plan is not being provided at this time.

Waivers granted. This item relates to a situation where preliminary and final major subdivision plan approvals are sought separately, whereas concurrent approvals are sought in this application.

8. *Waiver (partial)*. From Section 200-54C(14), requiring a copy of the preliminary approval resolution to be provided, whereas such resolution is not being provided.

Waiver granted. This item relates to a situation where preliminary and final major subdivision plan approvals are sought separately, whereas concurrent approvals are sought in this application.

9. *Waivers (partial)*. From Section 200-54C(18)(a) and (b), requiring an as-built lot grading plan to be submitted, whereas such plan is not being submitted at this time.

Waivers granted. This item relates to a situation where preliminary and final major subdivision plan approvals are sought separately, whereas concurrent approvals are sought in this application.

Site Plan Checklist

10. *Waiver (partial)*. From Section 200-14C(1)(a), requiring a copy of the approved preliminary site plan to be provided, whereas such plan is not being provided at this time.

Waiver granted. This item relates to a situation where preliminary and final major site plan approvals are sought separately, whereas concurrent approvals are sought in this application.

11. *Waiver (partial)*: From Section 200-14C(1)(b)[1], requiring final plans to include construction details specified at the time of preliminary approval, whereas such details are not being submitted at this time.
12. *Waiver (partial)*: From Section 200-14C(1)(b)[5], requiring a final landscape plan substantially conforming to the approved preliminary landscape plan to be submitted, whereas such plan is not being submitted at this time.

Waiver granted. This item relates to a situation where preliminary and final major site plan approvals are sought separately, whereas concurrent approvals are sought in this application.

Waiver granted. This item relates to a situation where preliminary and final major site plan approvals are sought separately, whereas concurrent approvals are sought in this application.

CONDITIONS REQUIRED

165. The Board finds that, in order to address the concerns expressed during the course of the hearing and to limit the relief to that reasonably necessary to satisfy the Applicant's legitimate requirements, the relief granted is subject to the following conditions:

Site plan

- a. The plans shall be revised to be consistent with Exhibit A-3 "Plan Rendering – Phase I", prepared by Langan (dated May 11, 2022), Exhibit A-4 "Plan Rendering – Phase II", prepared by Langan (dated May 11, 2022), testimony of the Applicant's witnesses, and these conditions.
- b. At least two permanent benchmarks ("BMs") are to be established for each 50 acres of the tract to be subdivided. That would equate to 14 BMs for the Block 8 tract and 14 BMs for the Block 15.14 tract. BM monumentation satisfactory to the Township Engineer shall be provided during compliance review. The notes on Sheets 4 and 5 of the subdivision plat providing for later installation shall be deleted.
- c. The Applicant shall secure applicable NJDEP Watershed and Land Use Management permits for all required approvals based on the wetlands delineation as shown on the Freshwater Wetlands Letter of Interpretation previously issued by DEP.

d. Any changes deemed significant, as determined by the Board Attorney in consultation with the municipal staff, subsequent to this approval will require an amended approval, and an application therefor shall be submitted to the Township.

e. Metes and bounds descriptions of the subdivision plat, all parcels, and proposed easements to be created, along with closure calculations, shall be submitted to the Township Engineer and be subject to his review and approval. Deed and easement instruments shall be submitted to the Board Attorney and be subject to his review and approval.

f. The development is proposed to be completed in two phases with Phase I consisting of Buildings B1, E1, and C1 and associated improvements and with Phase II comprising the remaining buildings, A1, B2-1, B2-2 and D1. Phasing plans that definitively show the limits of all Phase I construction including grading, utility and storm water installation, while greying out everything that is part of Phase II, shall be provided. The detailed development plans (site plans, utility plans, etc.) shall each identify the limits of Phase I and Phase II and depict proposed site conditions at Phase I completion prior to Phase II commencement, similar to what was provided for Phase I grading plans. This is in addition to the Overall Site Plan and Utility Phase I drawings.

g. The plans shall be clarified to show that the bike path will be composed of asphalt and the sidewalks will be composed of concrete.

h. The Applicant shall adhere to New Jersey law with respect to electric vehicle charging stations' signs and symbols/markings.

i. The Land Use/Land Cover chart (Table 6 in the EIS) shall be clarified to make clear if the lands remaining along Quakerbridge Road are included or not included. In addition, the EIS shall be revised in a manner satisfactory to the Township Landscape Architect to correct discrepancies between the chart and the narrative.

j. The Applicant shall work with the Township staff on the type and material of eight-foot high fence that is behind the vegetation on Quakerbridge Road. The staff will have the final decision-making power with respect thereto.

k. All of the berms on Clarksville Road shall be installed during and included in Phase I.

1. Standards for the incorporation of accessory structures, such as guard houses, emergency generators, sheds, and outdoor material storage and fencing therefor shall be addressed when the first tenant proposing the same comes in with a site plan or building permit application providing for same.

Traffic, Access, Circulation, and Parking

- m. No warehouse construction shall begin on either Phase I or Phase II until both of the following occur:
 - i. The DOT issues a permit for the construction of the connection between the Master Plan Road and U.S. Route 1; and
 - ii. The Avalon Road and Quakerbridge Road signalized intersection is approved by all parties having jurisdiction in accordance with the Board-approved plans.
- n. No Certificate of Occupancy or Temporary Certificate of Occupancy shall be issued until both of the following occur:
 - i. The Master Plan Road is fully constructed and operational in accordance with the approved plans, including the intersection with U.S. Route 1; and
 - ii. The Avalon Road and Quakerbridge Road signalized intersection is fully operational in accordance with the approved plans.
- o. Signage shall be installed at locations and in a form acceptable to the Township Engineer and the Township Traffic Engineer barring turns eastbound (in the direction of Princeton-Hightstown Road) by trucks from the development directly onto Clarksville Road from the Master Plan Road, with accompanying geometry changes as necessary to the intersection of Clarksville Road and the Master Plan Road to create a physical barrier on both sides of Clarksville Road to prevent trucks turning eastbound in the direction of Princeton-Hightstown Road. Turning prohibitions shall be enforceable by West Windsor Police. The signage and accompanying geometry changes shall be subject to Mercer County approval as necessary.
- p. The Township and Applicant shall work together to obtain County approval for the signage and geometry changes barring eastbound turns by trucks from the development onto Clarksville Road, and shall work together to apply for no turns by trucks onto Clarksville Road from Route 571 (Princeton-Hightstown Road).

- q. No curb cuts shall be permitted on Clarksville Road except where it intersects with the Master Plan Road, and for at least one emergency vehicle access point, subject to the approval and recommendation of the West Windsor Township Fire and Emergency Services Chief.
- r. The intersection of the Master Plan Road and U.S. Route 1 shall be constructed as soon as the DOT permit therefor is issued.
- s. Traffic reports shall be prepared by the Applicant upon the full occupancy of Phase I and for three consecutive years starting with the first anniversary of the occupancy of Phase I. The traffic reports shall include, in addition to standard distances, all signalized intersections through the full length of Clarksville Road in West Windsor.
 - i. The traffic reports shall include information as to how the tenants are advised of and are implementing means and methods of traffic reduction through rideshare, shuttles to/from the Princeton Junction train station and other public transportation opportunities. The tenant information shall include what amenities are being provided to keep employees on campus or provide options to use personal vehicles (e.g. bike share, e-scooter share). The Applicant shall include the same categories of information in all the reports.
 - ii. The Applicant shall share all the traffic reports with the Township Engineer and Township Traffic Consultant.
- t. Parking spaces for temporary trailer storage are being provided with each building. The Developer's Agreement shall include a provision setting forth what controls will be implemented to prevent misuse (storage of other goods or materials, tractor/truck parking, etc.). Trailer parking spaces shall be restricted to storage of disconnected licensed trailers only, in good working order.
- u. The Master Plan Road, as per the subdivision plat, provides for a 10-foot bikeway and 5-foot sidewalk. The Applicant has provided for a single crossing of this road between Clarksville Road and U.S. Route 1. A Rectangular Rapid Flashing Beacon (RRFB) for pedestrian safety due to the width of the road and volume of traffic expected shall be installed when warrants support installation.
- v. The Applicant shall construct the trail connection towards Bear Brook Road per the Master Plan Circulation Plan Element (Map 02, Quad 1), using the sewer easement, to the end of the property.

w. The Applicant shall work with NJ Transit, if NJ Transit decides to pursue bus routes adjacent to or within the development. The Applicant shall install bump outs and maintain shelters, if bus routes are provided for. Typical construction details shall be added to the plans and construction drawings, to be installed when and if NJ Transit identifies the locations.

x. The Applicant shall provide sufficient grade information at all barrier free ramps/parking spaces and accessible routes to building entrances to determine compliance with barrier free standards. Ten-scale detailed enlargements of same shall be used as necessary to provide legible information. The details provided (three sheets, all labeled CG401) address only parking stalls, and they do not provide ramps to the adjacent sidewalk network. In addition to adding accessible-ramp access to all accessible stalls, detailed grading of all crosswalks and ramps shall be provided.

y. Fire lanes shall be provided and appropriately marked at the direction of Chief Lynch of West Windsor Fire and Emergency Services.

z. Prior to construction, as part of the pre-construction meeting with municipal staff, the Applicant shall provide proposed construction routes, including video documentation of the preconstruction condition of the roads within the Township used for construction access and deliveries. The Applicant shall timely repair deterioration of local roads attributed to its construction traffic.

aa. The Applicant shall provide design hourly volumes requested by DOT for the Clarksville Road-Meadow Road intersection.

bb. The Applicant shall coordinate with the County to optimize signal timings on Quakerbridge Road with a proposed signal at Lawrence Station Road.

cc. The Applicant shall meet with staff to discuss traffic signing and the Traffic Signing Plan that has been provided. Discussion shall focus on choice and placement with signage, both of which will be subject to the review and approval of the Township Engineer and Township traffic consultant.

dd. 200 parking spaces for automobiles are proposed to be banked. If the Applicant wishes to install some or all of them, it shall engage with the Township staff as to their location. Whether to install them and where shall be subject to the review and approval of the Township

staff. The staff on its own initiative may require that some or all of the banked spaces be installed.

ee. The Applicant shall coordinate with Mercer County and the Township Engineer to extend the proposed shared path along Quakerbridge Road as far as practicable toward the Amtrak Overpass within available right-of-way, NJDEP permitting constraints, and grading constraints as may be approved by Mercer County.

ff. No automobile parking outside of the automobile parking areas or truck parking outside the truck parking areas shall be permitted.

gg. On Sheet CS100, the driveway connecting Building C1 to the roadway between C1 and B1 shall be either eliminated or moved more to the northeast, subject to the approval of the Township traffic consultant.

hh. The Applicant shall coordinate the design of the Quakerbridge Road widening with Mercer County with consideration of future potential changes to the Lawrence Station Road intersection location previously considered by Mercer County.

ii. The Applicant shall arrange for Title 39 enforcement on the Site by West Windsor Police.

jj. As part of a submission of an application for final site plan approval for Phase II, the Applicant shall work with the Township Engineer and Township Traffic Consultant to review ways in which the plan may be modified to further limit truck traffic on Clarksville Road. The plan shall address truck traffic coming from Princeton-Hightstown Road into the warehouse site.

kk. The Applicant agrees to the employment of best practices for reducing diesel emissions on-site and in the site surroundings and to require the same in its tenant leases. This includes no idling in violation of state code, and the use of particulate filters, which also require best practices in truck maintenance and operation.

Noise

ll. The need, value, and potential to employ measures to limit or diminish night-time noise production at the facilities closest to residential areas shall be addressed when the Applicant applies for final site plan approval for Building A1. The Applicant shall assess the need and

value of potential noise reduction measures, such as use of certain operational equipment on trucks and at the docks, including pneumatic dock levelers. Compression brakes are prohibited.

mm. Prior to the issuance of a Certificate of Occupancy, the Township shall engage a professional sound specialist to do a base study of the noise level to assess the sound levels to ensure that the Applicant complies with the noise regulations. The sound specialist shall do another noise test post-occupancy of each Phase II building to ensure compliance with noise regulations. If the original test or a subsequent test indicate that State or local code standards are violated, the Applicant shall take corrective steps to comply. The Applicant shall pay for these noise studies.

nn. The Health Department shall have access to do further testing whenever it desires without notice to the Applicant or tenants upon completion of the first Phase I or II building or any other Phase I or II improvements.

oo. The Developer's Agreement, subject to the review and approval of the Board Attorney and recorded by him, shall indicate when testing as set forth herein may occur and contain the requirement of remedial action if Township and State standards are violated. This resolution shall be attached to it.

pp. If noise studies or measurements in response to complaints show that the State and Township *dBA maxima* are exceeded, remediation will be necessary. The Applicant shall make, subject to the review and approval of Township staff, such operational or other changes as are necessary to comply.

Landscape and Conservation

qq. The conservation easements associated with the environmentally constrained lands, subject to DEP review and approval, on these properties should include the Township and thus establish the recorded Greenbelt in this area.

rr. The means of demarcating the conservation easement lines on the property (e.g., Greenbelt monuments) shall be subject to review and approval by the Township staff.

ss. The May 25, 2022 Air Quality Statement shall be included in the record. A further air quality study shall be done a) after construction of Phase I improvements but prior to any

building occupancy, to provide a base line and b) post-occupancy and these shall include a measure of particulate matter/solids.

tt. A note shall be added to the plans providing for review by staff of fencing as building permits are applied for each building. The fencing established shall be designed to mitigate wildlife impacts that could be the result of any fencing.

uu. The final planting schedule shall be amended to include additional plant size range specification, including the height for caliper trees and height and spread for shrubs.

vv. A note shall be inserted on the final landscape plans indicating that any additional ground level utility elements (e.g. water meter hot box or irrigation equipment) will be screened by landscape plantings.

ww. The 362 trees that are proposed within 100 feet of each building shall have a caliper of at least four inches.

xx. As the landscape plans are finalized for each building, the extent of hose bibs and need for automatic irrigation of landscape areas shall be evaluated and specified, subject to Township staff review and approval.

yy. The plan shall be modified to include birdhouses and, at the Applicant's option, bat houses. The design and location of same shall be subject to the review and approval of the Township staff.

zz. The Applicant shall make the roof areas other than the areas on which equipment is being located solar-ready. The warehouses shall comply with the New Jersey solar ready law (A3352).

aaa. The CEA in which contamination occurred has been remediated, and a No Further Action (NFA) letter has been issued by the DEP. Monitoring wells were installed and have been capped. The elevation of the existing and capped monitoring wells shall be adjusted to meet the proposed finished grades. A note shall be added indicating the required modifications to the existing monitoring wells.

bbb. The Applicant shall provide a schedule to Township staff from the property owner for the removal of rubble that will not be used during the project and the existing crushed demolition material that will be reused. The schedule must be reasonable and is subject to the review and approval of Township staff. To the extent that the Applicant takes any such material for use in

the construction of the warehouse development, it will test the materials and provide a certification that the materials are in compliance with NJDEP Site Remediation Standards for their intended use. The testing shall cover asbestos.

ccc. The Applicant shall work with the Township to grid out a certain area of the Site to estimate the number of trees that would be disturbed by the project and quantify the overall number of trees.

Building Architecture

ddd. The architectural façade design, materials, and colors shall remain uniform.

eee. If offices are not at each corner, or less office space at such locations, the architectural features shown on Exhibit A-14 “Proposed Elevations – Facility B-1” prepared by Cornerstone Architects (dated March 29, 2022) and the plans shall nevertheless remain the same.

fff. Windows that may allow visibility of internal racking or storage shall be treated with an opaque finish.

Signage

ggg. The Applicant has provided a generic wall sign template. Once tenants have been identified, the specific signage shall be provided to administrative staff in order to ensure compliance with Section 200-32B(2). The wall signs shall not be illuminated.

hhh. If tenant signage conforms to the submitted signage package, such signage can be approved administratively.

iii. Signage in a form and location subject to the review and approval of Township staff shall be provided addressing anti-idling regulations. Anti-idling regulations shall be enforced.

Stormwater Management

jjj. The emergency rules that DEP intends to adopt, known as PACT (Protecting Against Climate Threats), shall apply to the application if the rules are adopted and the rules would apply to the application at the DEP level.

kkk. Due to the extensive number of Green Infrastructure Best Management Practices (“GI BMPs”), significant earthwork will be performed and fill imported to implement proposed storm water management measures. This shall be done under the supervision of a NJ-licensed geotechnical engineer, with testing of each BMP’s infiltration rate after construction. A note to this effect shall be added to the plans.

lll. As per Code Section 200-105, the Applicant is required to enter into an agreement with the Township, in a form satisfactory to the Board Attorney, requiring the installation and maintenance by the Applicant and the Applicant’s successors-in-interest of all stormwater management improvements proposed by the Applicant and approved by the Board.

mmm. A Stormwater BMP Maintenance Plan has been prepared and found by the Township Engineer to be missing some key elements. The Applicant shall address the deficiencies in a manner acceptable to the Township Engineer during resolution compliance.

Utilities

nnn. A 20-foot wide easement is proposed along the extension of the sewer line along the north edge of the property, which addresses the Master Plan Utilities Plan Element requirement for the South Branch of the Duck Pond Run Sewer Interceptor. The easement will also extend from MH6 to the east property line with adjacent Lot 13 to service other properties north of the development. A stable access way to this portion of the system shall be provided with the sewer installation for future inspection and maintenance purposes, subject to NJDEP approval of wetlands and flood hazard permitting for same. Completion of the South Branch portion of the Sewer Interceptor is required as part of Phase I construction.

ooo. Two on-site sanitary sewer pump stations are proposed to service the properties on the east side of Clarksville Road, as indicated on Sheets CU111 and CU115. Both pump stations are to be privately owned and maintained, and approval of them is required from Township Council per Code Section 133-15E. Detailed designs for both facilities shall be provided, subject to the review and approval by the Township Engineer and the Township Landscape Architect, and are to include a facility Operation & Maintenance (O&M) manual, provisions for back-up power generation, and implementation of odor control measures.

ppp. The Applicant indicates that it has conservatively calculated the future commercial (retail, restaurants, convenience stores, hotel, etc.) sanitary sewer demand at 175,000 gallons per day and provided pipe capacity calculations that indicate the proposed sewer main to be installed

has sufficient capacity for the industrial and future commercial developments. However, no supporting calculations were provided to assess the conservativeness of that maximum flow number or how it has been attributed to the gravity portions of the system and the two pump stations. The Sewer Report shall be updated to include this calculation, subject to the review and approval of the Township Engineer.

qqq. Any intention by the Applicant to seek reimbursement from other future property owners connecting to the sewer main extension shall be addressed through the Developer's Agreement process.

rrr. A Treatment Works Approval will be required for the proposed redevelopment. A request to receive sewer allocation shall go before Township Council, to be approved by Resolution.

sss. The Applicant shall explore the installation of a NJ BPU (Board of Public Utilities) Community Solar program.

Fire and Emergency Services

ttt. A lock box to allow immediate access by the Fire Department shall be installed at the front of the building.

uuu. The Applicant shall be required by the Fire Official to conduct a radio signal strength survey of the buildings while under construction, and, if deemed necessary, a radio signal amplification system shall be installed.

vvv. The Applicant should be aware of Township fire prevention requirements for, before, and during construction:

- i. F-10005.3 Access: Temporary all-weather surface access roads, gravel or equivalent, capable of supporting a 30-ton emergency vehicle, shall be provided at all times for Fire Department vehicular access to all structures under construction and to all structures used for the storage of combustible construction materials. Access of 125 unobstructed feet shall be provided to all such locations at all times.
- ii. Temporary all-weather surface access roads shall be approved by the Fire Marshal's office prior to construction commencing.
- iii. F-10005.4 Water supply: The fire protection water supply system, including fire hydrants shown on the approved site plan, shall be installed and in service prior to placing combustible building materials on the project site or utilizing them in the

construction of building structures. If phased construction is approved, coordinated phased installation of the fire protection water system shall be permitted as approved by the Fire Marshal.

Other

www. Snow storage and removal for the sites, Avalon Way extension, both sides of the Master Plan Road, sidewalks, and bikeways shall be handled by the Applicant's Property Management Division. The Property Management Division will also handle any oil spills and provide maintenance for the development.

xxx. All warehouses shall be designed for only "Storage" Use Group as defined by the New Jersey Building Codes.

yyy. The Applicant shall have extended vesting of 10 years commencing on the date of this approval.

zzz. The Dr. Clarke House was located on the east side of Quakerbridge Road between Clarksville Road and Route 1. Archeological excavation there in 1985 uncovered the foundation of this 18th century farmhouse. The Applicant has retained Richard Grubb & Associates to prepare a Phase 1A cultural assessment as part of the DEP application process. The assessment shall be filed with the Township once it becomes available. The Applicant shall abide by the recommendations of the assessment, including any further study that may be required and recommendations therein.

aaaa. The Applicant shall share with Township staff the results of the archeological work that was done on the south side of Clarksville Road.

bbbb. The Applicant shall install the sign in the vicinity of the former farmhouse where enemy scouts were captured for later interrogation by the Continental Army. The sign was installed by the Girl Scouts as part of a Girl Scouts project and is in the Township's possession. Its location shall be subject to the review and approval of Township staff.

cccc. The Applicant, in conjunction with Township staff, shall also evaluate additional signage along the Quakerbridge Road path commemorating General Washington's historic march from Trenton to Princeton. The location and content of such signage shall be subject to the review and approval by the Township staff, who shall determine what signage will be installed. Installation shall be by the Applicant.

dddd. The incinerator on the site has been demolished and removed by the current owner. The closure documentation for that unit and associated equipment, including any remedial activities associated with the incinerator, shall be filed with the Township.

eeee. If any more existing structures need to be removed on the Site in order for a new structure to be built, the Applicant shall obtain a demolition permit and certificate of approval prior to a zoning permit being issued.

ffff. Proposed Block and Lot numbers, street names, and street addresses and unit numbering shall be submitted to the office of the Township Engineer and be subject to his review and approval.

gggg. All construction details, including final design of the stormwater management BMPs and their amenities, shall subject to the review and approval by the Township Engineer.

hhhh. The Applicant shall provide two engineer's estimates of probable construction costs for this project. One will include all Phase I site improvements for the purpose of establishing the required construction inspection escrow fees, while the other will be used for the purpose of establishing the required performance guarantee amounts. The latter is to consist solely of those improvements in the Township or County right-of-way or improvements ultimately to be dedicated to public entity as well as any proposed buffer landscaping and berthing, in accordance with applicable Township codes.

iiii. As per Ordinance section 200-81.1 the Applicant shall be required to provide, via both hard copy and in electronic format, approved site plans being submitted for signature and as-built surveys upon project completion. Electronic copies of the Stormwater Management Report and Maintenance Manual shall also be provided upon approval of same.

jjjj. The Applicant shall pay the affordable housing fee required in accordance with Section 200-126 of the ordinance and the Statewide Non-Residential Development Fee Act.

kkkk. The Applicant shall prepare and execute a Developer's Agreement setting forth the Applicant's obligation with respect to off-tract assessments and certain other conditions of this Approval. A copy of this resolution shall be appended to the Agreement, which shall be subject to the review and approval of the Board Attorney, and which shall be recorded by the Applicant.

llll. Other outside agency approvals will also be required. The following are approvals that are anticipated at this time:

- A DOT major access permit
- Mercer County Planning Board
- Mercer County Soil Conservation District
- Delaware and Raritan Canal Commission
- NJDEP (FHA Permit, Wetlands fill, TWA, construction storm water discharge permit)

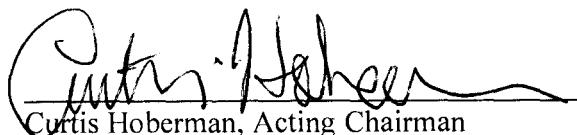
CONCLUSION

Based on the foregoing, the Board at its June 29, 2022 meeting voted to approve the plans with revisions made therein and as supplemented and modified by the exhibits and to grant the relief identified above subject to the conditions and to be revised in accordance with the conditions set forth herein.

