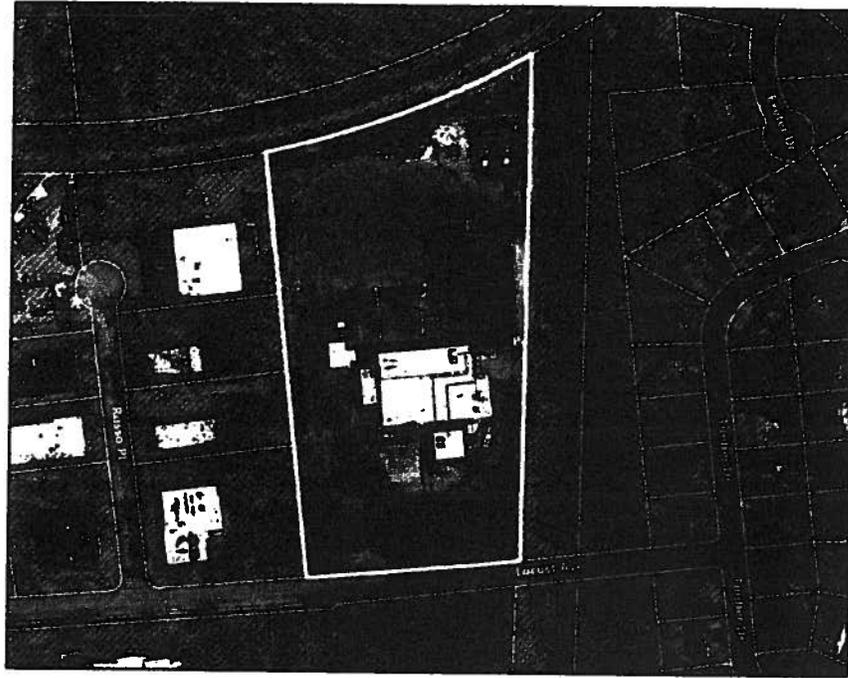


**Redevelopment Plan for 100 Locust Avenue
(Block 1901, Lot 35)**



Township of Berkeley Heights
Union County, New Jersey
November 17, 2016

Harbor Consultants, Inc.
Project Number 2015008.01

Prepared by:

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The original of this report was signed and
sealed in accordance with N.J.S.A. 45:14A-12.

MTM.

Michael Mistretta, PP #00575900

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Township Council

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Craig Pastore, Council Vice-President
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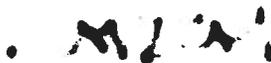
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1. Memorandum of Understanding by and between Township of Berkeley Heights and Berkeley Developers, LLC ("Berkeley Developers") Regarding Development of An Age-Restricted Development Project with Inclusionary Affordable Housing in the Township of Berkeley Heights County of Union, State of New Jersey, dated February 23, 2016.
2. Township Council Resolution No. 103-2016, dated April 19, 2016, "authorizing the Planning Board to undertake a preliminary investigation, utilizing Harbor Consultants, Inc., in order to recommend to the Township Council whether the property identified as Block 1901, Lot 35, located at 100 Locust Ave is an area in need of redevelopment according to criteria set forth in N.J.S.A 40A:12A-5".
3. Planning Board Resolution dated May 4, 2015, "authorizing Harbor Consultants, Inc., to prepare a map of the Study Area, a statement setting forth the basis for the investigation, and conduct a preliminary investigation of the Study Area to determine whether the Study Area meets the criteria set forth in the LRHL and should be designated as an area in need of non-condemnation redevelopment".
4. Township Council Resolution No. 195-2016, dated August 23, 2016, "designating the Study Area as an area in need of non-condemnation redevelopment pursuant to N.J.S.A. 40A:12A-6, satisfying criteria (b), (d), (h) and Section 3 of the Redevelopment Law, N.J.S.A 40A:12A-5. The Township Planner is hereby directed to work with the Township Council to prepare a redevelopment plan for the Study Area, and present same to the entire Township Council pursuant to N.J.S.A. 40A:12A-7f".
5. Planning Board Resolution dated September 7, 2016, "recommending the property identified as Block 1901, Lot 35 on the Tax Map of the Township of Berkeley Heights and more commonly known as 100 Locust Avenue be designated as an area in need of non-condemnation redevelopment"
6. Letter from the NJ Department of Community Affairs Commissioner, Charles Richman, to Berkeley Heights Mayor, Robert Woodruff, designating Block 1901, Lot 35 as an Area in Need of Redevelopment, dated September 9, 2016.
7. Agreement to Resolve Issues between the Township of Berkeley Heights and Fair Share Housing Center Concerning the Township's Mount Laurel Fair Share Obligations and the Means by which the Township Shall Satisfy Same ("the Settlement Agreement"), signed by FSHC September 13, 2016.
8. Township Council Resolution No. 220-2016, "authorizing the Township to enter into the Settlement Agreement with FSHC, in substantial the form attached hereto, subject to the terms and conditions set forth therein", dated September 20, 2016.
9. Locust Avenue Project Settlement Agreement between the Township of Berkeley Heights and Berkeley Developers, signed October 13, 2016.
10. Township Council Resolution No. 247-2016, dated October 13, 2016, "authorizing the Mayor and Township Clerk to execute the Settlement Agreement with Berkeley Developers".
11. Amended Part 19 – Design Standards as Applicable to the 100 Locust Avenue Redevelopment Plan.
12. Planner's Report for Berkeley Developers, LLC in the form of a letter to the Hon. Camille M. Kenny, J.S.C. from Philip Caton, PP, FAICP, dated October 13, 2016.
13. Court Order Approving Settlement Agreement between the Township of Berkeley Heights and Fair Share Housing Center, filed October 17, 2016.

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- Figure 1: Berkeley Heights Township Tax Map of the Redevelopment Area
Figure 2: Aerial Photograph of the 100 Locust Avenue Property
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Figure 7: Township of Berkeley Heights Zone Map of the Locust Avenue Property
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Table 3: New Jersey Department of Environmental Protection Active Contamination Site

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SECTION 1. INTRODUCTION

1.1 Statutory Basis for the Redevelopment Plan

On April 19, 2016, the Township of Berkeley Heights Council adopted Resolution no. 103-2016 which states "in connection with the Memorandum of Understanding, the Township finds it appropriate to commence the process to determine if the property identified as Block 1901, Lot 35, located at 100 Locust Avenue (the "Redevelopment Area") is in need of redevelopment; and the Township Council of the Township of Berkeley Heights finds it to be in the best interest of the Township and its residents to authorize the Township Planning Board to undertake such preliminary investigation of the Study Area as a Non-Condemnation Redevelopment Area"¹.

The Resolution adopted by the Township Council authorized the Planning Board "to undertake a preliminary investigation, utilizing Harbor Consultants, Inc., pursuant to the notice, hearing and other requirements of the Local Redevelopment and Housing Law, N.J.S.A.40A:12A-1, et seq., as amended, in order to recommend to the Township Council whether the property identified as Block 1901, Lot 35, located at 100 Locust Avenue, in the Township of Berkeley Heights, or any portion thereof, is an area in need of redevelopment according to the criteria set forth in N.J.S.A.40A:12A-5". A copy of the Resolution adopted by the Township Council is contained in the Appendix of this report.

On May 4, 2016, the Planning Board adopted a resolution "authorizing Harbor Consultants, Inc. to prepare a map of the Study Area, including a statement setting forth the basis for the investigation, the preparation of a map of the Study Area, and to perform a preliminary investigation of the Study Area to determine whether the Study Area is an area in need of non-condemnation redevelopment pursuant to the LHRL"². A copy of the Resolution adopted by the Planning Board is contained in the Appendix of this report.

On August 23, 2016, the Township of Berkeley Heights Council adopted Resolution No. 195-2016, which designated "the Study Area as an area in need of non-condemnation redevelopment pursuant to N.J.S.A. 40A:12A-6, satisfying criteria (b), (d), (h) and Section 3 of the Redevelopment Law, N.J.S.A 40A:12A-5". The resolution states that "the Township Planner is hereby directed to work with the Township Council to prepare a redevelopment plan for the Study Area, and present same to the entire Township Council pursuant to N.J.S.A. 40A:12A-7f"³.

On October 13, 2016, the Locust Avenue Project Settlement Agreement between the Township of Berkeley Heights and Berkeley Developers was agreed upon and signed with "the purpose of settling the Berkeley Developers Intervention and to create a realistic opportunity for the construction of the Inclusionary Development, and to generate affordable housing credits for the Township to apply to any Round 3 obligation assigned to it"⁴. On the same day, the Township of Berkeley Heights Council adopted Resolution No. 247-2016, which authorized the Mayor and Township Clerk to execute the Settlement Agreement with Berkeley Developers. The Settlement⁵.

¹ Berkeley Heights Township Council Resolution No. 103-2016, adopted April 19, 2016.

² Berkeley Heights Planning Board Resolution adopted May 4, 2016.

³ Berkeley Heights Township Council Resolution No. 195-2016, adopted August 23, 2016.

⁴ Locust Avenue Project Settlement Agreement, signed October 13, 2016.

⁵ Berkeley Heights Township Council Resolution No. 247-2016, adopted October 13, 2016.

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1.2 Description of the Redevelopment Plan Area

The 100 Locust Avenue property, or the "Redevelopment Area" is located at Block 1901, Lot 35, in the Light Industrial Zone District of Berkeley Heights. The Redevelopment Area consists of a single parcel that is 10.1 +/- acres, which is based on municipal tax records. The Study Area is bounded by the Locust Ave right-of-way to the South, the NJ Transit boundary line to the north of the property, and the PSEG Services Corp easement to the east. Adjacent Light Industrial properties, including Block 1901, Lots 36, 37, 38, and 39, border the west side of the site (see Figures 1 and 2 below).

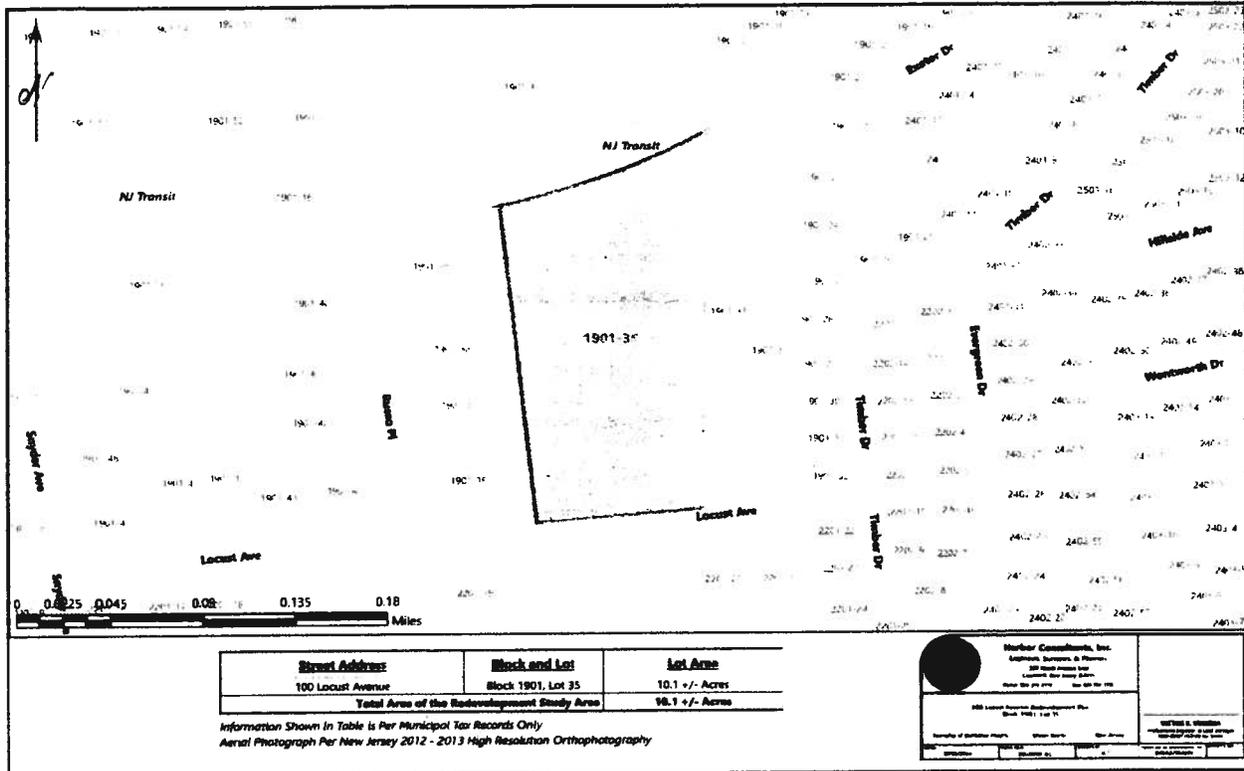


Figure 1: 100 Locust Ave Redevelopment Area, Tax Map

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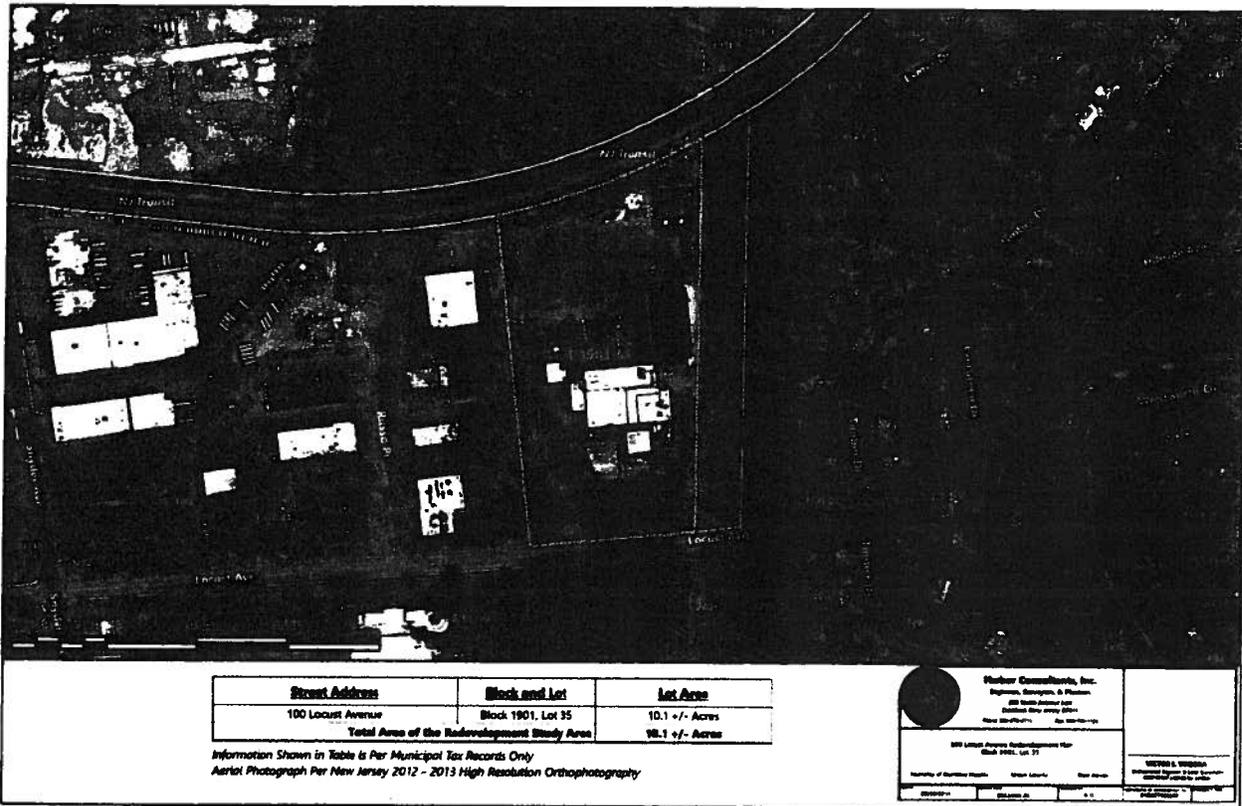


Figure 2: 100 Locust Ave Redevelopment Area, Aerial Map

i. History of the Site

History of Block 1901, Lot 35 shows that the building has housed commercial uses through the past two tenants – Dun & Bradstreet (D&B) and Computer Sciences Corporation (CSC). Planning and Zoning records for the property help track the development history and expansion of the built footprint on the site overtime. Records indicate that the property owners in 1981, D&B applied for permission to install a temporary emergency air conditioning system, which would entail some 420 square feet in the form of an air conditioner and pad – which included a variance for the continuance of a sideyard setback violation on the easterly side of the building, whereas a minimum setback of 15 feet is required and 10.57 feet existed.⁶

In 1983, D&B requested a modification of the existing site plan approval dated April 9, 1981 to the extent that the approval imposed a condition of the requirement that the applicant remove the concrete pad for the subject air conditioning unit and the air conditioning system by December 31, 1983. This application requested the approval to allow the permanent installation of the air conditioning system.⁷

In 1985, D&B applied for site plan approval for approximately 13,000 square feet of interior renovations to the existing building wings to be converted from administrative space to

⁶ Application No. SP-1-81, Resolution dated April 9, 1981.

⁷ Application No. SP-13-83, Resolution dated January 25, 1984.

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operational space for computers, and for the construction of a new external 320 ton chiller on the westerly side yard, which included waivers for submission of a stormwater management and control plan, an environmental impact statement, scale of plan, written use plan, traffic impact analysis, location of gas utility service and construction details.⁸

In 1991, D&B applied to the Planning Board for preliminary and final site plan approval in order to construct a generator enclosure - which included variances for the accessory building to be located in the front yard; a variance for the minimum required distance or spacing between the front wall of the building on the property and the rear wall of the generator enclosure, whereas 40 feet is required and 15 feet was proposed; and a waiver from the requirement to submit a stormwater management plan⁹.

In 1996, D&B submitted an application requesting to construct an 1,800 square foot mechanical room with ancillary chilling towers to replace old existing cooling equipment and towers - which required no use variances or bulk variances.

In 2002, D&B contracted out their IT services to CSC under a 10-year contract. Computer Sciences took over the Data Center located at 100 Locust Ave, and owned and operated it from there on out, and the facility supported D&B financial data processing services¹⁰.

In 2004, CSC applied to the Planning Board for preliminary and final site plan approval and conditional use approval to construct an electric utility substation and an electrical equipment building, as well as a transformer and an underground utility duct bank (the installation of the utility substation to be done in conjunction with Jersey Central Power & Light Company) - which requested waivers from certain Township checklist submission requirements including scale of plans, whereas 1"=30' is required and 1"=40' was submitted; a waiver from the requirement that plans include both existing and proposed elevations and contours that extend 50 feet beyond the tract; and a waiver for the requirement that sidewalks be constructed along the frontage of the property.¹¹

In 2009, CSC applied for preliminary and final major site plan approval for Block 1901, Lots 35 and 39, and proposed to separate the physical connections of the two lots by removing the existing driveway, curbing, and sidewalks, and to install additional top soil and landscaping to improve the existing stormwater management detention basin situated on the property line.¹² Floor plans of the administrative and operational wings, along with a rendering of the surface parking lot can be found under the Appendix section of this report.

Based on the environmental documentation from the NJDEP, it appears that the previous owner, CSC, did not fully utilize the site during its time there and had vacated the site prior to 2012, with the 2011 NJDEP Inspection showing that the "Building is currently for sale and is only manned by a few people", "environmental permits were not properly transferred", as well as other evidence. In 2012, Jones Lang LaSalle advertised the vacant property as: "100 Locust Avenue (the "Property"), a 99,874 square foot two story office / data center facility situated on 10.19+

⁸ Application No. SP-13-85.

⁹ Application No. SP-2-91, Resolution dated August 12, 1991.

¹⁰ <https://www.finextra.com/news/fullstory.aspx?newsitemid=6034>

¹¹ Application No. SP-10-04, Resolution dated August 4, 2005.

¹² Application No. SP -3-09, Resolution dated July 1, 2009.

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acres in Berkeley Heights, New Jersey built in 1965, office wing built in 1972. Upgrades were done in 2007. This offering presents a unique opportunity to acquire a corporate owned asset, with appeal to users, as well as upside to an investor associated with a redevelopment at the Property” and highlights that “it currently utilizes over 27,000 square feet of data center space ...and is “one of a limited number of existing data centers available in the New York Metro area”¹³. Despite being a built out and readily available data center in the area - uniquely positioned right off Route 78 in Northern New Jersey, minutes from the Garden State Parkway - the property struggled and failed to find a tenant seeking that use.

In 2014, CSC sold the property to Berkeley Developers. CSC had utilized the building for the housing of computer data processing systems which required redundant and power supplies and backup power supplies. As evidenced by the zoning history, the building had two separate power substations to rely on, a battery backup, a diesel fuel generator to supply backup power for the administrative offices, and two diesel fuel generators for backup to power the computer data systems.

The building has not been in use by Berkeley Developers, and no new commercial activity has commenced since the 2014 sale. Because of this, and despite a locked gate and building, the property has been subject to vandalism and trespassing – evidenced by graffiti inside and outside of the building, broken windows, and other disturbances on the property.

The limits of the study area are mapped on an Aerial Photograph Map, Township Zone Map, New Jersey State Plan Policy Map, FEMA Flood Map, and Township Tax Map. A copy of each of these maps is contained under Exhibits at the rear of this Report. A survey of the site, dated May 20, 2016 is depicted below:

¹³ http://www.joneslanglasalle.com/Lists/PropertiesList/Attachments/13622/100_Locust_brochure.pdf

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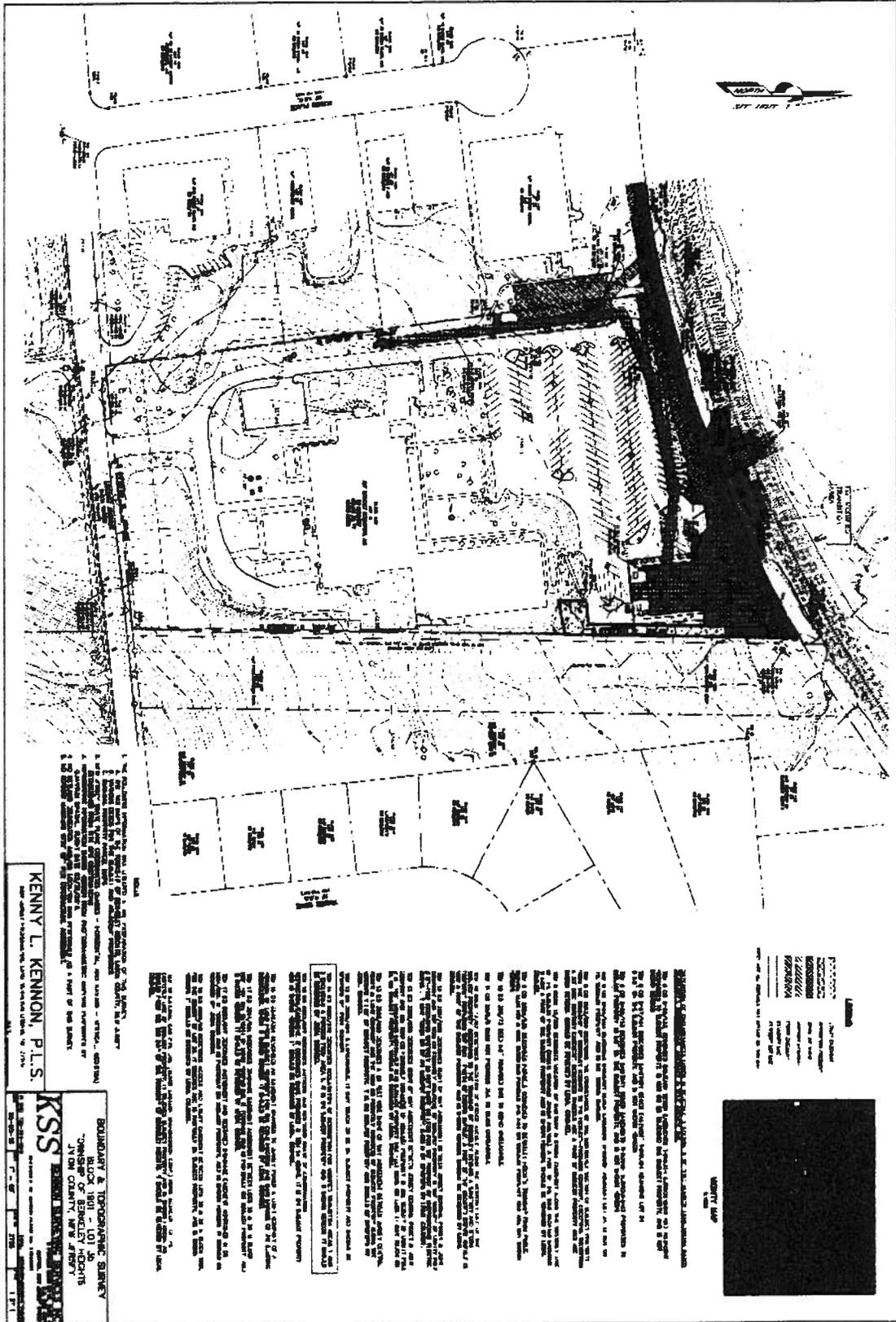


Figure 3. May 20, 2016 Survey of Block 1901, Lot 35 Showing Freshwater Wetland Transition Area

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ii. Photographs of Existing Conditions

A field survey of the property was conducted to determine the existing land use and overall condition of the properties. The photographs contained within this Report were taken on May 17, 2016.

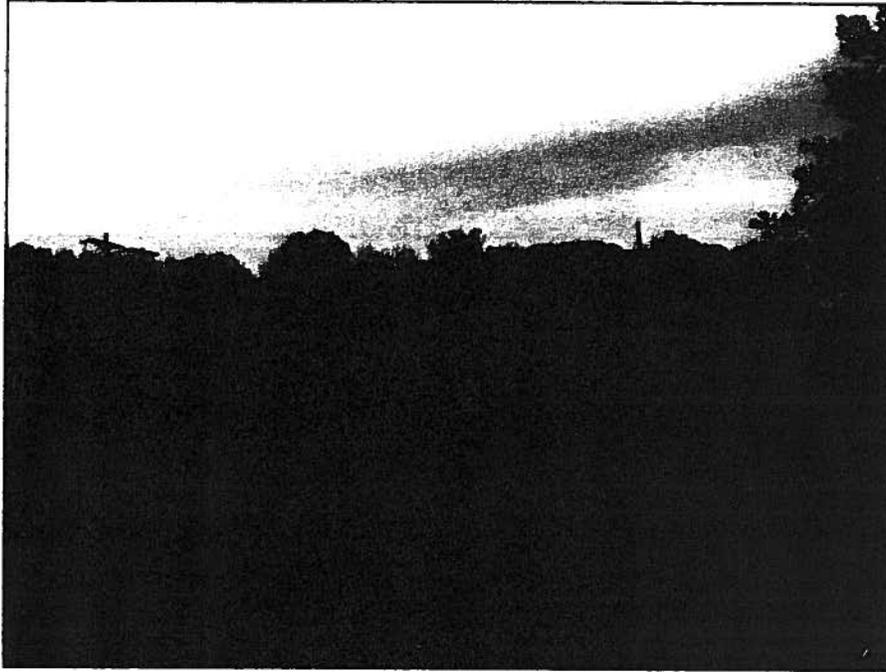


Figure 4: Electrical Substation at the Rear of the Site

iii. Neighborhood

The Study Area is bounded by the Locust Ave right-of-way to the South, the NJ Transit boundary line to the north of the property (Block 1901, Lot 16), and the PSEG Services Corp easement to the east (Block 1901, Lot 34). Adjacent Light Industrial properties, including Block 1901, Lots 36, 37, 38, and 39, border the west side of the site.

Directly across Locust Ave from Lot 35 is a large parcel owned by the Township of Berkeley Heights in the Open Land (OL) zone. This property, Block 2201, Lot 19, is 17.4 +/- acres and is home to the Berkeley Heights Community Pool, and other recreation facilities. Other Township Owned property, Block 1901, Lot 4, is located to the north of the study area in the OL zone and across the New Jersey Transit Rail Line. This property is not developed and is contiguous with Snyder Park to the west. Across the PSEG easement is the R-15 zone to the east, which permits single family homes on individual lots with a minimum of 15,000 square feet. The photographs contained within this Report were taken on May 17, 2016.

