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April 26, 2018

James E. Franklin II, Esq.
Youngblood, Franklin, Sampoli & Coombs, P.A.
Cornerstone Commerce Center
1201 New Road, Suite 230
Linwood, NJ 08221-1159

Re: In the Matter of the Application of the City of Somers Point, County of Atlantic, Docket No. ATL-L-1538-15

Dear Mr. Franklin:

This letter memorializes the terms of an agreement reached between the City of Somers Point (the City or "Somers Point"), the declaratory judgment plaintiff, and Fair Share Housing Center (FSHC), a Supreme Court-designated interested party in this matter in accordance with In re N.J.A.C. 5:96 and 5:97, 221 N.J. 1, 30 (2015)(Mount Laurel IV) and, through this settlement, a defendant in this proceeding.

Background

Somers Point filed the above-captioned matter on July 2, 2015 seeking a declaration of its compliance with the Mount Laurel doctrine and Fair Housing Act of 1985, N.J.S.A. 52:27D-301 et seq. in accordance with In re N.J.A.C. 5:96 and 5:97, supra. Through the declaratory judgment process, the City and FSHC agreed to settle the litigation and to present that settlement to the trial court with jurisdiction over this matter to review, 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.

Settlement terms

The City and FSHC hereby agree to the following terms:

1. FSHC agrees that the City, through the adoption of a Housing Element and Fair Share Plan conforming with the terms of this Agreement (hereafter "the Plan") and through the implementation of the Plan and this Agreement, satisfies its obligations under the Mount Laurel doctrine and Fair Housing Act of 1985, N.J.S.A. 52:27D-301 et seq., for the Prior Round (1987-1999) and Third Round (1999-2025).
2. At this time and at this particular point in the process resulting from the Supreme Court's Mount Laurel IV decision, when Third Round 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.
3. FSHC and Somers Point hereby agree that Somers Point's affordable housing obligations are as follows:

Rehabilitation Share (per Kinsey Report ¹)	25
Prior Round Obligation (pursuant to N.J.A.C. 5:93)	103
Third Round (1999-2025) Prospective Need (per Kinsey Report, as adjusted through this Agreement)	246

4. For purposes of this Agreement, the Third Round Prospective Need shall be deemed to include the Gap Period Present Need, which is a measure of households formed from 1999-2015 that need affordable housing, that was recognized by the Supreme Court in In re Declaratory Judgment Actions Filed By Various Municipalities, 227 N.J. 508 (2017).
5. The City's efforts to meet its present need include the following: participation in the rehabilitation program administered by the Atlantic County Improvement Authority's Rehabilitation Program. This is sufficient to satisfy the City's present need obligation of 25 units.
6. As noted above, the City has a Prior Round prospective need of 103 units, which is met through the following compliance mechanisms:

Development	Units	Bonus	Credits
Bay Avenue Settlement AH-1, Bass Harbor Site (Rental)	26	26	52
9-Qualifying Group Home Bedrooms (2 Homes Administered by Progressive Living Units and Systems (6 bedrooms), 1 Home Administered by Disabilities Resource Center (3 bedrooms))	9	0	9
Plantation Bay (inclusionary zoning family rental per prior approved Settlement Agreement)	75	0	75
Total (with 103 with 33 unit surplus)	110	26	136

7. The municipality, as calculated in Exh. A, has a realistic development potential (RDP) of 13 units. That RDP will be satisfied as follows:

Conversion of abandoned/foreclosed properties to affordable housing -- The City currently has a substantial number of registered foreclosed homes. The City will convert 13 such homes into low- and moderate-income housing (which, at the discretion of the City may include rental and/or for-sale units one or more conversions to group or special needs homes for which per bedroom credit shall be applied accordingly to meet a portion of the 13 unit obligation in accordance with N.J.A.C. 5:93-5.8, and reduce the remaining requirement for 13 homes accordingly). As part of the City's Housing Element and Fair Share Plan, the City will describe how it will convert these units into affordable housing in conjunction with one or more rehabilitation entities, which shall be designated as part of its Housing Element and Fair Share Plan, in accordance with the requirements of N.J.A.C. 5:93-5.5. The City will as part of its Housing Element and Fair Share Plan and Spending Plan show how it will fund such a program with Spending Plan and/or other sources and provide for a mechanism to address any shortfall in funding in accordance with N.J.A.C. 5:93-5.5. The City and FSHC reserve the right to agree to

¹ David N. Kinsey, PhD, PP, FAICP, NEW JERSEY LOW AND MODERATE INCOME HOUSING OBLIGATIONS FOR 1999-2025 CALCULATED USING THE NJ COAH PRIOR ROUND (1987-1999) METHODOLOGY, July 2016 and April 2017.

substitute alternative mechanisms for part or all of the 13 homes referenced in this paragraph through amendment of this Agreement pursuant to paragraph 24.

The RDP of 13, subtracted from the Third Round obligation of 246 units, results in an unmet need of 233 units, which shall be addressed through the following mechanisms:

- 33 Surplus Prior Round units from Plantation Bay
- Subject to all relevant notice and public hearing provisions pursuant to the New Jersey Municipal Land Use Law, within 120 days of the approval of this Agreement at a Fairness Hearing, the City will adopt an ordinance requiring a mandatory affordable housing set aside for all new multifamily residential developments of five (5) units or more. The set aside for rental developments shall be fifteen percent (15%) and the set aside for for-sale developments shall be twenty percent (20%). The provisions of the ordinance shall not apply to residential expansions, additions, renovations, replacement, or any other type of residential development that does not result in a net increase in the number of dwellings of five or more. Finally, the ordinance may also provide for alternative ways to satisfy the set-aside in particular situations. The form of the Ordinance and the potential alternative means of satisfaction shall be finalized prior to final judgment in this matter through collaboration between FSHC, Special Master Perskie, and representatives of the City.

The City will provide a realistic opportunity for the development of affordable housing through the maintenance of the existing inclusionary zoning on the Plantation Bay site as part of the Settlement Agreement previously approved by the Court, at least through July 1, 2025, as more specifically set forth in the Plantation Bay Settlement Agreement and Orders entered by the New Jersey Superior Court approving the Plantation Bay Settlement Agreement in Docket No. ATL-L-007302-06 P.W. The Plantation Bay Settlement Agreement is attached hereto as Exhibit B. The City will also maintain the zoning on the sites encompassed by the Bay Avenue Redevelopers settlement as more specifically set forth in the Bay Avenue Redevelopers Settlement Agreement and Orders entered by the New Jersey Superior Court approving the Bay Avenue Redevelopers Settlement Agreement in Docket No. ATL-L-003204-05 P.W. The Bay Avenue Redevelopers Settlement Agreement is attached hereto as Exhibit C. The parties recognize that the current AH-1, AH-2, and AH-3 zoning, previously approved as fair as a result of a Mount Laurel settlement by the court, is predicated upon the sequential development of multiple parcels in different ownership. The City will maintain this zoning as part of this Settlement Agreement at least through July 1, 2025 and this Settlement Agreement incorporates the terms of the Bay Avenue Redevelopers Settlement Agreement including, but not limited to, all obligations to make payment to the Municipality to assist in satisfying the municipality's affordable housing obligation, which shall remain in effect at least through July 1, 2025. The City also agrees that if, during that period, any owner of the individual parcels approaches the City seeking to develop just its parcel, the City will work with the property owner and other impacted property owners to allow a stand-alone inclusionary development on the individual parcel, which will include a proportionate share of the 26 family rental units required by the settlement, subject to the review and approval of FSHC and the Court. The City also agrees at the time of the midpoint review referenced in paragraph 18 to provide an update on the status of this zoning and whether any modifications are necessary at that time to continue to present a realistic opportunity. In addition, the parties recognize that for both Plantation Bay and Bay Avenue Redevelopers, the construction of either or both

developments including such modifications as may occur pursuant to this paragraph as to Bay Avenue Redevelopers and subject to potential modification of the City's Third Round obligation pursuant to paragraph 14 of this Agreement, may entitle the City to a higher RDP and/or additional rental bonus credits, which the City reserves the right to seek consistent with the terms of this Agreement.

The City reserves the right to create additional affordable housing beyond that required by this agreement using any of the methodologies available at law, accepted under COAH rules and regulations (including but not limited to extension of expired or expiring controls and additional market to affordable units), or through mechanisms allowed under the terms of any prior court approved settlement (e.g. use of payments into the City's Affordable Housing Trust Fund in lieu of development which can then be used to generate additional units). The City reserves the right to seek to use such additional credits to reduce the City's final unmet need number, or to apply against any future Round obligation which may arise, and FSHC reserves the right to take any position it wishes in response to such application. The City also reserves the right to seek to change the mechanisms used to address the affordable housing obligations in the Bay Area Redevelopers and/or Plantation Bay Settlement Agreements with the consent of the impacted property owners and FSHC, and approval of the Court. This paragraph does not create an obligation on behalf of the City to undertake any additional efforts to create affordable housing beyond those set forth in this agreement.

8. The City agrees to require 13% of all units referenced in this Agreement, excepting those units that were constructed or granted preliminary or final site plan approval prior to July 17, 2008, to be very low income units, with half of the very low income units being available to families. The municipality will comply with those requirements as follows:
 - 13% of any affordable units developed at Plantation Bay will be very low income
 - The parties recognize that the Bay Avenue Redevelopers Settlement Agreement was executed prior to July 17, 2008 and thus if the affordable units are developed pursuant to the terms of the Settlement Agreement there will be no requirement for very-low-income units as defined in P.L. 2008, c. 46. If pursuant to section 7, the City and a property owner modify the settlement, 13% of any affordable units developed through the modified settlement will be very low income
 - one of the abandoned/foreclosed homes to be converted will be targeted to a very low income household

9. The City shall meet its Third Round Prospective Need in accordance with the following standards as agreed to by the Parties and reflected in the table in paragraph 6 above:
 - a. Third Round bonuses will be applied in accordance with N.J.A.C. 5:93-5.15(d).
 - b. At least 50 percent of the units addressing the Third Round Prospective Need shall be affordable to very-low-income and low-income households with the remainder affordable to moderate-income households.
 - c. 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.

- d. At least half of the units addressing the Third Round Prospective Need in total must be available to families.
 - e. The City agrees to comply with an age-restricted cap of 25% and to not request a waiver of that requirement. This shall be understood to mean that in no circumstance may the municipality claim credit toward its fair share obligation for age-restricted units that exceed 25% of all units developed or planned to meet its cumulative prior round and third round fair share obligation.
10. The City shall add 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, the New Jersey State Conference of the NAACP, the Latino Action Network, and the Cape May County, Mainland/Pleasantville, and Atlantic City Branches of the NAACP, and shall, as part of its regional affirmative marketing strategies during its implementation of the affirmative marketing plan, provide notice to those organizations of all available affordable housing units. The City also agrees to require any other entities, including developers or persons or companies retained to do affirmative marketing, to comply with this paragraph.
11. All units shall include the required bedroom distribution, be governed by controls on affordability and affirmatively marketed in conformance with the Uniform Housing Affordability Controls, 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 at 35 percent of median income, 13 percent of affordable units in such projects shall be required to be at 30 percent of median income (subject to the provisions of paragraph 8), and all other applicable law. The City as part of its HEFSP 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. Income limits for all units that are part of the Plan required by this Agreement and for which income limits are not already established through a federal program exempted from the Uniform Housing Affordability Controls pursuant to N.J.A.C. 5:80-26.1 shall be updated by the City annually within 30 days of the publication of determinations of median income by HUD as follows:
- a. Regional income limits shall be established for the region that the City is located within (i.e. Region 6) based on the median income by household size, which shall be established by a regional weighted average of the uncapped Section 8 income limits published by HUD. To compute this regional income limit, the HUD determination of median county income for a family of four is multiplied by the estimated households within the county according to the most recent decennial Census. The resulting product for each county within the housing region is summed. The sum is divided by the estimated total households from the most recent decennial Census in the City's housing region. This quotient represents the regional weighted average of median income for a household of four. The income limit for a moderate-income unit for a household of four shall be 80 percent of the regional weighted average median income for a family of four. The income limit for a low-income unit for a household of four shall be 50 percent of the HUD determination of the regional weighted average median income for a family of four. The income limit for a very low income unit for a household of four shall be 30 percent of the regional weighted average median income for a family of four. These income limits shall be adjusted by household size based on

- multipliers used by HUD to adjust median income by household size. In no event shall the income limits be less than those for the previous year.
- b. The income limits attached hereto as Exhibit D are the result of applying the percentages set forth in paragraph (a) above to HUD's determination of median income for FY 2017, and shall be utilized until the City updates the income limits after HUD has published revised determinations of median income for the next fiscal year.
 - c. The Regional Asset Limit used in determining an applicant's eligibility for affordable housing pursuant to N.J.A.C. 5:80-26.16(b)3 shall be calculated by the City annually by taking the percentage increase of the income limits calculated pursuant to paragraph (a) above over the previous year's income limits, and applying the same percentage increase to the Regional Asset Limit from the prior year. In no event shall the Regional Asset Limit be less than that for the previous year.
 - d. The parties agree to request the Court prior to or at the fairness hearing in this matter to enter an order implementing this paragraph of this Agreement.
12. 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.
13. As an essential term of this Agreement, within one hundred and twenty (120) days of Court's approval of this Agreement, the City shall introduce and adopt an ordinance or ordinances providing for the amendment of the City's Affordable Housing Ordinance and Zoning Ordinance to implement the terms of this Agreement and the zoning contemplated herein and adopt a Housing Element and Fair Share Plan and Spending Plan in conformance with the terms of this Agreement.
14. The parties agree that if a final unappealable decision of a court of competent jurisdiction over this matter, including the Appellate Division and New Jersey Supreme Court, or a determination by an administrative agency responsible for implementing the Fair Housing Act, or an action by the New Jersey Legislature, would result in a calculation of an obligation for the City for the period 1999-2025 that would be lower by more than twenty (20%) percent than the total prospective Third Round need obligation established in this Agreement, and if that calculation is memorialized in an unappealable final judgment, the City may seek to amend the judgment in this matter to reduce its fair share obligation accordingly. FSHC agrees to support such an application to amend if filed by the City unless FSHC has a factual or legal basis to believe that the criteria set forth above have not been met. The Parties further agree that in the event such final decision, administrative determination, or legislation shall not include a specific obligation number for the City of Somers Point, and in the further event the City of Somers Point shall request FSHC to make an adjustment to the City's Third Round Obligation set forth in this Agreement, the Parties shall make a good faith effort to agree upon the Third Round Obligation number for the City using the state-wide need number and / or Region 6 number, and / or formula(s) / methodology(ies) set forth within such final decision. If the Parties are unable to agree within forty (45) days following receipt of the request, both parties agree to participate in Court-supervised mediation with a retired Mount Laurel judge or other mediator acceptable to the parties in an attempt to resolve this matter prior to adversarial motion practice on this issue.

Notwithstanding any such reduction, the City shall be obligated to adopt a Housing Element and Fair Share Plan that conforms to the terms of this Agreement and to

implement all compliance mechanisms included in this Agreement, including by adopting or leaving in place any site specific zoning adopted or relied upon in connection with the Plan adopted pursuant to this Agreement; taking all steps necessary to support the development of any 100% affordable developments referenced herein; maintaining all mechanisms to address unmet need; and otherwise fulfilling fully the fair share obligations as established herein. The reduction of the City's obligation below that established in this Agreement does not provide a basis for seeking leave to amend this Agreement or seeking leave to amend an order or judgment pursuant to R. 4:50-1. If the City prevails in reducing its prospective need for the Third Round, the City may carry over any resulting extra credits to future rounds in conformance with the then-applicable law.

15. The City shall prepare a Spending Plan within the period referenced above, subject to the review of FSHC and approval of the Court, and reserves the right to seek approval from the Court that the expenditures of funds contemplated under the Spending Plan constitute "commitment" for expenditure pursuant to N.J.S.A. 52:27D-329.2 and -329.3, with the four-year time period for expenditure designated pursuant to those provisions beginning to run with the entry of a final judgment approving this settlement in accordance with the provisions of In re Tp. Of Monroe, 442 N.J. Super. 565 (Law Div. 2015) (aff'd 442 N.J. Super. 563). On July 1, 2019, and every July 1 thereafter through the end of the period of protection from litigation referenced in this Agreement, the City agrees to provide annual reporting of trust fund activity to the New Jersey Department of Community Affairs, Council on Affordable Housing, or 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. The reporting shall include an accounting of all housing trust fund activity, including the source and amount of funds collected and the amount and purpose for which any funds have been expended.
16. On July 1, 2019, and every July 1 thereafter through the end of this Agreement, the City 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 Fair Share Housing Center, using forms previously developed for this purpose by the Council on Affordable Housing or any other forms endorsed by the Special Master and FSHC.
17. The Fair Housing Act includes two provisions regarding action to be taken by the City during the ten-year period of protection provided in this Agreement. The City 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 City will post on its municipal website, with a copy provided to Fair Share Housing Center, a status report as to its implementation of the Plan and an analysis of whether any unbuilt sites or unfulfilled mechanisms continue to present a realistic opportunity and whether any 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 any mechanisms to meet unmet need should be revised or supplemented.

- b. For the review of very low income housing requirements required by N.J.S.A. 52:27D-329.1, on July 1, 2021 and July 1, 2024, the City 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.
18. FSHC is hereby deemed to have party status in this matter and to have intervened in this matter as a defendant without the need to file a motion to intervene or an answer or other pleading. The parties to this Agreement agree to request the Court to enter an order declaring FSHC is an intervenor, but the absence of such an order shall not impact FSHC's rights.
19. This Agreement must be approved by the Court following a fairness hearing as required by 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. Borough of Fort Lee, 286 N.J. Super. 311, 328-29 (App. Div. 1996). The City shall present its planner as a witness at this hearing. FSHC agrees to support this Agreement at the fairness hearing. In the event the Court approves this proposed settlement, the parties contemplate the municipality will receive "the judicial equivalent of substantive certification and accompanying protection as provided under the FHA," as addressed in the Supreme Court's decision in In re N.J.A.C. 5:96 & 5:97, 221 N.J. 1, 36 (2015). The "accompanying protection" shall remain in effect through July 1, 2025. If this Agreement is rejected by the Court at a fairness hearing it shall be null and void.
20. If an appeal is filed of the Court's approval or rejection of this Agreement, 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 this Agreement if the Agreement is approved before 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 rescind any action taken in anticipation of the trial court's approval. All Parties shall have an obligation to fulfill the intent and purpose of this Agreement.
21. This Agreement may be enforced through a motion to enforce litigant's rights or a separate action filed in Superior Court, Atlantic County.
22. 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.
23. This Agreement shall be governed by and construed by the laws of the State of New Jersey.
24. This Agreement may not be modified, amended or altered in any way except by a writing signed by each of the Parties.
25. 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.

26. 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.
27. 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: (i) it has been represented by counsel in connection with negotiating the terms of this Agreement; and (ii) it has conferred due authority for execution of this Agreement upon the persons executing it.
28. 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.
29. 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.
30. No member, official or employee of the City 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.
31. Anything herein contained to the contrary notwithstanding, the effective date of this Agreement shall be the date upon which all of the Parties hereto have executed and delivered this Agreement.
32. All notices required under this Agreement ("Notice[s]") shall be written and shall be served upon the respective Parties by certified mail, return receipt requested, or by a recognized overnight or by a personal carrier. In addition, where feasible (for example, transmittals of less than fifty pages) shall be served by facsimile or e-mail. All Notices shall be deemed received upon the date of delivery. Delivery shall be affected as follows, subject to change as to the person(s) to be notified and/or their respective addresses upon ten (10) days notice as provided herein:

TO FSHC:

Adam M. Gordon, Esq.
Fair Share Housing Center
510 Park Boulevard
Cherry Hill, NJ 08002
Phone: (856) 665-5444
Telecopier: (856) 663-8182
E-mail: adamgordon@fairsharehousing.org

TO THE CITY:

William "Wes" Swain
Somers Point City Hall
1 West New Jersey Avenue
Somers Point, NJ 08244

Telephone: 609 - 927- 9088 Ext 128
Telecopier: 609.927.4014
Email: wswain@spgov.org

WITH A COPY TO:

James E. Franklin II, Esq.
Youngblood, Franklin, Sampoli & Coombs, P.A.
Cornerstone Commerce Center
1201 New Road, Suite 230
Linwood, NJ 08221-1159

Telephone: 609.601.6600
Telecopier: 609.601.6601
E-Mail: jfranklin@youngbloodlegal.com

Please sign below if these terms are acceptable.

Sincerely,



Adam M. Gordon, Esq.
Counsel for Intervenor/Interested Party
Fair Share Housing Center

On behalf of the City of Somers Point, with the authorization
of the governing body:

John L. Glasser, Jr., Mayor

Dated: _____

Telephone: 609 - 927- 9088 Ext 128
Telecopier: 609.927.4014
Email: wswain@spgov.org

WITH A COPY TO:

James E. Franklin II, Esq.
Youngblood, Franklin, Sampoli & Coombs, P.A.
Cornerstone Commerce Center
1201 New Road, Suite 230
Linwood, NJ 08221-1159

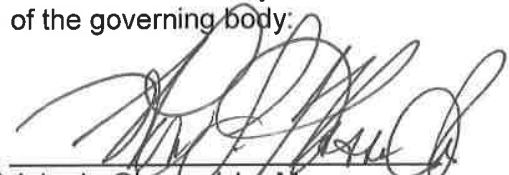
Telephone: 609.601.6600
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E-Mail: jfranklin@youngbloodlegal.com

Please sign below if these terms are acceptable.

Sincerely,

Adam M. Gordon, Esq.
Counsel for Intervenor/Interested Party
Fair Share Housing Center

On behalf of the City of Somers Point, with the authorization
of the governing body:

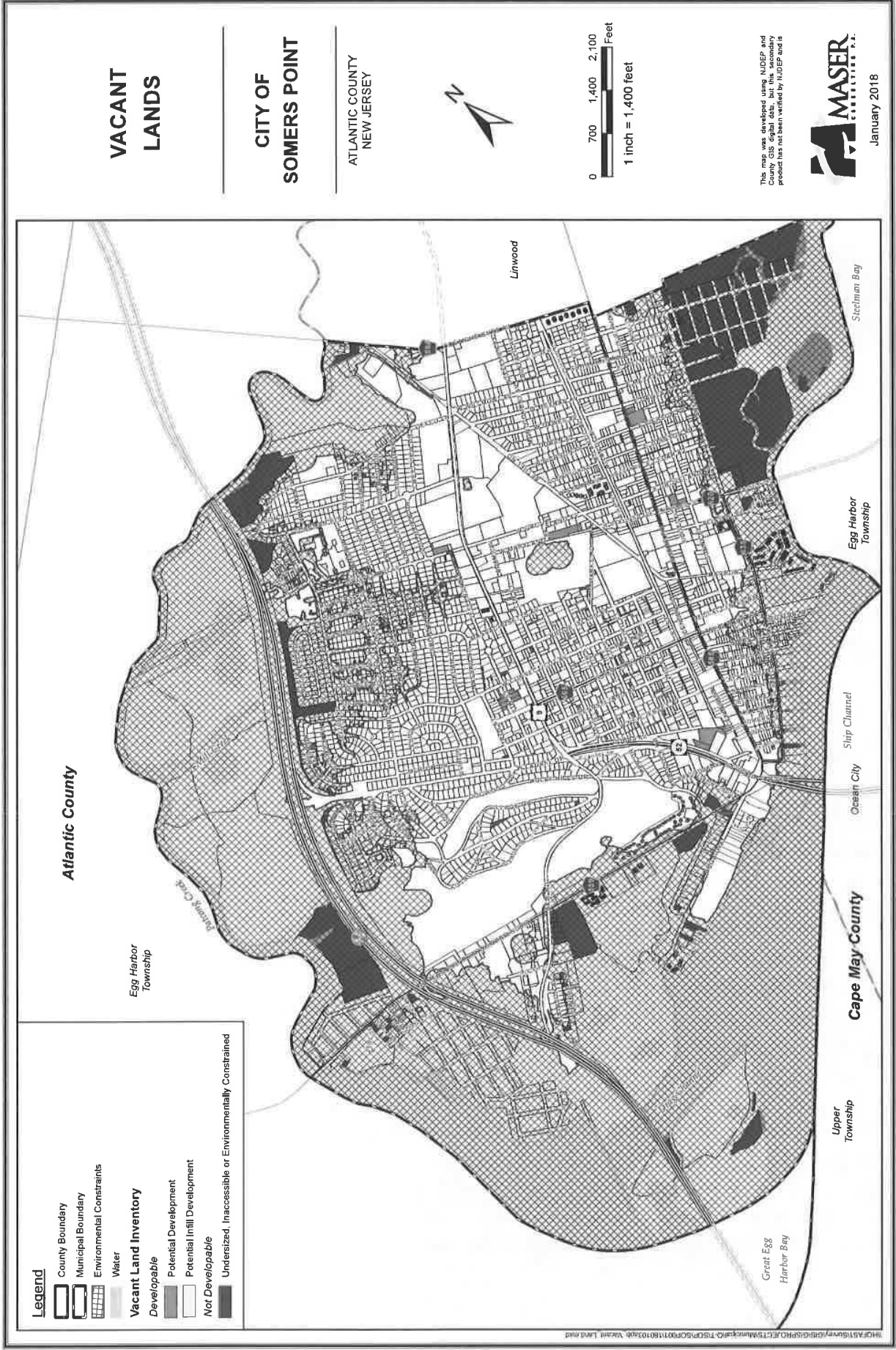


John L. Glasser, Jr., Mayor

Dated: 4/26/18

EXHIBIT A: VACANT LAND ADJUSTMENT

Exh. A-1



Exh. A-2

Block	Lot	Address	Owner	Planning Area	Zoning	Total Acres	Constrained Acres	Buildable Acres	Constraint Description	Notes	Includ-in RDP	Total Units (8 du/acre)	RDP
2	1	BOUNDARY LINWOOD-MARSH	SOMERS POINT CITY	PAS	Water	21.45	21.45	0.00	Wetlands, SFHA, Water	Undevelopable due to Environmental Constraints	No	0	0
101	1	GARFIELD (PAPER ST-MARSH)	SOMERS POINT CITY	PAS	Water	1.24	1.24	0.00	Wetlands, SFHA, Water	Undevelopable due to Environmental Constraints	No	0	0
102	1	LINDCOLN (PAPER ST-MARSH)	SOMERS POINT CITY	PAS	FD	1.03	1.03	0.00	Wetlands, SFHA	Undevelopable due to Environmental Constraints	No	0	0
103	1	DITTMAN (PAPER ST-MARSH)	SOMERS POINT CITY	PAS	FD	1.01	1.01	0.00	Wetlands, SFHA, Water	Undevelopable due to Environmental Constraints	No	0	0
104	1	OCEAN (PAPER ST-MARSH)	SOMERS POINT CITY	PAS	FD	1.02	1.02	0.00	Wetlands, SFHA	Undevelopable due to Environmental Constraints	No	0	0
105	1	SINGERLY (PAPER ST-MARSH)	SOMERS POINT CITY	PAS	FD	1.04	1.04	0.00	Wetlands, SFHA, Water	Undevelopable due to Environmental Constraints	No	0	0
106	1	DISSON (PAPER ST-MARSH)	SOMERS POINT CITY	PAS	FD	1.07	1.07	0.00	Wetlands, SFHA	Undevelopable due to Environmental Constraints	No	0	0
107	1	PATTISON (PAPER ST-MARSH)	SOMERS POINT CITY	PAS	FD	0.98	0.98	0.00	Wetlands, SFHA	Undevelopable due to Environmental Constraints	No	0	0
107	2	OCEAN (PAPER ST-MARSH)	MAGILL, ANDREW E	PAS	FD	0.09	0.09	0.00	Wetlands, SFHA	Undevelopable due to Environmental Constraints	No	0	0
108	1	BEAVER (PAPER ST-MARSH)	SOMERS POINT CITY	PAS	Water	0.76	0.76	0.00	Wetlands, SFHA	Undevelopable due to Environmental Constraints	No	0	0
108	2	PATTISON (PAPER ST-MARSH)	HAGS, GEORGE & EDITH	PAS	FD	0.31	0.31	0.00	Wetlands, SFHA	Undevelopable due to Environmental Constraints	No	0	0
109	1	STUART (PAPER ST-MARSH)	SOMERS POINT CITY	PAS	FD	1.16	1.16	0.00	Wetlands, SFHA	Undevelopable due to Environmental Constraints	No	0	0
110	3	STUART (PAPER ST-MARSH)	SOMERS POINT CITY	PAS	R-1	0.51	0.51	0.00	Wetlands, SFHA	Undevelopable due to Environmental Constraints	No	0	0
111	9	CAMPBELL AVE	KIEJDAN, PINCHUS & MOLLY	PA1	R-1	0.80	0.80	0.00	Wetlands, SFHA	Undevelopable due to Environmental Constraints	No	0	0
201	1	GARFIELD (PAPER ST-MARSH)	SOMERS POINT CITY	PAS	Water	0.33	0.33	0.00	Wetlands, SFHA, Water	Undevelopable due to Environmental Constraints	No	0	0
202	1	LINDCOLN (PAPER ST-MARSH)	SOMERS POINT CITY	PAS	FD	0.75	0.75	0.00	Wetlands, SFHA, Water	Undevelopable due to Environmental Constraints	No	0	0
203	1	DITTMAN (PAPER ST-MARSH)	SOMERS POINT CITY	PAS	FD	1.49	1.49	0.00	Wetlands, SFHA, Water	Undevelopable due to Environmental Constraints	No	0	0
204	1	GRANT (PAPER ST-MARSH)	SOMERS POINT CITY	PAS	FD	2.12	2.12	0.00	Wetlands, SFHA, Water	Undevelopable due to Environmental Constraints	No	0	0
205	1	SINGERLY (PAPER ST-MARSH)	SOMERS POINT CITY	PAS	FD	2.18	2.18	0.00	Wetlands, SFHA, Water	Undevelopable due to Environmental Constraints	No	0	0
206	1	DISSON (PAPER ST-MARSH)	SOMERS POINT CITY	PAS	FD	2.26	2.26	0.00	Wetlands, SFHA	Undevelopable due to Environmental Constraints	No	0	0
207	1	PATTISON (PAPER ST-MARSH)	SOMERS POINT CITY	PAS	FD	2.27	2.27	0.00	Wetlands, SFHA	Undevelopable due to Environmental Constraints	No	0	0
208	1	BEAVER (PAPER ST-MARSH)	SOMERS POINT CITY	PAS	FD	2.34	2.34	0.00	Wetlands, SFHA	Undevelopable due to Environmental Constraints	No	0	0
209	1	STUART AVE (PAPER ST-MARSH)	NOCELLA, L C/O ELEANOR NOCELLA	PAS	FD	0.07	0.07	0.00	Wetlands, SFHA	Undevelopable due to Environmental Constraints	No	0	0
209	2	STUART AVE (PAPER ST-MARSH)	FALVELLA, LUCILLE	PAS	FD	0.07	0.07	0.00	Wetlands, SFHA	Undevelopable due to Environmental Constraints	No	0	0
209	3	STUART AVE (PAPER ST-MARSH)	DESIATA, J ESTATE C/O M PLANTULLI	PAS	FD	0.07	0.07	0.00	Wetlands, SFHA	Undevelopable due to Environmental Constraints	No	0	0
209	4	STUART AVE (PAPER ST-MARSH)	HANSELL M & SZILAGYI & EBLE E	PAS	FD	0.07	0.07	0.00	Wetlands, SFHA	Undevelopable due to Environmental Constraints	No	0	0
209	5	STUART (PAPER ST-MARSH)	SOMERS POINT CITY	PAS	FD	2.13	2.13	0.00	Wetlands, SFHA	Undevelopable due to Environmental Constraints	No	0	0
210	1	STUART (PAPER ST-MARSH)	SOMERS POINT CITY	PAS	FD	0.32	0.32	0.00	Wetlands, SFHA	Undevelopable due to Environmental Constraints	No	0	0
210.01	1	STUART (PAPER ST-MARSH)	SOMERS POINT CITY	PAS	FD	0.35	0.35	0.00	Wetlands, SFHA	Undevelopable due to Environmental Constraints	No	0	0
212	7	HARNED & BAY AVES	FORD, ARTHUR T III	PA1	R-1	0.29	0.29	0.00	Wetlands, SFHA	Undevelopable due to Environmental Constraints	No	0	0
224	6.02	431 W OCEAN HEIGHTS AVE	OCEAN HEIGHTS MANOR LLC	PA1	R-MF	0.22	0.00	0.22		Potential Infill Development	No	1	0
251	2.03	412 W OCEAN HEIGHTS AVE	CONDIRON, MATTHEW & EILEEN	PA1	GB	0.22	0.22	0.00	Wetlands	Undevelopable due to Environmental Constraints	No	0	0
251	2.04	410 W OCEAN HEIGHTS AVE	CONDIRON, MATTHEW & EILEEN	PA1	GB	0.21	0.21	0.00	Wetlands	Undevelopable due to Environmental Constraints	No	0	0
251	2.05	414 W OCEAN HEIGHTS AVE	CONDIRON, MATTHEW & EILEEN	PA1/PAS	HVR	0.90	0.90	0.00	Wetlands, SFHA, Water	Undevelopable due to Environmental Constraints	No	0	0
304	1	GRANT (PAPER ST-MARSH)	SOMERS POINT CITY	PAS	FD	0.66	0.66	0.00	Wetlands, SFHA, Water	Undevelopable due to Environmental Constraints	No	0	0
305	1	SINGERLY (PAPER ST-MARSH)	SOMERS POINT CITY	PAS	FD	1.57	1.57	0.00	Wetlands, SFHA	Undevelopable due to Environmental Constraints	No	0	0
306	1	DISSON (PAPER ST-MARSH)	SOMERS POINT CITY	PAS	FD	1.67	1.67	0.00	Wetlands, SFHA	Undevelopable due to Environmental Constraints	No	0	0
307	1	PATTISON (PAPER ST-MARSH)	SOMERS POINT CITY	PAS	FD	2.03	2.03	0.00	Wetlands, SFHA	Undevelopable due to Environmental Constraints	No	0	0
309	1	RANDALL (PAPER ST-MARSH)	SOMERS POINT CITY	PAS	FD	3.74	3.74	0.00	Wetlands, SFHA	Undevelopable due to Environmental Constraints	No	0	0
409	1	OLD MANS CREEK-MARSH	SOMERS POINT CITY	PAS	FD	3.78	3.78	0.00	Wetlands, SFHA	Undevelopable due to Environmental Constraints	No	0	0
510	17	DAWES AVE-LANDLOCKED	INNOCENTE INVESTMENTS LLC	PA1	R-1	0.03	0.03	0.00	SFHA	Undevelopable due to Environmental Constraints	No	0	0
511	1	234 SHORE RD	PROGRESS REALTY INC	PA1	HC-1	1.37	0.00	1.37		Potential Development with Lot 17	Yes	13	3
511	17	220 SHORE RD	PROGRESS REALTY INC	PA1	R-1	0.30	0.00	0.30					
525	3.02	MEADOWS	JACQUE CONSTRUCTION COMPANY INC	PA1/PAS	RCD	13.34	13.34	0.00	Wetlands, SFHA, Water	Undevelopable due to Environmental Constraints	No	0	0
529	32	GARDEN STATE PKWY-MARSH	SOMERS POINT CITY	PA1	FD	3.15	3.15	0.00	Wetlands, SFHA	Undevelopable due to Environmental Constraints	No	0	0
602	1	STEELMANS BAY-MARSH	SOMERS POINT CITY	PAS	Water	10.17	10.17	0.00	Wetlands, SFHA, Water	Undevelopable due to Environmental Constraints	No	0	0
603	1	STEELMANS BAY-MARSH	SOMERS POINT CITY	PAS	FD	15.56	15.56	0.00	Wetlands, SFHA, Water	Undevelopable due to Environmental Constraints	No	0	0
609	2	MEADOWS	AQUA DEV INC, C/O COHEN	PAS	HC-1	1.50	1.50	0.00	Wetlands, SFHA	Undevelopable due to Environmental Constraints	No	0	0
609	3	STEELMANS BAY-MARSH	SOMERS POINT CITY	PAS	FD	30.57	30.57	0.00	Wetlands, SFHA, Water	Undevelopable due to Environmental Constraints	No	0	0
612	8	309 SHORE RD	JAGAM, LLC	PA1	HC-1	0.29	0.00	0.29		Potential Infill Development	No	2	0
612	11	16 W PIERSON AVE	JAGAM, LLC	PA1	R-1	0.09	0.00	0.09		Undergrazed	No	0	0
712	3	21 W CEDAR AVE	EVANGELISTI, DOLORES K	PA1	R-1	0.15	0.00	0.15		Potential Infill Development	No	1	0
719	15	920 W GROVELAND AVE	BRAHIN, LEE & JEFFREY ET ALS	PA1	R-1	0.66	0.00	0.66		Potential Development	Yes	5	1
911	6	25 E MARYLAND AVE	RAAB, MARK & DARIA	PA1	HC-1	0.52	0.00	0.52		Potential Development with Lot 8	Yes	5	1