This resolution of memorialization was adopted on November 2, 2022 by a vote of those who voted to grant the relief sought by the Applicant.

The date of decision shall be June 29, 2022 except that the date of the adoption of this memorializing resolution is the date of decision for purposes of (1) mailing a copy of the decision to the Applicant within 10 days of the date of the decision; (2) filing a copy of the decision with the administrative officer; and (3) publication of a notice of this decision. The date of the publication of the notice of decision shall be the date of the commencement of the vesting protection period.

We do hereby certify that the foregoing resolution was adopted by the Planning Board at its regular meeting held on November 2, 2022 This resolution memorializes formal action taken by the Board at its regular meeting held June 29, 2022



Curtis Hoberman, Acting Chairman

Lisa Komjati
Lisa Komjati, Administrative Secretary

Michael Karp, Former Vice Chair – Yea
Sue Appelget – Yea
Anis Baig – Yea
Curtis Hoberman – Yea
Andrea Mandel – Yea
Hemant Marathe – Yea
Simon Pankove – Nay
Allen Schectel – Nay
Jyotika Bahree, Alternate No. 1 – Absent
Robert Loverro, Alternate No. 2 – Absent

EXHIBIT “B”

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Atlantic Realty Development
Corporation

ATLANTIC REALTY DEVELOPMENT
CORPORATION,

Plaintiff,

v.

THE MAYOR AND COUNCIL OF THE
TOWNSHIP OF WEST WINDSOR AND THE
TOWNSHIP OF WEST WINDSOR,

Defendants.

**SUPERIOR COURT OF NEW JERSEY
MERCER COUNTY-LAW DIVISION**

CIVIL ACTION

DOCKET NO.: MER-L-1947-18

**STIPULATION OF SETTLEMENT AND
CONSENT ORDER**

Recital: This Stipulation and Consent Order ("SCO"), dated ___,
2020, is executed by Plaintiff Atlantic Realty Development
Corporation ("Atlantic") and by Defendant Township of West Windsor
("Township"), referred to together as "the Parties", in intended
final settlement of the above-captioned zoning and land use related
action ("the Action"), in concert with the Parties' final
settlement regarding the Superior Court of New Jersey declaratory

judgment action captioned: I/M/O The Township of West of Windsor, Docket No. MER-L-1561-15, ("the Township DJ Action") and the related appeal, captioned: I/M/O The Township of West Windsor (Mount Laurel Declaratory Judgement Action), Docket No. A-005412-18 ("the Appeal"), each involving the same Atlantic real property located within the Township that is in issue in the captioned Action, with resolution of the Appeal being provided for within Section 24. hereof through separate Stipulation of Dismissal to be filed under the Appeal Docket immediately upon entry of the instant SCO;

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A. THE PARTIES

Through their respective undersigned counsel, Waters, McPherson, McNeill, P.C. (Kenneth D. McPherson, Jr., counsel of record) appearing for Plaintiff Atlantic, and Miller, Porter, and Muller, P.C. (Gerald J. Muller, counsel of record) appearing for the Defendants), the Parties have hereby entered the instant SCO, stipulating and agreeing as follows:

1. Pursuant to Order of Substitution of Parties entered in the Action on December 2, 2019 (copy attached as Exhibit A), Atlantic has been substituted as the real-party-in-interest under Rule 4:34-3, superseding the original plaintiff in the Action, Princeton Land, LLC ("PL"), an affiliate of The Howard Hughes

Corporation ("HHC"), and pursuant to Orders of the Appellate Division, entered in the Appeal on January 22, 2020 (attached hereto as Exhibit B), Atlantic has also been recognized as a Party-Appellant, and successor-in-interest to HHC and to HHC's affiliate titleholder, PL.

B. THE SETTLED LAND USE ACTION

2. The Action was commenced through complaint filed by HHC's affiliate PL, on September 13, 2018 ("the Complaint"), as titleholder to contiguous lots within the southwestern section of the Township, fronting on US Route 1, comprised of approximately 650 acres, formally used by the American Cyanamid Corporation, principally as an industrial agricultural research facility ("the HHC Site"), acquired in 2010 in its entirety by HHC, with the intention of development for predominantly residential uses, including approximately 1,976 units of inclusionary family housing, as set forth in the concept plans filed by PL, and later adopted by Atlantic in the Action in which Atlantic has succeeded PL as Party Plaintiff-in-Interest;

i. Pre-Settlement Litigation of Non-residential Zoning

3. Following hearing on April 5, 2019 on motion by the Township for dismissal of Counts One, Four and Five of the Complaint, the Court issued an order, dated June 26, 2019, granting dismissal with prejudice of Counts One, Four and Five of the

Complaint, which sought statutory Redevelopment planning of the HHC Site and other related relief compelling zoning revision, with remaining Counts Two and Three of the Complaint, respectively contending that the existing use zoning of the HHC site (effectively precluding any residential development of the property in Atlantic's view) is arbitrary and contrary to the Municipal Land Use Law ("MLUL"), and is confiscatory in its application to the HHC site in violation of the State and Federal Constitutions, remaining in contest by the Township and therefore being scheduled for pretrial discovery;

4. Further pre-trial discovery and litigation activity in the Action was suspended through successive Case Management Orders at the request of the Parties in order to discuss possible settlement of the Action;

5. Atlantic acquired title to the entirety of the HHC Site on or about October 29, 2019, with the intention of developing the HHC Site principally for residential uses;

ii. Presentation of HHC Site Development Plans

6. Prior to commencement of the Action, on or about September 13, 2018, on referral by the Township Council, on May 10, 2017 and July 26, 2017, the Township Planning Board ("Planning Board") heard the presentation by Atlantic's predecessor-in-title of concept plans for the redevelopment of the HHC Site for

inclusionary housing and other non-industrial uses, following which the Planning Board declined to take action at that time in furtherance of either designation of any or all portions of the HHC Site as a redevelopment area, or, alternatively, designation of the HHC site as a statutory area in need of renewal, and otherwise declining to advance rezoning of the HHC site, with the Township Council thereafter similarly declining requests for zoning revision;

7. On or about November 6, 2019, in contrast to the Planning Board presentation by Atlantic's predecessor-in-title of concept plans for residential development of the HHC Site, the Township Planning Board published drafts of contemplated Township Master Plan revisions which did not include residential use of the HHC Site;

iii. Resolution of Township Affordable Housing Litigation

8. On or about July 2, 2019, within the Township's aforementioned Township DJ Action, that is now the subject of the Appeal being maintained by Atlantic (which is being concurrently settled together with the Action), the Presiding Judge issued a Final Judgment of Compliance and Repose, resolving the Township DJ Action and approving the Township's affordable housing compliance plan, which the Township views as satisfying and discharging any Township obligation to rezone and site plan for inclusionary family

housing, other than as to inclusionary housing development sites included in the Township's Court-approved affordable Housing Element and Fair Share Plan ("HEFSP"), which does not include the HHC Site.

C. RECONCILIATION OF CONFLICTING VIEWS OF LAND USE

9. In appearances and submissions in both the above captioned Action and the Appeal, the Parties have held divergent land use views, with Atlantic maintaining, on the one hand, that the HHC Site is suitable for residential use and that there exists need for market-rate housing within the regional housing market, within which the HHC Site and the Township are situated, such that, in Atlantic's view, market-rate housing constitutes the highest and best use of the HHC's Site, and the Township maintaining, on the other hand, that the Township's provision of constitutionally sufficient affordable housing is not a function of the HHC Site as the Township has made constitutionally sufficient provision for residential zoning, with affordable units included in the Township's approved HEFSP, together with the Hilton/Toll Bros. Project, thereby satisfying the Township's affordable housing obligation while avoiding burdens of additional residential development;

D. COURT-AUTHORIZED SETTLEMENT CONFERENCING OF PARTIES

10. In effort to resolve their differences regarding zoning and development of the HHC Site, during Case Management teleconferences conducted in the Action on January 6, 2020 and March 9, 2020, the Parties requested that the Court grant a further suspension of discovery and litigation proceedings, and the Court's April 13, 2020 Case Management Order ("CMO"), entered contemporaneously with case management telephonic conferences, therefore tolled discovery pending further Case Management teleconference, initially scheduled thereunder for June 16, 2020, and thereafter, rescheduled for July 1, 2020, pursuant to the aforementioned April 13, 2020 CMO, dated April 13, 2020, with the aforesaid tolling of discovery being further extended through November 10 2020 pursuant to CMO entered September 10, 2020;

E. TERMS OF CONDITIONAL SETTLEMENT

11. The Parties, having since conferred both directly and through their respective counsel, and having reviewed and approved the instant SCO, now present the instant SCO to the Court and hereby advise the Court, through their respective counsel, of the following terms of settlement:

i. Opportunity to Review and Comment on the Terms of the Agreement

The Parties have had due opportunity to consider the terms and conditions of the instant SCO and exhibits referenced herein

and attached hereto, review of the SCO being conducted with the benefit of advice of respective counsel for the Parties, and, in the case of the Township, with the benefit of the advice and recommendations of the Township's independent planning consultants and the Township's Real Estate Manager;

ii. Resolution Adopting the SCO

12. The Township Council of the Township has also considered the instant SCO and annexed exhibits, including in executive session as authorized under the Open Public Meetings Act, N.J.S.A. 10:4-6 to-21, for settlement discussion, and, through Resolution duly adopted at a regularly scheduled meeting (a copy of which is attached hereto as Exhibit C), the Township Council has approved the instant SCO and authorized its execution on behalf of the Township, which accordingly has been signed below, subject to all the executory actions of municipal governmental contemplated hereunder being considered at duly noticed public meetings, and subject, as well, to the independent exercise of discretion of the Planning Board and Township Council with respect to the prospective zoning revisions contemplated herein;

F. DISMISSAL OF ACTION WITHOUT PREJUDICE TO BECOME WITH PREJUDICE DISMISSAL UPON FULFILLMENT OF CONDITIONS OF SETTLEMENT

13. The Parties having reached accord, and with due authorizations of the respective Parties having been obtained for

the execution hereof by their respective counsel, and the executed SCO having been submitted for entry by the Court on consent to pursuant to R.4:42-1 (b), Parties having before the Court, both in settlement of the Action, with the Parties hereby further **Agreeing and Stipulating, as follows:**

14. The Action shall be, and hereby is dismissed without prejudice, through entry of the instant SCO without costs in favor of or against either Party, with the instant dismissal becoming a final dismissal with prejudice immediately upon satisfaction of Conditions 1. and 2. of settlement set forth immediately below, with the entry of dismissal with prejudice forever precluding Atlantic, or any successors-in-interest thereto, from: a) applying to the Planning Board for recommendation or authorization of residential use of the HHC Site; b) petitioning the Township Council for residential-use rezoning; or c) initiating litigation, or otherwise seeking governmental or judicial relief authorizing residential use of the HHC Site:

Condition 1. Adoption of Zoning Code Consistent with Conceptual Site Plan. With the benefit of a supporting resolution of the Planning Board recommending rezoning of the HHC Site ("Planning Board Resolution"), the Township Council and the Township shall have adopted an ordinance rezoning the HHC Site, in form consistent with development shown on the Conceptual Site Plan attached hereto as Exhibit D, which,

subject to site plan approvals and all other applicable regulatory approvals, shall include permissible development of the HHC Site with not less than 5.5 million square feet of modern warehouse use ("Warehouse Rezoning"), and development of up to 150,000 square feet of retail use calculated exclusively of other commercial uses shown as permitted on Exhibit D, without authorization of any residential development of the entire 650+ acre HHC Site, with Warehouse Rezoning including the enactment of modern warehouse and non-residential use zoning code, incorporating, in substance, the Bulk and Dimensional regulations shown in Exhibit E annexed hereto, which will accommodate contemplated improvements shown on the annexed (Exhibit D) Conceptual Site Plan ("Warehouse Rezoning Code"); and

Condition 2. Timely Action on Rezoning. Both the aforesaid Planning Board Resolution and the Warehouse Rezoning Code are to be adopted at regularly scheduled or special public meetings of both the Planning Board and the Township Council, the Board and the Township Council, each having respectively considered the HHC Site, in the Planning Board's case, in the course of hearing the proposed redevelopment plan presentation of Atlantic's predecessor-in-title, and, in the case of both the Planning Board and the Township Council, during the course of selection of inclusionary housing sites

for incorporation in the Township's Court approved HEFSP, with the public hearings contemplated in connection with the adoption of the Planning Board Resolution and Warehouse Rezoning Code being conducted in public sessions, intended to be completed within or about ninety (90) days from the date of entry hereof;

i. Entry of Final Dismissal with Prejudice Order

15. Upon timely, final and non-appealable adoption of Warehouse Rezoning Code hereunder, or entry of an non-appealable court decision in favor of the Parties in litigation brought by a third party, thereby satisfying conditions precedent to final dismissal of the Action set forth in Section 14. hereof, an order of dismissal of the Action with prejudice and without costs shall be entered on notice pursuant to Rule 4:42-1(c) (Settlement on Notice).

G. REACTIVATION OF ACTION IN THE EVENT OF NON-FULFILLMENT OF SETTLEMENT CONDITIONS.

16. In the event that either of conditions 1. and 2. set forth in Section 14. hereof shall not be timely fulfilled as a result of either the Planning Board and/or Township Council action or inaction in the course of their respective discretionary reviews of the SCO and annexed Exhibits ("Non-Approval of Warehouse Rezoning"), or, in the event either Condition should not be fulfilled as a result of judicial determination adverse to the

adoption of Warehouse Rezoning Code, then, in either of such events, Atlantic may apply to the Court, on notice duly served on counsel for the Township pursuant to Rule 4:42-2, for the issuance of an order reactivating the Action, and upon entry of such order, the Parties shall resume their respective litigation positions in the Action as of the date thereof, subject to further CMO, provided, however, that reactivation of the Action hereunder due to Non-Approval of Warehouse Rezoning shall not affect the finality and non-appealable status of either the July 2, 2019 Judgment of Immunity and Repose entered in the Township's Mount Laurel IV DJ Action or the dismissal of the Appeal with prejudice pursuant to Section 24. hereof;

i. Election of Acceptance of Partial Warehouse Rezoning

17. If, as a result of inaction, or adverse action, of the Planning Board, and/or, the Township Council, or as a result of decision of a reviewing Court, Non-Approval of Warehouse Rezoning shall occur, then, in such events, Atlantic may, at its election, opt for either the reactivation of the Action on notice pursuant to Rule 4:42-1(c) as provided for in Section 16. hereof, and thereby resume its litigation position therein, or, Atlantic may accept such non-conforming rezoning revisions as may be adopted by the Township with respect to portions of the HHC Site that Atlantic may designate as accepted, and thereafter, Atlantic may then litigate for relief from zoning of areas constituting the balance

of the HHC Site not designated as accepted by Atlantic ("Contested Zoning Areas"), and, any litigation of Contested Zoning Areas reactivated hereunder may include the prosecution of claims for judicial relief from zoning which, if granted, would allow Contested Zoning Areas to be used for residential uses, including, but not limited to, multifamily residential homes, as well as inclusionary family housing and 100% affordable unit housing projects, provided however, that as set forth in Section 16. hereof, the reactivation of the Action for litigation of Contested Zoning Areas shall have no effect on either the Township's Judgment of Repose and Immunity or the final dismissal of the Appeal hereunder;

ii. HEFSP Compliance Will Be Contestable in Event of Non-Approval of Warehouse Rezoning

18. In the event of Non-Approval of Warehouse Rezoning set forth in Section 16. above, in addition to litigation of Contested Zoning Areas, Atlantic may contest the adequacy of the Township's compliance with the terms of the Court's July 2, 2019 Judgment in the Township's Mount Laurel IV DJ Action approving the Township's HEFSP, and contest any subsequent orders founded thereon, to the extent of challenging the reasonableness and speed of Township and its selected developers progress with affordable housing sites included within the Township's HEFSP, with Atlantic's right of contest of the Township's HEFSP accruing under the terms of this

Section 18. including the option of challenging, within the Township DJ Action, the continuing validity and reasonableness of the Court's earlier findings that specific affordable housing sites included within the Township's Court-approved HEFSP are "realistic" compliance sites, properly creditable toward satisfaction of the balance of the Township's Third Round obligation;

iii. Township Retention of All Defenses in Event of Non-Approval of Warehouse Rezoning and Reactivation of Litigation of Contested Zoning Areas

19. In all instances of Non-Approval of Warehouse Rezoning and reactivation of litigation under the terms of Sections 16., 17., or 18. hereof, the Township shall have available to it all defenses at law and equity assertable in good faith, and the entry of this SCO shall be without prejudice to the Township in any Contested Zoning Area proceedings arising due to Non-approval of Warehouse Rezoning;

H. EXPEDITION OF REZONING AND SITE PLANNING CONFORMING (WITHOUT VARIANCE) TO WAREHOUSE REZONING CODE

20. Warehouse Rezoning shall be expeditiously scheduled before the Planning Board and Township Council without the necessity of further study or investigation of the HHC site, given the Township Council and Planning Board's aforementioned prior considerations of the HHC Site on-record, with Warehouse Rezoning being supported principally by submission of the instant SCO as

entered by the Court, along with Exhibits annexed thereto, together with such other consistent documentation and customary professional exhibits and reports (including, but not limited to, reports of fiscal impact of Warehouse Rezoning), that Atlantic and/or the Township may timely submit in support of Warehouse Rezoning;

i. Nonsupport of Objectors

21. Neither the Township nor the Planning Board nor Atlantic shall support or fund, any challenge, contest, or appeal (including prerogative writ actions pursuant to Rule 4:69-1), seeking relief from Warehouse Rezoning hereunder or from any Site Plan approval issued pursuant to Warehouse Rezoning Code, and having heretofore reviewed the Exhibits annexed hereto, the Township, its Planning Consultant, and Land Use Manager, shall, on request by Atlantic, express general support in a concise writing for any site plan application conforming to Warehouse Rezoning Code adopted in form annexed hereto as Exhibit E without necessity of variance ("Conforming Site Plan Application").

ii. Rejection of No Variances-Conforming Warehouse Rezoning Site Plan as Cause for Reopening of Claims for Residential Uses of HHC Site

22. In the event of non-approval of a Conforming Site Plan Application, in addition to seeking judicial review of such adverse site planning decision, as provided for in Sections 16., 17. and

18. hereof, Atlantic shall also be entitled to initiate separate litigation, seeking regulatory and/or judicial relief that would:

i) allow Atlantic to make market rate residential use of such portions of the HHC site that may be subject to such adverse site planning decision; **ii)** allow the substitution of areas of the HHC Site for sites included within the Township's HEFSP, as is provided for in Section 18. hereof (Contest of HEFSP compliance in event of Non-Approval of Warehouse Rezoning); or **iii)** relief that would allow inclusionary housing development of HHC Site areas for application toward satisfaction of any later round ("Round IV") Mount Laurel compliance obligations of the Township. (The Township shall retain all defenses as provided in Section 19. hereof., and non-approval of a Conforming Site Plan Application hereunder shall otherwise have no effect on either the finality of the July 2, 2019 Judgment in the Township Mount Laurel IV Declaratory Judgment Action or the dismissal of the Appeal under Section 24. upon entry of the instant SCO.);

I. ENTRY OF DISMISSAL WITH PREJUDICE OF ACTION UPON FINAL ADOPTION OF WAREHOUSE REZONING

23. Upon the final non-appealable adoption of Warehouse Rezoning Code as conditionally stipulated herein, final dismissal of the Action with prejudice shall be entered on notice pursuant to Rule 4:42 - 1(c), on application of either Party hereto, without costs in favor of or against either Party;

i. Dismissal of Appeal upon entry of SCO

24. Upon entry of the instant SCO, Atlantic shall cause Stipulations of Settlement and Dismissal of the Appeal, in form annexed hereto as Exhibit F, to be entered by the Office of the Clerk of the Appellate Division of New Jersey Superior Court pursuant to R. 2:8-2 in final resolution of the Appeal as set forth in the Recital hereto;

ii. No Tax Abatement Applications

25. Subject to Section 14. hereof, Atlantic is foregoing and relinquishing any application for: arrangements for payments in lieu of taxes ("PILOT"); Financial Agreements under the Housing and Redevelopment Laws; or other form of abatement of ad valorem municipal real estate taxes.

J. COUNTERPARTS

26. This SCO may be executed by the Parties, through their respective counsel, in counterparts.

Waters, McPherson, McNeill, P.C.
Counsel for Plaintiff
Atlantic Realty Development Corporation

By 
Kenneth D. McPherson, Jr.

Dated: _____, 2020

Miller, Porter, and Muller
Special Counsel to Defendant
Township of West Windsor

By: _____
Gerald J. Muller, Esq.
Dated: _____, 2020

The Foregoing is So Ordered.

By: _____
Mary C. Jacobson, A.J.S.C.

Table of Exhibits

Order of Substitution of Party-Plaintiff-in-Interest	A
Orders of Appellate Division recognizing Atlantic Realty as Appellant.....	B
Resolution of Township Council Approving Form of Settlement and Consent Order	C
Conceptual Site Plan.....	D
Warehouse Rezoning.....	E
Stipulations of Settlement and Dismissal of the Appeal	F

1206426.2

EXHIBIT A

Kenneth D. McPherson, Jr., Esq. (Attorney ID No. 028501982)

Lauren H. Sobotka, Esq. (Attorney ID No. 273992018)

WATERS, McPHERSON, McNEILL, P.C.

300 Lighting Way

P.O. Box 1560

Secaucus, NJ 07096

Tel. (201) 863-4400

Email kmj@lawwmm.com

Attorneys for Movants Atlantic Realty Development Corporation and
Affiliate Title Holders, Scholar's Meadow LLC and Clarksville
Center LLC

PRINCETON LAND LLC,

Plaintiff,

v.

THE MAYOR AND COUNCIL OF THE
TOWNSHIP OF WEST WINDSOR AND
THE TOWNSHIP OF WEST WINDSOR,

Defendants.