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Figure 5: Block 2201, Lot 19 – Directly Across the Street from Site, Undeveloped 15C Protected Land and Berkeley Heights Community Pool



Figure 6: Block 1901, Lot 34 – PSEG Services Corp Easement to the East of the Study Area

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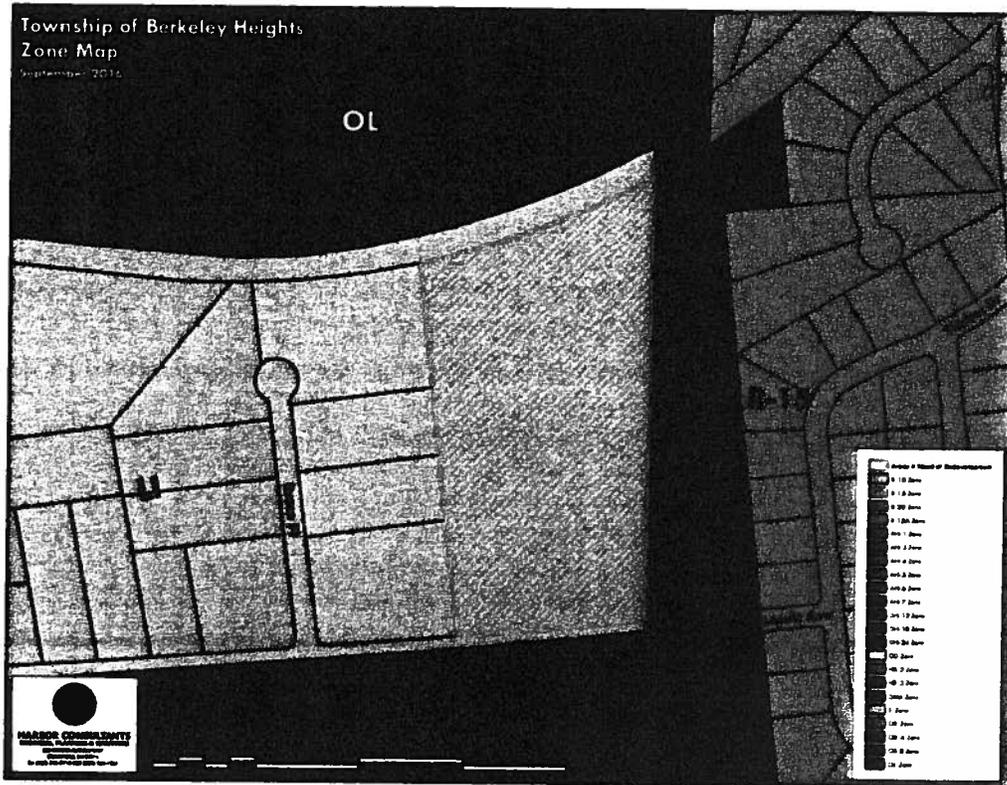


Figure 7: Township of Berkeley Heights Zone Map, showing Block 1901, Lot 35

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SECTION 2. THE PUBLIC PURPOSE

2.1 Adoption of a Redevelopment Plan

In accordance with the Local Redevelopment and Housing Law, NJAC 40:12A-7: No redevelopment project shall be undertaken or carried out except in accordance with a Redevelopment Plan adopted by ordinance of the municipal governing body, upon its finding that the specifically delineated project area is located in an area in need of redevelopment or in an area in need of rehabilitation, or both, according to criteria set forth in section 5 or section 14 of P.L. 1992, c. 79 (C40A:12A-5 or 40A:12A-14), as appropriate.

The redevelopment plan shall include an outline for the planning, development, redevelopment, or rehabilitation of the project area sufficient to indicate:

- (1) Its relationship to definite local objectives as to appropriate land uses, density of population, and improved traffic and public transportation, public utilities, recreational and community facilities and other public improvements.
- (2) Proposed land uses and building requirements in the project area.
- (3) Adequate provision for the temporary and permanent relocation, as necessary, of residents in the project area, including an estimate of the extent to which decent, safe and sanitary dwelling units affordable to displaced residents will be available to them in the existing local housing market.
- (4) An identification of any property within the redevelopment area which is proposed to be acquired in accordance with the redevelopment plan.
- (5) Any significant relationship of the redevelopment plan to (a) the master plans of contiguous municipalities; (b) the master plan of the County in which the municipality is located, and (c) the State Development and Redevelopment Plan adopted pursuant to the "State Planning Act," P.L. 1985, c. 398 (C.52:18A-196 et al.).

The Redevelopment Plan shall describe its relationship to pertinent municipal development regulations as defined in the "Municipal Land Use Law," P.L. 1975, c. 291 (C.40:55D-1 et seq.). The Redevelopment Plan shall supersede applicable provisions of the development regulations of the municipality or constitute an overlay zoning district within the redevelopment area. When the Redevelopment Plan supersedes any provision of the development regulations, the ordinance adopting the redevelopment plan shall contain an explicit amendment to the zoning district map included in the zoning ordinance.

2.2 Redevelopment Goals and Objectives

The Goals and Objectives of the Locust Avenue Redevelopment Plan are as follows:

- Provide for an age-restricted housing development with an inclusionary affordable housing component as outlined in an Order filed with the Court dated October 17, 2016, an agreement with the Fair Share Housing Center dated September 20, 2016, and a

A Redevelopment Plan for 100 Locust Avenue

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settlement agreement between the Township and the Township of Berkeley Heights and Berkeley Developers signed October 13, 2016 - all of which outline the Township's third round affordable housing obligation and the redevelopment of 100 Locust Avenue;

- Redevelop an outdated, vacant light industrial complex that has been found to be an area in need of redevelopment and satisfy certain criteria of the Local Redevelopment and Housing Law with a new upscale residential housing development with amenities designed to serve the residents of the community;
- Preserve and allow for the incorporation of green space, specimen trees, and vegetated buffers on the property to buffer the residential development from adjacent uses;
- Provide sufficient off street parking spaces and internal vehicular circulation for all residents and employees on the site in accordance with Residential Site Improvement Standards;
- Incorporate amenities such as a clubhouse and outdoor terrace into the architectural design of the building that would soften the appearance of the buildings and address the social and active and passive recreational needs of the community;
- Provide and maintain safe, on-site and off-site pedestrian connections to surrounding properties that provide recreation opportunities such as the Berkeley Swim Club;
- Investigate the impact of the new development on the traffic conditions at the intersection of Snyder Avenue, Locust Avenue and Hamilton Avenue, and determine the need for a traffic signal at this intersection;
- Incorporate green building technologies into the site improvements and the building design to the extent practicable; and
- Design the project to comply with the Amended Part 19 – Design Standards and Exhibits attached to the Settlement Agreement.

2.3 Relationship to the Local Objectives

2.3.A. Master Plan Goals

The Township Planning Board adopted a Land Use Plan Element of the Master Plan in September 2007, prepared by Michael Mistretta, PP, LLA of Harbor Consultants, Inc.

In the review of Zoning and Land Use Regulations, this report briefly describes information related to the Study Area's zones within the Master Plan. To further understand the benefits and effects redeveloping the Study Area would have on the Township of Berkeley Heights, this report analyzes how the redevelopment relates and adheres to the overarching Township Master Plan beyond the Zoning and Land Use Regulations.

Within the Executive Summary, the Master Plan continues to state that the Township has been, "proactive in the preparation of planning studies and reports which are valuable tools and references to guide future growth and development."¹⁴ Therefore, the Study Area and its potential redevelopment plan would help to promote and continue growth and development towards which the Township has been striving. The redevelopment of the Study Area compliments and adheres to the goals of the Township Master Plan.

¹⁴ Township of Berkeley Heights, New Jersey Master Plan by Michael Mistretta, PP, LLA of Harbor Consultants, Inc., September 2007. §1 – Introduction §1.1 Executive Summary, Page 13.

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2.3.B. Master Plan Objectives

i. Land Use Element

Important planning considerations in the Land Use Element that apply to the redevelopment plan include the following:

- Assure that future site development is compatible with the existing pattern of single family residential, commercial, office/research, light industrial, and public uses, including open space in the community.¹⁵
- Encourage redevelopment of frequently vacant or antiquated/obsolete buildings, and encourage façade improvement for existing buildings.¹⁶
- Encourage mixed-use, sustainable development that incorporates compact and “green” building design, with adequate transportation options to reduce reliance on cars.
- Develop zoning that reflects existing development patterns and supports appropriate infill development.
- Encourage the development of commercial and civic uses serving the whole population, including children and teenagers.

ii. Circulation and Parking Element

Important planning concepts in the Circulation and Parking Element that are applicable to the Berkeley Heights Redevelopment Plan.

- Evaluate existing pedestrian linkages throughout the Township between existing land uses (residential, commercial, institutional, open space, etc.) and the various community facilities.
- Explore shared privately owned parking lots, particularly on weekends.
- Improve the use of all available parking, both public and private.
- Improve traffic circulation.
- Identify potential changes in circulation patterns and signalization to improve traffic flow and promote implementation of those changes both in the vicinity of the Property (See Section 3.1 of this Redevelopment Plan).

2.3.C Relation to the Township Land Use Procedures Ordinance

100 Locust Avenue is located within the LI Light Industrial Zone District as depicted on the Township of Berkeley Heights Zone Map.

The following are the permitted uses in the LI Zone District:

A. Permitted Principal Uses:

1. Light industry:

¹⁵ Township of Berkeley Heights Master Plan, 2007, Page 33.

¹⁶ Township of Berkeley Heights Master Plan, 2007, Page 34.

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- a. The manufacture of light machinery, comprising any of the following: small machine parts, such as for cash registers, sewing machines, typewriters, calculators and other office machines;
- b. The fabrication of light metal products comprising any of the following: baby carriages, bicycles, metal furniture, musical instruments, sheet metal products, and toys;
- c. The fabrication of paper products, comprising any of the following: bags, books, bookbinding, boxes and packaging materials, and office supplies;
- d. The fabrication of wood products, comprising of the following: boats, boxes, cabinets and woodworking, furniture, toys;
- e. The retail processing of food;
- f. The manufacturing of electronic products, jewelry, sporting goods; and
- g. Distribution centers, warehouses and storehouses.
- h. Sports Complex and Sports/Fitness Equipment Sales
- i. Comprehensive Wellness Center including but not limited to Spa and beauty services, Chiropractic Care, Yoga, Physical/Sports Therapy, etc.
- j. Professional Offices

2. All uses permitted in OR Zone.

B. Permitted Accessory Uses:

1. Signs.
2. Storage buildings appropriately screened from public view.
3. A Dish Antenna provided it:
 - a. Conforms to the rear and side yard setback requirements;
 - b. Is not in the front yard or between the street line and a line drawn at the front facade of the principal building extended to the sidelines of the property;
 - c. Has reflectors no larger than sixteen (16) feet in diameter; and
 - d. Does not exceed twenty (20) feet in height at the highest point of the structure in any position.
 - e. No roof installations are permitted.

C. Conditional Uses:

1. Public utility uses.
2. Parking of School Buses and Commercial Vehicles

D. Height, Area, and Bulk Requirements:

1. See Schedule of General Regulations.

Section 6.3.5 - OR, OR-A, and OR-B: Office and Research Zones

A. Permitted Principal Uses:

1. Office buildings for executive, engineering or administrative purposes.
2. Scientific, engineering or research laboratories devoted to research, design or experimentation and processing and fabricating incidental thereto providing no materials

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or finished products shall be manufactured, processed or fabricated on said premises for sale, except such as are incidental to said laboratory research, design or experimentation conducted on said premises.

3. Municipal buildings, parks, playgrounds and other governmental uses.
4. Places of worship including parish homes and religious school buildings.
5. Schools or other educational institutions including playgrounds and accessory buildings.

The bulk requirements for the LI Zone District are as follows:

Table 1: Article 6.1 - Schedule Of General Regulations	
B. Light Industrial (LI) Zone	
Item	Permitted or Required
Minimum Lot Area	60,000
Minimum Lot Width	150
Minimum Lot Depth Front Yard	250
<i>Principal Building</i>	
Minimum Setback - Front Yard	40 feet
Minimum Setback - Rear Yard	100 feet
Minimum Setback - Side Yard	15 feet
<i>Accessory Building</i>	
Minimum Setback - Front Yard	40 feet
Minimum Setback - Back Yard	10 feet
Minimum Setback - Side Yard	15 feet
Maximum Building Height	40 ^a feet
Maximum Permit Coverage Building	35%
Maximum Permit Coverage Other	35%
Maximum Permit Coverage Combined	70%
^a May be seventy-five (75) feet with a three hundred (300) foot minimum setback in all yards	

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SECTION 3. THE REDEVELOPMENT PLAN

3.1 Land Use Plan

The Locust Avenue Site has been involved in the Township's affordable housing compliance since August 20, 2015, when Berkeley Developers filed a Motion to Intervene in the Compliance Action, and which intervention was granted by the Court on October 9, 2015. As part of the Memorandum of Understanding (MOU) agreement, certain terms and conditions were set forth to regulate the land use plan for the site. The MOU states that "after ongoing discussions, negotiations and mediations between the Township and Berkeley Developers, the parties have agreed upon the general terms of an age-restricted, residential rental development of the Locust Avenue Site, with an inclusionary affordable housing component"¹⁷. Most importantly, the MOU stated the following conditions:

- i. "The residential development shall have an inclusionary affordable housing component of 15% of the total units being developed as very low, low and moderate income affordable housing units to qualify as such pursuant to the terms of the applicable affordable housing regulations, Court Order, Court Special Master requirements, and the Uniform Housing Affordability Controls ("UHAC") regulations, N.J.A.C. 5:80-26.1, et seq. The parties agree that the affordability controls shall expire at the end of thirty (30) years after the date of the initial occupancy of the affordable unit. While the parties prefer for all of the affordable units to be one-bedroom units, the final bedroom distribution will have to satisfy the applicable affordable housing regulations, Court Order, and/or Court Special Master requirements";
- ii. Density of Development - The residential development of the Locust Avenue Site shall be developed with a permitted density of one hundred and ninety six (196) units;
- iii. Age-Restrictions - The residential development of the Locust Avenue Site shall be 100% age-restricted, with a minimum age of 55 years old with the exception that no more than five (5) units may be occupied by employees of Berkeley Developers, or the operating entity for the Locust Avenue Site, who are employed as supers for the site and may have younger members of their household residing onsite. The final number of units to be occupied by employees shall be agreed upon by the parties and included in the settlement agreement to be filed with the Court;
- iv. Setbacks - The residential development of the Locust Avenue Site shall have a minimum front yard setback of one hundred (100') feet. The side yard setback shall be thirty-five (35) feet, and the rear yard setback shall be fifty (50) feet;
- v. Traffic Study & Related Improvements - Berkeley Developers hereby agrees to provide a traffic study for the proposed residential development of the Locust Avenue Site to the Township, which shall address the traffic impact of the proposed development on the Township's traffic circulation and roadways. If determined necessary by the Township Traffic Engineer, Berkeley Developers agrees to pay for

¹⁷ Memorandum of Understanding by and between Township of Berkeley Heights and Berkeley Developers, LLC Regarding Development, dated February 23, 2016.

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the design and construction of a traffic light at the intersection of Locust Avenue and Snyder Avenue;

- vi. **Redevelopment** - The Township and Berkeley Developers agree that the residential development of the Locust Avenue Site would likely proceed under the New Jersey Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1, et seq. (the "Redevelopment Law"), provided the Locust Avenue Site meets the criteria for the Township to declare it an area in need of redevelopment. If the Locust Avenue Site is deemed an area in need of redevelopment, upon final approval of the redevelopment plan and in connection with the entering of the redevelopment agreement, the residential development shall be subject to a Payment in Lieu of Taxes ("PILOT") agreement between the Township and Berkeley Developers, the specific terms of which shall be further negotiated between the parties. T

3.1.1 Permitted Uses in the Locust Avenue Redevelopment Plan

3.3.1.A Permitted Principal Uses:

1. Age-restricted residential apartments at a maximum density of 196 units in no less than two (2) separate buildings;
2. Inclusionary Affordable age-restricted housing units in accordance with an Order issued by the Court dated October 17, 2106 and a settlement agreement between the Township and Berkeley Developers, LLC dated October 13, 2016;
3. Public and private conservations areas.

3.3.1.B Permitted Accessory Uses:

1. Electrical substation
2. Clubhouse with meetings rooms, kitchen, exercise room, delivery room, and other amenities serving the residents;
3. Active and passive recreational facilities;
4. Common outdoor public or private spaces, plazas and terraces;
5. Pedestrian walking paths;
6. Parking lots, parking structures, surface parking, covered parking, private driveways,
7. Gardens, hardscape patio areas, landscape features;
8. Storage buildings, sheds;
9. Green Building Techniques and Green Roofs; and
10. Solar canopy array or roof mounted systems.

3.3.1.C Conditional Uses:

1. Public utility uses.

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3.1.2 Building, Area, and Yard Requirements

The Redevelopment Plan shall comply with the building, area and yard requirements as outlined under Table 2.

Table 2: Bulk Requirements for the 100 Locust Avenue Redevelopment Area	
Density of Development	
A maximum density of one hundred and ninety six (196) one and two bedroom residential units in a minimum of 2 separate buildings, with no three bedroom or greater market rate units.	
Min. Lot Area	10 Acres
Min. Lot Width	400 Feet
Min. Lot Depth	850 Feet
Min. Front Yard Setback (ft) – Principal & Accessory	100 Feet
Min. Each Side Yard Setback (ft) – Principal & Accessory	35 Feet
Min. Total Side Yard Setback (ft) – Principal & Accessory	70 Feet
Min. Rear Yard Setback (ft) – Principal & Accessory	50 Feet
Max. Building Coverage (%) ^(b)	35% ^(b)
Max. Impervious Lot Coverage (%) ^{(b) (c)}	65% ^{(b) (c)}
Max. Building Height (ft) – Residential – 3 Story Exposure	42 Feet
Max. Building Height (ft) – Residential – 4 Story Exposure	52 Feet
Min. Distance between 2 Buildings	110 Feet
Max. Number of Building Stories	4 Stories provided that only a 3 to 4 Story exposure as described on Figure 9: Site Layout Concept Plan
Multifamily Bedroom Distribution (refer to Figure 9: Site Layout Concept Plan)	
"Berkeley Developers shall have an obligation to deed-restrict fifteen percent (15%) of the residential units in the Inclusionary Development (equivalent to 29 units) as very low, low or moderate income affordable units. Any such affordable units shall be one-bedroom units and shall comply with UHAC, applicable COAH affordable housing regulations, any applicable order of the Court, and other applicable laws."	
Parking Requirements	
Off-Street Parking for Residents	Residential Site Improvement Standards (RSIS)
Off-Street Parking for Visitors	Residential Site Improvement Standards (RSIS)
Min. Distance between Building and Parking/Drive Aisles ^(d)	20 Feet ^(d)
Min. Distance between Rear/Side Property Line and Parking/Drive Aisles	15 Feet
^(a) 100% age-restricted, with a minimum age of 55 years old with the exception that no more than five (5) units may be occupied by employees of Berkeley Developers	
^(b) This coverage area does not include brick paver pedestrian walkways, hardscaped patio area, or any hardscaped landscaping.	
^(c) This includes the maximum building coverage and the impervious lot coverage, for a combined total.	
^(d) This includes all buildings parts, including patios, porches, balconies, and other projections.	

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3.2 Development Requirements

1. The Township Council may authorize a de minimus design waiver from Section 3.2 of the Redevelopment Plan without the need for amending the Redevelopment Plan as described under Section 8.2.

3.2.1 Parking Standards

Parking, Driveways and Loading Spaces shall comply with Part 11 of the Township Land Use Procedures Ordinances with the following exceptions:

1. All parking areas and drive aisles shall be setback at a minimum of 20 feet from every building part, including patios, porches, balconies, or other projections. All parking areas and drive aisles shall be setback at a minimum of 15 feet from all rear and side yard property lines.
2. All required off-street parking and loading spaces shall be provided on-site.
3. The minimum number of off-street parking spaces provided within the redevelopment area shall be as described in Table 2.
4. A minimum buffer strip of at least ten feet (10') in width shall be provided between the redevelopment area and any parking space, driveway or aisle.
5. A Traffic Circulation Plan shall be provided depicting the turning radius of emergency vehicle routes through the site. No truck circulation routes shall interfere with any permitted on street parking spaces or driveways.
6. Fire lanes and restricted parking areas shall be provided as directed by the Township Fire Official.
7. All parking spaces, loading spaces, fire lanes, and circulation routes shall be striped and signed in accordance with the Manual on Uniform Traffic Control Devices (MUTCD). All such striping and signage shall be depicted on the Traffic Circulation Plan.
8. All areas designated for truck circulation, deliveries, customer parking and employee parking shall be paved with an asphalt or concrete material.
9. A traffic study shall be prepared to evaluate the need for a traffic signal at the intersection of Locust Avenue and Snyder Avenue. Per the Locust Avenue Settlement Agreement, to "address the traffic impact of the proposed Inclusionary Development on the Township's traffic circulation and roadways". "If determined necessary by the Township's Traffic Engineer, in the Township's Traffic Engineer's reasonable discretion, Berkeley Developers shall pay for the design and construction of a traffic light ("Traffic Light") at the intersection of Locust Avenue and Snyder Avenue. Berkeley Developers shall have the right to review and provide comments on the plans and

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related schematics for the Traffic Light. The Redevelopment Plan shall not be adopted by the Planning Board until the Traffic Study has been completed, and if it is determined by the Township that a traffic light is required at the intersection of Locust Avenue and Snyder Avenue, that the preliminary design and estimated construction cost of the traffic light is outlined within the Redevelopment Plan". In addition, "If NJDOT does not approve the installation of the Traffic Light as a result of the initial Traffic Study, Berkeley Developers shall have an ongoing obligation to install the Traffic Light for the duration of the PILOT Agreement (defined in subsection 4.1). Berkeley Developers shall reapply to the NJDOT for the installation of the Traffic Light upon receipt of a written request from the Township Engineer and provided that conditions have changed so that there is reason to believe that the NJDOT will approve the Traffic Light; provided that the Township shall not make such a request more than once every five (5) years. The Township shall have the right to provide its own traffic study, at the Township's sole discretion, to support any application to the NJDOT for the approval of the Traffic Light. Berkeley Developers shall be responsible for the costs of the installation of the Traffic Light".

3.2.2 Project Design Standards and Conditions

As part of, and in addition to, the Amended Part 19 Design Standards as they apply to this Redevelopment Plan (attached at the rear of this report), the following conditions shall likewise be met:

1. The purpose of the 100 foot building setback along Locust Avenue is to maintain and preserve and enhance the existing wooded area along the Locust Avenue property frontage to the maximum extent possible;
2. The use of green building technologies is strongly encouraged to be incorporated into all aspects of the project design. Green building (also known as green construction or sustainable building) is the practice of creating structures and using processes that are environmentally responsible and resource-efficient throughout a building's life-cycle: from siting to design, construction, operation, maintenance, renovation, and demolition.
3. Upon the demolition of any existing building or structure, in whole or in part, the site shall be properly graded and stabilized unless new construction is to commence on the same site within thirty (30) days.
4. Three bedroom or greater units are prohibited.
5. Location and Area of Amenities – At the center portion of "Building A" on Figure 9, a range of 8,000 to 10,000 +/- ft² of Community Space on the 3rd Level to consist of a range of 5,500 to 6,500 ft² Clubhouse and a range of 2,500 to 3,500 ft² of Outdoor Terrace. Any portion of the 10,000 +/- ft² that is not developed as community space will remain as an architectural element to preserve the 2- story elevation at that portion of the building.
6. A 2,500 +/- sq. ft. outdoor centrally hardscape patio area designed for social

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gatherings and a sitting area located within a 41,000 +/- open space area bifurcating the two buildings with an additional 10,771 +/- open space area creating a vegetative buffer along the entrance way.

7. Preservation of the 100 feet of existing vegetation along Locust Avenue.
8. A Traffic study at the intersection of Locust Avenue and Snyder Avenue as outlined in the Locust Avenue Settlement Agreement and Section 3.2.1(8) above.
9. Pedestrian connection consisting of 6 foot wide brick paver walkways on site, off-site and off-tract extending to the Swim Club – including crosswalks and pedestrian safety measures across Locust Avenue.
10. Parking to conform to Residential Site Improvement Standards (RSIS).
11. The building heights shall conform with the Concept Plan and the Conceptual Building Elevation Rendering (Figures 8 and 9 below). The height will transition from 3 to 4 stories depending on the grading of the site. In working with the existing topography on site and in order to limit the exposure of the building, the height shall be limited to 3 stories along the entire frontage of the northern (larger) building with a 4 story exposure along the entire northern building elevation (along the railroad tracks). The southern building will have a 3 story exposure along Locust Avenue, sloping down to a 4 story building exposure on the building sides and all interior building elevations. The central portion of "Building A", as depicted on Figure 9, shall be limited to a 2- story residential elevation at that portion of the building with the rooftop amenities.
12. All provisions as depicted and outlined in the Concept Plan, dated October 10, 2016 (below), which was included as evidence at the October 17, 2016 Fairness Hearing.
13. Screening of the existing electrical substation (depicted in Figure 4 on page 7 above) with an ornamental fencing and landscaping.
14. In addition to the Township Design Standards and the conditions above, all definitions per the Berkeley Heights Township ordinances remain valid for this Redevelopment Plan.

3.2.2.B Building and Architectural Design Standards and Programming

Bedroom Distribution

The bedroom distribution chart, as included in the Concept Plan, is depicted below.

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Building	Story	One Bed	One Bed+D	Two Bed Int.	Two Bed Crn.					
A	Ground	-	-	-	-					
	First	36	7	19%	4	11%	17	47%	8	22%
	Second	36	7	19%	4	11%	17	47%	8	22%
	Third	36	7	19%	4	11%	17	47%	8	22%
	Total	108	21	19%	12	11%	51	47%	24	22%
B	Ground	-	-	-	-					
	First	30	10	33%	3	10%	11	37%	6	20%
	Second	29	7	24%	3	10%	13	45%	6	21%
	Third	29	7	24%	3	10%	13	45%	6	21%
	Total	88	24	27%	9	10%	37	42%	18	20%
Project Total		196	45	23%	21	11%	88	45%	42	21%

i. Architectural Building Elevation

Figure 8 below represents a typical architectural building elevation for the Woodcrest at Berkeley Community. This building elevation is typical for all four sides of all buildings to be constructed on the property. The building elevation shall be designed to satisfy the Amended Part 19 – Design Standards as attached as an exhibit to this Redevelopment Plan. It is understood that this rendering is conceptual in nature and is subject to further refinement during the architectural and civil engineering design phase (site plan) of the redevelopment project. The rendering has been incorporated to help visualize the standards set forth by the agreed upon terms.

The rendering includes a number of items that were refined through the Settlement process between the Township and the Developer, including but not limited to, building height, materials, architectural elements, and other design features.

ii. Site Layout Concept Plan

Figure 9 below represents a site layout concept plan for the Woodcrest at Berkeley Community. This concept plan generally illustrates the building configuration, open space, amenities, unit count, bedroom distribution, and overall general layout of the development. It is understood that this rendering is conceptual in nature and is subject to further refinement during the architectural and civil engineering design phase (site plan) of the redevelopment project.

The concept plan has been incorporated to help visualize the standards set forth by the agreed upon terms of the settlement. The concept plan, which was refined through the Settlement process between the Township and the Developer, represents a number of items that extend beyond the agreed upon building layout, including: Clubhouse and Outdoor Terrace space, architectural elements and building setbacks, sidewalks and pedestrian hardscape patio areas, outdoor open space and landscape features, and preservation of forested areas.

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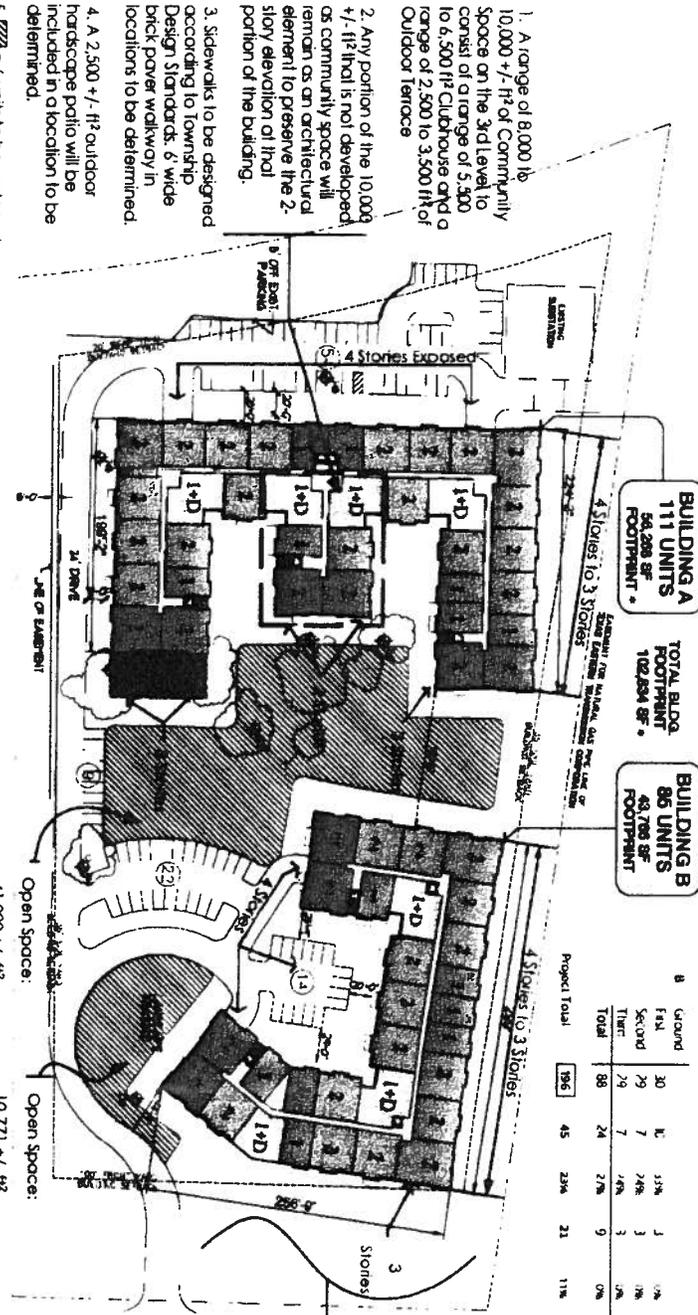
Township of Berkeley Heights, Union County, New Jersey

M.J.M. 10.11.2016

- Notes:
1. Parking to Conform to RSIS Standards
 2. The development shall comply with the amended Part 19 Design Standards and additional notes amended to the Design Standards:
 - * Plus the area of the two (2) shaded units added to Building A

CONCEPT C
SITE PLAN
SCALE: 1"=80'

WOODCREST AT BERKELEY HEIGHTS
LUXURY 55 AND OLDER
GARDEN COMMUNITIES



Building	Story	One Bed	One Bed +D	Two Bed Int.	Two Bed Un.
A	1st	30	7	15%	17
	2nd	30	7	15%	17
	Total	60	14	30%	34
B	1st	30	7	15%	17
	2nd	30	7	15%	17
	Total	60	14	30%	34
Project Total		120	28	60%	68

Building	Story	One Bed	One Bed +D	Two Bed Int.	Two Bed Un.
A	1st	30	7	15%	17
	2nd	30	7	15%	17
	Total	60	14	30%	34
B	1st	30	7	15%	17
	2nd	30	7	15%	17
	Total	60	14	30%	34
Project Total		120	28	60%	68

Figure 9. Concept Plan for 100 Locust Avenue

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3.2.3 Open Space, Amenities, and Environmental Considerations

Per Exhibit B.2 of the Locust Avenue Project Settlement Agreement, presented as *Figure 9* above, the redevelopment project shall include, but not limited to, the following elements: an outdoor recreation area, ADA compliant pedestrian pathway within the site (locations to be determined) and along Locust Avenue, pedestrian connection to the south side of Locust Avenue, an outdoor hardscape area, rooftop terrace in Building "A", and indoor "clubhouse" with communal areas and kitchen within Building "A" to satisfy this requirement. More specifically, the concept plan requires a range of 8,000 to 10,000 +/- ft² of Community Space on the 3rd Level of Building "A" to consist of a range of 5,500 to 6,500 ft² Clubhouse and a range of 2,500 to 3,500 ft² of Outdoor Terrace. Any portion of the 10,000 +/- ft² that is not developed as Community Space will remain as an architectural element to preserve the 2- story elevation at that portion of the building. The pedestrian pathways and sidewalks are to be designed according to Township Design Standards as a 6 foot wide brick paver walkway in locations on the site that have yet to be determined. In addition, an approximately 2,500 +/- ft² outdoor hardscape patio will be included in a location on the site that has also yet to be determined. Overall, the concept plan shows two open space areas that are approximately 41,000 +/- ft² and 10,771 +/- ft² respectively. While the exact square footage will not be exactly that, it is expected that the open space will be in close proximity to that total area. It is agreed that the open space shall include landscape features, as well as the preservation of some of the existing trees on the site. Finally, the existing forested area at the frontage of the site on Locust Avenue will be preserved to create a natural and sufficient buffer from the roadway and landscape improvements will be made along the entranceway. A combination of these items and any additional features will provide adequate open space and amenities for the site, and will likewise preserve the natural and wooded feel that exists on the site currently.