2013	4	7 BROADWAY	CRAB TRAP, LTD	PA1	HC-2	0.45	0.38	0.07	Wetlands, SFHA	Undevelopable due to Environmental Constraints	No	0	0
2013	5	7 BROADWAY	CRAB TRAP, LTD	PA1	HC-2	0.37	0.18	0.19	Wetlands, SFHA	Potential Infill Development	No	1	0
2014	12.02	HIGH BANK(PAPER ST-MARSH)	SOMERS POINT CITY	PA1	FD	0.19	0.19	0.00	Wetlands, SFHA	Undevelopable due to Environmental Constraints	No	0	0
2018	1.05	BROADWAY	KAZMARCK, ALEXANDER	PA1	R-MF	0.30	0.30	0.00	Wetlands, SFHA	Undevelopable due to Environmental Constraints	No	0	0
2018	1.08			PA1	R-MF	0.43	0.43	0.00	Wetlands, SFHA, Water	Undevelopable due to Environmental Constraints	No	0	0
2018	2.02			PA1	R-MF	0.32	0.32	0.00	Wetlands, SFHA	Undevelopable due to Environmental Constraints	No	0	0
2021	1.02	1208 ATKINSON AVE	MARTIN, SIDNEY W	PA5	FD	8.28	8.28	0.00	Wetlands, SFHA	Undevelopable due to Environmental Constraints	No	0	0
2021	1.03	1204 ATKINSON AVE	WALLACE, TIMOTHY J.	PA1	HC-1	0.19	0.19	0.00	Wetlands, SFHA	Undevelopable due to Environmental Constraints	No	0	0
2021	1.04	1206 ATKINSON AVE	WALLACE, TIMOTHY J.	PA1	HC-1	0.20	0.20	0.00	Wetlands, SFHA	Undevelopable due to Environmental Constraints	No	0	0
2021	1.05	500 MAYS LANDING RD	ATLANTIC SYNERGY GROUP, LLC	PA1/PAS	TC	3.08	3.08	0.00	Wetlands, SFHA	Undevelopable due to Environmental Constraints	No	0	0
2021	1.06	NEW RD	MARTIN, SIDNEY W	PA1/PAS	HC-1	0.41	0.41	0.00	Wetlands, SFHA	Undevelopable due to Environmental Constraints	No	0	0
2021	1.07	NEW RD	MARTIN, SIDNEY W	PA1/PAS	HC-1	0.43	0.43	0.00	Wetlands, SFHA	Undevelopable due to Environmental Constraints	No	0	0
2021	1.08	NEW RD	MARTIN, SIDNEY W	PA1/PAS	HC-1	0.39	0.39	0.00	Wetlands, SFHA	Undevelopable due to Environmental Constraints	No	0	0
2021	2	MAYS LANDING RD	BEESEY'S POINT BRIDGE COMPANY	PA1	HC-1	0.28	0.28	0.00	Wetlands, SFHA	Undevelopable due to Environmental Constraints	No	0	0
2040	2	92 MAYS LANDING RD	PATCOING LAND, LLC C/O EDMUNDS ASSOC	PA5	R-1	0.37	0.37	0.00	Wetlands, SFHA	Undevelopable due to Environmental Constraints	No	0	0
2042	1.02	5 WOODLAWN AVE	COURTNEY, MATTHEW	PA5	R-1	0.17	0.17	0.00	SFHA	Undevelopable due to Environmental Constraints	No	0	0
2042	8	5 CLIVEDEN AVE	RIS PROPERTIES LLC	PA5	R-1	0.19	0.19	0.00	SFHA	Undevelopable due to Environmental Constraints	No	0	0
2131	1.04			PA1	R-1	0.19	0.19	0.00	Wetlands	Undevelopable due to Environmental Constraints	No	0	0
2131	1.06			PA1	R-1	0.17	0.15	0.01	Wetlands	Undevelopable due to Environmental Constraints	No	0	0
2142.01	2	MEADOWS	STRETCH, MYRTLE J	PA5	FD	0.17	0.17	0.00	Wetlands, SFHA	Undevelopable due to Environmental Constraints	No	0	0
2142.02	2.01	2 WOODLAWN AVE	STRIEFSKY, PAUL & LINDA	PA5	R-1	0.36	0.36	0.00	Wetlands, SFHA	Undevelopable due to Environmental Constraints	No	0	0
2142.02	2.04	10 WOODLAWN AVE	STEVANUS, DAVID B & SUSAN L	PA5	R-1	0.17	0.17	0.00	Wetlands, SFHA	Undevelopable due to Environmental Constraints	No	0	0
2242	2			No PA	Water	0.31	0.31	0.00	Wetlands, SFHA, Water	Undevelopable due to Environmental Constraints	No	0	0
2332	1.04	1508 ATKINSON AVE	CARRIL, SUZANNE R & GREEN, ROBERT D	PA1	R-1	0.18	0.14	0.04	Wetlands	Undevelopable due to Environmental Constraints	No	0	0
2900	1	ISLAND-GR EGG HARBOR BAY	GARGAN, THOMAS V	PA5	R-CL	0.26	0.26	0.00	Wetlands, SFHA	Undevelopable due to Environmental Constraints	No	0	0
2901	1	ISLAND-GR EGG HARBOR BAY	GARGAN, THOMAS V	PA5	R-CL	3.61	3.61	0.00	Wetlands, SFHA, Water	Undevelopable due to Environmental Constraints	No	0	0
2904	1	ISLAND-GR EGG HARBOR BAY	GARGAN, THOMAS V	PA5	R-CL	0.71	0.71	0.00	Wetlands, SFHA, Water	Undevelopable due to Environmental Constraints	No	0	0
Total						207.98	194.57	13.41				83	0

EXHIBIT B: PLANTATION BAY SETTLEMENT AGREEMENT

SETTLEMENT AGREEMENT OF LITIGATION

PLANTATION BAY, LLC v. CITY OF SOMERS POINT

Docket No. ATL- L-7302-06 P.W. (Mount Laurel)

This Settlement Agreement of Litigation ("Agreement") is entered into this 29th day of July, 2008 by and between (i) Plantation Bay, LLC, having an address at 901 Mays Landing Road, Somers Point, New Jersey 08224 ("Plaintiff"); and (ii) the City of Somers Point, County of Atlantic, State of New Jersey, a municipal corporation of the State of New Jersey ("Somers Point" and/or the "City") situated for the conduct of official business at City Hall, 1 West New Jersey Avenue, Somers Point, New Jersey 08244 (Plaintiff and the City are sometimes hereinafter individually referred to as a "Party" and collectively as the "Parties.")

BACKGROUND

1. Plaintiff owns approximately 150 acres in Somers Point's Recreational Golf Course ("RGC") District identified on the City's tax maps as Lots 1921 and 1944 in Block 3; Lots 1943 and 1946 in Block 1; Lot 1941 in Block 2; and Lot 1941.01 in Block 5.01 ("Plaintiff's Property"). Plaintiff's Property is known as the Greate Bay Country Club and is improved with an 18-hole regulation golf course, golf practice facility, clubhouse with banquet facilities and parking area.
2. The Parties believe that the process outlined in this Agreement for the approval and construction of the Project and the adoption of the Zoning Amendment (as hereinafter defined) are in accord with the State of New Jersey's Smart Growth principles.
3. Plaintiff desires to construct an inclusionary residential development on Plaintiff's Property so as to create additional affordable housing opportunities in accordance with Southern Burl. Co. NAACP v. City of Mount Laurel, 92 N.J. 158 (1983) ("Mount Laurel II") and the New Jersey Fair Housing Act, N.J.S.A. 52:27D-301, et seq. (the "FHA"), and Plaintiff has filed

exclusionary zoning litigation in the Superior Court of New Jersey for Atlantic County (the "Superior Court") against the City and the Planning Board in the matter captioned Plantation Bay, LLC v. City of Somers Point, and the City of Somers Point Planning Board, Docket No. ATL- L-7302-06 P.W. (the "Litigation"). The City of Somers Point Planning Board is not a party to this Settlement as Plaintiff subsequently dismissed its action against to the City of Somers Point Planning Board.

4. The City has a constitutional and statutory obligation to adopt land use regulations that provide a realistic opportunity for the City's fair share of the regional need for housing affordable to those of low and moderate income consistent with the Mount Laurel doctrine and the FHA.

5. Third parties, including owners of property located adjacent to Plaintiff's Property, have contended that none of Plaintiff's Property may be developed for housing because a restriction in the Plaintiff's chain of title restricts the use of the property to a golf course (the "deed restriction" issue).

6. Plaintiff disputes that the foregoing is the case and is prepared to (a) construct an inclusionary residential development on approximately 24.58 acres of Plaintiff's Property located in proximity to Mays Landing-Somers Point Road, (b) use an additional 5.55 acres for amenities such as parking and a clubhouse/banquet facility, (c) permanently preserve approximately 120 acres of Plaintiff's Property as an 18-hole regulation golf course and golf practice facility, and (d) defend all claims that may be asserted with respect to the alleged deed restriction.

7. The City and the Planning Board have determined that it is in the best interests of the City and its residents to maintain an 18-hole regulation golf course and golf practice facility

on Plaintiff's Property and to assure the permanent preservation of approximately 120 acres of Plaintiff's Property for outdoor recreation use.

8. The Parties have engaged in extensive planning discussions and have executed a Memorandum of Understanding (MOU) with respect to a mutually agreeable inclusionary development concept for the Plaintiff's Property.

9. The Parties have reached an understanding with respect to the agreed-upon development of the Plaintiff's Property as documented and memorialized herein, which the Parties intend to jointly submit to the Superior Court for review and approval.

NOW, THEREFORE, in consideration of the mutual covenants, promises and agreements contained herein, to which the Parties agree to be legally bound, the Parties agree to settle the Litigation as follows:

SECTION I

INCORPORATION OF BACKGROUND

1.1 **Incorporation.** The "Background" set forth hereinabove is incorporated by reference herein as if set forth at length.

SECTION II

THE LAND USE CONCEPT FOR THE INCLUSIONARY RESIDENTIAL DEVELOPMENT OF PLAINTIFF'S PROPERTY AND THE PROVISION OF AFFORDABLE HOUSING OPPORTUNITIES

2.1 **The Parties' Intent.** The purpose and intent of this Agreement is to (a) enhance the realistic opportunity for the provision of low and moderate income housing units through Plaintiff's construction of affordable rental housing units for families on Plaintiff's Property; (b) develop the Plaintiff's Property in accordance with the proposed Zoning Amendment, the proposed GDP Ordinance, and the proposed Municipal Development Agreement (each of which is further described herein) in a manner that will satisfy a substantial portion of the City's Third

Round Mount Laurel Obligation; (c) promote sound local, regional and State land use and utility planning objectives; (d) secure for the benefit of the City a conservation restriction, pursuant to N.J.S.A. 13:8B-1 et seq., on approximately 120 acres of Plaintiff's Property; (e) provide a mechanism for the long term financial viability of the golf course operation on Plaintiff's Property which is an important, valued and long-standing employer and corporate citizen within Somers Point; and (f) provide the City with a tax ratable structure that will assist in the stabilization of local taxes.

2.2 The Land Use Plan. The intentions of the Parties as expressed above are intended to be implemented by (a) the City's consideration of the proposed Zoning Amendment (the "Zoning Amendment"), which shall be applicable to the City's Recreational Golf Course ("RGC") District including Plaintiff's Property, and the proposed General Development Plan Ordinance (the "GDP Ordinance"), which are attached hereto and incorporated by reference herein as **Exhibit "A"** and **"Exhibit B"**, respectively; (b) execution of a Municipal Development Agreement as contemplated by the GDP ordinance; and (c) the City and the Planning Board otherwise extending full cooperation to secure all required outside agency governmental permits, licenses, authorizations and approvals. The terms and conditions of the Municipal Development Agreement shall not be inconsistent with this Settlement Agreement.

2.3 Implementation of the Land Use Plan. In order to achieve the foregoing objectives, within forty-five (45) days of the Superior Court's entry of an Order approving this Agreement, the City agrees to introduce and consider adoption of the proposed Zoning Amendment and GDP Ordinance (**Exhibits "A" and "B"**). If adopted, the proposed Zoning Amendment and proposed GDP Ordinance, shall be incorporated into the City's Housing Element and Fair Share Plan (collectively, the "Compliance Plan"). Regardless of the timing for

completion and/or approval of the Compliance Plan, following execution of the Municipal Development Agreement contemplated by the GDP ordinance, Plaintiff shall be permitted to pursue development approvals for the Project with the Planning Board, which the Planning Board shall expeditiously process in accordance with Section 4.2 hereof, so long as the proposed Zoning Amendment and GDP Ordinance (Exhibits "A" and "B") are adopted, the Municipal Development Agreement is executed, and, in accordance with Section 5.1 of this Agreement, the Superior Court has entered an Order approving this Agreement.

If the proposed Zoning Amendment and GDP Ordinance are not timely adopted in accordance with this Section 2.3, Plaintiff and the City each shall have the unilateral option of terminating this Agreement and continuing with the Litigation.

SECTION III

INTENDED SCOPE OF DEVELOPMENT OF THE PLAINTIFF'S PROPERTY AND PLAINTIFF'S AFFORDABLE HOUSING OBLIGATIONS

3.1 The Project. The "Project" shall include the construction of an inclusionary residential development, the conveyance to the City of a conservation restriction for approximately 120 acres of Plaintiff's Property consisting of an 18-hole regulation golf course and golf practice facility, and the continued operation, maintenance, improvement and/or redevelopment of a golf course service area including but not limited to a clubhouse with banquet facilities and parking area. The proposed Zoning Amendment (Exhibit "A") shall provide for uses and standards that shall allow for the construction of the inclusionary residential development, continued operation, maintenance, modification and improvement of an 18-hole regulation golf course and golf practice facility, continued operation, maintenance, modification and improvement of the clubhouse with banquet facilities, parking area and other golf course support services in accordance with this Agreement. Plaintiff shall file development applications

that are substantially consistent with the Proposed Ordinance (**Exhibit "A"**), with the Concept Plan attached hereto as **Exhibit "C"** (the "Concept Plan"), and the Municipal Development Agreement. Construction of the Project may be phased in any manner to be determined by Plaintiff and developed over such period of time as may be determined by Plaintiff, subject only to the limitations set forth at Section 3.4 of this Agreement relative to the phasing of the Affordable Units, and at Section 3.2 of this Agreement relative to the duration of zoning.

3.1.1 Inclusionary Residential Development. The Project shall contain an inclusionary residential development with a maximum of (a) three hundred (300) market rate residential units, and (b) seventy-five (75) residential rental units for families made available to those of low income and moderate income (the "Affordable Units") (a 20% set-aside) as hereinafter provided in Section 3.3. The market rate units will be divided between the area designated as "Housing West" on **Exhibit "C"** (approximately 16.52 acres located west of US 9), and the area designated as "Housing East" on **Exhibit "C"** (approximately 8.06 acres located east of US 9). All of the Affordable Units shall be located in the area designated as "Housing West" on **Exhibit "C"**. Plaintiff agrees to diligently pursue, at its sole cost and expense, all necessary permits and approvals for the inclusionary residential development.

3.1.2 Golf Course Support and Service Area. The Project will include an approximately 5.5 acre "Golf Course Support Service Area" as depicted on **Exhibit "C"**, which may be used for the clubhouse, banquet facility, restaurant, parking area, and other facilities ancillary to a golf course-based country club.

3.1.3 Deed Restricted Golf Course. The Project shall contain an 18-hole regulation golf course and golf practice facility in the area depicted on **Exhibit "C"** as

the "Deed Restricted Golf Course and Practice Facility". Plaintiff has agreed to provide a conservation restriction, pursuant to N.J.S.A. 13:8B-1 et seq. for the approximately 120 acres of Plaintiff's Property comprising the 18-hole regulation golf course and golf practice facility. Plaintiff warrants that all mortgage lenders and secured creditors have consented to this Settlement Agreement and to the conservation restriction. The conservation restriction shall be limited to the Deed Restricted Golf Course and Practice Facility as designated on **Exhibit "C"** and shall not include the areas designated as "Housing East" (approximately 8.06 acres), "Housing West" (approximately 16.52 acres) or "Golf Course Support Service Area" (approximately 5.55 acres) as depicted on **Exhibit "C"**. Plaintiff shall be permitted to use the Deed Restricted Golf Course and Practice Facility area for management of stormwater from the other areas of the Project. In the event that Plaintiff fails to adequately maintain stormwater management basins and utility pipes then the Homeowners Association to be created for the market-rate housing units shall be permitted access over the golf course to service same. The City has the right (but not the obligation) to maintain the site improvements for the benefit of the residential units in the event that they are not properly maintained by Plaintiff or the Homeowners Association. The City shall have the right to file a lien against the property for all costs that it incurs in performing these maintenance obligations.

30.13a

The conservation restriction shall be in the form attached hereto as **Exhibit "D"**. If the "deed restriction" issue has been resolved in Plaintiff's favor by a Court of competent jurisdiction, Plaintiff shall convey the conservation restriction to the City and record the conservation restriction with Atlantic County within 45 days after the Planning Board grants final, non-appealable General Development Plan approval. If the "deed

restriction” issue has not been so resolved, Plaintiff shall convey the conservation restriction prior to construction of the first housing unit in the inclusionary development.

Upon conveyance of the conservation restriction, the Plaintiff shall fully cooperate with the City to compel the New Jersey Council on Affordable Housing (“COAH”) to remove the 120-acre conservation-restricted golf course parcel from the City’s Vacant Land Inventory when computing municipal affordable housing adjustments pursuant to N.J.S.A. 52:27D-310.1(b).

In addition to conveying a conservation restriction to the City, at the City’s request Plaintiff shall offer to convey without charge a conservation restriction to all owners of residential property within 200 feet of the golf course, provided that the prospective grantees agree to waive any claim that the existing deed restriction prevents the construction of the inclusionary development contemplated by this Settlement Agreement. The form and content of such conservation restriction shall be determined in connection with the Municipal Development Agreement.

3.1.4 Subdivision. Plaintiff shall be entitled, at its option, to subdivide the Housing East, Housing West, Golf Course Support Service Area, and Deed Restricted Golf Course and Practice Facility areas into separate lots. Plaintiff shall also be entitled to subdivide the lands upon which the Affordable Units are to be situated (approximately 2.72 acres in the Housing West area) from the remainder of the Housing West area.

3.1.5 Incorporation and/or Vacation of Oak Lane. The Parties agree that the realization of the Project shall require the improvement and use of a paper public street known as Oak Lane or, alternatively, the relocation, improvement and use of Oak Lane, or, alternatively, the City’s vacation of Oak Lane (or a portion thereof). The City has

agreed to permit such a use, relocation, and/or vacation of Oak Lane to allow development of the Project in the manner depicted on **Exhibit "C"**.

3.1.6 Vacation of Loveland Avenue. The Parties agree that the realization of the Project shall require the City's vacation of a paper public street known as Loveland Avenue. The City has agreed to permit such vacation of Loveland Avenue to allow development of the Project in the manner depicted on **Exhibit "C"**.

3.1.7 Financial Plan for Golf Course. In order to provide long-term fiscal stability for the golf course operation, Plaintiff shall include in the master deed for the inclusionary residential development a requirement that the owners of all market rate residential units shall be members of the golf course/country club.

3.2 Duration of Zoning Contemplated by the Proposed Zoning Amendment and Proposed GDP Ordinance. In order to fully implement the purposes of this Agreement and in accordance with COAH rules and applicable New Jersey case law, absent the written consent of Plaintiff (which for purposes of this Agreement shall include any successor to any of Plaintiff's interests in the Project), the City shall not amend any provision of the proposed Zoning Amendment or proposed GDP Ordinance for a period of ten (10) years from the date of the Superior Court's approval of this Agreement.

3.3 Provision of Affordable Housing. Plaintiff has agreed to provide for the production of affordable housing through construction of affordable rental units for families within the Project. If the parties hereinafter determine and agree that it is in their mutual interest to instead provide for the production of affordable housing, in whole or in part, through (a) the provision of such housing elsewhere in the City as may be permitted by COAH rules and/or the Superior Court, and/or (b) by making a monetary payment to the City to fund an RCA to provide

affordable housing in the South-Southwest Housing Region or other housing activity that would assist in the City's satisfaction of its Mount Laurel Obligation, then the parties shall negotiate a mutually acceptable amendment to this Agreement, which shall be subject to review by the Superior Court.

3.3.1 Calculation of Number of Affordable Units to Be Provided by

Plaintiff. In the event that less than three hundred (300) market rate residential units are approved and constructed on Plaintiff's Property, Plaintiff agrees that for every four market rate residential units approved and constructed on Plaintiff's Property, Plaintiff shall provide one Affordable Unit on Plaintiff's Property (a 20% set-aside). By way of example, if two hundred ninety-two (292) market rate residential units are approved and constructed on Plaintiff's Property, then Plaintiff shall provide seventy-three (73) on-site Affordable Units.

3.3.2 Financial Incentives - Construction of Affordable Units on Plaintiff's

Property. Plaintiff shall be freely permitted to apply for and secure available State and federal subsidies and/or tax credits to defray the cost of construction of the Affordable Units, for which the City will extend its full and prompt endorsement and support. Additionally, the City shall extend a Payment in Lieu of Taxes (the "PILOT") for the Affordable Units. The term and duration of the PILOT shall be consistent with the term and duration of the New Jersey Housing Mortgage Finance Agency (the "HMFA") mortgage. This PILOT shall only apply to the Affordable Units, and the rest of the Project shall be subject to standard taxation. The form of PILOT Agreement to be executed with respect to the Affordable Units is attached hereto as Exhibit "E" and shall be executed by the Parties within the time period established in the Municipal

Developer's Agreement. The PILOT shall not take effect until construction of the units is completed and the units are ready for occupancy.

Notwithstanding the foregoing, Plaintiff acknowledges that the entire Project is classified as "inclusionary" and, as such, may disqualify the Affordable Units from securing nine percent (9%) Low Income Housing Tax Credits ("LIHTCs") and Balanced Housing/Home Express funds under the New Jersey Department of Community Affairs' and HMFA's regulations. Plaintiff agrees that it shall nonetheless construct the seventy-five (75) affordable rental units if the foregoing government funding sources are not forthcoming.

3.3.3 Change in Tax Assessment. There shall be no change in the basis for the assessment of Plaintiff's Property until such time as there is an actual change in use of the respective portion thereof. This shall not preclude reassessment based on the current golf course, clubhouse, banquet facility and associated uses.

3.4 Compliance with COAH's Rules. Plaintiff agrees that all Affordable Units shall comply with COAH's and HMFA's rules including, but not limited to those concerning (a) income qualification, (b) controls on affordability, (c) deed restrictions, (d) bedroom distribution, (e) low/moderate income split and range of affordability requirements, (f) phasing, (g) affirmative marketing and (h) handicap accessibility. However, COAH's preference for integration shall not be applicable and, as shown on the Concept Plan, Plaintiff may concentrate all Affordable Units in one component of the Project. Plaintiff will provide and/or pay for ~~income qualification and affirmative marketing services with a COAH approved administrative agent~~ and shall likewise file all required monitoring forms with COAH and the Court.

SECTION IV

DEVELOPMENT AND BUILDING APPROVALS

4.1 **Site Specific Zoning Measures.** The Parties acknowledge the unique and beneficial development opportunity that is presented with respect to the Plaintiff's Property and agree that certain variances and waivers from the Zoning Amendment, as well as relaxation from other local and regional land use legislation or regulations may ultimately prove to be required to allow for the intended, site specific development of the Plaintiff's Property as set forth in this Agreement. In order to permit the intended, agreed upon development of the Plaintiff's Property, and in accordance with COAH's cost-generation regulations and the Municipal Land Use Law, *N.J.S.A. 40:55D-1 et seq.* (the "MLUL"), the City and the Planning Board shall cooperate with the Plaintiff in granting reasonable variances and such other relief as may be necessary to construct the Project.

4.2 **Subsequent Development Approvals.** The Planning Board shall conduct all reviews of Plaintiff's applications for general development plan, preliminary and final subdivision, site plan and/or variance approvals strictly in accordance with the MLUL, COAH's rules, the Residential Site Improvement Standards (the "RSIS"), and this Agreement, and Plaintiff shall be afforded all expedition and cost-reduction rights, entitlements and benefits accorded to inclusionary developers in COAH's rules and applicable case law. In this regard, the Parties specifically agree that the Planning Board will schedule such special meetings as may be necessary to accommodate the "action time periods" set forth in the MLUL and shall provide Plaintiff with preferential treatment on regular agenda reviews.

4.3 **Role of the Court's Special Master in the Development Approval Process for the Project.** The Parties may request the Master to assist the Parties during the application

process for any approvals and permits relating to development of the Project. The Master's involvement may be requested by any of the Parties without the consent of the other. Unless otherwise agreed by the Parties through their respective attorneys, the cost of the Master shall be paid by the Party seeking the Master's assistance to resolve a problem real or perceived.

4.4 Marc Shuster, P.P., to Serve As Reviewing Planner in the Development Approval Process for the Project The Parties acknowledge that Marc Shuster, P.P. has served an integral role in the development of the Zoning Amendment, the proposed Master Plan Amendment and this Agreement. As such, at the discretion of the City, Marc Shuster shall be retained as the exclusive reviewing planner for all development applications submitted for the Project for as long as he chooses to serve in that capacity.

4.5 Mount Laurel Cost Reduction Entitlements. As is customary with respect to Mount Laurel projects, COAH's cost reduction regulations apply to the inclusionary residential development, including but not limited to:

- a. No Planning Board application fees and escrow fees shall be attributable to the Affordable Units.
- b. No fees shall be charged for engineering inspections for the Affordable Units.
- c. As it is an inclusionary development, the Project shall not be subject to any development fee ordinance.

4.6 Recreation Facilities and Fees. The Parties acknowledge that on October 26, 2006, the City adopted a recreation ordinance that requires developers of 21 or more new dwelling units to pay a fee of \$1,800.00 per dwelling unit to offset the cost incurred by the City to provide adequate recreational facilities to existing and new residents. The Parties further

acknowledge that on June 23, 2008, in the case of the New Jersey Shore Builder's Association v. Township of Jackson, the Appellate Division of the Superior Court ruled that municipalities lack authority to assess such contribution for off-site recreational facilities. The Parties further acknowledge that the demand generated by the residents of the development for City-supported recreational facilities may be reduced because purchasers of market-rate housing will have access to the golf course and associated facilities, and that Plaintiff will expend substantial sums of money for the redesign and improvement of the golf course. The Parties further acknowledge that the residents of the affordable units are less likely to have access to the golf course, and thus it is appropriate to provide on-site recreational facilities for the residents of the affordable units. Plaintiff will install reasonable recreational facilities on the site of the affordable units, the amount and type of which shall be set forth in the Municipal Development Agreement. In the event that by July 1, 2010 (a) the Municipal Land Use Law has been amended to authorize municipalities to assess fees for off-site recreational facilities or (b) the recent decision of the Appellate Division is reversed by the Supreme Court of New Jersey, the Parties agree that in addition to installing on-site recreational facilities for the Affordable Units, Plaintiff shall pay a recreation fee of Two Hundred Thousand Dollars (\$200,000.00), payable as a per unit contribution at the time a building permit is issued for each market rate unit.