SUPERIOR COURT OF NEW JERSEY
MERCER COUNTY-LAW DIVISION

DOCKET NO. MER-L-1947-18

CIVIL ACTION

ORDER OF SUBSTITUTION OF
PARTY-PLAINTIFFS

The above-captioned action ("the Action") having been brought before the Court by Waters, McPherson, McNeill, P.C. (Kenneth D. McPherson, Jr. and Lauren H. Sobotka, appearing), as counsel for movant Atlantic Realty Development Corporation ("ARDC") and ARDC's affiliated title holders identified herein, on notice of motion, served on counsel for parties of record, Pepper Hamilton, LLC (Thomas M. Letizia, appearing), attorneys for Original Party-Plaintiff, Princeton Land LLC ("PL"), and Miller, Porter & Muller, P.C. (Gerald J. Miller, appearing), Special Counsel for Defendants, Mayor and Council of the Township of West Windsor and the Township of West Windsor (together, "Defendants"), seeking an

Order pursuant to Rule 4:34-3 (Real-Party-in-Interest/Substituting Parties-Plaintiff), and the Court having received no objections to the form of the Proposed Order, submitted with the moving papers, and for good cause shown in the moving papers;

It is on this 2nd day of ~~November~~, ^{December} 2019, hereby ORDERED:

1. Having acquired title and development rights to the property that is the object of the Action, ARDC, as holder of development rights, and its affiliate title holders, Scholar's Meadow LLC and Clarksville Center LLC, (together, "Movants"), are now the Real-Parties-Plaintiffs-in-Interest in the captioned matter;
2. Movants shall be and hereby are substituted for PL as Parties-Plaintiffs pursuant to Rule 4:34-3;
3. Further filings in the Action may be captioned, and should be accepted by the Office of the Clerk for filing, showing Movants as Parties-Plaintiffs in the following manner: "Atlantic Realty Development Corporation, Scholar's Meadow LLC, and Clarksville Center LLC, Plaintiffs, through substitution as Real-Parties-in-Interest Pursuant to Rule 4:34-3;
4. A true, but uncertified, copy of this Order shall be served on the offices of counsel of record for all the other parties within 7 days of the date hereof.

Mary C. Jacobson, A.J.S.C.
Mary C. Jacobson, A.J.S.C.

 Opposed

X Unopposed

1155521.3

EXHIBIT

B

FILED, Clerk of the Appellate Division, January 22, 2020, A-005412-18, M-003007-19

ORDER ON MOTION

I/M/O THE TOWNSHIP OF WEST
WINDSOR

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-005412-18T2
MOTION NO. M-003007-19
BEFORE PART G
JUDGES: JOSEPH L. YANNOTTI
LISA A. FIRKO

MOTION FILED: 12/20/2019 BY: TOWNSHIP OF WEST WINDSOR

ANSWER(S)
FILED:

SUBMITTED TO COURT: January 21, 2020

ORDER

THIS MATTER HAVING BEEN DULY PRESENTED TO THE COURT, IT IS, ON THIS
21st day of JANUARY, 2020, HEREBY ORDERED AS FOLLOWS:

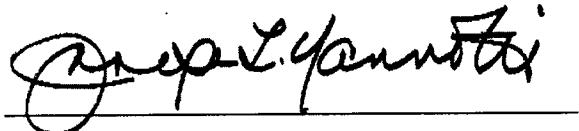
MOTION BY RESPONDENT

MOTION TO AMEND SCHEDULING ORDER DENIED AND OTHER

SUPPLEMENTAL:

The motion to amend the scheduling order is denied. All parties to the trial court proceedings are deemed to be parties on appeal. Atlantic Realty is the appellant, and all other parties are respondents. Unless it has already done so, any respondent that does not intend to participate in the appeal shall within ten (10) days after the date of this order inform the Clerk of the Court of its non-participation. Any amicus curiae that has been granted leave to appear in the trial court proceedings may, without seeking further leave, file a brief on appeal. R. 1:13-9(d). The Township's motion to bar Atlantic Realty from raising arguments regarding the site formerly owned by Howard Hughes is denied.

FOR THE COURT:



JOSEPH L. YANNOTTI, P.J.A.D.

FILED, Clerk of the Appellate Division, January 22, 2020, A-005412-18, M-003206-19

ORDER ON MOTION

I/M/O THE TOWNSHIP OF WEST
WINDSOR

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-005412-18T2
MOTION NO. M-003206-19
BEFORE PART G
JUDGES: JOSEPH L. YANNOTTI
LISA A. FIRKO

MOTION FILED: 12/30/2019

BY: ATLANTIC REALTY

ANSWER(S) 01/10/2020
FILED:

BY: TOWNSHIP OF WEST WINDSOR

SUBMITTED TO COURT: January 21, 2020

ORDER

THIS MATTER HAVING BEEN DULY PRESENTED TO THE COURT, IT IS, ON THIS
21st day of JANUARY, 2020, HEREBY ORDERED AS FOLLOWS:

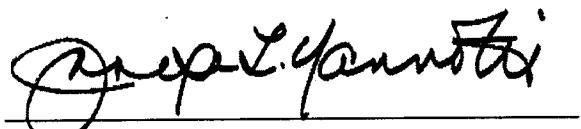
MOTION BY APPELLANT

MOTION to SUBSTITUTE
REAL-PARTY-IN-INTEREST DENIED AND OTHER

SUPPLEMENTAL:

The motion is denied as moot. See Order entered on M-3007-19.

FOR THE COURT:



JOSEPH L. YANNOTTI, P.J.A.D.

EXHIBIT

C

2020-R_____

RESOLUTION

WHEREAS,

the Township of West Windsor (“Township”) filed a declaratory judgment action, pursuant to In re Adoption of N.J.A.C. 5:96 & 5:97 ex rel. New Jersey Council on Affordable Housing, 221 N.J. 1 (2015) (“Mount Laurel IV”) in July of 2015, captioned I/M/O The Township of West of Windsor, Docket No. MER-L-1561-15 (“Township Declaratory Judgment Action”), in which the Township sought immunity from builders’ remedy lawsuits; and

WHEREAS,

in 2016, Atlantic Realty Corporation (“Atlantic Realty”), as owner of the parcel of land, known as the H&B Site (“H&B Site”), intervened in the Township’s Declaratory Judgment Action; and

WHEREAS,

in the Fall of 2018, the Township entered into settlement discussions with Intervener Fair Share Housing Center (“FSHC”) in the Township Declaratory Judgment Action ; and

WHEREAS,

a settlement agreement between the Township and FSHC was ultimately reached in the Township Declaratory Judgment Action, which was subsequently approved by this Council; and

WHEREAS,

on or about July 2, 2019, the presiding Mount Laurel Judge entered a Final Judgment of Compliance and Repose in the Township Declaratory Judgment Action based on the Township – FSHC settlement; and

WHEREAS,

in August of 2019, as developer of lands within the Township referred to as the “H&B Site”, and as intervenor in the Township Declaratory Judgment Action, Atlantic Realty appealed the July 2, 2019 Order of the Superior Court of New Jersey, Appellate Division, captioned I/M/O The Township of West of Windsor, Docket No. A-005412-18 (“the Appeal”); and

WHEREAS,

on September 13, 2019, Howard Hughes Corporation, through its affiliate Princeton Lands, LLC (“PL”), titleholder to approximately 650 acres (the “HHC Site”), filed a prerogative writ action, captioned: Atlantic Realty Development Corporation v. The Mayor and Council of the Township of West Windsor and the Township of West Windsor assigned Docket No. MER-L-1947-18, as titleholder to approximately 650 acres (“the HHC Action”) seeking residential rezoning of the HHC Site ; and

WHEREAS, Atlantic Realty acquired title to the HHC site on or about October 29, 2019, and through Court Orders, succeeded to the positions of Howard Hughes Corporation and PL in the Appeal and in the HHC Action;

WHEREAS, Atlantic Realty and the Township have, through respective legal counsel, negotiated terms of settlement agreement providing for the dismissal of the Appeal and the HHC Action regarding the H&B Site and the HHC Site under terms and conditions set forth in a proposed Stipulation of Settlement with Consent Order (“SCO”) resolving both the Appeal and the HHC Action; and

WHEREAS the Council has: reviewed the SCO, has consulted with its professionals, heard comment by the public and has determined that it would be in the best interests of the Township to approve the SCO and terms of the settlement agreement memorialized therein.

NOW, THEREFORE, be it resolved on this, the 30th day of November, 2020 by the West Windsor Township Council, that the Township’s counsel is hereby authorized and directed to execute the SCO attached hereto, or in a form substantially equivalent thereto, approved by Township Council, and the Mayor, and the Township Clerk, are hereby authorized to execute on behalf of the Township all documents contemplated within the SCO and to otherwise do all things necessary or convenient to implement the terms of the settlement agreement memorialized therein.

ADOPTED: November 30, 2020,

I hereby certify that the above resolution was adopted by the West Windsor Township Council at their meeting held on the 30th day of November, 2020.

Gay M. Huber Township Clerk West Windsor Township

Exhibit D

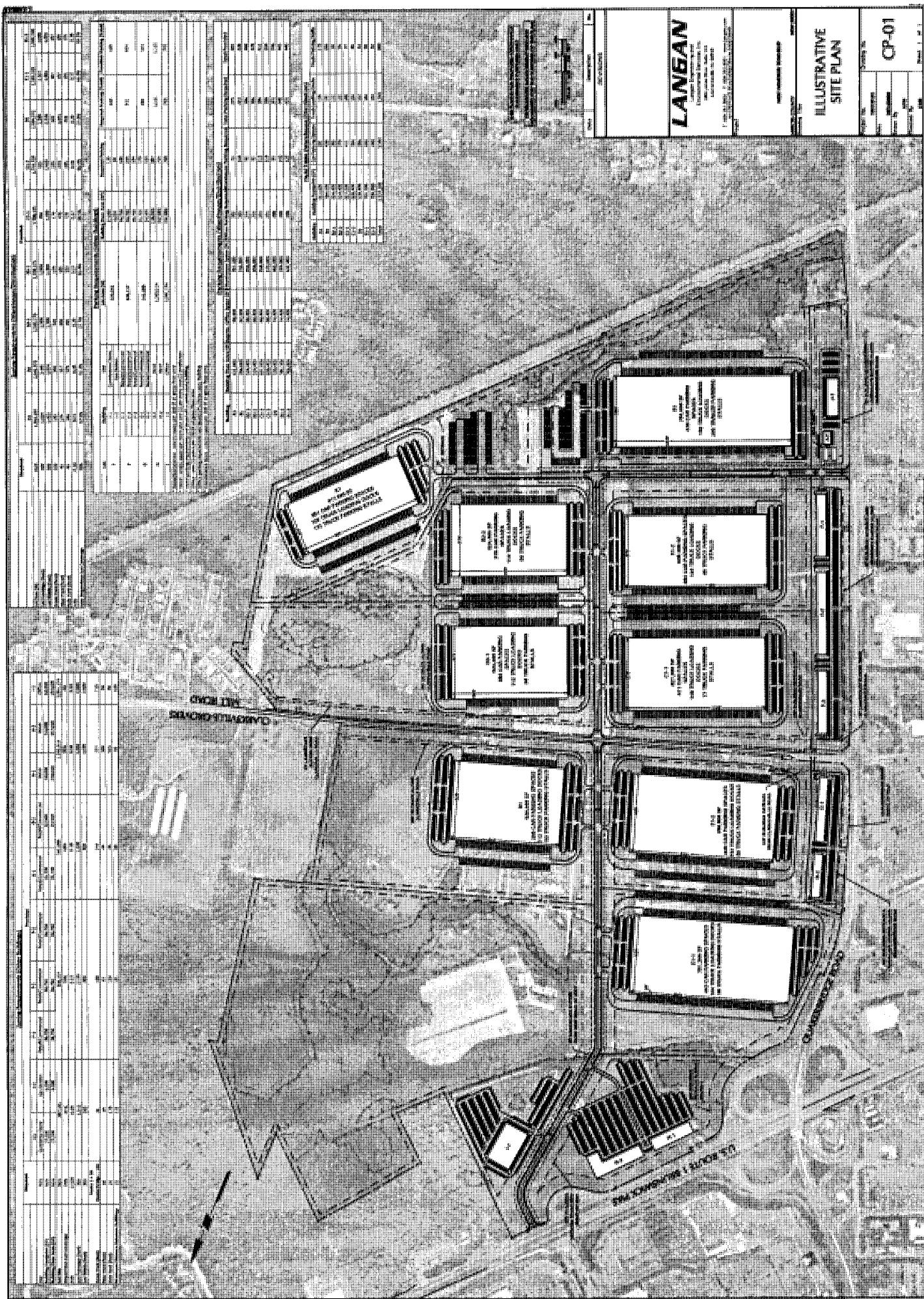


Exhibit E

Draft PCD Ordinance 11 Dated 11-18-20

ORDINANCE 2020-XX

AN ORDINANCE TO AMEND AND SUPPLEMENT THE CODE OF THE TOWNSHIP OF WEST WINDSOR (1999)

AN ORDINANCE CREATING THE PLANNED COMMERCIAL DISTRICT (PCD)

WHEREAS, the Planning Board of West Windsor adopted a Land Use Element of the Master Plan on February 12, 2020 (2020 Land Use Plan Element); and

WHEREAS, the 2020 Land Use Plan Element recommends a Planned Commercial District encompassing lots commonly referred to as the Howard Hughes Tract which are identified by municipal tax records as Block 8 Lots 1, 2, 2 (QFarm), 3, 16, 20, 28, 32.01, 39, 40, 41, 45, 46, and 49 as well as Block 15.14 Lots 18, 18 (QFarm), 19, 19 (QFarm), 20, 20 (QFarm), 22 (QFarm), 26 (QFarm), and 75; and

WHEREAS, the 2020 Land Use Plan Element recommends a variety of research, industrial, and commercial land uses to be permitted in this PCD; and

WHEREAS, the intent of the PCD is to support a wide variety of nonresidential uses to facilitate the redevelopment of the tract, while also ensuring that any such development will be complementary to the surrounding area, protect existing environmental constraints, minimize undue strain on the Township's community facilities, and avoid any substantial adverse impacts to the existing traffic and circulation patterns of Clarksville Road, Quakerbridge Road, and the US Route 1 corridor.

NOW, THEREFORE, BE IT ORDAINED by the Township Council of the Township of West Windsor, County of Mercer, State of New Jersey, as follows:

Section 1. Chapter 200 of the Code of the Township of West Windsor (1999), Land Use, Part 1, Site Plan Review, Article II, Terminology, Section 200-4, Definitions, Subsection B is amended by adding the following NEW definitions.

DISTILLERY – A facility which produces by distillation spirits for consumption, the sales and distribution of which are subject to regulation by the State of New Jersey.

OUTPATIENT SURGICAL FACILITY – A facility providing surgical treatment to patients not requiring hospitalization. It is not part of a hospital but is organized and operated to provide medical care to out-patients. Patients shall be served solely on an out-patient basis, and no patients shall be kept overnight on the premises.

PERFORMING ARTS FACILITY – A multi-use establishment that is intended for use by various types of the performing arts, including but not limited to dance, music, and theater.

PET DAY CARE FACILITY – A facility where dogs, cats, and other domestic household pets are temporarily boarded for pay or remuneration of any sort. A pet day care service is distinguished from a kennel in that pets are typically boarded for the day,

Draft PCD Ordinance 11 Dated 11-18-20

although overnight may be available. A pet day care establishment may also offer accessory services, such as retail sales of pet care supplies, veterinary services, and animal grooming. The breeding and/or selling of animals at these facilities is not permitted.

SPA – A commercial establishment offering health and beauty treatment through such means as steam baths, message, and similar services.

WINERY – A licensed facility comprising the building or buildings used to convert fruit or fruit juices to wine, and to age, bottle, store, distribute, and sell said wine. A winery includes crushing, fermenting and refermenting, bottling, blending, bulk and bottle storage, aging, shipping, receiving, laboratory equipment and maintenance facilities, sales, and administrative office functions, and may include tasting and promotional events.

Section 2. Chapter 200 of said Code, Land Use, Part 4, Zoning, Article XXVI, Titles, Purposes, Establishment of Districts; General Conditions, Section 200-143, Zoning Map, is amended to read as follows:

The boundaries of said zoning district is hereby established as shown on the Zoning Map, Township of West Windsor, dated August 17, 2020, and revised through _____, which, with all explanatory matter thereon, is hereby adopted and made part of this Part 4. An official copy of said Map, indicating the latest amendments shall be kept up-to-date in the office of the Land Use Manager for the use and benefit of the public and shall have the most current revision date shown thereon. The Zoning Map for that shall be the official reference as to the current zoning classification of the land within the boundaries of the Township of West Windsor.

Section 3. Chapter 300 of the Code of the Township of West Windsor (1999), Land Use, Part 4, Zoning, Article XXVIII, Regulations for Business Districts, Section 200-207.3, PCD Planned Commercial District use regulations, is hereby created as follows.

§ 200-207.3 PCD Planned Commercial District use regulations.

- A. Intent. The intent of the PCD is to support a wide variety of nonresidential uses to facilitate the redevelopment of the tract, while also ensuring that any such development will be complementary to the surrounding area, protect existing environmental constraints, minimize undue strain on the Township's community facilities, and avoid any substantial adverse impacts to the existing traffic and circulation patterns of Clarksville Road, Quakerbridge Road, and the US Route 1 corridor. Retail, service commercial, entertainment and hospitality uses are to be located along Quakerbridge Road and US Route 1 in order to maintain the commercial character of those corridors. Warehouse and distribution uses are encouraged within the remainder of the district. The PCD is also intended to

Draft PCD Ordinance II Dated 11-18-20

promote an attractive comprehensive integrated design and encourage a high level of investment.

- B. Permitted uses. In the PCD, no building or premises shall be used and no building shall be erected or altered which is arranged, intended, or designed to be used except for one or more of the following uses, and all such uses shall be subject to the performance standards set forth in Part 1, Site Plan Review, of this chapter unless otherwise noted.
- (1) General, corporate, administrative, and professional offices.
 - (2) Research, testing, analytic laboratories.
 - (3) Product development laboratories.
 - (4) Pilot plant facilities.
 - (5) Warehousing and distribution facilities.
 - (6) Finishing and assembly of products.
 - (7) Limited manufacturing.
 - (8) Data processing and computer centers.
 - (9) Business support uses.
 - (10) Banks with or without drive-through lanes.
 - (11) Retail stores and shops.
 - (12) Personal service establishments.
 - (13) Restaurants, including but not limited to establishments offering indoor dining, outdoor dining, take out, delivery, curbside pickup, and drive-through lanes.
 - (14) Taverns offering alcoholic beverages for sale and consumption on the premises.
 - (15) Brew pubs.
 - (16) Fast food restaurants with or without drive-through lanes.
 - (17) Gas stations in conjunction with a convenience store and/or vehicle wash.
 - (18) Health clubs.
 - (19) Fitness centers.
 - (20) Commercial recreation facilities.
 - (21) Spas.
 - (22) Performing art facilities.
 - (23) Legitimate theaters.
 - (24) Motion-picture theaters.
 - (25) Cultural facility buildings or structures.
 - (26) Hotels with one hundred (100) or more guest rooms.

Draft PCD Ordinance 11 Dated 11-18-20

- (27) Conference centers.
 - (28) Child care centers.
 - (29) Senior day care centers.
 - (30) Medical offices.
 - (31) Urgent care medical facilities.
 - (32) Outpatient surgical facilities.
 - (33) Breweries.
 - (34) Wineries.
 - (35) Distilleries.
 - (36) Veterinary clinics.
 - (37) Pet day care facilities.
 - (38) Mixed use planned developments pursuant to Section 200-209A.(8), except for affordable housing.
 - (39) A community landmark sign serving as a gateway to the community and which may include an electronic sign with changeable type, which shall display information regarding municipal, civic, and community events as well as emergency messaging. It may also display on-premises and off-premises advertising.
 - (40) Any existing wastewater treatment plant or electrical substation which existed prior to the date of the adoption of this ordinance.
 - (41) Any kennel which existed prior to the date of the adoption of this ordinance.
 - (42) Any combination of the above permitted uses in one or more principal buildings on a lot.
- C. Accessory uses. In the PCD, the following uses may be permitted as accessory uses.
- (1) Accessory uses and accessory buildings incidental to the above uses located on the same lot and within the same zoning district permitting the principal use.
 - (2) Outdoor and rooftop dining for restaurants, hotels, taverns, breweries, brewpubs, and wineries.
 - (3) A restaurant or cafeteria primarily for supplying meals only to employees and guests of the principal use.
 - (4) In-service training schools for employees.
 - (5) Custodial living quarters.
 - (6) Indoor and outdoor recreation facilities, provided that all such accessory buildings and uses shall be planned as an integral part of the principal use.

Draft PCD Ordinance 11 Dated 11-18-20

- (7) Assembly halls for meetings incidental to the business of the principal use.
 - (8) Maintenance, utility, and storage facilities incidental to the principal use.
 - (9) Guard houses.
 - (10) Public and private utility (e.g. electric, gas, telephone, cable, water, sewer, etc.) substations, electric and gas facilities to service the permitted uses. Such facilities shall be subject to the requirements contained in Article XXVII, Section 200-156B, except that the requirements of Section 200-156B(6)b shall not apply.
 - (11) Electric vehicle charging stations.
- D. Conditional uses. In the PCD, the following uses may be permitted as conditional uses.
- (1) Transmission lines, transmitting and receiving antennae or aerials subject to the requirement set forth in Article XXVII, Section 200-156B.
 - (2) Public utilities (e.g. electric, gas, telephone, cable, water, sewer, etc.) substation, electric and gas facilities subject to the requirements contained in Article XXVII, Section 200-156B, except those utilities which are necessary to service the permitted uses.

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Section 4. Chapter 200 of the Code of the Township of West Windsor (1999), Land Use, Part 4, Zoning, Article XXVIII, Regulations for Business Districts, Section 200-207.4, PCD Planned Commercial District bulk and area regulations, is hereby created as follows.

§ 200-207.4 PCD Planned Commercial District bulk and area regulations.

- A. Minimum lot area: None.
- B. Minimum lot frontage: 300 feet.
- C. Minimum lot width: 300 feet.
- D. Minimum lot depth: None.
- E. Minimum front yards:
 - (1) Along Quakerbridge Road: 50 feet.
 - (2) Along Clarksville Road: 100 feet.
 - (3) Along US Route 1: 100 feet.
 - (4) Along proposed roads generally consistent with the Master Plan: 100 feet.
 - (5) Along other roadways: 50 feet.
- F. Minimum rear yard: 40 feet.
- G. Minimum side yard:
 - (1) For buildings less than or equal to 40 feet in height: 25 feet.
 - (2) For buildings greater than 40 feet in height: 40 feet.
- H. Yards abutting residential districts. The above yards shall be increased by 25 feet in those instances where they abut, in whole or in part, a residential zone district or lot line.
- I. Minimum building setback from US Route 1 or Quakerbridge Road for warehouse and distribution facilities: 300 feet.
- J. Minimum distance between buildings: 25 feet.
- K. Maximum improvement coverage: 70%
- L. Maximum building height:
 - (1) The maximum building height shall be three (3) stories and forty-five (45) feet for all uses except warehouse and distribution facilities as well as hotels located along US Route 1.
 - (2) The maximum building height shall be two (2) stories and sixty (60) feet for warehouse and distribution facilities.
 - (3) The maximum building height shall be six (6) stories and seventy-five (75) feet for hotels along US Route 1 provided that:

Draft PCD Ordinance II Dated 11-18-20

- (a) Four (4) or more storied buildings shall be located only within a band one thousand and eight hundred (1,800) feet in width as measured from the right of way line of US Route 1.
- (b) The minimum setback requirements shall be increased an additional three (3) feet of setback for one (1) foot of building height which exceeds forty-five (45) feet.