3.2.4 Pedestrian Access and Improvements

This Redevelopment Plan presents the opportunity to create pedestrian walking paths within the site to serve residents and provide for active recreation space, as well as enhance streetscape between the site and the surrounding area. Currently, the site does not provide adequate pedestrian linkages to surrounding uses; and sidewalks exist only on the southern side of Locust Ave, with none on the north side of the right-of-way. Therefore, this Redevelopment Plan is an opportunity to provide both access and mobility to its residents, and to safely connect them to the surrounding uses, which includes the Berkeley Swim Club. In an age-restricted community, these pedestrian linkages and access to additional recreational facilities are incredibly important considerations – especially because the site is tucked into a light industrial area.

While *Figure 9*, does not provide exact locations for pedestrian walkways or linkages to the southern side of Locust Avenue, all linkages shall follow the standards in Part 19 of the Township Code. All walkways will be 6 foot wide brick paver, and will be properly lit and graded to ADA compliance. The location of the walkways, when decided, will be proposed to and up to the discretion of the Township Planning Board, Zoning Board, or other approval authority.

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3.2.5 Redevelopment Area Phasing Plan

It is envisioned that the project will be constructed in two simple phases. Phase I would involve the demolition of the existing buildings and structures. Phase II would involve the construction of the (at least) two building residential community and all associated amenities, as well as on-site, off-site and off-tract improvements.

3.2.6 Utilities

1. All new electric, telephone, television, cable, gas, and other utility service lines servicing the buildings shall be installed underground, to the extent such underground service is commercially reasonable, available and permitted by the applicable utility companies, and in all events, shall be installed in accordance with the prevailing standards and practices of the respective utility or other companies providing such services.
2. All utility connection permits and road opening permits shall be obtained from the respective utility authority prior to the start of construction. All municipal roadways damages by the redevelopment of the site shall be restored and/or repaved as directed by the Township of Berkeley Heights Engineer.
 - a. Per the Locust Avenue Settlement Agreement¹⁸, "the Township acknowledges that in order for Berkeley Developers to construct its Inclusionary Development, Berkeley Developers will be required to obtain any and all necessary and applicable agreements, approvals, and permits from all relevant public entities and utilities; such as, by way of example only, the Township, the Planning Board, the County of Union, the Union County Planning Board, the New Jersey Department of Environmental Protection, the New Jersey Department of Transportation, the Somerset-Union Soil Conservation District and the like, including the Township's ordinance requirements as to site plan and subdivision (the "Required Approvals") and the Redevelopment Plan. The Township agrees to use all reasonable efforts to assist Berkeley Developers in its undertakings to obtain the Required Approvals", provided, however, that the Township shall not be required to incur any out-of-pocket costs in providing such assistance.

3.3 Provisions Related to Off-Site Improvements

3.3.1 Traffic Study and Related Improvements

Per the Locust Avenue Settlement Agreement¹⁹, "within forty-five (45) days of the Effective Date of this Agreement Berkeley Developers shall provide to the Township a traffic study for the proposed Inclusionary Development ("Traffic Study"). The Traffic Study shall address the traffic impact of the proposed Inclusionary Development on the Township's traffic circulation and roadways. If determined necessary by the Township's Traffic Engineer, in the Township's Traffic Engineer's reasonable discretion, Berkeley Developers shall pay for the design and construction of a traffic light ("Traffic Light") at the intersection of Locust Avenue and Snyder

¹⁸ Locust Avenue Settlement Agreement between the Township of Berkeley Heights and Berkeley Developers, LLC, dated October 13, 2016, pg. 7.

¹⁹ *Ibid*, pg. 5.

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Avenue. Berkeley Developers shall have the right to review and provide comments on the plans and related schematics for the Traffic Light. The Redevelopment Plan shall not be adopted by the Planning Board until the Traffic Study has been completed, and if it is determined by the Township that a traffic light is required at the intersection of Locust Avenue and Snyder Avenue, that the preliminary design and estimated construction cost of the traffic light is outlined within the Redevelopment Plan”.

The Township and Berkeley Developers recognize that the installation of the Traffic Light is governed by the New Jersey Department of Transportation (NJDOT). If the NJDOT does not approve the installation of the Traffic Light as a result of the initial Traffic Study, Berkeley Developers shall have an ongoing obligation to install the Traffic Light for the duration of the PILOT Agreement. Berkeley Developers shall reapply to the NJDOT for the installation of the Traffic Light upon receipt of a written request from the Township Engineer and provided that conditions have changed so that there is reason to believe that the NJDOT will approve the Traffic Light; provided that the Township shall not make such a request more than once every five (5) years. The Township shall have the right to provide its own traffic study, at the Township’s sole discretion, to support any application to the NJDOT for the approval of the Traffic Light. Berkeley Developers shall be responsible for the cost of the installation of the Traffic Light.

3.3.2 Pedestrian Access and Circulation

As noted in the Pedestrian Access and Improvements Section 3.2.4 above, the Redevelopment should include a strong pedestrian linkage not only within the site, but also to existing facilities such as the Berkeley Swim Club. Per the MOU and Settlement Agreement (*Figure 9 of this Plan*), sidewalks to be designed according to Township Design Standards. 6' wide brick paver walkway in locations to be determined.

3.4 Provisions Related to State and Federal Regulations

3.4.1 Environmental Site Remediation Regulations

Berkeley Developers retained Peak Environmental LLC to perform a site remediation investigation of the property. The Summary of Environmental Investigation Activities and Areas of Concerns (AOC) are summarized in a report prepared by Peak Environmental LLC dated April 08, 2016. The cover letter states that, “based upon the completion of a Phase I Environmental Site Assessment by Peak dated 2013 and a Phase II Site Investigation, the four recognized environmental conditions/AOCs listed below were identified at the site that needed further investigations: AOC A1 – Fiberglass Coated Steel 15,000 gallon diesel fuel UST; AOC A2 – Double Walled Fiberglass 15,000 gallon diesel fuel UST; AOC A3 – Area of former 10,000 gallon #2 Fuel USTs removed in 1993; AOC A4 – Three Electrical Transformer Areas. Environmental investigations were conducted at each AOC as summarized below. Drawing no. 1 shows the location of each AOC.”²⁰. A copy of the cover letter of the Peak Environmental report dated April 08, 2016 is included under the Appendix section of this report. A copy of the full 227 page report prepared by Peak Environmental LLC listed “Under Separate Cover”, is on file with the Township Clerk’s office.

²⁰ Peak Environmental, LLC. Summary of Environmental Investigation Activities. Dated April 8, 2016.

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The site has been host to a number of environmental inspections since 2005 that resulted in the issuance of various notices and violations. In 2011, a NJDEP inspection showed that the "Building is currently for sale and is only manned by a few people. Computer Sciences Corporation is the current owner and they moved into site in 2002 and never transferred ownership of the permits from previous owner Dun & Bradstreet, ID #40964. Since the Permits were not transferred within 120 days of the 2002 ownership change they are no longer valid. ID #40964 is being deleted and new permits will have to be obtained at this ID for following equipment that was all installed by previous owner Dun & Bradstreet:

- Three Buderus boilers that operate on natural gas with backup operation on #2 fuel oil. Heat input ratings are 1.2, 1.4 and 1.4 MMBTU/hr for the three boilers that were installed in late 1990s.
- Two CAT diesel emergency generators rated at 18.03 MMBTU/hr. Hour meters read 802 and 826 hrs. and they were previously permitted under old ID #40964 as PCP960001 and PCP960002. Facility tests monthly but only maintains a work order that does not include all info under subchapter 19.11. NOV to be issued for recordkeeping as well as 8.3(b) on the boilers and generators. Karen Barnett advised to get general permits for boilers/generators. There are also two 15,000 gallon fuel oil tanks that had previous permit but would fit exemption under 8.2(d)3. Exemption form was faxed to Facility. According to Fred there has not been a delivery in past few years as they are working off current inventory in the tanks. Also on site but not operational are three Solar turbines that had been previously permitted and terminated in 2010. There are no plans to use equipment and the output side of turbines are locked out."

**Table 3: New Jersey Department of Environmental Protection
Site Remediation Program, Active Sites^a With Confirmed Contamination (as of 5/10/2016)**

Site ID	PI Number	PI Name	Address	Home
1304	013524	Computer Science Corp (CSC)	100 Locust Ave	No

^a Active Sites are those sites having one or more active cases or remedial action permits where contamination has been confirmed. These sites may have any number of pending and/or closed cases.

To the extent required by law, the designated Redeveloper of the project shall retain a Licensed Site Remediation Professional (LSRP) who will oversee the renovation of the existing buildings and structures to ensure the site complies with applicable rules and regulations pertaining to site remediation as regulated by the State of New Jersey Department of Environmental Protection (NJDEP).

3.5 Provisions Related to Affordable Housing

Per the Locust Avenue Settlement Agreement, the following terms regarding the Affordable Housing Set-Aside and the Berkeley Developers' Obligation shall be adhered to:

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1. Berkeley Developers shall have an obligation to deed-restrict fifteen percent (15%) of the residential units in the Inclusionary Development (equivalent to 29 units) as very low, low or moderate income affordable units. Any such affordable units shall be one-bedroom units and shall comply with UHAC, applicable COAH affordable housing regulations, any applicable order of the Court, and other applicable laws.
 - a. In addition, the affordable units shall remain affordable rental units for a period of thirty (30) years ("Deed-Restriction Period") so that the Township may count the units against its obligations to provide age-restricted rental housing. This obligation includes, but is not limited to, the Developer's obligation to comply with bedroom distribution requirements, very low/low/moderate income split requirements, pricing requirements, affirmative marketing requirements, candidate qualification and screening requirements and deed restriction requirements.
 - b. The distribution of the affordable housing units shall be in compliance with COAH's Round Two substantive regulations, N.J.A.C. 5:93, which the Parties believe will govern the issue, or as approved by the Special Master and the Court.
 - c. Berkeley Developers shall contract with an experienced administrative agent ("Administrative Agent") for the administration of the affordable units and shall have the obligation to pay all costs associated with properly deed restricting the affordable units in accordance with UHAC and other applicable laws for the Deed-Restriction Period. Berkeley Developers and its Administrative Agent, shall work with the Township and the Township's Administrative Agent regarding any affordable housing monitoring requirements imposed by COAH or the Court.
 - d. The Parties agree that the affordability controls shall expire at the end of 30 years after the date of the initial occupancy of the affordable unit. At the end of the Deed Restriction Period, the Township shall cooperate with the developer, at no cost to the Township, to facilitate the developer's ability to exercise its right to have the deed restriction last for only 30 years subject to the requirements of N.J.A.C. 5:80-26.1 I(b) of UHAC.
 - e. The Parties agree that the affordable units are to be included in the Affordable Housing Plan to be approved and credited by the Court in the Compliance Action, and that the credits will be applied against any Round 3 obligation assigned to the Township, and that the affordable units will be credited within the permitted twenty-five (25%) percent limitation for age-restricted affordable housing as set forth under COAH's Round Two substantive regulations.
 - f. Upon written notice, Berkeley Developers shall provide detailed information requested by the Township or the Township's Administrative Agent, within 30 days concerning Berkeley Developers' compliance with UHAC and other applicable laws.

A Redevelopment Plan for 100 Locust Avenue

Township of Berkeley Heights, Union County, New Jersey

3.6 Redevelopment Actions

3.6.1 Demolition

The Redevelopment Plan will involve the demolition of the existing structures on the property with the exception of the existing power substation and utility lines.

3.6.2 New Construction

The Redevelopment Plan will involve new construction of a residential complex of a minimum of two (2) multistory buildings and all related roadways, pedestrian pathways, and parking.

3.6.3 Properties to be Acquired

This Redevelopment Plan will not involve the taking of any privately owned property.

3.6.4 Relocation

No residents will need to be relocated to complete this redevelopment plan.

SECTION 4. RELATIONSHIP TO THE LAND USE AND ZONING ORDINANCE

4.1 Berkeley Heights Zoning Code and Map Amendment

Regulations of the Township of Berkeley Heights regulating development in the area addressed by this Redevelopment Plan. Final adoption of this Plan by the Town Council shall be considered an amendment of the Township of Berkeley Heights Zoning Map.

The zoning district map in the zoning ordinances of the Township shall be amended to include the boundaries described in the Redevelopment Plan and the provisions therein. All of the provisions of the Redevelopment Plan shall supersede the applicable development regulations of the Township's ordinances, as and where indicated, for the Redevelopment Area. In the event of any inconsistencies between the provisions of this Redevelopment Plan and any prior ordinance of the Township of Berkeley Heights, the provisions hereof shall be determined to govern.

A Redevelopment Plan for 100 Locust Avenue

Township of Berkeley Heights, Union County, New Jersey

SECTION 5. RELATIONSHIP TO THE LAND USE AND ZONING ORDINANCE

5.1 Green Design and Elements

Any measures taken during demolition and reconstruction are encouraged to incorporate principles of green building into all aspects of the project design. Green building (also known as green construction or sustainable building) is the practice of creating structures and using processes that are environmentally responsible and resource-efficient throughout a building's life-cycle: from siting to design, construction, operation, maintenance, renovation, and demolition. Broadly speaking, green building design goals include reduced energy and water use; use of sustainable, renewable, non-toxic and locally produced materials; improved indoor air quality; environmentally-conscious site planning; and a location in a central, developed area with existing services and resources.

5.2 Sustainability

Goal: Encourage the incorporation of sustainability principles into both private development and public infrastructure projects.

Objectives:

- Encourage "green" development standards and projects that are designed in conformance with the Leadership in Energy and Environmental Design (LEED) Green Building Rating System. It is not recommended that this project obtain LEED certification, however it is recommended that this redevelopment project is designed to satisfy the goals and objectives of the LEED rating system.
- Encourage universal design to be integrated early on into any public or private development.
- Reduce impervious surface areas and encourage the use of "green" roofs.
- Encourage transit, pedestrian and bicycle-friendly development and roadways.²¹

5.3 Berkeley Heights Adoption of Sustainability Ordinance

The Township of Berkeley Heights adopted an ordinance on April 22, 2014 addressing the concept of green design and environmental sustainability within the municipality. The Township Council developed the ordinance with a vision of a greener and more sustainable Berkeley Heights, including redevelopment projects such as this one. The ordinance was established so that prospective developers could incorporate green design and sustainability into their plan and design for downtown redevelopment. It is a goal and objective of this Redevelopment Plan to set a standard for all future redevelopment projects in the Township to design and construct or rehabilitate existing buildings and structures using sustainable building materials.

²¹ Township of Berkeley Heights Master Plan, 2007, Page 46-47

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SECTION 6. RELATIONSHIP TO OTHER PLANS

6.1 Plans of Adjacent Municipalities

The redevelopment area is located in the central/western part of Berkeley Heights Township along Plainfield Avenue. The surrounding Municipalities include: The Borough of New Providence, Long Hill Township, Chatham Township, Borough of Watchung, Warren Township, Mountainside Boro, Summit City, and Scotch Plains Township.

i. Borough of New Providence

The Borough of New Providence is located northeast of Berkeley Heights and is connected mainly via Springfield Avenue and Mountain Ave. Springfield Avenue is largely residential when first entering New Providence. New Providence will not be affected by the Locust Avenue Redevelopment Plan.

ii. Township of Long Hill

The Township of Long Hill is located northwest of Berkeley Heights and is connected via Springfield Avenue. Springfield Avenue turns into Valley Road upon entering the Village of Gillette, which is a district of Long Hill Township. Long Hill will not be affected by the Locust Avenue Redevelopment Plan.

iii. Chatham Township

Chatham Township is located directed north of Berkeley Heights and is connected via Snyder Ave, which turns into Bridge Ave as you enter Chatham. Only the very southern tip of Chatham touches Berkeley Heights, which is Passaic River Park that traverses between the two towns. Chatham will not be affected by the Locust Avenue Redevelopment Plan.

iv. Borough of Watchung

The Borough of Watchung is located along the most of the southwest portion of Berkeley Heights. Plainfield Ave runs north to south and continues from the Southern portion of Berkeley Heights into Watchung. The north west of Watchung stretches along I-78, which bisects the two municipalities and buffers residential development on either side of the expressway. The north eastern portion of Watchung that touches Berkeley Heights is adjacent to the Connell Company Corporate Campus and is separated by Valley Road. Watchung will not be affected by the Locust Avenue Redevelopment Plan.

v. Warren Township

Warren Township is located along the westernmost portion of Berkeley Heights, and is connected via Emerson Lane to the south and Mountain Ave to the north. Mountain Ave splits as it enters into Warren and continues south as Mountain Ave, and briefly turns into Hillcrest Rd until it reaches Long Hill. Warren will not be affected by the Locust Avenue Redevelopment Plan.

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vi. Mountainside Boro

Mountainside Boro is located along the southeast portion of Berkeley Heights and is connected only by the Watchung Reservation. Mountainside will not be affected by the Locust Avenue Redevelopment Plan.

vii. Summit City

Summit City is located along the easternmost tip of Berkeley Heights and is mainly connected via I-78 and the Watchung Reservation. Governor Livingston High School and its associated athletics fields is located in Berkeley Heights, but it sits on the border between Summit and Berkeley Heights. Summit will not be affected by the Locust Avenue Redevelopment Plan.

viii. Scotch Plains Township

Scotch Plains Township is located to the south of Berkeley Heights and is connected by the Watchung Reservation and Valley Road, which becomes Sky Top Drive as it enters the Reservation. Scotch Plains will not be affected by the Locust Avenue Redevelopment Plan.

6.2 Union County Master Plan

"The Union County Master Plan has a variety of planning goals and objectives designed to address major issues and influences that impact Union County's housing, land use, transportation/circulation and economic development. The County goals and objectives recognize the interrelationships of related policies of municipalities, regional agencies and the State regarding the future development of Union County"²².

The Union County Master Plan sets guidelines for the municipalities of Union County and aims to spur economic growth through commercial, residential and transportation development. The Union County Master Plan promotes development and redevelopment consistent with surrounding areas while revitalizing "older suburban areas through...commercial adaptive reuse...upgrading of community infrastructure, and upgrading transportation and transit facilities."²³

The Locust Avenue Redevelopment Plan is consistent with the Union County Master Plan, in that it aims to promote redevelopment of an aging suburban light industrial district in close proximity to the Downtown through beautification and planning efforts.

6.3 New Jersey State Development and Redevelopment Plan

All of the properties in the redevelopment area are mapped within the Metropolitan Planning Area PA I as depicted on the New Jersey State Development and Redevelopment Plan. "In the Metropolitan Planning Area, the State Plan's intention is to provide for much of the state's future

²² Union County Master Plan: June 1998 featured in 2007 Berkeley Heights Master Plan, Michael Mistretta of Harbor Consultants, Inc., 76.

²³ Union County Master Plan: June 1998, 1-3 – 1-4.

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redevelopment; revitalize cities and towns; promote growth in compact forms; stabilize older communities; redesign areas of sprawl; protect the character of existing stable communities"²⁴

In 2001, the New Jersey State Planning Commission adopted The New Jersey State Development and Redevelopment Plan. A Final Draft of the State Development and Redevelopment Plan was reissued in 2010. The State Planning Act contains three key provisions that mandate the approaches the Plan must use in achieving State Planning Goals. The Plan must encourage development, redevelopment and economic growth in locations that are well situated with respect to present or anticipated public services or facilities and to discourage development where it may impair or destroy natural resources or environmental qualities; reduce sprawl; and promote development and redevelopment in a manner consistent with sound planning and where infrastructure can be provided at private expense or with reasonable expenditures of public funds. (N.J.S.A. 52:18A-196. et seq.)

The general redevelopment plan strategy is to achieve all the State Planning Goals by coordinating public and private actions to guide future growth into compact, ecologically designed forms of development and redevelopment, and to protect the Environs, consistent with the Statewide Policies and the State Plan Policy Map.

The New Jersey State Plan Policy Map integrates the two critical spatial concepts of the State Plan—Planning Areas, and Center and Environs—and provides the framework for implementing the Goals and Statewide Policies. Each Planning Area has specific intentions and Policy Objectives that guide the application of the Statewide Policies. The Policy Objectives ensure that the Planning Areas guide the development of location of Centers and protect the Environs. Applying the Statewide Policies through the State Plan Policy Map will achieve the goals of the State Planning Act.

According to the New Jersey State Development and Redevelopment Plan, the Locust Avenue Redevelopment Area is located in the Metropolitan Planning Area, PA1. PA1 provides for much of the state's future redevelopment: revitalize cities and towns; promote growth in compact forms; stabilize older suburbs; redesign areas of sprawl; and protect the character of existing stable communities. As the name implies, the communities in this Planning Area often have strong ties to, or are influenced by, major metropolitan centers—the New York/Newark/Jersey City metropolitan region in the northeastern counties. The investment in passenger rail service in the Metropolitan Planning Area is represented by over 130 stations on eleven (11) heavy rail lines, two (2) rapid transit lines, two (2) light rail lines, and one (1) subway line.

Over the years, both the public and private sectors have made enormous investments in building and maintain a wide range of facilities and services to support these communities. The massive public investment is reflected in thousands of miles of streets, trade schools and colleges, libraries, theaters, office buildings, parks and plazas, transit terminals and airports. Most of these communities are fully developed, or almost fully developed, with little vacant land available for new development. Much of the change in land uses, therefore, will take the form of redevelopment. These communities have many things in common: mature settlement patterns resulting in a diminished supply of vacant land; infrastructure systems that generally are beyond or approaching their reasonable life expectancy; the need to rehabilitate housing to meet ever

²⁴ State Development and Redevelopment Plan, New Jersey State Planning Commission, adopted March 1, 2001, page 190.

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changing market standards; the recognition that redevelopment is, or will be the not-too-distant future, the predominant form of growth; and a growing realization of the need to regionalize an increasing number of services and systems in light of growing fiscal restraints. In addition, the wide and often affordable choice of housing in proximity to New York and Philadelphia has attracted significant immigration, resulting in noticeable changes in demographic characteristics over time. The redevelopment designation for this study area is consistent with and will reinforce the goals and objectives of the State Development and Redevelopment Plan.

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SECTION 7. General Provisions

7.1 Role of the Township of Berkeley Heights

i. Redeveloper Selection

In order to assure that the vision of the Locust Avenue will be successfully implemented in an effective comprehensive and timely way and in order to promptly achieve the public purpose goals of the Redevelopment Plan, the Township Council, would first need to designate Berkeley Developers, LLC as the Redeveloper for this Plan. Berkeley Developers would then be required to execute a Redevelopment Agreement satisfactory to and authorized by the Township Council.

7.2 Approvals Process

This Redevelopment Plan changes the process by which approvals for the development of land are typically granted. For a typical development application, a property owner submits plans and an application to the Planning Board or Zoning Board of Adjustment, and the board schedules a hearing on the application. However, in order to comply with this Redevelopment Plan and to streamline the review process, the following procedure will be followed:

i. Township Council Review

The Township Council acting as the Redevelopment Entity shall review all proposed redevelopment projects within the redevelopment area to ensure that such project(s) is consistent with the Redevelopment Plan and relevant redeveloper agreement(s). Such review shall occur prior to the submission of the redevelopment project(s) to the Planning Board. As part of its review, the Township Council may require the redeveloper(s) to submit proposed site plan applications to the Township Council or to a subcommittee organized by the Township Council prior to the submission of such applications to the Planning Board. Such Committee may include members of the Township Council and any other members and/or professionals as determined necessary and appropriate by the Township Council. Such Committee shall make its recommendations to the Mayor and Council.

In undertaking its review, the Township Council shall determine whether the proposal is consistent with this Redevelopment Plan and relevant redeveloper agreement(s). In addition, the review may address the site and building design elements of the project to ensure that the project adequately addresses the goals and objectives of this Plan.

ii. Planning Board Review Process

All development applications shall be submitted to the Township of Berkeley Heights Planning Board through the normal site plan and subdivision procedures as outlined in N.J.S.A. 40:55D-1 et seq. The Planning Board shall deem any application for redevelopment for any property subject to this Redevelopment Plan incomplete if the applicant has not been designated by the Township Council as a redeveloper(s) and the project plan has not been reviewed and approved by the Township Council. Additionally, the Planning Board shall deem any application for redevelopment for any property subject to this Redevelopment Plan incomplete if the applicant has not received

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approval from the Township Council or any committee that it may designate for such purpose, stating that the application is consistent with the Redevelopment Plan and Redevelopment Agreement.

iii. Variances & Design Waivers

Neither the Planning Board nor the Board of Adjustment shall grant any deviations from the terms and requirements of this Redevelopment Plan, including the granting of any "d" variances. Unless otherwise specified in this Plan, any proposed changes to the Redevelopment Plan shall be in the form of an amendment to the Redevelopment Plan adopted by the Township Council in accordance with the procedures set forth in the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq.

Per the Locust Avenue Settlement Agreement, "the Planning Board recognizes that the Redevelopment Approvals and this Agreement all contemplate the development of an "inclusionary development" within the meaning of the Mount Laurel doctrine, and Berkeley Developers shall be entitled to any benefits, protections, and obligations afforded to developers of inclusionary developments. Nothing shall prevent Berkeley Developers from applying for a waiver or bulk variance from any standard imposed by the Redevelopment Plan and/or the Township's Land Use and Development Ordinance as applicable, and the standards set forth in the MLUL and/or the Redevelopment Law, as applicable, shall determine if Berkeley Developers is entitled to this relief or from seeking a waiver or de minimus exception to any standard or requirement of the Residential Site Improvement Standards under the applicable regulations. Notwithstanding the above, the Township Council and Township Planning Board are under no contractual obligation to grant or approve any request for a variance, waiver or de minimus exception".

7.3 Easements

No building shall be constructed over a public easement in the Redevelopment Area without prior written approval of the Township Council. The May 20, 2016 Boundary and Topography Survey completed by Kennon Survey Services and provided by Berkeley Developers, shows a number of easements on the site. These easements include a Jersey Central Power and Light (JCP&L) substation easement that runs along the western edge of the site and follows just below and along the northern edge of the site to and covering the electrical substation in the northeast corner of the site. A 20' JCP&L right of way easement exists along the northernmost edge of the site. A 30' sanitary easement exists along the northernmost edge of the site. In addition, a utility easement exists at the northern border of the site that covers a little over 30' from the northern edge, and overlaps with the JCP&L right of way easement. A drainage easement exists in the northwest corner of the site, along a portion of the western border of the site that overlaps with the JCP&L substation easement. Finally, a 30' sanitary easement (scaled from tax map) enters the site from the north into the northern portion of the site.