SECTION V

SUPERIOR COURT APPROVAL OF THIS SETTLEMENT AGREEMENT

5.1 Court Approval Of Agreement Required. The Parties acknowledge that pursuant to applicable *Mount Laurel* decisional law this Agreement requires Superior Court approval subsequent to the Superior Court conducting a Fairness Hearing upon adequate notice to the protected class and the general public. The Parties further acknowledge that those terms of

the Agreement that provide for affordable housing have been drafted in accordance with the regulations adopted by COAH on May 6, 2008, published in the *New Jersey Register* on June 2, 2008, as modified by new and amended regulations proposed by COAH on May 6, 2008, published in the *New Jersey Register* on June 16, 2008. Additionally, the City reserves the right to maintain that under the *Mount Laurel* doctrine and the FHA no growth share obligation should be attributable to the market-rate units in this inclusionary development. Within ten (10) days of execution of this Agreement by all Parties, the Plaintiff, with the City's support, shall pursue the scheduling of a Fairness Hearing with the Superior Court, at which time the Agreement shall be submitted to the Superior Court for its review and approval. Upon the scheduling of a Hearing date, Plaintiff shall comply with all notice requirements imposed or directed by the Superior Court and the cost of providing notice shall be borne by Plaintiff. Plaintiff shall assume primary responsibility for pursuing the approval of the Superior Court at the Hearing and defending any Superior Court Order approving this Agreement. The City shall fully support and endorse approval of this Agreement at the Hearing. If the Superior Court approves or conditionally approves this Settlement Agreement, then upon the City's adoption of the proposed Zoning Amendment and GDP Ordinance Plaintiff shall request the Court to dismiss the litigation against the City and Planning Board. If the Superior Court has not approved or conditionally approved this Settlement Agreement within one hundred twenty (120) days of the date on which all Parties have been supplied with a complete copy of this Agreement (including all Exhibits), the Parties each shall have the unilateral option of terminating this Agreement and continuing with the Litigation.

5.2 Defense of Agreement. The Parties shall fully cooperate with each other to secure Superior Court approval of this Agreement and to defend said approval against all

challenges and/or appeals pursued by third parties. The City shall promptly notify Plaintiff of all challenges and appeals.

5.3 **Payment of Costs.** Plaintiff will be responsible for defending any claims that Plaintiff's Property is deed restricted so as to preclude residential development, including the expense of filing a declaratory judgment action, if necessary. Plaintiff will be responsible for the expenses of the Court's Master attributable to her review of the so-called "deed restriction" issue. Plaintiff will defend and indemnify the City with regard to any third party litigation attributable to the "deed restriction" issue provided that (a) the City does not take a position in such litigation inconsistent with Plaintiff's position on the "deed restriction" issue and (2) the City directs its legal counsel to cooperate with Plaintiff in defending any such litigation in order to avoid unnecessary duplication of efforts and associated costs. The City shall have the sole discretion to select its legal counsel which will be paid for by Plaintiff at the prevailing rates paid by the City to its legal counsel within 30 days upon presentation of detailed legal invoices. In the event that for any reason Plaintiff does not convey to the City a conservation restriction for the area depicted on Exhibit "D" as the "Deed Restricted Golf Course and Practice Facility" as provided in Section 3.1.3, above, the City maintains the right to assert, at its sole cost and expense, that the existing deed restriction is enforceable. In addition, pursuant to the MOU dated December 28, 2007, Plaintiff agrees that the professional fees incurred by the City in revising the zoning amendment (Exhibit "A") and the GDP Ordinance ("B"), and in drafting or revising this Settlement Agreement, shall be deemed expenses incurred pursuant to a request for rezoning and thus subject to and governed by Ordinance No. 21 of 2007, which imposes application fees and escrow fees on such requests for rezoning. Plaintiff shall reimburse the City for these expenses, as well as the cost of providing notice set forth in Section 5.1. To secure payment of these

expenses, Plaintiff agrees to an initial escrow fund of \$15,000.00 and to bring the balance back up to \$15,000.00 within seven (7) days after receiving notice that the fund has been reduced to \$5,000.00. Except as provided above, each Party shall be responsible for its own costs and expenses in securing Superior Court approval and defending any Superior Court Order approving this Agreement, provided, however, that Plaintiff shall assume primary responsibility for pursuing approval of the Superior Court at the Hearing and defending any Superior Court Order approving this Agreement as set forth in Section 5.1.

5.4 Compliance Plan. Plaintiff shall interact and cooperate with the City and the Superior Court subsequent to the Superior Court's approval of this Agreement with respect to the City's efforts to prepare and secure Superior Court approval of its Compliance Plan in a continuing effort to vindicate the rights of the protected class. However, Plaintiff's foregoing cooperation shall not require Plaintiff to delay pursuing the receipt of development approvals and/or construction of any portion of the Project in accordance with this Agreement.

SECTION VI

DEFAULT

6.1 Violation and Default. In the event that any Party shall fail to perform any undertaking required to be performed by it pursuant to the terms of this Agreement, unless the Party (or Parties) for whose benefit such obligation was intended waive such obligation in writing, such failure to perform shall constitute an event of default under this Agreement. Upon any such event of default, the non-defaulting Party shall have available any and all rights and remedies that may be provided in law or in equity including, but not limited to, the right of specific performance and/or the right to prosecute a motion in aid of litigant's rights.

SECTION VII

NOTICES

7.1 **Third-Party Actions.** The Parties and their respective counsel agree to immediately provide each other with notice of any lawsuits, actions, governmental proceedings or administrative proceedings, threatened or pending, which could have a material adverse impact on the Project.

7.2 **Notice by and Among the Parties.** All notices required under this Agreement shall be in writing and shall be given by facsimile or by certified mail, return receipt requested, or by FedEx, UPS or a similarly recognized receipted overnight delivery service. All notices shall be deemed received upon the date of delivery which is set forth in the mailing certifications or receipts used, and all times for performance based upon such notices shall be from the date set forth in such proof of delivery. The persons and entities to receive notice shall be as follows or to any successor designated by the respective recipient:

To Plaintiff:

Mark Benevento
Plantation Bay, LLC
c/o Grete Bay Country Club
901 Mays Landing Road
Somers Point, NJ 08224
Fax: 609-927-9766

Paul H. Schneider, Esq.
Craig M. Gianetti, Esq.
Giordano, Halleran & Ciesla, P.C.
125 Half Mile Road
Red Bank, NJ 07701
Fax: 732-224-6599

To the City:

Clerk, the City of Somers Point
1 West New Jersey Avenue
Somers Point, NJ 08244

Damon Tyner, Esquire
Parker McCay, P.A. Bayport One
8025 Black Horse Pike Suite 325
West Atlantic City, NJ 08232-2965
Telecopier: (609) 347-8050

Ronald C. Morgan, Esquire
Douglas McCollister, Esquire
Parker McCay, P.A.
Three Greentree Centre
7001 Lincoln Drive West
P.O. Box 974
Marlton, NJ 08053-0974
Telecopier: (856) 552-1427

To the Court's Master:

Mary Beth Lonergan, P.P.
Clarke, Caton & Hintz
400 Sullivan Way
Trenton, NJ 08628
Telecopier: (609) 883-4044

SECTION VIII

MISCELLANEOUS

8.1 Captions. Captions and titles to this Agreement are inserted for the purposes of convenience and reference only, and are in no way to be construed as limiting or modifying the scope and intent of the various purposes and substantive provisions of this Agreement.

8.2 Cooperation. The Parties expressly agree to cooperate with each other in order to effectuate and carry out the purposes of this Agreement as well as the Mount Laurel Doctrine, the FHA, and COAH's rules that are in effect as of the date of this Agreement.

8.3 Waiver. Each of the Parties waives all rights to challenge the validity and enforceability of this Agreement. Failure to enforce provisions or obligations in this Agreement by any Party shall not be construed as a waiver of these provisions and obligations.

8.4 Entire Agreement. This Agreement, including its prefatory statements, background recitals and exhibits, constitutes the entire Agreement between the Parties with

respect to the resolution of the Litigation and the related subject matters hereof. No representative, agent or employee of any Party has been authorized to make any representations and/or promises that are not contained herein or to otherwise modify, amend, vary or alter the terms hereof except as stated herein. No modifications, amendments, variations or alternations shall be binding unless reduced to writing and signed by the Parties.

8.5 Validity. In the event that any provision of this Agreement shall be held to be invalid, unenforceable or void, the Parties shall, within thirty (30) days of such determination, attempt to restructure this Agreement consistent with its underlying intent. If the Parties fail to agree to such a restructuring, any Party may seek Superior Court review and a ruling to restructure the Agreement in a legally acceptable manner reflecting the underlying intent of the Parties as expressed herein.

8.6 Preparation. The Parties acknowledge that the Parties' attorneys have jointly prepared this Agreement as a means of settling the Litigation. Therefore, this Agreement shall be construed on a parity among the Parties and any presumption for resolving ambiguities against the drafter shall not apply.

8.7 Construction. This Agreement shall be construed, governed and enforced in accordance with the laws of the State of New Jersey and the rules and regulations of COAH. Jurisdiction with respect to any litigation related to this Agreement by way of enforcement or post judgment relief shall exclusively be in the Superior Court of New Jersey for Atlantic County. Service of any complaint, motion or judgment enforcement proceedings may be affected consistent with the terms hereof for the delivery of notices. The Parties hereby consent to service of process in such manner and waive any other service of process. Process may be

affected by written notice pursuant to the terms hereof for notices. The Parties expressly waive a trial by jury in any such litigation or proceedings.

8.8 Parties Bound and Assignment. The Agreement shall inure to the benefit of and be binding upon the Parties hereto and their respective successors and assigns. Plaintiff shall expressly be permitted to sell, convey and/or assign its rights to develop one or more phases or sections of the Project to other developers and/or users who shall be entitled to rely upon and enforce this Agreement as to the remaining Parties. Advanced written permission to sell and assign is not intended and shall not be required.

8.9 Holiday and Weekends — Time for Performance. Should any date on or before which the performance of any act is required under the terms of the Agreement fall on a Saturday, Sunday, legal holiday and/or generally recognized religious holiday in the State of New Jersey (such as Christmas, Good Friday, etc.), the date for performance shall be extended to and shall occur on the next succeeding business day. All references to "days" shall be deemed to refer to calendar days unless the context clearly and unequivocally requires otherwise. Except as otherwise set forth herein, any act to be performed on or before a certain day shall be deemed to be required to be performed on or before 5:00 p.m. on the day set forth and, if performed after 5:00 p.m., shall be deemed not to have been performed on said date.

8.10 Counterpart Signature. This Agreement may be executed simultaneously or in one or more counterparts, each of which, when so executed and delivered, shall constitute an original, fully enforceable counterpart for all purposes. Facsimile counterparts shall be accepted and enforceable. Immediately following the delivery of a facsimile counterpart, the sending Party shall deliver a counterpart with the original execution page.

IN WITNESS WHEREOF, the Parties hereto have hereunto set their hands and seals the day and year appearing below their names.

Attest:

Renee Buck

Print Name: Renee Buck

Plantation Bay, LLC

By: Mark Benedetto

Managing Member

Print Name: MARK BENEDETTO

Date: 7-29, 2008

Attest:

Carol L. Degrassi

Print Name: Carol L. Degrassi

CITY OF SOMERS POINT,
A Municipal Corporation of the State of New Jersey

By: Francis X. Cosgrove

Print Name: Francis X. Cosgrove

Date: 9/11, 2008

ACKNOWLEDGMENT

STATE OF NEW JERSEY)

) SS:

COUNTY OF ATLANTIC)

I certify that on 7/29, 2008, MARK BENEVENTO personally came before me and stated to my satisfaction that he:

- (a) Signed, sealed and delivered the attached document as the Managing Member of Plantation Bay, LLC, that are collectively designated as Plaintiff in this document;
- (b) was authorized to and did execute this instrument as the Managing Member of the Plaintiff named in this document; and
- (c) executed this instrument as the act of the Plaintiff named in this document.


NOTARY PUBLIC

RENEE A. BUCK
NOTARY PUBLIC OF NEW JERSEY
MY COMMISSION EXPIRES OCT. 8, 2008

ACKNOWLEDGMENT

STATE OF NEW JERSEY)

) SS:

COUNTY OF Atlantic)

I certify that on Sept. 11, 2008, Francis X Cosgrove personally came before me and stated to my satisfaction that he:

- (a) This person signed, sealed and delivered the attached documents as Council President of the City of Somers Point, a body corporate and politic of the State of New Jersey, named in this document;
- (b) was authorized to and did execute this document as the Council President, the entity named in this document; and
- (c) executed this instrument as the act of the entity named in this document.

Lynn N MacEwan
NOTARY PUBLIC



EXHIBITS

A - Proposed Zoning Amendment

B - Proposed GDP Ordinance

C - Concept Plan

D - Proposed Conservation Easement and Restrictive Covenants

E - PILOT Agreement for Affordable Units

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City of Somers Point Resolution

No. 142 of 2008

RESOLUTION AUTHORIZING SETTLEMENT OF MOUNT LAUREL LITIGATION

WHEREAS, the City of Somers Point (City) and the Somers Point Planning Board (Board) were defendants in pending Mount Laurel proceedings in the Superior Court encaptioned Plantation Bay, LLC, v. City of Somers Point, and the City of Somers Point Planning Board, Docket No. ATL-L-7302-06 P.W.; and

WHEREAS, on December 28, 2007, plaintiff and the City executed a Memorandum of Understanding (MOU) that committed both parties to attempt to settle the pending litigation; and

WHEREAS, the negotiations between the City and plaintiff have resulted in a draft Settlement Agreement, as authorized by Resolution No. 77 of 2008; and

WHEREAS, the Somers Point Planning Board was subsequently released from the litigation

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Somers Point that the City approves the form and content of the Settlement Agreement that is attached hereto which has been revised to reflect the release of the Somers Point Planning Board from the litigation and authorizes its execution by the Council President and City Clerk for submission to the Superior Court for review and approval upon execution by the remaining parties to this Agreement.

I Carol L. Degrassi, City Clerk of the City of Somers Point, New Jersey, hereby certify that the foregoing Resolution is a true copy, duly adopted by the City Council of said City at a Regular meeting held on the 28th day of August, 2008.

In Witness Whereof, I have hereunto set my hand and seal of my Office this 28th day of August, 2008.


Carol L. Degrassi, RMC/CMC, City Clerk

EXHIBIT A

City of Somers Point
County of Atlantic, State of New Jersey
Ordinance _____-07

**AN ORDINANCE OF THE CITY OF SOMERS POINT,
COUNTY OF ATLANTIC, SUPPLEMENTING AND AMENDING CHAPTER 114 OF THE
DEVELOPMENT REGULATIONS OF THE CITY OF SOMERS POINT, TO ADD A NEW
ARTICLE ENTITLED "RECREATIONAL PLANNED UNIT DEVELOPMENT OPTION (RPUD)"**

BE IT ORDAINED, by the Mayor and Council of the City of Somers Point, County of Atlantic and State of New Jersey, as follows:

WHEREAS, Mayor and Council of the City of Somers Point having reviewed and considered this amendment to Chapter 114 of the Development Regulations of the City of Somers Point and having found that it is in the best interests of the residents and future residents of the City of Somers Point that said amendment be adopted.

BE IT ORDAINED by the Mayor and Council of the City of Somers Point that Chapter 114 of the Development Regulations of the City of Somers Point, entitled "Development Regulations," is the same and is hereby amended, as follows:

Section 1: Add Article XIII A: Recreational Planned Unit Development Option (RPUD)

§ _____ Development in the Recreational Planned Unit Development ("RPUD") shall be permitted consistent with the regulations and guidelines that follow and consistent with all other applicable rules, regulations and laws.

A. Purpose. The purpose of the RPUD Recreational Planned Unit Development Option is to provide the opportunity for planned residential neighborhoods that include a variety of housing types as set forth below. The objectives of the RPUD regulations and standards are to encourage innovative development to achieve a variety of building types, layout and siting under a comprehensive plan of development. The RPUD encourages comprehensive planning for large tracts of land within the context of the City and the Region, to provide a planned residential community to be uniquely integrated with recreational opportunities, but provides standards to ensure integrated building design, quality architecture, efficient circulation, protection of natural resources and an attractive pedestrian environment. Such design standards will have a beneficial effect upon the health, safety, general welfare and morals of the City and neighboring communities consistent with smart growth and sustainable development concepts and principles.

B. Conditions for application of Recreational Planned Unit Development Option.

1. The RPUD standards may be applied to contiguous tracts of land, contiguous parcels shall include those land areas which directly abut or are separated by a general access roadway or other right-of-way, one hundred forty acres or more; or any number of assembled contiguous parcels totaling one hundred forty acres or more, under common

ownership or under contract by a single developer within the City of Somers Point Recreational Golf Course District (RGC).

2. The parcel or parcels proposed for development under the RPUD standards must have a minimum of 100 feet of frontage on a municipal, state or county roadway.
3. Any parcel proposed for development under the RPUD standards, which also falls wholly or partially within the Historic District or which includes a Historic Landmark within its boundaries, must submit the proposal to the Historic District Commission for review and recommendation.
4. A general development plan including a phasing plan and proposed schedule shall be submitted in accordance with the requirements of NJSA 40:55D-45.1et seq. and _____ and Sections _____ and _____ of the Land Development Ordinances of the City of Somers Point.
5. Of the entire tract a minimum of 120 acres must be dedicated and deed restricted as an eighteen hole golf course.

C. Permitted Uses

1. Golf Course and associated support uses
2. Banquet Facilities including restaurants
3. Permitted Residential Uses.
 - a. Single-family and duplex attached dwelling units (townhouses and flats)
 - b. Multi-family dwelling units

D. Accessory Uses.

Only those accessory uses and structures customarily incidental to the principal uses are permitted subject to the standards set forth in this section.

1. Off-street parking
2. Trash and recyclables enclosures
3. Stormwater management facilities, basins and ponds
4. Public utilities infrastructure
5. Signs
6. Loading areas
7. Garages
8. Porches and decks
9. On-site recreational facilities for residents in residential areas
10. Recreational facilities and clubhouses associated with a golf course residential development including restaurant uses and pro-shop, banquet hall and other such associated uses, to be located on the non-residential portion of the property.

E. Densities.

1. Gross Density: Maximum 2.5 units per acre (equivalent to the total number of dwelling units divided by the gross tract area)

2. Net Density: Maximum 16 units per acre on the non-golf course designated property (equivalent to the total number of dwelling units divided by the non-golf course designated property), for a maximum of 360 market rate and affordable housing units.

F. Bulk, Area and Parking Regulations

Recreational Planned Unit Development Option (RPUD) Standards		
	Residential Use	Golf Course Use
Minimum Front Yard Setback (feet)	20 feet to public R/W Min. 12 feet to porch	50'
Side Yard Setback (feet)	10 feet	25'
Rear Yard Setback (feet)	20 feet 10 feet to deck or patio	25'
Maximum Tract coverage	75%	80%
Maximum Building Height (feet)*	35 feet - golf course perimeter** 45 feet - other	45 feet
Maximum Building Length	200 feet	200 feet
Parking set back	n/a	15
Parking Requirements	In accordance with N.J. Residential Site Improvement Standards	To be determined by Planning Board
Building set back To interior road	12 min. from non garage face to edge of paving 25 min. from garage face to edge of paving	N/A
Between buildings	35 ft. rear to rear 25 ft. side to side 30 ft. side to rear	N/A

* Height to top of flat roof or mid-point of slope of pitched roof.

** Any building located closest to the line separating a residential tract from golf course uses.

G. General Requirements.

1. In accordance with N.J.S.A. 40:55D-45, the planning board must find the following facts and conclusions:

- a. Departures by the proposed development from zoning regulations otherwise applicable to the subject property conform to the standards set forth for the RPUD.
 - b. That proposals for maintenance and conservation of the common open space are reliable, and the amount, location and purpose of the common open space are adequate
 - c. That provision through the physical design of the proposed development for public services, control over vehicular and pedestrian traffic, and the amenities of light and air, recreation and visual enjoyment are adequate.
 - d. That the proposed planned development will not have an unreasonably adverse impact upon the area in which it is proposed to be established.
 - e. In the case of a proposed development which contemplates construction over a period of years, that the terms and conditions intended to protect the interests of the public and of the residents, occupants and owners of the proposed development in the total completion of the development are adequate.
2. Where a planned development consistent with the requirements of this section is proposed on multiple contiguous tax lots; the bulk standards, setback requirements and design standards set forth in this section may be applied to a tract as delineated in the development plan provided that all lots will be either consolidated or subdivided as part of the proposal, that all lots are part of a comprehensive development plan, and provided that a use and phasing plan is submitted that delineates the project area boundaries. If lots within the planned development are separated by a public street, they must share a minimum of 100 feet of parallel street frontage.
- H. Design Standards and Submission Requirements. The submission requirements and design standards set forth in this subsection shall be in addition to the prevailing requirements set forth within the City's Zoning Ordinance and shall apply to all development and redevelopment projects in the Recreational Golf Course District (RGC).
1. **Site Orientation and Design.**
 - a. Spatial relationships between buildings, public and semi-public spaces, and other structures should be designed to relate to one another, both functionally and visually. Features such as courtyards, greens, pedestrian and bicycle pathways which encourage pedestrian activity and incidental social interaction among users shall be incorporated into the site design. The site should be designed to reinforce street frontages, and main entryways should be emphasized to create a sense of identity with special landscape features, and appropriately scaled signage and architectural accents.
 - b. Buildings shall define the streetscape through the use of detail, building articulation and massing. The streetscape shall be generally continued across side yard setback areas between buildings by using landscaping. The streetscape shall also be reinforced by shade trees and may be further reinforced by walls, street lamps and other street furniture.
 - c. To the extent possible, new streets shall connect with existing streets and with each other. Pedestrian connections should be established.
 2. **Common Open Space:** For each residential tract, a minimum of 25% of the gross area shall be pervious. The open areas shall be accessible to the residents of the respective residential tract.

3. A comprehensive storm water management plan shall be developed in accordance with prevailing State, County and Local requirements. Storm water quality basins should be designed as integrated landscape features whenever possible. Stormwater management basins and other stormwater management facilities serving the residential development may be located on the deed restricted golf course area.
4. Landscaping: A comprehensive landscape plan shall be prepared by a licensed professional landscape architect that provides for shade, buffering to adjacent uses, planting beds within parking areas, foundation plantings adjacent to buildings, preservation of existing healthy vegetation where possible, and other landscaping elements designed to compliment and enhance the overall site and building design.
 - a. At main entryways massed landscaping, architectural features and appropriate signage shall be utilized to create visual focal points and to add to the creation of a sense of place.
 - b. Shade trees shall be installed along road frontages and internal access drives at intervals satisfactory to the Board
 - c. There shall be a landscape island at least 9 feet in width at the terminus of each parking row, and landscaped islands shall be placed at intervals throughout the parking area for every 20 linear spaces.
 - d. Each parking lot island must contain at least one shade tree along with shrubs and ground cover. Where trees are not possible due to the presence of a light post or underground utilities, shrubs shall be installed.
 - e. Planted berms or solid fencing shall be utilized to enhance buffers between incompatible uses and to shield loading and service activities in the non-residential portions of any development. If needed a wall designed to match the architecture may be erected to screen loading areas.
5. Lighting.
 - a. Streetlights and lighting along pedestrian pathways shall be pedestrian scaled, contextually appropriate fixtures.
 - b. Streets and open space shall be provided with adequate lighting, while minimizing adverse impacts, such as glare and overhead sky glow, on adjacent properties. House side shields shall be provided where abutting a residential use.
 - c. Along all pedestrian paths, along drive aisles and within courtyards, decorative lampposts shall be provided at regular intervals but not greater than 100 feet on center.
 - d. Lighting on residential streets should be located at the street intersections. Lighting standards shall be consistent throughout the development. If individual lampposts equipped with photo sensors are provided at each driveway, the need for street lights between intersections may be eliminated.
 - e. Residential porch patio, or balcony lighting and yard post lighting is encouraged to augment street lighting design and to create a sense of safety and community.

- f. Light fixtures attached to the exterior of a building shall be architecturally compatible with the style, materials, colors, and details of the building and shall comply with the local building codes. The type of light source used on the exterior of buildings, signs, parking areas, pedestrian walkways, and other areas of a site, and the light quality produced, shall be the same or compatible to adjacent site lighting fixtures. If facades are lit from the exterior, lights should be concealed through shielding or recessed behind architectural features. Lighting of roof forms such as cupolas or other special roof forms is permitted. The use of low-pressure sodium, fluorescent, or mercury vapor lighting, either attached to buildings or to light the exterior of buildings, shall be prohibited. Mounting brackets and associated hardware should be inconspicuous.

6. Architectural plans consisting of floor plans and elevations of areas visible to the general public and site design plans including all public and semi-public space should be submitted. The features, scale and details of the buildings and streetscape shall demonstrate a comprehensive design approach.

a. Architectural standards for residential development. All development shall have a coherent architectural style, vocabulary and color scheme.

i. The following materials shall be permitted for facades:

- Wood natural and synthetic, cement board or vinyl siding and shingles
- Simulated clapboard.
- Brick.
- Indigenous stone and Cultured Stone.
- Cast Stone.
- Architectural CMU.
- Synthetic Stucco (EIFS).
- Stucco.

ii. Front facades of fifty percent of the townhouses shall be partially faced masonry material, i.e. brick, stone or stucco on primary elevations, a minimum of 4 feet above grade which face front and side streets and pedestrian mews. Architectural variation must be provided as to distinguish the units from one another. Elevations out of primary public view can be made of other materials. Projecting windows may also be made of materials other than masonry. Portions of side elevations away from the public view need not include masonry material. Where the end of a building faces the street, the side elevation shall receive a treatment similar to the front elevation and shall respond to the street.

iii. No more than three (3) consecutive townhouses attached to one another may have the same building setback. Off-sets must be at least three (3) feet.

7. Design standards for signs.

- a. Each use shall be permitted one façade/wall sign not to exceed 10% of the principal front wall area and not to exceed 30 square feet. In the case of a freestanding building two façade/wall signs will be permitted on different facades.

- b. Signs affixed to the exterior of a building shall be architecturally compatible with the style, composition, materials, colors, and details of the building, as well as with other signs used on the building or its vicinity. The use of coordinated awnings and decorative light fixtures are encouraged.
- c. Signs shall fit within the existing facade features, shall be confined to signable areas, and shall not interfere with door and window openings, conceal architectural details or obscure the composition of the facade where they are located.
- d. Sign colors should be compatible with the colors of the building facade. A dull or matte finish is recommended for reduction of glare and enhancement of legibility.
- e. Signs shall be either spotlight or backlit with a diffused light source. Light shall not significantly spill over to other portions of the building or site. Backlighting shall illuminate the letters, characters, or graphics on the sign, but not its background. Warm fluorescent bulbs may be used to illuminate the interior of display windows. Neon signs or flashing lights are not permitted.
- f. Signs shall be mounted so that the method of installation is concealed. Signs applied to masonry surfaces should be mechanically fastened to mortar joints only and not directly into brick or stone. Drilling to provide electrical service should also follow the same rule.
- g. Each residential development may have a monument identification sign located at the entryways, a maximum of 20 square feet and set back a minimum of 10 feet from the right-of-way line.
- h. One directional sign not to exceed 20 square feet to direct visitors to the various commercial and community destinations is permitted. Such sign may not interfere with traffic circulation and shall not be designed to advertise.

8 Streets, alleys and sidewalks

- a. Cross sections of proposed streets shall be submitted depicting the range of street widths, patterns and styles that will make up the framework of streets. Streets, alleys and sidewalks are important public spaces and should be complimented with pedestrian plazas and other elements to enhance the pedestrian experience.
- b. Sidewalks a minimum of four (4) feet wide must be installed along all public streets and in accordance with RSIS Standards within residential development. Sidewalks in front of commercial uses shall be a minimum of ten (10) feet wide and twelve (12) feet if outdoor cafes are contemplated.
- c. Sidewalks and pedestrian access ways shall be designed to protect the pedestrian from vehicular traffic and to facilitate and encourage movement among the various uses

- 9 Affordable Housing: Affordable housing credits under NJAC 5:94-1et seq. to be negotiated for all housing units and to be provided through onsite construction or other means acceptable to the City of Somers Point.

City of Somers Point
Ordinance Amendment
General Development Plan Ordinance

EXHIBIT B

ORDINANCE NO. 23 OF 2007

Chapter 114 Article III DEVELOPMENT REGULATIONS, section 114-9 shall be amended to add the definition that follows:

GENERAL DEVELOPMENT PLAN - A plan showing general land use, circulation, open space, utilities, storm water management, environmental factors, community facilities, type and density of housing, floor area for nonresidential development, and phasing for parcels in excess of 100 acres, which is proposed to be constructed as a planned development. The term of the effect of a General Development Plan approval shall be determined by the Planning Board, and shall not exceed 20 years.

Chapter 114 Article XXIII SUBDIVISION OF LAND shall be amended to add Section 114-171.1 General Development Plan as follows:

ARTICLE XXIII, Section 114-171.1
General Development Plan Submission Procedures

A. Purpose and Applicability

1. The purpose of this section is to permit and encourage the submission of conceptual general development plans that present a comprehensive plan for a proposed Recreational Planned Unit Developments (RPUD) in the Recreational Golf Course (RGC) District. The general development plan is intended to prompt an integrated approach to site planning that relates to the existing development patterns in the City within the RGC District.
2. A developer of a parcel or parcels of land totaling more than 100 acres in size in the RGC District for which the developer is seeking approval of a RPUD must submit a general development plan to the planning board prior to the submission of preliminary subdivision or site plans to the planning board.
3. The general development plan shall set forth the proposed and permitted number of dwelling units and the residential density, and the amount of nonresidential floor space for the proposed development in its entirety according to a schedule which sets forth the timing of the various sections of the development, and the area to be permanently deed-restricted for golf course and recreational use.

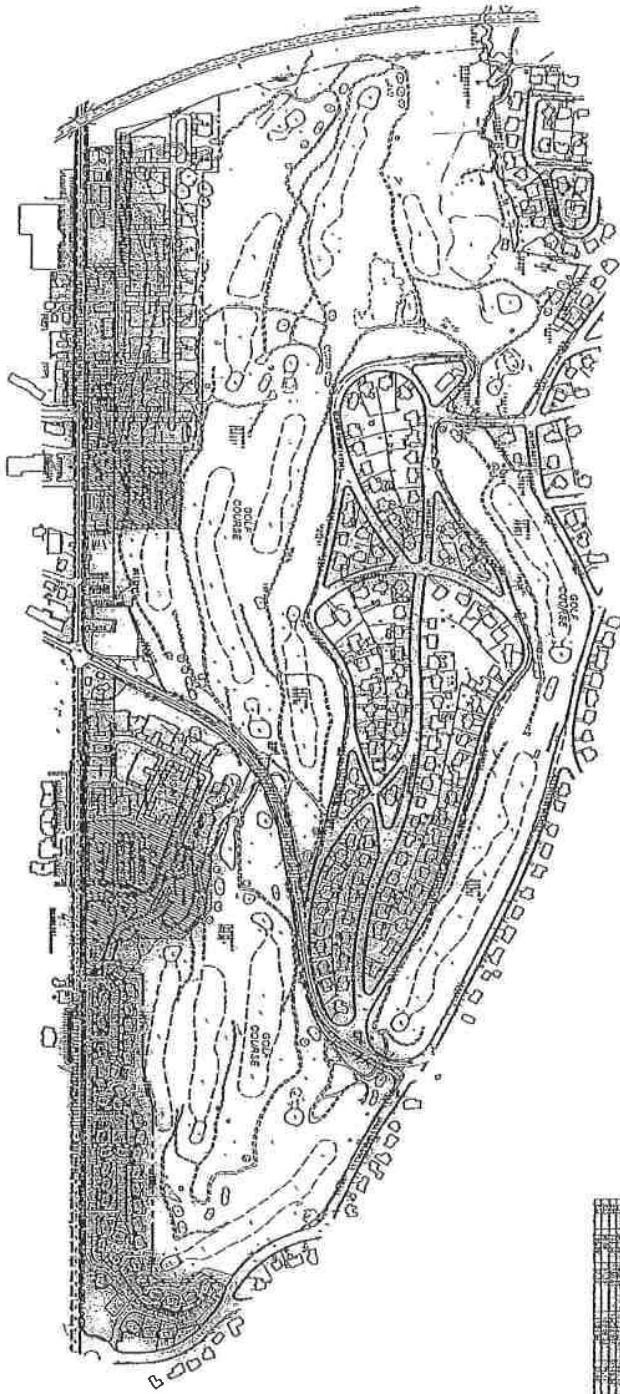
City of Somers Point
Ordinance Amendment
General Development Plan Ordinance

1. That departures by the proposed development from zoning regulations otherwise applicable to the subject property conform to the zoning ordinance standards that may be specific to a planned development.
2. That proposals for maintenance and conservation of the common open space are reliable, and that the amount, location and purpose of the common open space are adequate.
3. That provisions through the physical design of the proposed development for public services, control over vehicular and pedestrian traffic, and the amenities of light and air, recreation and visual enjoyment are adequate.
4. That the proposed planned development will not have an unreasonably adverse impact upon the area in which it is proposed to be established.
5. In the case of a proposed development which contemplates construction over a period of years, the terms and conditions intended to protect the interests of the public and of the residents, occupants and owners of the proposed development in the total completion of the development are adequate.
6. That the proposal is responsive to the natural features of the site and is designed in a manner that preserves valuable site characteristics identified in the environmental inventory.
7. That the proposal advances the principles of smart growth by providing opportunities for vehicular and pedestrian interconnectivity where feasible, by encouraging the efficient use of land, and by safeguarding the character of existing stable neighborhoods.