M. Maximum Retail Building Space.

- (1) The maximum size of a retail building shall be twenty-five thousand (25,000) square feet.
- (2) The total combined retail area of the PCD shall not exceed one hundred and fifty thousand (150,000) square feet, not including restaurants and/or shops associated with the hotel use.

N. Parking in yards. Parking shall be permitted in the front, rear, and side yard setbacks subject to the following:

- (1) Parking lots shall maintain a twenty-five (25) foot minimum grassed or landscaped separation on each lot to an adjoining lot, except that a seven and one-half (7.5) foot minimum grass or landscaped separation on each lot may be provided in those instances where a warehouse and distribution facility abuts an adjacent warehouse and distribution facility.
- (2) Parking shall not be permitted in any landscape buffer required by this chapter.

O. Parking for warehouse and distribution facilities. Parking at warehouse and distribution facilities shall be computed as the sum of the parking required for the floor area of the facility used as office space plus the parking required for the floor area of the building used for warehousing or distribution space. The parking ratios to be used in this computation are as follows:

- (1) One (1) space for each five thousand (5,000) square feet of building floor area devoted to warehousing and/or distribution space.
- (2) One (1) space for each two hundred and fifty (250) square feet of building floor area that is devoted to office space.

P. PCD Performance Standards. All uses permitted in the PCD shall be subject to the performance standards set forth in Part 1, Site Plan Review, of this chapter, except as modified below.

- (1) The provisions of Section 200-36.1 shall not apply to warehouse and distribution facilities. The provisions of Section 200-36.1 shall apply to all other uses, except that sidewalks in the PCD may be constructed of impervious materials.
- (2) The provisions of Section 200-28.D(1) shall not apply.

Draft PCD Ordinance II Dated 11-18-20

- (3) Parking and loading is permitted between the fronts of buildings and the street line. No parking is permitted within any landscaped buffer as required herein.
 - (4) Aisles for the movement and circulation of vehicles shall be permitted in all yard setback areas. No aisle, except those required for access into and out of the site, shall be permitted in landscaped buffer as required herein.
 - (5) Trailer parking spaces and loading docks shall be permitted within building yard setbacks for warehouse and distribution facilities.
 - (6) Acceleration and deceleration lanes shall not be required at warehouse and distribution facility entrances along the master plan road located between US Route 1 and Quakerbridge Road.
 - (7) Impervious cover, including but not limited to buildings, sidewalks, or other constructed surface, shall be permitted within two hundred (200) feet of the centerline of any stream, ditch, or watercourse not identified on Attachment A. The construction of any such impervious cover shall be in accordance with all outside agency regulations as applicable.
 - (8) Existing trees may be removed in accordance with all outside agency regulations and pursuant to site plan approval.
 - (9) Bicycle parking shall not be required for warehouse and distribution facilities.
- Q. Additional standards pertaining to banks and fast-food restaurants with drive-through lanes. The following additional standards shall apply to drive through lanes in the PCD.
- (1) The minimum distance between the edge of a drive-through lane and any property line shall be thirty (30) feet, or fifty (50) feet if the property adjoins a residential district.
 - (2) Direct access to and from drive-throughs shall not be permitted from public streets. Such access shall be provided from within the lot or the internal road system servicing the primary use. Ingress and egress points shall be coordinated so as not to impede the main traffic flow to, from, or passing by the drive-through lanes.
 - (3) For banks, no more than four (4) drive-through teller windows shall be provided, not including an ATM drive-up lane.
- R. Additional standards pertaining to veterinary clinics. The following additional standards shall apply to veterinary clinics in the PCD.
- (1) The veterinary clinic building shall be sited at least one hundred and fifty (150) feet from any residential use or zoning district.
 - (2) Buildings housing animals shall be soundproofed to a maximum transmission of 65 dB measured on the outside of the exterior wall. Other soundproofing requirements may be imposed by the board of jurisdiction,

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- such as, but not limited to the following: non-opening windows and forced-air ventilation, solid core doors and sound-absorbent ceilings.
- (3) Proper and ample ventilation of all animal areas in buildings shall be demonstrated to the satisfaction of the board of jurisdiction and shall meet all state licensing requirements.
 - (4) Animals may be kept overnight for medical reasons only.
 - (5) Animals shall be housed indoors and may be allowed outside only for short periods under staff supervision for hygienic or medical reasons. When they are outside, they shall be kept in a completely enclosed area.
 - (6) A maximum percentage of floor area for overnight holding of animals shall be limited to 30% of the gross floor area of the veterinary clinic/hospital building.
 - (7) No cremation or disposal of dead animals is allowed on the premises. Disposal of used and contaminated veterinary medical supplies shall meet low-level hazardous waste disposal requirements.
 - (8) The curbing of pets shall be addressed.
- S. Additional standards pertaining to pet day care facilities. The following additional standards shall apply to pet day care facilities in the PCD.
- (1) All buildings and structures, including outdoor play areas or other enclosures in which the animals are to be kept, shall be located at least one hundred fifty (150) feet from any residential use or zoning district.
 - (2) Buildings housing animals shall be soundproofed to a maximum transmission of 65 dB measured on the outside of the exterior wall. Other soundproofing requirements may be imposed by the board of jurisdiction, such as, but not limited to the following: non-opening windows and forced-air ventilation, solid core doors and sound-absorbent ceilings.
 - (3) All buildings shall be of adequate construction, maintained in good repair, and secured in order to protect animals from injury or escape.
 - (4) Proper and ample ventilation of all animal areas in buildings shall be demonstrated to the satisfaction of the board of jurisdiction and shall meet all state licensing requirements.
 - (5) All animals housed in the facility shall be kept within the confines of a building between the hours of 9:00 p.m. and 8:00 a.m.
 - (6) Outdoor facilities:
 - (a) A wall or fence shall be installed to secure the pets from other domestic animals and unauthorized individuals.
 - (b) Outdoor animal areas shall be sufficient to protect the animal from sunlight, rain, snow or weather detrimental to the animal's health or shall allow indoor access.

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- (c) Provisions shall be made for the removal and proper disposal of animal food, waste, bedding, and debris.
 - (d) All outdoor areas where animals are kept shall have impermeable flooring that can easily be cleaned and sanitized or shall have a minimum of six inches of animal-appropriate gravel which is replaced on a regular schedule which is consistent with the maintenance of sanitary conditions.
- T. Additional standards pertaining to community landmark signs. The following additional standards shall apply to community landmark signs in the PCD.
- (1) One (1) Community Landmark Sign shall be permitted along Quakerbridge Road, and one (1) Community Landmark Sign shall be permitted along the US Route 1 corridor
 - (2) A Community Landmark Sign shall serve as a gateway sign into the community and as such, such sign shall provide sufficient availability for community information.
 - (3) A Community Landmark Sign shall provide availability and display time for municipal, civic or emergency messaging use and may display on-premises and off-premises advertising.
 - (4) The nearest edge of the Community Landmark Sign display face shall have a setback of thirty-five (35) feet from any right-of-way.
 - (5) No Community Landmark Sign shall exceed fifty (50) feet in height measured from the top of the sign to the grade at the base of the sign.
 - (6) Each Community Landmark sign may have up to two display faces, placed either back to back or in a V-shaped configuration. Each display face shall have a maximum area of three hundred and seventy-eight (378) square feet.
 - (7) Community Landmark Signs shall be permitted to operate twenty-four (24) hours a day.
 - (8) All message or copy change of the Community Landmark Sign display face shall be instantaneous. Scrolling, fading, animated, flashing or moving messages or copy is prohibited. No display face shall change message or copy more than once every eight (8) seconds.
 - (9) A Community Landmark Sign display face may not message or advertise adult or sexually oriented businesses or materials, hate speech, or use any form of profane language or promotion of any message that would be obscene in nature.
 - (10) All Community Landmark Signs shall incorporate ambient light sensors that measure the levels of surrounding light and automatically reduce the intensity of illumination during periods of darkness or increase the intensity of illumination during periods of brightness. No Community

Draft PCD Ordinance 11 Dated 11-18-20

Landmark Sign display face shall exceed a maximum illumination intensity of 500 nits during nighttime hours (dusk until dawn) and 7,500 nits during daytime hours (dawn until dusk) when the display face is in direct sunlight. A Community Landmark Sign display face shall not spill light or glare exceeding 0.3-foot candles of light above the ambient light level.

- (11) The architecture of a Community Landmark Sign shall incorporate visual art or architecture elements in addition to its messaging function thereby creating a unique or distinctive architectural design. A Community Landmark Sign design shall incorporate one or more of the following architectural elements: natural or reproduced stone, stucco, wood, brick, ornamental iron or decorative steel. Any Community Landmark Sign design that incorporates landscaping shall require the operator (the entity, person, or individual who owns the New Jersey Department of Transportation outdoor advertising sign permit for the specific Community Landmark Sign display area) to permanently maintain the landscaping. The owner or operator of the Community Landmark Sign shall continuously maintain the structure and surrounding associated area. The Township may require a Community Landmark Sign to display the name of the municipality, county or local identifiable community area as part of the structure.
- (12) Community Landmark Signs shall not be considered a principal use or structure on a lot and shall be allowed on lots that already have principal uses or structures.

U. Buffers. Landscape buffers in the PCD shall be provided as follows.

- (1) Landscape transition buffer. A landscape transition buffer of not less than twenty-five (25) feet in width shall be provided and maintained by the owner or lessee of a property between any nonresidential use and contiguous residentially zoned districts.
- (2) A landscape buffer of fifty (50) feet in width shall be provided along US Route 1 and Quakerbridge Road.
- (3) A landscape buffer of seventy-five (75) feet shall be provided along Clarksville Road.
- (4) A landscape buffer of twenty-five (25) feet shall be provided along the master plan road located between US Route 1 and Quakerbridge Road.
- (5) No parking or loading shall be permitted in a landscape buffer.
- (6) Yard requirements shall be deemed to be counted as part of the landscape buffer area. Where yard areas are less than the required buffer area, they shall be increased accordingly.

Draft PCD Ordinance 11 Dated 11-18-20

- (7) Suitably landscaped and bermed stormwater basins in the PCD may be located within any yard setbacks or landscaped buffers required by this Chapter, provided that a maximum of fifty percent (50%) of the basin may be located within the buffer area.

Section 5. In the event of any conflict between the provisions and requirements of this section and the provisions and requirements of any other section of this chapter, the provisions and requirements of this section shall govern.

Section 6. This ordinance shall take effect twenty days after action or inaction by the Mayor as approved by law, or an override of a mayoral veto by the Council, whichever is applicable; upon filing with the Mercer County Planning Board; and upon publication according to law.

Introduction:

Planning Board Approval:

Public Hearing:

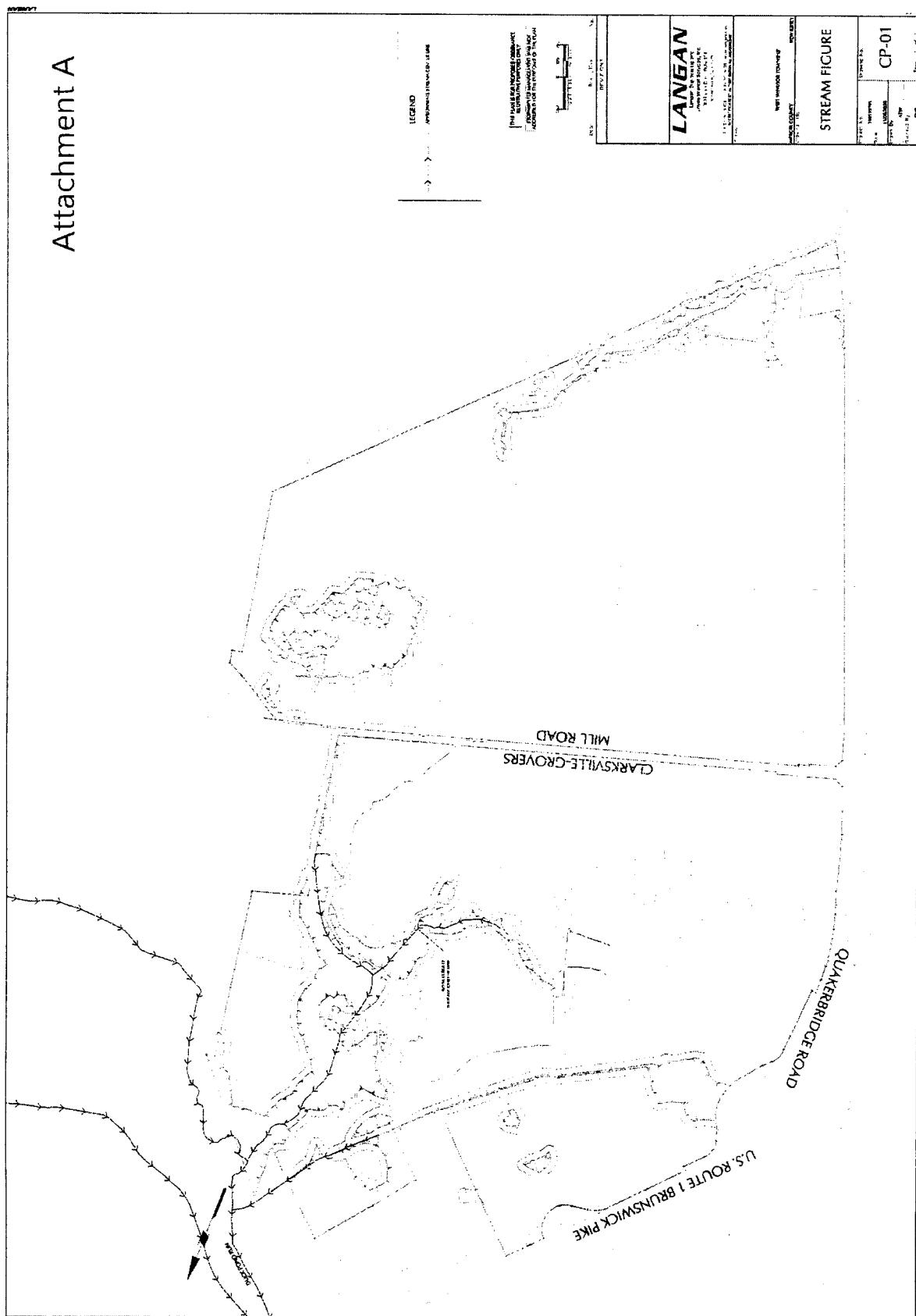
Adoption:

Mayor Approval:

Effective Date:

Draft PCD Ordinance II Dated 11-18-20

Attachment A



EXHIBIT

F

Kenneth D. McPherson, Jr., Esq. (Attorney ID No. 028501982)
Jessica CM Almeida, Esq. (Attorney ID No. 058132013)
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jalmeida@lawwmm.com
Attorneys for Intervener/Appellant, Atlantic Realty

**I/M/O THE TOWNSHIP OF
WEST WINDSOR**

: SUPERIOR COURT OF NEW JERSEY
: APPELLATE DIVISION
: Docket No.: A-005412-18 T2
:
: Civil Action
:
: ON APPEAL FROM THE SUPERIOR
: COURT OF NEW JERSEY, LAW
: DIVISION, MERCER COUNTY
**(Mount Laurel Declaratory
Judgement Action)**
:
: DOCKET NO. MER-L-1561-15
:
: Sat Below: Hon. Mary C.
: Jacobson, A.J.S.C.
:
:
:

STIPULATION OF SETTLEMENT OF APPEAL

WHEREAS the captioned appeal ("the Appeal") was commenced by Notice of Appeal, filed by Intervener-Appellant Atlantic Realty Development Corporation ("Atlantic"), on August 14, 2019, seeking relief from the Orders of the Trial Court below, dated January 11, 2019 and July 2, 2019, entered in Plaintiff-Respondent Township of West Windsor's ("Township") Mount Laurel IV Declaratory Judgment action, commenced under the caption: I/M/O Declaratory Judgment Action of Township of West Windsor, Mercer County Superior Court,

Law Division, assigned Docket No. MER-L-1561-15 ("Township DJ Action"),

WHEREAS the foregoing orders now on appeal, respectively:

- a) Approved the Township's settlement agreement with Intervener-Respondent Fair Share Housing Center ("FSHC") following Settlement/Fairness Hearing, through which the Township and FSHC stipulated, subject to Court review, to a Township Housing Element and Fair Share Plan ("HEFSP") in satisfaction of the Township's constitutional affordable housing obligation, as set forth in order dated January 11, 2019 on appeal; and
- b) Granted the Township Judgment of Immunity and Repose from Builder's Remedy suits, through Order now on appeal dated July 2, 2019;

WHEREAS within the Appeal, Atlantic filed an appeal Case Information Statement, Appeal Brief, and Appendices with the Appellate Division, seeking, in substance, relief from the terms of the foregoing Orders, which, in effect, accept the Township's HEFSP without inclusion of certain properties intended for development by Atlantic as inclusionary housing sites, located within the Township, respectively referred to as:

- a) the H&B Site, comprised of approximately 28 acres, located in the Eastern quadrant of the Township, more specifically

identified in Atlantic's filings within the Township DJ Action, and

b) the Howard Hughes Corporation ("HHC") Site, comprising approximate 660 acre site, also located within the Township, with frontage on US Route 1 as also more specifically described in filings below, the rights to develop of the HHC Site having been acquired by Atlantic following the filing of the Appeal, with the Appellate Division thereafter entering orders recognizing Atlantic's appeal position as encompassing both the H&B and the HHC Sites;

WHEREAS, the Appeal was referred to the Civil Appeal Settlement Program ("CASP"), with Atlantic, the Township, and FSHC initially conferring before the Hon. Robert A. Fall, P.J.A.D. (Retired, Temporarily Assigned) as Parties submitting CASP Statements through their respective counsel, with Waters, McPherson, McNeill, P.C., appearing on behalf of Atlantic (Kenneth D. McPherson, Jr., attending), Miller, Porter and Muller, P.C., appearing on behalf of the Township (Gerald J. Muller, attending), with Intervener FSHC attending through its Counsel and Executive Director, Adam Gordon;

WHEREAS, in separate action commenced in Mercer County Superior Court Law Division, under the caption: Princeton Land, LLC v. The Township of West Windsor, Docket No. MER-L-1947-18,

relief from zoning of the HHC site was separately sought through Complaint filed September 13, 2018, along with related claims for land use relief, to which Atlantic succeeded as a Party-Plaintiff-in-Interest through order of substitution following Atlantic's aforesaid acquisition of rights to development of the HHC site ("the HHC Site Action") ,

WHEREAS, contemporaneously with the conduct of CASP process in the Appeal, principals for Atlantic and the Township directly conferred regarding the HHC Action, and with leave of the Assignment Judge presiding in the HHC Action, further settlement exchanges were conducted by Atlantic and the Township through their respective counsel, culminating in the Township and Atlantic's execution of a Stipulation of Settlement and Consent Order ("SCO") under the caption of the HHC Action, subject to both Township Council review thereof and adoption of approval resolution and entry of the SCO by the presiding Judge, with the entry and execution of the instant stipulation dismissing the Appeal ("Appeal Dismissal Stipulation") having been made a term and condition of Atlantic's and the Township's settlement of the HHC Action and the Appeal, both settlements together involving rezoning and use of the HHC Site and H&B Site;

WHEREAS, following the aforesaid CASP conference, Atlantic filed its principal brief and appendix for the Appeal pursuant to

Amended Appeal Brief Scheduling Order, with dates for further responding briefing in the Appeal being suspended by the presiding CASP Judge at the joint request of Atlantic and the Township pending further settlement discussion;

WHEREAS, Atlantic and the Township have further conferred, and, on notice to FSHC, have reached agreement memorialized herein ("Appeal Settlement Stipulation") for the disposition of the Appeal and settlement of appeal issues regarding the HHC Site and H&B Site addressed herein;

IT IS on this _____ day of _____, 2020, therefore further stipulated and agreed by Atlantic, the Township, and FSHC, as follows:

1. Atlantic shall sign, through counsel, a stipulation dismissing the Appeal with prejudice, in the form attached hereto as Exhibit A ("Appeal Dismissal Stipulation"), immediately dismissing the Appeal upon Township adoption and publication of a resolution by the Municipal Council of the Township ("Settlement Resolution"), authorizing and directing:

a) the Township's execution, through counsel, and delivery to counsel for Atlantic, of a Township counterpart of both the instant Appeal Settlement Stipulation , executed on behalf of the Township, together with execution and delivery of a

Township counterpart of the aforesaid SCO, resolving the HHC Action under terms and conditions stated therein; and

b) the Township Council's introduction of proposed zoning code, in form attached hereto as Exhibit B, for consideration, within time provided for within the SCO, together with the recommendations and pertinent advices of: the Township Planner, the Township Civil Engineer, and Township Real Estate Manager), as proposed new zoning of the H&B site which, subject to further action of the Township Council, would be adopted, allowing improvement of the H&B Site for uses consistent with the H&B Site concept plan attached to this Appeal Settlement Stipulation as Exhibit C hereto ("H&B Site Non-Residential Rezoning"), with the Settlement Resolution further resolving that due consideration shall be given to H&B Site Non-Residential Rezoning without necessity of additional studies thereof, at regularly scheduled meeting, or as soon thereafter that the that H&B Site Non-Residential Rezoning may be attend to, within the time frames contemplated within the SCO;

2. Upon publication of the Settlement Resolution, Atlantic shall deliver to counsel for the Township, the executed Appeal Dismissal Stipulation, to be held in escrow by counsel for the Township for filing with the Clerk of Appellate Division,

immediately upon the Presiding Judge's entry of the SCO in the HHC Action on prompt application by Atlantic for entry of the SCO pursuant to the terms thereof, and exchange of executed counterparts of the instant Appeal Dismissal Stipulation;

3. Atlantic further stipulates and agrees herein that the Township Council's timely adoption of H&B Site Non-Residential Rezoning by final non-appealable Ordinance, through meetings of the Township Council scheduled within the timeframe contemplated within the SCO, shall constitute and effectuate a self-executing release of all claims of Atlantic and any successors thereof, to residential uses of the H&B site, binding Atlantic to acceptance of the H&B Site Non-Residential Rezoning as authorized uses of the H&B Site;

4. In the event that H&B Site Non-Residential Rezoning shall not be timely adopted as final and non-appealable Ordinance ("Failure of H&B Site Non-Residential Rezoning"), Atlantic shall nonetheless remain bound by the Appeal Dismissal Stipulation, and Atlantic's sole recourse with respect to the H&B Site shall be regularly available petitioning of municipal government for zoning revision, and/or litigating for rezoning of the H&B Site and other related legal and equitable relief, with the prior entry of the Appeal Dismissal Stipulation and Settlement Resolution being without prejudice to the Township in such event, with the Township

retaining all available legal defenses to any action by Atlantic hereunder. (While the entry of the Appeal Dismissal Stipulation shall preclude Atlantic from contesting either the settlement of the Township's total affordable unit obligation or the award of immunity from Builder's Remedy suits within the Township Declaratory Judgment Action, in the event of Failure of H&B Site Non-Residential Rezoning, Atlantic may participate in annual and midpoint reviews of Township progress with implementation of the HEFSP and may advocate for authorization of inclusionary housing on the H&B Site as a remedy for any insufficiency of Township advancement of the HESFP, as may be determined by the Judge presiding in the Township DJ Action, with the Township retaining all defenses and responses thereto otherwise available to it.); and

5. Counterparts. This Appeal Settlement Stipulation and may be signed in counterparts with service of an electronic reproduction thereof being effective as though it were an original.