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7.4 Site Plan Review

i. Site Plan and Subdivision Review

Site plans should be submitted to the Township Council (as redevelopment agency) for approval prior to review and approval by the Planning Board. Prior to commencement of construction, site plans for the construction and/or rehabilitation of improvements within the Redevelopment Area, prepared in accordance with the requirements of the Municipal Land Use Law (N.J.S.A. 40:55D-1 et seq.), shall be submitted by the applicants for review and approval by the Township Planning Board.

ii. Approvals by Other Agencies

The redeveloper shall be required to provide the Township with copies of all permit applications made to federal, state and county agencies upon filing such applications, as will be required by the Redeveloper's Agreement to be executed between the redeveloper and the Township.

iii. Certificate of Completion and Compliance

Upon the inspection, verification and approval by the Township Council that the redevelopment of a parcel subject to a Redevelopment Agreement has been completed, a Certificate of Completion and Compliance will be issued to the redeveloper and such parcel will be deemed no longer in need of redevelopment.

iv. Severability

The provisions of this Redevelopment Plan are subject to approval by Ordinance. If a Court of competent jurisdiction finds any word, phrase, clause, section, or provision of this Redevelopment Plan to be invalid, illegal, or unconstitutional, the word, phrase, clause, section, or provision shall be deemed severable, and the remainder of the Redevelopment Plan and implementing Ordinance shall remain in full force and effect.

v. Adverse Influences

No use or reuse shall be permitted which, when conducted under proper and adequate conditions and safeguards, will produce corrosive, toxic or noxious fumes, glare, electromagnetic disturbance, radiation, smoke, cinders, odors, dust or waste, undue noise or vibration, or other objectionable features so as to be detrimental to the public health, safety or general welfare.

vi. Non-Discrimination Provisions

No covenant, lease, conveyance or other instrument shall be affected or executed by the Township Council or by a developer or any of his successors or assignees, whereby land within the Redevelopment Area is restricted by the Township Council, or the developer, upon the basis of race, creed, color, or national origin in the sale, lease, use or occupancy thereof. Appropriate covenants, running with the land forever, will prohibit such restrictions and shall be included in the

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disposition instruments. There shall be no restrictions of occupancy or use of any part of the Redevelopment Area on the basis of race, creed, color or national origin.

vii. Infrastructure and Public Improvements

The redeveloper, at the redeveloper's sole cost and expense, shall provide all necessary engineering studies for, and construct or install all on- and off-site municipal infrastructure improvements and capacity enhancements or upgrades required in connection with the provision of water, sanitary sewer, and stormwater sewer service to the project, in addition to all required tie-in or connection fees. The redeveloper shall also be responsible for providing, at the redeveloper's cost and expense, all sidewalks, curbs, streetscape improvements (street trees and other landscaping), street lighting, and on- and off-site traffic controls and road improvements for the project or required as a result of the impacts of the project. The Redevelopment Agreement between the Township and the redeveloper will contain the terms, conditions, specifications, and a description of required performance guarantees (such as performance bonds or other acceptable performance security) pertaining to redeveloper's obligation to provide the infrastructure and improvements required for the project.

viii. Duration of the Plan

The provisions of this Plan specifying the redevelopment of the Redevelopment Area and the requirements and restrictions with respect thereto shall be in effect for a period of 40 years from the date of approval of this plan by the Township Council.

ix. Procedure for Amending the Approved Plan

The Township of Berkeley Heights Township Council, at its sole discretion, may amend the Redevelopment Plan from time to time upon compliance with the requirements of state law.

x. All of the provisions of the Redevelopment Plan shall supersede the applicable development regulations of the Township's ordinances, as and where indicated, for the Redevelopment Area.

xi. If any article, section, subsection, sentence, clause or phrase of this Redevelopment Plan is, for any reason, held to be unconstitutional or invalid, such decision shall not affect the remaining portions of this Ordinance and they shall remain in full force and effect.

xii. In the event of any inconsistencies between the provisions of this Redevelopment Plan and any prior ordinance of the Township of Berkeley Heights, the provisions hereof shall be determined to govern. All other parts, portions and provisions of the Revised General Ordinances of the Township of Berkeley Heights are hereby ratified and confirmed, except where inconsistent with the terms hereof.

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Section 8. Appendix

MEMORANDUM OF UNDERSTANDING

BY AND BETWEEN

TOWNSHIP OF BERKELEY HEIGHTS

AND

BERKELEY DEVELOPERS, LLC

REGARDING

**DEVELOPMENT OF AN AGE-RESTRICTED DEVELOPMENT PROJECT
WITH INCLUSIONARY AFFORDABLE HOUSING
IN
THE TOWNSHIP OF BERKELEY HEIGHTS
COUNTY OF UNION, STATE OF NEW JERSEY**

WHEREAS, on March 24, 2015, the Township Council of the Township of Berkeley Heights adopted a resolution in which the Township reaffirmed its voluntary commitment to satisfy its affordable housing obligations, however they may ultimately be defined by COAH or a court; and

WHEREAS, in compliance with the New Jersey Supreme Court decision in In re Adoption of N.J.A.C. 5:96 & 5:97 by N.J. Council on Affordable Housing, 221 N.J. 1 (2015), on or about July 2, 2015, the Township filed an action with the Superior Court of New Jersey, entitled In the Matter of the Application of the Township of Berkeley Heights, County of Union, Docket No. UNN-L-2405-15, seeking a Judgment of Compliance and Repose approving its Fair Share Plan, in addition to related reliefs (the "Compliance Action"); and

WHEREAS, on or about August 20, 2015, Berkeley Developers, LLC ("Berkeley Developers") filed a Motion to Intervene in the Compliance Action seeking to construct a three hundred (300) unit luxury residential rental development, with sixty (60) of such units being set aside for low and moderate income housing, on the property identified as Block 1901, Lot 35, commonly known as 100 Locust Avenue (the "Locust Avenue Site"); which intervention was granted by the Court on October 9, 2015; and

WHEREAS, after ongoing discussions, negotiations and mediations between the Township and Berkeley Developers, the parties have agreed upon the general terms of an age-restricted, residential rental development of the Locust Avenue Site, with an inclusionary affordable housing component; and

WHEREAS, the Township and Berkeley Developers wish to enter into this Memorandum of Understanding to memorialize the agreed upon terms of age-restricted,

inclusionary, residential rental development of the Locust Avenue Site, with the additional and more specific terms and conditions of said development to be further negotiated and agreed to in additional agreements, including a formal settlement agreement to be filed with the Court in connection with the Compliance Action.

NOW, THEREFORE, for and in good and valuable consideration in hand paid, receipt of which is hereby acknowledged, and in consideration of the mutual covenants and obligations hereinafter set forth, the Township and Berkeley Developers hereby set forth in this Memorandum of Understanding that the following general terms shall apply to the future development of the Locust Avenue Site:

1. Berkeley Developers agrees to develop, construct, or otherwise build an age-restricted, inclusionary, residential rental development at the Locust Avenue Site subject to the following conditions:

- a. Affordable Housing Component – The residential development shall have an inclusionary affordable housing component of 15% of the total units being developed as very low, low and moderate income affordable housing units to qualify as such pursuant to the terms of the applicable affordable housing regulations, Court Order, Court Special Master requirements, and the Uniform Housing Affordability Controls (“UHAC”) regulations, N.J.A.C. 5:80-26.1, *et seq.* The parties agree that the affordability controls shall expire at the end of thirty (30) years after the date of the initial occupancy of the affordable unit. While the parties prefer for all of the affordable units to be one-bedroom units, the final bedroom distribution will have to satisfy the applicable affordable housing regulations, Court Order, and/or Court Special Master requirements. The Parties agree that the affordable housing units are to be included in the Township’s Fair Share Plan to be approved and credited by the Court in the Compliance Action; which may be credited within the permitted 25% limitation for age-restricted affordable housing as set forth under the Council on Affordable Housing’s (“COAH”) Round Two substantive regulations, which the parties believe will govern this issue.
- b. Density of Development – The residential development of the Locust Avenue Site shall be developed with a permitted density of one hundred and ninety six (196) units.
- c. Age-Restrictions – The residential development of the Locust Avenue Site shall be 100% age-restricted, with a minimum age of 55 years old with the exception that no more than five (5) units may be occupied by employees of Berkeley Developers, or the operating entity for the Locust Avenue Site, who are employed as supers for the site and may have younger members of their household residing onsite. The final number of units to be occupied by employees shall be agreed upon by the parties and included in the settlement agreement to be filed with the Court.

- d. Setbacks – The residential development of the Locust Avenue Site shall have a minimum front yard setback of one hundred (100') feet. The side yard setback shall be thirty-five (35) feet, and the rear yard setback shall be fifty (50) feet.
- e. Traffic Study & Related Improvements – Berkeley Developers hereby agrees to provide a traffic study for the proposed residential development of the Locust Avenue Site to the Township, which shall address the traffic impact of the proposed development on the Township's traffic circulation and roadways. If determined necessary by the Township Traffic Engineer, Berkeley Developers agrees to pay for the design and construction of a traffic light at the intersection of Locust Avenue and Snyder Avenue.
- f. Redevelopment – The Township and Berkeley Developers agree that the residential development of the Locust Avenue Site would likely proceed under the New Jersey Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1, et seq. (the "Redevelopment Law"), provided the Locust Avenue Site meets the criteria for the Township to declare it an area in need of redevelopment. If the Locust Avenue Site is deemed an area in need of redevelopment, upon final approval of the redevelopment plan and in connection with the entering of the redevelopment agreement, the residential development shall be subject to a Payment in Lieu of Taxes ("PILOT") agreement between the Township and Berkeley Developers, the specific terms of which shall be further negotiated between the parties. The Township shall not commence the redevelopment process until the final terms of the development have been negotiated and agreed upon, and approved by the Court and the Court Special Master.

2. The Township must review and approve the final concept plan, building elevations, architectural floor plans, design standards, building materials, streetscape improvements, passive recreation areas, clubhouse, amenities and like development information, which shall be agreed upon and included in the final settlement agreement to be filed with the Court.

3. The parties understand and agree that this Memorandum of Understanding sets forth the general agreed upon terms for the development of the age-restricted, inclusionary, residential, rental development of the Locust Avenue Site. Nothing herein shall bind or otherwise restrict the parties from negotiating and agreeing to additional and more specific terms of development. Final approval of the proposed residential development is subject to the Township and Berkeley Developers coming to an agreement on the final terms of the development, including that set forth in paragraph 2 herein; which shall be set forth in a settlement agreement to be filed with the Court, and be subject to the Court's and the Court Special Master's approval.

4. Upon approval of the final plans included in the settlement agreement filed with the Court, Berkeley Developers agrees to enter into an escrow agreement with the Township for

the deposit of monies in escrow with the Township to be utilized to tender payment of fees for professional services, including legal, engineering and planning services, being provided in conjunction with the review of the residential development of the Locust Avenue Site, along with redevelopment process under the Redevelopment Law.

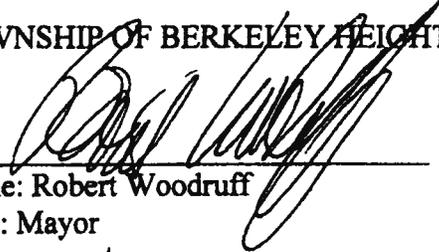
5. The Township and Berkeley Developers shall agree to a timeline for the finalization of the plans to be included in the settlement agreement to be filed with the Court, the submission of the agreement to the Court, and the timing of the redevelopment process upon approval of the settlement agreement by the Court, as set forth in paragraphs 2, 3 and 4 herein; which timeline shall be attached to and incorporated into the settlement agreement. The timeline shall be agreed upon within thirty (30) days from the full execution of this MOU, unless otherwise extended by the parties. The parties understand that the time periods agreed upon in the timeline may be subject to change based on factors outside of the parties' control.

6. The Township and Berkeley Developers hereby agree to act in good faith in the negotiation of the final terms of the development, along with the preparation of a more formal agreement to set forth all of the agreed upon terms of the age-restricted, residential, rental development at the Locust Avenue Site, which final agreement shall be filed with the Court, and be subject to the Court's and the Court Special Master's approval. The parties further agreed to proceed in good faith in proceeding through the redevelopment process and developing the site in compliance with the agreed upon timeline to be attached to the settlement agreement.

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

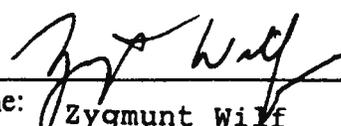
IN WITNESS WHEREOF, the Borough and Berkeley Developers have executed this Memorandum of Understanding as of the dates set forth below.

TOWNSHIP OF BERKELEY HEIGHTS

By: 
Name: Robert Woodruff
Title: Mayor

Dated: 2/23, 2016

BERKELEY DEVELOPERS, LLC

By: 
Name: Zygmunt Wilf
Title: Managing Member

Dated: February 23, 2016

Agenda Item No.: 3

**TOWNSHIP OF BERKELEY HEIGHTS
UNION COUNTY, NEW JERSEY**

RESOLUTION

WHEREAS, in compliance with the New Jersey Supreme Court decision in In re Adoption of N.J.A.C. 5:96 & 5:97 by N.J. Council on Affordable Housing, 221 N.J. 1 (2015), or about July 2, 2015, the Township filed an action with the Superior Court of New Jersey, entitled In the Matter of the Application of the Township of Berkeley Heights, County of Union Docket No. UNN-L-2405-15, seeking a Judgment of Compliance and Repose approving its Fair Share Plan, in addition to related reliefs (the "Compliance Action"); and

WHEREAS, on or about August 20, 2015, Berkeley Developers, LLC ("Berkeley Developers") filed a Motion to Intervene in the Compliance Action seeking to construct a three hundred (300) unit luxury residential rental development, with sixty (60) of such units being set aside for low and moderate income housing, on the property identified as Block 1901, Lot 35, located at 100 Locust Avenue; which intervention was granted by the Court on October 9, 2015; and

WHEREAS, after ongoing discussions, negotiations and mediations between the Township and Berkeley Developers, the parties have agreed upon the general terms of an one hundred and ninety-six (196) unit age-restricted, residential rental development of the 100 Locust Avenue property, with a fifteen (15%) percent inclusionary affordable housing component, subject to the terms and conditions set forth in the Memorandum of Understanding entered by the parties; and

WHEREAS, in connection with the Memorandum of Understanding, the Township finds it appropriate to commence the process to determine if the property identified as Block 1901, Lot 35, located at 100 Locust Avenue (the "Study Area") is in need of redevelopment; and

WHEREAS, the New Jersey Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1, et seq. (the "Redevelopment Law"), sets forth the procedures for the Township to declare an area in need of redevelopment, along with the development and effectuation of a redevelopment plan; and

WHEREAS, pursuant to the required redevelopment procedures, specifically set forth in N.J.S.A. 40A:12A-6, no area of a municipality shall be determined a redevelopment area unless the governing body of the municipality shall, by resolution, authorize the Planning Board to undertake a preliminary investigation to determine whether a proposed area is a redevelopment area according to the criteria set forth in N.J.S.A. 40A:12A-5; and

WHEREAS, pursuant to P.L. 2003, Chapter 159, "[t]he resolution authorizing the planning board to undertake a preliminary investigation shall state whether the redevelopment area determination shall authorize the municipality to use all those powers provided by the Legislature for use in a redevelopment area other than the use of eminent domain (hereinafter referred to as a 'Non-Condernnation Redevelopment Area') or whether the redevelopment area determination shall authorize the municipality to use all those powers provided by the Legislature for use in a redevelopment area, including the power of eminent domain (hereinafter referred to as a 'Condernnation Redevelopment Area'); and

WHEREAS, the Township Council of the Township of Berkeley Heights finds it to be in the best interest of the Township and its residents to authorize the Township Planning Board to undertake such preliminary investigation of the Study Area as a Non-Condernnation Redevelopment Area.

NOW, THEREFORE, BE IT RESOLVED, by the Township Council of the Township of Berkeley Heights, in the County of Union, and State of New Jersey, that the Planning Board is hereby authorized to undertake a preliminary investigation, utilizing Harbor Consultants, Inc., pursuant to the notice, hearing and other requirements of the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1, et seq., as amended, in order to recommend to the Township Council whether the property identified as Block 1901, Lot 35, located at 100 Locust Avenue, in the Township of Berkeley Heights, or any portion thereof, is an area in need of redevelopment according to the criteria set forth in N.J.S.A. 40A:12A-5.

BE IT FURTHER RESOLVED that, pursuant to New Jersey P.L.2013, c.159, the redevelopment area determination shall authorize the Township to use all those powers provided by the Legislature for use in a redevelopment area other than the use of eminent domain, also know as a "Non-Condernnation Redevelopment Area."

BE IT FURTHER RESOLVED that a certified copy of this Resolution is to be forwarded to the Township Planning Board.

BE IT FURTHER RESOLVED that this Resolution shall take effect pursuant to law.

APPROVED this 19th day of April, 2016.

ATTEST:

Ana Minkoff

Ana Minkoff
Township Clerk

ROLL CALL	AYE	NAY	ABSTAIN	ABSENT
D'AQUILA	✓			
DELIA		✓		
FAECHER	✓			
KINGSLEY	✓			
PASTORE	✓			
PIRONE	✓			
TIE:				
MAYOR WOODRUFF				

[Signature]
WOODRUFF

**PLANNING BOARD
TOWNSHIP OF BERKELEY HEIGHTS**

RESOLUTION

WHEREAS, the New Jersey Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1, et seq. ("LRHL"), authorizes municipalities to determine whether certain parcel(s) of land situated within the municipality constitute an area in need of redevelopment; and

WHEREAS, pursuant to the LRHL, no parcel(s) of land shall be declared an area in need of redevelopment without the municipality having first authorized its planning board, by way of resolution, to undertake a preliminary investigation to determine whether the subject parcel(s) meet the statutory criteria of an area in need of redevelopment as defined in the LRHL; and

WHEREAS, the Township Council of the Township of Berkeley Heights ("Township Council"), by way of Resolution No. 103-2016, adopted on April 19, 2016, authorized the Township of Berkeley Heights Planning Board ("Board") to undertake a preliminary investigation utilizing Harbor Consultants, Inc. of the area consisting of Block 1901, Lot 35, located at 100 Locust Avenue, as identified on the Official Tax Map of the Township of Berkeley Heights (the "Study Area"), to determine if the Study Area, or any portion thereof, meets the criteria set forth in the LRHL and should be designated as an area in need of redevelopment except that any redevelopment area determination shall not authorize the Township of Berkeley Heights to exercise the power of condemnation or eminent domain to acquire any property in the delineated area; and

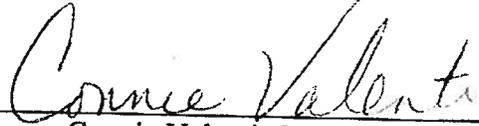
WHEREAS, on May 4, 2016, the Board considered, upon referral from the Township Council, Resolution No. 103-2016 and voted to authorize Harbor Consultants to prepare a map of the Study Area, including a statement setting forth the basis for the investigation, the preparation of a map of the Study Area, and to perform a preliminary investigation of the Study Area to determine whether the Study Area is an area in need of non-condemnation redevelopment pursuant to the LRHL; and

WHEREAS, the Board took action to authorize Harbor Consultants to prepare a map of the Study Area, including a statement setting forth the basis for the investigation, the preparation of a map of the Study Area, and to perform a preliminary investigation of the Study Area to determine whether the Study Area is an area in need of non-condemnation redevelopment pursuant to the LRHL at the meeting on May 4, 2016, and this Resolution constitutes a memorialization of that action.

NOW, THEREFORE, BE IT RESOLVED, that the Planning Board of the Township of Berkeley Heights on this 4th day of May, 2016, hereby memorializes by this Resolution the action taken by the Board on May 4, 2016 authorizing Harbor Consultants, Inc., to prepare a map of the Study Area, a statement setting forth the basis for the investigation and conduct a preliminary investigation of the Study Area to determine whether the Study Area meets the criteria set forth in the LRHL and should be designated as an area in need of non-condemnation redevelopment.

BE AND THE SAME IS HEREBY AUTHORIZED BY THE BOARD

I hereby certify that the above Resolution is a true copy of the Resolution adopted by the Planning Board of the Township of Berkeley Heights on May 4, 2016.



Connie Valenti, Secretary

Motion to Approve: Mr. Einbinder

Second: Mr. Woodruff

Ayes: Mr. Einbinder, Mr. Johnson, Mr. Woodruff, Mr. Niceforo, Mr. Hall,
Mr. Beal, Mr. Bocchino, Mr. Cunningham and Mr. Mangold

Nays: None

Abstentions: None

Absences: Mr. Graziano, Ms. Kingsley

Agenda Item No.: 4

**TOWNSHIP OF BERKELEY HEIGHTS
UNION COUNTY, NEW JERSEY**

RESOLUTION

WHEREAS, in compliance with the New Jersey Supreme Court decision in In re Adoption of N.J.A.C. 5:96 & 5:97 by N.J. Council on Affordable Housing, 221 N.J. 1 (2015), on or about July 2, 2015, the Township filed an action with the Superior Court of New Jersey entitled In the Matter of the Application of the Township of Berkeley Heights, County of Union, Docket No. UNN-L-2405-15, seeking a Judgment of Compliance and Repose approving its Fair Share Plan, in addition to related reliefs (the "Compliance Action"); and

WHEREAS, on or about August 20, 2015, Berkeley Developers, LLC ("Berkeley Developers") filed a Motion to Intervene in the Compliance Action seeking to construct a three hundred (300) unit luxury residential rental development, with sixty (60) of such units being set aside for low and moderate income housing, on the property identified as Block 1901, Lot 35, located at 100 Locust Avenue; which intervention was granted by the Court on October 9, 2015 and

WHEREAS, after ongoing discussions, negotiations and mediations between the Township and Berkeley Developers, the parties have agreed upon the general terms of an one hundred and ninety-six (196) unit age-restricted, residential rental development of the 100 Locust Avenue property, with a fifteen (15%) percent inclusionary affordable housing component, subject to the terms and conditions set forth in the Memorandum of Understanding entered by the parties, which contemplated the development by way of redevelopment; and

WHEREAS, the New Jersey Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq. (the "Redevelopment Law") authorizes municipalities to determine whether certain parcels of land located with the municipality constitute areas in need of non-condemnation redevelopment; and

WHEREAS, the Township Council (the "Council") of the Township of Berkeley Heights (the "Township"), by way of a Resolution No. 103-2016, authorized and directed the Berkeley Heights Planning Board (the "Planning Board") to conduct a preliminary investigation pursuant to the Redevelopment Law to determine whether the property identified as Block 1901, Lot 35, as shown on the Tax Map of the Township, located at 100 Locust Avenue (the "Study Area"), constitute an area in need of non-condemnation redevelopment in accordance with the criteria set forth in N.J.S.A. 40A:12A-5; and

WHEREAS, the Planning Board authorized Michael J. Mistretta, P.P., of Harbor Consultants, Inc. (the "Planning Consultant") to conduct an investigation to determine whether the Study Area, or any portion thereof, constitutes an area in need of non-condemnation redevelopment in accordance with the Redevelopment Law, and to prepare a preliminary investigation report of the Study Area (the "Study"); and

WHEREAS, the Planning Consultant prepared a Study dated May 2016 (the "Report"), which details the findings and recommendations relevant to whether the Study Area should be designated as an area in need of non-condemnation redevelopment; and

WHEREAS, the Planning Board, having provided the requisite notices and all jurisdictional requirements of the Redevelopment Law having been met, conducted public hearing on August 17, 2016, whereat the Planning Consultant, being sworn and qualified as an expert in professional planning, made a presentation of the Study and the Report to the Planning Board; and

WHEREAS, in addition to the presentation of the Planning Consultant, at the public hearing the Planning Board heard testimony and evidence from members of the general public, who also were given an opportunity to cross-examine the Planning Consultant and address questions to the Planning Board concerning the potential designation of the Study Area as an area in need of non-condemnation redevelopment; and

WHEREAS, the Planning Consultant concluded that the Study Area satisfies the criteria (b), (d), (h) and Section 5 of the Redevelopment Law, N.J.S.A. 40:A:12A-5; and that the Study Area should be deemed an area in need of non-condemnation redevelopment; and

WHEREAS, the Planning Board did not receive any written comments or objections to the Study or Report prior to the close of the public hearing on August 17, 2016; and

WHEREAS, at the conclusion of the public hearing, the Planning Board found that the Planning Consultant's conclusions in the Report and his testimony provide substantial evidence to support the findings that the Study Area satisfies criteria of the Redevelopment Law, N.J.S.A. 40:A:12A-5, that the public questions and comments did not erode the Planning Consultant's testimony or conclusions, and that the collective designation of the Study Area as an area in need of non-condemnation redevelopment is necessary for the effective redevelopment of the Study Area; and

WHEREAS, by a vote of 7 to 0, the Planning Board unanimously voted to recommend that the Township Council of the Township of Berkeley Heights find that the Study Area be designated a an area in need of non-condemnation redevelopment meeting criteria of the Redevelopment Law, N.J.S.A. 40:A:12A-5 as set forth by the Planning Consultant; and

WHEREAS, the Planning Board is expected to adopt a Resolution memorializing the public hearing and decision at its September 7, 2016 meeting; and

WHEREAS, the Planning Board submitted a summary of the Board's findings, along with a copy of the Report and all exhibits presented at the public hearing to the Township Clerk for distribution to the Mayor and Township Council for consideration thereof; and

WHEREAS, after review and consideration of the Planning Board's recommendation, including all documents submitted therewith, the Township Council agrees with the conclusion of the Planning Board that the Study Area meets the aforementioned criteria for redevelopment area designation, and the Township Council finds that such conclusion is supported by

TOWNSHIP OF BERKELEY HEIGHTS PLANNING BOARD

RESOLUTION

RESOLUTION OF THE TOWNSHIP OF BERKELEY HEIGHTS PLANNING BOARD RECOMMENDING THE PROPERTY IDENTIFIED AS BLOCK 1901, LOT 35 ON THE TAX MAP OF THE TOWNSHIP OF BERKELEY HEIGHTS AND MORE COMMONLY KNOWN AS 100 LOCUST AVENUE BE DESIGNATED AS AN AREA IN NEED OF NON-CONDEMNATION REDEVELOPMENT.

WHEREAS, the New Jersey Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq. ("LRHL"), authorizes municipalities to determine whether certain parcels of land situated within the municipality constitute an area in need of redevelopment; and

WHEREAS, pursuant to the LRHL, no parcels of land shall be declared an area in need of redevelopment without the municipality having first authorized its Planning Board by way of Resolution to undertake a preliminary investigation to determine whether the subject parcels meet the statutory criteria of an area in need of redevelopment as defined in the LRHL; and

WHEREAS, the Township Council of the Township of Berkeley Heights ("Council") by way of Resolution No. 103-2016 adopted on April 19, 2016, authorized the Township of Berkeley Heights Planning Board ("Board") to undertake a preliminary investigation, utilizing Harbor Consultants, of the area consisting of Block 1901, Lot 35 as identified on the Tax Map of the Township of Berkeley Heights and more commonly known as 100 Locust Avenue ("Study Area") to determine if the Study Area, or any portion thereof, meets the criteria set forth in the LRHL and should be designated as an area in need of non-condemnation redevelopment; and

WHEREAS, on May 4, 2016, the Board voted to authorize Harbor Consultants to prepare a map of the Study Area and perform a preliminary investigation of the Study Area to determine whether the Study Area is an area in need of non-condemnation redevelopment pursuant to the LRHL; and

WHEREAS, Harbor Consultants prepared a Preliminary Investigation Report, dated July 12, 2016, detailing their investigation, findings and recommendations pertaining to whether the Study Area should be designated as an area in need of non-condemnation redevelopment; and

WHEREAS, in accordance with N.J.S.A. 40A:12A-6, public notice was published in the Courier News once each week for two

consecutive weeks, the last publication being not less than 10 days prior to the date set for the hearing, and a copy of the public notice was mailed at least 10 days prior to the date set for the hearing to the owner of the property within the Study Area regarding the scheduled hearing before the Board to determine whether the designated Study Area should be recommended as an area in need of non-condemnation redevelopment; and

WHEREAS, on August 17, 2016, Michael Mistretta, P.P., of Harbor Consultants, provided testimony to the Board regarding his investigation, findings and recommendations pertaining to whether the Study Area should be recommended to be an area in need of non-condemnation redevelopment; and

WHEREAS, the Board did not receive any comments or objections from the property owner or public regarding whether the Study Area should be recommended as an area in need of non-condemnation redevelopment; and

WHEREAS, the Board having considered the evidence and testimony presented, hereby finds and concludes as follows:

1. The Hearing before the Board was advertised and noticed in accordance with the LRHL and took place on August 17, 2016.

2. Michael Mistretta, P.P., was duly sworn and his credentials and expertise as a Licensed Professional Planner in the State of New Jersey were accepted by the Board.

3. The following documents were admitted into evidence and relied upon by the Board:

- PB1 - Statement of Basis for Investigation including April 19, 2016 Township of Berkeley Heights Council Resolution and May 4, 2016 Township of Berkeley Heights Planning Board Resolution
- PB2 - Map of Study Area - 100 Locust Avenue, Block 1901, Lot 35
- PB3 - "Preliminary Investigation Report for 100 Locust Avenue (Block 1901, Lot 35) as a Non-Condensation Area in Need of Redevelopment" prepared by Harbor Consultants, dated July 12, 2016
- PB4 - Affidavits of Service and Publication including

Public Notice

4. The Study Area is located at 100 Locust Avenue and identified as Block 1901, Lot 35 on the Tax Map of the Township of Berkeley Heights. The Study Area is approximately 10.1 acres located in a Light Industrial Zone District in Berkeley Heights. In accordance with a recent New Jersey Supreme Court Decision the Township of Berkeley Heights filed an action in Superior Court seeking a judgment of compliance and repose approving its Fair Share Plan. The owners of the Study Area, Berkeley Developers, LLC, filed a Motion to Intervene in the compliance action and the parties entered into a Memorandum of Understanding regarding development of the property including the provision of affordable housing. The Memorandum of Understanding addressed the need for a study to be performed to determine whether the property should be declared an area in need of non-condemnation redevelopment pursuant to the LRHL.

5. On April 19, 2016, the Township Council adopted a Resolution authorizing the Board to undertake a preliminary investigation, utilizing Harbor Consultants, to determine whether the Study Area should be declared an area in need of non-condemnation redevelopment pursuant to the LRHL. On May 4, 2016, the Board adopted a Resolution authorizing Harbor Consultants to prepare a Map of the Study Area and a preliminary investigation report to determine whether the Study Area is in need of non-condemnation redevelopment pursuant to the LRHL. The Study Area is bounded by the Locust Avenue right-of-way to the South, the New Jersey Transit Boundary line to the North and the PSE&G powerlines to the South. There is a residential neighborhood on the other side of the PSE&G powerlines. There is Township owned Open Space on the other side of Locust Avenue.

6. The history of the Study Area demonstrates occupancy for commercial use by Dun & Bradstreet dating back to the 1980s. In 2002, Dun & Bradstreet contracted out their IT services to Computer Sciences Corporation who took over the property. Based on documentation reviewed, the property has been vacant or at least has not been fully utilized dating back to 2012. In 2014, Computer Science Corporation sold the property to the present owners, Berkeley Developers. The property has not been used by Berkeley Developers and remains vacant.

7. The property has not been maintained. There are large scraps and trash throughout the property. There is evidence of trespassing and vandalism in the form of graffiti and broken windows. There is evidence of water damage and mold in the

building. There have been fire and police calls to the property. In 2015, the lawn sprinklers activated flooding Locust Avenue causing hazardous icing conditions. Various environmental conditions have been documented at the site based on a site remediation investigation performed by Peek Environmental, LLC.