D. Approval Process and Duration

1. The planning board shall grant or deny general development plan approval within 95 days after submission of a complete application to the administrative officer.
2. The term of the effect of the general development plan approval shall be determined by the planning board using the guidelines set forth below, except that the term of the approval shall not exceed twenty (20) years from the day upon which the developer receives final approval of the first section of the planned development. In making its determination regarding the duration of the approval of the development plan, the planning board shall consider the following:
 - a. the number of dwelling units or amount of nonresidential floor area to be constructed

EXHIBIT C



LIST DATA SUMMARY
 NUMBER OF SHEETS: 1
 SHEET NO. 1 OF 1
 DATE: 1/11/11
 SCALE: 1" = 100'

DATE OF SURVEY: 1/11/11
 SURVEYOR: [Name]
 PROJECT: [Name]

PROPERTY DATA
 OWNER: [Name]
 ADDRESS: [Address]

PROJECT DATA
 PROJECT NO.: [Number]
 SHEET NO.: [Number]

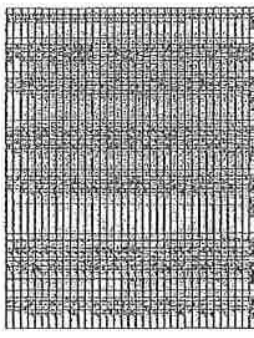
NOTES:
 1. [Note 1]
 2. [Note 2]

NO.	DESCRIPTION	DATE
1	1/11/11	1/11/11
2	1/11/11	1/11/11
3	1/11/11	1/11/11
4	1/11/11	1/11/11
5	1/11/11	1/11/11

WILLIAM P. MOYANUS
 PROFESSIONAL LAND SURVEYOR
 NEW HAMPSHIRE LICENSE NO. 11116

DUFFY, DOLGY & MCKENANUS
 631 EIGHTH AVENUE, QUINCY, NH 03085
 (603) 531-5115

DATE OF SURVEY: 1/11/11
 SURVEYOR: [Name]
 PROJECT: [Name]



THIS MAP WAS PREPARED BY THE SURVEYOR IN ACCORDANCE WITH THE REQUIREMENTS OF THE PROFESSIONAL LAND SURVEYING ACT, NEW HAMPSHIRE, 1980.

Prepared by:

EXHIBIT D

Paul H. Schneider, Esq.
Giordano, Halleran & Ciesla, P.C.

GRANT OF CONSERVATION RESTRICTION/EASEMENT

This Grant of Conservation Restriction/Easement is made this ____ day of _____, 2008, by **PLANTATION BAY, LLC**, a New Jersey limited liability company, having an address of 901 Mays Landing Road, Somers Point, New Jersey 08224 (hereinafter referred to as the "Grantor") in favor of the **CITY OF SOMERS POINT**, a municipal corporation of the State of New Jersey, having an address of City Hall, 1 West New Jersey Avenue, Somers Point, New Jersey 08224 its successors, or assigns (hereinafter referred to as "Grantee")

WITNESSETH

WHEREAS, the Grantor is the owner of certain property located along Mays Landing Road in the City of Somers Point, Atlantic County, New Jersey, designated as Lots 1921 and 1944 in Block 3; Lots 1943 and 1946 in Block 1; Lot 1941 in Block 2; and Lot 1941.01 in Block 5.01 on the official Tax Map of the City of Somers Point (hereinafter "the Property"); and

WHEREAS, approximately 120 acres of the Property have long been used for outdoor recreation purposes, specifically an 18-hole regulation golf course and golf practice facility; and

WHEREAS, Grantor has obtained development approvals to construct an inclusionary residential development on approximately 24.58 acres of the Property, and plans to continue using approximately 5.55 acres of the Property for golf course support services including but not necessarily limited to a clubhouse/banquet facility and parking area; and

WHEREAS, preserving land for outdoor recreation use plays a significant role in the maintenance of the quality of life for the citizens of Somers Point; and

WHEREAS, Grantor desires to permanently preserve approximately 120 acres of the Property for outdoor recreation use, specifically an 18-hole regulation golf course and golf practice facility, and to prohibit any other use as further specified herein (“Restricted Property”). The Restricted Property is depicted on the concept plan attached hereto as **Schedule A** as “Deed Restricted Golf Course and Practice Facility”, and a legal description of the Restricted Property is attached as **Schedule B**; and

WHEREAS, Grantor is not restricting the use of the remaining approximately 30 acres of the Property (“Unrestricted Property”); and

WHEREAS, the Grantee is authorized by the New Jersey Conservation Restriction and Historic Preservation Restriction Act, N.J.S.A. 13:8B-1 et seq., to acquire and enforce conservation restrictions; and

WHEREAS, Grantor desires to grant to Grantee the right to enforce the terms of this Conservation Restriction/Easement; and

WHEREAS, Grantor desires to reserve access through the Restricted Property for construction, reconstruction, repair and maintenance of the inclusionary residential development and the golf course support and service facilities including but not limited to the clubhouse/banquet facility and golf course parking area on the Unrestricted Property; and

WHEREAS, Grantor desires and intends that the Restricted Property shall be maintained and preserved in perpetuity as an 18-hole regulation golf course and golf practice facility or other outdoor recreation use, and that the Restricted Property shall be used, occupied, conveyed and transferred subject to, and benefited by, the covenants hereinafter set forth; and

WHEREAS, the Grantor, having the authority to do so, intends to enter into this Conservation Restriction/Easement in order to grant to the Grantee a conservation restriction/easement on the Property as set forth herein.

NOW, THEREFORE, in consideration of the facts recited above and mutual covenants, terms, conditions and restrictions contained herein, the receipt and sufficiency of which is hereby acknowledged, the Grantor, for itself, its agents, representatives, assigns, and successors, hereby voluntarily covenants and agrees with the City of Somers Point, that the Restricted Property is hereby made and declared to be subject, in perpetuity, to the following conveyances, easements, covenants and restrictions in favor of the Grantee:

1. Grantor hereby conveys, transfers, assigns and grants to the Grantee a conservation restriction/easement with respect to that portion of the Property designated as the "Deed Restricted Golf Course and Practice Facility" as shown on **Schedule A** and as described in **Schedule B**.

2. The Restricted Property shall be used, preserved, developed and maintained in perpetuity for outdoor recreation use, specifically an 18-hole regulation golf course and golf practice facility or other outdoor recreation purposes.

3. The Restricted Property is hereby restricted in perpetuity against any development or use whatsoever, other than development and use as an 18-hole regulation golf course and golf practice facility or other outdoor recreation purposes.

4. This Conservation Restriction/Easement is intended to create a "conservation restriction" as that term is defined in the New Jersey Conservation Restriction and Historic Preservation Restriction Act, N.J.S.A 13:8B-1 et seq. and to satisfy the requirements of City Ordinance No. _____. Pursuant to the terms of said Ordinance, the Grantor has agreed to

provide a conservation restriction in conjunction with construction of an inclusionary residential development on the Unrestricted Property for the purpose of protecting, preserving, using and maintaining in perpetuity the Restricted Property for outdoor recreation purposes.

5. The easements, covenants and restrictions set forth herein shall run with the land and be binding upon the Grantor, its agents, representatives, successors, assigns and all parties having or acquiring any right, title or interest in the Restricted Property, or any part thereof. Notice shall be given to any persons holding any easement on the Restricted Property as well as to any potential purchaser of the Restricted Property through the recordation of this Conservation Restriction/Easement for each lot of the Restricted Property with the Atlantic County Clerk's Office.

6. To monitor and enforce this Conservation Restriction/Easement the City of Somers Point shall have the right to enter upon the Restricted Property in a reasonable manner and at reasonable times to assure compliance with the provisions of this Conservation Restriction/Easement.

7. In addition to the exercise of any other statutory or common law right, after receipt by Grantor of a written notice to cease from the City sent in accordance with the within notice requirements, and the lapsing of a five (5) day period to cure or cease the prohibited activity, the City shall have the right to enjoin any activity on, or use of, the Restricted Property that is inconsistent with the purpose of this Conservation Restriction/Easement and to enforce the preservation or restoration of such areas or features of the Restricted Property that may be damaged by inconsistent activity or use. The Grantor intends that enforcement of the terms and provisions of this Conservation Restriction/Easement shall be at the discretion of the City and that any forbearance on behalf of the City to exercise its rights hereunder in the event of any

breach hereof by the Grantor, its successors or assigns, shall not be deemed or construed to be a waiver of the City's rights granted hereunder in the event of any subsequent breach. This shall be true regardless of the number of breaches of this Conservation Restriction/Easement, or its restrictions, conditions, or covenants which occur, or the length of time it remains unenforced.

8. Notwithstanding any other provision in this Conservation Restriction/Easement, the Grantor reserves to itself, its successors and assigns, all rights as owner of the Restricted Property, including but not limited to the rights to:

(a) Operate, use and maintain the Restricted Property as a commercial, for-profit golf course and golf practice facility or other commercial, for-profit outdoor recreation uses, consistent with this Conservation Restriction/Easement

(b) Develop, redevelop, maintain, modify and repair an 18-hole regulation golf course and golf practice facility on the Restricted Property, including but not limited to all structures and facilities that Grantor determines will further or benefit the operation of the golf course and/or golf practice facility;

(c) Install, replace and maintain any utility lines on the Restricted Property as have been or may be approved or are required pursuant to the terms of any permits issued by any federal, state, or local governmental agencies;

(d) Install, replace, maintain, modify and repair stormwater management facilities on the Restricted Property for management of stormwater from the Unrestricted Property in such manner as may be approved or required pursuant to the terms of any permits issued by any federal, state or local.

(e) Temporary access on and across the Restricted Property as reasonably convenient or necessary for construction, reconstruction, repair or maintenance of the

inclusionary residential development and associated site improvements on the Unrestricted Property; and

(f) Temporary access on and across the Restricted Property as reasonably convenient or necessary for the construction, reconstruction, repair and maintenance of the clubhouse/banquet facility, parking lot and other golf course support amenities and associated sited improvements on the Unrestricted Property.

9. In the event that the Grantor fails to adequately maintain stormwater management basins and utility pipes then the Homeowners Association to be created for the market-rate housing units shall be permitted access over, under and across the golf course to service and maintain same. The Grantee has the right (but not the obligation) to maintain the site improvements for the benefit of the residential units in the event that they are not properly maintained by the Grantor or the Homeowners Association at the Grantor's cost and expense. The Grantee shall have the right to file a lien against the property for all costs that it incurs in performing these maintenance obligations in the event of the Grantor's nonpayment.

10. No right of access by the general public to any portion of the Property, including the Restricted Property, is conveyed by this Conservation Restriction/Easement.

11. All notices, consents, approvals or other communications hereunder shall be in writing and shall be deemed properly given if sent by United States certified mail, return receipt requested, addressed to the appropriate party or its assigns or successors in interest.

12. The Grantor agrees that the terms, conditions, restrictions and purposes of this grant will be inserted by it in any subsequent deed, lease, sub-lease or other legal instrument by which the Grantor transfers, encumbers, shares, or divests itself of any interest in the Restricted Property. Grantor is permitted to convey the lots comprising the Restricted Property,

individually or collectively to a third party or subject to the restrictions in this Conservation Restriction/Easement, which conveyance and any grantee thereof shall be subject to all terms and restrictions contained in this Conservation Restriction/Easement.

13. The City agrees that it will assign its rights under this Conservation Restriction/Easement only to another governmental body. Notwithstanding this assignment, City will not delegate to any other governmental entity or any other entity control over or the ability to enforce the matters described in this Conservation Restriction/Easement.

14. Notwithstanding anything contained herein to the contrary, any modification or termination of this Conservation Restriction/Easement shall require the prior written approval of City, its successors or assigns.

15. If any provision of this Conservation Restriction/Easement or the application thereof to any person or circumstance is found to be invalid, the remainder of the provisions of this Conservation Restriction/Easement, and the application of such provision to persons or circumstances other than those as to which it is found to be invalid, shall not be affected thereby.

16. The Grantor reserves unto itself the right to undertake de minimis modifications of the borders of the Restricted Property that are approved by the Grantee. The Grantee may approve the modification under the following conditions and with the following documentation:

(a) The modification does not diminish the area of the Restricted Property;

and

(b) The modification does not compromise the continued viability and use of the Restricted Property as required by this Conservation Restriction/Easement.

17. If the Grantee approves the Grantor's proposed modification, the Grantor shall amend this Conservation Restriction/Easement by preparing and submitting to the Grantee for review and approval:

(a) A revised Plan and Metes and Bounds description for the area to be preserved under the modified Conservation Restriction/Easement (hereinafter the "Modification Documents"; and

(b) An Amended Conservation Restriction/Easement that reflects the modifications to this original Conservation Restriction/Easement, the justification for the modification and that also includes the deed book and page of the title deed for the property or properties subject to the modified Conservation Restriction/Easement set forth in the Modification Documents.

18. This Conservation Restriction/Easement may only be removed pursuant to N.J.S.A. 13:8B-1 et. seq.

19. The said Grantor does covenant with the said Grantee as follows:

(a) That the said Grantor is seized of the property and said Conservation Restriction/Easement and has the right and title to convey the same and to restrict the same.

(b) That the Grantee shall quietly enjoy the said Conservation Easement.

(c) That the said Grantor, its successors and assigns, shall be bound by the terms of this Conservation Restriction/Easement, which shall run with the land.

(d) That all mortgage lenders and other creditors with a security interest in the land to be conveyed by said Conservation/Easement Restriction have consented to this document. Any mortgages, encumbrances and similar secured credit accommodations shall be subordinate and subject to this Easement.

20. Grantor agrees that Grantee shall be permitted to include the 120-acre Restricted Property in its Open Space/Green Acres Plan.

TO HAVE AND TO HOLD unto the City of Somers Point, its successors and assigns forever. The covenants, terms, conditions, restrictions, and purposes imposed with this Conservation/Restriction Easement shall not only be binding upon the Grantor but also its agents, representatives, assigns and all successors to it in interest, and shall continue as a servitude running in perpetuity with the land referred to herein as the Restricted Property.

IN WITNESS WHEREOF, the Grantor has set its hand and seal on the day and year first above written, and directs that this Conservation Restriction/Easement be recorded in the office of the Atlantic County Clerk.

WITNESS:

PLANTATION BAY, LLC

By: _____

Managing Member

EXHIBIT "E"

AGREEMENT FOR PAYMENT IN LIEU OF TAXES

THIS AGREEMENT, made this ____ day of _____, ____ between Plantation Bay, LLC, a New Jersey limited liability company, having its principal office c/o Greate Bay Country Club, 901 Mays Landing Road, Somers Point, New Jersey 08224 (hereinafter the "Sponsor"), and the City of Somers Point, a municipal corporation of Atlantic County and State of New Jersey (hereinafter the "Municipality").

WITNESSETH

In consideration of the mutual covenants herein contained and for other good and valuable consideration, it is mutually covenanted and agreed as follows:

1. This Agreement is made pursuant to the authority contained in Section 37 of the New Jersey Housing and Mortgage Finance Agency Law of 1983 (N.J.S.A. 55:14K-1 et seq.) (hereinafter "HMFA Law") and a Resolution of the Committee of the Municipality dated _____, 200_ (the "Resolution") and with the approval of the New Jersey Housing and Mortgage Finance Agency (hereinafter the "Agency"), as required by N.J.S.A. 55:14K-37.
2. The Affordable Housing Project is or will be situated on a ____ acre parcel of land designated as a portion of Block _____, Lot _____, as shown on the Official Assessment Map of the City of Somers Point and more commonly referred to as Somers Point, New Jersey.
3. As of the date the Sponsor executes a first mortgage upon the Project in favor of the Agency (hereinafter referred to as the "Agency Mortgage"), the land and improvements comprising the Affordable Housing Project shall be exempt from real property taxes, provided that the Sponsor shall make payments in lieu of

taxes to the municipality as provided hereinafter. The exemption of the Affordable Housing Project from real property taxation and the Sponsor's obligation to make payments in lieu of taxes shall not extend beyond the date on which the Agency Mortgage is paid in full, which according to the HMFA Law, may not exceed fifty (50) years.

4. (a) If the Affordable Housing Project receives construction and permanent financing from the Agency the Sponsor shall make payment to the Municipality of an annual service charge in lieu of taxes in such amount as follows:
 - (1) From the date of the execution of the Agency Mortgage until the date of substantial completion of the Affordable Housing Project, the Sponsor shall make payment to the Municipality in an amount equal to \$_____ (pursuant to the HMFA Law, the amount of taxes due on the property for the year preceding the recording of the Agency Mortgage). As used herein, "Substantial Completion" means the date upon which the Municipality issues the Certificate of Occupancy for all units in the Affordable Housing Project.
 - (2) From the date of Substantial Completion of the Affordable Housing Project and for the remaining term of the NJHMFA Mortgage, the Sponsor shall make payment to the Municipality in an amount equal to 6.28 percent of Project Revenues.
- (b) If the Affordable Housing Project receives permanent financing only from the Agency, the Sponsor shall make payment to the Municipality in an amount

equal to 6.28 percent of Project Revenues, from the date of the Agency Mortgage and for the remaining term of the Agency Mortgage.

(c) As used herein, "Project Revenues" means the total annual gross rental or carrying charge or other income of the Sponsor from the Affordable Housing Project less the costs of utilities furnished by the Affordable Housing Project, which shall include the costs of gas, electric, heating fuel, water supplied, and sewerage charges, if any.

(d) The amount of payment in lieu of taxes to be [paid pursuant to paragraphs (a) or (b) and (c) above is calculated in Exhibit "A" attached hereto. It is expressly understood and agreed that the revenue projections provided to the Municipality as set forth in Exhibit "A" and as a part of the Sponsor's application for an agreement for payments in lieu of taxes are estimates only. The actual payments in lieu of taxes to be paid by the Sponsor shall be determined pursuant to Section 5 below.

5. (a) Payments by the Sponsor shall be made on a quarterly basis in accordance with bills issued by the Tax Collector of the Municipality in the same manner and on the same dates as real estate taxes are paid to the Municipality and shall be based upon Project Revenues of the previous quarter. The Municipality may elect, by notice to the Sponsor delivered in writing no later than the date of Substantial Completion, to require the Sponsor to use for purposes of calculating rents and the corresponding annual service charge in lieu of taxes a fiscal year other than the accounting fiscal year of the Sponsor. If the Municipality makes such an election, the use of the phrase "fiscal year" in this Agreement shall refer

to such annual accounting period specified by the Municipality. No later than three (3) months following the end of the first fiscal year of operation after (i) the date of Substantial Completion (if the Affordable Housing Project is receiving construction and permanent financing) or (ii) the date of the Agency Mortgage (if the Affordable Housing Project is receiving permanent financing only) and each year thereafter that this Agreement remains in effect, the Sponsor shall submit to the Municipality a certified, audited financial statement of the operation of the Project (the "Audit"), setting forth the Project Revenues and the total payments in lieu of taxes due to the Municipality calculated at 6.28 percent of Project Revenues as set forth in the Audit (the "Audit Amount"). The Sponsor simultaneously shall pay the difference, if any, between (i) the Audit Amount and (ii) payments made by the Sponsor to the Municipality for the preceding fiscal year. The Municipality may accept any such payment without prejudice to its right to challenge the amount due. In the event that the payments made by the Sponsor for any fiscal year shall exceed the Audit Amount for such fiscal year, the Municipality shall credit the amount of such excess to the account of the Sponsor.

(b) All payments pursuant to this Agreement shall be in lieu of taxes and the municipality shall have all the rights and remedies of tax enforcement granted to the Municipalities by law just as if said payments constituted regular tax obligations on real property within the Municipality. If, however, the Municipality disputes the total amount of the annual payment in lieu of taxes due it, based upon the Audit, it may apply to the Superior Court, Chancery Division

for an accounting of the service charge due the Municipality, in accordance with this Agreement and HMFA Law. Any such action must be commenced within one year of the receipt of the Audit by the Municipality.

(c) In the event of any delinquency in the aforesaid payments, the Municipality shall give notice to the Sponsor and NJHMFA in the manner set forth in 9(a) below, prior to any legal action being taken.

6. The tax exemption provided herein shall apply only so long as the Sponsor or its successors and assigns and the Affordable Housing Project remain subject to the provisions of the HMFA Law and Regulations made thereunder and the supervision of the Agency, but in no event longer than the term of the Agency Mortgage. In the event of (a) a sale, transfer or conveyance of the Affordable Housing Project by the Sponsor or (b) a change in the organizational structure of the Sponsor, this Agreement shall be assigned to the Sponsor's successor and shall continue in full force and effect so long as the successor entity qualifies under the HMFA Law or any other state law applicable at the time of the assignment of this Agreement and assumes the Agency Mortgage.
7. Upon any termination of such tax exemption, whether by affirmative action of the Sponsor, its successors and assigns, or by virtue of the provisions of the HMFA Law, or any other applicable state law, the Affordable Housing Project shall be taxed as omitted property in accordance with the law.
8. The Sponsor, its successors and assigns shall, upon request, permit inspection of property, equipment, buildings and other facilities of the Affordable Housing Project and also documents and papers by representatives duly authorized by the

Municipality. Any such inspection, examination or audit shall be made during reasonable hours of the business day in the presence of an officer or agent of the Sponsor or its successors and assigns.

9. Any notice or communication sent by either part to the other hereunder shall be sent by certified mail, return receipt requested, addressed as follows:

(a) When sent by the Municipality to the Sponsor, it shall be addressed to Plantation Bay, LLC, 901 Mays Landing Road, Somers Point, New Jersey 08224 or to such other address as the Sponsor may hereafter designate in writing; and a copy of said notice or communication by the Municipality to the Sponsor shall be sent by the Municipality to the New Jersey Housing and Mortgage Finance Agency, 637 South Clinton Avenue, PO Box 18550, Trenton, New Jersey 08650-2085.

(b) When sent by the Sponsor to the Municipality, it shall be addressed to the City of Somers Point, City Hall, 1 West New Jersey Avenue, Somers Point, NJ 08244 or to such other address as the Municipality may designate in writing; and a copy of said notice or communication by the Sponsor to the Municipality shall be sent by the Sponsor to the New Jersey Housing and Mortgage Finance Agency, 637 South Clinton Avenue, PO Box 18550, Trenton, New Jersey 08650-2085.

10. In the event of a breach of this Agreement by either of the parties hereto or a dispute arising between the parties in reference to the terms and provisions as set forth herein, either party may apply to the Superior Court, Chancery Division, to settle and resolve said dispute in such fashion as will tend to accomplish the purposes of the HMFA Law.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day and year set forth below.

ATTEST:

ATTEST:

SPONSOR:

Plantation Bay, LLC

MUNICIPALITY:

City of Somers Point

#622507 v1 -

EXHIBIT C: BAY AVENUE REDEVELOPERS SETTLEMENT AGREEMENT

Correct Version

REVISED APRIL 11, 2007

SETTLEMENT AGREEMENT OF LITIGATION

BAY AVENUE REDEVELOPERS, L.L.C., BASS HARBOR, L.L.C., HARBOUR COVE MARINA, L.L.C., and S.P. #2 v. CITY OF SOMERS POINT, and the CITY OF SOMERS POINT PLANNING BOARD,

Docket No. ATL- L-3204-05 P.W. (*Mount Laurel*)

This Settlement Agreement of Litigation (this "Agreement") is entered into this [_____] day of April, 2007 by and between (i) Bay Avenue Redevelopers, L.L.C., Bass Harbor, L.L.C., Harbour Cove Marina, L.L.C., and S.P. #2, each with a business address at 2 Eastwick Drive, Gibbsboro, New Jersey, 08026 (collectively, "Plaintiff") and (ii) the City of Somers Point, County of Atlantic, State of New Jersey, a municipal corporation of the State of New Jersey ("Somers Point" and/or the "City") situated for the conduct of official business at City Hall, 1 West New Jersey Avenue, Somers Point, New Jersey 08244 (Plaintiff and the City are sometimes hereinafter individually referred to as a "Party" and collectively as the "Parties.")

BACKGROUND

1. Plaintiff is the fee owner, contract purchaser and/or owner of an equitable interest in approximately 21 acres more or less in Somers Point, which lands are identified on the City's tax maps as Block 1213, Lot 5 and Block 1212, Lots 2.01 and 2.02 (the "Bay Avenue Property"), Block 1007, Lots 1, 2 and 3 (the "Bass Harbor Property"), Block 1211, Lot 2 (the "Harbour Cove Property") and Block 719, Lot 18 (the "S.P. Property"). Unless otherwise indicated, the Bay Avenue Property, the Bass Harbor Property and the Harbour Cove Property shall be collectively referred to as "Plaintiff's Properties."

2. The Parties agree that in order to both accomplish the goals and objectives of this Agreement and promote sound local, regional and state land use and utility planning objectives,

the rezoning and rehabilitation efforts contemplated by this Agreement (hereinafter defined) require the rezoning of properties owned by Shore Memorial Hospital and/or affiliated entities ("Shore Memorial") and identified on the tax maps of the City as Block 1410, Lots 1, 4, 5 and 7-10, Block 1411, Lot 1, Block 1412, Lot 4, Block 1413, Lots 1 and 2 and Block 1512, Lots 21 and 21.01 (collectively the "Hospital Property").

3. The Parties further believe that the process outlined in this Agreement for the approval and construction of the Project, hereinafter defined, the adoption of the Zoning Amendment and the adoption of the Master Plan Amendment are in accord with the State of New Jersey's Smart Growth principles.

4. Shore Memorial, while not a Party to either this Agreement or the Litigation (hereinafter defined), is the owner of the Bay Avenue Property and the Hospital Property, both of which are anticipated to be re-zoned in connection with implementation of this Agreement. Shore Memorial, after having had the opportunity to review this Agreement and accompanying exhibits, has consented to the anticipated re-zoning of the Hospital Property as set forth in the Proposed Ordinance and has confirmed its commitment to assist the City in the City's efforts to address its affordable housing obligations, subject to the terms and conditions set forth herein, as evidenced by the Statement of Consent to Settlement Agreement executed by Shore Memorial and attached to this Agreement as Exhibit "H." Based on the foregoing, Shore Memorial shall be deemed to be a third-party beneficiary of this Agreement with the right to rely on and enforce those provisions pertaining to the Hospital Property and the Non-Residential Component of the Project.

5. Unless otherwise indicated, Plaintiff's Properties and the Hospital Property shall be collectively referred to as the "Properties."

6. Plaintiff desires to produce affordable housing on Plaintiff's Properties so as to create additional affordable housing opportunities in accordance with *Southern Burl. Co. NAACP v. City of Mount Laurel*, 92 N.J. 158 (1983) ("*Mount Laurel II*"), the New Jersey Fair Housing Act, N.J.S.A. 52:27D-301, *et seq.* (the "FHA") and applicable regulations of the New Jersey Council on Affordable Housing ("COAH"), N.J.A.C. 5:91-1 *et seq.* and N.J.A.C. 5:93-1 *et seq.*, and has filed exclusionary zoning litigation in the Superior Court of New Jersey for Atlantic County (the "Superior Court") against the City and the Planning Board of the City of Somers Point (the "Planning Board") in the matter captioned *Bay Avenue Redevelopers, L.L.C., Bass Harbor, L.L.C., Harbor Cove Marina, L.L.C., And S.P. #2 v. City Of Somers Point, and The City Of Somers Point Planning Board*, Docket No. ATL- L-3204-05 P.W. (*Mount Laurel*) (the "Litigation").

7. The Litigation resulted in an August 23, 2006 Judgment Declaring and Finding Defendant, The City Of Somers Point, Not In Compliance with the *Mount Laurel* Doctrine ("Judgment of Non-Compliance") that declared, in part, that: (a) the City has not satisfied its twelve (12) year cumulative second cycle affordable housing obligation from 1987 to 1999 (the "*Mount Laurel* Obligation"), as that *Mount Laurel* Obligation was assigned by COAH under *Mount Laurel II* and the FHA; (b) for failing to satisfy the *Mount Laurel* Obligation, the City is in violation of its constitutional and statutory mandates; and (c) a decision is reserved with respect to Plaintiff's entitlement to a builder's remedy.

8. Following the Judgment of Non-Compliance, the Parties and the Court's Special Master engaged in extensive planning discussions with respect to a mutually agreeable inclusionary development concept for the Properties.

9. The Parties have reached an understanding with respect to Plaintiff's builder's remedy entitlements and obligations and the agreed-upon development of the Properties as documented and memorialized herein, which the Parties intend to jointly submit to the Superior Court for review and approval.

10. Upon agreeing to the terms of this Agreement, the Parties presented this Agreement to the Planning Board for approval, but the Planning Board declined to execute this Agreement.

11. Notwithstanding the Planning Board's decision not to endorse this Agreement, the Parties remain committed to the terms of this Agreement and shall: (a) pursue approval of this Agreement from the Superior Court; and (b) seek all necessary judicial assistance so as to implement the terms of this Agreement and facilitate the prompt production of the affordable housing anticipated by this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants, promises and agreements contained herein, to which the Parties agree to be legally bound, the Parties agree to settle Plaintiff's builder's remedy litigation as follows:

SECTION I

INCORPORATION OF BACKGROUND

1.1 **Incorporation.** The "Background" set forth hereinabove is incorporated by reference herein as if set forth at length.

SECTION II

THE LAND USE CONCEPT FOR THE INCLUSIONARY DEVELOPMENT OF PLAINTIFF'S PROPERTIES AND THE PROVISION OF AFFORDABLE HOUSING OPPORTUNITIES

2.1 **The Parties' Intent.** The purpose and intent of this Agreement is to (a) enhance the realistic opportunity for the provision of low and moderate income housing units through

Plaintiff's: (i) construction of twenty-six (26) affordable family rental housing units; and (ii) significant monetary contributions to the City's affordable housing trust fund for the purpose of subsidizing the production of thirty (30) additional units of affordable housing in the South-Southwest Housing Region through the execution of a Regional Contribution Agreement (an "RCA") between the City and a qualifying receiving municipality or other housing activity that would assist in the City's satisfaction of its *Mount Laurel* Obligation; (b) provide an opportunity for the rehabilitation of the Properties consistent with the provisions of the Local Redevelopment and Housing Law, *N.J.S.A. 40A:12A-14* (the "Rehabilitation Law"), and (c) develop the Properties in accordance with the proposed zoning amendment and the proposed Master Plan amendment (each of which is further described herein) in a manner that will adequately address the City's rehabilitation needs for the Properties as well as satisfy a substantial portion of the City's *Mount Laurel* Obligation; (d) promote sound local, regional and state land use and utility planning objectives; (e) allow for the expansion and upgrading of existing buildings and facilities and development of additional facilities on lands currently under the ownership and control of Shore Memorial, which is an important, vital, valued and long-standing employer and corporate citizen within Somers Point; (f) set forth the terms and conditions of Shore Memorial's commitment to provide \$490,000 to be used for up to fourteen (14) units of affordable housing in the South-Southwest Housing Region through the execution of an RCA between the City and a qualifying receiving municipality and/or for other housing activity that will facilitate the City's ability to satisfy the entirety of its assigned 105 unit Second Round *Mount Laurel* Obligation; and (g) provide the City with a tax ratable structure that will assist in the stabilization of local taxes.

2.2 The Land Use Plan. The intentions of the Parties as expressed above are intended to be implemented by (a) the City's consideration of the Proposed Zoning Ordinance (the "Proposed Ordinance"), which shall be applicable to the Properties and which is attached hereto and incorporated by reference herein as Exhibit "A"; (b) the Planning Board's consideration of a Proposed Master Plan Amendment (the "Proposed Master Plan Amendment"), which is attached hereto and incorporated by reference herein as Exhibit "B"; (c) placement of the Properties in an area in need of rehabilitation pursuant to the Rehabilitation Law, for the purpose of facilitating: (i) a five-year tax exemption and abatement program to foster economic development within the City and (ii) an upgrade to existing water and sewer infrastructure currently serving the Properties in the manner further described at Section 5.4 of this Agreement; (d) the City and the Planning Board otherwise extending full cooperation to secure all required outside agency governmental permits, licenses, authorizations and approvals.