Waters, McPherson, McNeill, P.C.
Counsel for Intervener-Appellant
Atlantic Realty Development Corporation

By: /s/ Kenneth D. McPherson Jr.
Kenneth D. McPherson, Jr.

Dated: _____ , _____

Miller, Porter, and Muller
Special Counsel to Plaintiff-Respondent
Township of West Windsor

By: _____
Gerald J. Muller, Esq.
Dated: _____,

Fair Share Housing Center
Intervener-Respondent
Counsel of Record and
Executive Director

By: _____
Adam M. Gordon, Esq.

Dated: _____,

1206443.1

EXHIBITS TO BE APPENDED

EXHIBIT A	Appeal Dismissal Stipulation
EXHIBIT B	Settlement Zoning Code for H&B Site
EXHIBIT C	H&B Site Concept Plan

Exhibit A

Kenneth D. McPherson, Jr., Esq. (Attorney ID No. 028501982)
Jessica CM Almeida, Esq. (Attorney ID No. 058132013)
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jalmeida@lawwmm.com
Attorneys for Intervener/Appellant, Atlantic Realty

I/M/O THE TOWNSHIP OF WEST WINDSOR : SUPERIOR COURT OF NEW JERSEY
: APPELLATE DIVISION
: Docket No.: A-005412-18 T2
:
: Civil Action
:
: ON APPEAL FROM THE SUPERIOR
: COURT OF NEW JERSEY, LAW
: DIVISION, MERCER COUNTY
(Mount Laurel Declaratory Judgement Action) : DOCKET NO. MER-L-1561-15
:
: Sat Below: Hon. Mary C.
: Jacobson, A.J.S.C.
:
: STIPULATION OF DISMISSAL OF
: APPEAL PURSUANT TO RULE 2:8-2

The matters in the above-captioned appeal ("the Appeal") that Intervener-Appellant, Atlantic Realty Development Corporation ("Atlantic") had placed in dispute with Plaintiff-Respondent Township of West Windsor ("Township") and Intervener-Respondent Fair Share Housing Center ("FSHC"), by filing of the instant Appeal seeking relief of Orders entered before the Trial Court, which among other things, approved agreement between the Township and FSHC settling the Township's Mount Laurel inclusionary housing obligation from which the Appeal was taken by Atlantic, having now

been amicably adjusted, with the consent of the Township and FSHC, memorialized through execution of the instant stipulation by respective counsel below, and, on notice to all other Parties of record below through e-Court's filing of the instant stipulation of dismissal, pursuant to Rule 2:8-2, Atlantic does hereby dismiss the Appeal with prejudice and without costs.

Waters, McPherson, McNeill, P.C.
Counsel for Intervener-Appellant
Atlantic Realty Development Corporation

By: /s/ Kenneth D. McPherson Jr.
Kenneth D. McPherson, Jr.

Dated: _____, 2020

Miller, Porter, and Muller
Special Counsel to Plaintiff-Respondent
Township of West Windsor

By: _____
Gerald J. Muller, Esq.
Dated: _____, 2020

Fair Share Housing Center
Intervener-Respondent
Counsel of Record and
Executive Director

By: _____
Adam M. Gordon, Esq.

Dated: _____, 2020

1185418.3

Exhibit B

Draft ROM-3 Ordinance 08 Dated 11-18-20

ORDINANCE 2020-XX

AN ORDINANCE TO AMEND AND SUPPLEMENT THE CODE OF THE TOWNSHIP OF WEST WINDSOR (1999)

AN ORDINANCE AMENDING THE ROM-3 Industrial District (research, office, limited manufacturing)

WHEREAS, the Planning Board of West Windsor adopted a Land Use Element of the Master Plan on February 12, 2020 (2020 Land Use Plan Element); and

WHEREAS, the 2020 Land Use Plan Element recommends expanding the list of permitted uses in the ROM-3 District to include self-storage and warehousing; and

WHEREAS, the intent of the ROM-3 District is to promote a high-quality level of development at a scale that will also provide substantial compatibility with the residential and agricultural nature of the surrounding area, protect any associated existing or proposed areas of Township Greenbelt and limit both environmental impacts and potential conflicts with surrounding neighborhoods to the greatest degree possible.

NOW, THEREFORE, BE IT ORDAINED by the Township Council of the Township of West Windsor, County of Mercer, State of New Jersey, as follows:

Section 1. Chapter 300 of the Code of the Township of West Windsor (1999), Land Use, Part 4, Zoning, Article XXIX, Regulations for Research/Office/Manufacturing, Research/Office and Research and Development Districts, Section 200-213, ROM-3 Industrial District (research, office, limited manufacturing) use regulations, is hereby amended as follows. Added text is underlined, and text being eliminated is ~~struck-through~~.

§ 200-213 ROM-3 Industrial District (research, office, limited manufacturing) use regulations.

A. Permitted uses. In an ROM-3 District, no building or premises shall be used and no building shall be erected or altered which is arranged, intended or designed to be used except for one or more of the following uses, and all such uses shall be subject to the performance standards set forth in Part 1, Site Plan Review, of this chapter.

- (1) All those permitted uses as listed for an ROM-2 District.
- (2) Research-office. Limited manufacturing park developments, notwithstanding any other requirements of this chapter, shall be subject to those special requirements as listed herein for a ROM-1 Park District, except as changed herein:
 - (a) Minimum park area: 12 acres in contiguous parcels.
 - (b) Minimum lot area: three acres.

Draft RCM-3 Ordinance 08 Date 7/18/20

(c) Minimum park and lot frontage: 250 feet.

(d) Maximum building height: three stories, but not to exceed 45 feet.

(3) Warehousing and distribution facilities.

(4) Finishing and assembly of products.

(5) Self-storage facilities.

B. Accessory Uses. In the ROM-3 District, the following uses may be permitted as accessory uses.

(1) Accessory uses and accessory buildings incidental to the above uses located on the same lot and within the same zoning district permitting the principal use.

(2) Uses and buildings incidental to permitted uses within the same zoning district permitting the principal use.

(3) A restaurant or cafeteria primarily for supplying meals only to employees and guests of the principal use.

(4) In-service training schools for employees.

(5) Custodial living quarters.

(6) Indoor and outdoor recreation facilities, provided that all such accessory buildings and uses shall be planned as an integral part of the principal use.

(7) Assembly halls for meetings incidental to the business of the principal use.

(8) Maintenance, utility and storage facilities incidental to the principal use.

(9) Guard houses.

(10) Public and Private utility (e.g., electric, gas, telephone, cable, water, sewer, etc.) substations, electric and gas facilities to service the permitted uses. The facilities shall be subject to the requirements contained in Article XXVII, §200-156B, except that the requirement of 200-156B(6)b shall not apply.

(11) Electric vehicle charging stations.

B-C. Conditional uses. In an ROM-3 District, the following uses may be permitted as conditional uses:

(1) Any use permitted by condition in an ROM-2 District, with the exception of §§ 200-211B(3).

(2) Transmission lines, transmitting and receiving antennae or aerials subject to the requirement set forth in Article XXVII, Section 200-156B.

(3) Public utilities (e.g. electric, gas, telephone, cable, water, sewer, etc.) substation, electric and gas facilities subject to the requirements contained in Article XXVII, Section 200-156B, except those utilities which are necessary to service the permitted uses.

Draft ROM-3 Ordinance 08 Dated 11-18-20

Section 2. Chapter 300 of the Code of the Township of West Windsor (1999), Land Use, Part 4, Zoning, Article XXIX, Regulations for Research/Office/Manufacturing, Research/Office and Research and Development Districts, Section 200-214, ROM-3 District bulk and area regulations, is hereby amended as follows. Added text is underlined, and text being eliminated is struck through.

§ 200-214 ROM-3 Industrial District (research, office, limited manufacturing) use regulations.

The following shall be the standards for the ROM-3 District

- A. Minimum lot area: five acres.
- B. Minimum lot area for warehouse and distribution facilities: twenty-five (25) acres.
- B. C. Minimum lot frontage: 300 feet.
- C. D. Minimum lot width: 300 feet.
- D. E. Minimum lot depth: not applicable.
- E. F. Minimum Yards
 - (1) Front yard: 125 feet, ~~with a seventy-five foot landscape area at the street right of way~~.
 - (2) Rear yard: 40 feet.
 - (3) Side yard: ~~There shall be two side yards with a minimum of 40 feet each.~~
 - (a) For buildings less than or equal to forty (40) feet in height: twenty-five (25) feet.
 - (b) For buildings greater than forty (40) feet in height: forty (40) feet.
 - (c) For warehouse and distribution facilities, a side yard setback of three hundred (300) shall be provided from the westerly boundary line of the ROM-3 District.
 - (4) Yards abutting residential districts. ~~The above yard, including the landscape transition buffer and screen requirements, shall be increased by 20 feet in those instances where they abut, in whole or in part, a residential district or lot line. Side and rear yards shall be increased by twenty-five (25) feet in those instances where they abut, in whole or in part, a residential zone district or lot line. This provision shall not apply to the aforementioned three hundred (300) foot setback from the westerly boundary line of the ROM-3 District established for warehouse and distribution facilities.~~
- G. Minimum distance between buildings: 25 feet.

Draft ROM-3 Ordinance 08 Dated 11-18-20

F. H. Maximum FAR. There shall be no FAR for the ROM-3 District. The maximum permitted FAR shall be allowed to vary according to the following schedule, depending on the intended use and building height:

<u>Primarily⁺ Research/Office Uses⁺</u>	<u>Maximum FAR</u>
In one-story buildings	0.22
In multistory buildings	0.30
<u>Primarily⁺ Manufacturing/Warehousing Uses⁺</u>	<u>Maximum FAR</u>
In one-story buildings	0.30
In multistory buildings	0.40

NOTE:

⁺"Primarily" shall mean more than 80% of total building use on a lot. The maximum FAR shall be adjusted proportionately where less than 80% of the designated building uses are proposed for a lot.

G. I. Maximum improvement coverage: 50% 70%.

H. J. Maximum building height: three stories, but not to exceed 45 feet.

- (1) The maximum building height shall be three stories and forty-five (45) feet for all uses except warehouse and distribution facilities.
- (2) The maximum height shall be two (2) stories and forty-five (45) feet for warehouse and distribution facilities.

K. Parking in yards. Parking shall be permitted in the front, rear, and side yard setbacks subject to the following:

- (1) Parking lots shall maintain a twenty-five (25) foot minimum grassed or landscaped separation on each lot to an adjoining lot, except that a seven and one-half (7.5) foot minimum grass or landscaped separation on each lot may be provided in those instances where a warehouse and distribution facility abuts an adjacent warehouse distribution facility.
- (2) Parking shall not be permitted in any landscape buffer required by this chapter.

L. Parking for warehouse and distribution facilities. Parking at warehouse and distribution facilities shall be computed on a pro rata basis as the sum of the parking required for the floor area of the facility used as office space plus the parking required for the floor area of the building used for warehousing or distribution space. The parking ratios to be used in this computation are as follows:

- (1) One (1) space for each five thousand (5,000) square feet of building floor area devoted to warehousing and/or distribution space.
- (2) One (1) space for each two hundred and fifty (250) square feet of building floor area that is devoted to office space.

Draft ROM-3 Ordinance (R) Dated 11-18-20

M. ROM-3 District Performance Standards. All uses permitted in the ROM-3 District shall be subject to the performance standards set forth in Part 1, Site Plan Review, of this chapter, except as modified below.

- (1) The provisions of Section 200-36.1 shall not apply to warehouse and distribution facilities. The provisions of Section 200-36.1 shall apply to all other uses, except that sidewalks in the ROM-3 District may be constructed of impervious materials.
- (2) The provisions of Section 200-28.D(1) shall not apply.
- (3) Parking and loading is permitted between the fronts of buildings and the street line. No parking is permitted within any landscaped buffer as required herein.
- (4) Aisles for the movement and circulation of vehicles shall be permitted in all yard setback areas. No aisle, except those required for access into and out of the site, shall be permitted in landscaped buffer as required herein.
- (5) Trailer parking spaces and loading docks shall be permitted within building yard setbacks for warehouse and distribution facilities.
- (6) Existing trees may be removed in accordance with all outside agency regulations and pursuant to site plan approval.
- (7) Bicycle parking shall not be required for warehouse distribution facilities.

O. Buffers. Landscape buffers in the ROM-3 District shall be provided as follows.

- (1) A landscape buffer of seventy-five (75) feet shall be provided at the street line.
- (2) For warehouse and distribution facilities, a landscape buffer of one hundred (100) feet shall be provided from the westerly boundary line of the ROM-3 District.
- (3) No parking or loading shall be permitted in a landscape buffer.
- (4) Yard requirements shall be deemed to be counted as part of the landscape buffer area. Where yard areas are less than the required buffer area, they shall be increased accordingly.
- (5) Suitably landscaped and bermed stormwater basins in the ROM-3 District may be located within any yard setbacks or landscaped buffers required by this Chapter, provided that a maximum of fifty percent (50%) of the basin may be located within the buffer area.

Section 3. In the event of any conflict between the provisions and requirements of this section and the provisions and requirements of any other section of this chapter, the provisions and requirements of this section shall govern.

Draft ROM-3 Ordinance 08 Dated 11-18-20

Section 4. This ordinance shall take effect twenty days after action or inaction by the Mayor as approved by law, or an override of a mayoral veto by the Council, whichever is applicable; upon filing with the Mercer County Planning Board; and upon publication according to law.

Introduction:

Planning Board Approval:

Public Hearing:

Adoption:

Mayor Approval:

Effective Date:

Exhibit C

571

Cannot Fill - Will also have 50' buffer
(eliminate or move parking)



West Windsor Township
Block 23, Lot 5
27.86 acres
Option #5b

Cannot Fill - Will also have 50' buffer
(eliminate or move parking)

COPY

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Atlantic Realty Development
Corporation

ATLANTIC REALTY DEVELOPMENT
CORPORATION,

Plaintiff,

v.

THE MAYOR AND COUNCIL OF THE
TOWNSHIP OF WEST WINDSOR AND THE
TOWNSHIP OF WEST WINDSOR,

Defendants.

SUPERIOR COURT OF NEW JERSEY
MERCER COUNTY-LAW DIVISION

CIVIL ACTION

DOCKET NO.: MER-L-1947-18

STIPULATION OF SETTLEMENT AND
CONSENT ORDER

Recital: This Stipulation and Consent Order ("SCO"), dated ___,
2020, is executed by Plaintiff Atlantic Realty Development
Corporation ("Atlantic") and by Defendant Township of West Windsor
("Township"), referred to together as "the Parties", in intended
final settlement of the above-captioned zoning and land use related
action ("the Action"), in concert with the Parties' final
settlement regarding the Superior Court of New Jersey declaratory

judgment action captioned: I/M/O The Township of West of Windsor, Docket No. MER-L-1561-15, ("the Township DJ Action") and the related appeal, captioned: I/M/O The Township of West Windsor (Mount Laurel Declaratory Judgement Action), Docket No. A-005412-18 ("the Appeal"), each involving the same Atlantic real property located within the Township that is in issue in the captioned Action, with resolution of the Appeal being provided for within Section 24. hereof through separate Stipulation of Dismissal to be filed under the Appeal Docket immediately upon entry of the instant SCO;

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A. THE PARTIES

Through their respective undersigned counsel, Waters, McPherson, McNeill, P.C. (Kenneth D. McPherson, Jr., counsel of record) appearing for Plaintiff Atlantic, and Miller, Porter, and Muller, P.C. (Gerald J. Muller, counsel of record) appearing for the Defendants), the Parties have hereby entered the instant SCO, stipulating and agreeing as follows:

1. Pursuant to Order of Substitution of Parties entered in the Action on December 2, 2019 (copy attached as Exhibit A), Atlantic has been substituted as the real-party-in-interest under Rule 4:34-3, superseding the original plaintiff in the Action, Princeton Land, LLC ("PL"), an affiliate of The Howard Hughes

Corporation ("HHC"), and pursuant to Orders of the Appellate Division, entered in the Appeal on January 22, 2020 (attached hereto as Exhibit B), Atlantic has also been recognized as a Party-Appellant, and successor-in-interest to HHC and to HHC's affiliate titleholder, PL.

B. THE SETTLED LAND USE ACTION

2. The Action was commenced through complaint filed by HHC's affiliate PL, on September 13, 2018 ("the Complaint"), as titleholder to contiguous lots within the southwestern section of the Township, fronting on US Route 1, comprised of approximately 650 acres, formally used by the American Cyanamid Corporation, principally as an industrial agricultural research facility ("the HHC Site"), acquired in 2010 in its entirety by HHC, with the intention of development for predominantly residential uses, including approximately 1,976 units of inclusionary family housing, as set forth in the concept plans filed by PL, and later adopted by Atlantic in the Action in which Atlantic has succeeded PL as Party Plaintiff-in-Interest;

i. Pre-Settlement Litigation of Non-residential Zoning

3. Following hearing on April 5, 2019 on motion by the Township for dismissal of Counts One, Four and Five of the Complaint, the Court issued an order, dated June 26, 2019, granting dismissal with prejudice of Counts One, Four and Five of the

Complaint, which sought statutory Redevelopment planning of the HHC Site and other related relief compelling zoning revision, with remaining Counts Two and Three of the Complaint, respectively contending that the existing use zoning of the HHC site (effectively precluding any residential development of the property in Atlantic's view) is arbitrary and contrary to the Municipal Land Use Law ("MLUL"), and is confiscatory in its application to the HHC site in violation of the State and Federal Constitutions, remaining in contest by the Township and therefore being scheduled for pretrial discovery;

4. Further pre-trial discovery and litigation activity in the Action was suspended through successive Case Management Orders at the request of the Parties in order to discuss possible settlement of the Action;

5. Atlantic acquired title to the entirety of the HHC Site on or about October 29, 2019, with the intention of developing the HHC Site principally for residential uses;

ii. Presentation of HHC Site Development Plans

6. Prior to commencement of the Action, on or about September 13, 2018, on referral by the Township Council, on May 10, 2017 and July 26, 2017, the Township Planning Board ("Planning Board") heard the presentation by Atlantic's predecessor-in-title of concept plans for the redevelopment of the HHC Site for

inclusionary housing and other non-industrial uses, following which the Planning Board declined to take action at that time in furtherance of either designation of any or all portions of the HHC Site as a redevelopment area, or, alternatively, designation of the HHC site as a statutory area in need of renewal, and otherwise declining to advance rezoning of the HHC site, with the Township Council thereafter similarly declining requests for zoning revision;

7. On or about November 6, 2019, in contrast to the Planning Board presentation by Atlantic's predecessor-in-title of concept plans for residential development of the HHC Site, the Township Planning Board published drafts of contemplated Township Master Plan revisions which did not include residential use of the HHC Site;

iii. Resolution of Township Affordable Housing Litigation

8. On or about July 2, 2019, within the Township's aforementioned Township DJ Action, that is now the subject of the Appeal being maintained by Atlantic (which is being concurrently settled together with the Action), the Presiding Judge issued a Final Judgment of Compliance and Repose, resolving the Township DJ Action and approving the Township's affordable housing compliance plan, which the Township views as satisfying and discharging any Township obligation to rezone and site plan for inclusionary family

housing, other than as to inclusionary housing development sites included in the Township's Court-approved affordable Housing Element and Fair Share Plan ("HEFSP"), which does not include the HHC Site.