8. The property is within the Metropolitan Planning Area PA I as depicted on the New Jersey State Development and Redevelopment Plan. The intention of the State Plan for Metropolitan Planning Areas is to provide for much of the state's future development, revitalize cities and towns, promote growth in compact forms, stabilize older communities, redesign areas of sprawl and protect the character of the existing stable communities.

9. Investigation and planning analysis indicates the Study Area should be recommended to be an area in need of non-condemnation redevelopment based on the following criteria of the LRHL, N.J.S.A. 40A:12A-5:

b. The discontinuance of the use of buildings previously used for commercial, manufacturing, or industrial purposes; the abandonment of such buildings; or the same being allowed to fall into so great a state of disrepair as to be untenable.

d. Areas with buildings or improvements which, by reason of dilapidation, obsolescence, overcrowding, faulty arrangement or design, lack of ventilation, light and sanitary facilities, excessive land coverage, deleterious land use or obsolete layout, or any combination of these or other factors, are detrimental to the safety, health, morals, or welfare of the community.

h. The designation of the delineated area is consistent with Smart Growth Planning Principles adopted pursuant to law or regulation.

10. The property owner and members of the public had no questions or comments regarding the designation of the Study Area as an area in need of non-condemnation redevelopment.

11. The Board found the Preliminary Investigation Report and testimony of Mr. Mistretta to be credible. The Board recognized Mr. Mistretta's extensive experience and knowledge of the Township based on his years of service as the Township's Planning Consultant, including preparation of the 2007 "Township of Berkeley Heights Master Plan". The Board specifically adopted the

findings and recommendations set forth in the Preliminary Investigation Report and testimony of Mr. Mistretta that the Study Area should be recommended to be an area in need of non-condemnation redevelopment.

NOW, THEREFORE, BE IT RESOLVED by the Township of Berkeley Heights Planning Board, County of Union, State of New Jersey, as follows:

1. Investigation and planning analysis indicates the Study Area should be recommended to be an area in need of non-condemnation redevelopment based on the following criteria of the LRHL, N.J.S.A. 40A:12A-5:

b. The discontinuance of the use of buildings previously used for commercial, manufacturing, or industrial purposes; the abandonment of such buildings; or the same being allowed to fall into so great a state of disrepair as to be untenable.

d. Areas with buildings or improvements which, by reason of dilapidation, obsolescence, overcrowding, faulty arrangement or design, lack of ventilation, light and sanitary facilities, excessive land coverage, deleterious land use or obsolete layout, or any combination of these or other factors, are detrimental to the safety, health, morals, or welfare of the community.

h. The designation of the delineated area is consistent with Smart Growth Planning Principles adopted pursuant to law or regulation.

2. The findings and recommendations set forth in the Preliminary Investigation Report and testimony of Mr. Mistretta are hereby accepted by the Board and incorporated herein.

3. The Board recommends the Township of Berkeley Heights Council declare the Study Area to be an area in need of non-condemnation redevelopment pursuant to the provisions of the LRHL.

4. The Board Secretary is directed to transmit a copy of the Preliminary Investigation Study and this Resolution to the Township of Berkeley Heights Council for consideration.

5. This Resolution shall take effect immediately.

BE IT FURTHER RESOLVED, that this Resolution, adopted this 7th day of September 2016, memorializes the action taken by the Board at its meeting held on August 17, 2016.



Connie Valenti, Secretary
Planning Board
Township of Berkeley Heights
State of New Jersey

Date Approved: August 17, 2016
Roll Call vote: 7 - 0
Those in Favor: Mr. Einbinder, Mr. Johnson, Mr. Woodruff,
Mr. Niceforo, Mr. Hall, Ms. Kingsley, and
Mr. Bocchino
Those Opposed: None



State of New Jersey

DEPARTMENT OF COMMUNITY AFFAIRS

101 SOUTH BROAD STREET

PO BOX 800

TRENTON, NJ 08625-0800

(609) 292-6420

CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

CHARLES A. RICHMAN
Commissioner

September 9, 2016

The Honorable Robert Woodruff
Mayor
Township of Berkeley Heights
29 Park Avenue
Berkeley Heights, New Jersey 07922

Dear Mayor Woodruff:

We are in receipt of Ana Minkoff's letter of August 24, 2016 and Resolution No. 195-2016 designating Block 1901, Lot 35 an Area in Need of Redevelopment.

The Department of Community Affairs has mapped the area as situated in the Metropolitan Planning Area (PA 1). In accordance with N.J.S.A. 40A:12A-6, the municipality's approval took effect upon transmittal to the Department of Community Affairs and no further action is necessary from the Department to effectuate your designation. Please kindly forward a copy of your Redevelopment Plan once completed.

The Township or redeveloper may also find the New Jersey Business Action Center (BAC), located in the Department of State, helpful in identifying other sources of state financing that might be available to facilitate the redevelopment of these properties. You may contact the BAC by calling (866) 534-7789.

This designation is a tribute to the work the Township of Berkeley Heights has done. Please feel free to contact Robert Tessier at (609) 292-1547 if you need any further assistance.

Sincerely,

Charles A. Richman
Commissioner

cc: Municipal Clerk
Gerard Scharfenberger, Office of Planning Advocacy
Sean Thompson, Local Planning Services

RECEIVED

SEP 19 2016

TWP. CLERK

AGREEMENT TO RESOLVE ISSUES BETWEEN THE TOWNSHIP OF BERKELEY HEIGHTS AND FAIR SHARE HOUSING CENTER CONCERNING THE TOWNSHIP'S MOUNT LAUREL FAIR SHARE OBLIGATIONS AND THE MEANS BY WHICH THE TOWNSHIP SHALL SATISFY SAME.

In the Matter of the Township of Berkeley Heights, County of Union,
Docket No. UNN-L-2405-15

THIS SETTLEMENT AGREEMENT ("Agreement") made this 13th day of September 2016, by and between:

TOWNSHIP OF BERKELEY HEIGHTS, a municipal corporation of the State of New Jersey, County of Union, having an address at 22 Park Avenue, Berkeley Heights, New Jersey 07922 (hereinafter the "Township" or "Berkeley Heights");

And

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

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

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

WHEREAS, the immunity secured by Berkeley Heights remains in force as of the date of this Agreement; and

WHEREAS, the trial court appointed Elizabeth C. McKenzie, A.I.C.P., P.P., as the "Special Master" in this case as is customary in Mount Laurel matters; and

WHEREAS, with Ms. McKenzie's assistance, Berkeley Heights and FSHC have engaged in good faith negotiations and have reached an amicable accord on the various substantive provisions, terms and conditions delineated herein; and

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

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

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

Settlement Terms

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

1. Berkeley Heights' "Rehabilitation" obligation is 11.
2. Berkeley Heights' "Prior Round" obligation is 183.
3. Berkeley Heights' allocation of the Round 3 regional need is 389.
4. FSHC and the Township agree that Berkeley Heights does not accept the basis of the methodology or calculations proffered by FSHC's consultant, David N. Kinsey, PhD, P.P., F.A.I.C.P. The Parties agree to the terms in this agreement solely for purposes of settlement of this action. Although the Township does not accept the basis of the methodology or calculations proffered by FSHC's consultant, FSHC contends, and is free to take the position before the court, that the 389-unit obligation should be accepted by the court because it is based on the Prior Round methodology and reflects a 35-percent reduction of Dr. Kinsey's May 2016 calculation of the Township's Third Round fair share obligations.
5. Pursuant to N.J.A.C. 5:93-4.2, and as confirmed by Special Master McKenzie, Berkeley Heights' current Realistic Development Potential (hereinafter "RDP") is 359.
6. **Satisfaction of Rehabilitation Obligation:** The Township has an 11-unit rehabilitation obligation, and shall satisfy that obligation as follows:
 - a) The Township has an entity (Mary M. Moody, P.P.) in place that has recently rehabilitated 12 units in the Township.
 - b) Of the 12 units, all have been rehabilitated since July of 2010 (of which five (5) were rehabilitated since July of 2014).
 - c) There are six (6) more units in the pipeline to be rehabilitated in the near future.
 - d) The Township will continue to implement its rehabilitation program until the six (6) units in the pipeline have been completed or withdrawn, thereby fully satisfying the Township's 11-unit rehabilitation obligation, with up to seven (7) excess units rehabilitated.
7. **Satisfaction of Prior Round Obligation:** The Township has a 183-unit Prior Round obligation, and has satisfied that obligation as follows:

- a) The Township is entitled to secure all of the 129 credits from its Regional Contribution Agreement ("RCA") with the City of Newark. 91 RCA credits will be applied to the Township's Prior Round Obligation. The remaining 38 RCA credits will be applied towards the 1999 to 2008 time period.
- b) 47 existing affordable units from the following constructed and occupied units:
 - i. 13 affordable family rental units from the Station Court (Lockhern Assoc.) Sherman Avenue project.
 - ii. 14 affordable family rental units from the Villas on the Park (Glenside) Springholm project.
 - iii. 5 affordable family rental units from the Whispering Way Project.
 - iv. 3 age-restricted rental units from the Park Edge project.
 - v. 4 group home bedrooms from the Our House Project on 18 Whitney Dr.
 - vi. 5 group home bedrooms from the Our House Project on 135 Windsor Way
 - vii. 3 group home bedrooms from the Our House Project on 640 Plainfield Ave.
- c) 45 rental bonus credits.

8. **Satisfaction of RDP:** The Township has a 359-unit RDP, and intends to satisfy that obligation as follows:

- a) 119 units from the following six (6) new inclusionary redevelopment projects:
 - i. Kings Site Project (434 Springfield Ave. - Block 702, Lot 17). 150 total rental units, including 23 affordable family rental units. An MOU has been executed.
 - ii. Locust Ave. Project (100 Locust Ave., - Block 1901, Lot 35). 196 total rental age-restricted units, including 29 age-restricted affordable rental units. An MOU has been executed.
 - iii. Movie Theatre site project (450 Springfield Avenue, Block 702, Lot 13). 20 total rental units, including 3 affordable family rental units. An MOU has been executed.
 - iv. Former Hotel Site Project (Lone Pine Drive – Block 702, Lot 18). 62 total rental units including 9 affordable family rental units. To be included in Downtown Redevelopment Plan with zoning similar to Kings Site Project.
 - v. Connell Site Project (500 Connell Drive – Block 41, Lot 1). 312 total units, including 35 affordable units to be provided over and above the \$2,350,000 already paid towards the Township's RCA with Newark. The Township will provide documentation in the form of an MOU one week prior to the date of the Fairness Hearing.
 - vi. Hamilton Ave. Site (110 Roosevelt Ave – Block 1301, Lot 19). 100 total units - 80 market rate for-sale townhouses and 20 affordable family rental units, subject to and contingent upon acquisition of the property by the Township and adoption of a redevelopment plan by the Township. Negotiations are ongoing. Following the transfer of title to the Township, the Township will adopt a Redevelopment Plan on or before October 17,

2017 that will demonstrate that it creates a realistic opportunity in accordance with the terms of this Agreement.

- b) 57 units from two future redevelopment projects in the DMX and DH-24 zones. The DH-24 and DMX zones are to be identified as "future redevelopment projects" and shall be designed to the same building height and architectural design standards as the Kings Shopping Center redevelopment project. Within eighteen ("18") months of the entry of an Order granting a final Judgment in this matter, a Redevelopment Plan shall be adopted encompassing the area along both sides of Lone Pine Drive, including (but not necessarily limited to) the existing DMX and DH-24 zones, to provide for inclusionary residential development yielding 57 affordable housing units, along with such other uses as the Township sees fit to permit. Berkeley Heights agrees to send a copy of this Redevelopment Plan to FSHC at least 30 days prior to its consideration by the Planning Board or Council, whichever occurs first.
- c) 55 units from the following existing affordable housing projects:
 - i. 29 age-restricted rental units from the Park Edge Project.
 - ii. 11 for-sale units from the Highlands at Berkeley Heights Project.
 - iii. 3 for-sale units from the Cottage Lane I, Tudor Court I Project.
 - iv. 6 for-sale units from the Cottage Lane II, Tudor Court II Project.
 - v. 2 for-sale units from the 10 Cottage St., Lot 8 in Block 1301 Project.
 - vi. 4 for-sale units from the Berkeley Village, Helen Way (off Cottage St.) Project.
- d) 38 remaining RCA credits (applied to 1999-2008 portion of obligation).
- e) 90 rental bonus credits.

9. For the purposes of settlement, the Township agrees to address the 30-unit remaining portion of its allocation of the Round 3 regional need through the following mechanisms:

- a) 10 units to be built in the Downtown Districts (HB-2, HB-3 and DD).
- b) 20 units to be provided under the Mandatory Set-Aside Ordinance (MSO).

10. The projected 10-units from the as-of-right zoning in the Township's Downtown Districts (HB-2, HB-3 and DD), and the projected 20-units from the mandatory set-aside language from projects approved in the future, creates a 30-unit remaining portion of the Township's allocation of the Round 3 regional need. The Township's Affordable Housing Plan will fully address this 30-unit portion by: a) as-of-right zoning over the remainder of the Downtown Districts, which for the purposes of this agreement are defined as the HB-2, HB-3 and DD zoned districts, that will, conservatively, produce at least another 10 units as a result of the redevelopment of underutilized sites; and b) the adoption of the MSO requiring any site that benefits from a rezoning, variance or redevelopment plan approved by the Township that results in multi-family residential development of five (5) dwelling units or more to produce affordable housing at a set-aside rate of 20% for for-sale affordable units and at a set-aside rate of 15% for rental affordable units. These mechanisms are agreed to in order to fully satisfy the Township's 30-unit remaining portion of its allocation of the Round 3 regional need. The Township shall have the exclusive right to solve any gap associated with this remaining portion of its Round 3

obligation. The adoption of the MSO does not give any developer the right to any such rezoning, variance, redevelopment designation or other relief, or establish any obligation on the part of Berkeley Heights to grant such rezoning, variance, redevelopment designation or other relief. The MSO will remain in place through July of 2025, or until the Township's remaining portion of its Round 3 obligation is satisfied, whichever is later.

11. The Township's RDP shall not be revisited by FSHC or any other interested party absent a substantial changed circumstance and, if such a change in circumstance occurs with the RDP, the Township shall have the right to address the issue without negatively affecting its continuing entitlement to immunity from all Mount Laurel lawsuits through July 2, 2025.

12. All redevelopment projects in the Township's Affordable Housing Plan shall be constructed to satisfy the Township's Part 19 Design Standards.

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

14. To the extent that Berkeley Heights is entitled to any "bonus credits" to be applied to its Round 3 obligation, such bonuses will be applied in accordance with N.J.A.C. 5:93-5.15(d). Furthermore, the Township will be entitled to additional rental bonus credits generated by projects that may be developed under Sections 9 and 10 of this Agreement up to the maximum of 97 rental bonuses for which it is eligible based on its third round obligation.

15. At least 50 percent of the units addressing the Third Round Prospective Need shall be affordable to a combination of very-low-income and low-income households, while the remaining affordable units shall be affordable to moderate-income households.

16. At least twenty-five percent of the Third Round Prospective Need shall be met through rental units, including at least half in rental units available to families.

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

18. The Township agrees to comply with COAH's Round 2 age-restricted cap of 25 percent, and to not request a waiver of that requirement. This shall be understood to mean that in no circumstance may the Township claim credit toward its fair share obligation for age-restricted units that exceed 25 percent of all units developed or planned to meet its prior round and Round 3 fair share obligations.

19. The Township and/or its administrative agent shall add the following entities to the list of community and regional organizations in its affirmative marketing plan, pursuant to N.J.A.C. 5:80-26.15(f)(5): Fair Share Housing Center (510 Park Boulevard, Cherry Hill, NJ 08002), the New Jersey State Conference of the NAACP, the Latino Action Network (P.O. Box 943, Freehold, NJ 07728, East Orange NAACP (P.O. Box 1127, East Orange, NJ 07019), Newark NAACP (P.O. Box 1262, Newark, NJ 07101, Morris County NAACP (P.O. Box 2256, Morristown, NJ 07962, and Elizabeth NAACP (P.O. Box 6732, Elizabeth, NJ 07206). As part of its regional affirmative marketing strategies during implementation of its fair share plan, the Township and/or

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

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

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

22. Subsequent to the signing of this Agreement, if a binding legal determination by the Judiciary, the Legislature, or any administrative subdivision of the Executive Branch determines that Berkeley Heights's Round 3 obligation is decreased to 311 or less, with any relevant appeal periods having passed, the Township may file a proposed form of Order, on notice to FSHC and the Township's Service List, seeking to reduce its Round 3 obligation accordingly. Such relief shall be presumptively granted. Notwithstanding any such reduction, the Township shall be obligated to implement the Fair Share Plan prepared, adopted and endorsed as a result of this Agreement, including by leaving in place any site specific zoning adopted or relied upon in connection with the Plan approved pursuant to this settlement agreement; maintaining all

mechanisms to address the remaining portion of the Township's allocation of the Round 3 regional need; and otherwise fulfilling fully the fair share obligations as established herein. The reduction of the Township's obligation below that established in this agreement does not provide a basis for seeking leave to amend this agreement or the fair share plan adopted pursuant to this agreement or seeking leave to amend an order or judgment pursuant to R. 4:50-1. If the Township prevails in reducing its prospective need for Round 3, the Township may carry over any resulting surplus credits to Round 4.

23. Berkeley Heights agrees to pay \$15,000 to FSHC within 10 days after the approval of this Agreement by the court at a Fairness Hearing.

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

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

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

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

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

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

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

28. All Parties shall have an obligation to fulfill the intent and purpose of this Agreement. However, if an appeal of the Court's approval or rejection of the Settlement Agreement is filed by a third party, the Parties agree to defend the Agreement on appeal, including in proceedings before the Superior Court, Appellate Division, and New Jersey Supreme Court, and to continue to implement the terms of the Settlement Agreement if the Agreement is approved by the trial court unless and until an appeal of the trial court's approval is successful, at which point the Parties reserve their right to return to the *status quo ante*. In this regard, the Township and FSHC acknowledge that the parties have entered into this agreement to settle the litigation and that each is free to take such position as it deems appropriate should the matter return to the *status quo ante*. In no circumstance shall FSHC shall be required to return funds paid to it and the Township agrees not to seek the return of those funds.

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

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

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

32. This Agreement may be executed in any number of counterparts, each of which shall be an original and all of which together shall constitute but one and the same Agreement.

33. The Township and FSHC acknowledge that each has entered into this Agreement on its own volition without coercion or duress after consulting with its counsel, that each person to sign this Agreement is the proper person and possesses the authority to sign the Agreement, that this Agreement contains the entire understanding of the Township and FSHC and that there

are no representations, warranties, covenants or undertakings other than those expressly set forth herein.

34. The Township and FSHC acknowledge that this Agreement was not drafted by the Township and FSHC, but was drafted, negotiated and reviewed by representatives of the Township and FSHC and, therefore, the presumption of resolving ambiguities against the drafter shall not apply. The Township and FSHC expressly represent that: (a) it has been represented by counsel in connection with negotiating the terms of this Agreement; and (b) it has conferred due authority for execution of this Agreement upon the persons executing it.

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

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

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

38. All notices required under this Agreement ("Notice[s]") shall be written and shall be served upon the Township and FSHC by certified mail, return receipt requested, or by a recognized overnight or by a personal carrier. In addition, where feasible (for example, transmittals of less than fifty pages) shall be served by facsimile or e-mail. All Notices shall be deemed received upon the date of delivery. Delivery shall be affected as follows, subject to change as to the person(s) to be notified and/or their respective addresses upon ten (10) days' notice as provided herein:

TO FSHC:

Kevin D. Walsh, Esq.
Fair Share Housing Center
510 Park Boulevard
Cherry Hill, NJ 08002
Phone: (856) 665-5444
Telecopier: (856) 663-8182
E-mail: kevinwalsh@fairsharehousing.org

TO THE TOWNSHIP:

Erik C. Nolan, Esq.
Jeffrey R. Surenian & Associates, LLC
707 Union Avenue, Suite 301
Brielle, NJ 08730
Phone: (732) 612-3100
Telecopier: (732) 612-3101
Email: EN@Surenian.com

Joseph V. Sordillo, Esq.
McElroy, Deutsch, Mulvaney & Carpenter, LLP
1300 Mount Kemble Avenue

PO Box 2075
Morristown, NJ 07962-2075
Phone: (973) 425-4170
Telecopier: (973) 425-0161
Email: jsordillo@mdmc-law.com

**WITH A COPY TO THE
TOWNSHIP ADMINISTRATOR:**

John Bussiculo, Administrator
Township of Berkeley Heights
29 Park Avenue
Berkeley Heights, NJ 07922
Phone: (908) 464-2700 x2232
Telecopier: (908) 464-8150
Email: jbusiculo@bhtwp.com

In the event any of the individuals identified above has a successor, the individual identified shall name the successor and notify all others identified of their successor.

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

Witness/Attest:



Witness/Attest:


Joseph Sordillo, Esq.

Dated: 9/13/16

FAIR SHARE HOUSING CENTER:

By: 
_____ Kevin D. Walsh, Esq.
On Behalf of Fair Share Housing Center
9/13/2016

TOWNSHIP OF BERKELEY HEIGHTS:

By: 
_____ Robert Woodruff, Mayor
On Behalf of the Township of Berkeley Heights

Agenda Item No.: 2

**TOWNSHIP OF BERKELEY HEIGHTS
UNION COUNTY, NEW JERSEY**

RESOLUTION

WHEREAS, on March 24, 2015, the Township Council of the Township of Berkeley Heights adopted a resolution in which the Township reaffirmed its voluntary commitment to satisfy its affordable housing obligations, however they may ultimately be defined by COAH or court; and

WHEREAS, in compliance with the New Jersey Supreme Court decision in In re Adoption of N.J.A.C. 5:96 & 5:97 by N.J. Council on Affordable Housing, 221 N.J. 1 (2015), on or about July 2, 2015, the Township filed an action with the Superior Court of New Jersey, entitled In the Matter of the Application of the Township of Berkeley Heights, County of Union, Docket No. UNN-L-2405-15, seeking, among other things, a Judgment of Compliance and Repose declaring that its Housing Element and Fair Share Plan (hereinafter "Fair Share Plan"), to be amended, if necessary, satisfies its "fair share" of the regional need for low and moderate income housing pursuant to the "Mount Laurel doctrine" (the "Compliance Action"); and

WHEREAS, the Township simultaneously sought, and ultimately secured, a protective order providing Berkeley Heights immunity from all exclusionary zoning lawsuits while it pursued approval of its Fair Share Plan; and

WHEREAS, the Fair Share Housing Center ("FSHC") participated in the Township's Compliance Action, with its Motion to Intervene currently pending before the Court; and

WHEREAS, the trial judge also appointed Elizabeth C. McKenzie, P.P., A.I.C.P. as the "Special Master," as is customary in Mount Laurel matters adjudicated in the courts; and

WHEREAS, with assistance from the Special Master, Berkeley Heights and FSHC engaged in good faith negotiations which resulted in an amicable accord on the various substantive terms and conditions as set forth in the Settlement Agreement attached hereto, which Agreement has been reviewed and approved by legal counsel for the Township and FSHC; and

WHEREAS, through this process, the Township and FSHC agreed upon the Township's affordable housing obligations and the compliance techniques necessary for Berkeley Heights to satisfy its "fair share" of the regional need for low- and moderate-income housing; and

WHEREAS, the Township and FSHC also agreed to present the Settlement Agreement to the Trial Judge for approval at a duly-noticed Mount Laurel Fairness Hearing; and

WHEREAS, although there is a well-established policy favoring the settlement of all forms of litigation, the settlement of Mount Laurel litigation is particularly favored because (1)

avoids the expenditure of finite public resources; and (2) expedites the construction of safe, decent housing for the region's low- and moderate-income households; and

WHEREAS, in light of the above, the Township Council finds that it is in the best interest of Berkeley Heights to enter into the Settlement Agreement with FSHC and to take various other actions delineated below, which will ultimately result in approval of the Township's Fair Share Plan which, in turn, will maintain the Township's immunity from all Mount Laurel lawsuits during the ten-year period set forth in the New Jersey Fair Housing Act, N.J.S.A. 52:27D-301 to 329.

NOW, THEREFORE, BE IT RESOLVED that the Mayor and Township Council of the Township of Berkeley Heights, County of Union, State of New Jersey, as follows:

1. The Township is hereby authorized to enter into the Settlement Agreement with FSHC, in substantial the form attached hereto, subject to the terms and conditions set forth therein.
2. The Mayor and Township Clerk are hereby authorized to execute the Settlement Agreement in the substantial form attached hereto.
3. The Township hereby directs its Special Mount Laurel Counsel, Township Planner and other appropriate Township official to take all actions to have the Settlement Agreement filed and approved by the Court and satisfy the terms set forth in the Settlement Agreement, including, without limitation, to: (a) file the fully-executed Settlement Agreement with the Court for review and approval at a duly-notice Fairness Hearing, (b) take all actions reasonable and necessary to secure an Order approving the Settlement Agreement, and (c) work towards ultimately securing judicial approval of the Township's Fair Share Plan, after it is drafted, adopted by the Township's Planning Board and endorsed by the Township Council.

BE IT FURTHER RESOLVED that this Resolution shall take effect pursuant to law.

APPROVED this 20th day of September, 2016.

ATTEST:



Ana Minkoff
Township Clerk

ROLL CALL	AYE	NAY	ABSTAIN	ABSENT
D'AQUILA	✓			
DELA		✓		
FALCHER				✓
KINGSLEY	✓			
PASTORE	✓			
PHONE				
TIE:				
MAYOR WOODRUFF				

LOCUST AVENUE PROJECT SETTLEMENT AGREEMENT



THIS SETTLEMENT AGREEMENT ("Agreement") made this 13th day of _____, 2016, by and between:

TOWNSHIP OF BERKELEY HEIGHTS, a municipal corporation of the State of New Jersey, County of Union, having an address at 29 Park Avenue, Berkeley Heights, New Jersey 07922 (hereinafter the "Township");

And

BERKELEY DEVELOPERS, LLC, a New Jersey limited liability company, having an address at c/o Wilf Law Firm, LLP, 820 Morris Turnpike, Suite 201, Short Hills, New Jersey 07078 (hereinafter "Berkeley Developers");

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

WHEREAS, on March 24, 2015, the Township Council ("Council") of the Township adopted a resolution in which the Township reaffirmed its voluntary commitment to satisfy its affordable housing obligations, however they may ultimately be defined by the New Jersey Council on Affordable Housing ("COAH") or a court; and

WHEREAS, in compliance with the New Jersey Supreme Court's decision in In re Adoption of N.J.A.C. 5:96 and 5:97 by N.J. Council on Affordable Housing, 221 N.J. 1 (2015), on or about July 2, 2015, the Township filed an action with the Superior Court of New Jersey ("Court"), entitled In the Matter of the Application of the Township of Berkeley Heights, County of Union, Docket No. UNN-L-2405-15, seeking a Judgment of Compliance and Repose approving its Affordable Housing Plan (as defined herein), in addition to related reliefs (the "Compliance Action"); and

WHEREAS, on or about August 20, 2015, Berkeley Developers filed a Motion to Intervene in the Compliance Action ("Berkeley Developers Intervention") and such intervention was granted by the Court on October 9, 2015; and

WHEREAS, Berkeley Developers is the owner of the real property known and designated as Block 1901, Lot 35 ("Property") according to the Township's tax and assessment maps, and is commonly known as 100 Locust Avenue; and

WHEREAS, the Township intends to prepare a Housing Element and Fair Share Plan (hereinafter "Affordable Housing Plan"), that will be adopted by the Planning Board of the Township ("Planning Board"), endorsed by the Township Council, and submitted to the Court for review and approval; and

WHEREAS, said Affordable Housing Plan will include the Property as an inclusionary development at a density of 196 rental residential units, including a 15% set aside for units to be affordable to low or moderate income households; and

WHEREAS, the Planning Board is not a party to this Agreement but the Parties understand and anticipate that the Planning Board will abide by the terms of this Agreement as set forth below for the purpose of facilitating a resolution of the Berkeley Developers Intervention; and

WHEREAS, the Township will seek the Court's approval of the Affordable Housing Plan in connection with the Compliance Action and, regardless of the Court's approval or disapproval of the Affordable Housing Plan and the ultimate disposition of the Compliance Action, the Parties intend to be bound by this Agreement provided this Agreement is approved by the Court; and

WHEREAS, after ongoing discussions, negotiations and mediations, the Township and Berkeley Developers entered into a Memorandum of Understanding on February 23, 2016 ("MOU"), attached hereto as Exhibit A, which memorialized the agreed upon terms of an inclusionary development on the Property; and

WHEREAS, Berkeley Developers is amenable to fully and finally resolving the Berkeley Developers Intervention premised upon securing the right to construct a 196-unit rental residential inclusionary development on the Property; and

WHEREAS, more specifically, pursuant to the terms successfully negotiated by the Township and Berkeley Developers in the MOU, and subject to the details delineated herein, Berkeley Developers intends to develop the Property as an inclusionary development consisting of 196 age-restricted rental residential units including 29 affordable housing units ("Inclusionary Development"); and

WHEREAS, to ensure that the Inclusionary Development generates affordable housing credits to be applied to the Township's Round 3 affordable housing obligation, the affordable units within the Inclusionary Development shall be developed in accordance with COAH prior round regulations, the Uniform Housing Affordability Controls, N.J.A.C. 5:80-26.1 et seq. ("UHAC") and all other applicable law, and said Inclusionary Development shall be deed restricted for a period of 30 years; and

WHEREAS, to further effectuate this settlement, and provided that the Property meets the criteria for the Township to declare the Property as a "non-condemnation redevelopment area" pursuant to the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq. ("Redevelopment Law"), the Township shall designate the Property as a non-condemnation redevelopment area, adopt a redevelopment plan for the Property that permits the Inclusionary Development, and enter into a redevelopment agreement, including the PILOT Agreement (defined below), with Berkeley Developers as the designated redeveloper of the Property, all in accordance with the Redevelopment Law (collectively, the "Redevelopment Approvals") and as set forth in greater detail in Section 4.1 herein; and

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

Agreement at a Fairness Hearing; and

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

ARTICLE I - PURPOSE

1.1 The purpose of this Agreement is to settle the Berkeley Developers Intervention and to create a realistic opportunity for the construction of the Inclusionary Development, and to generate affordable housing credits for the Township to apply to any Round 3 obligation assigned to it. The Parties have agreed to the design of the elevation for the proposed buildings, which is depicted in Exhibit B.1 as attached hereto and made a part hereof. The Parties have agreed to the concept plan layout for the proposed buildings, which is depicted in Exhibit B.2 as attached hereto and made a part hereof. The Inclusionary Development shall be subject to the Design Standards attached hereto and made a part hereof as Exhibit C, which has also been reviewed and approved by Berkeley Developers, the Township and the Township's professionals. Notwithstanding the foregoing, nothing in this Agreement shall prevent the Parties from continuing to work together to revise the plans for an improved design and layout, subject to the terms of this Agreement. The Inclusionary Development shall be further subject to the following requirements:

1.1.1 Density. The residential development of the Property shall be developed with a density of 196 residential units, inclusive of an affordable housing component that is described in greater detail in Section 3.1 herein.