Within ten (10) days of the execution of this Agreement, the City shall refer the Proposed Master Plan Amendment (Exhibit "B") to the Planning Board for consideration and request that the Planning Board conduct a public hearing and take action on the Proposed Master Plan Amendment.

Within forty-five (45) days of the Superior Court's entry of a Judgment approving this Agreement and in accordance with Section 5.2 of this Agreement, the City, irrespective of the Planning Board's actions and/or recommendations with regard to the Proposed Master Plan Amendment, agrees to introduce and consider adoption of the Proposed Ordinance (Exhibit "A"). If adopted, the City shall incorporate the Proposed Master Plan Amendment and/or Proposed Ordinance, and the affordable housing that is to be produced and/or funded pursuant to this Agreement, into the City's Fair Share Compliance Plan (the "Compliance Plan") and shall

request that the Planning Board incorporate the same into the Planning Board's Housing Element.

Regardless of the timing for completion and/or approval of the Proposed Ordinance and/or Compliance Plan, Plaintiff shall, at any point following Superior Court approval of this Agreement pursuant to Section 6.1 of this Agreement, be permitted to pursue development approvals for the Project with the Planning Board, which the City shall request that the Planning Board expeditiously process in accordance with Section 4.2.

If the Proposed Ordinance is not timely adopted in accordance with this Section 2.2, Plaintiff and the City shall have the unilateral option of terminating this Agreement and continuing with the Litigation.

SECTION III

INTENDED SCOPE OF DEVELOPMENT OF THE PROPERTIES AND PLAINTIFF'S AFFORDABLE HOUSING OBLIGATIONS

3.1 **The Total Project.** The Total Project (the "Project") shall include the construction of both residential and non-residential uses, as well as the reservation of a designated area for open space, which open space area shall allow for public access. The Proposed Ordinance (Exhibit "A") shall provide for uses and standards that shall allow for the construction of the Residential and Non-Residential Components (hereinafter defined) in accordance with this Agreement. Plaintiff shall file development applications that are substantially consistent with the Proposed Ordinance (Exhibit "A"), and substantially consistent with the Concept Plans and Elevations collectively attached hereto as Exhibits "C-1 through C-10" (the "Concept Plans"). Plaintiff agrees to commence with construction of the parking garage referenced in Section 3.1.2 of this Agreement, followed by the development of the Bay Avenue Property and the development of the on-site affordable housing units proposed for the Bass

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located on the Hospital Properties and owned by Shore Memorial, which expansion shall include a parking garage that will address parking needs of the Non-Residential Component and other non-residential construction of not more than 350,000 square feet in total floor area, as generally shown on Exhibits "C-1" and "C-2".

3.1.3 **Vacation of Sunny Avenue** The Parties agree that the realization of the Non-Residential Component of the Project shall require the City's vacation of a portion of a public street known as Sunny Avenue. The City has agreed to permit such vacation of Sunny Avenue to allow development of the Non-Residential Component in the manner depicted at Exhibit "C-3."

3.1.4 **Areas of Open Space Within the Project** Plaintiff has agreed to provide an open space area in an area commonly known as the North Basin of Harbour Cove Marina. It is estimated that the area for both the North and South (currently existing) basin open space areas will be approximately 10,000 square feet in total size. The open space area to be provided will be available for public use, but will be owned, managed maintained and insured by Plaintiff and/or its successor and assigns, with the City being an additional insured on such insurance policies. The open space area shall be in a location and at a scope generally depicted in the "Cook-Out Area Plan," a true and correct copy of which is attached hereto as Exhibit "C-10."

3.2 **Duration of Zoning Contemplated by the Proposed Ordinance** In order to fully implement the purposes of this Agreement and in accordance with *N.J.A.C. 5:93-5.13(c)* and applicable New Jersey case law, absent the written consent of Plaintiff (which for purposes of this Agreement shall include any successor to any of Plaintiff's interests in any component of

the Project), the City shall not amend any provision of the Proposed Ordinance for a period of ten (10) years from the date of the Superior Court's approval of this Agreement.

3.3 S.P. Property The Parties recognize that the S.P. Property, although a subject of the Litigation, shall not be developed in accordance with terms of this Agreement. The Parties further agree that the current zoning designation and bulk/area standards for the S.P. Property allow for the development, by-right, of a medical/commercial facility of approximately 20,000 square feet. The City agrees that the current zoning designations and bulk/area standards for the S.P. Property shall not be amended or altered for a period of ten (10) years. The affordable housing obligations of the S.P. Property shall be limited to the payment of a development fee in an amount equal to two percent (2%) of the equalized assessed value for the non-residential development on the S.P. Property.

The S.P. Property shall also be entitled to the rights and entitlements set forth at Section 4.2 of this Agreement.

3.4 Affordable Housing Within the Residential Component Plaintiff has agreed to provide for the production of affordable housing through construction of such housing within the Project and to make monetary payments to the City to fund an RCA to provide affordable housing in the South-Southwest Housing Region or other housing activity that would assist in the City's satisfaction of its *Mount Laurel* Obligation.

3.4.1 Affordable Units to Be Constructed Within the Residential Component Irrespective of the number of market rate units approved and constructed within the Residential Component, if Plaintiff proceeds with construction of the Residential Component, Plaintiff agrees that the total number of Affordable Units to be constructed within the Project shall be twenty-six (26) family rental units to enable the

City to fully satisfy its twenty-five percent (25%) second round rental obligation and allow the City to capture and secure 2 for 1 family rental bonus credits pursuant to *N.J.A.C. 5:93-5.15(d)* such that the on-site construction of twenty-six (26) units equates to the production of fifty-two (52) credits. The affordable family rental units shall be located on a subdivided lot on the Bass Harbor Property and Plaintiff shall be freely permitted to apply for and secure available state and federal subsidies and/or tax credits to defray the cost of construction of the affordable units, for which the City will extend its full and prompt endorsement and support. In this regard, the City shall extend a Payment in Lieu of Taxes (the "PILOT") for the Affordable Units. The term and duration of the PILOT shall be consistent with the term and duration of the New Jersey Housing Mortgage Finance Agency (the "HMFA") mortgage. This PILOT shall only apply to the Affordable Units of the Project, and the rest of the Project shall be subject to standard taxation, except as provided in Section 5.3 hereof. The form of PILOT Agreement to be executed with respect to the Affordable Units is attached hereto as Exhibit "D" and shall be executed by the Parties within thirty (30) days of the date of the Superior Court's approval of this Agreement. However, the PILOT shall not take effect until construction of the units are completed and ready for occupancy.

Notwithstanding the foregoing, Plaintiff acknowledges that the entire Residential Component is classified as "inclusionary" and, as such, may disqualify the Affordable Units from securing nine percent (9%) Low Income Housing Tax Credits ("LIHTCs") and Balanced Housing/Home Express funds under the New Jersey Department of Community Affairs' and HMFA's regulations. Plaintiff agrees that it shall nonetheless

construct the twenty-six affordable rental units if the foregoing government funding sources are not forthcoming.

3.4.2 Plaintiff's RCA Funding Obligations. In addition to the on-site construction of twenty-six (26) affordable rental units (equating to fifty-two (52) credits pursuant to *N.J.A.C. 5:93-5.15(d)*), Plaintiff agrees to fully fund the transfer of thirty (30) units to another community in the South-Southwest Housing Region pursuant to an RCA to be executed by the City and a qualified "receiving" municipality of the City's choosing or other qualified housing activity. The amount of money for each unit that is being transferred shall be equal to either: (a) the amount of money that the City is responsible for tendering to the "receiving" municipality; or (b) or thirty-five thousand dollars (\$35,000) per unit, whichever amount is less. A payment schedule shall be set forth in the RCA in accordance with COAH's rules and the Plaintiff shall be responsible for abiding by said schedule to fully fund the first thirty (30) units being transferred in the event that the total RCA exceeds thirty (30) units. Payments shall be made by the Plaintiff to the City at least sixty (60) days prior to the time that the City shall tender payment to the receiving municipality such that the City has sufficient time to deposit the money in its dedicated RCA Funding Account and the City is in a position to send certified funds to the "receiving" municipality in accordance with the payments schedule. However, Plaintiff's first payment shall be required no sooner than May 1, 2008. In making such payment on or after May 1, 2008, Plaintiff shall tender a performance guarantee or letter of credit to the City in the full amount of the RCA funding obligation upon execution of the RCA and its approval by COAH and the Court to ensure that sufficient funds are available to pay for the Plaintiff's funding obligations in the event of

Plaintiff's default. The form of the guarantee or credit accommodation shall be subject to the review and approval of the City's solicitor and insurance agent.

Plaintiff's above-described obligations to fully fund the anticipated RCA of 300 units and guarantee the entirety of Plaintiff's RCA payment obligation is conditioned upon Plaintiff being (a) entitled to construct the three hundred (300) market rate housing units anticipated to be approved for the Residential Component. If, as a result of municipal or outside agency review, Plaintiff is prevented or prohibited from constructing the three hundred (300) market rate units anticipated for the Residential Component of the Project, Plaintiff's RCA funding obligations, outlined above, shall be reduced at a rate of one RCA unit (at a cost of \$35,000 per unit) for every ten (10) market rate units not approved within the Residential Component.

In the event that the City cannot reach an agreement with a receiving municipality, or the Superior Court or COAH disapproves the anticipated RCA, Plaintiff nonetheless agrees to make the payment described in the preceding sentence to the City's Affordable Housing Trust Fund, for the purpose of enabling the City to satisfy its *Mount Laurel* Obligation.

3.5 Shore Memorial's Contribution Toward the Production of Affordable Housing In conjunction with construction of the Non-Residential Component of the Project as generally shown on Exhibit "C-1", Shore Memorial, as the owner of the Hospital Property, has agreed to contribute four hundred and ninety thousand dollars (\$490,000.00) to the City's Affordable Housing Trust Fund, which funds shall be used by the City to fund an RCA to provide affordable housing in the South-Southwest Housing Region and/or other housing activity that would assist in the City's satisfaction of its *Mount Laurel* Obligation (the "Hospital

Contribution"). In consideration of the Hospital Contribution, the City has agreed that: (i) the portions of the Non-Residential Component consisting of the parking garage and hospital expansion (lobby and medical facilities addition containing a total floor area of approximately 250,000 square feet) shall be exempt from any future development fee, growth share or other affordable housing ordinance that may be adopted by the City; and (ii) the portions of the Non-Residential Component consisting of medical office buildings (containing a total floor area of approximately 90,000 square feet) may be subject to a development fee in an amount equal to 2% of equalized assessed value, but shall be exempt from any growth share or other affordable housing ordinance that may be adopted by the City. The Hospital Contribution shall be payable in accordance with a payment schedule to be set forth in the RCA in accordance with COAH's rules, with each payment be made to the City at least sixty (60) days prior to the time that the City is required to tender payment to the receiving municipality such that the City has sufficient time to deposit the money in its dedicated RCA Funding Account and the City is in a position to send certified funds to the "receiving" municipality in accordance with the payments schedule; provided, however, that no portion of the Hospital Contribution shall be required to be paid prior to January 2, 2008. Within forty-five (45) days of approval of the RCA by COAH and the Court, a performance guarantee or letter of credit shall be tendered to the City in the full amount of this RCA funding obligation, the form of which shall be subject to the review and approval of the City's solicitor and insurance agent. Shore Memorial's commitment to provide a guarantee and make the Hospital Contribution is conditioned upon and shall not arise prior to approval of this Agreement by the Superior Court and adoption of the Proposed Ordinance to allow development of the non-Residential Component.

In the event that the City cannot reach an agreement with a receiving municipality, or the Superior Court or COAH disapproves the anticipated RCA, the Hospital Contribution shall nonetheless be paid into the City's Affordable Housing Trust Fund for the purpose of enabling the City to address its *Mount Laurel* Obligation through other means consistent with the COAH regulations. Payment shall be made following notification by City of the alternative affordable housing purpose(s); provided, however, that no payment shall be required sooner than the later of January 2, 2008 or sixty (60) days prior to the date upon which the City requires such funds for the alternative affordable housing purpose.

3.6 **Compliance with COAH's Rules.** Plaintiff agrees that all affordable units shall comply with COAH's Rules including, but not limited to those concerning (a) income qualification, (b) controls on affordability, (c) deed restrictions, (d) bedroom distribution, (e) low/moderate income split, (f) phasing, as it relates to the Residential Component of the Project; (g) affirmative marketing and (h) handicap accessibility. However, COAH's preference for integration shall not be applicable should Plaintiff elect to concentrate all affordable units as rental units in one component of the Project, which is Plaintiff's intention. Plaintiff will provide and/or pay for income qualification services with a COAH approved agency and shall likewise file all required monitoring forms with COAH and the Court. For purposes of COAH's phasing requirements pursuant to *N.J.A.C. 5:93-5.6(d)*, Plaintiff shall be entitled to credit for completion of one (1) affordable unit for every payment of thirty five thousand dollars (\$35,000.00) made or guaranteed by Plaintiff in conjunction with Plaintiff's RCA obligations set forth at 3.4.2 of this Agreement.

SECTION IV

DEVELOPMENT AND BUILDING APPROVALS

4.1 **Site Specific Zoning Measures.** The Parties acknowledge the unique and beneficial development opportunity that is presented with respect to the Properties and agree that certain variances and waivers from the Proposed Ordinance, as well as relaxation from other local and regional land use legislation or regulations may ultimately prove to be required to allow for the intended, site specific development of the Properties as set forth in this Agreement. In order to permit the intended, agreed upon development of the Properties, and in accordance with *N.J.A.C. 5:93-10.1(b)* and the Municipal Land Use Law, *N.J.S.A. 40:55D-1 et seq.* (the "MLUL"), the City shall request that the Planning Board cooperate with the Plaintiff by granting reasonable variances and such other relief as may be necessary to construct the Project. The City further agrees to consider further amendments to the Proposed Ordinance in the event that the Planning Board refuses to grant reasonable variances from the Proposed Ordinance (Exhibit "A"), which reasonable variances are necessary to construct the Project in accord with the intention of the Parties and the terms of this Agreement.

4.2 **Subsequent Development Approvals and Plaintiff's Subchapter 10 Entitlements.** The City shall request that the Planning Board conduct all reviews of Plaintiff's applications for preliminary and final subdivision, site plan and/or variance approvals strictly in accordance with the MLUL, COAH's Rules, the Residential Site Improvement Standards (the "RSIS") with respect to the Residential Component and this Agreement, and that the Plaintiff be afforded all expedition and cost-reduction rights, entitlements and benefits accorded to inclusionary developers in COAH's second cycle Subchapter 10 Rules [*N.J.A.C. 5:93-10.1, et seq.*]. In this regard, the Parties specifically agree that the City shall request that the Planning Board schedule such special meetings as may be necessary to accommodate the "action

time periods" set forth in the MLUL and to provide Plaintiff with preferential treatment on regular agenda reviews.

In the event that the Planning Board refuses the City's requests with respect to the terms as set forth above, the Plaintiff shall be entitled to petition the Superior Court for such necessary relief as the Plaintiff determines to be appropriate to accomplish the terms and objectives of this Agreement and the prompt production of affordable housing.

4.3 Role of the Court's Special Master in the Development Approval Process for the Project The Parties may request the Master to assist the Parties during the application process for any approvals and permits relating to development of the Project. The Master's involvement may be requested by any of the Parties without the consent of the other.

Unless otherwise agreed by the Parties through their respective attorneys, the cost of the Master shall be paid by the Party seeking the Master's assistance to resolve a problem real or perceived.

4.4 Marc Shuster, P.P., to Serve As Reviewing Planner in the Development Approval Process for the Project The Parties acknowledge that Marc Shuster, P.P., and his associates, have served an integral role in the development of the Proposed Ordinance, the Proposed Master Plan Amendment and this Agreement. As such, the City shall request that the Planning Board retain Marc Shuster, P.P., and, in Mr. Shuster's absence, one of his planning associates, to serve as the exclusive reviewing planner for all development applications submitted for the Project provided that Marc Shuster, P.P. and his planning associates are employed by the City or Planning Board.

In the event that the Planning Board refuses the City's request with respect to the terms as set forth above, the Plaintiff shall be entitled to petition the Superior Court for such necessary

relief as the Plaintiff determine to be appropriate to accomplish the terms and objectives of this Agreement and the prompt production of affordable housing.

4.5 Mount Laurel Cost Reduction Entitlements. As is customary with respect to *Mount Laurel* projects, the following specific cost reduction entitlements apply to the Residential Component:

- a. No Planning Board application fees and escrow fees shall be attributable to the Affordable Units.
- b. No fees shall be charged for building permits, certificates of occupancy, or engineering inspections for the Affordable Units.
- c. The Residential Component, as it is an inclusionary development, shall not be subject to any development fee ordinance.

SECTION V

AREA IN NEED OF REHABILITATION AND TAX EXEMPTION/ABATEMENT RELIEF

5.1 Current Tax Structure and Condition of Existing Water and Sewer Infrastructure a Deterrent to Development. Both the City and Plaintiff recognize and acknowledge that the escalating local, school, and county real estate taxes in the City are creating a financial burden for the City's residents. The Parties further acknowledge that the sewer infrastructure that currently serves some of the Properties is of such an age and deteriorated condition that the subject sewer system cannot sustain the scope of development currently proposed for the Properties.

5.2 Area in Need of Rehabilitation. In order to address the tax and infrastructure constraints described in Section 5.1 (above), the Parties agree that, based upon the investigation and findings set forth in the Certification of Edmond C. Speitel Regarding Determination of Area

As in Need of Rehabilitation (the "Speitel Report"), which is attached hereto and incorporated by reference herein as Exhibit "E." the Properties can be declared to be an "area in need of rehabilitation" pursuant to the Rehabilitation Law, such that the City can offer and extend a five (5) year tax exemption and abatement to Plaintiff and to buyers within the Residential Component of the Project pursuant to the Five-Year Exemption and Abatement Law, *N.J.S.A. 40A:21-1, et seq.* (the "Abatement Law") to serve as an inducement and economic stimulus to allow the Project to move forward and thus enable the City to eventually correct its taxing imbalance. In that regard, Plaintiff acknowledges and confirms that Shore Memorial concurs with such a rehabilitation designation for the Hospital Property, subject to the terms and conditions of this Section 5.2.

To achieve the foregoing, the governing body of the City shall draft a proposed resolution (the "Rehabilitation Resolution") declaring the Properties in need of rehabilitation and in conjunction with that Rehabilitation Resolution, direct the Planning Board to promptly conduct any preliminary investigation required pursuant to *N.J.S.A. 40A:12A-14* to determine, following public notice and public hearing, whether the Properties are in an area in need of rehabilitation such that five (5) year tax exemption and abatement relief is available under *N.J.S.A. 40A:21-1, et seq.* In conducting such an investigation, the City shall direct the Planning Board to specifically consider the Speitel Report. Consistent with the provisions of *N.J.S.A. 40A:12A-14*, the City shall request that the Planning Board within forty-five (45) days of receipt of the Rehabilitation Resolution from the City, submit its recommendations regarding the Rehabilitation Resolution to the City. Within twenty (20) days of receipt of the recommendations, if any, from the Planning Board on the Rehabilitation Resolution, the City shall act on the Rehabilitation Resolution. For purposes herein, if the Rehabilitation Resolution

is adopted by the City, the Proposed Ordinance (Exhibit "A") shall be construed as the City's Rehabilitation Ordinance under *N.J.S.A. 40:12A-7*.

Under no circumstances shall: (a) the Properties be declared as an area in need of redevelopment; (b) the Plaintiff or Shore Memorial be required to execute any redevelopment agreement in order to proceed with development approvals and development of the Project; or (c) any additional substantive or procedural requirements be imposed on development of the Project that are not set forth in the MLUL, Proposed Ordinance or this Agreement. The intention of the Parties and Shore Memorial's consent to the re-zoning of the Hospital Property and the rehabilitation area designation are based upon the understanding that the City shall proceed solely in accord with the proscriptions of the rehabilitation process and not the redevelopment process, as there are distinct and substantial differences between those two (2) regulatory processes that are appreciated and acknowledged by the Parties and Shore Memorial.

5.3 Tax Exemption and Abatement. Upon receipt of the Planning Board's preliminary investigation determination, if any, that the Properties, and the Properties only, are an area in need of rehabilitation, the City shall adopt an Ordinance to authorize five (5) year tax exemptions and abatements pursuant to *N.J.S.A. 40A:21-1 et seq.* for the developer of the Project, Plaintiff, and to residential owners within the designated rehabilitation area. The foregoing shall be accomplished within thirty (30) days of receipt of the Planning Board's preliminary investigation determination, if any. Immediately upon adoption, the City and Plaintiff shall execute the Tax Agreement attached hereto as Exhibit "F" which Plaintiff may assign to developers of the Project who may, in turn, reassign same to the individual residential property owners of improved and/or unimproved lots in the Residential Component, once construction commences. Provided that Plaintiff constructs all market rate units currently

anticipated for the Residential Component, it is estimated, as more fully set forth at Exhibit "F," that the City shall receive PILOT proceeds in the amount of eight million and four hundred thousand dollars (\$8,400,000.00). The contents of Exhibit "F" are incorporated by reference herein as if set forth at length.

5.4 Sewer Improvements Within the Area in Need of Rehabilitation

As set forth at Section 2.1, the Parties acknowledge that the development of the Properties in accordance with this Agreement requires that certain sewer infrastructure improvements be constructed in and around the Properties (the "Sewer Improvements") after the completion of a sewer study in and around the Properties (the "Sewer Study"). The scope and phasing of the currently anticipated Sewer Improvements and the Sewer Study are set forth at Exhibits "G-1 and G-2," respectively. Plaintiff has agreed, subject to Plaintiff's ability to construct the Bay Avenue Property and the Non Residential Component of the Project, to conduct the Sewer Study, as detailed at Exhibit "G-2," at Plaintiff's sole cost and expense.

Plaintiff has further agreed that if after completion of the Sewer Study, it is determined that the City's sewer infrastructures cannot accommodate the sewer demands resulting from the Project, Plaintiff shall, at its sole cost and expense, upgrade any and all components of the City's sewer infrastructures so as to accommodate the sewer demands of the Project. While it is currently anticipated that the scope of such necessary improvements are defined within the Sewer Improvements set forth at Exhibit "G-1," it is understood and agreed by the Parties that the completion of the Sewer Study may yield alternative means to address and accommodate the sewer demands of the Project. Accordingly, following the completion of the Sewer Study the Parties shall cooperate in determining the appropriate scope of improvements to the City's sewer infrastructure so as to accommodate the sewer demands of the Project, which may require

modifying the Sewer Improvements outlined in Exhibit "G-1." However, regardless of whatever improvements are deemed necessary to accommodate the sewer demands of the Project, the cost and expense associated with such improvements shall be the sole responsibility of the Plaintiff.

In consideration of Plaintiff's agreement to perform the foregoing Sewer Study and construct improvements deemed necessary as a result of that Sewer Study, Plaintiff shall have the right to *pro rata* reimbursement from such users within the proposed area in need of rehabilitation. The City and the Plaintiff shall enter into a developer's agreement outlining the scope of Plaintiff's reimbursement entitlements. In further consideration of Plaintiff's agreement to conduct the Sewer Study and construct improvements deemed necessary following that Sewer Study, the City has agreed to grant Plaintiff, without costs, all necessary easements and permits necessary to effectuate all utilities and infrastructure for the Project.

SECTION VI

SUPERIOR COURT APPROVAL OF THIS SETTLEMENT AGREEMENT

6.1 **Court Approval Of Agreement Required.** The Parties acknowledge that pursuant to applicable *Mount Laurel* decisional law this Agreement requires Superior Court approval subsequent to the Superior Court conducting a Fairness Hearing upon adequate notice to the protected class and the general public. Within ten (10) days of execution of this Agreement by all Parties, the Parties shall jointly pursue the scheduling of a Fairness Hearing with the Superior Court, at which time the Agreement shall be submitted to the Superior Court for its review and approval. Upon the scheduling of a Hearing date, the City shall comply with all Notice requirements imposed or directed by the Superior Court and shall fully support and endorse approval of this Agreement at the Hearing. If the Superior Court has not approved this

Settlement Agreement within ninety (90) days of the date on which all Parties have been supplied with a complete copy of this Agreement (including all Exhibits). Plaintiff and the City shall have the unilateral option of terminating this Agreement and continuing with the Litigation.

6.2 **Defense of Agreement and Payment of Costs.** The Parties shall fully cooperate with each other to secure Superior Court approval of this Agreement and to defend said approval against all challenges and/or appeals pursued by third parties. The City shall promptly notify Plaintiff and the Superior Court's Special Master of all challenges and appeals. Each Party shall be responsible for their own costs and expenses in securing Superior Court approval and defending any Superior Court Judgment approving this Agreement.

6.3 **Compliance Plan.** Plaintiff shall interact and cooperate with the City and the Superior Court subsequent to the Superior Court's approval of this Agreement with respect to the City's efforts to prepare and secure Superior Court approval of its Compliance Plan in a continuing effort to vindicate the rights of the protected class. However, Plaintiff's foregoing cooperation shall not require Plaintiff to delay pursuing the receipt of development approvals and/or construction of any portion of the Project in accordance with this Agreement.

SECTION VII

DEFAULT

7.1 **Violation and Default.** In the event that any Party shall fail to perform any undertaking required to be performed by it pursuant to the terms of this Settlement Agreement, unless the Party (or Parties) for whose benefit such obligation was intended waive such obligation in writing, such failure to perform shall constitute an event of default under this Agreement. Upon any such event of default, the non-defaulting Party shall have available any and all rights and remedies that may be provided in law or in equity including, but not limited to, the right of specific performance and/or the right to prosecute a motion in aid of litigant's rights.

SECTION VIII

NOTICES

8.1 **Third-Party Actions.** The Parties and their respective counsel agree to immediately provide each other with notice of any lawsuits, actions, governmental proceedings or administrative proceedings, threatened or pending, which could have a material adverse impact on the Project.

8.2 **Notice by and Among the Parties.** All notices required under this Agreement shall be in writing and shall be given by facsimile or by certified mail, return receipt requested, or by Fedex, UPS or a similarly recognized receipted overnight delivery service. All notices shall be deemed received upon the date of delivery which is set forth in the mailing certifications or receipts used, and all times for performance based upon such notices shall be from the date set forth in such proof of delivery. The persons and entities to receive notice shall be as follows or to any successor designated by the respective recipient:

To Plaintiff: Scarborough Properties
2 Eastwick Drive,
Gibbsboro, New Jersey, 08026
Attn: M. Sean Scarborough
Telecopier: (856) 435-4554

Kenneth S. Goodkind, Esquire
Richard J. Hoff, Jr., Esquire
Flaster/Greenberg P.C.
1810 Chapel Avenue West
Cherry Hill, NJ 08002

To the City:

Clerk, the City of Somers Point
1 West New Jersey Avenue
Somers Point, NJ 08244

Damon Tyner, Esquire
Parker McCay, P.A.

Bayport One
8025 Black Horse Pike
Suite 325
West Atlantic City, NJ
08232-2965
Telecopier: (609) 347-8050

Ronald C. Morgan, Esquire
Douglas McCollister, Esquire
Parker McCay, P.A.
Three Greentree Centre
7001 Lincoln Drive West
P.O. Box 974
Marlton, NJ 08053-0974
Telecopier: (856) 552-1427

To Shore Memorial as an Interested non-Party:

Albert L. Gutierrez
President and CEO
Shore Memorial Hospital
Shore Road & New York Avenue
Somers Point, NJ 08244

Gary T. Hall, Esquire
McCarter & English, LLP
Four Gateway Center
100 Mulberry Street
Newark, NJ 07102
Telecopier: (973) 624-7070

SECTION IX

MISCELLANEOUS

9.1 Captions. Captions and titles to this Agreement are inserted for the purposes of convenience and reference only, and are in no way to be construed as limiting or modifying the scope and intent of the various purposes and substantive provisions of this Agreement.

9.2 Cooperation. The Parties expressly agree to cooperate with each other in order to effectuate and carry out the purposes of this Agreement as well as the *Mount Laurel Doctrine*, the FHA, and COAH's Rules that are in effect as of the date of this Agreement.

9.3 Waiver. Each of the Parties waives all rights to challenge the validity and enforceability of this Agreement. Failure to enforce provisions or obligations in this Agreement by any Party shall not be construed as a waiver of these provisions and obligations.

9.4 Entire Agreement. This Agreement, including its prefatory statements, background recitals and exhibits, constitutes the entire Agreement between the Parties with respect to the resolution of the Litigation and the related subject matters hereof. No representative, agent or employee of any Party has been authorized to make any representations and/or promises that are not contained herein or to otherwise modify, amend, vary or alter the terms hereof except as stated herein. No modifications, amendments, variations or alternations shall be binding unless reduced to writing and signed by the Parties.

9.5 Validity. In the event that any provision of this Agreement shall be held to be invalid, unenforceable or void, the Parties shall, within thirty (30) days of such determination, attempt to restructure this Agreement consistent with its underlying intent. If the Parties fail to agree to such a restructuring, any Party may seek Superior Court review and a ruling to restructure the Agreement in a legally acceptable manner reflecting the underlying intent of the Parties as expressed herein.

9.6 Preparation. The Parties acknowledge that the Parties' attorneys have jointly prepared this Agreement as a means of settling the Litigation. Therefore, this Agreement shall be construed on a parity among the Parties and any presumption for resolving ambiguities against the drafter shall not apply.

9.7 Construction. This Agreement shall be construed, governed and enforced in accordance with the laws of the State of New Jersey and the rules and regulations of COAH. Jurisdiction with respect to any litigation related to this Agreement by way of enforcement or

post-judgment relief shall exclusively be in the Superior Court of New Jersey for Atlantic County. Service of any complaint, motion or judgment enforcement proceedings may be affected consistent with the terms hereof for the delivery of notices. The Parties hereby consent to service of process in such manner and waive any other service of process. Process may be affected by written notice pursuant to the terms hereof for notices. The Parties expressly waive a trial by jury in any such litigation or proceedings.

9.8 Parties Bound and Assignment. The Agreement shall inure to the benefit of and be binding upon the Parties hereto and their respective successors and assigns. Plaintiff shall expressly be permitted to sell, convey and/or assign its rights to develop one or more phases or sections of the Project to other developers and/or users who shall be entitled to rely upon and enforce this Agreement as to the remaining Parties. Advanced written permission to sell and assign is not intended and shall not be required.

9.9 Holiday and Weekends – Time for Performance. Should any date on or before which the performance of any act is required under the terms of the Agreement fall on a Saturday, Sunday, legal holiday and/or generally recognized religious holiday in the State of New Jersey (such as Christmas, Good Friday, etc.), the date for performance shall be extended to and shall occur on the next succeeding business day. All references to “days” shall be deemed to refer to calendar days unless the context clearly and unequivocally requires otherwise. Except as otherwise set forth herein, any act to be performed on or before a certain day shall be deemed to be required to be performed on or before 5:00 p.m. on the day set forth and, if performed after 5:00 p.m., shall be deemed not to have been performed on said date.

9.10 Counterpart Signature. This Agreement may be executed simultaneously or in one or more counterparts, each of which, when so executed and delivered, shall constitute an

original, fully enforceable counterpart for all purposes. Facsimile counterparts shall be accepted and enforceable. Immediately following the delivery of a facsimile counterpart, the sending Party shall deliver a counterpart with the original execution page.

IN WITNESS WHEREOF, the Parties hereto have hereunto set their hands and seals the day and year appearing below their names.

Attest:

Bay Avenue Redevelopers, L.L.C., Bass Harbor, L.L.C., Harbour Cove Marina, L.L.C., and S.P. #2

By: _____
Managing Member

Print Name: _____

Print Name: M. Sean Scarborough

Date: April _____, 2007

Attest:

CITY OF SOMERS POINT,
A Municipal Corporation of the
State of New Jersey

By: _____

Print Name: _____

Print Name: _____

Date: April _____, 2007

ACKNOWLEDGMENT

STATE OF NEW JERSEY)

) SS:

COUNTY OF _____)

I certify that on April _____, 2007, _____, personally came before me and stated to my satisfaction that this person:

(d) This person signed, sealed and delivered the attached document as _____ of the City of Somers Point, a body corporate and politic of the State of New Jersey, named in this document;

(e) _____ was authorized to and did execute this document as the _____, the entity named in this document; and

(f) _____ executed this document as the act of the entity named in this document.