C. RECONCILIATION OF CONFLICTING VIEWS OF LAND USE

9. In appearances and submissions in both the above captioned Action and the Appeal, the Parties have held divergent land use views, with Atlantic maintaining, on the one hand, that the HHC Site is suitable for residential use and that there exists need for market-rate housing within the regional housing market, within which the HHC Site and the Township are situated, such that, in Atlantic's view, market-rate housing constitutes the highest and best use of the HHC's Site, and the Township maintaining, on the other hand, that the Township's provision of constitutionally sufficient affordable housing is not a function of the HHC Site as the Township has made constitutionally sufficient provision for residential zoning, with affordable units included in the Township's approved HEFSP, together with the Hilton/Toll Bros. Project, thereby satisfying the Township's affordable housing obligation while avoiding burdens of additional residential development;

D. COURT-AUTHORIZED SETTLEMENT CONFERENCING OF PARTIES

10. In effort to resolve their differences regarding zoning and development of the HHC Site, during Case Management teleconferences conducted in the Action on January 6, 2020 and March 9, 2020, the Parties requested that the Court grant a further suspension of discovery and litigation proceedings, and the Court's April 13, 2020 Case Management Order ("CMO"), entered contemporaneously with case management telephonic conferences, therefore tolled discovery pending further Case Management teleconference, initially scheduled thereunder for June 16, 2020, and thereafter, rescheduled for July 1, 2020, pursuant to the aforementioned April 13, 2020 CMO, dated April 13, 2020, with the aforesaid tolling of discovery being further extended through November 10 2020 pursuant to CMO entered September 10, 2020;

E. TERMS OF CONDITIONAL SETTLEMENT

11. The Parties, having since conferred both directly and through their respective counsel, and having reviewed and approved the instant SCO, now present the instant SCO to the Court and hereby advise the Court, through their respective counsel, of the following terms of settlement:

i. Opportunity to Review and Comment on the Terms of the Agreement

The Parties have had due opportunity to consider the terms and conditions of the instant SCO and exhibits referenced herein

and attached hereto, review of the SCO being conducted with the benefit of advice of respective counsel for the Parties, and, in the case of the Township, with the benefit of the advice and recommendations of the Township's independent planning consultants and the Township's Real Estate Manager;

ii. Resolution Adopting the SCO

12. The Township Council of the Township has also considered the instant SCO and annexed exhibits, including in executive session as authorized under the Open Public Meetings Act, N.J.S.A. 10:4-6 to-21, for settlement discussion, and, through Resolution duly adopted at a regularly scheduled meeting (a copy of which is attached hereto as Exhibit C), the Township Council has approved the instant SCO and authorized its execution on behalf of the Township, which accordingly has been signed below, subject to all the executory actions of municipal governmental contemplated hereunder being considered at duly noticed public meetings, and subject, as well, to the independent exercise of discretion of the Planning Board and Township Council with respect to the prospective zoning revisions contemplated herein;

F. DISMISSAL OF ACTION WITHOUT PREJUDICE TO BECOME WITH PREJUDICE DISMISSAL UPON FULFILLMENT OF CONDITIONS OF SETTLEMENT

13. The Parties having reached accord, and with due authorizations of the respective Parties having been obtained for

the execution hereof by their respective counsel, and the executed SCO having been submitted for entry by the Court on consent to pursuant to R.4:42-1 (b), Parties having before the Court, both in settlement of the Action, with the Parties hereby further **Agreeing and Stipulating, as follows:**

14. The Action shall be, and hereby is dismissed without prejudice, through entry of the instant SCO without costs in favor of or against either Party, with the instant dismissal becoming a final dismissal with prejudice immediately upon satisfaction of Conditions 1. and 2. of settlement set forth immediately below, with the entry of dismissal with prejudice forever precluding Atlantic, or any successors-in-interest thereto, from: a) applying to the Planning Board for recommendation or authorization of residential use of the HHC Site; b) petitioning the Township Council for residential-use rezoning; or c) initiating litigation, or otherwise seeking governmental or judicial relief authorizing residential use of the HHC Site:

Condition 1. Adoption of Zoning Code Consistent with Conceptual Site Plan. With the benefit of a supporting resolution of the Planning Board recommending rezoning of the HHC Site ("Planning Board Resolution"), the Township Council and the Township shall have adopted an ordinance rezoning the HHC Site, in form consistent with development shown on the Conceptual Site Plan attached hereto as Exhibit D, which,

subject to site plan approvals and all other applicable regulatory approvals, shall include permissible development of the HHC Site with not less than 5.5 million square feet of modern warehouse use ("Warehouse Rezoning"), and development of up to 150,000 square feet of retail use calculated exclusively of other commercial uses shown as permitted on Exhibit D, without authorization of any residential development of the entire 650+ acre HHC Site, with Warehouse Rezoning including the enactment of modern warehouse and non-residential use zoning code, incorporating, in substance, the Bulk and Dimensional regulations shown in Exhibit E annexed hereto, which will accommodate contemplated improvements shown on the annexed (Exhibit D) Conceptual Site Plan ("Warehouse Rezoning Code"); and

Condition 2. Timely Action on Rezoning. Both the aforesaid Planning Board Resolution and the Warehouse Rezoning Code are to be adopted at regularly scheduled or special public meetings of both the Planning Board and the Township Council, the Board and the Township Council, each having respectively considered the HHC Site, in the Planning Board's case, in the course of hearing the proposed redevelopment plan presentation of Atlantic's predecessor-in-title, and, in the case of both the Planning Board and the Township Council, during the course of selection of inclusionary housing sites

for incorporation in the Township's Court approved HEFSP, with the public hearings contemplated in connection with the adoption of the Planning Board Resolution and Warehouse Rezoning Code being conducted in public sessions, intended to be completed within or about ninety (90) days from the date of entry hereof;

i. Entry of Final Dismissal with Prejudice Order

15. Upon timely, final and non-appealable adoption of Warehouse Rezoning Code hereunder, or entry of an non-appealable court decision in favor of the Parties in litigation brought by a third party, thereby satisfying conditions precedent to final dismissal of the Action set forth in Section 14. hereof, an order of dismissal of the Action with prejudice and without costs shall be entered on notice pursuant to Rule 4:42-1(c) (Settlement on Notice).

G. REACTIVATION OF ACTION IN THE EVENT OF NON-FULFILLMENT OF SETTLEMENT CONDITIONS.

16. In the event that either of conditions 1. and 2. set forth in Section 14. hereof shall not be timely fulfilled as a result of either the Planning Board and/or Township Council action or inaction in the course of their respective discretionary reviews of the SCO and annexed Exhibits ("Non-Approval of Warehouse Rezoning"), or, in the event either Condition should not be fulfilled as a result of judicial determination adverse to the

adoption of Warehouse Rezoning Code, then, in either of such events, Atlantic may apply to the Court, on notice duly served on counsel for the Township pursuant to Rule 4:42-2, for the issuance of an order reactivating the Action, and upon entry of such order, the Parties shall resume their respective litigation positions in the Action as of the date thereof, subject to further CMO, provided, however, that reactivation of the Action hereunder due to Non-Approval of Warehouse Rezoning shall not affect the finality and non-appealable status of either the July 2, 2019 Judgment of Immunity and Repose entered in the Township's Mount Laurel IV DJ Action or the dismissal of the Appeal with prejudice pursuant to Section 24. hereof;

i. **Election of Acceptance of Partial Warehouse Rezoning**

17. If, as a result of inaction, or adverse action, of the Planning Board, and/or, the Township Council, or as a result of decision of a reviewing Court, Non-Approval of Warehouse Rezoning shall occur, then, in such events, Atlantic may, at its election, opt for either the reactivation of the Action on notice pursuant to Rule 4:42-1(c) as provided for in Section 16. hereof, and thereby resume its litigation position therein, or, Atlantic may accept such non-conforming rezoning revisions as may be adopted by the Township with respect to portions of the HHC Site that Atlantic may designate as accepted, and thereafter, Atlantic may then litigate for relief from zoning of areas constituting the balance

of the HHC Site not designated as accepted by Atlantic ("Contested Zoning Areas"), and, any litigation of Contested Zoning Areas reactivated hereunder may include the prosecution of claims for judicial relief from zoning which, if granted, would allow Contested Zoning Areas to be used for residential uses, including, but not limited to, multifamily residential homes, as well as inclusionary family housing and 100% affordable unit housing projects, provided however, that as set forth in Section 16. hereof, the reactivation of the Action for litigation of Contested Zoning Areas shall have no effect on either the Township's Judgment of Repose and Immunity or the final dismissal of the Appeal hereunder;

ii. HEFSP Compliance Will Be Contestable in Event of Non-Approval of Warehouse Rezoning

18. In the event of Non-Approval of Warehouse Rezoning set forth in Section 16. above, in addition to litigation of Contested Zoning Areas, Atlantic may contest the adequacy of the Township's compliance with the terms of the Court's July 2, 2019 Judgment in the Township's Mount Laurel IV DJ Action approving the Township's HEFSP, and contest any subsequent orders founded thereon, to the extent of challenging the reasonableness and speed of Township and its selected developers progress with affordable housing sites included within the Township's HEFSP, with Atlantic's right of contest of the Township's HEFSP accruing under the terms of this

Section 18. including the option of challenging, within the Township DJ Action, the continuing validity and reasonableness of the Court's earlier findings that specific affordable housing sites included within the Township's Court-approved HEFSP are "realistic" compliance sites, properly creditable toward satisfaction of the balance of the Township's Third Round obligation;

iii. Township Retention of All Defenses in Event of Non-Approval of Warehouse Rezoning and Reactivation of Litigation of Contested Zoning Areas

19. In all instances of Non-Approval of Warehouse Rezoning and reactivation of litigation under the terms of Sections 16., 17., or 18. hereof, the Township shall have available to it all defenses at law and equity assertable in good faith, and the entry of this SCO shall be without prejudice to the Township in any Contested Zoning Area proceedings arising due to Non-approval of Warehouse Rezoning;

H. EXPEDITION OF REZONING AND SITE PLANNING CONFORMING (WITHOUT VARIANCE) TO WAREHOUSE REZONING CODE

20. Warehouse Rezoning shall be expeditiously scheduled before the Planning Board and Township Council without the necessity of further study or investigation of the HHC site, given the Township Council and Planning Board's aforementioned prior considerations of the HHC Site on-record, with Warehouse Rezoning being supported principally by submission of the instant SCO as

entered by the Court, along with Exhibits annexed thereto, together with such other consistent documentation and customary professional exhibits and reports (including, but not limited to, reports of fiscal impact of Warehouse Rezoning), that Atlantic and/or the Township may timely submit in support of Warehouse Rezoning;

i. Nonsupport of Objectors

21. Neither the Township nor the Planning Board nor Atlantic shall support or fund, any challenge, contest, or appeal (including prerogative writ actions pursuant to Rule 4:69-1), seeking relief from Warehouse Rezoning hereunder or from any Site Plan approval issued pursuant to Warehouse Rezoning Code, and having heretofore reviewed the Exhibits annexed hereto, the Township, its Planning Consultant, and Land Use Manager, shall, on request by Atlantic, express general support in a concise writing for any site plan application conforming to Warehouse Rezoning Code adopted in form annexed hereto as Exhibit E without necessity of variance ("Conforming Site Plan Application").

ii. Rejection of No Variances-Conforming Warehouse Rezoning Site Plan as Cause for Reopening of Claims for Residential Uses of HHC Site

22. In the event of non-approval of a Conforming Site Plan Application, in addition to seeking judicial review of such adverse site planning decision, as provided for in Sections 16., 17. and

18. hereof, Atlantic shall also be entitled to initiate separate litigation, seeking regulatory and/or judicial relief that would: **i)** allow Atlantic to make market rate residential use of such portions of the HHC site that may be subject to such adverse site planning decision; **ii)** allow the substitution of areas of the HHC Site for sites included within the Township's HEFSP, as is provided for in Section 18. hereof (Contest of HEFSP compliance in event of Non-Approval of Warehouse Rezoning); or **iii)** relief that would allow inclusionary housing development of HHC Site areas for application toward satisfaction of any later round ("Round IV") Mount Laurel compliance obligations of the Township. (The Township shall retain all defenses as provided in Section 19. hereof., and non-approval of a Conforming Site Plan Application hereunder shall otherwise have no effect on either the finality of the July 2, 2019 Judgment in the Township Mount Laurel IV Declaratory Judgment Action or the dismissal of the Appeal under Section 24. upon entry of the instant SCO.);

I. ENTRY OF DISMISSAL WITH PREJUDICE OF ACTION UPON FINAL ADOPTION OF WAREHOUSE REZONING

23. Upon the final non-appealable adoption of Warehouse Rezoning Code as conditionally stipulated herein, final dismissal of the Action with prejudice shall be entered on notice pursuant to Rule 4:42 - 1(c), on application of either Party hereto, without costs in favor of or against either Party;

i. Dismissal of Appeal upon entry of SCO

24. Upon entry of the instant SCO, Atlantic shall cause Stipulations of Settlement and Dismissal of the Appeal, in form annexed hereto as Exhibit F, to be entered by the Office of the Clerk of the Appellate Division of New Jersey Superior Court pursuant to R. 2:6-2 in final resolution of the Appeal as set forth in the Recital hereto;

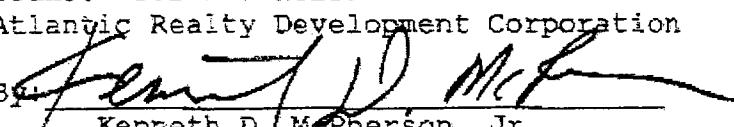
ii. No Tax Abatement Applications

25. Subject to Section 14. hereof, Atlantic is foregoing and relinquishing any application for: arrangements for payments in lieu of taxes ("PILOT"); Financial Agreements under the Housing and Redevelopment Laws; or other form of abatement of ad valorem municipal real estate taxes.

J. COUNTERPARTS

26. This SCO may be executed by the Parties, through their respective counsel, in counterparts.

Waters, McPherson, McNeill, P.C.
Counsel for Plaintiff
Atlantic Realty Development Corporation

By: 
Kenneth D. McPherson, Jr.

Dated: _____, 2020

Miller, Porter, and Muller
Special Counsel to Defendant
Township of West Windsor

By: Gerald J. Muller
Gerald J. Muller, Esq.
Dated: December 7, 2020

The Foregoing is So Ordered.

By: Mary C. Jacobson, A.J.S.C.

EXHIBIT A

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Center LLC

PRINCETON LAND LLC,

Plaintiff,

v.

THE MAYOR AND COUNCIL OF THE
TOWNSHIP OF WEST WINDSOR AND
THE TOWNSHIP OF WEST WINDSOR,

Defendants.

SUPERIOR COURT OF NEW JERSEY
MERCER COUNTY-LAW DIVISION

DOCKET NO. MER-L-1947-18

CIVIL ACTION

ORDER OF SUBSTITUTION OF
PARTY-PLAINTIFFS

The above-captioned action ("the Action") having been brought before the Court by Waters, McPherson, McNeill, P.C. (Kenneth D. McPherson, Jr. and Lauren H. Sobotka, appearing), as counsel for movant Atlantic Realty Development Corporation ("ARDC") and ARDC's affiliated title holders identified herein, on notice of motion, served on counsel for parties of record, Pepper Hamilton, LLC (Thomas M. Letizia, appearing), attorneys for Original Party-Plaintiff, Princeton Land LLC ("PL"), and Miller, Porter & Muller, P.C. (Gerald J. Miller, appearing), Special Counsel for Defendants, Mayor and Council of the Township of West Windsor and the Township of West Windsor (together, "Defendants"), seeking an

MER L 001947-18 12/02/2019 Pg 2 of 3 Trans ID: LCV20192227364

Order pursuant to Rule 4:34-3 (Real-Party-in-Interest/Substituting Parties-Plaintiff), and the Court having received no objections to the form of the Proposed Order, submitted with the moving papers, and for good cause shown in the moving papers:

It is on this 2nd day of December, 2019, hereby

ORDERED:

1. Having acquired title and development rights to the property that is the object of the Action, ARDC, as holder of development rights, and its affiliate title holders, Scholar's Meadow LLC and Clarksville Center LLC, (together, "Movants"), are now the Real-Parties-Plaintiffs-in-Interest in the captioned matter;
2. Movants shall be and hereby are substituted for PL as Parties-Plaintiffs pursuant to Rule 4:34-3;
3. Further filings in the Action may be captioned, and should be accepted by the Office of the Clerk for filing, showing Movants as Parties-Plaintiffs in the following manner: "Atlantic Realty Development Corporation, Scholar's Meadow LLC, and Clarksville Center LLC, Plaintiffs, through substitution as Real-Parties-in-Interest Pursuant to Rule 4:34-3;
4. A true, but uncertified, copy of this Order shall be served on the offices of counsel of record for all the other parties within 7 days of the date hereof.

MER L 001947-18 12/02/2019 Pg 3 of 3 Trans ID: LCV20192227364

Mary C. Jacobson, A.J.S.C.

Mary C. Jacobson, A.J.S.C.

- Opposed
X Unopposed

1155521.3

EXHIBIT

B

FILED, Clerk of the Appellate Division, January 22, 2020, A-005412-18, M-003007-19

ORDER ON MOTION

I/M/O THE TOWNSHIP OF WEST
WINDSOR

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-005412-18T2
MOTION NO. M-003007-19
BEFORE PART G
JUDGES: JOSEPH L. YANNOTTI
LISA A. FIRKO

MOTION FILED: 12/20/2019 BY: TOWNSHIP OF WEST WINDSOR

ANSWER(S)
FILED:

SUBMITTED TO COURT: January 21, 2020

ORDER

THIS MATTER HAVING BEEN DULY PRESENTED TO THE COURT, IT IS, ON THIS
21st day of JANUARY, 2020, HEREBY ORDERED AS FOLLOWS:

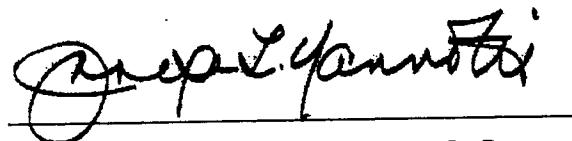
MOTION BY RESPONDENT

MOTION TO AMEND SCHEDULING ORDER DENIED AND OTHER

SUPPLEMENTAL:

The motion to amend the scheduling order is denied. All parties to the trial court proceedings are deemed to be parties on appeal. Atlantic Realty is the appellant, and all other parties are respondents. Unless it has already done so, any respondent that does not intend to participate in the appeal shall within ten (10) days after the date of this order inform the Clerk of the Court of its non-participation. Any amicus curiae that has been granted leave to appear in the trial court proceedings may, without seeking further leave, file a brief on appeal. R. 1:13-9(d). The Township's motion to bar Atlantic Realty from raising arguments regarding the site formerly owned by Howard Hughes is denied.

FOR THE COURT:



JOSEPH L. YANNOTTI, P.J.A.D.

MER-L-1561-15 MERCER

ORDER - REGULAR MOTION

IV

FILED, Clerk of the Appellate Division, January 22, 2020, A-005412-18, M-003206-19

ORDER ON MOTION

I/M/O THE TOWNSHIP OF WEST
WINDSOR

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-005412-18T2
MOTION NO. M-003206-19
BEFORE PART G
JUDGES: JOSEPH L. YANNOTTI
LISA A. FIRKO

MOTION FILED: 12/30/2019 BY: ATLANTIC REALTY

ANSWER(S) 01/10/2020 BY: TOWNSHIP OF WEST WINDSOR
FILED:

SUBMITTED TO COURT: January 21, 2020

ORDER

THIS MATTER HAVING BEEN DULY PRESENTED TO THE COURT, IT IS, ON THIS
21st day of JANUARY, 2020, HEREBY ORDERED AS FOLLOWS:

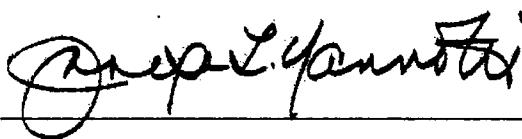
MOTION BY APPELLANT

MOTION to SUBSTITUTE
REAL-PARTY-IN-INTEREST DENIED AND OTHER

SUPPLEMENTAL:

The motion is denied as moot. See Order entered on M-3007-19.

FOR THE COURT:


JOSEPH L. YANNOTTI, P.J.A.D.

EXHIBIT

C

2020-R247

RESOLUTION

- WHEREAS, the Township of West Windsor (“Township”) filed a declaratory judgment action, pursuant to In re Adoption of N.J.A.C. 5:96 & 5:97 ex rel. New Jersey Council on Affordable Housing, 221 N.J. 1 (2015) (“Mount Laurel IV”) in July of 2015, captioned I/M/O The Township of West of Windsor, Docket No. MER-L-1561-15 (“Township Declaratory Judgment Action”), in which the Township sought immunity from builders’ remedy lawsuits; and
- WHEREAS, in 2016, Atlantic Realty Corporation (“Atlantic Realty”), as owner of the parcel of land, known as the H&B Site (“H&B Site”), intervened in the Township’s Declaratory Judgment Action; and
- WHEREAS, in the Fall of 2018, the Township entered into settlement discussions with Intervener Fair Share Housing Center (“FSHC”) in the Township Declaratory Judgment Action; and
- WHEREAS, a settlement agreement between the Township and FSHC was ultimately reached in the Township Declaratory Judgment Action, which was subsequently approved by this Council; and
- WHEREAS, on or about July 2, 2019, the presiding Mount Laurel Judge entered a Final Judgment of Compliance and Repose in the Township Declaratory Judgment Action based on the Township – FSHC settlement; and
- WHEREAS, in August of 2019, as developer of lands within the Township referred to as the “H&B Site”, and as intervenor in the Township Declaratory Judgment Action, Atlantic Realty appealed the July 2, 2019 Order of the Superior Court of New Jersey, Appellate Division, captioned I/M/O The Township of West of Windsor, Docket No. A-005412-18 (“the Appeal”); and
- WHEREAS, on September 13, 2019, Howard Hughes Corporation, through its affiliate Princeton Lands, LLC (“PL”), titleholder to approximately 650 acres (the “HHC Site”), filed a prerogative writ action, captioned: Atlantic Realty Development Corporation v. The Mayor and Council of the Township of West Windsor and the Township of West Windsor assigned Docket No. MER-L-1947-18, as titleholder to approximately 650 acres (“the HHC Action”) seeking residential rezoning of the HHC Site ; and
- WHEREAS, Atlantic Realty acquired title to the HHC site on or about October 29, 2019, and through Court Orders, succeeded to the positions of Howard Hughes Corporation and PL in the Appeal and in the HHC Action; and

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2020-R247

WHEREAS, Atlantic Realty and the Township have, through respective legal counsel, negotiated terms of settlement agreement providing for the dismissal of the Appeal and the HHC Action regarding the H&B Site and the HHC Site under terms and conditions set forth in a proposed Stipulation of Settlement with Consent Order (“SCO”) resolving both the Appeal and the HHC Action; and

WHEREAS, the Council has: reviewed the SCO, has consulted with its professionals, heard comment by the public and has determined that it would be in the best interests of the Township to approve the SCO and terms of the settlement agreement memorialized therein.

NOW THEREFORE BE IT RESOLVED, on this, the 30th day of November, 2020 by the West Windsor Township Council, that the Township's counsel is hereby authorized and directed to execute the SCO attached hereto, or in a form substantially equivalent thereto, approved by Township Council, and the Mayor, and the Township Clerk, are hereby authorized to execute on behalf of the Township all documents contemplated within the SCO and to otherwise do all things necessary or convenient to implement the terms of the settlement agreement memorialized therein

ADOPTED: November 30, 2020,

I hereby certify that the above resolution was adopted by the West Windsor Township Council at their meeting held on the 30th day of November, 2020.

Gay M. Huber
Gay M. Huber
Township Clerk
West Windsor Township

Exhibit D

Exhibit E

Draft PCD Ordinance 11 Dated 11-18-20

ORDINANCE 2020-25

AN ORDINANCE TO AMEND AND SUPPLEMENT CHAPTER 200 OF THE CODE OF THE TOWNSHIP OF WEST WINDSOR (1999) BY CREATING THE PLANNED COMMERCIAL DISTRICT (PCD)

WHEREAS, the Planning Board of West Windsor adopted a Land Use Element of the Master Plan on February 12, 2020 (2020 Land Use Plan Element); and

WHEREAS, the 2020 Land Use Plan Element recommends a Planned Commercial District encompassing lots commonly referred to as the Howard Hughes Tract which are identified by municipal tax records as Block 8 Lots 1, 2, 2 (QFarm), 3, 16, 20, 28, 32.01, 39, 40, 41, 45, 46, and 49 as well as Block 15.14 Lots 18, 18 (QFarm), 19, 19 (QFarm), 20, 20 (QFarm), 22 (QFarm), 26 (QFarm), and 75; and

WHEREAS, the 2020 Land Use Plan Element recommends a variety of research, industrial, and commercial land uses to be permitted in this PCD; and

WHEREAS, the intent of the PCD is to support a wide variety of nonresidential uses to facilitate the redevelopment of the tract, while also ensuring that any such development will be complementary to the surrounding area, protect existing environmental constraints, minimize undue strain on the Township's community facilities, and avoid any substantial adverse impacts to the existing traffic and circulation patterns of Clarksville Road, Quakerbridge Road, and the US Route 1 corridor.

NOW, THEREFORE, BE IT ORDAINED by the Township Council of the Township of West Windsor, County of Mercer, State of New Jersey, as follows:

Section 1. Chapter 200 of the Code of the Township of West Windsor (1999), Land Use, Part 1, Site Plan Review, Article II, Terminology, Section 200-4, Definitions, Subsection B is amended by adding the following NEW definitions.

DISTILLERY – A facility which produces by distillation spirits for consumption, the sales and distribution of which are subject to regulation by the State of New Jersey.