1.1.2 Age Restrictions. The residential development of the Property shall be one hundred (100%) percent age-restricted with a head of household with a minimum of age of 55 years old for residents, subject to compliance with federal law, except that no more than five (5) residential units may be occupied by employees of Berkeley Developers or the operating entity for the Inclusionary Development, who are employed as superintendents for the Inclusionary Development and who may have younger members of their households residing on-site. Berkeley Developers shall provide certified payroll records documenting any employer who it states are employed as superintendents on this property and have members of their household under the age of eighteen who reside in this development.

1.1.3 Setbacks. The residential development of the Property shall have a minimum front yard setback of one hundred (100) feet, a minimum side yard setback (each side) of thirty-five (35) feet, and a minimum rear yard setback of fifty (50) feet.

ARTICLE II - BASIC TERMS AND CONDITIONS

2.1 This Agreement is subject to Court approval following a duly noticed "Fairness Hearing," which has been scheduled by the Court for October 17, 2016. The Township is responsible for the preparation and cost of the notice of the Fairness Hearing, which has already

been provided by the Township. The Parties will work together to ensure that the Court approves the Agreement at the currently scheduled Fairness Hearing or promptly thereafter, if rescheduled by the Court.

2.2 In the event of any legal challenges to the Court's approval of this Agreement or the Redevelopment Approvals, the Parties must diligently defend any such challenge and shall cooperate with each other regarding said defense. In addition, if any such challenge results in a modification of this Agreement or the Inclusionary Development, the Parties must negotiate in good faith with the intent to draft a mutually-acceptable amended Agreement, provided that no such modification requires an increase or decrease in density than that agreed upon and reflected in the within Agreement.

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

ARTICLE III – BERKELEY DEVELOPERS OBLIGATIONS

3.1 Affordable Housing Set-Aside. Berkeley Developers shall have an obligation to deed-restrict fifteen percent (15%) of the residential units in the Inclusionary Development (equivalent to 29 units) as very low, low or moderate income affordable units. Any such affordable units shall be one-bedroom units and shall comply with UHAC, applicable COAH affordable housing regulations, any applicable order of the Court, and other applicable laws.

3.1.1 In addition, the affordable units shall remain affordable rental units for a period of thirty (30) years ("Deed-Restriction Period") so that the Township may count the units against its obligations to provide age-restricted rental housing. This obligation includes, but is not limited to, the Developer's obligation to comply with bedroom distribution requirements, very low/low/moderate income split requirements, pricing requirements, affirmative marketing requirements, candidate qualification and screening requirements and deed restriction requirements.

3.1.2 The distribution of the affordable housing units shall be in compliance with COAH's Round Two substantive regulations, N.J.A.C. 5:93, which the Parties believe will govern the issue, or as approved by the Special Master and the Court.

3.1.3 Berkeley Developers shall contract with an experienced administrative agent ("Administrative Agent") for the administration of the affordable units and shall have the obligation to pay all costs associated with properly deed restricting the affordable units in accordance with UHAC and other applicable laws for the Deed-Restriction Period. Berkeley Developers and its Administrative Agent, shall work with the Township and the Township's Administrative Agent regarding any affordable housing monitoring requirements imposed by COAH or the Court.

3.1.4 The Parties agree that the affordability controls shall expire at the end of 30 years after the date of the initial occupancy of the affordable unit. At the end of the Deed-Restriction Period, the Township shall cooperate with the developer to facilitate the developer's

ability to exercise its right to have the deed restriction last for only 30 years subject to the requirements of N.J.A.C. 5:80-26.11(b) of UHAC.

3.1.5 The Parties agree that the affordable units are to be included in the Affordable Housing Plan to be approved and credited by the Court in the Compliance Action, and that the credits will be applied against any Round 3 obligation assigned to the Township, and that the affordable units may be credited within the permitted twenty-five (25%) percent limitation for age-restricted affordable housing as set forth under COAH's Round Two substantive regulations.

3.1.6 Upon written notice, Berkeley Developers shall provide detailed information requested by the Township or the Township's Administrative Agent, within 30 days concerning Berkeley Developers' compliance with UHAC and other applicable laws.

3.2 Obligation Not To Oppose Township's Application for Approval of its Affordable Housing Plan. As it pertains to the Property, Berkeley Developers shall not directly or indirectly oppose or undertake any action to interfere with, nor participate in, the Court's adjudication of the Township's affordable housing obligations and compliance standards. Berkeley Developers shall also not directly or indirectly oppose or undertake any action to interfere with the Court's approval and/or implementation of the Affordable Housing Plan, as it may be amended in any form, unless the Affordable Housing Plan deprives Berkeley Developers of any rights created hereunder, or unless any other defendants or interested parties undertake any action to obstruct or impede Berkeley Developers from securing such approvals as it needs to develop the Inclusionary Development on the Property.

3.3 Obligation to Withdraw As An Intervenor in the Township's Compliance Action. Upon the Court's approval of this Agreement at the Fairness Hearing, Berkeley Developers shall no longer continue to participate in the Compliance Action, except for the limited circumstances described in Section 3.2 of this Agreement, and shall formally be dismissed from the Township's Compliance Action.

3.4 Traffic Study & Related Improvements.

a. Within forty-five (45) days of the Effective Date (as this term is defined herein) of this Agreement Berkeley Developers shall provide to the Township a traffic study for the proposed Inclusionary Development ("Traffic Study"). The Traffic Study shall address the traffic impact of the proposed Inclusionary Development on the Township's traffic circulation and roadways. If determined necessary by the Township's Traffic Engineer, in the Township's Traffic Engineer's reasonable discretion, Berkeley Developers shall pay for the design and construction of a traffic light ("Traffic Light") at the intersection of Locust Avenue and Snyder Avenue. Berkeley Developers shall have the right to review and provide comments on the plans and related schematics for the Traffic Light. The Redevelopment Plan shall not be adopted by the Planning Board until the Traffic Study has been completed, and if it is determined by the Township that a traffic light is required at the intersection of Locust Avenue and Snyder Avenue, that the preliminary design and estimated construction cost of the traffic light is outlined within the Redevelopment Plan.

b. Notwithstanding the foregoing in subsection 3.4.a, the Parties recognize that the installation of the Traffic Light is governed by the New Jersey Department of Transportation ("NJDOT"). If NJDOT does not approve the installation of the Traffic Light as a result of the initial Traffic Study, Berkeley Developers shall have an ongoing obligation to install the Traffic Light for the duration of the PILOT Agreement (defined in subsection 4.1). Berkeley Developers shall reapply to the NJDOT for the installation of the Traffic Light upon receipt of a written request from the Township Engineer and provided that conditions have changed so that there is reason to believe that the NJDOT will approve the Traffic Light; provided that the Township shall not make such a request more than once every five (5) years. The Township shall have the right to provide its own traffic study, at the Township's sole discretion, to support any application to the NJDOT for the approval of the Traffic Light. Berkeley Developers shall be responsible for the costs of the installation of the Traffic Light.

ARTICLE IV - OBLIGATIONS OF THE TOWNSHIP

4.1 Obligation To Effect Redevelopment Approvals.

a. As of the Effective Date of this Agreement, the Township has already adopted a resolution ("Initial Resolution") directing the Planning Board to undertake a preliminary investigation of the Property to determine if the Property meets the criteria for designation as a "non-condemnation redevelopment area" in accordance with N.J.S.A. 40A:12A-5 and - 6. Within thirty (30) days of the Planning Board's recommendation that the Property be designated as a non-condemnation redevelopment area, the Township shall adopt a resolution formally designating the Property as a non-condemnation redevelopment area ("Redevelopment Area Designation"). Within ninety (90) days of the date of the Redevelopment Area Designation, which occurred on or about August 23, 2016, the Township shall prepare a redevelopment plan in accordance with N.J.S.A. 40A:12A-7 permitting the Inclusionary Development as-of-right ("Redevelopment Plan"), introduce the Redevelopment Plan by ordinance on first reading, and adopt a resolution referring the Redevelopment Plan to the Planning Board for review and recommendation. Within the lesser of (a) thirty (30) days from the date of the Planning Board's final review and recommendation of adoption of the Redevelopment Plan, or (b) forty-five (45) days from the date the of the Township's introduction of the Ordinance adopting the Redevelopment Plan and referring same to the Planning Board, the Township shall adopt the Redevelopment Plan by ordinance on second reading ("Ordinance").

b. Within thirty (30) days of the date of the adoption of the Ordinance, the Township shall negotiate a redevelopment agreement with Berkeley Developers ("Redevelopment Agreement") and adopt resolutions approving the Redevelopment Agreement and designating Berkeley Developers as the exclusive redeveloper of the Property. The Redevelopment Agreement shall be reasonably satisfactory to both the Township and Berkeley Developers and upon final approval of the redevelopment plan and in connection with the entering of the redevelopment agreement, the residential development shall be subject to a Payment in Lieu of Taxes (PILOT) agreement ("PILOT Agreement") between the Township and Berkeley Developers, the specific terms of which shall be further negotiated between the Parties. The Township and Berkeley Developers shall execute the Redevelopment Agreement promptly after

the Township's adoption of the resolution approving same. In connection with the above actions, the Township shall comply with all applicable procedural requirements set forth in the Redevelopment Law and the case law interpreting same, including, but not limited to, legal notice requirements. All of the time periods set forth in this Section 4.1 may be subject to extension of time, which shall be reasonably agreed upon by the Parties, if at no fault of either Party the required actions cannot be completed within the time periods established.

c. The parameters of the PILOT Agreement discussed in Section 4.b above shall be agreed to between the Parties within (45) days of the execution of this Agreement. Berkeley Developers has proposed terms for the PILOT Agreement as set forth and attached hereto as Exhibit D, which are being reviewed by the appropriate Township officials and professionals, and are subject to the Township's response and the Parties' final agreement of same.

4.2 Obligation To Preserve The Redevelopment Approvals. The Redevelopment Approvals shall not be amended or rescinded except upon the application of Berkeley Developers or by Order of the Court.

4.3 Representation regarding Sufficiency of Water and Sewer: The Township agrees to reasonably comply with Berkeley Developers' investigation and inquiry into the sufficiency of potable water and sewer capacity to service the proposed Inclusionary Development. Any water, sewer or any other utility infrastructure or improvements, studies, analysis required for the development of the proposed Inclusionary Development shall be at the cost and expense of Berkeley Developers, subject to the pro-rata allocation under the Municipal Land Use Law.

4.4 Obligation To Cooperate: The Township acknowledges that in order for Berkeley Developers to construct its Inclusionary Development, Berkeley Developers will be required to obtain any and all necessary and applicable agreements, approvals, and permits from all relevant public entities and utilities; such as, by way of example only, the Township, the Planning Board, the County of Union, the Union County Planning Board, the New Jersey Department of Environmental Protection, the New Jersey Department of Transportation, the Somerset-Union Soil Conservation District and the like, including the Township's ordinance requirements as to site plan and subdivision (the "Required Approvals") and the Redevelopment Plan. The Township agrees to use all reasonable efforts to assist Berkeley Developers in its undertakings to obtain the Required Approvals.

4.5 Obligation to Refrain From Imposing Cost-Generative Requirements. The Township recognizes that the Redevelopment Approvals, this Agreement all contemplate the development of an "inclusionary development" within the meaning of the Mount Laurel doctrine, and Berkeley Developers shall be entitled to any benefits, protections, and obligations afforded to developers of inclusionary developments, other than what Berkeley Developers agreed to in the Memorandum of Understanding and this Agreement.

ARTICLE V – OBLIGATIONS OF THE PLANNING BOARD

5.1 Obligation to Participate in Redevelopment Approvals with Reasonable Diligence. Notwithstanding any other provision of Article V, the Parties understand that the Planning Board is not a party to this Agreement, but the Parties anticipate that the Planning Board will honor the provisions set forth herein. At the time of the execution of this Agreement, the Township has already adopted the Initial Resolution, the Planning Board has already completed its preliminary investigation of the Property, and the Township has designated the Property as an area in need of redevelopment, meeting the criteria for designation as a “non-condemnation redevelopment area” in accordance with N.J.S.A. 40A:12A-5 and -6. The costs of the preparation of this preliminary investigation study and the preparation of the redevelopment plan and related work shall be borne by Berkeley Developers through an escrow agreement with the Township.

5.2 Obligation to Process Berkeley Developers’ Development Applications with Reasonable Diligence. The Planning Board shall expedite the processing of Berkeley Developers’ development applications following Court approval of this Agreement following a duly noticed Fairness Hearing in accordance with N.J.A.C. 5:93-10.1(a) and within the time limits imposed by the MLUL. In the event of any appeal of the Redevelopment Approvals, Court approval of this Agreement, the Planning Board shall process and take action on any development application by Berkeley Developers for the Property which decision may be conditioned upon the outcome of any pending appeal.

5.3 Obligation to Refrain From Imposing Cost-Generative Requirements. The Planning Board recognizes that the Redevelopment Approvals and this Agreement all contemplate the development of an “inclusionary development” within the meaning of the Mount Laurel doctrine, and Berkeley Developers shall be entitled to any benefits, protections, and obligations afforded to developers of inclusionary developments. Nothing shall prevent Berkeley Developers from applying for a waiver or bulk variance from any standard imposed by the Redevelopment Plan and/or the Township’s Land Use and Development Ordinance as applicable, and the standards set forth in the MLUL and/or the Redevelopment Law, as applicable, shall determine if Berkeley Developers is entitled to this relief or from seeking a waiver or de minimus exception to any standard or requirement of the Residential Site Improvement Standards under the applicable regulations. Notwithstanding the above, the Township Council and Township Planning Board are under no contractual obligation to grant or approve any request for a variance, waiver or de minimus exception.

ARTICLE VI – MUTUAL OBLIGATIONS

6.1 Escrow Agreement. Within thirty (30) days of the Effective Date (as this term is defined herein), the Township and Berkeley Developers shall enter into an escrow agreement for the deposit of monies in escrow with the Township to be utilized to tender payment of reasonable fees for professional services, including legal, engineering and planning services, construction inspection services, being provided in conjunction with the Redevelopment Approvals and the review and construction inspection of the Inclusionary Development and any off-site and off-tract improvements. This Agreement shall be in addition to and in conjunction with the existing

Escrow Agreement entered between the Parties to cover the planning costs relating to the preliminary investigation.

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

6.3 Mutual Good Faith, Cooperation and Assistance. The Parties shall exercise good faith, cooperate, and assist each other in fulfilling the intent and purpose of this Agreement, including, but not limited to, the approval of this Agreement by the Court, the Redevelopment Approvals, the development of the Property consistent with the terms hereof, and the defense of any challenge with regard to any of the foregoing.

6.4 Failure to Effect Redevelopment Approvals. If the Township fails to effect the Redevelopment Approvals within the time frames set forth in Section 4.1 or the Parties fail to agree on a PILOT Agreement as set forth in Section 4.1, then, at the option of Berkeley Developers, in its sole discretion and by prior written notice to the Township in accordance with Article IX of this Agreement, the Parties shall be restored to the status quo ante to the date hereof and all claims and defenses available now shall be available to the Parties.

6.4.1 In the event that the Redeveloper decides that the Parties shall be restored to the status quo ante to the date hereof and all claims and defenses available now shall be available to the Parties, no Party shall be entitled to use this Agreement, or negotiations in conjunction therewith, to attempt to prejudice the other in any future proceedings.

6.5 Defense of Agreement. Each Party exclusively shall be responsible for all costs which they may incur in obtaining Court approval of this Agreement and any appeal therefrom, or from effecting the Redevelopment Approvals or the approval of the Affordable Housing Plan or any part thereof. The Parties shall diligently defend any such challenge.

ARTICLE VII - AFFORDABLE HOUSING CREDITS

7.1 Upon written notice, Berkeley Developers agrees to supply the Township and the Township's Administrative Agent, all documents within 30 days within its possession that may be reasonably necessary to demonstrate the creditworthiness of the affordable units.

ARTICLE VIII - COOPERATION AND COMPLIANCE

8.1 Implementation And Enforcement Of Agreement: The Parties agree to cooperate with each other, provide all reasonable and necessary documentation, and take all necessary actions to satisfy the terms and conditions hereof and assure compliance with the terms of this Agreement, subject to prior written agreement between the Parties on payment by the requesting party of the requested party's direct costs and expenses in connection with such assistance. The Township's obligation to cooperate shall be further conditioned upon Berkeley

Developers paying and maintaining current real estate taxes, subject to any Exemption for the Inclusionary Development.

ARTICLE IX - NOTICES

9.1 Notices: Any notice or transmittal of any document required, permitted or appropriate hereunder and/or any transmittal between the Parties relating to the Property (herein "Notice[s]") shall be written and shall be served upon the respective Parties by facsimile or by certified mail, return receipt requested, or recognized overnight or personal carrier such as, for example, Federal Express, with certified proof of receipt, and, where feasible (for example, any transmittal of less than fifty (50) pages), and in addition thereto, a facsimile delivery shall be provided. All Notices shall be deemed received upon the date of delivery set forth in such certified proof, and all times for performance based upon notice shall be from the date set forth therein. Delivery shall be affected as follows, subject to change as to the person(s) to be notified and/or their respective addresses upon ten (10) days' notice as provided herein:

TO BERKELEY DEVELOPERS:

Berkeley Developers, LLC
Tony DiGiovanni
820 Morris Turnpike, Suite 201
Short Hills, NJ 07078
Fax: (973) 467-4628

WITH COPIES TO:

Bisgaier Hoff, LLC
Attention: Robert Kasuba Esq.
25 Chestnut St., Suite 3
Haddonfield, NJ 08033
Fax: (856) 795-0312

TO THE TOWNSHIP OF BERKELEY HEIGHTS:

Township of Berkeley Heights
Attention: John Bussiculo, Township Administrator
29 Park Avenue
Berkeley Heights, NJ 07922
Fax: (908) 464-6081

WITH COPIES TO:

McElroy Deutsch Mulvaney & Carpenter, LLP
Attention: Joseph Sordillo, Esq.
PO Box 2075
1300 Mount Kemble Avenue
Morristown, NJ 07960
Fax: (973) 425-0161

AND TO:

Jeffrey R. Surenian and Associates, LLC

Attention: Erik C. Nolan, Esq.
707 Union Avenue, Suite 301
Brielle, NJ 08730
Fax: (732) 612-3101

In the event any of the individuals identified above has a successor, the individual identified shall name the successor and notify all others identified of their successor.

ARTICLE X - MISCELLANEOUS

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

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

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

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

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

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

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

10.8 Necessity of Required Approvals: The Parties recognize that the site plans

required to implement the Inclusionary Development provided in this Agreement, and such other actions as may be required of the Planning Board or Township under this Agreement, cannot be approved except on the basis of the independent reasonable judgment by the Planning Board and the Township Council, as appropriate, and in accordance with the procedures established by law. Nothing in this Agreement is intended to constrain that judgment or to authorize any action not taken in accordance with procedures established by law. Similarly, nothing herein is intended to preclude Berkeley Developers from appealing any denials of or conditions imposed by the Planning Board in accordance with the MLUL or taking any other action permitted by law.

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

10.10 Entire Agreement: This Agreement constitutes the entire agreement between the parties hereto and supersedes all prior oral and written agreements between the parties with respect to the subject matter hereof except as otherwise provided herein.

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

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

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

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

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

the extent available. Further, the Parties may apply to the Court for relief, by way of a motion for enforcement of litigant's rights.

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

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

10.18 Conflicts. The Parties acknowledge that this Agreement cannot be affected by the Compliance Action or any amendments to the Township's Affordable Housing Plan or Land Use and Development Ordinances and this Agreement shall control with respect to those matters as applied to the Property. Upon the entry of a Judgment of Compliance and Repose in the Township's Compliance Action, and after the Compliance Action is concluded, the Court shall retain jurisdiction to ensure compliance with the terms and conditions of this Agreement. As to any inconsistencies between the Redevelopment Approvals and this Agreement, the Redevelopment Approvals shall control.

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

THE REMAINDER OF THIS PAGE IS PURPOSEFULLY BLANK

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

Witness/Attest:

BERKELEY DEVELOPERS, LLC

By: MARK WILF

David E. Taylor

By: Mark Wilf
MANAGING MEMBER

Dated: 10-13-2016

Witness/Attest:

TOWNSHIP OF BERKELEY HEIGHTS

By: ROBERT WOODRUFF

as its MAYOR

Ana Montano

By: Robert Woodruff
Robert Woodruff, Mayor

Dated: 10/13/16

**TOWNSHIP OF BERKELEY HEIGHTS
UNION COUNTY, NEW JERSEY**

RESOLUTION

WHEREAS, on March 24, 2015, the Township Council of the Township of Berkeley Heights adopted a resolution in which the Township reaffirmed its voluntary commitment to satisfy its affordable housing obligations, however they may ultimately be defined by COAH or a court; and

WHEREAS, in compliance with the New Jersey Supreme Court decision in In re Adoption of N.J.A.C. 5:96 & 5:97 by N.J. Council on Affordable Housing, 221 N.J. 1 (2015), on or about July 2, 2015, the Township filed an action with the Superior Court of New Jersey entitled In the Matter of the Application of the Township of Berkeley Heights, County of Union, Docket No. UNN-L-2405-15, seeking a Judgment of Compliance and Repose approving its Fair Share Plan, in addition to related reliefs (the "Compliance Action"); and

WHEREAS, on or about August 20, 2015, Berkeley Developers, LLC ("Berkeley Developers") filed a Motion to Intervene in the Compliance Action seeking to construct a three hundred (300) unit luxury residential rental development, with sixty (60) of such units being set aside for low and moderate income housing, on the property identified as Block 1901, Lot 35, commonly known as 100 Locust Avenue (the "Locust Avenue Site"); which intervention was granted by the Court on October 9, 2015; and

WHEREAS, after ongoing discussions, negotiations and mediations between the Township and Berkeley Developers, the parties have agreed upon the general terms of an age-restricted, residential rental development of the Locust Avenue Site, with an inclusionary affordable housing component; and

WHEREAS, the proposed residential development of the Locust Avenue Site would be permitted to be developed with a density of one hundred and ninety six (196) units, which units shall be age-restricted, with a minimum age of 55 years old, and have an inclusionary affordable housing component of 15% equivalent to 29 of the total units being developed as very low, low and moderate income affordable housing units; and

WHEREAS, the residential development of the Locust Avenue Site would proceed under the New Jersey Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1, et seq. (the "Redevelopment Law"), provided the Locust Avenue Site meets the criteria for the Township to declare it an area in need of redevelopment; and

WHEREAS, the Township and Berkeley Developers entered into this Memorandum of Understanding memorializing the agreed upon terms of the inclusionary, age-restricted, residential rental development of Property; and

**PART 19 – DESIGN STANDARDS
ARTICLE 19.1 PURPOSES**

Section 19.1.1 - Purpose

The purpose and intent of this Ordinance to:

- A. Set forth specific guidelines and standards to promote functional and attractive site plans and subdivisions.
- B. Provide guidelines and standards that shall be used by an applicant in preparing a development plan and by the Planning Board and Zoning Board of Adjustment in reviewing the same. In reviewing a development plan, the Planning Board and Zoning Board of Adjustment shall determine whether or not, and to what degree, an application for development meets such guidelines and standards. The Boards may approve, conditionally approve, request modifications, or deny any approval of the application for development based upon its review of the development plan.
- C. Ensure that any development gives due consideration to the physical, visual, and spatial character and scale of the existing streetscape, neighborhood, and district in which it is located and the township generally.
- D. Ensure that the design, location and façade treatment of the front, sides, and rear of all buildings and structures is done in an efficient and aesthetically pleasing manner so that they will not markedly incongruous with the character of the existing neighborhood or, if within the Downtown, with the standards and guidelines set forth in the Urban Design Plan and in the illustrative streetscape sketches presented herein.

ARTICLE 19.2 MODIFICATIONS AND WAIVERS

Section 19.2.1 - Permitted Deviations

The design standards and guidelines contained in this Part are the minimum requirements for site plan, subdivision, development or rehabilitation plans, and shall be the criteria for evaluating the plan and design of such developments. The guidelines and standards are not intended to restrict creativity and an applicant may request their modification or waiver, provided the applicant demonstrates to the Board not only the criteria for exceptions pursuant to N.J.S.A. 40:55D-51, but also that the resulting change will:

- A. Generally satisfy the purpose of this Part.
- B. Be designed in accordance with the Township's normally acceptable engineering, planning and/or architectural standards.

- C. Generally enhance the overall development plan for the tract, without adverse impacts on its physical, visual or spatial characteristics.
- D. Generally enhance the existing streetscape, neighborhood and district in which such development is located, without adverse impacts on their physical, visual or spatial characteristics, or on the Township generally.
- E. Not reduce the useful life or increase the cost of maintenance of the improvement to be modified, or otherwise have an adverse impact on the long-term function of the development.
- F. Not materially detract from the real property values of adjacent or nearby properties.

ARTICLE 19.3 COMPLIANCE

Section 19.3.1 - Statement of Plan

A report shall be submitted by the applicant that demonstrates compliance with all design standards and guidelines contained herein. The report shall include verbal and written descriptions, drawings, slides, and any other materials necessary to illustrate the proposed design elements and the scale of such in relation to people and neighboring properties. Compliance with Article 19 – Design Standards was made a checklist item for all development applications via Ordinance no. 16-2010 (Exhibit 1 attachment).

Section 19.3.2 - Building Design

Individual buildings shall respect the general image as presented in the Design Standards and shall take into consideration the adjacent or adjoining buildings which already embody the recommended design features. Any deviation shall require specific proofs as to why the Design Standards and Guidelines cannot be met.

Section 19.3.3 - Context

Consistency over an entire viewed area (context), including the street or street enclosure shall be created through consistency of materials, colors, sidewalk textures, streetscape, scale and proportion, lighting fixtures and street furniture. Context is defined as the adjacent and adjoining buildings within a minimum of 200 feet of the property line of the site plan, and within any viewshed where the buildings or structures or surfaces on that site plan are visible.

Section 19.3.4 - Incompatible Design Prohibited

The use of materials, colors or building configurations incompatible with these Design Standards and Guidelines shall be prohibited unless specific proofs can be presented as to why these cannot be met. If context area differs significantly from the Design Standards,

it must be demonstrated that the context in scale and character is of significant architectural merit.

ARTICLE 19.4 GENERAL STANDARDS AND GUIDELINES

Section 19.4.1 - Application

The standards and guidelines set forth in Part 19 shall apply to all districts throughout Berkley Heights, except that they shall not apply to those AH and OR-A zone districts in which development is conducted in substantial conformity with any conceptual site plan and elevations specifically referenced to the applicable Developer's Agreement for such zone or which received preliminary site plan approval from the Planning Board or Board of Adjustment prior to January 1, 1994. However, the standards and guidelines set forth specifically for the Downtown (Article 19.5.) shall override these general standards and guidelines, for application within the Downtown.

Section 19.4.2 - Site Plans

- A. This section shall apply to all site plan applications.
- B. The following standards shall be used to develop and review any site plan.
 1. **Building Location.** A building shall be located to front towards and relate to a public street, both functionally and visually. In a multiple building development, buildings located in the interior of a site creating courts or alleys, shall be located to front toward and relate to one another, both functionally and visually. To the extent possible, the development shall divide proposed buildings into smaller, individualized groupings, utilizing such features as courtyards, quadrangles, and alleys that encourage pedestrian activity and incidental social interactions among users. Spatial relationships between buildings shall be geometrically logical and architecturally formal. No building shall be oriented to front towards an open parking area.
 2. **Parking Lot Location.** Parking lots shall be located to the rear of a building and/or the interior of the site where its negative visual impact to adjacent properties and the public right-of-way can be minimized. Parking lots shall be prohibited in any front yard setback area.
 3. **Pedestrian Circulation.** A barrier-free walkways system shall be provided to allow pedestrian access to a building or use from both parking lots within the site and the Township's sidewalk system. Such a walkway system shall promote pedestrian activity both within the site itself and throughout the community by its integration with the township's sidewalk system. Walkways shall be separate from motor vehicle circulation to the greatest extent possible and shall provide a

pleasant route for users that will promote enjoyment of the site by, and encourage incidental social interaction among, pedestrians.

4. Street Lamps/Posts. The exterior of any site with greater than fifty (50) feet of street frontage shall have decorative lamp posts spaced at intervals of between forty (40) and sixty (60) feet along or near all street lines and driveways.
5. All pedestrian walkways shall have historic/decorative lighting fixtures as approved by the Planning Board. Light fixtures shall be positioned in proximity to pedestrian crosswalks at intersections. Walkways in the interior of a site shall have ornamental lamp posts spaced approximately thirty (30) to forty (40) feet apart. The style, size, and color of such lamp posts shall be determined by the Board based on existing fixtures located in similar developments in the Township. Lighting levels from such fixtures shall be as specified in Section 19.4.14.

Section 19.4.3 - Urban Design

This section shall apply to all site plan applications:

- A. Design Standards. The following standards shall be used to prepare and review the physical character and appearance of a development plan and specifically the appropriateness of the physical, visual and spatial relationships between the proposed development and the streetscape, neighborhood and district in which it is located.
 1. An individual development shall not be considered on its own, but with regard to the area in which it's located, including existing adjacent or nearby buildings, the geometric pattern of structures and roads, yards and streetscapes.
 2. Consistency within a district shall be created through the use of selected or complementary materials, colors, sidewalk textures, street textures, scale and proportions, lighting fixtures and street furniture (such as benches, trash receptacles, street signs, etc). If additional materials or colors are introduced, the applicant shall demonstrate that the materials or colors will enhance the design intent of this district.
 3. The physical, visual and spatial characteristics of a streetscape, neighborhood, district, and the Township generally shall be established and reinforced through the consistent use of compatible urban design elements, relating the characteristics of an individual development to other existing and planned developments in a harmonious manner, and resulting in a coherent overall development pattern for a streetscape, neighborhood and district, and the Township generally. A development plan shall relate to and reinforce urban design elements where such exist, as established by an urban design elements inventory conducted of the streetscape, neighborhood and district in which such development is located. If a site is located in a streetscape, neighborhood or

district where existing design elements are weak or nonexistent, the development plan shall establish design elements that relate to the community generally, based on an urban design inventory of the Township. In the case of an addition or renovation to an existing building of architectural merit, development plan shall also relate to and reinforce design elements of such existing building. Urban design elements to be addressed in any development plan shall include, but not be limited to, the following:

- a. Scale, as defined by the comparison of the height, width, mass and fenestration of a building or buildings in proportion to the human dimension.
- b. Massing, as defined by the shape, dimensions and volume of the solid form of a building and/or the space of which it is part.
- c. Proportion, as defined by the comparison of the width to height of a building wall or streetscape.
- d. Rhythm of solid to voids, as defined by the comparison of the solid portions of a building wall to the voids formed by door and window openings and recesses in same.
- e. Horizontal courses, as defined by the base course, middle wall section, belt courses and cornice of a building.
- f. Projections and recesses, as defined by the projections formed by such elements as bay windows, dormers, cornices and eaves from the building wall surface and the indentations formed by such elements as porch and window recesses from same.
- g. Roof form, as defined by the type, shape and pitch of the roof of a building.
- h. First floor elevation, as defined, by the height of the first floor level of a building from the ground and any elements, such as stairs, that facilitate transition between levels.
- i. Entrance treatment, as defined by the placement and articulation of the entrance to a building.
- j. Street orientation, as defined by the visual and functional orientation of the front façade, or other visible façades and entrance of a building to the street and sidewalk.
- k. Footprints, as defined by the location and coverage of the lot by the building area of the ground floor.

- l. Setbacks, as defined by the dimensions a building is setback from front, side, and rear lot lines.
- m. Yard areas, as defined by the areas of open space remaining between front, side and rear lot lines and a building.
- n. Architectural style, materials, colors, and details.
- o. Signage.
- p. Shade trees.
- q. Lamp posts and other lighting fixtures.
- r. Landscaping.
- s. Walls and fencing.
- t. Sidewalks and walkways.
- u. Benches, trash receptacles, and other street or site furniture.

Section 19.4.4 - Architectural Design

- A. The following standards shall apply to all site plans.
- B. Design standards. The following standards shall be used to develop and review the architectural design of all buildings and structures in a development plan. Where a development plan involves an existing building or a site upon which an existing building is located, said building shall be repaired, renovated, and restored to comply with this Section only if such modifications shall involve exterior renovations.
 1. Continuity of Treatment: The architectural treatment of a façade or roof shall be completely continued around all visually exposed sides of a building, whether such a building is a new or an existing building to be rehabilitated. All sides of a building shall be architecturally designed so as to be consistent with regard to style, materials, colors, and details.
 2. Façades: All visually exposed façades of a building shall have an articulated base course and cornice or soffit. The base shall be traditionally proportionate to the overall horizontal and vertical dimensions of a façade and may align with kick plate or still levels on the ground floor. The cornice, soffit overhang or roof shall terminate the top of a building and may project horizontally from the building wall plane and may be ornamented with moldings, brackets and other details that shall be appropriate to the architectural style of a building. The middle section of

a building may be horizontally divided at floor, lintel, or still levels with belt courses or similar architectural features. Building massing shall be considered an integral part of the design of a building and shall be architecturally compatible with the style, materials, colors, and details of the building

3. **Massing and Length:** Building wall offsets measuring a minimum of two (2) feet shall be provided at maximum spacing of forty (40) feet along each building wall to provide architectural interest and variety and relieve the negative visual effect of a single, long wall. The total measurement of such offsets shall equal a minimum of ten percent (10%) of the building wall length. The maximum spacing between such offsets shall be forty (40) feet. The minimum projection or depth of any such offset to be considered for this determination shall not be less than two (2) feet.

4. **Roof:** The type, shape, texture, and color of the roof of a building shall be designed to complement the architectural design of the building. A roof shall be considered as an integral part of the design of a building and shall be architecturally compatible with the style, materials, colors, and details of the building. The minimum permitted gable roof pitch shall be eight over twelve (8/12) and all gables on a building shall be of the same pitch, however a six over twelve (6/12) may be permitted if it can be demonstrated that the 8/12 roof negatively impacts the design of the roof and or adversely increases the overall building height. A flat roof may be permitted on a building of a minimum of two (2) stories in height, but only if all exposed walls on such a building have articulated cornices that project horizontally from the building wall plane. A mansard roof may be permitted on buildings which incorporate these elements as a portion of the entire style of the building (such as Victorian Second Empire or other appropriate architectural style), but only if it is located on the third story of a building, completely and integrally enclosing that story, completely and integrally enclosing that story. Flat or mansard roofs shall be prohibited on all other buildings. Architectural embellishments that add visual interests to roofs, such as dormers, belvederes, masonry chimneys, cupolas, clock towers and such similar elements shall be permitted, provided such as architecturally compatible with the style, materials, colors, and details of the building.

5. **Windows:** The fenestration of a building shall be considered an integral part of its design and shall be architecturally compatible with its style, materials, colors, and details. Window shall be vertically proportioned wherever possible. Windows located on the upper stories of a building shall be vertically aligned with the windows and doors on the ground level. All windows shall be double hung or casement types. A building designed of an architectural style that normally has windows with mutins or divided lights shall utilize them. Such mutin or divided light grids may be of the snap-on variety, if fitted on the exterior of the window or between the glazing of the window units.

6. Entrances: All entrances to a building shall be defined and articulated by utilizing such elements as lintels, pediments, pilasters, columns, porticos, porches, overhangs, railings, balustrades, awnings, and other such elements where appropriate. Any such elements utilized shall be architecturally compatible with the style, materials, colors, and details of such building.
7. Physical Plant: All air conditioning units, HVAC systems, exhaust pipes or stacks, and elevator housing shall be concealed from view from grade for a distance of five hundred (500) feet from the site. Such shielding shall be accomplished by utilizing the walls or roof of the building or a penthouse type screening device that shall be designed to complement the design of the building and shall be architecturally compatible with the style, materials, colors, and details of the building.
8. Materials, Colors, and Details: All materials, colors, and details used on the exterior of a building shall be architecturally compatible with the style of such buildings, as well as with each other. A building designed of an architectural style that normally includes certain integral materials, colors, and/or details shall have such incorporated into the design of such building.
9. Details: All architectural details used on the exterior of a building shall be compatible with the architectural style of the building. A building designed of an architectural style that normally has certain integral architectural details shall incorporate such details.
10. Shutters: A building designed of an architectural style that normally has shutters shall have them on all windows on the front façade. A building located on a corner site shall have shutters on all windows of all façades fronting on a street. To the extent possible, shutters shall be on hinges, and shall be proportioned to the actual size, height and width of the window.
11. Lighting: Light fixtures attached to the exterior of a building shall be designed to help accent its architectural features and the urban space of which it is part, shall be designed to complement the design of a building and shall be architecturally compatible with the style, materials, colors, and details of the building and other lighting fixtures used on the site. Careful attention shall also be given to the type of light source used and the light quality it produces. The type of light sources used on buildings, signs, parking areas, pedestrian walkways, and other areas of a site shall be the same or compatible. The use of low pressure sodium lighting shall be discouraged.
12. Signage: Signs affixed to the exterior of a building shall be designed to complement the design of the building and shall be architecturally compatible with the style, materials, colors, and details of the building and other signs used

on the site. Signs should adhere to Part 5, Signs of Appendix A of the Municipal Land Use Procedures Ordinance.

13. Multiple Tenancy: A building with multiple fronts or multiple tenants, whether or not the same type of use is located on the same floor level, shall be unified in its design treatment through the use of architecturally compatible style, materials, colors, details, awnings, signage, lighting fixtures, and other design elements.
14. Corner Buildings: A building on a corner site shall be considered a more prominent structure from an urban design standpoint because such buildings have at least two (2) front visible façades. Therefore, these structures shall have additional height, visual prominence, and design elements relating to its location as a corner site.
15. Multiple Buildings: A development that contains more than one (1) building or structure shall be unified through the use of architecturally compatible styles, materials, colors, details, awnings, signage, lighting fixtures, and other design elements.

Section 19.4.6 - Multi-family Buildings

- A. The standards and guidelines contained in this Section shall apply to all site plan applications for multi-family residential development, including townhouses and apartments.
- B. Development Standards. The following standards shall apply:
 1. Distribution and Design of Affordable Housing Units: In the developments of five (5) or more dwelling units that provide for affordable housing pursuant to Part 18, the affordable housing units shall be interspersed, as far as practicable, with market rate units. Affordable housing units shall not be easily distinguishable, from the exterior, from the market rate housing units by virtue of the architectural design style, materials, colors, or details.
 2. Site Design: The development plan shall locate buildings, parking areas, and open space in an arrangement that shall promote enjoyment of dwelling units, other site facilities, and the community as a whole by residents of the development. Dwelling units and buildings shall be orientated towards the street and interior open spaces and away from parking lots and garages.
 3. Individuality of Dwelling Units and Buildings: In order to provide attractiveness and individuality to dwelling units, buildings and complexes of buildings, while avoiding the monotonous repetition of design elements, the following design elements shall be utilized:

- (1) The addition of architectural embellishments to provide visual interest to roofs, such as dormers, belvederes, masonry chimneys, and such similar elements, provided such is architectural compatible with the style, materials, colors, and details of the building
- a. Defining and articulating front entrances to each dwelling unit or building, and entrances facing a street when such are not the same, by utilizing such front entrance details as lintels, pediments, porticos, pilasters, columns, railings, and overhangs to provide identity and individuality to such entrances. Porches are encouraged. Entry steps to each dwelling unit or building shall be constructed of brick or stone consistent with the architectural style of the building. A minimum of one low-wattage LED light fixture shall be provided for each exterior entrance to a dwelling unit or building. All of the above listed entrance elements shall be architecturally compatible with the style, materials, colors, and details of a building and may be varied between dwelling units, buildings, or complexes of buildings.
4. **Dwelling Unit Location:** No dwelling unit shall be located below grade level, whether fully or partially.
5. **Fire Escapes:** Buildings containing dwelling units located above the second story and requiring a second means of egress pursuant to the U.C.C. shall not utilize an attached external fire escape as one of the required means of egress. All fire escapes shall be designed and integrated into the architectural features of the buildings. Bolts on metal fire escapes are prohibited.
6. **Ground Floor Elevations:** The ground floor of each dwelling unit shall be elevated above grade, except for dwelling units designed for senior citizens or the handicapped.
7. **Common Open Space:** Active and passive recreational areas and other public and/or semi-public open space, such as courtyards, plazas, alleys, and pedestrian walkways shall be designed to promote use and enjoyment by residents of the development. Such areas shall be designed to utilize natural features of the site, including existing vegetation where possible, and shall be extensively landscaped with a wide variety of plant materials. Where such areas are enclosed by buildings, such as courtyards and plazas, they shall be designed to be architecturally formal and geometrically logical. This shall not preclude the use of curvilinear designs for walkways or landscaped areas.
8. **Yard Area Definition:** Front and side yards shall be appropriately landscaped. This selection and design of plantings shall be prepared by a certified landscape architect. If a unit must front on a parking area, its front yard shall be appropriately landscaped and the parking area shall be screened by architectural elements designed to match the architectural character of the adjacent units.

9. **Pedestrian Walkway Materials:** Formal walkways shall be constructed of brick, slate, cobblestone, colored/textured concrete or some combination of the above materials that is architecturally compatible with the style, materials, colors, and details of the buildings. Informal paths may be constructed of the above materials, crushed granite or shale stone.
10. An accessory building shall be provided for the storage of maintenance equipment if such is stored on the site, unless such accommodations are made within a primary building structure. Such buildings shall be compatible with the style, materials, colors, and architectural detailing of principle buildings.
11. **Cable Television Utility:** All dwelling units shall be provided with facilities for potential linkage to the Township’s cable television utility.
12. Adjacent units in the same building shall be adjoined in such a manner as to provide maximum sound proofing and privacy.
13. Apartment buildings shall have as many combinations of units as possible, of varied sizes. Groupings of units and access to units shall be designed to assure a sense of Safety and security for the residents, in particular when accessing and egressing vertical circulation elements.
14. Multi-family attached structures shall use a combination of vertical duplexes and single level apartments to maximize efficiency. Access to any unit shall not require a vertical, manual ascent of over two (2) stories.

ARTICLE 19.5 STANDARDS

Section 19.5.4 - Urban Design

- A. **Standards and Guidelines.** Urban design is the three dimensional relationship between structures, spaces and landscaping elements which determines the visual, spatial and physical impact of an area or space taking into consideration both the stationary and moving picture plane of the viewers and/or user. The following shall be used to develop and review the physical character and appearance of an development plan and specifically the appropriateness of the physical, visual, and spatial relationships between the proposed development, the adjacent and nearby buildings, the open spaces, both on and off the site, and to the district in which it is located
 1. **Context.** An individual development shall not be considered on its own, but with sufficient regard to the design guidelines and standards as set forth in the Design Standards.

2. Character and Consistency. The character of a zone, neighborhood, streetscape, district and community is created and maintained through the consistent use of compatible urban design and architectural design elements such as massing, scale, proportion, style, roof pitches, materials, colors, signage, building details, lamp posts and other lighting, fences, walls, shade trees and other landscaping, sidewalk and walkways materials and other groundscape treatments, benches, trash receptacles and other street furniture. Consistent use of compatible elements develops and reinforces design relationships and shall be encouraged. Architectural or streetscape elements that are incompatible with these guidelines shall be avoided. Materials or colors incompatible with the Design Standards shall not be allowed unless the applicant shows proof that the materials or colors will enhance the design intent of the district.

3. Each building, whether new or rehabilitated shall have a finished elevation, cornice and roof on all visible façades. The design of each building shall not be considered on its own, but with sufficient regard to the overall Urban Design Plan and the Design Standards.

4.
 - a. Relationship of Materials, Textures and Colors: The relationship between materials, textures, and colors of the façades and roof of a building or group of buildings shall conform to the recommended Material and Color Standards, and must be visually compatible with the predominant materials, textures, and colors used in buildings to which such are visually related.

 - b. Roof: The type, shape, texture, and color of the roof of a building shall be designed to complement the architectural design of the building. A roof shall be considered as an integral part of the design of a building and shall be architecturally compatible with the style, materials, colors, and details of the building. The minimum permitted gable roof pitch shall be eight over twelve (8/12) and all gables on a building shall be of the same pitch, however a six over twelve (6/12) may be permitted if it can be demonstrated that the 8/12 roof negatively impacts the design of the roof and/or adversely increases the overall building height.

The roof of a building shall be visually compatible with the streetscape and buildings to which such is visually related. Buildings shall have either a pitched roof or a roof designed with an articulated cornice. Gabled roofs shall have a minimum pitch of eight on twelve (8/12), however a six over twelve (6/12) may be permitted if it can be demonstrated that the 8/12 roof negatively impacts the design of the roof and/or adversely increases the overall building height. No gambrel or butterfly roofs shall be permitted.

Architectural embellishments that add visual interests to roofs, such as dormer-belvederes, masonry chimneys, cupolas, clock towers and such similar elements shall be permitted, provided such are architecturally compatible with the style, materials, colors, and details of the building.

- c. Continuity of Walls and Fences: Walls and open fencing shall be visually compatible with the streetscape, buildings, and spaces to which such are visually related. No chain link fences shall be permitted.

- d. Rhythm of Solids: The relationship of the solid portions of a building to the voids, formed by door and window openings and recesses, shall conform to the streetscape and buildings to which such is visually related. No chain link fences shall be permitted.

- e. Rhythm of Entrance: The relationship of entrances and porches to the street shall be visually compatible with the streetscape and buildings to which such is visually related. Entrances shall be recessed and or open inward where possible.

- f. Sidewalks: Public sidewalk, roadway crosswalks and internal pedestrian walkways shall follow the recommended Streetscape standards.

Section 19.5.5 - Streetscape

- A. The following standards and guidelines shall apply for the age-restricted development at 100 Locust Avenue.

- B. Standards and Guidelines.
 - 1. The streetscape edge shall include Belgian block or granite curbing, decorative lamp posts, sidewalks of brick, street trees and privacy edges (decorative fences or hedges) where use is other than retail service and other street furniture such as benches, trash receptacles, planters, bus stops and information/advertising kiosks.

 - 2. Sidewalks shall promote a pleasant ambience to pedestrians. Sidewalks shall comply with Section 10.6.7 of the Township Ordinances. The applicant shall give attention to color, detail, material and harmony of the sidewalk. Sidewalks should conform to material and color standards.

 - 3. Lamp posts and other lighting fixtures to be located on the sites shall conform to the general Lighting Standards (Section 11.1.5 in the Township Code of Ordinances) and to the standards set by any lighting posts and or fixtures which may be located in the adjacent portion of the public right-of-way and or on adjacent and nearby sites or rights-of-way.

4. Shade trees and other landscaping on the site or in the adjacent public right-of-way shall conform to the general Landscaping Standards (Section 11.1.4 Landscaping of the Municipal Land Use Procedures Ordinance), and to the standards set by shade tree and or landscaping on adjacent or nearby sites or rights-of-way.
5. Benches, trash receptacles and other street furniture on the site shall conform with the Design Standards and with those existing in the public right-of-way and on adjacent or nearby sites or rights-of-way.

C. Traffic Calming Features

These improvements are intended to enhance the walking experience, increase pedestrian connectivity to and through the corridor, and improve the appearance and comfort of district's streets and sidewalks. In addition, the Plan requires street furnishings and landscaping to soften the sidewalk environment and traffic calming features to enhance walking.

To improve the pedestrian environment, the following traffic-calming measures shall be considered or made where appropriately identified within the public right-of-way.

- Crosswalks ~~in the Downtown~~ shall be improved with painted stripes, solid paint in contrasting colors, or textured materials such as brick pavers. These highly visible treatments make drivers more aware of pedestrian crossing locations.

1. The design, placement and dimensions of these features shall be determined by the Planning Board or Zoning Board of Adjustment during preliminary site plan review.

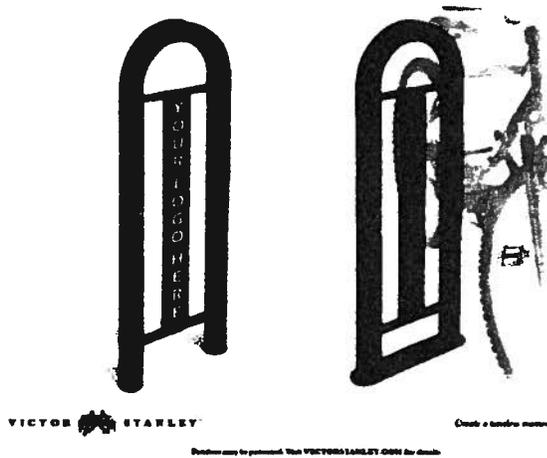
- The pedestrian portion of the public right-of-way shall include both a sidewalk walking area and a tree planting strip between the sidewalk and the curb, where trees and/or plantings are located.
- Street trees shall be planted at regular spacing on all streets.
- Streets shall include pedestrian-scale street lighting.
- Protective bollards may be installed at corners and pedestrian intersections, at the Township's discretion.

2. Street Furniture

The following streetscape improvement guidelines are to be complied with pursuant to Section 19.5.5 of the *Downtown Design Standards*, for any commercial property owner within the Downtown Corridor seeking site plan approval, to create a cohesive and attractive environment:

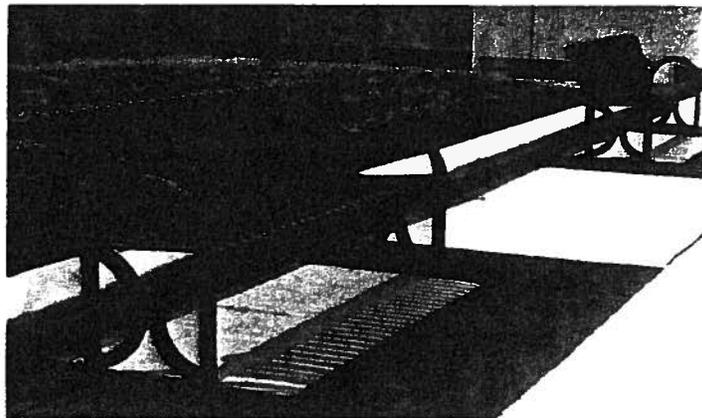
A. Bike Rack:

Secure Site Design LLC, Victor Stanley, Inc. – Cycle Sentry Series Model BRNS-301, in Black



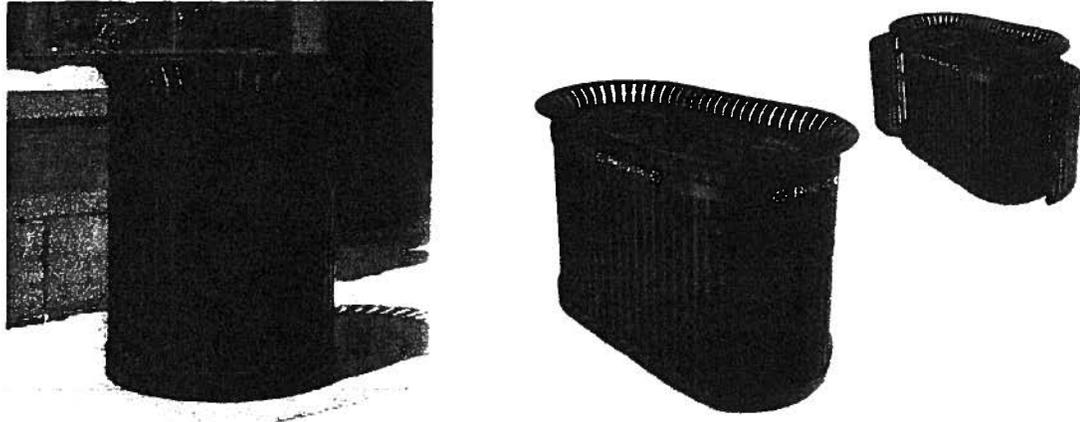
B. Bench:

Victor Stanley, Inc. City Series Model Cr-18, 6 Foot length, in Black
Benches are to be anchored to concrete pad, not to the brick pavers.



C. Trash and Recycling Receptacles:

1. Victor Stanley, Inc. Economy Series ES – 142, 36 – gallon with the Standard Tapered Formed Lid, in Black, with half-moon liners for 36 gallon (left); or
2. Victor Stanley, Inc. SD 242- 2- 36 Gallon with the Standard Tapered Formed Lid, Black color (right).



D. Pavers:

Hanover Prest Brick, Traditional, Red Charcoal Blend Natural Finish or Traditional Red Natural Finish Size 4x8



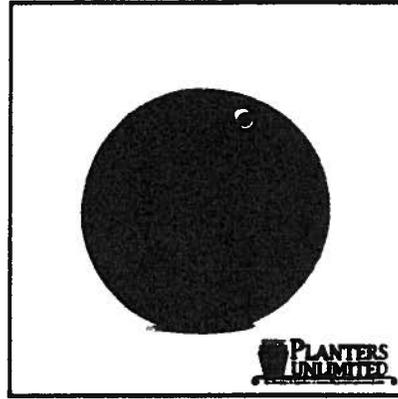
- Pavers to be installed at a 45 degree angle Herringbone Design
- Soldier, Solid border - 1 brick width
- Concrete fill underlay

E. Planters:

Victor Stanley, Inc. Zen Series, with Wide-Mouth Formed lid, in Black

- Preferred in the 50-70 lb size

Planters will be equipped with 24 inch -28 inch Round Planter Well Reservoir (WW-R24) through the Planters Unlimited company. Any other model must be approved equal.



F. Street Light:

Streetlamps are recommended to be placed along the curbing of the road in order to decrease their impact on pedestrian access. The streetscape shall be reinforced by the uniform line of streetlamps. Unique building setbacks and orientation will be considered. (See Dimensional Rendering on Page 27).

Shakespeare Historical Series – Washington Style 17” Anchor Base – AP17-12FS41W1.
(Fluted shaft, 12’ height, semi-gloss dark green, with weatherproof receptacle)

With the CAN Generation Series LED Post Top – ACN050LEDEU33113GN.

- Classical cage type, Glass Acorn top, Architectural finial in Hartford Green)

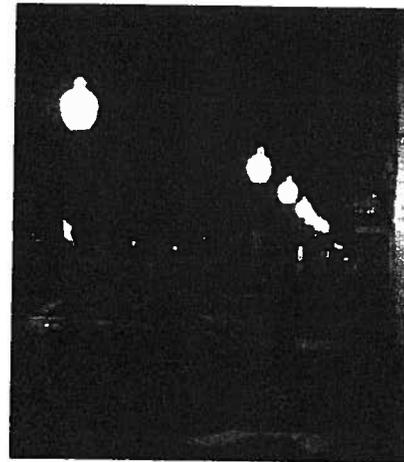


Light Bulbs

LED Light Bulbs will be the only permitted Light Bulb for Street Lights in the Downtown. It is recommended that a LED driver with a universal mounting bracket that will allow it to bolt on to the socket plate is installed. This driver has an adjustable stem to go up and down so the end user can align it with the top of the lens for a lantern or acorn fixture. This is a retrofit LED system with a driver, LED, and heat sync. There is currently no standardized way of measuring LED bulbs that are used to replace traditional bulbs¹, but the “color” measured in kelvins (k) and the lumens (lm) will be used for the LED bulbs in the Downtown. As recommended by the lighting manufacturer and the manual for the CAN Generation Series LED Post Top², the color of the LED used should be between close to the 4000k range and the light output of the LED should be in the 1100-1300 lm range. Any other light bulbs proposed to be used must be approved by the Zoning Officer and approved equal. Light bulbs and any replacement bulbs will be uniform amongst all streetlamps.

Equivalent wattages and light output of Incandescent, CFL and LED bulbs³		
Light Output	LEDs	Incandescents
<i>Lumens</i>	<i>Watts</i>	<i>Watts</i>
450	4 - 5	40
750 - 900	6 - 8	60
1100 - 1300	9 - 13	75 - 100

* 1100-1300 is the designated lumens range for the Downtown Standards. others included in this chart are for reference only



Section 19.5.6 Signage

A. Purpose and Intent.

The general intent of this subsection is to regulate and control the design of signs within the Downtown and specified adjacent areas to not only assist the general public in the location of various activities and businesses, but to create a cohesive identity through design and aesthetic planning. The Design Standards in this section apply to the Downtown (*Section 19.5.3 - Existing Conditions*) Signage and supersede any design regulations in Part 5 “Signs” of the Land Development Ordinance of Township Municipal Code. Signs in the Downtown are still subject to the height, area, number of signs, and other regulations outlined in Part 5. All signs must:

¹ <http://www.eco-revolution.com/lumens-and-light-output/>

² <http://www.cooperindustries.com/content/dam/public/lighting/products/documents/streetworks/brochures/streetworks-generation-series-led-bro.pdf>

³ http://eartheasy.com/live_led_bulbs_comparison.html

conform to all of the relevant provisions of the Part 5 ordinance and the must be issued the proper permit by the Zoning Officer.

The effectiveness of a sign is determined by a number of factors, including size, placement, content, legibility, letter size and color contrast. In this section, these factors are examined as a set of basic principles governing the design of any sign, no matter what the type of material.

Signs in the Downtown Corridor should advertise a place of business or provide directions and information. An effective sign and graphics system functions not as a separate entity but as an integral part of the built environment. Carefully planned, signs communicate essential information, while also ordering and enhancing the architectural character of Downtown. A sign's use of color, size, shape placement, and selection of lettering can attract or detract from its effectiveness. An effectively designed sign should:

- a. Be compatible with the surrounding physical and visual character of the area;
- b. Promote the "individuality" of establishments;
- c. Identify the business clearly and attractively;
- d. Enhance the building on which it is located; and
- e. Reduce the amount of visual clutter caused by excessive and poorly placed signage.

B. Sign Design

The Township Land Development Code has regulations to control the size, location, and number of signs, but code restrictions alone may not be enough. Design criteria are needed to encourage and coordinate well-designed signs. Sign copy area shall also be regulated by the Land Development Code to indicate the maximum area. The following sign guidelines are intended to assure the local merchant that all other Downtown commercial establishments are similarly regulated.

i. Recommended Sign Types

While many sign types are permitted in Downtown, the following sign types are recommended:

- a. Signs made of carved or sandblasted painted high-density eurythane foam, wood, or metal; hard mounted pvc-komacel; look or individual mounted letters; dimensional letters of formed plastic or metal; or pin-mounted letters with no background or raceway.

- b. Must be flush mounted on the front facade. Such signs may not be illuminated internally.
- c. Illumination may be either gooseneck lighting (colors: complement the sign and building; no yellow; recommend dark green, black, dark brown) or halo lit pin-mounted letters in soft white only.
- d. All signage within a contiguous building or plaza must be consistent in size and type and lighting.

ii. Prohibited Sign Types

In addition to the signs prohibited under Part 5 “Signs” of the Land Development Ordinance of Township Municipal Code, LED displays or signs, moving signs, signs with lit motion, neon and flashing signs, and unshielded spotlights are likewise prohibited.

Prohibited Materials

All stucco, vinyl, plastic, neon, sheet metal, and aluminum signs are prohibited.

iii. Monument Signs

Any sign supported by structures or supports that are placed on, or anchored in, the ground and that are independent from any building or other structure.

Freestanding monument signs may have two-faces and are subject to the height and area Standards outlined in Part 5 “Signs” of the Land Development Ordinance of Township Municipal Code. Monument signs must be made of stone, brick, or wood foundations, and follow the color standards outlined in Section 19.5.7 - Material and Color Standards and Guidelines below.

Prohibited Materials

All stucco, vinyl, plastic, neon, metal, and aluminum freestanding/monument signs are prohibited. Pylon or tall pole signs are prohibited.

C. Sign Illumination

The appearance of a well-designed sign can be enhanced, or marred, by the way in which it is lighted. Illuminated signs are important for businesses that stay open in the evening and for those that want to advertise their presence after closing. At night, illuminated signs and storefront display windows provide a pleasing, ambient light to the sidewalks and streets of the commercial district, making them appear lively, inviting and safe to pedestrians and passing motorists. Careful consideration should be given to the quality, quantity, method, and type of illumination.

selected. Ultimately, the type of light used and the way in which it is provided will determine the effectiveness of the sign, its perceived color and its relationship to surrounding building materials.

- a. Illumination may be either gooseneck lighting (colors: complement the sign and building; no yellow; recommend dark green, black, dark brown) or halo lit pin-mounted letters in soft white only

Section 19.5.7 - Material and Color Standards and Guidelines

- A. The following standards shall be specifically applied to develop and evaluate the architectural materials and colors of all buildings and structures in development plans located at 100 Locust Avenue.

Preferred primary materials for all building façades are: stone; masonry; brick; wood; stucco (except EIFS is not allowed); Hardie board, panels, or similar fiber cement siding; precast and cast stone; manufactured stone and, masonry; and glass; as well as cast iron, steel, aluminum and other types of metal. No more than three different primary materials should be used on building façades. Within the primary materials, variations in colors, textures, and pattern may be employed to further break up the bulk or mass of a building. The following materials are not appropriate in any location of the Downtown District:

- Materials with little or no precedent in Berkeley Heights, such as exposed concrete masonry units, Exterior Insulation Finish Systems (EIFS) and bare or stained wood.
- Faux treatments which mimic common materials, including imitation brick or stone facing, vinyl or asphalt siding, and sheet metal siding.
- Materials that age rapidly and are difficult to maintain, such as paint over shop-finished metal or plastic.

1. Materials: Exterior building materials shall consist of the following:

- a. **Walls** – Brick, natural or cultured stone, wood clapboard siding, cement composite siding (ie Hardie Board), cedar shake siding. Non-reflective and non-tinted glass. No vinyl or aluminum siding. Colors should comply with the Design Standards recommended “Colors”. Trim can be Azek or Fypon not EIFS.
- b. **Roofing** – Asphalt or cedar shingles, slate, copper, synthetic slate, and standing or batten seam metal, including aluminum. No red, green, white, light brown or multicolor allowed. Gray, black, and dark brown are the preferred colors.

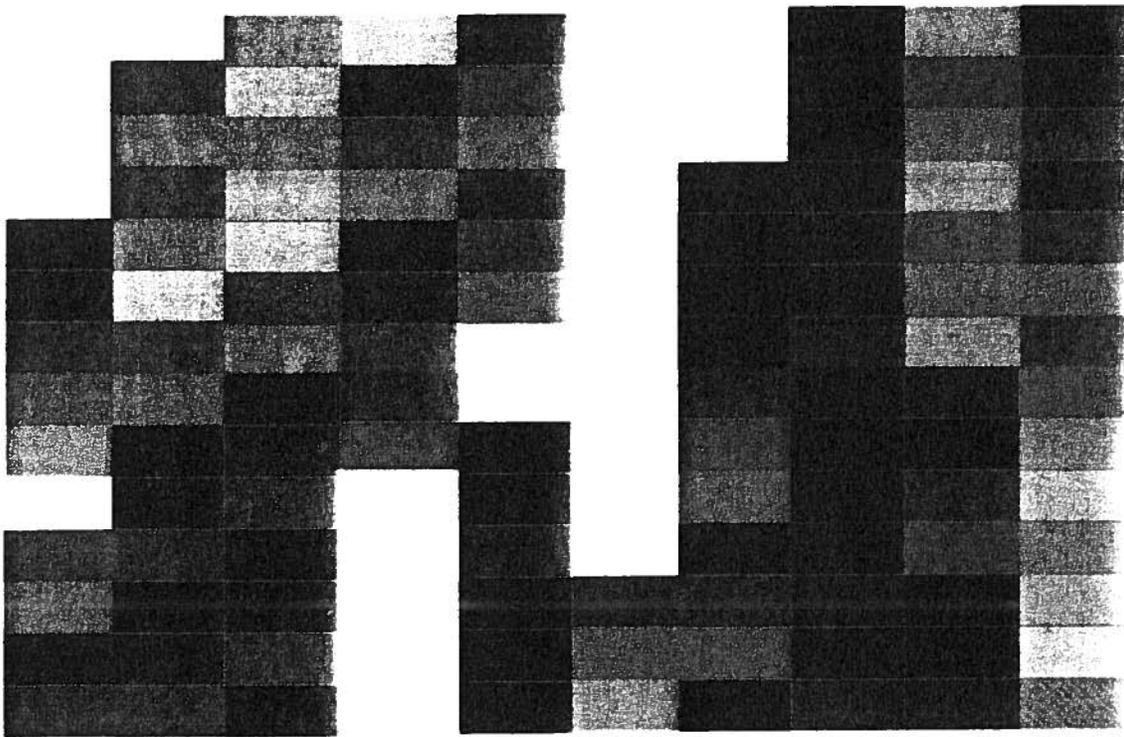
- c. **Door and window trim** – stone, wood, azek, or Fypon. EIFS are prohibited.
 - d. **Cornices and Soffits** – wood, stone, azek, or fiberglass.
 - e. **Shutters** – wood, or vinyl raised panel louver with woodgrain imprint.
 - f. **Awnings** – Awnings should be canvas and waterproof cloth materials over metal frames. Metal, vinyl and plastic awnings are prohibited. Translucent backlit awnings are prohibited. Colors should coordinate with the façade and comply with the Design Standards “Colors” in section 4.3.4 below. It is recommended that light coloring on a dark/black background is used, and other proposed designs adhering to the Design Standards “Colors” will be considered for review and approval.
 - g. **Gutters, leaders, and flashing** – galvanized steel, copper, colored anodized aluminum or terne coated stainless steel. Colors must conform with the recommended “Colors” of the Design Standards, but can also be white, and follow the scheme of the building.
 - h. **Sidewalks and walkways** – Public sidewalks, roadway crosswalks, and internal pedestrian walkways shall consist of:
 - (1) Hanover Prest Brick, Traditional, Red Charcoal Blend Natural Finish, or Tradition Red, or Red/Brown Natural Finish 4x8, Herringbone Design at a 45 Degree Angle
2. **Prohibited Materials:** The use of bare aluminum, other bare metal materials or exposed concrete block as exterior building materials shall be specifically prohibited. In no instance shall a sidewalk located in a public right-of-way be permitted to be constructed of asphalt.
 3. **Consistent Application:** Façade design and finish materials should be considered in three dimensions, particularly as buildings turn corners. Materials and/or details should be extended around building corners and extensions in order to avoid a “pasted on” appearance. All building façades adjacent to or easily visible from a public street, walkway, or open space should exhibit the same or similar degree of architectural detailing as the building’s primary, street-facing façade. Material changes should occur at a logical transition point, related to dimensional architectural massing or detailing, rather than, for example, creating an arbitrary pattern within a flat façade.
 4. **Colors:** All exterior portions of a building and all materials used on it shall be of such colors or hues as those recommended below:

All exterior portions of a building and all materials used on it shall be of such colors or hues as, recommended in Benjamin Moore Historical Colors, colors: HC 19-21, 23-48, 67-93, 95-114, 121-126, 145-174; and Benjamin Moore America's Colors, colors: AC 1-6, 16-18, 22-42.

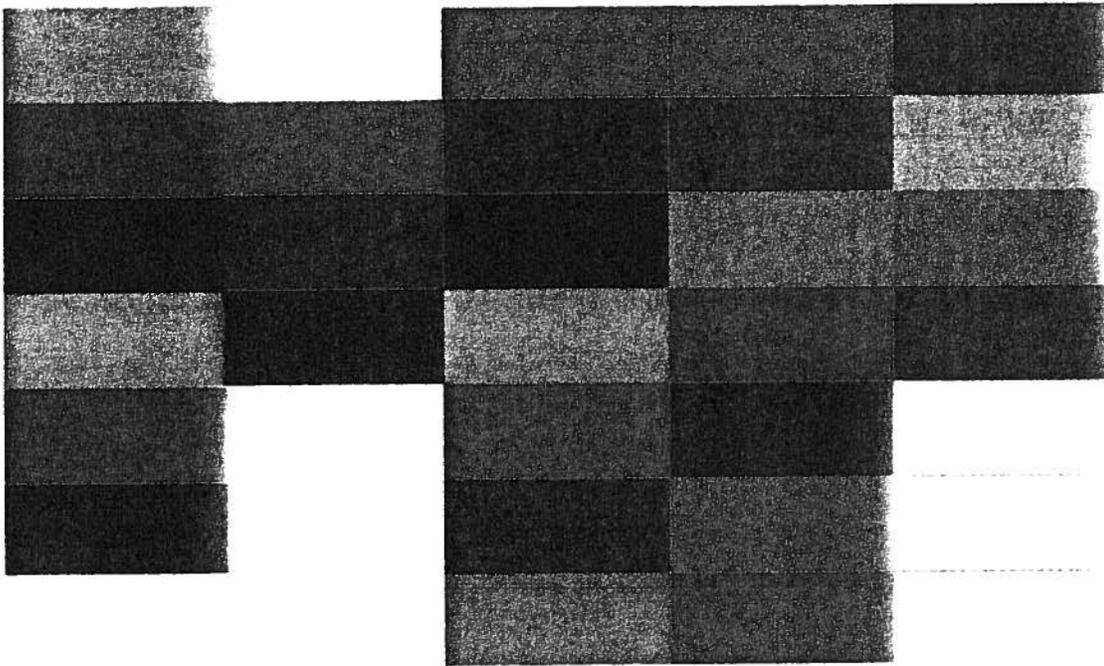
Colors not listed may be permitted if such colors are shown by the applicant to be substantially consistent and compatible with an approved color.

The recommended color swatches are detailed below:

Benjamin Moore Historical Colors



Benjamin Moore America's Colors



In addition to the Applicable Standards above, the following standards will be met for the 100 Locust Avenue project:

1. No massed walls of siding as the primary building material.
2. No greater than two (2) stories of hardi plank (or equal) siding along the building elevation. The intent is to have at least 50% of the building elevation on a four story building to have stone. The amount of stone may be averaged to allow a greater amount of stone at the building corners or other interior elevations building sections;
3. At least two (2) colors of siding will be used;
4. Metal roofing will be incorporated as applicable to the concept building elevations.
5. The roofline will be ornamented with moldings, brackets and other details that shall be appropriate to the architectural style of the building.
6. All window casing shall be a minimum of a 1" x 4" wood, clad or synthetic wood (Azek) material.
7. The main entrance to the site will be enhanced with landscaping and large evergreen trees to buffer the residential units along the Locust Drive & main entry driveway;
8. All colors will be an approved equal consistent with the Benjamin Moore Historical Color series outlined in the Part 19 Design Standards;
9. The purpose of the 100 foot building setback along Locust Avenue is to maintain and preserve and enhance the existing wooded area along the Locust Avenue property frontage to the maximum extent possible;
10. The developer has identified a group of existing mature trees, identified as A thru H and J on the Tree Survey. The intent of the two building design layout is to preserve these existing trees, and design the buildings to work with the existing topography in order to limit the exposure of the building to 3 stories along the entire frontage of the northern

(larger) building with a 4 story exposure along the entire northern building elevation (along the railroad tracks). The southern building will have a 3 story exposure along Locust Avenue, sloping down to a 4 story building exposure on the building sides and all interior building elevations;

11. These notes are based the Exhibits prepared for the Locust Avenue Settlement Agreement.

Clarke Caton Hintz

Hon. Camille M. Kenny, J.S.C.
Union County Superior Court
Union County Court House
2 Broad Street
14th Floor Tower
Elizabeth, NJ 07207

October 13, 2016

Re: In re Township of Berkeley Heights
Docket No. UNN - L - 2405 - 15

Dear Judge Kenny,

This letter report is submitted to the Court pursuant to my appointment to serve in a limited capacity as a special master in the above-captioned matter. My participation is solely to address the intervention of Berkeley Developers, LLC in Berkeley Heights declaratory judgment application due to a potential conflict of interest which the special master, Elizabeth McKenzie, identified.

Berkeley Developers, LLC (hereinafter "Berkeley") was granted intervention in the Township's DJ action by the Court on October 9, 2015. Berkeley seeks to build an inclusionary residential development on a 10.1 acre parcel designated as Block 1901, Lot 35, commonly known as 100 Locust Avenue. The Locust Avenue site is located between an existing single family detached housing neighborhood and a light industrial district and, as such, is a suitable transitional site for multi-family housing.

After ongoing negotiations, the parties agreed upon the general terms of an age-restricted (55 years and older) rental development of 196 units. Pursuant to a Memorandum of Understanding entered into by the parties on February 23, 2016 the development would include a 15% affordable housing set-aside, or 29 units, which would be developed as very low, low and moderate income units in accordance with applicable Uniform Housing Affordability Controls ("UHAC"). The affordable units would be deed-restricted for a period of 30 years from initial occupancy.

The Memorandum of Understanding ("MOU") also indicates that the site will be declared a "non-condemnation area in need of redevelopment" pursuant to N.J.S.A. 45:14A - 12 and that the parties would negotiate a Payment In Lieu of Taxation ("PILOT") agreement. In fact, the Township adopted a Resolution declaring the site a redevelopment area on August 23, 2016.

Clarke Caton Hintz

Other prominent terms of the MOU are that the Township reserves the right to approve the final concept plan, architectural design and site improvements and that Berkeley agrees to provide a traffic study and, if warranted, pay for traffic signalization at the nearby intersection of Locust Avenue and Snyder Avenue.

The MOU contemplated that the parties would enter into a Settlement Agreement which would be presented to the Court for approval as part of Berkeley Heights' compliance plan for the "third round". After additional negotiations, the parties were able to finalize the form of agreement and should execute it later today.

The Settlement Agreement incorporates all of the salient features of the MOU as set forth above as well as the following exhibits:

- Exhibit B1: building elevations
- Exhibit B2: concept plan building layout
- Exhibit C: Township design standards which will apply to the project
- Exhibit D: Berkeley Developers PILOT proposal

Consequently, the parties have agreed on all of the terms which were anticipated to be covered by the Settlement Agreement. Preparation of the Redevelopment Plan is in process as is the PILOT, which will be part of the Redevelopment Agreement between the Township and Berkeley Developers.

Ms. McKenzie's thorough master's report sets forth the Township's present need of 11 units and its third round prospective need of 389 units and describes the components of the Township's proposal to address its obligation. She then evaluates the fairness of Berkeley Heights' proposed settlement with the Fair Share Housing Center ("FSHC"). Her evaluation is guided by the criteria set forth in East/West Venture v. Borough of Fort Lee, 286 N.J. Super 311 (App. Div. 1996), a case in which I was privileged to serve as special master. Ms. McKenzie applied the relevant criteria to the entirety of the Township's plan and settlement with FSHC. Given my limited role, I will apply the "East/West" criteria to the Township's settlement with Berkeley.

I. Consideration of the number and rationale of affordable units being constructed¹

Of the 196 total units being proposed Berkeley has committed to set aside 29 units as affordable to very low, low and moderate income households. This translates to a 15% setaside, which is consistent with COAH's second round rules

¹ This criterion corresponds to both the first and second criteria in Ms. McKenzie's report.

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(N.J.A.C. 5:93 – 5.15 (c) 5) and with long standing judicial precedent for inclusionary developments in which the affordable housing is for rent, as opposed to for sale. The density of the Berkeley development at 19.4 units/acre (196 units on a 10.1 acre site) is well above the 10 unit/acre baseline suggested in COAH's rules (N.J.A.C. 5:93 – 5.15 (c) 5). Consequently, both the proposed density and the affordable housing set-aside set forth in the settlement agreement are well grounded in COAH's rules and Court precedent for inclusionary rental developments.

2. Other Contributions by the Plaintiff

Under the fairness analysis any other contributions being made by Berkeley must be considered. Under the terms of the settlement agreement, Berkeley is obligated to provide a traffic study and to pay for the signalization of the intersection of Locust Avenue and Snyder Avenue if warranted by the Township Engineer and the NJ Department of Transportation. This obligation continues during the period covered by the PILOT, with a continuing responsibility on the part of Berkeley to provide updated traffic studies not more frequently than at 5 year intervals.

3. Other components of the settlement that contribute to the satisfaction of the constitutional obligation

The settlement agreement obligates the Township to prepare and adopt a Redevelopment Plan for the Locust Avenue site within a specified schedule. It also commits both parties to negotiate and adopt a Redevelopment Agreement which will include a PILOT agreement within a specific time frame. The attention to detail and commitment to a rigorous schedule for providing these critical documents will expedite the approval and, ultimately the construction of the affordable housing and thereby contribute to satisfaction of the constitutional obligation.

Similarly, as articulated by Ms. McKenzie in her report, rental housing, such as is committed to by Berkeley in the settlement agreement is more accessible to lower income households who are often unable to qualify for a mortgage than for sale housing.

4. Other factors which may be relevant to the fairness of the settlement

As Ms. McKenzie points out, the Township's settlement with FSHC protects the Berkeley redevelopment in the event of a subsequent binding, unappealable

Clarke Caton Hintz

determination of municipal fair share obligation which is below the 389 unit prospective need. Such a ruling would not entitle the Township to abandon the settlement with Berkeley.

Furthermore, the settlement calls for the Planning Board to expedite the processing of Berkeley's development applications in accordance with COAH's second round rules (N.J.A.C. 5:93 – 10.1 (a)). This provision is customary in *Mount Laurel* settlements and can be a significant factor in facilitating the delivery of affordable housing. The Township's adoption of the Area in Need of Redevelopment designation *prior* to the time set forth in the settlement agreement is a welcome indication that Berkeley Heights is supportive of expediting the approval of the project.

In conclusion, as directed by the Court, I have evaluated the "Locust Avenue Project Settlement Agreement" between Berkeley Heights Township and Berkeley Developers, LLC and find that it is fair and reasonable to the interests of low and moderate income households. I have undertaken this review in accordance with the standards set forth in East/West Venture v. Borough of Fort Lee, 286 N.J. Super. 311 (App. Div. 1996).

In closing I would like to express my appreciation to the parties for their efforts in achieving settlement. Settlement of *Mount Laurel* litigation – so long as it meets the appropriate standards for judicial approval – is clearly preferable to the adjudication of such disputes.

I would be pleased to respond to any questions on this report from Your Honor or to the parties and appreciate the opportunity to be of service in this matter.

Sincerely,



Philip B. Caton, PP, FAICP

C. Elizabeth C. McKenzie, AICP, PP
Erik Nolan, Esq.
Jeffrey A. Surenian, Esq.
Joseph V. Sordillo, Esq.
Kevin D. Walsh, Esq.

Adam Gordon, Esq.
John Bussiculo, Township Administrator
Michael Mistretta, PP, Township Administrator
Robert Kasuba, Esq.
Meghan Barrett Burke, Esq.

RECEIVED OCT 27 2016

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Attorneys for Declaratory Plaintiff, Township of Berkeley Heights
Jeffrey R. Surenian (Attorney ID: 024231983)
Erik C. Nolan (Attorney ID: 014032006)

FILED
OCT 19 2016
GAMILE M. KENNY
J.S.C.

**IN THE MATTER OF THE
APPLICATION OF THE TOWNSHIP
OF BERKELEY HEIGHTS, COUNTY
OF UNION**

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: UNION COUNTY

DOCKET NO.: UNN-L-002405-15

Civil Case
(*Mount Laurel II*)

**ORDER APPROVING SETTLEMENT
AGREEMENT BETWEEN THE
TOWNSHIP OF BERKELEY HEIGHTS
AND FAIR SHARE HOUSING CENTER**

THIS MATTER having been opened to the Court by Jeffrey R. Surenian and Associates, LLC, on behalf of declaratory plaintiff, Township of Berkeley Heights (hereinafter "the Township" or "Berkeley Heights") via a Declaratory Judgment Complaint filed on July 2, 2015 to approve the Township's Housing Element and Fair Share Plan (hereinafter "Fair Share Plan") in response to In Re Adoption of N.J.A.C. 5:96, 221 N.J. 1 (2015) ("Mount Laurel IV"); and the Court having granted the Township immunity from Mount Laurel lawsuits from the time of the filing of the Township's Declaratory Judgment action (hereinafter "DJ Action"); and the Court having appointed Elizabeth C. McKenzie, A.I.C.P., P.P., as the Special Mount Laurel Court Master (hereinafter the "Court Master"); and, due to Ms. McKenzie's identification of a potential conflict involving one of the Intervenor (Berkeley Developers, LLC), Philip B. Caton, P.P., F.A.I.C.P., serving as the Court Master for the Berkeley Developers, LLC project only; and Fair Share Housing Center ("FSHC") having participated in the Township's DJ Action as an "interested party" and not as a formal Intervenor; and FSHC's expert, David Kinsey, PhD, P.P.,

F.A.I.C.P., having issued an expert report that calculated fair share obligations for all of the municipalities in the state; and the Township having hired Econsult Solutions, Inc., which produced its own expert report calculating fair share obligations for all municipalities in the state; and the Township's professionals and Kevin D. Walsh, Esq., of FSHC having entered into mediation supervised by the Court Master to try to agree on the magnitude of the Township's third round fair share obligation and how the Township would comply with same; and the Township's professionals and FSHC having agreed upon a form of Settlement Agreement (attached hereto as Exhibit P-1 and referred to hereinafter as the "FSHC Settlement Agreement"), which was executed by Kevin D. Walsh, Esq., on behalf of FSHC; and the Township Council having adopted a resolution on September 20, 2016 (attached hereto as Exhibit P-2) authorizing the Mayor of Berkeley Heights to execute the FSHC Settlement Agreement, which he subsequently did; and that at this point in the process resulting from the Mount Laurel IV decision, when fair share obligations have yet to be definitively determined, it is appropriate for FSHC and the Township to have arrived at a settlement regarding the Township's third round, present and prospective need, instead of doing so through plenary adjudication of the third round, present and prospective need; and the Township having prepared a Final Summary of its Fair Share Plan (which contains all of the major terms of the settlement, and is hereinafter referred to as "Final Summary of Plan"), along with a Vacant Land Analysis (hereinafter "VLA"), both of which are attached hereto as Exhibit P-3; and three developers (Berkeley Developers, LLC, Berkeley Heights Developers, LLC, and Lockhern Property, LLC) having intervened into the Township's DJ Action; and the Township having reached settlements with all three intervenor developers (see attached Exhibits P-4, P-6 and P-8), for projects that will produce affordable housing in the Township; and the Township also having entered into a Development Agreement with the Connell Company, attached hereto as Exhibit P-10, which will also produce affordable housing in the Township; and the Township Council having adopted

resolutions (attached hereto as Exhibits P-5, P-7, P-9 and P-11) authorizing the Mayor of Berkeley Heights to execute the agreements with the developers, which he subsequently did; and the Court having set a date of October 17, 2016 for a Fairness Hearing to entertain approval of the settlement between FSHC and the Township, and to determine whether said settlement is fair, reasonable and adequately protects the interest of low and moderate income households; and the Township having provided proper public and actual notice of the Fairness Hearing; and no objections to the settlement having been received; and counsel for the Township having prepared a Certification of Notice, attached hereto as Exhibit P-14, to document that proper notice of the Fairness Hearing had been given, and that no objections had been received; and the Court Master having submitted a report to the Court on October 10, 2016 (attached hereto as Exhibit P-12) regarding the proposed settlement between FSHC and the Township, as well as an evaluation of the settlements between the Township and Berkeley Heights Developers, LLC, and Lockhem Property, LLC; and Philip B. Caton, P.P., F.A.I.C.P., having prepared a report (attached hereto as Exhibit P-13) regarding the settlement between the Township and Berkeley Developers, LLC; and the Fairness Hearing having been held on October 17, 2016, during which Exhibits P-1 to P-14, which are attached hereto, were marked into evidence; and the Court having considered the testimony taken during the Fairness Hearing, as well as the comments of counsel; and the Court having reviewed all of the documents submitted into evidence during the Fairness Hearing; and the Court being satisfied that the parties are entitled to the relief sought; and good cause having been shown;

It is hereby ordered on this 17th day of October, 2016, as follows:

1. The Court finds and determines pursuant to the judicial standards prescribed by the Appellate Division in East/West Venture v. Bor. Of Fort Lee, 286 N.J. Super. 311 (App. Div. 1996), and through analysis of the FSHC Settlement Agreement (attached hereto as Exhibit P-1), the Court Master's report (attached hereto as Exhibit P-12), and on the basis of the testimony

taken during a Fairness Hearing conducted on October 17, 2016; that the settlement between the FSHC and the Township is fair, reasonable and adequately protects the interest of low and moderate income households, and the Court hereby approves the FSHC Settlement Agreement, which is attached hereto as Exhibit P-1.

2. The Court also finds that after considering the Master's Reports of both Elizabeth C. McKenzie, A.I.C.P., P.P., and Philip B. Caton, P.P., F.A.I.C.P. (Exhibits P-12 and P-13), and considering the testimony of Elizabeth C. McKenzie, A.I.C.P., P.P., that the settlements between the Township and Berkeley Developers, LLC, Berkeley Heights Developers, LLC, and Lockhern Property, LLC (Exhibits P-4, P-6 and P-8), as well as the Development Agreement between the Township and the Connell Company (Exhibit P-10), are fair and reasonable to low and moderate income households and are hereby approved.

3. On April 17, 2017, the Court will hold a Compliance Hearing to consider approving the Township of Berkeley's Heights' Housing Element and Fair Share Plan. Prior to the Compliance Hearing the Township shall (a) prepare a Housing Element and Fair Share Plan, including a Spending Plan, reflecting all of the terms and conditions of the FSHC Settlement Agreement (Exhibit P-1), along with all necessary implementing ordinances and exhibits; (b) submit the Housing Element and Fair Share Plan to the Court Master and interested parties for review and comment; (c) have the Housing Element and Fair Share Plan adopted by the Township Planning Board; (d) have the Housing Element and Fair Share Plan endorsed by the Township Council; and (e) submit the Housing Element and Fair Share Plan, and all required supplementary documentation, including the Spending Plan, to the Court, the Court Master and interested parties for final review and recommendation by the Court Master and for approval by the Court. After the Compliance Hearing to approve the Township's Housing Element and Fair Share Plan is held, the Court will consider issuing a Judgment of Compliance and Repose, which

will provide the Township and its Planning Board with immunity from Mount Laurel lawsuits through July 1, 2025.

4. The temporary immunity from Mount Laurel lawsuits that is currently in place for the Township and its Planning Board will remain in place for a period of 220 days from the entry of this Order.

5. As a result of the Settlement between the Township and FSHC, the Township's Present Need or Rehabilitation Obligation is 11, the Township's Prior Round Obligation is 183 and the Township's third round Fair Share Obligation is 389.

6. The Township has undertaken a vacant land analysis, and, as a result of that analysis, the Township, FSHC and the Court Master have agreed that the Township is entitled to a vacant land adjustment such that it has a Realistic Development Potential ("RDP") of 359 units and a remaining portion of its allocation of the third round need of 30 units.

7. The Township shall continue to implement its rehabilitation program, currently being run by Mary M. Moody, P.P., to satisfy its 11-unit Rehabilitation Obligation.

8. The Township has satisfied its 183-unit Prior Round Obligation as follows:

- a. 91 RCA credits from the Township's 129-unit Regional Contribution Agreement ("RCA") with the City of Newark.
- b. 47 constructed and occupied affordable units.
- c. 45 rental bonuses.

9. The Township will satisfy its 359-unit RDP as follows:

- a. 119 units from six (6) new inclusionary redevelopment projects, including all three of the Intervenor sites.
- b. 57 units from two redevelopment projects in the DMX and DH-24 zones.
- c. 55 constructed and occupied affordable units.
- d. 38 remaining RCA credits (applied to 1999-2008 portion of obligation).
- e. 90 rental bonuses.

10. The Township will satisfy the 30-unit remaining portion of its allocation of the third round regional need via (a) 10 affordable units to be built through redevelopment within the

Township's HB-2, HB-3 and DD downtown districts and (b) a town wide Mandatory Set-Aside Ordinance.

11. All other terms and conditions in the FSHC Settlement Agreement (Exhibit P-1) shall be adhered to, and all such terms and conditions are hereby incorporated by reference.

12. Berkeley Heights shall pay \$15,000 to FSHC within 10 days after the entry of this Order.

13. Prior to the Compliance Hearing scheduled for April 17, 2017, the Township will satisfy all of the conditions and requirements found in the Court Master's October 10, 2016 report, which is attached hereto as Exhibit P-12.

14. Counsel for the Township shall provide copies of this Order to all counsel of record and to the Court Master within seven (7) days of receipt.

Reasons set forth on the record on 10/17/16.



HONORABLE CAMILLE M. KENNY, J.S.C.