NOTARY PUBLIC

EXHIBITS

- A - Proposed Ordinance
- B - Proposed Master Plan Amendment
- C - Concept Plans and Architectural Plans (collectively attached)
- D - PILOT Agreement for Affordable Units
- E -Speitel Report
- F -PILOT Agreement for Residential Component
- G-1 - Sewer Improvements
- G-2 - Sewer Study
- H - Statement of Consent to Settlement Agreement

EXHIBIT A

City of Somers Point
County of Atlantic, State of New Jersey
Ordinance _____-07

AN ORDINANCE SUPPLEMENTING AND AMENDING CHAPTER 114 ENTITLED DEVELOPMENT REGULATIONS ORDINANCE OF THE CODE OF THE CITY OF SOMERS POINT AS HERETOFORE SUPPLEMENTED AND AMENDED, TO ADD NEW ARTICLES ENTITLED "AFFORDABLE HOUSING (AH) ZONING", AND AMEND ARTICLE XIX "SPECIAL HOSPITAL CLASSIFICATION"

BE IT ORDAINED, by the Mayor and Council of the City of Somers Point, County of Atlantic and State of New Jersey, as follows:

WHEREAS, the City of Somers Point is required to provide affordable housing opportunities in accordance with *So. Burl. Co. NAACP v. City of Mount Laurel, 92 N.J. 158(1983 "Mount Laurel II")*, the New Jersey Fair Housing Act, *N.J.S.A. 52:27D-301, et seq.* (the "FHA") and applicable regulations of the New Jersey Council on Affordable Housing ("COAH") *N.J.A.C. 5:91-1 et seq.* and *N.J.A.C. 5:93-1 et seq.*; and

WHEREAS, after extensive deliberation and discussion the Mayor and Council of the City of Somers Point have entered into a Settlement Agreement of Litigation with Bay Avenue Redevelopers, LLC., Bass Harbour, LLC., Harbour Cove Marina, LLC., and S.P. #2 ("Developer") as the result of a builders remedy lawsuit; and

WHEREAS, the Developer has agreed to develop affordable housing opportunities within an inclusionary development project which includes residential and non-residential components identified on the City of Somers Point City's tax maps as Block 1411, Lot 1, Block 1412, Lot 4, Block 1413, Lots 1 and 2 (" Non- Residential , Hospital Expansion"), Block 1410 Lots 1, 4, 5, 7-10 and Block 1512 Lot 21 and 21.01 (" Non- Residential, Three Story Medical , Two Story Medical & Parking Garage") Block 1007, Lots 1, 2 and 3 ("Residential, Bass Harbour"), Block 1211, Lot 2 (" Residential, Harbour Cove") and Block 1212, Lots 2.01, 2.02, Block 1213 Lot 5 ("Residential, Bay Avenue")

NOW THEREFORE, BE IT ORDAINED by the Mayor and Council of the City of Somers Point, Atlantic County, New Jersey, that the Development Regulations Ordinance of the City of Somers Point is heretofore supplemented and amended as follows:

Section 1 Add Article XIA: Affordable Housing (AH) Zones (AH1, AH2 and AH3)

Intent: For the purposes of fulfilling the City of Somers Point affordable housing obligation as prescribed by the New Jersey Council on Affordable Housing *N.J.A.C. 5:91-1 et seq.* and *N.J.A.C. 5:93-1 et seq.*; and, the New Jersey Fair Housing Act, *N.J.S.A. 52:27D-301, et seq.* the City sets forth the following standards for the purpose of developing an inclusionary affordable housing development project as follows:

I. Permitted Uses:

A. Permitted uses. Multi-family residential and townhomes shall be permitted principal uses in accordance with the design and area standards outlined below.

B. Accessory uses. Any accessory use and building reasonably and customarily incidental to any of the principal uses permitted, provided that they do not create conditions detrimental to the health, safety or general welfare of the community.

1. Parking lots and parking structures shall be permitted as an accessory use.

II. Design and Area Requirements:

A. General Design Requirements

All residential buildings shall be designed with a minimum of three (3) separate façade materials and various projections such as porches, decks, dormers, porticos and the like. There shall also be breaks along the facades to add visual interest. The overall architectural concept shall be generally consistent with the predominant vernacular in the community.

B. AH1

1. Maximum Units: 120 units (94 market rate + 26 low/mod. income):
Twenty-six (26) low and moderate income rentals shall be provided in accordance with the New Jersey Council on Affordable Housing's rules and regulations and consistent with Section 3.4.1 of the Settlement Agreement of Litigation in the matter of Bay Avenue Redevelopers, L.L.C., Bass Harbor, L.L.C., Harbour Cove Marina, L.L.C., and S.P. #2v, City of Somers Point; Docket No. ATL-L-3204-05 P.W. (Mount Laurel) (the "Settlement Agreement"), shall be located on a subdivided lot that shall contain no market rate housing units.

2. Minimum Tract

Acreage: 3.20 (±) acres

3. Minimum Lot Size: 1 acre, except for buildings of 100% affordable units

4. Maximum Density: 37 D.U. per acre

5. Maximum Height: 48 feet

6. Minimum Setbacks:

a. Front:

1. Bay Avenue: 10 feet

2. East Maryland Avenue: 10 feet

b. Side: 10 feet

c. Rear: 10 feet

d. The front yard setback adjacent to the Bay Avenue and East Maryland Ave intersection (curved) may be reduced by 20% as

measured from the Right-of-Way for a distance no greater than 50% of the building length.

6. Off-street parking shall be provided in accordance with Residential Site Improvement Standards (RSIS)

7. All off street parking shall be setback a minimum of (10) feet from Right-of-Ways, except along the Pleasant Avenue right-of-way, where (0) feet shall be permitted.

8. Minimum distance between structures shall be in accordance with Building and Code Officials Association (BOCA) standards.

C. AH2

1. Maximum Units: 16 units

2. Minimum Lot Acre: 0.75 (±) acres

3. Maximum Density: 21 D.U. per acre

4. Maximum Height: 48 feet

5. Minimum Setbacks:

a. Front:

1. Bay Avenue: 10 feet

2. Pleasant Avenue: 10 feet

b. Side: 20 feet

c. Rear: 10 feet

d. Bulk Head: 10 feet

6. Off-street parking shall be provided in accordance with Residential Site Improvement Standards (RSIS)

7. All off street parking shall be setback a minimum of (10) feet from right-of-ways except along the Pleasant Avenue right-of-way, where (0) feet shall be permitted.

8. Minimum distance between structures shall be in accordance with Building and Code Officials Association (BOCA) standards.

D. AH3

1. Maximum Units: 190 units

2. Minimum Acreage: 8.60 (±) acres

3. Maximum Density: 22 D.U. per acre

4. Maximum Height: 48 feet

5. Minimum Setbacks:

a. Front:

1. Bay Avenue: 10 feet

2. Harbor Lane: 10 feet

3. Sunny Avenue: 10 feet

b. Side: 20 feet

c. Rear: 20 feet

6. Off-street parking shall be provided in accordance with Residential Site Improvement Standards (RSIS)

7. All off-street parking shall be setback a minimum of (10) feet from Right-of-Ways.

8. Minimum distance between structures shall be in accordance with Building and Code Officials Association (BOCA) standards.

Section 2 Amend Article XIX as follows:

Add to 114-116:

C. Permitted uses. All types of health care related and medical uses shall be permitted such as hospitals, clinics, practitioner's offices and the like including support facilities, in accordance with the design and area standards included in this article.

D. Accessory uses. Any accessory use and building reasonably and customarily incidental to any of the principal uses permitted, provided that they do not create conditions detrimental to the health, safety or general welfare of the community.

1. Parking lots and/or parking structures shall be permitted as an accessory use.
2. Loading docks/areas shall be permitted as an accessory use.

Revise 114-117 C by replacing (1) – (4) with the following:

- (1) Two (2) on-site parking spaces for every bed in the hospital facilities.
- (2) Five (5) spaces for every 1,000 square feet of building area for medical office space.

Add after 114-117:

117A. Design and Area Requirements

A. General Requirements

All buildings shall be designed with a minimum of three (3) separate façade materials and various projections such as porches, decks, dormers, porticos and the like. There shall also be breaks along the facades to add visual interest. The overall architectural concept shall be generally consistent with the predominant vernacular in the community.

B. Hospital and Hospital Facilities:

1. Maximum Height: 60 feet
2. Minimum Setback:
 - a. Front: 5 feet
 - b. Side: 5 feet
 - c. Rear: 5 feet
3. Setbacks shall not apply to projections, roof overhangs and dormers measuring 5 feet or less.
4. Setbacks shall not apply to pre-existing structures.

C. Medical Offices:

Building A

1. Height: 60 feet

2. Setback:

- a. Front on Brighton Avenue: 5 feet
- b. Side: 5 feet
- c. Rear: 5 feet

3. Minimum distance between structures shall be in accordance with Building and Code Officials Association (BOCA) standards.

Building B

1. Height: 60 feet

2. Setback:

- a. Front:
 - 1. Brighton Avenue: 5 feet
 - 2. Bay Avenue 20 feet
- b. Side: 5 feet
- c. Rear: 5 feet

3. Minimum distance between structures shall be in accordance with Building and Code Officials Association (BOCA) standards.

Building C

1. Height: 60 feet

2. Setback:

- a. Front:
 - 1. Harbor Lane: 5 feet
 - 2. Bay Avenue 20 feet
- b. Side: 5 feet
- c. Rear: 5 feet

3. Minimum distance between structures shall be in accordance with Building and Code Officials Association (BOCA) standards.

Building D - Two Story Medical

1. Height 35 feet

2. Setback

- a. Front 5 feet
- b. Side 5 feet
- c. rear 20 feet

3. Minimum distance between structures shall be in accordance with Building and Code Officials Association (BOCA) standards

D. Parking Structures:

1. Minimum Floor area: 325,000 sq. feet (970 spaces)

2. Maximum Height: 60 feet

3. Minimum Setback:

- a. Front: 5 feet
- b. Side:
 - 1. Bay Avenue 125 feet
- c. Rear: 10 feet

4. A system of pedestrian links and skyways which interconnect principal use structures with the parking garage shall be permitted as an accessory use. Skyways may traverse Right-of-Ways

provided that said skyway does not impede the flow of traffic and create conditions detrimental to the health, safety or general welfare of the community and are in accordance with BOCA.

5. Minimum distance between structures shall be in accordance with Building and Code Officials Association (BOCA) standards.

E. Impervious Coverage:

A. CAFRA standards shall apply, i.e., 80% or the legal pre-existing impervious coverage on site at time of application, which ever is greater.

F. Circulation Improvements:

1. A circulation improvement plan shall be submitted with any site plan which shall include the following:

- a. Traffic calming techniques
- b. On-street parking
- c. The installation of a cul-de-sac and parking area at the south-west end of the Sunny Avenue right-of-way (Identified on the City tax map as Block 1412, Lot 4 & Block 1410, Lot 1) which shall prevent thru-traffic to the Brighton Avenue Right-of-Way and mitigate on-street parking demands along the Sunny Avenue Right-of-Way.
- d. Temporary parking plan
 - 1. Development of the non-residential component of the project will require a temporary parking plan utilizing a portion of the Bay Avenue site during the construction of the parking garage (as described [IV, D])

Section 3 Revise 114-8 by adding the definition of building height below:

BUILDING HEIGHT for the purpose of AH1, AH2, AH3, and SHOS zones only. The vertical dimension measured from the average elevation of the finished lot grade at the front of the building to the highest point of ceiling of the top story in the case of a flat roof, to the deck line of the mansard roof and to the average height between the plate and ridge of a gable, hip or gambrel roof. Exempt from this definition shall be chimneys, steeples, elevator sheds and mechanical equipment, except that additional height for such facilities shall not exceed 10 feet from the ridge line, except decorative steeples which shall not exceed twice the ridge height to the highest measured point of the steeple.

The Zoning Map of the City of Somers Point shall be revised as follows:

A. The legend shall have added the following zones:

- AH1 – Affordable Housing 1 Zone
- AH2 – Affordable Housing 2 Zone
- AH3 – Affordable Housing 3 Zone
- SHOS – Special Hospital Zone

B. The Map shall have added the following zoned areas:

AH1 – Block 1007, Lots 1, 2 & 3
AH2 – Block 1211, Lot 2
AH3 – Block 1212, Lots 2.01 & 2.02; Block 1213, Lot 5
SHOS – Block 1410, Lots, 1, 4, 5, 7, 8, 9 & 10; Block 1411, Lot 1; Block
1412, Lot 4; Block 1413, Lots 1 & 2; Block 1512, Lot 21 & 21.01

S:\ISP2006 Somers Point\Affordable Housing (AH) Zone - Final 3-21-07.doc

Amendment to:

COMPLIANCE PLAN
October 2006
City of Somers Point
Atlantic County, New Jersey
(Prepared by Heyer, Gruel & Associates)
Adopted by the Somers Point Planning Board
October 18, 2006

The original of this document was signed and
Sealed in accordance with NJAC 45:14A-12.

March 2007

Prepared by:

Marc R. Shuster, AICP #2380, PP #1746

Marc R. Shuster, PP, AICP
Bach Associates, PC
304 White Horse Pike
Haddon Heights, New Jersey 08035
Phone 856-546-8611 Fax 856-546-8612

I. Introduction

This document sets forth and amends the City of Somers Point Compliance Plan, October 2006. Two recent events have necessitated this amendment, the Appellate Court's decision regarding the New Jersey Council on Affordable Housing (COAH) third round methodology (growth share) and a builder's remedy settlement agreement between the City and Bay Avenue Redevelopers, LLC.

On January 25, 2007, the Superior Court of New Jersey, Appellate Division issued an opinion, which for the most part challenges the validity of the third round "growth share" rules that were adopted by COAH on December 20, 2004. The Appellate Division invalidated the central components of growth share rules and remanded the matter to COAH for new rule-making which must be completed within the next 6 months.

The forgoing necessitates that the City of Somers Point adopt a new Compliance Plan after the new rules take effect some months from now. The current third round Compliance Plan which calculates the City's third round housing obligation from 2000 to 2014 based upon the invalidated rules is therefore of no force and effect. Therefore, all instances in which growth share is referenced within the current Compliance Plan shall be considered null and void.

On January 25, 2007, Somers Point City Council preliminarily endorsed the Bay Avenue Redevelopers, LLC, settlement agreement. As a result of this agreement, Bay Avenue Redevelopers, LLC has agreed to construct 26 affordable rental units and fund 30 Regional Contribution Agreements (RCA) to address the City of Somers Point prior round affordable housing obligation. Therefore, the pages referenced hereafter of the current Compliance Plan shall be retracted and amended as follows: The final settlement agreement is attached herelo.

II. Prior Round Obligation

Somers Point has a 12-year (1987-1999) cumulative prior round obligation of 105 new construction units. The City plans to meet this obligation through the following:

- Regional Contribution Agreement
- Inclusionary Sites (Bay Avenue Redeveloper, LLC)
- Alternative Living Arrangements

III. Credits, Reductions and Municipal Adjustments

Currently, there are three (3) rental group homes in operation within the City that were established post 1980. Each of the three (3) group homes has three (3) bedrooms, which in turn, provide affordable rental housing for nine (9) low-

income disabled individuals. This has been detailed in its October 2006 document and is not a change.

IV. Inclusionary Sites

Bay Avenue Redevelopers, LLC shall develop a multi-site project consisting of three residential project sites (Bay Avenue, Harbour Cove & Bass Harbour) and two non-residential project sites (Hospital Expansion & Route 9 Parcel). The overall project will yield 300 market rate residential units with an additional 26 rental units set aside for low and moderate income families. The affordable units will be constructed on the Bass Harbour site in accordance with all COAH rules, regulations and phasing provisions. None of the residential buildings within the overall project will be greater than 48' in height as defined in accordance with the terms of the Bay Avenue Redevelopers settlement agreement. All material in its original document relating to these sites in terms of maps, descriptions, suitability is hereby included by reference. Any lands of its Greate Bay Golf Course site (Greate Bay, LLC), previously included are no longer part of the Compliance Plan.

V. Rental Bonus Credits

According to N.J.S.A 5:93-5:15, every municipality shall create a realistic opportunity to construct rental housing in addressing its 1987 to 1999 housing need. The rental obligation shall be a minimum of 25% of the adjusted pre-credited need and the municipality shall receive 2 units of credit for rental units available to the general public (up to the municipality's rental obligation). The City of Somers Point has a prior round minimum rental obligation of 26 units (25% of 105 units). The City is entitled to a two for one rental bonus credit of 26 units.

VI. Regional Contribution Agreements

The City shall meet the remaining prior round housing obligation through 44 RCA's. Bay Avenue Redevelopers LLC, has agreed to fund 30 units at a cost of \$35,000 per unit and will post the necessary funding guarantee. The timing for the posting of that guarantee has not yet been determined, but the timing for the guarantee will be such that the City will not be required to bond for the 30 Bay Avenue Redeveloper, LLC funded RCA units. The remaining 14 RCA units will be funded and guaranteed by the Shore Memorial Hospital through its agreement to contribute the \$490,000 necessary and they will post a bond to that effect. An RCA agreement with the City of Bridgeton is in discussion.

VII. Summary

Affordable Housing Obligation

- Prior Round Obligation - 105 units

Prior Round

- Credits -- Group Home -- 9 units (rental)
- Inclusionary Site -- 26 units (rental)

Bass Harbor -- 3 acres @ 40 DU/acre = 120 units
 22% set aside = 26 units (rental)
 Maximum Height 4 stories/48' Feet

- Rental Bonus -- 26 units
- Regional Contribution Agreements -- 44 units

44 RCA @ \$35,000 each	\$1,540,000
14 Municipal sponsored	\$490,000
30 Developer sponsored	\$1,050,000

Summary

Prior Round Obligation	105
Group Homes	9
Inclusionary Site	26 rental units
RCA	44
Rental Bonus	26
Total Credits	105

4/16/07

EXHIBIT "D"

AGREEMENT FOR PAYMENT IN LIEU OF TAXES

THIS AGREEMENT, made this ____ day of _____, _____ between Bass Harbor, L.L.C, a New Jersey limited liability company, having its principal office at 2 Eastwick Drive, Gibbsboro, New Jersey, 08026 (hereinafter the "Sponsor"), and the City of Somers Point, a municipal corporation of Atlantic County and State of New Jersey (hereinafter the "Municipality").

WITNESSETH

In consideration of the mutual covenants herein contained and for other good and valuable consideration, it is mutually covenanted and agreed as follows:

1. This Agreement is made pursuant to the authority contained in Section 37 of the New Jersey Housing and Mortgage Finance Agency Law of 1983 (*N.J.S.A. 55:14K-1 et seq.*) (hereinafter "HMFA Law") and a Resolution of the Committee of the Municipality dated _____, 200__ (the "Resolution") and with the approval of the New Jersey Housing and Mortgage Finance Agency (hereinafter the "Agency"), as required by *N.J.S.A. 55:14K-37*.
2. The Affordable Housing Project is or will be situated on a ____ acre parcel of land designated as a portion of Block _____, Lot _____, as shown on the Official Assessment Map of the City of Somers Point and more commonly referred to as Somers Point, New Jersey.
3. As of the date the Sponsor executes a first mortgage upon the Project in favor of the Agency (hereinafter referred to as the "Agency Mortgage"), the land and

4/16/07

improvements comprising the Affordable Housing Project shall be exempt from real property taxes, provided that the Sponsor shall make payments in lieu of taxes to the Municipality as provided hereinafter. The exemption of the Affordable Housing Project from real property taxation and the Sponsor's obligation to make payments in lieu of taxes shall not extend beyond the date on which the Agency Mortgage is paid in full, which according to the HMFA Law, may not exceed fifty (50) years.

4. (a) If the Affordable Housing Project receives construction and permanent financing from the Agency, the Sponsor shall make payment to the Municipality of an annual service charge in lieu of taxes in such amount as follows:

- (1) From the date of the execution of the Agency Mortgage until the date of substantial completion of the Affordable Housing Project, the Sponsor shall make payment to the Municipality in an amount equal to \$_____ (pursuant to the HMFA Law, the amount of taxes due on the property for the year preceding the recording of the Agency Mortgage). As used herein, "Substantial Completion" means the date upon which the Municipality issues the Certificate of Occupancy for all units in the Affordable Housing Project.
- (2) From the date of Substantial Completion of the Affordable Housing Project and for the remaining term of the NJHMFA Mortgage, the Sponsor shall make payment to the Municipality in an amount equal to 6.28 percent of Project Revenues.

(b) If the Affordable Housing Project receives permanent financing only from the Agency, the Sponsor shall make payment to the Municipality in an amount equal to 6.28 percent of Project Revenues, from the date of the Agency Mortgage and for the remaining term of the Agency Mortgage.

4/16/07

(c) As used herein, "Project Revenues" means the total annual gross rental or carrying charge or other income of the Sponsor from the Affordable Housing Project less the costs of utilities furnished by the Affordable Housing Project, which shall include the costs of gas, electric, heating fuel, water supplied, and sewerage charges, if any.

(d) The amount of payment in lieu of taxes to be paid pursuant to paragraphs (a) or (b) and (c) above is calculated in Exhibit "A" attached hereto. It is expressly understood and agreed that the revenue projections provided to the Municipality as set forth in Exhibit "A" and as part of the Sponsor's application for an agreement for payments in lieu of taxes are estimates only. The actual payments in lieu of taxes to be paid by the Sponsor shall be determined pursuant to Section 5 below.

5. (a) Payments by the Sponsor shall be made on a quarterly basis in accordance with bills issued by the Tax Collector of the Municipality in the same manner and on the same dates as real estate taxes are paid to the Municipality and shall be based upon Project Revenues of the previous quarter. The Municipality may elect, by notice to the Sponsor delivered in writing no later than the date of Substantial Completion, to require the Sponsor to use for purposes of calculating rents and the corresponding annual service charge in lieu of taxes a fiscal year other than the accounting fiscal year of the Sponsor. If the Municipality makes such an election, the use of the phrase "fiscal year" in this Agreement shall refer to such annual accounting period specified by the Municipality. No later than three (3) months following the end of the first fiscal year of operation after (i) the date of

4/16/07

Substantial Completion (if the Affordable Housing Project is receiving construction and permanent financing) or (ii) the date of the Agency Mortgage (if the Affordable Housing Project is receiving permanent financing only) and each year thereafter that this Agreement remains in effect, the Sponsor shall submit to the Municipality a certified, audited financial statement of the operation of the Project (the "Audit"), setting forth the Project Revenues and the total payments in lieu of taxes due to the Municipality calculated at 6.28 percent of Project Revenues as set forth in the Audit (the "Audit Amount"). The Sponsor simultaneously shall pay the difference, if any, between (i) the Audit Amount and (ii) payments made by the Sponsor to the Municipality for the preceding fiscal year. The Municipality may accept any such payment without prejudice to its right to challenge the amount due. In the event that the payments made by the Sponsor for any fiscal year shall exceed the Audit Amount for such fiscal year, the Municipality shall credit the amount of such excess to the account of the Sponsor.

(b) All payments pursuant to this Agreement shall be in lieu of taxes and the municipality shall have all the rights and remedies of tax enforcement granted to the Municipalities by law just as if said payments constituted regular tax obligations on real property within the Municipality. If, however, the Municipality disputes the total amount of the annual payment in lieu of taxes due it, based upon the Audit, it may apply to the Superior Court, Chancery Division for an accounting of the service charge due the Municipality, in accordance with

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4/16/07

11. purposes of the HMFA Law.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day and year set forth below.

ATTEST:

SPONSOR:

Bass Harbor, L.L.C.

ATTEST:

MUNICIPALITY:

City of Somers Point.

4/16/07

EXHIBIT "A"

Projected Payment in Lieu of Taxes
Based upon 200__ Rent Levels

REAL ESTATE TAX CALCULATIONS FOR TAX ABATEMENT

Gross Rents	\$	<u>\$156,888.00</u>
Less Vacancy	(-)	<u>15,688.00</u>
Less Utilities (if applicable)	(-)	<u>8,400.00</u>
Gross Sheltered Rents	\$	<u>132,799.20</u>
x Rate	X	<u>6.28%</u>
Real Estate Taxes	\$	<u>8,339.79</u>

FLASTER/GREENBERG P.C.
1810 Chapel Avenue West, Third Floor
Cherry Hill, New Jersey 08002
(856) 661-1900
Kenneth Goodkind, Esquire
Carl S. Bisgaler, Esquire
Richard J. Hoff, Jr., Esquire
Attorneys for Plaintiffs

EXHIBIT (E)

<p>BAY AVENUE REDEVELOPERS, L.L.C., A Subsidiary of SCARBOROUGH PROPERTIES, INC., and R. RANDLE SCARBOROUGH, Plaintiffs, v. CITY OF SOMERS POINT and CITY OF SOMERS POINT PLANNING BOARD, Defendants.</p>	<p>SUPERIOR COURT OF NEW JERSEY LAW DIVISION - ATLANTIC COUNTY DOCKET NO: ATL-3204-05 P.W. CIVIL ACTION - MOUNT LAUREL CERTIFICATION OF EDMOND C. SPEITEL REGARDING DETERMINATION OF AREA AS IN OF NEED OF REHABILITATION</p>
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1. This Certification presents my expert opinion that the area of the City of Somers Point occupied by the properties which are the subject of the proposed settlement of this litigation (the "Area") satisfy the requirements of N.J.S.A. 40A:12A-14.a.(2) for determining such area to be in need of rehabilitation. Specifically, it is my opinion that a majority of the water and sewer infrastructure (the "Infrastructure") in the Area highlighted on the attached 1951 aerial photograph is at least 50 years old and is in need of repair or substantial maintenance.
2. I am a licensed professional engineer and a licensed professional planner in the State of New Jersey. I am a principal of Speitel & Speitel, Inc., a corporation authorized to provide professional Engineering services in the State of New Jersey.
3. I am personally familiar with the City of Somers Point, and the Area in particular, having been involved in engineering work in Somers Point for various Scarborough entities and other clients over the last 25 years.
4. I am familiar with the Local Housing and Redevelopment Law, including Section 14 concerning rehabilitation, and have been involved in several redevelopment projects on

behalf of the Scarborough's and other Clients. A copy of my C.V. is annexed hereto.

5. I have concluded based on the 1951 aerial photograph and site visits that all of the residential units in the study area are greater than 50 years of age.
6. I have reached my conclusion and opinion based on my personal knowledge of the area over past 25 years including inspections of the Area and its Infrastructure on numerous occasions in early July 2006 and most recently on July 11, 2006. I walked and/or drove along Shore Road, New York Avenue, Brighton Avenue, Sunny Avenue, Connecticut Avenue, Harbor Lane, Pleasant Avenue, Maryland Avenue, Bay Avenue, Kapella Avenue and Launch Avenue in the study area and at least one block beyond the study area. Visual evident of underground infrastructure was limited to painted markings in the street, pavement trench patches, fire hydrant color coding for capacity, as well as the castings, valve boxes, and fire hydrants. The oldest fire hydrant found was on Shore Road just south of New York Avenue. This was a "Corey" hydrant. The date of the hydrant was not legible however this type of hydrant was commonly used before the 1950's.
7. I have also reviewed the following documents and records relating to the Infrastructure, a 1957 survey prepared by James M Monaghan, Jr. and the "Regional Sewerage Feasibility Study Atlantic County, New Jersey" April 1968 and have consulted with persons knowledgeable about the Infrastructure and its' history.
8. My inspection and investigation of the water Infrastructure indicates that portions of the infrastructure along Shore Road, Brighton Avenue, and Harbor Avenue are in excess of 50 years old. This is evidenced by the size and type of cast iron pipe and fire hydrants used, as well as the 1957 survey prepared by James M Monaghan, Jr. Attached is a copy of the Monaghan plan as well as a color exhibit showing the water and sewer lines older than and newer than 50 years in the study area.
9. It is my professional opinion that maintenance, repairs, and upgrades are required of the water system to provide redundant interconnections of sufficient size and capacity to provide

essential water service to the Hospital and fire service to the surrounding community. At least one 12 inch diameter looped water main should be available from the elevated water storage tank to the Hospital. Presently, the water system relies primarily on an old, mostly pre World War II system of 4, 6 and 8 inch cast iron water mains for both fire and domestic use.

10. My inspection and investigation reveals that the sewer infrastructure on Brighton Avenue is more than 50 years old. The 1957 survey of the Hospital shows that the sewer system existed in the street. It is unclear if the sewerage treatment plant shown on the 1957 survey on Brighton Avenue serviced the surrounding community or only the hospital. The survey does validate the information provided verbally by Joseph Di Orlo about the existence of a sewer plant for the hospital.

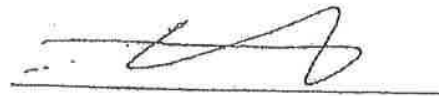
11. A program of rehabilitation which increases the capacity of the water system through the replacement of old under sized mains is necessary to promote the overall development of this area of the City.

Conclusion

It is my opinion that the majority of the infrastructure in the area shown on the attached plan is at least 50 years old and is in need of repair or substantial maintenance.

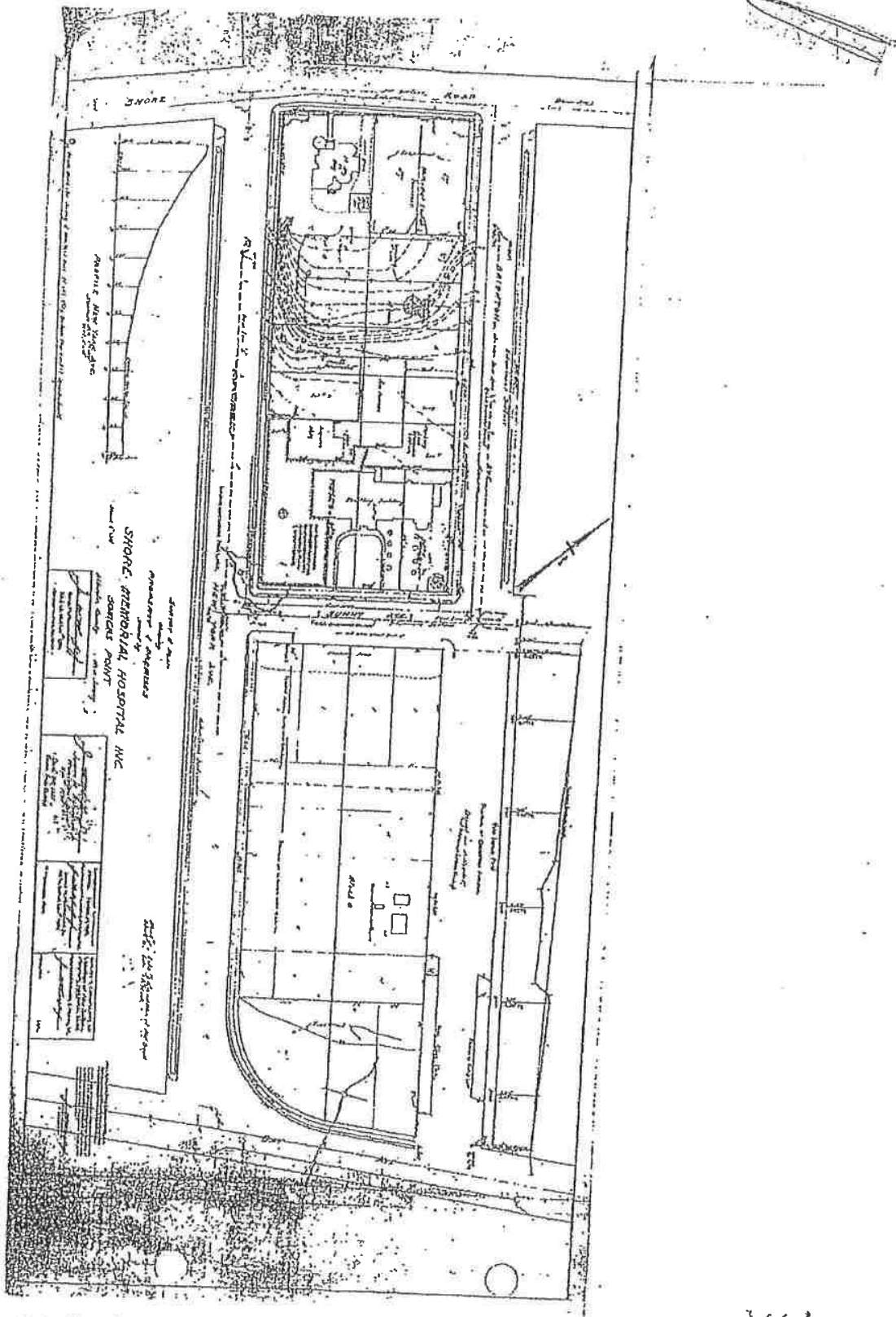
I hereby certify that the foregoing statements are true and correct to the best of my knowledge and belief. I am aware that if any of the foregoing statements by me are willfully false, I am subject to punishment.

Dated: July 20, 2006

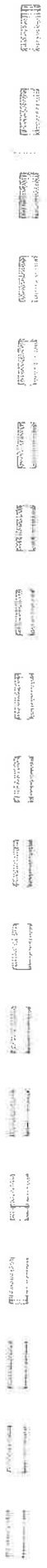


Edmond C. Spitel, PE, PP

Spitel and Spitel, Inc.



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4/16/07

EXHIBIT "F"

**MARKET RATE RESIDENTIAL UNIT TAX AGREEMENT
BETWEEN
CITY OF SOMERS POINT AND
BAY AVENUE REDEVELOPERS, LLC**

THIS MARKET RATE RESIDENTIAL UNIT TAX AGREEMENT (the "Agreement") dated as of the ____ day of _____, 2007, between Bay Avenue Redevelopers, LLC, a New Jersey limited liability company, having its place of business at 2 Eastwick Drive, Gibbsboro, New Jersey (the "Entity"), and the CITY OF SOMERS POINT, a municipal corporation of the State of New Jersey, having offices at 1 West New Jersey Avenue, Somers Point, New Jersey 08244 (the "City"), under the provisions of the Five-Year Exemption and Abatement Law, as amended and supplemented, N.J.S.A. 40A:21-1 et seq. (the "Exemption Law").

WITNESSETH:

WHEREAS, the Entity is the owner of Block 1213, Lot 5 and Block 1212, Lots 2.01 and 2.02, Block 1007, Lots 1, 2 and 3, and Block 1211, Lot 2 (the "Property"), a portion of which is subject to an Affordable Residential Unit Tax Agreement but not subject to this Agreement; and

WHEREAS, pursuant to the provisions of the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq. (the "Local Redevelopment and Housing Law"), and N.J.S.A. 40A:12A-14 in particular, and in accordance with N.J.S.A. 40A:21-3.b of the Exemption Law, the City adopted Resolution ____-07, which is attached as Exhibit "A" to this Agreement, determining the Property to be an area in need of rehabilitation; and

WHEREAS, the Exemption Law permits a municipality to exempt from the payment of real estate taxes, for a limited period of time, any rehabilitation or improvements made in the

redevelopment of a rehabilitation area, subject to the terms and conditions of a tax agreement complying with the requirements of the Exemption Law; and

WHEREAS, the City has enacted Ordinance ___-___, which is attached as Exhibit "B" to this Agreement and is Exhibit "F" to the Settlement Agreement of Litigation, dated _____, 2007, among certain entities, including the Parties, providing among other things, for the exemption and abatement from taxation for construction of new multiple dwellings (as defined in N.J.S.A. 40A:21-3(o)) in accordance with the Exemption Law; and

WHEREAS, the Entity has submitted to the City Council pursuant to N.J.S.A. 40A:21-9 an application for a tax exemption (the "Application"), a copy of which is attached hereto as Exhibit "C" pursuant to the Exemption Law with respect to portions of the Property; and

WHEREAS, the Entity intends to develop three hundred (300) market rate residential townhouse units (the "Units"), as well as twenty-six (26) affordable rental apartment Units, on the Property (the "Project"). This Agreement applies only to the three hundred (300) Market Rate Units at the Property; and

WHEREAS, the City Council has approved the tax exemption requested by the Entity in the Application subject to the terms and conditions of this Agreement, and the parties desire to set forth in detail their mutual rights and obligations with respect to the tax exemption applicable to the Units.

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth herein, and for other good and valuable consideration, the parties to this Agreement mutually covenant and agree as follows:

1. **City's Findings.** The City makes the following findings with respect to the tax exemption granted in this Agreement:

a. The exemption for the Units is anticipated to benefit the City and its inhabitants by furthering the development and rehabilitation of the subject Property and the neighborhood surrounding the subject Property (the "Neighborhood"). Rehabilitation of the Property

and revitalization of the Neighborhood will prevent further decline in the condition and value of the Property and the Neighborhood, permitting the City to rely more on the Property as a source of payments in lieu of taxes and future tax revenue, thereby enhancing the long-term value to the City of the Property and the Neighborhood. These benefits are expected to outweigh substantially any costs to the City associated with the tax exemption for the Units.

b. The tax exemption to be granted under this Agreement is important to the City. Because of the cost of rehabilitation, it is likely that the work would not be undertaken without the incentive of the tax exemption granted under this Agreement.

2. Tax Exemption.

a. Each Unit constructed by the Entity (or its assigns) shall be exempt from taxation in accordance with the provisions of the Exemption Law in the manner provided by this Agreement, for a period of five (5) years from the first day of the month following the issuance of a Certificate of Occupancy for such Unit, and this Agreement shall be in effect as to a Unit for no more than five (5) full years next following the date of completion of the Unit, pursuant to N.J.S.A. 40A:21-11.

b. Regarding sales of individual Units in fee simple, where it is determined that the Unit will be used as a residential dwelling, the tax exemption of the Unit shall continue and inure to the fee simple Unit purchaser, and any respective successors or assigns, in accordance with N.J.S.A. 40A:21-1, et seq.

3. Annual Service Charge.

a. In consideration of the aforesaid exemption from taxation on improvements, the Entity shall make payment to the City of an Annual Service Charge ("ASC") in accordance with N.J.S.A. 40A:21-10a. ("Cost Basis") for municipal services supplied to the subject Property, as set forth in Paragraphs 3.d(1) through (3) below. As contemplated by Section 5.3 of the Settlement Agreement of Litigation, if the Entity constructs the 300 market rate units currently anticipated for

the Project, the aggregate ASC over the life of this Agreement shall be at least eight million four hundred thousand dollars (\$8,400,000.00).

b. The ASC shall be paid timely, in quarterly installments on those dates when real estate tax payments are due, subject to any necessary adjustment within thirty (30) days after the close of each calendar year.

c. The ASC shall accrue from the first day of the month following the issuance of a Certificate of Occupancy on each Unit as set forth in Paragraph 2 above.

d. The Entity shall pay to the City, or cause to be paid to the City, in lieu of full property tax payments, the following amounts:

- (1) For each of the one hundred ninety (190) Units anticipated to be constructed on the Bay Area Property (as such is defined in the Settlement Agreement of Litigation), annually for five (5) years, an amount each year equal to two (2%) percent of the cost of such Unit, but not less than Five Thousand Four Hundred Sixty-Three (\$5,463.00) Dollars;
- (2) For each of the ninety-four (94) Units, anticipated to be constructed on the Bass Harbor Property, (as such is defined in the Settlement Agreement of Litigation), annually for five (5) years, an amount each year equal to two (2%) percent of the cost of such Unit, but not less than Five Thousand Seven Hundred (\$5,700.00) Dollars;
- (3) For each of the sixteen (16) Units, anticipated to be constructed on the Harbour Cove Property (as such is defined in the Settlement Agreement of Litigation), annually for five (5) years, an amount each year equal to two (2%) percent of the cost of such unit, but not less than Six Thousand Six Hundred Fifty (\$6,650.00) Dollars;

(4) For purposes of this Agreement, "the cost of the Unit" means the cost or fair market value of direct labor and all materials used in the construction, expansion, or rehabilitation of all buildings, structures, and facilities at the project site, including the costs, if any, of land acquisition and land preparation, provision of access roads, utilities, drainage facilities, and parking facilities, together with architectural, engineering, legal, surveying, testing, and contractors' fees associated with the project, allocated among the various Units in the Project by the Entity on any reasonable basis. The Entity shall cause such costs and allocations to be certified and verified to the governing body of the City by an independent and qualified architect, following the completion of the Units.

e. The annual payments in lieu of taxes shall be paid to the City on a quarterly basis, in a manner consistent with the City's tax collection schedule, in accordance with Paragraph 3.b. above. In the event the City does not timely receive any installment, the amount past due shall bear a rate of interest permitted under the State law for unpaid taxes, and, the ASC shall be a continuous municipal lien on the Property.

4. **Termination of Agreement.**

a. If during any tax year prior to the termination of the tax agreement, the Entity ceases to operate or disposes of Units or fails to meet the conditions for qualification, then the tax which would have otherwise been payable for each tax year for each such Unit shall become due and payable from the Entity as if no exemption or abatement had been granted. The governing body of the City shall notify the Entity, the Tax Collector and Tax Assessor forthwith and the Tax Collector shall within fifteen (15) days thereof notify the owner of the Unit of the amount of taxes due, in accordance with N.J.S.A. 40A:21-12. With respect to the disposal of Units, where it is determined

that the new owner of a Unit will continue to use the Unit pursuant to all of the conditions which qualified the Unit, the exemption and the abatement shall continue, and the Agreement shall remain in effect.

b. At the termination of the applicable exemption period for a Unit under this Agreement, that Unit shall be subject to all applicable real property taxes as provided by State law and regulation and City ordinance.

c. This Agreement shall be in effect for no more than five (5) full tax years next following completion of the Project.

5. **Remedies.** In the event of a breach of this Agreement, either Party may file an action with the Superior Court of New Jersey and may seek any available remedies.

6. **Governing Law and Conflicts.** This Agreement shall be governed by the provisions of the Exemption Law and the laws of the State of New Jersey. The parties agree that in the event of a conflict between this Agreement and the Application, the language contained in this Agreement shall govern and prevail.

7. **Oral Representations.** Neither party hereto has made any oral representation that is not contained in this Agreement. This Agreement, the City's Ordinance authorizing the Agreement, and the Application constitute the entire agreement between the parties.

8. **Modification.** There shall be no modification of this Agreement except by written instrument executed by both parties.

9. **Notices.** Unless prior to giving any notice required under this Agreement, either party shall have notified the other to the contrary, all notices shall be sent by certified mail, return receipt requested, addressed as follows:

As to the City:

City Clerk
City of Somers Point
1 West New Jersey Avenue
Somers Point, New Jersey 08224

With a copy to:

Damon Tyner, Esquire
Ronald Morgan, Esquire
Parker McCay
3 Greentree Center
7001 Lincoln Drive West
P.O. Box 974
Marlton, New Jersey 08053-0974

As to Entity:

Mr. M. Sean Scarborough
2 Eastwick Drive
Gibbsboro, New Jersey 08026

With a copy to:

Kenneth Goodkind, Esquire
Richard Hoff, Esquire
Flaster/Greenberg P.C.
1810 Chapel Avenue West
Cherry Hill, New Jersey 08002

10. Certificates of Occupancy. It is understood and agreed that the Entity or its designee shall remain obligated to apply for Certificates of Occupancy in a timely manner and to effectuate all required filings concerning such Certificates.

11. Severability. If any term, covenant or condition of this Agreement shall be judicially declared to be invalid or unenforceable, the remainder of this Agreement and the application of such term, covenant or condition to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby.

12. Counterparts. This Agreement may be executed in counterparts. All such counterparts shall be deemed to be originals and together shall constitute but one and the same instrument.

13. Exhibits. Any and all Exhibits annexed to this Agreement are hereby made a part of this Agreement by this reference thereto.

[Intentionally Left Blank]

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed the day and year first above written.

BAY AVENUE REDEVELOPERS, LLC

WITNESS

M. SEAN SCARBOROUGH, Member

ATTEST:

THE CITY OF SOMERS POINT

CITY CLERK

CARL D'ADAMO
President of the City Council

JUL 18 06 12:36p

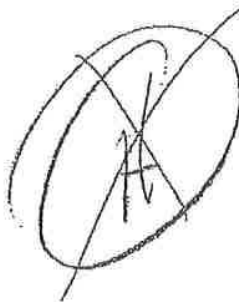
JUL 17 2006 2:26PM

DORAN ENGINEERING

NO. 512 P. 2/6

P. 2

EXHIBIT G 1



November 21, 2005

Wes Swain, City Administrator
City of Somers Point
City Hall
1 West New Jersey Avenue
Somers Point, NJ 08244

RE: Sewer System Upgrade
Bay Avenue, Somers Point
Doran #30624

Dear Mr. Swain:

As per your request, we are performing a Preliminary Estimate for Sewer Upgrades on Bay Ave, which will include the anticipated flow generated by future development.

In this area of the City, the sewerage flows by gravity down the side streets to Bay Avenue, then along Bay Ave to an existing pump station located between Higbee and Gibbs Avenues. The Pump Station in turn pumps to an existing larger gravity system at the intersection of Bay and Pleasant Avenues.

Based on discussion with the Sewer Department regarding the age and condition of the existing sewer system and both the existing and anticipated sewer flows to be generated by future development, we believe the City will be required to upgrade the pump station, the 8" CIP force main and a section of the 10" VCP gravity sewer main. The following are the approximate costs to upgrade each section of the system.

1. Gravity System -- Based on information taken from the "As Built" Plan, there exists a high point and a reverse grade for the section of pipe at Deatur and Bay Avenues. This area of the system continues to be an area of back up on the upstream side, which would seem to verify the reverse grades in the system.

MH # 29 to MH # 28 400'
New York Ave. to Gibbs Ave.

In order to properly evaluate the force main, it should be cleaned and televised. The following is the anticipated costs to televise the existing force main.

ITEM	DESCRIPTION	QUANTITY	UNIT PRICE	TOTAL
1	Clean & TV 8" CIP	2300/LF	3.50/LF	8,050
2	By Pass Pumping	L.S.	L.S.	10,000
				\$1,805.00
	Contingency 10%			\$ 1,805.00
	Sub Total			\$19,855.00
	Administration, Design Inspection			\$ 3,800.00
	Total			\$ 23,655.00

If the above mentioned television inspection of the 8" CIP force main reveals that the line should be replaced, then the following is the anticipated cost for this replacement. It is suggested that if the force main be increased from 8" to 10" to accommodate future anticipated flow. *From Pump Station #4 to MHA Bay & Plant*

ITEM	DESCRIPTION	QUANTITY	UNIT PRICE	TOTAL
1	Line and Increase 8" to 10" Force Main	2300/LF	130.00/LF	299,000
2	By Pass Pumping	L.S.	25,000	25,000
				\$324,000.00
	Contingency 10%			\$ 32,400.00
	Sub Total			\$356,400.00
	Administration, Design Inspection			\$64,152.00
	Total			\$420,552.00

It should be noted that the above conclusions are based on general information and practical knowledge of the existing sanitary sewerage system. It is our recommendation that full Engineering Analysis, including physical testing or televising of the various components be done prior to any major expenditure of funds.

If you have any questions or require further information, please do not hesitate to contact this office.

Very truly yours,

Matthew F. Doran, PE, PP, PLS
Doran Engineering

DORAN
ENGINEERING, PA
ENGINEERS • PLANNERS • SURVEYORS

EXHIBIT
62

840 NORTH MAIN STREET • PLEASANTVILLE, NJ 08232
(609) 646-3111 FAX (609) 641-0592

PATRICK J. DORAN, P.E., P.P. (1927-1993)
MATTHEW F. DORAN, P.E., P.P., P.L.S., C.M.E., C.R.W.M.
PATRICK J. DORAN, JR., B.S. ACCOUNTING
EDWARD P. STINSON, P.E., C.M.E.
DEBORAH L. WAHL, P.E., P.P.

MEMBER
NATIONAL SOCIETY OF PROFESSIONAL ENGINEERS
AMERICAN SOCIETY OF CIVIL ENGINEERS
AMERICAN SOCIETY OF MILITARY ENGINEERS
N.J. SOCIETY OF MUNICIPAL ENGINEERS
CERTIFIED MUNICIPAL ENGINEERS

July 11, 2005

Edmond C. Speitel, PE
Speitel and Speitel, Inc.
2 Eastwick Drive, Suite 101
Gibbsboro, New Jersey 08026

RE: Bay Avenue Redevelopers
Sewer Availability Study
Shore Memorial and Bay Avenue
Somers Point, New Jersey
Doran #30022

Dear Mr. Speitel:

The following is a scope of services for the above referenced project.

The Sewer Availability Study will include verification of capacity within existing sanitary sewer system:

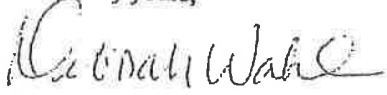
1. 10" VCP gravity main located in Bay Avenue from Harbor Lane to Pump Station No.4 located on the easterly side of Bay Avenue between Gibbs and Higbee Avenues.
2. Pump Station No. 4.
3. 8" CIP force main from Pump Station No.4 to receiving manhole at intersection of Bay and Pleasant Avenues.
4. 15" VCP gravity main in Bay Avenue from Pleasant Avenue to Pump Station No.5 located on the easterly side of Bay Avenue just south of Cedar Avenue.
5. Pump Station No.5.
6. 12" CIP force main from in Bay Avenue to receiving manhole located in Pierson Avenue approximately 280 feet east of Bethel Road.

The proposed study will continue downstream of the proposed project until it is determined that all existing sewers have capacity to handle the additional 65,700 gpd generated by the proposed project.

Report will include the required repairs and or replacements required to provide capacity for proposed project.

If you have any questions, or require additional information, please do not hesitate to contact this office at your earliest convenience.

Very truly yours,



Deborah Wahl, P.E., P.P.

/Cc: Wes Swain, Administrator City of Somers Point

EXHIBIT H

STATEMENT OF CONSENT TO SETTLEMENT AGREEMENT

Albert L. Gutierrez, being of full age, hereby certifies as follows:

1. I am the President and Chief Executive Officer of Shore Memorial Hospital, and I have been authorized to execute this Certification on behalf of Shore Memorial Hospital and its affiliated and/or controlling entities (collectively "Shore Memorial").
2. Shore Memorial has been provided with a copy of a proposed Settlement Agreement of Litigation to be entered into by the parties in the matter of *Bay Avenue Redevelopers, L.L.C., Bass Harbor, L.L.C., Harbour Cove Marina, L.L.C., and S.P. #2 v City of Somers Point, and The City Of Somers Point Planning Board*, Docket No. ATL- L-3204-05 P.W. (*Mount Laurel*) (the "Agreement").
3. The Agreement proposes to resolve the Litigation, in part, through the proposed adoption of an Ordinance (the "Proposed Ordinance") that anticipates, in part, the rezoning of properties owned and controlled by Shore Memorial and identified on the tax maps of the City as Block 1410, Lots 1, 4, 5 and 7-10, Block 1411, Lot 1, Block 1412, Lot 4, Block 1413, Lots 1 and 2 and Block 1512, Lots 21 and 21.01 (the "Hospital Property"). Shore Memorial has been afforded the opportunity to review and comment on both the Agreement and the Proposed Ordinance, and Shore Memorial consents to adoption of the Proposed Ordinance.
4. Section 3.5 of the Agreement states that in contemplation of the development of the rezoned Hospital Property Shore Memorial will provide to the City of Somers Point funds to be used for a regional contribution agreement and/or other affordable housing purposes pursuant to the terms and conditions specified therein. Shore Memorial hereby confirms the affordable housing commitment as set forth in the Agreement.

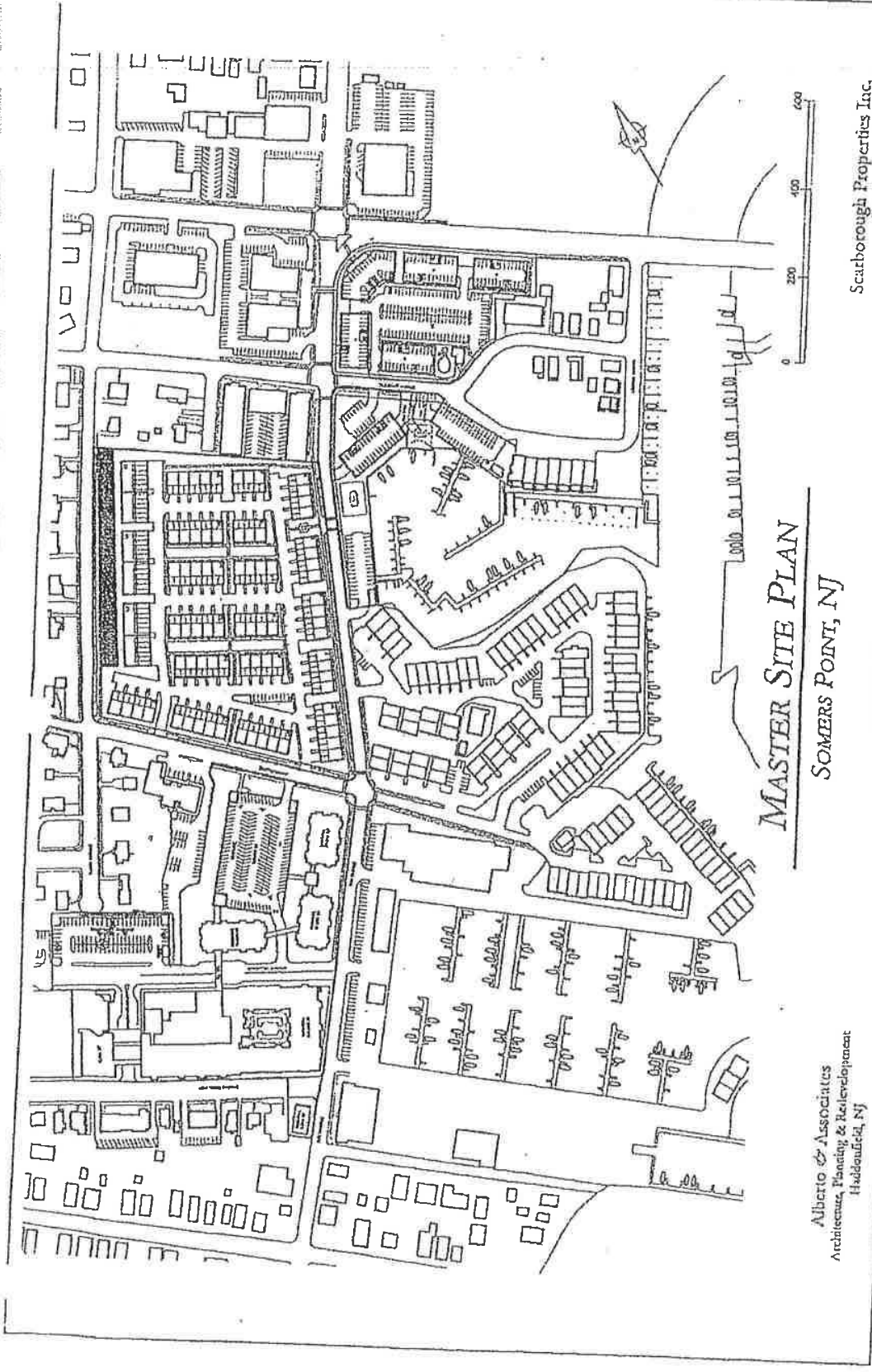
5. It is the present expectation of Shore Memorial that following construction of the Non-Residential Component of the Project (as defined in the Agreement), the medical office buildings will be subject to real property taxation and the parking garage and hospital expansion will be exempt from real property taxation, subject to then-applicable statutory provisions governing exemptions from real property taxation.

6. I certify that the statements contained herein are true and correct to the best of my knowledge, information and belief. I understand that if any statements contained herein are willfully false, I am subject to punishment.

Dated: March ____, 2007

ALBERT L. GUTIERREZ

1. 2. 3. 4. 5. 6. 7. 8. 9. 10. 11. 12. 13. 14. 15. 16. 17. 18. 19. 20. 21. 22. 23. 24. 25. 26. 27. 28. 29. 30. 31. 32. 33. 34. 35. 36. 37. 38. 39. 40. 41. 42. 43. 44. 45. 46. 47. 48. 49. 50. 51. 52. 53. 54. 55. 56. 57. 58. 59. 60. 61. 62. 63. 64. 65. 66. 67. 68. 69. 70. 71. 72. 73. 74. 75. 76. 77. 78. 79. 80. 81. 82. 83. 84. 85. 86. 87. 88. 89. 90. 91. 92. 93. 94. 95. 96. 97. 98. 99. 100.



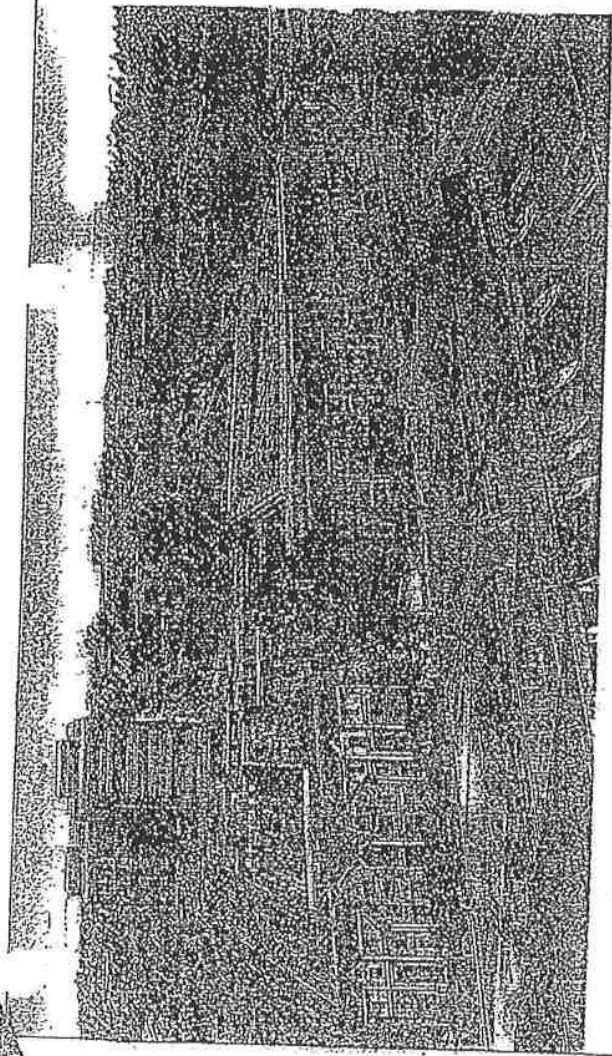
MASTER SITE PLAN
SOMERS POINT, NJ

Alberto & Associates
Architecture, Planning & Redevelopment
Haddonfield, NJ

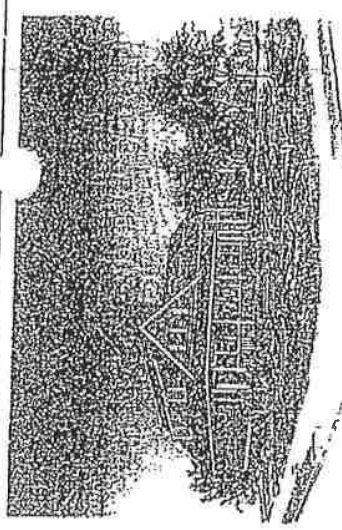
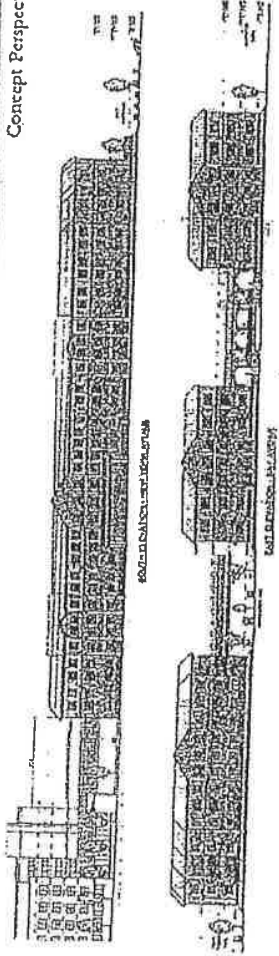
Scarborough Properties Inc.
Developer
Somers Point, NJ

February 07, 2007

PROJECT NO. 01-001
 PROJECT NAME: HOSPITAL EXPANSION
 CLIENT: SCARBOROUGH PROPERTIES INC.
 LOCATION: SOMERS POINT, NJ
 DATE: FEBRUARY 7, 2007
 DRAWN BY: [Name]
 CHECKED BY: [Name]
 APPROVED BY: [Name]



Concept Perspective



Rehab Center Perspective



Site Plan - Expansion Area

HOSPITAL EXPANSION

SOMERS POINT, NJ

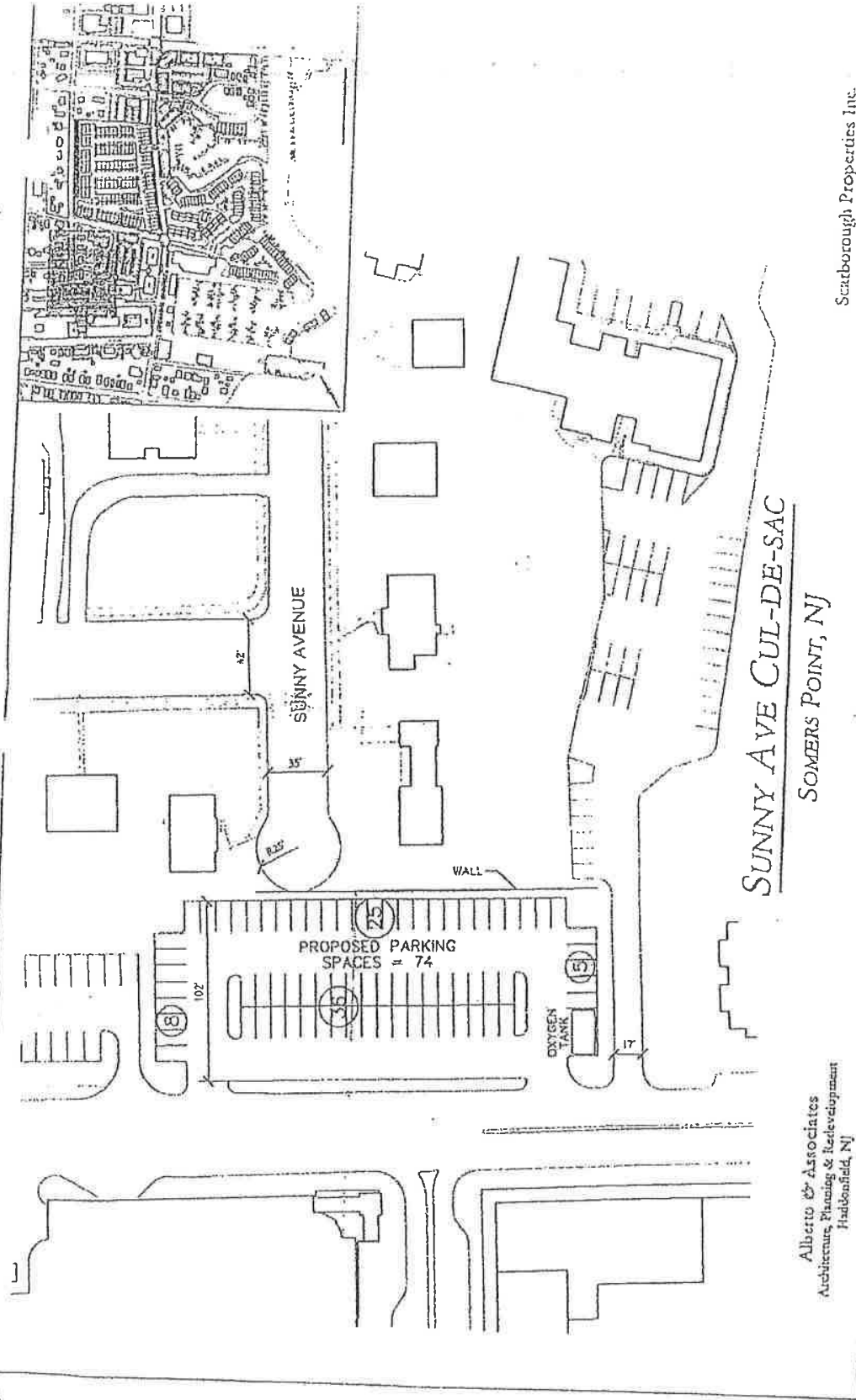
Alberto & Associates
 Architects + Planning
 Haddonfield, NJ

David Rudzinski Architects
 Architects
 Voorhees, NJ

February 7, 2007

Scarborough Properties Inc.
 Developer
 Somers Point, NJ

PROFESSIONAL SEAL
 REGISTERED PROFESSIONAL ARCHITECT
 STATE OF NEW JERSEY
 No. 123456789
 DATE: 02/19/2007

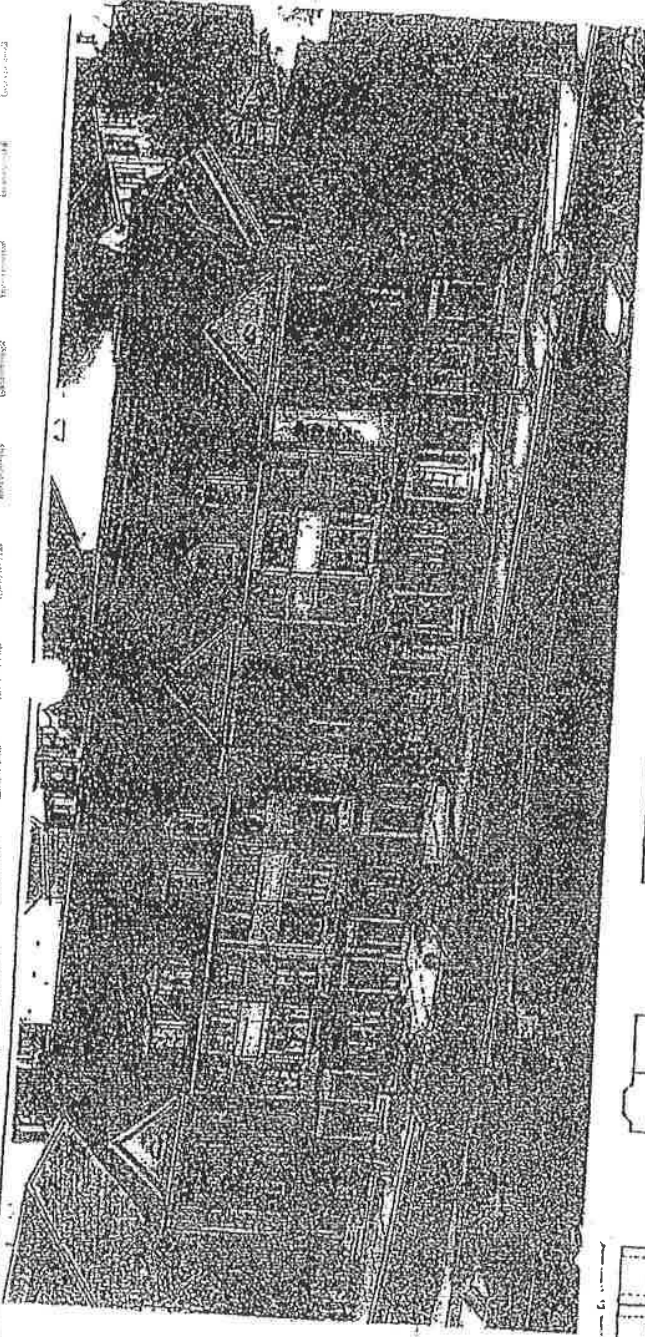


SUNNY AVE CUL-DE-SAC
SOMERS POINT, NJ

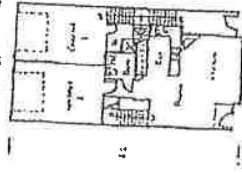
Alberto G. Associates
 Architecture, Planning & Redevelopment
 Haddonfield, NJ

Scarborough Properties Inc.
 Developer
 Somers Point, NJ

February 19, 2007

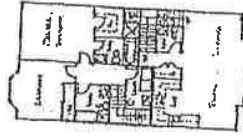


Concept Elevation

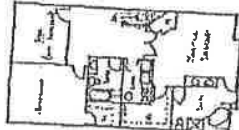


First Floor

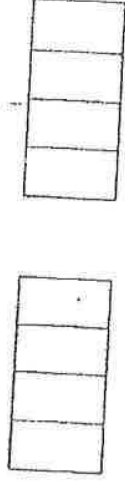
Unit Plan Layout



Second Floor



Third Floor



Site Plan Example

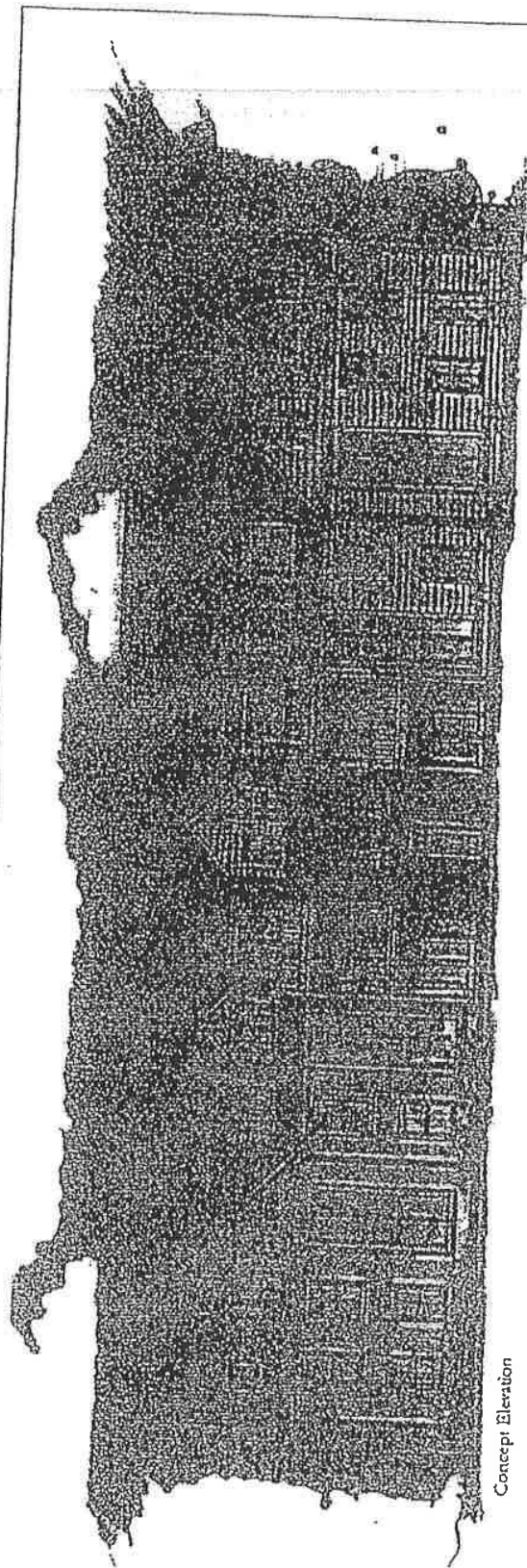
BAY AVENUE SITE - STACKED TOWNHOMES

Somers Point, NJ

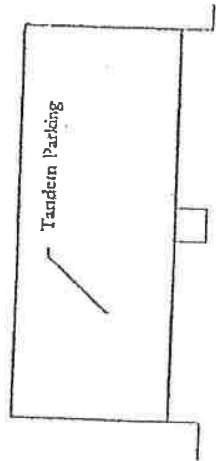
February 7, 2007

Alberto & Associates
Architects - Planning
Haddonfield, NJ

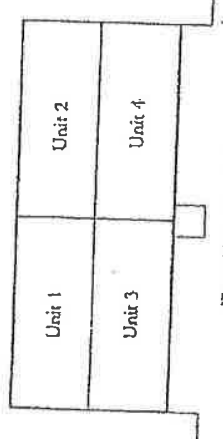
Scarbrough Properties Inc.
Developer
Somers Point, NJ



Concept Elevation



Ground Floor Plan



Floor Plan - Levels 2-4

BAY AVENUE SITE - 12-UNIT BUILDING

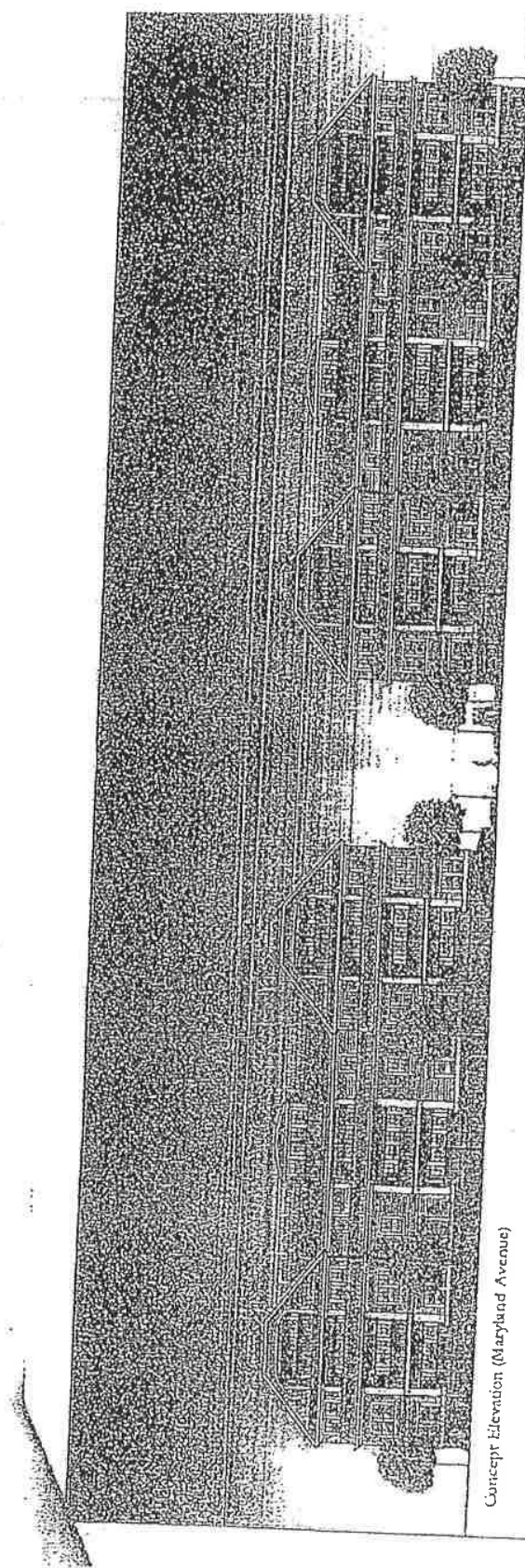
Somers Point, NJ

Alberto & Associates
Architecture - Planning
Haddonfield, NJ

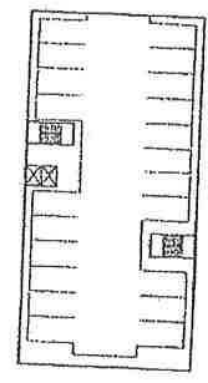
Scarborough Properties Inc
Developer
Somers Point, NJ

February 3, 2007

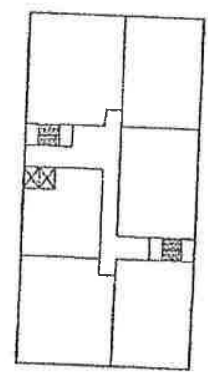
PROJECT NO. 07-001
 SHEET NO. 01
 DATE: 02/07/07
 SCALE: AS SHOWN
 DRAWN BY: J. B. BROWN
 CHECKED BY: J. B. BROWN
 APPROVED BY: J. B. BROWN
 PROJECT NO. 07-001
 SHEET NO. 01
 DATE: 02/07/07
 SCALE: AS SHOWN
 DRAWN BY: J. B. BROWN
 CHECKED BY: J. B. BROWN
 APPROVED BY: J. B. BROWN



Concept Elevation (Maryland Avenue)



Parking Level



Unit Layout - Levels 1-4

BASS HARBOR SITE - MID-RISE BUILDING

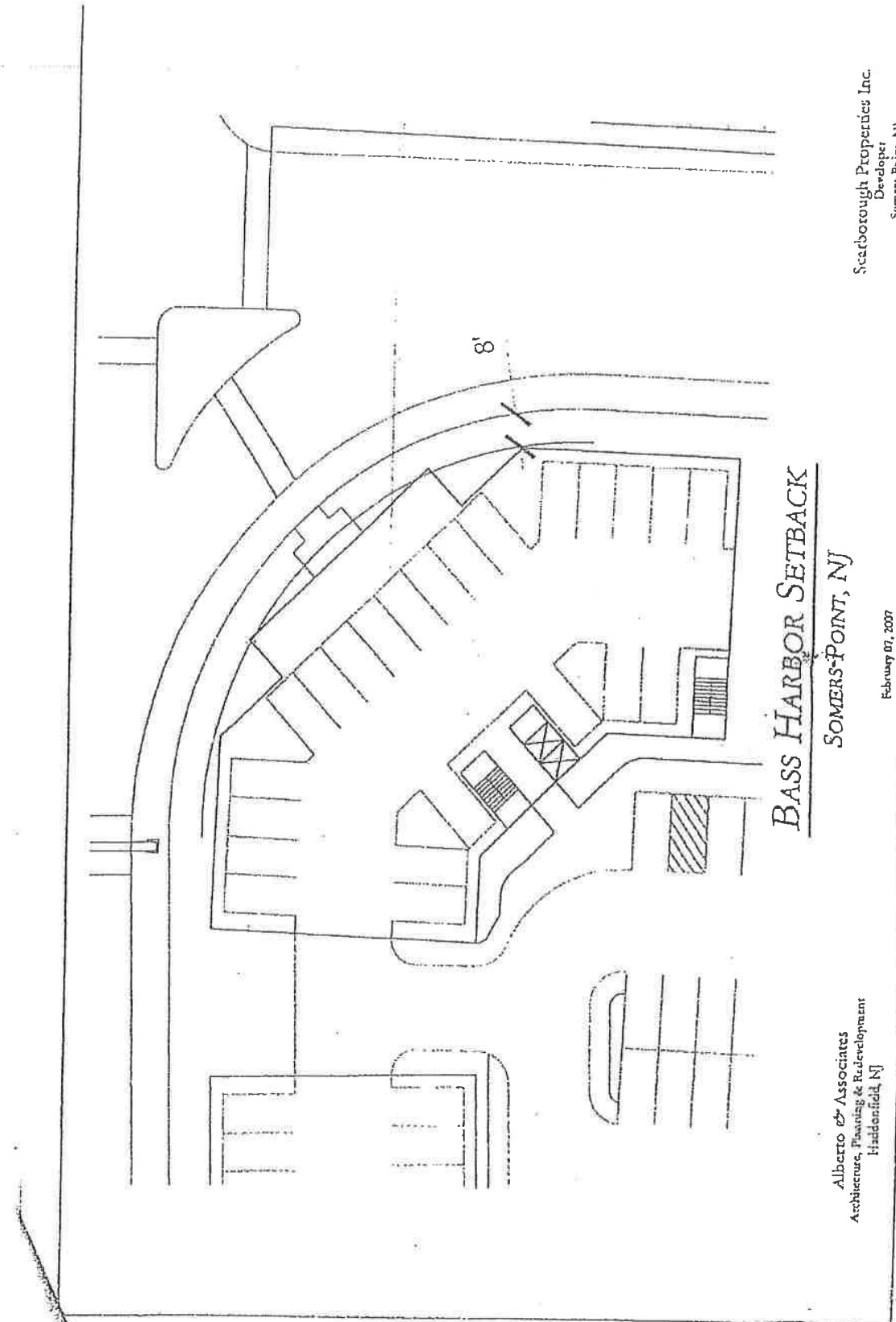
Somers Point, NJ

Alberto & Associates
 Architects - Planning
 Haddonfield, NJ

Scarborough Properties Inc.
 Developer
 Somers Point, NJ

February 7, 2007

Architectural Drawing Scale: 1/4" = 1'-0"



BASS HARBOR SETBACK
SOMERS-POINT, NJ

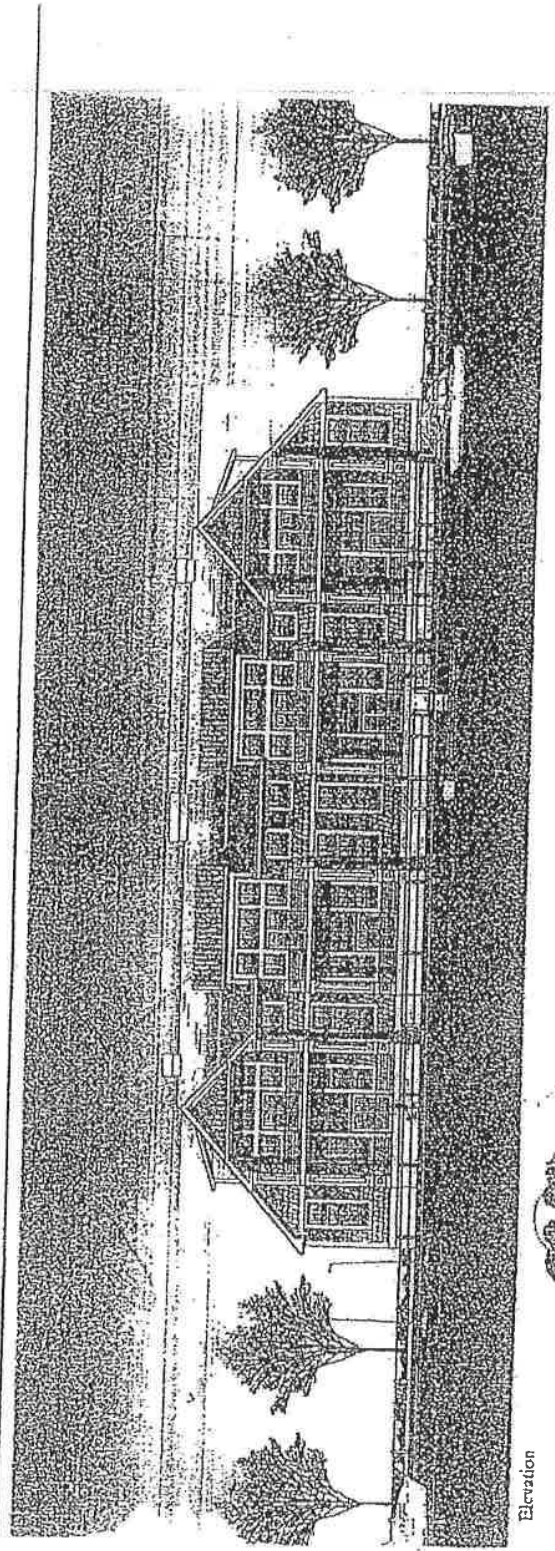
Alberto & Associates
 Architects, Planning & Redevelopment
 Haddonfield, NJ

Scarborough Properties Inc.
 Developer
 Somers Point, NJ

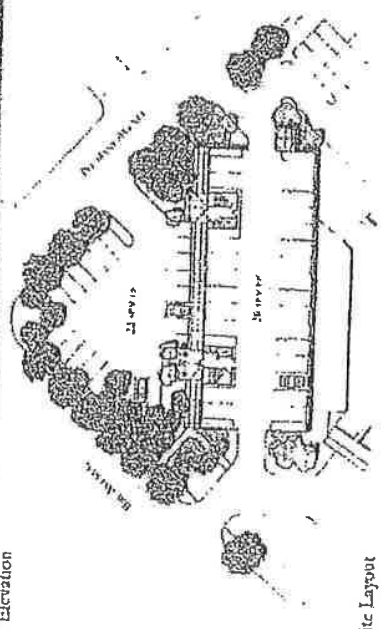
February 07, 2007

Architectural Drawing Scale: 1/4" = 1'-0"

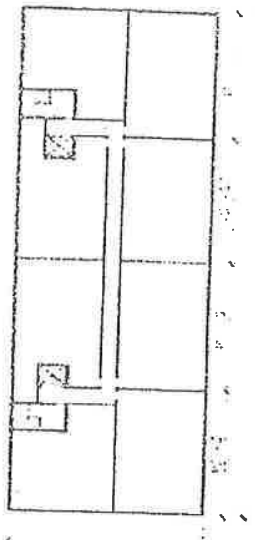
- 1.00 SITE PLAN
- 2.00 FLOOR PLAN
- 3.00 ELEVATION
- 4.00 SECTION
- 5.00 DETAIL
- 6.00 EXTERIOR
- 7.00 INTERIOR
- 8.00 MECHANICAL
- 9.00 ELECTRICAL
- 10.00 PLUMBING
- 11.00 PAINT
- 12.00 FINISH
- 13.00 FURNITURE
- 14.00 LANDSCAPE
- 15.00 SIGNAGE
- 16.00 ACCESSIBILITY
- 17.00 ENERGY
- 18.00 SUSTAINABILITY
- 19.00 SECURITY
- 20.00 OTHER



Elevation



Site Layout



Typical Floor Plan

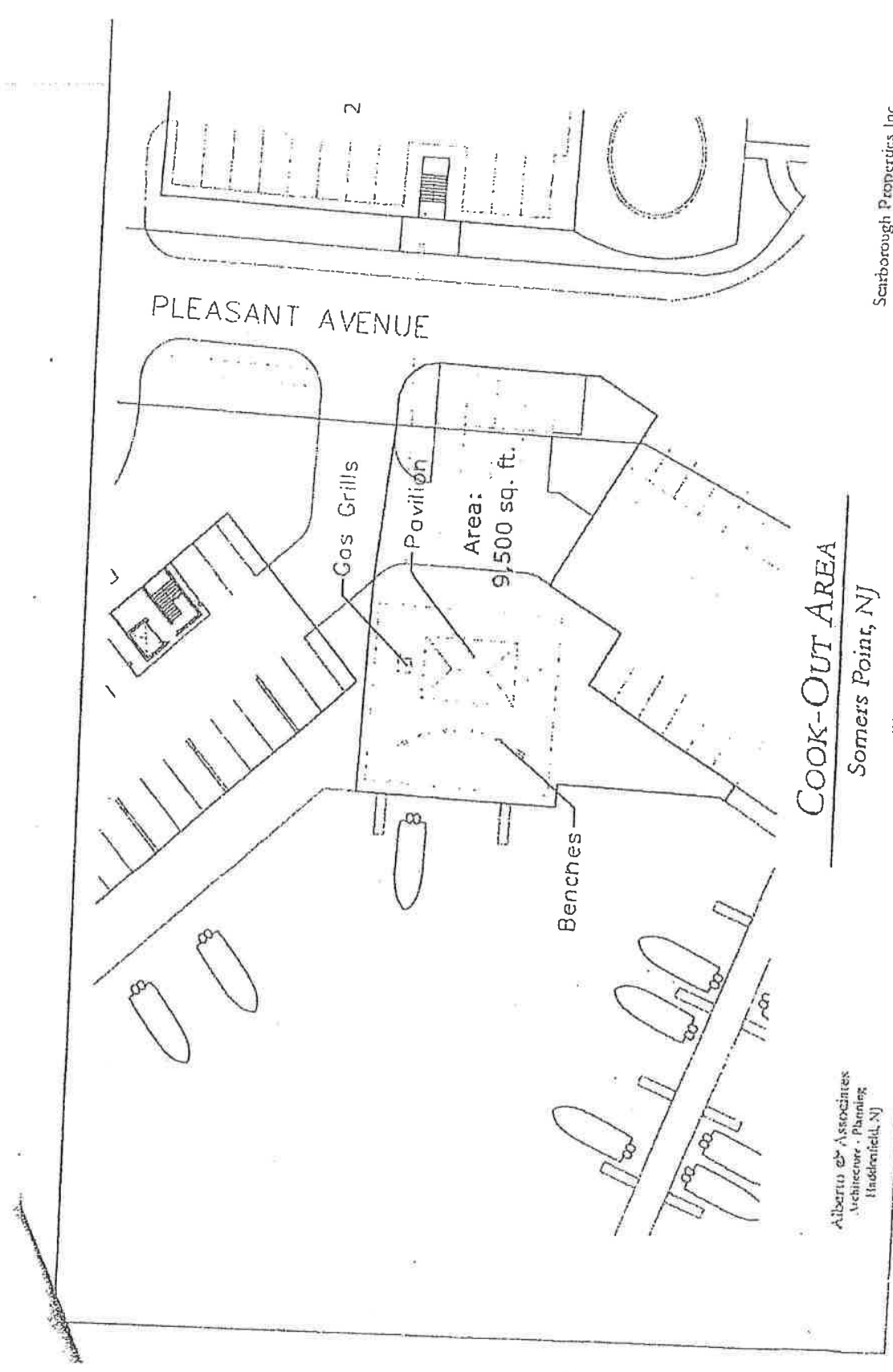
HARBOR COVE SITE

Somers Point, NJ

February 7, 2007

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Architecture - Planning
Haddonfield, NJ

Scarborough Properties Inc
Developer
Somers Point, NJ



COOK-OUT AREA

Somers Point, NJ

Alberto & Associates
 Architects - Planning
 Haddonfield, NJ

Scarborough Properties Inc.
 Developer
 Somers Point, NJ

February 7, 2007

EXHIBIT D: 2017 INCOME LIMITS

Prepared by Affordable Housing Professionals of New Jersey (AHPNJ) - August 2017

2017 AFFORDABLE HOUSING REGIONAL INCOME LIMITS BY HOUSEHOLD SIZE

Income limits not officially adopted by the State of New Jersey. Contact your municipality to see if applicable in your jurisdiction. Additional information about AHPNJ income limits is posted on AHPNJ.org

| | 1 Person | *1.5 Person | 2 Person | *3 Person | 4 Person | *4.5 Person | 5 Person | 6 Person | 7 Person | 8+ Person | Max Increase Rents** Sales*** | Regional Asset Limit**** |
|-----------------|----------|-------------|----------|-----------|-----------|-------------|-----------|-----------|-----------|-----------|-------------------------------|--------------------------|
| Region 1 | | | | | | | | | | | | |
| Median | \$60,271 | \$64,576 | \$68,882 | \$77,492 | \$86,102 | \$89,546 | \$92,990 | \$99,878 | \$106,766 | \$113,655 | | |
| Moderate | \$48,217 | \$51,661 | \$55,105 | \$61,993 | \$68,882 | \$71,637 | \$74,392 | \$79,903 | \$85,413 | \$90,924 | 1.7% | \$166,493 |
| Low | \$30,136 | \$32,288 | \$34,441 | \$38,746 | \$43,051 | \$44,773 | \$46,495 | \$49,939 | \$53,383 | \$56,827 | 1.99% | |
| Very Low | \$18,081 | \$19,373 | \$20,664 | \$23,248 | \$25,831 | \$26,864 | \$27,897 | \$29,963 | \$32,030 | \$34,096 | | |
| Region 2 | | | | | | | | | | | | |
| Median | \$65,953 | \$70,663 | \$75,374 | \$84,796 | \$94,218 | \$97,987 | \$101,755 | \$109,293 | \$116,830 | \$124,368 | | |
| Moderate | \$52,762 | \$56,531 | \$60,299 | \$67,837 | \$75,374 | \$78,389 | \$81,404 | \$87,434 | \$93,464 | \$99,494 | 1.7% | \$180,756 |
| Low | \$32,976 | \$35,332 | \$37,687 | \$42,398 | \$47,109 | \$48,993 | \$50,878 | \$54,646 | \$58,415 | \$62,184 | 3.25% | |
| Very Low | \$19,786 | \$21,199 | \$22,612 | \$25,439 | \$28,265 | \$29,396 | \$30,527 | \$32,788 | \$35,049 | \$37,310 | | |
| Region 3 | | | | | | | | | | | | |
| Median | \$73,780 | \$79,050 | \$84,320 | \$94,860 | \$105,400 | \$109,616 | \$113,832 | \$122,264 | \$130,696 | \$139,128 | | |
| Moderate | \$59,024 | \$63,240 | \$67,456 | \$75,888 | \$84,320 | \$87,693 | \$91,066 | \$97,811 | \$104,557 | \$111,302 | 1.7% | \$200,698 |
| Low | \$36,890 | \$39,525 | \$42,160 | \$47,430 | \$52,700 | \$54,808 | \$56,916 | \$61,132 | \$65,348 | \$69,564 | 0.38% | |
| Very Low | \$22,134 | \$23,715 | \$25,296 | \$28,458 | \$31,620 | \$32,885 | \$34,150 | \$36,679 | \$39,209 | \$41,738 | | |
| Region 4 | | | | | | | | | | | | |
| Median | \$66,022 | \$70,738 | \$75,454 | \$84,885 | \$94,317 | \$98,090 | \$101,862 | \$109,408 | \$116,953 | \$124,498 | | |
| Moderate | \$52,817 | \$56,590 | \$60,363 | \$67,908 | \$75,454 | \$78,472 | \$81,490 | \$87,526 | \$93,562 | \$99,599 | 1.7% | \$177,413 |
| Low | \$33,011 | \$35,369 | \$37,727 | \$42,445 | \$47,158 | \$49,045 | \$50,931 | \$54,704 | \$58,476 | \$62,249 | 1.53% | |
| Very Low | \$19,807 | \$21,221 | \$22,635 | \$25,466 | \$28,295 | \$29,427 | \$30,559 | \$32,822 | \$35,086 | \$37,349 | | |
| Region 5 | | | | | | | | | | | | |
| Median | \$58,240 | \$62,400 | \$66,560 | \$74,880 | \$83,200 | \$86,528 | \$89,856 | \$96,512 | \$103,168 | \$109,824 | | |
| Moderate | \$46,592 | \$49,920 | \$53,248 | \$59,904 | \$66,560 | \$69,222 | \$71,885 | \$77,210 | \$82,534 | \$87,859 | 1.7% | \$154,194 |
| Low | \$29,120 | \$31,200 | \$33,280 | \$37,440 | \$41,600 | \$43,264 | \$44,928 | \$48,256 | \$51,584 | \$54,912 | 2.09% | |
| Very Low | \$17,472 | \$18,720 | \$19,968 | \$22,464 | \$24,960 | \$25,958 | \$26,956 | \$28,954 | \$30,950 | \$32,947 | | |
| Region 6 | | | | | | | | | | | | |
| Median | \$51,085 | \$54,734 | \$58,383 | \$65,681 | \$72,979 | \$75,898 | \$78,817 | \$84,655 | \$90,494 | \$96,332 | | |
| Moderate | \$40,868 | \$43,787 | \$46,706 | \$52,545 | \$58,383 | \$60,718 | \$63,054 | \$67,724 | \$72,395 | \$77,066 | 1.7% | \$136,680 |
| Low | \$25,543 | \$27,367 | \$29,192 | \$32,840 | \$36,489 | \$37,949 | \$39,409 | \$42,328 | \$45,247 | \$48,166 | 0.00% | |
| Very Low | \$15,326 | \$16,420 | \$17,515 | \$19,704 | \$21,894 | \$22,769 | \$23,645 | \$25,397 | \$27,148 | \$28,900 | | |

Moderate income is between 80 and 90 percent of the median income. Low income is 50 percent or less of median income. Very low income is 30 percent or less of median income.

* These columns are for calculating the pricing for one, two and three bedroom sale and rental units as per N.J.A.C. 5:80-26.4(a).

**This column is used for calculating the pricing for rent increases for units as per N.J.A.C. 5:97-9.3. The increase for 2015 was 2.3%, the increase for 2016 was 1.1% and the increase for 2017 is 1.7% (Consumer price index for All Urban Consumers (CPI-U): Regions by expenditure category and commodity and service group). Landlords who did not increase rents in 2015 or 2016 may increase rent by up to the applicable combined percentage from their last rental increase for that unit. In no case can rent for any particular apartment be increased more than one time per year.

*** This column is used for calculating the pricing for resale increases for units as per N.J.A.C. 5:97-9.3. As per 5:97-9.3(b), The price of owner-occupied low and moderate income units may increase annually based on the percentage increase in the regional median income limit for each housing region. In no event shall the maximum resale price established by the administrative agent be lower than the last recorded purchase price.

Low income tax credit developments may increase based on the low income tax credit regulations.

**** The Regional Asset Limit is used in determining an applicant's eligibility for affordable housing pursuant to N.J.A.C. 5:80-26.16(b)3.

Note: Since the Regional Income Limits for Region 6 in 2016 were higher than the 2017 calculations, the 2016 income limits will remain in force for 2017. See N.J.A.C. 5:97-9.2(c).