OUTPATIENT SURGICAL FACILITY – A facility providing surgical treatment to patients not requiring hospitalization. It is not part of a hospital but is organized and operated to provide medical care to out-patients. Patients shall be served solely on an out-patient basis, and no patients shall be kept overnight on the premises.

PERFORMING ARTS FACILITY – A multi-use establishment that is intended for use by various types of the performing arts, including but not limited to dance, music, and theater.

PET DAY CARE FACILITY – A facility where dogs, cats, and other domestic household pets are temporarily boarded for pay or remuneration of any sort. A pet day care service is distinguished from a kennel in that pets are typically boarded for the day,

Draft PCD Ordinance 11 Dated 11-18-20

although overnight may be available. A pet day care establishment may also offer accessory services, such as retail sales of pet care supplies, veterinary services, and animal grooming. The breeding and/or selling of animals at these facilities is not permitted.

SPA – A commercial establishment offering health and beauty treatment through such means as steam baths, message, and similar services.

WINERY – A licensed facility comprising the building or buildings used to convert fruit or fruit juices to wine, and to age, bottle, store, distribute, and sell said wine. A winery includes crushing, fermenting and refermenting, bottling, blending, bulk and bottle storage, aging, shipping, receiving, laboratory equipment and maintenance facilities, sales, and administrative office functions, and may include tasting and promotional events.

Section 2. Chapter 200 of said Code, Land Use, Part 4, Zoning, Article XXVI, Titles, Purposes, Establishment of Districts; General Conditions, Section 200-143, Zoning Map, is amended to read as follows:

The boundaries of said zoning district is hereby established as shown on the Zoning Map, Township of West Windsor, dated August 17, 2020, and revised through _____, which, with all explanatory matter thereon, is hereby adopted and made part of this Part 4. An official copy of said Map, indicating the latest amendments shall be kept up-to-date in the office of the Land Use Manager for the use and benefit of the public and shall have the most current revision date shown thereon. The Zoning Map for that shall be the official reference as to the current zoning classification of the land within the boundaries of the Township of West Windsor.

Section 3. Chapter 300 of the Code of the Township of West Windsor (1999), Land Use, Part 4, Zoning, Article XXVIII, Regulations for Business Districts, Section 200-207.3, PCD Planned Commercial District use regulations, is hereby created as follows.

§ 200-207.3 PCD Planned Commercial District use regulations.

- A. Intent. The intent of the PCD is to support a wide variety of nonresidential uses to facilitate the redevelopment of the tract, while also ensuring that any such development will be complementary to the surrounding area, protect existing environmental constraints, minimize undue strain on the Township's community facilities, and avoid any substantial adverse impacts to the existing traffic and circulation patterns of Clarksville Road, Quakerbridge Road, and the US Route 1 corridor. Retail, service commercial, entertainment and hospitality uses are to be located along Quakerbridge Road and US Route 1 in order to maintain the commercial character of those corridors. Warehouse and distribution uses are encouraged within the remainder of the district. The PCD is also intended to

Draft PCD Ordinance 11 Dated 11-18-20

promote an attractive comprehensive integrated design and encourage a high level of investment.

- B. Permitted uses. In the PCD, no building or premises shall be used and no building shall be erected or altered which is arranged, intended, or designed to be used except for one or more of the following uses, and all such uses shall be subject to the performance standards set forth in Part 1, Site Plan Review, of this chapter unless otherwise noted.
- (1) General, corporate, administrative, and professional offices.
 - (2) Research, testing, analytic laboratories.
 - (3) Product development laboratories.
 - (4) Pilot plant facilities.
 - (5) Warehousing and distribution facilities.
 - (6) Finishing and assembly of products.
 - (7) Limited manufacturing.
 - (8) Data processing and computer centers.
 - (9) Business support uses.
 - (10) Banks with or without drive-through lanes.
 - (11) Retail stores and shops.
 - (12) Personal service establishments.
 - (13) Restaurants, including but not limited to establishments offering indoor dining, outdoor dining, take out, delivery, curbside pickup, and drive-through lanes.
 - (14) Taverns offering alcoholic beverages for sale and consumption on the premises.
 - (15) Brew pubs.
 - (16) Fast food restaurants with or without drive-through lanes.
 - (17) Gas stations in conjunction with a convenience store and/or vehicle wash.
 - (18) Health clubs.
 - (19) Fitness centers.
 - (20) Commercial recreation facilities.
 - (21) Spas.
 - (22) Performing art facilities.
 - (23) Legitimate theaters.
 - (24) Motion-picture theaters.
 - (25) Cultural facility buildings or structures.
 - (26) Hotels with one hundred (100) or more guest rooms.

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- (27) Conference centers.
 - (28) Child care centers.
 - (29) Senior day care centers.
 - (30) Medical offices.
 - (31) Urgent care medical facilities.
 - (32) Outpatient surgical facilities.
 - (33) Breweries.
 - (34) Wineries.
 - (35) Distilleries.
 - (36) Veterinary clinics.
 - (37) Pet day care facilities.
 - (38) Mixed use planned developments pursuant to Section 200-209A.(8), except for affordable housing.
 - (39) A community landmark sign serving as a gateway to the community and which may include an electronic sign with changeable type, which shall display information regarding municipal, civic, and community events as well as emergency messaging. It may also display on-premises and off-premises advertising.
 - (40) Any existing wastewater treatment plant or electrical substation which existed prior to the date of the adoption of this ordinance.
 - (41) Any kennel which existed prior to the date of the adoption of this ordinance.
 - (42) Any combination of the above permitted uses in one or more principal buildings on a lot.
- C. Accessory uses. In the PCD, the following uses may be permitted as accessory uses.
- (1) Accessory uses and accessory buildings incidental to the above uses located on the same lot and within the same zoning district permitting the principal use.
 - (2) Outdoor and rooftop dining for restaurants, hotels, taverns, breweries, brewpubs, and wineries.
 - (3) A restaurant or cafeteria primarily for supplying meals only to employees and guests of the principal use.
 - (4) In-service training schools for employees.
 - (5) Custodial living quarters.
 - (6) Indoor and outdoor recreation facilities, provided that all such accessory buildings and uses shall be planned as an integral part of the principal use.

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- (7) Assembly halls for meetings incidental to the business of the principal use.
 - (8) Maintenance, utility, and storage facilities incidental to the principal use.
 - (9) Guard houses.
 - (10) Public and private utility (e.g. electric, gas, telephone, cable, water, sewer, etc.) substations, electric and gas facilities to service the permitted uses. Such facilities shall be subject to the requirements contained in Article XXVII, Section 200-156B, except that the requirements of Section 200-156B(6)b shall not apply.
 - (11) Electric vehicle charging stations.
- D. Conditional uses. In the PCD, the following uses may be permitted as conditional uses.
- (1) Transmission lines, transmitting and receiving antennae or aerials subject to the requirement set forth in Article XXVII, Section 200-156B.
 - (2) Public utilities (e.g. electric, gas, telephone, cable, water, sewer, etc.) substation, electric and gas facilities subject to the requirements contained in Article XXVII, Section 200-156B, except those utilities which are necessary to service the permitted uses.

Draft PCD Ordinance II Dated 11-18-20

Section 4. Chapter 200 of the Code of the Township of West Windsor (1999), Land Use, Part 4, Zoning, Article XXVIII, Regulations for Business Districts, Section 200-207.4, PCD Planned Commercial District bulk and area regulations, is hereby created as follows.

§ 200-207.4 PCD Planned Commercial District bulk and area regulations.

- A. Minimum lot area: None.
- B. Minimum lot frontage: 300 feet.
- C. Minimum lot width: 300 feet.
- D. Minimum lot depth: None.
- E. Minimum front yards:
 - (1) Along Quakerbridge Road: 50 feet.
 - (2) Along Clarksville Road: 100 feet.
 - (3) Along US Route 1: 100 feet.
 - (4) Along proposed roads generally consistent with the Master Plan: 100 feet.
 - (5) Along other roadways: 50 feet.
- F. Minimum rear yard: 40 feet.
- G. Minimum side yard:
 - (1) For buildings less than or equal to 40 feet in height: 25 feet.
 - (2) For buildings greater than 40 feet in height: 40 feet.
- H. Yards abutting residential districts. The above yards shall be increased by 25 feet in those instances where they abut, in whole or in part, a residential zone district or lot line.
- I. Minimum building setback from US Route 1 or Quakerbridge Road for warehouse and distribution facilities: 300 feet.
- J. Minimum distance between buildings: 25 feet.
- K. Maximum improvement coverage: 70%
- L. Maximum building height:
 - (1) The maximum building height shall be three (3) stories and forty-five (45) feet for all uses except warehouse and distribution facilities as well as hotels located along US Route 1.
 - (2) The maximum building height shall be two (2) stories and sixty (60) feet for warehouse and distribution facilities.
 - (3) The maximum building height shall be six (6) stories and seventy-five (75) feet for hotels along US Route 1 provided that:

Draft PCD Ordinance 11 Dated 11-18-20

- (a) Four (4) or more storied buildings shall be located only within a band one thousand and eight hundred (1,800) feet in width as measured from the right of way line of US Route 1.
- (b) The minimum setback requirements shall be increased an additional three (3) feet of setback for one (1) foot of building height which exceeds forty-five (45) feet.

M. Maximum Retail Building Space.

- (1) The maximum size of a retail building shall be twenty-five thousand (25,000) square feet.
- (2) The total combined retail area of the PCD shall not exceed one hundred and fifty thousand (150,000) square feet, not including restaurants and/or shops associated with the hotel use.

N. Parking in yards. Parking shall be permitted in the front, rear, and side yard setbacks subject to the following:

- (1) Parking lots shall maintain a twenty-five (25) foot minimum grassed or landscaped separation on each lot to an adjoining lot, except that a seven and one-half (7.5) foot minimum grass or landscaped separation on each lot may be provided in those instances where a warehouse and distribution facility abuts an adjacent warehouse and distribution facility.
- (2) Parking shall not be permitted in any landscape buffer required by this chapter.

O. Parking for warehouse and distribution facilities. Parking at warehouse and distribution facilities shall be computed as the sum of the parking required for the floor area of the facility used as office space plus the parking required for the floor area of the building used for warehousing or distribution space. The parking ratios to be used in this computation are as follows:

- (1) One (1) space for each five thousand (5,000) square feet of building floor area devoted to warehousing and/or distribution space.
- (2) One (1) space for each two hundred and fifty (250) square feet of building floor area that is devoted to office space.

P. PCD Performance Standards. All uses permitted in the PCD shall be subject to the performance standards set forth in Part 1, Site Plan Review, of this chapter, except as modified below.

- (1) The provisions of Section 200-36.1 shall not apply to warehouse and distribution facilities. The provisions of Section 200-36.1 shall apply to all other uses, except that sidewalks in the PCD may be constructed of impervious materials.
- (2) The provisions of Section 200-28.D(1) shall not apply.

Draft PCD Ordinance 11 Dated 11-18-20

- (3) Parking and loading is permitted between the fronts of buildings and the street line. No parking is permitted within any landscaped buffer as required herein.
 - (4) Aisles for the movement and circulation of vehicles shall be permitted in all yard setback areas. No aisle, except those required for access into and out of the site, shall be permitted in landscaped buffer as required herein.
 - (5) Trailer parking spaces and loading docks shall be permitted within building yard setbacks for warehouse and distribution facilities.
 - (6) Acceleration and deceleration lanes shall not be required at warehouse and distribution facility entrances along the master plan road located between US Route 1 and Quakerbridge Road.
 - (7) Impervious cover, including but not limited to buildings, sidewalks, or other constructed surface, shall be permitted within two hundred (200) feet of the centerline of any stream, ditch, or watercourse not identified on Attachment A. The construction of any such impervious cover shall be in accordance with all outside agency regulations as applicable.
 - (8) Existing trees may be removed in accordance with all outside agency regulations and pursuant to site plan approval.
 - (9) Bicycle parking shall not be required for warehouse and distribution facilities.
- Q. Additional standards pertaining to banks and fast-food restaurants with drive-through lanes. The following additional standards shall apply to drive through lanes in the PCD.
- (1) The minimum distance between the edge of a drive-through lane and any property line shall be thirty (30) feet, or fifty (50) feet if the property adjoins a residential district.
 - (2) Direct access to and from drive-throughs shall not be permitted from public streets. Such access shall be provided from within the lot or the internal road system servicing the primary use. Ingress and egress points shall be coordinated so as not to impede the main traffic flow to, from, or passing by the drive-through lanes.
 - (3) For banks, no more than four (4) drive-through teller windows shall be provided, not including an ATM drive-up lane.
- R. Additional standards pertaining to veterinary clinics. The following additional standards shall apply to veterinary clinics in the PCD.
- (1) The veterinary clinic building shall be sited at least one hundred and fifty (150) feet from any residential use or zoning district.
 - (2) Buildings housing animals shall be soundproofed to a maximum transmission of 65 dB measured on the outside of the exterior wall. Other soundproofing requirements may be imposed by the board of jurisdiction,

Draft PCD Ordinance 11 Dated 11-18-20

such as, but not limited to the following: non-opening windows and forced-air ventilation, solid core doors and sound-absorbent ceilings.

- (3) Proper and ample ventilation of all animal areas in buildings shall be demonstrated to the satisfaction of the board of jurisdiction and shall meet all state licensing requirements.
 - (4) Animals may be kept overnight for medical reasons only.
 - (5) Animals shall be housed indoors and may be allowed outside only for short periods under staff supervision for hygienic or medical reasons. When they are outside, they shall be kept in a completely enclosed area.
 - (6) A maximum percentage of floor area for overnight holding of animals shall be limited to 30% of the gross floor area of the veterinary clinic/hospital building.
 - (7) No cremation or disposal of dead animals is allowed on the premises. Disposal of used and contaminated veterinary medical supplies shall meet low-level hazardous waste disposal requirements.
 - (8) The curbing of pets shall be addressed.
- S. Additional standards pertaining to pet day care facilities. The following additional standards shall apply to pet day care facilities in the PCD.
- (1) All buildings and structures, including outdoor play areas or other enclosures in which the animals are to be kept, shall be located at least one hundred fifty (150) feet from any residential use or zoning district.
 - (2) Buildings housing animals shall be soundproofed to a maximum transmission of 65 dB measured on the outside of the exterior wall. Other soundproofing requirements may be imposed by the board of jurisdiction, such as, but not limited to the following: non-opening windows and forced-air ventilation, solid core doors and sound-absorbent ceilings.
 - (3) All buildings shall be of adequate construction, maintained in good repair, and secured in order to protect animals from injury or escape.
 - (4) Proper and ample ventilation of all animal areas in buildings shall be demonstrated to the satisfaction of the board of jurisdiction and shall meet all state licensing requirements.
 - (5) All animals housed in the facility shall be kept within the confines of a building between the hours of 9:00 p.m. and 8:00 a.m.
 - (6) Outdoor facilities:
 - (a) A wall or fence shall be installed to secure the pets from other domestic animals and unauthorized individuals.
 - (b) Outdoor animal areas shall be sufficient to protect the animal from sunlight, rain, snow or weather detrimental to the animal's health or shall allow indoor access.

Draft PCD Ordinance 11 Dated 11-18-20

- (c) Provisions shall be made for the removal and proper disposal of animal food, waste, bedding, and debris.
- (d) All outdoor areas where animals are kept shall have impermeable flooring that can easily be cleaned and sanitized or shall have a minimum of six inches of animal-appropriate gravel which is replaced on a regular schedule which is consistent with the maintenance of sanitary conditions.

T. Additional standards pertaining to community landmark signs. The following additional standards shall apply to community landmark signs in the PCD.

- (1) One (1) Community Landmark Sign shall be permitted along Quakerbridge Road, and one (1) Community Landmark Sign shall be permitted along the US Route 1 corridor
- (2) A Community Landmark Sign shall serve as a gateway sign into the community and as such, such sign shall provide sufficient availability for community information.
- (3) A Community Landmark Sign shall provide availability and display time for municipal, civic or emergency messaging use and may display on-premises and off-premises advertising.
- (4) The nearest edge of the Community Landmark Sign display face shall have a setback of thirty-five (35) feet from any right-of-way.
- (5) No Community Landmark Sign shall exceed fifty (50) feet in height measured from the top of the sign to the grade at the base of the sign.
- (6) Each Community Landmark sign may have up to two display faces, placed either back to back or in a V-shaped configuration. Each display face shall have a maximum area of three hundred and seventy-eight (378) square feet.
- (7) Community Landmark Signs shall be permitted to operate twenty-four (24) hours a day.
- (8) All message or copy change of the Community Landmark Sign display face shall be instantaneous. Scrolling, fading, animated, flashing or moving messages or copy is prohibited. No display face shall change message or copy more than once every eight (8) seconds.
- (9) A Community Landmark Sign display face may not message or advertise adult or sexually oriented businesses or materials, hate speech, or use any form of profane language or promotion of any message that would be obscene in nature.
- (10) All Community Landmark Signs shall incorporate ambient light sensors that measure the levels of surrounding light and automatically reduce the intensity of illumination during periods of darkness or increase the intensity of illumination during periods of brightness. No Community

Draft PCD Ordinance II Dated 11-18-20

Landmark Sign display face shall exceed a maximum illumination intensity of 500 nits during nighttime hours (dusk until dawn) and 7,500 nits during daytime hours (dawn until dusk) when the display face is in direct sunlight. A Community Landmark Sign display face shall not spill light or glare exceeding 0.3-foot candles of light above the ambient light level.

- (11) The architecture of a Community Landmark Sign shall incorporate visual art or architecture elements in addition to its messaging function thereby creating a unique or distinctive architectural design. A Community Landmark Sign design shall incorporate one or more of the following architectural elements: natural or reproduced stone, stucco, wood, brick, ornamental iron or decorative steel. Any Community Landmark Sign design that incorporates landscaping shall require the operator (the entity, person, or individual who owns the New Jersey Department of Transportation outdoor advertising sign permit for the specific Community Landmark Sign display area) to permanently maintain the landscaping. The owner or operator of the Community Landmark Sign shall continuously maintain the structure and surrounding associated area. The Township may require a Community Landmark Sign to display the name of the municipality, county or local identifiable community area as part of the structure.
- (12) Community Landmark Signs shall not be considered a principal use or structure on a lot and shall be allowed on lots that already have principal uses or structures.

U. Buffers. Landscape buffers in the PCD shall be provided as follows.

- (1) Landscape transition buffer. A landscape transition buffer of not less than twenty-five (25) feet in width shall be provided and maintained by the owner or lessee of a property between any nonresidential use and contiguous residentially zoned districts.
- (2) A landscape buffer of fifty (50) feet in width shall be provided along US Route 1 and Quakerbridge Road.
- (3) A landscape buffer of seventy-five (75) feet shall be provided along Clarksville Road.
- (4) A landscape buffer of twenty-five (25) feet shall be provided along the master plan road located between US Route 1 and Quakerbridge Road.
- (5) No parking or loading shall be permitted in a landscape buffer.
- (6) Yard requirements shall be deemed to be counted as part of the landscape buffer area. Where yard areas are less than the required buffer area, they shall be increased accordingly.

Draft PCD Ordinance 11 Dated 11-18-20

- (7) Suitably landscaped and bermed stormwater basins in the PCD may be located within any yard setbacks or landscaped buffers required by this Chapter, provided that a maximum of fifty percent (50%) of the basin may be located within the buffer area.

Section 5. In the event of any conflict between the provisions and requirements of this section and the provisions and requirements of any other section of this chapter, the provisions and requirements of this section shall govern.

Section 6. This ordinance shall take effect twenty days after action or inaction by the Mayor as approved by law, or an override of a mayoral veto by the Council, whichever is applicable; upon filing with the Mercer County Planning Board; and upon publication according to law.

Introduction: November 30, 2020

Planning Board Approval:

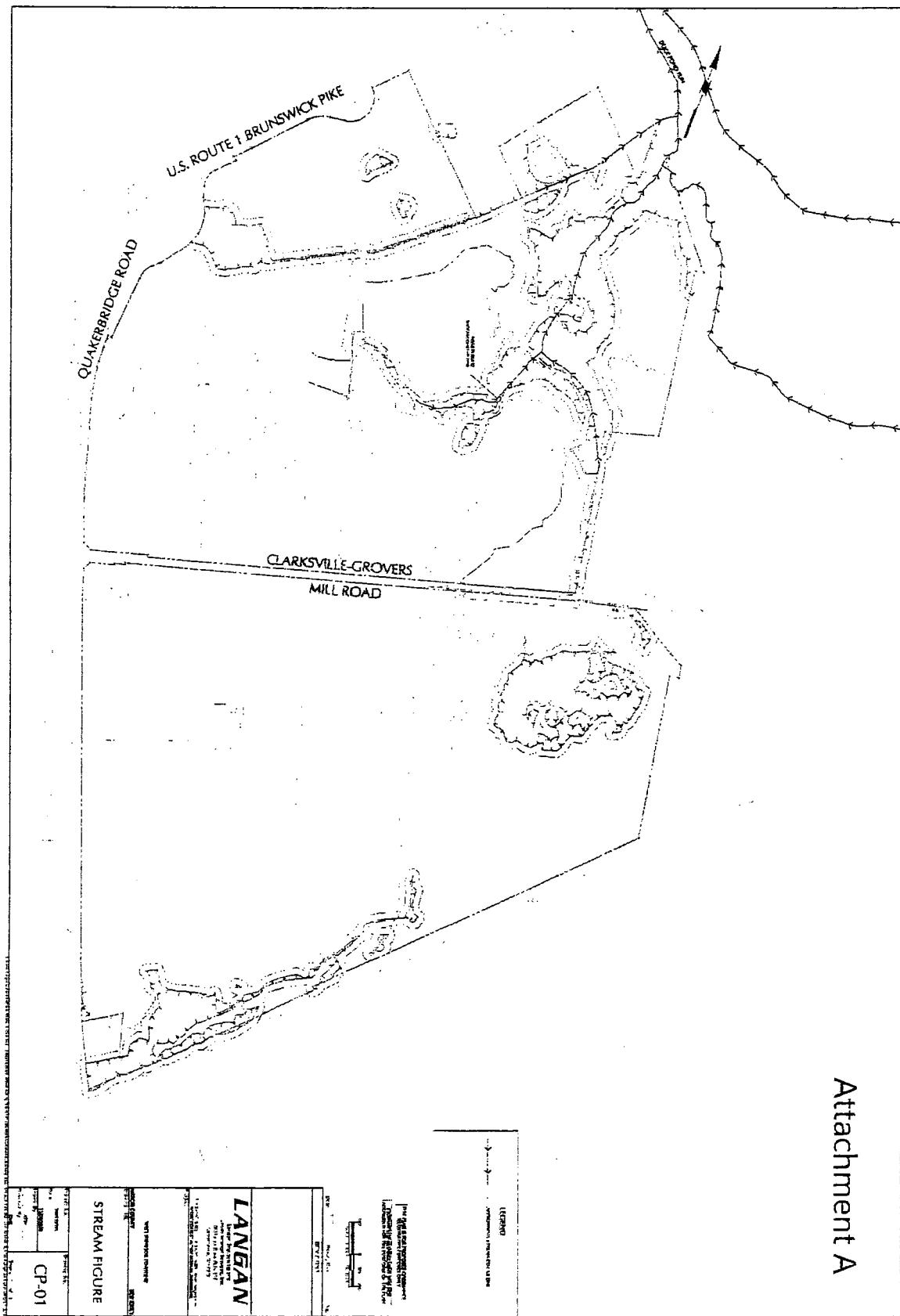
Public Hearing:

Adoption:

Mayor Approval:

Effective Date:

Attachment A



EXHIBIT

F

Kenneth D. McPherson, Jr., Esq. (Attorney ID No. 028501982)
Jessica CM Almeida, Esq. (Attorney ID No. 058132013)
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jalmeida@lawwmm.com
Attorneys for Intervener/Appellant, Atlantic Realty

: SUPERIOR COURT OF NEW JERSEY
: APPELLATE DIVISION
: Docket No.: A-005412-18 T2
:
: Civil Action
:
: ON APPEAL FROM THE SUPERIOR
: COURT OF NEW JERSEY, LAW
: DIVISION, MERCER COUNTY
:
**(Mount Laurel Declaratory
Judgement Action)** : DOCKET NO. MER-L-1561-15
:
: Sat Below: Hon. Mary C.
: Jacobson, A.J.S.C.
:
:
:

STIPULATION OF SETTLEMENT OF APPEAL

WHEREAS the captioned appeal ("the Appeal") was commenced by Notice of Appeal, filed by Intervener-Appellant Atlantic Realty Development Corporation ("Atlantic"), on August 14, 2019, seeking relief from the Orders of the Trial Court below, dated January 11, 2019 and July 2, 2019, entered in Plaintiff-Respondent Township of West Windsor's ("Township") Mount Laurel IV Declaratory Judgment action, commenced under the caption: I/M/O Declaratory Judgment Action of Township of West Windsor, Mercer County Superior Court,

Law Division, assigned Docket No. MER-L-1561-15 ("Township DJ Action"),

WHEREAS the foregoing orders now on appeal, respectively:

- a) Approved the Township's settlement agreement with Intervener-Respondent Fair Share Housing Center ("FSHC") following Settlement/Fairness Hearing, through which the Township and FSHC stipulated, subject to Court review, to a Township Housing Element and Fair Share Plan ("HEFSP") in satisfaction of the Township's constitutional affordable housing obligation, as set forth in order dated January 11, 2019 on appeal; and
- b) Granted the Township Judgment of Immunity and Repose from Builder's Remedy suits, through Order now on appeal dated July 2, 2019;

WHEREAS within the Appeal, Atlantic filed an appeal Case Information Statement, Appeal Brief, and Appendices with the Appellate Division, seeking, in substance, relief from the terms of the foregoing Orders, which, in effect, accept the Township's HEFSP without inclusion of certain properties intended for development by Atlantic as inclusionary housing sites, located within the Township, respectively referred to as:

- a) the H&B Site, comprised of approximately 28 acres, located in the Eastern quadrant of the Township, more specifically

identified in Atlantic's filings within the Township DJ Action, and

b) the Howard Hughes Corporation ("HHC") Site, comprising approximate 660 acre site, also located within the Township, with frontage on US Route 1 as also more specifically described in filings below, the rights to develop of the HHC Site having been acquired by Atlantic following the filing of the Appeal, with the Appellate Division thereafter entering orders recognizing Atlantic's appeal position as encompassing both the H&B and the HHC Sites;

WHEREAS, the Appeal was referred to the Civil Appeal Settlement Program ("CASP"), with Atlantic, the Township, and FSHC initially conferring before the Hon. Robert A. Fall, P.J.A.D. (Retired, Temporarily Assigned) as Parties submitting CASP Statements through their respective counsel, with Waters, McPherson, McNeill, P.C., appearing on behalf of Atlantic (Kenneth D. McPherson, Jr., attending), Miller, Porter and Muller, P.C., appearing on behalf of the Township (Gerald J. Muller, attending), with Intervener FSHC attending through its Counsel and Executive Director, Adam Gordon;

WHEREAS, in separate action commenced in Mercer County Superior Court Law Division, under the caption: Princeton Land, LLC v. The Township of West Windsor, Docket No. MER-L-1947-18,

relief from zoning of the HHC site was separately sought through Complaint filed September 13, 2018, along with related claims for land use relief, to which Atlantic succeeded as a Party-Plaintiff-in-Interest through order of substitution following Atlantic's aforesaid acquisition of rights to development of the HHC site ("the HHC Site Action") ,

WHEREAS, contemporaneously with the conduct of CASP process in the Appeal, principals for Atlantic and the Township directly conferred regarding the HHC Action, and with leave of the Assignment Judge presiding in the HHC Action, further settlement exchanges were conducted by Atlantic and the Township through their respective counsel, culminating in the Township and Atlantic's execution of a Stipulation of Settlement and Consent Order ("SCO") under the caption of the HHC Action, subject to both Township Council review thereof and adoption of approval resolution and entry of the SCO by the presiding Judge, with the entry and execution of the instant stipulation dismissing the Appeal ("Appeal Dismissal Stipulation") having been made a term and condition of Atlantic's and the Township's settlement of the HHC Action and the Appeal, both settlements together involving rezoning and use of the HHC Site and H&B Site;

WHEREAS, following the aforesaid CASP conference, Atlantic filed its principal brief and appendix for the Appeal pursuant to

Amended Appeal Brief Scheduling Order, with dates for further responding briefing in the Appeal being suspended by the presiding CASP Judge at the joint request of Atlantic and the Township pending further settlement discussion;

WHEREAS, Atlantic and the Township have further conferred, and, on notice to FSHC, have reached agreement memorialized herein ("Appeal Settlement Stipulation") for the disposition of the Appeal and settlement of appeal issues regarding the HHC Site and H&B Site addressed herein;

IT IS on this _____ day of _____, 2020, therefore further stipulated and agreed by Atlantic, the Township, and FSHC, as follows:

1. Atlantic shall sign, through counsel, a stipulation dismissing the Appeal with prejudice, in the form attached hereto as Exhibit A ("Appeal Dismissal Stipulation"), immediately dismissing the Appeal upon Township adoption and publication of a resolution by the Municipal Council of the Township ("Settlement Resolution"), authorizing and directing:

a) the Township's execution, through counsel, and delivery to counsel for Atlantic, of a Township counterpart of both the instant Appeal Settlement Stipulation , executed on behalf of the Township, together with execution and delivery of a

Township counterpart of the aforesaid SCO, resolving the HHC Action under terms and conditions stated therein; and

b) the Township Council's introduction of proposed zoning code, in form attached hereto as Exhibit B, for consideration, within time provided for within the SCO, together with the recommendations and pertinent advices of: the Township Planner, the Township Civil Engineer, and Township Real Estate Manager), as proposed new zoning of the H&B site which, subject to further action of the Township Council, would be adopted, allowing improvement of the H&B Site for uses consistent with the H&B Site concept plan attached to this Appeal Settlement Stipulation as Exhibit C hereto ("H&B Site Non-Residential Rezoning"), with the Settlement Resolution further resolving that due consideration shall be given to H&B Site Non-Residential Rezoning without necessity of additional studies thereof, at regularly scheduled meeting, or as soon thereafter that the that H&B Site Non-Residential Rezoning may be attend to, within the time frames contemplated within the SCO;

2. Upon publication of the Settlement Resolution, Atlantic shall deliver to counsel for the Township, the executed Appeal Dismissal Stipulation, to be held in escrow by counsel for the Township for filing with the Clerk of Appellate Division,

immediately upon the Presiding Judge's entry of the SCO in the HHC Action on prompt application by Atlantic for entry of the SCO pursuant to the terms thereof, and exchange of executed counterparts of the instant Appeal Dismissal Stipulation;

3. Atlantic further stipulates and agrees herein that the Township Council's timely adoption of H&B Site Non-Residential Rezoning by final non-appealable Ordinance, through meetings of the Township Council scheduled within the timeframe contemplated within the SCO, shall constitute and effectuate a self-executing release of all claims of Atlantic and any successors thereof, to residential uses of the H&B site, binding Atlantic to acceptance of the H&B Site Non-Residential Rezoning as authorized uses of the H&B Site;

4. In the event that H&B Site Non-Residential Rezoning shall not be timely adopted as final and non-appealable Ordinance ("Failure of H&B Site Non-Residential Rezoning"), Atlantic shall nonetheless remain bound by the Appeal Dismissal Stipulation, and Atlantic's sole recourse with respect to the H&B Site shall be regularly available petitioning of municipal government for zoning revision, and/or litigating for rezoning of the H&B Site and other related legal and equitable relief, with the prior entry of the Appeal Dismissal Stipulation and Settlement Resolution being without prejudice to the Township in such event, with the Township

retaining all available legal defenses to any action by Atlantic hereunder. (While the entry of the Appeal Dismissal Stipulation shall preclude Atlantic from contesting either the settlement of the Township's total affordable unit obligation or the award of immunity from Builder's Remedy suits within the Township Declaratory Judgment Action, in the event of Failure of H&B Site Non-Residential Rezoning, Atlantic may participate in annual and midpoint reviews of Township progress with implementation of the HEFSP and may advocate for authorization of inclusionary housing on the H&B Site as a remedy for any insufficiency of Township advancement of the HESFP, as may be determined by the Judge presiding in the Township DJ Action, with the Township retaining all defenses and responses thereto otherwise available to it.); and

5. Counterparts. This Appeal Settlement Stipulation and may be signed in counterparts with service of an electronic reproduction thereof being effective as though it were an original.

Waters, McPherson, McNeill, P.C.
Counsel for Intervener-Appellant
Atlantic Realty Development Corporation

By: /s/ Kenneth D. McPherson Jr.
Kenneth D. McPherson, Jr.

Dated: _____

Miller, Porter, and Muller
Special Counsel to Plaintiff-Respondent
Township of West Windsor

By: Gerald J. Muller
Gerald J. Muller, Esq.
Dated: _____

Fair Share Housing Center
Intervener-Respondent
Counsel of Record and
Executive Director

By: _____
Adam M. Gordon, Esq.

Dated: _____

1206443.1

EXHIBITS TO BE APPENDED

EXHIBIT A	Appeal Dismissal Stipulation
EXHIBIT B	Settlement Zoning Code for H&B Site
EXHIBIT C	H&B Site Concept Plan

Exhibit A

Kenneth D. McPherson, Jr., Esq. (Attorney ID No. 028501982)
Jessica CM Almeida, Esq. (Attorney ID No. 058132013)
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jalmeida@lawwmm.com
Attorneys for Intervener/Appellant, Atlantic Realty

I/M/O THE TOWNSHIP OF : SUPERIOR COURT OF NEW JERSEY
WEST WINDSOR : APPELLATE DIVISION
: Docket No.: A-005412-18 T2
: :
: Civil Action
: :
: ON APPEAL FROM THE SUPERIOR
: COURT OF NEW JERSEY, LAW
: DIVISION, MERCER COUNTY
(Mount Laurel Declaratory : DOCKET NO. MER-L-1561-15
Judgement Action) : :
: Sat Below: Hon. Mary C.
: Jacobson, A.J.S.C.
: :
: STIPULATION OF DISMISSAL OF
: APPEAL PURSUANT TO RULE 2:8-2

The matters in the above-captioned appeal ("the Appeal") that Intervener-Appellant, Atlantic Realty Development Corporation ("Atlantic") had placed in dispute with Plaintiff-Respondent Township of West Windsor ("Township") and Intervener-Respondent Fair Share Housing Center ("FSHC"), by filing of the instant Appeal seeking relief of Orders entered before the Trial Court, which among other things, approved agreement between the Township and FSHC settling the Township's Mount Laurel inclusionary housing obligation from which the Appeal was taken by Atlantic, having now

been amicably adjusted, with the consent of the Township and FSHC, memorialized through execution of the instant stipulation by respective counsel below, and, on notice to all other Parties of record below through e-Court's filing of the instant stipulation of dismissal, pursuant to Rule 2:8-2, Atlantic does hereby dismiss the Appeal with prejudice and without costs.

Waters, McPherson, McNeill, P.C.
Counsel for Intervener-Appellant
Atlantic Realty Development Corporation

By: /s/ Kenneth D. McPherson Jr.
Kenneth D. McPherson, Jr.

Dated: _____, 2020

Miller, Porter, and Muller
Special Counsel to Plaintiff-Respondent
Township of West Windsor

By: Gerald J. Muller
Gerald J. Muller, Esq.
Dated: _____, 2020

Fair Share Housing Center
Intervener-Respondent
Counsel of Record and
Executive Director

By: _____
Adam M. Gordon, Esq.

Dated: _____, 2020

1185418.3

Exhibit B

Draft ROM-3 Ordinance 08 Dated 11-18-20

ORDINANCE 2020-24

AN ORDINANCE TO AMEND AND SUPPLEMENT CHAPTER 200 OF THE CODE OF THE TOWNSHIP OF WEST WINDSOR (1999) BY MODIFYING PROVISIONS PERTAINING TO THE ROM-3 INDUSTRIAL DISTRICT – (Research, Office, Limited Manufacturing)

WHEREAS, the Planning Board of West Windsor adopted a Land Use Element of the Master Plan on February 12, 2020 (2020 Land Use Plan Element); and

WHEREAS, the 2020 Land Use Plan Element recommends expanding the list of permitted uses in the ROM-3 District to include self-storage and warehousing; and

WHEREAS, the intent of the ROM-3 District is to promote a high-quality level of development at a scale that will also provide substantial compatibility with the residential and agricultural nature of the surrounding area, protect any associated existing or proposed areas of Township Greenbelt and limit both environmental impacts and potential conflicts with surrounding neighborhoods to the greatest degree possible.

NOW, THEREFORE, BE IT ORDAINED by the Township Council of the Township of West Windsor, County of Mercer, State of New Jersey, as follows:

Section 1. Chapter 300 of the Code of the Township of West Windsor (1999), Land Use, Part 4, Zoning, Article XXIX, Regulations for Research/Office/Manufacturing, Research/Office and Research and Development Districts, Section 200-213, ROM-3 Industrial District (research, office, limited manufacturing) use regulations, is hereby amended as follows. Added text is underlined, and text being eliminated is ~~struck-through~~.

§ 200-213 ROM-3 Industrial District (research, office, limited manufacturing) use regulations.

- A. Permitted uses. In an ROM-3 District, no building or premises shall be used and no building shall be erected or altered which is arranged, intended or designed to be used except for one or more of the following uses, and all such uses shall be subject to the performance standards set forth in Part 1, Site Plan Review, of this chapter.
 - (1) All those permitted uses as listed for an ROM-2 District.
 - (2) Research-office. Limited manufacturing park developments, notwithstanding any other requirements of this chapter, shall be subject to those special requirements as listed herein for a ROM-1 Park District, except as changed herein:
 - (a) Minimum park area: 12 acres in contiguous parcels.
 - (b) Minimum lot area: three acres.

Draft ROM-3 Ordinance 08 Dated 11-18-20

(c) Minimum park and lot frontage: 250 feet.

(d) Maximum building height: three stories, but not to exceed 45 feet.

(3) Warehousing and distribution facilities.

(4) Finishing and assembly of products.

(5) Self-storage facilities.

B. Accessory Uses. In the ROM-3 District, the following uses may be permitted as accessory uses.

(1) Accessory uses and accessory buildings incidental to the above uses located on the same lot and within the same zoning district permitting the principal use.

(2) Uses and buildings incidental to permitted uses within the same zoning district permitting the principal use.

(3) A restaurant or cafeteria primarily for supplying meals only to employees and guests of the principal use.

(4) In-service training schools for employees.

(5) Custodial living quarters.

(6) Indoor and outdoor recreation facilities, provided that all such accessory buildings and uses shall be planned as an integral part of the principal use.

(7) Assembly halls for meetings incidental to the business of the principal use.

(8) Maintenance, utility and storage facilities incidental to the principal use.

(9) Guard houses.

(10) Public and Private utility (e.g., electric, gas, telephone, cable, water, sewer, etc.) substations, electric and gas facilities to service the permitted uses. The facilities shall be subject to the requirements contained in Article XXVII, §200-156B, except that the requirement of 200-156B(6)b shall not apply.

(11) Electric vehicle charging stations.

B. C. Conditional uses. In an ROM-3 District, the following uses may be permitted as conditional uses:

(1) Any use permitted by condition in an ROM-2 District, with the exception of §§ 200-211B(3).

(2) Transmission lines, transmitting and receiving antennae or aerials subject to the requirement set forth in Article XXVII, Section 200-156B.

(3) Public utilities (e.g. electric, gas, telephone, cable, water, sewer, etc.) substation, electric and gas facilities subject to the requirements contained in Article XXVII, Section 200-156B, except those utilities which are necessary to service the permitted uses.

Draft ROM-3 Ordinance 08 Dated 11-18-20

Section 2. Chapter 300 of the Code of the Township of West Windsor (1999), Land Use, Part 4, Zoning, Article XXIX, Regulations for Research/Office/Manufacturing, Research/Office and Research and Development Districts, Section 200-214, ROM-3 District bulk and area regulations, is hereby amended as follows. Added text is underlined, and text being eliminated is struck through.

§ 200-214 ROM-3 Industrial District (research, office, limited manufacturing) use regulations.

The following shall be the standards for the ROM-3 District

- A. Minimum lot area: five acres.
- B. Minimum lot area for warehouse and distribution facilities: twenty-five (25) acres.
- B. C. Minimum lot frontage: 300 feet.
- C. D. Minimum lot width: 300 feet.
- D. E. Minimum lot depth: not applicable.
- E. F. Minimum Yards
 - (1) Front yard: 125 feet, with a seventy-five foot landscape area at the street right of way.
 - (2) Rear yard: 40 feet.
 - (3) Side yard: There shall be two side yards with a minimum of 40 feet each.
 - (a) For buildings less than or equal to forty (40) feet in height: twenty-five (25) feet.
 - (b) For buildings greater than forty (40) feet in height: forty (40) feet.
 - (c) For warehouse and distribution facilities, a side yard setback of three hundred (300) feet shall be provided from the westerly boundary line of the ROM-3 District.
 - (4) Yards abutting residential districts. The above yard, including the landscape transition buffer and screen requirements, shall be increased by 20 feet in those instances where they abut, in whole or in part, a residential district or lot line. Side and rear yards shall be increased by twenty-five (25) feet in those instances where they abut, in whole or in part, a residential zone district or lot line. This provision shall not apply to the aforementioned three hundred (300) foot setback from the westerly boundary line of the ROM-3 District established for warehouse and distribution facilities.
- G. Minimum distance between buildings: 25 feet.

Draft ROM-3 Ordinance 08 Dated 11-18-20

F. H. Maximum FAR. There shall be no FAR for the ROM-3 District. The maximum permitted FAR shall be allowed to vary according to the following schedule, depending on the intended use and building height:

Primarily [†] Research/Office Uses [‡]	Maximum FAR
In one-story buildings	0.22
In multistory buildings	0.30
Primarily [†] Manufacturing/Warehousing Uses [‡]	Maximum FAR
In one-story buildings	0.30
In multistory buildings	0.40

NOTE:

[†]"Primarily" shall mean more than 80% of total building use on a lot. The maximum FAR shall be adjusted proportionately where less than 80% of the designated building uses are proposed for a lot.

G. I. Maximum improvement coverage: 50% 70%.

H. J. Maximum building height: three stories, but not to exceed 45 feet.

- (1) The maximum building height shall be three stories and forty-five (45) feet for all uses except warehouse and distribution facilities.
- (2) The maximum height shall be two (2) stories and forty-five (45) feet for warehouse and distribution facilities.

K. Parking in yards. Parking shall be permitted in the front, rear, and side yard setbacks subject to the following:

- (1) Parking lots shall maintain a twenty-five (25) foot minimum grassed or landscaped separation on each lot to an adjoining lot, except that a seven and one-half (7.5) foot minimum grass or landscaped separation on each lot may be provided in those instances where a warehouse and distribution facility abuts an adjacent warehouse distribution facility.
- (2) Parking shall not be permitted in any landscape buffer required by this chapter.

L. Parking for warehouse and distribution facilities. Parking at warehouse and distribution facilities shall be computed on a pro rata basis as the sum of the parking required for the floor area of the facility used as office space plus the parking required for the floor area of the building used for warehousing or distribution space. The parking ratios to be used in this computation are as follows:

- (1) One (1) space for each five thousand (5,000) square feet of building floor area devoted to warehousing and/or distribution space.
- (2) One (1) space for each two hundred and fifty (250) square feet of building floor area that is devoted to office space.

Draft ROM-3 Ordinance 08 Dated 11-18-20

M. ROM-3 District Performance Standards. All uses permitted in the ROM-3 District shall be subject to the performance standards set forth in Part 1, Site Plan Review, of this chapter, except as modified below.

- (1) The provisions of Section 200-36.1 shall not apply to warehouse and distribution facilities. The provisions of Section 200-36.1 shall apply to all other uses, except that sidewalks in the ROM-3 District may be constructed of impervious materials.
- (2) The provisions of Section 200-28.D(1) shall not apply.
- (3) Parking and loading is permitted between the fronts of buildings and the street line. No parking is permitted within any landscaped buffer as required herein.
- (4) Aisles for the movement and circulation of vehicles shall be permitted in all yard setback areas. No aisle, except those required for access into and out of the site, shall be permitted within any landscaped buffer as required herein.
- (5) Trailer parking spaces and loading docks shall be permitted within building yard setbacks for warehouse and distribution facilities.
- (6) Existing trees may be removed in accordance with all outside agency regulations and pursuant to site plan approval.
- (7) Bicycle parking shall not be required for warehouse distribution facilities.

O. Buffers. Landscape buffers in the ROM-3 District shall be provided as follows.

- (1) A landscape buffer of seventy-five (75) feet shall be provided at the street line.
- (2) For warehouse and distribution facilities, a landscape buffer of one hundred (100) feet shall be provided from the westerly boundary line of the ROM-3 District.
- (3) No parking or loading shall be permitted in a landscape buffer.
- (4) Yard requirements shall be deemed to be counted as part of the landscape buffer area. Where yard areas are less than the required buffer area, they shall be increased accordingly.
- (5) Suitably landscaped and bermed stormwater basins in the ROM-3 District may be located within any yard setbacks or landscaped buffers required by this Chapter, provided that a maximum of fifty percent (50%) of the basin may be located within the buffer area.

Section 3. In the event of any conflict between the provisions and requirements of this section and the provisions and requirements of any other section of this chapter, the provisions and requirements of this section shall govern.

Draft ROM-3 Ordinance 08 Dated 11-18-20

Section 4. This ordinance shall take effect twenty days after action or inaction by the Mayor as approved by law, or an override of a mayoral veto by the Council, whichever is applicable; upon filing with the Mercer County Planning Board; and upon publication according to law.

Introduction: November 30, 2020

Planning Board Approval:

Public Hearing:

Adoption:

Mayor Approval:

Effective Date:

