RESOLUTION #2017-268-20D

RESOLUTION AUTHORIZING AN AFFORDABLE HOUSING SETTLEMENT AGREEMENT WITH BORDENTOWN DEVELOPMENT CO., LLC (BCD)

WHEREAS, Bordentown Development Co., LLC, hereinafter referred to as BDC, is the owner of property located on Route 130 and Rising Sun Road and designated as Block 138.01, Lots 41, 42, and 43; and

WHEREAS, through mediation, it has been agreed upon that BDC will develop its property, to include, in part, affordable housing units, which will generate affordable housing credits to be applied to the Township's Gap and Round 3 affordable housing obligations; and

NOW, THEREFORE, BE IT RESOLVED by the Township Committee of the Township of Bordentown that it does accept the terms and conditions of the settlement agreement and further authorizes the Mayor and Township Clerk to execute the agreement on behalf of the Township of Bordentown.

It is hereby certified that the foregoing is a true and correct copy of a resolution adopted by the Township Committee of the Township of Bordentown at a meeting held on September 25, 2017.

Colleen M. Eckert

COLLEEN M. ECKERT, RMC, TWP. CLERK

09/25/17

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT ("Agreement") made this _____ day of _____, 2017, by and between:

TOWNSHIP OF BORDENTOWN, a municipal corporation of the State of New Jersey, County of Burlington, having an address at One Municipal Drive, Bordentown, New Jersey 08505 (hereinafter the "**Township**");

And

BORDENTOWN DEVELOPMENT CO., LLC, a New Jersey limited liability company, **ZB PROPERTIES LLC** A New Jersey limited liability company **AND ZEIGER ENTERPRISES INC.** a New Jersey Corporation, all with an address at 1 West Walnut Avenue, Moorestown NJ 08057. (hereinafter collectively "**BDC**");

Collectively, the Township and BDC shall be referred to as the "**Parties**."

WHEREAS, on June 8, 2017, the Township Council ("Committee") of the Township adopted a resolution in which the Township reaffirmed its voluntary commitment to satisfy its affordable housing obligations, however they may ultimately be defined by the New Jersey Committee on Affordable Housing ("COAH") or a court; and

WHEREAS, in response to the New Jersey Supreme Court's decision In re Adoption of N.J.A.C. 5:96 and 5:97 by N.J. Council on Affordable Housing, 221 N.J. 1 (2015), on or about July 2, 2015, the Township filed an action with the Superior Court of New Jersey ("Court"), entitled In the Matter of the Application of the Township of Bordentown, County of Burlington, Docket No. BUR-L-1620-15, seeking a Judgment of Compliance and Repose approving its Affordable Housing Plan (as defined herein), in addition to related reliefs (the "Compliance Action"); and

WHEREAS, on or about August 19, 2015, BDC filed a Motion to Intervene in the Compliance Action ("BDC Intervention") and such intervention was granted by the Court on December 8, 2015; and

WHEREAS, BDC is the owner of the vacant real property located on Route 130 and Rising Sun Road and designated as Block 138.01 Lots 41, 42 and 43 on the Tax Map of the Township of Bordentown; and

WHEREAS, through mediation supervised by the Court Master, Mary Beth Lonergan, A.I.C.P., P.P., the Parties have reached an agreement that BDC will develop its Property to include a subdivided commercial lot consisting of ten (10) contiguous acres at the corner of Route 130 and Rising Sun Road, (the "**Commercial Lot**") and with an inclusionary project consisting of 54 townhome footprints/ within which are 49 market and 10 affordable stacked flats and 168 apartments allocated as 142 market rate apartments and 26 affordable apartments The total project yield will be 227 units, of which 191 units will be market rate family units and

36 units will be set-aside for very low, low and moderate income households ("**Inclusionary Development**"); and

WHEREAS, BDC is amenable to fully and finally resolving the BDC Intervention premised upon securing the right to construct the development contemplated herein on the Property; and

WHEREAS, the Planning Board is not a party to this Settlement Agreement but the Parties understand and anticipate that the Planning Board will abide by the terms of this Agreement as set forth below for the purpose of facilitating a resolution of BDC's objection to the Township's Affordable Housing Plan; and

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

WHEREAS, to ensure that the Inclusionary Development contemplated by this Agreement generates affordable housing credits to be applied to the Township's Gap (1999-2015) and Round 3 (2015-2025) affordable housing obligations, the affordable units within the Inclusionary Development shall be developed in accordance with the COAH Prior Round regulations, the Uniform Housing Affordability Controls, N.J.A.C. 5:80-26.1 et seq. ("UHAC"), and all other applicable law, and said Inclusionary Development shall be deed restricted for a period of 30 years from the initial occupancy of the affordable units; and

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

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

ARTICLE I –"AH AFFORDABLE HOUSING ZONE"

1.1 Purpose The purpose of this Agreement is to settle the BDC Intervention and to create a realistic opportunity for the construction of the Inclusionary Development, and to generate affordable housing credits for the Township to apply to its Gap (1999-2015) and Prospective Need –(2015-2025) affordable housing obligations. The Inclusionary Development shall be substantially consistent with the concept plan attached hereto and made a part hereof as **Exhibit A** and zoning standards attached hereto and made a part hereof as **Exhibit B** which have generally been reviewed and approved by the Township and the Township's professionals. The Inclusionary Development and the Commercial Lot, exclusive of Lot 41, shall be governed by an "AH Affordable Housing Zone" (the

"AH Zone") that will be adopted as part of Township Zoning Ordinances in accord with the timeframes and standards set forth herein.

1.2 Standards The AH Zone shall incorporate the following requirements:

1.2.1 Density. The mixed-use development of the Property shall be developed with a density of 227 residential units, inclusive of an affordable housing component that is described in greater detail in Section 3.1 herein.

1.2.2 Setbacks – The mixed-use development of the Property shall comply with the building setbacks set forth in the bulk chart attached as **Exhibit B**, which standards shall be adopted as part of an "AH" Zone that will be part of Township Zoning Ordinances.

1.2.3 Commercial Lot– The mixed-use development of the Property shall include a ten (10) contiguous acre parcel both fronting on Route 130 and Rising Sun Road, as shown on the attached **Exhibit A.** The Commercial Lot and existing Lot 41 (fronting on Route 130) shall be zoned to allow both "HC" Highway Commercial and "REO" permitted uses, and the revised Ordinance shall incorporate the less restrictive bulk standards from each zone, so that the commercial development of these parcel is encouraged to the maximum extent possible. The Parties agree that Lot 41 will not be required for the Inclusionary Development, and that this lot is outside the WQMP sewer service area. The Township and BDC shall cooperate in the extension of sewer service in accord with Article 4.4 below.

1.2.4 Amenities. BDC shall include various amenities in the Inclusionary Development designed to support the apartment and Townhome uses, including, without limitation, a clubhouse, pool and tot lot, as illustrated on the drawings in Exhibit A.

1.2.5 RSIS The Parties agree that the Inclusionary Development shall be governed by the Residential Site Improvement Standards as to all matters covered by the RSIS.

1.2.6 Architectural Design. BDC shall construct the mixed-use development in substantial compliance with the floor plans and final architectural building elevations as further reviewed and approved by the Township.

1.2.7 Infrastructure Improvements. BDC shall take affirmative steps to encourage commercial development of the site, including, but not limited to the following: Utility connection(s) and storm water connection(s) will be designed along with necessary easements established for the future Commercial Property.

1.2.8 Buffer. Buffering shall be provided along Meadow Run and along the Commercial property.

ARTICLE II - BASIC TERMS AND CONDITIONS

2.1 This Agreement is subject to Court approval at a Fairness Hearing to be scheduled concurrently with the Compliance Hearing, or at a date scheduled by the Court. The Parties will work together to ensure that the Court approves the Agreement at the currently scheduled Compliance Hearing or promptly thereafter, if rescheduled by the Court.

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

2.3 This Agreement does not purport to resolve all of the issues before the Court raised in the Compliance Action. The Township may continue to prosecute the Compliance Action however, such continued prosecution shall not affect this Agreement and the Inclusionary Development that is authorized herein.

ARTICLE III – BDC OBLIGATIONS

3.1 Affordable Housing Set-Aside. BDC shall have an obligation to deed-restrict thirty six (36) of the residential units in the Inclusionary Development as very low, low and moderate income affordable units. Any such affordable units shall comply with UHAC, applicable COAH affordable housing regulations, any applicable order of the Court, and other applicable laws , including the 13% very low income requirement (a minimum of 13% very low income units, very low income is defined as 30% or less of the regional income) embodied in the Fair Housing Act in lieu of the UHAC requirement as to low income.

3.1.1 In addition, the affordable units shall remain affordable rental units for a period of thirty (30) years from the date of their initial occupancy ("Deed-Restriction Period") so that the Township may count the units against its obligations to provide family rental affordable housing. This obligation includes, but is not limited to BDC's obligation to comply with (1) bedroom distribution requirements (8 three bedroom units (2 very low, 2 low and 4 moderate), 21 two bedroom units (3 very low, 8 low and ten moderate) and 7 one bedroom units (1 very low, 3 low and 3 moderate), (2) income split requirements (5 very low income unit, 13 low income units and 18 moderate income units), (3) pricing requirements, (4) affirmative marketing requirements, (5) candidate qualification and screening requirements, (6) integrating the affordable units amongst the market rate units, and (7) deed restriction requirements.

3.1.2 The distribution of the affordable housing units shall be in compliance with COAH's Round Two substantive regulations, N.J.A.C. 5:93, which

the Parties believe will govern the issue, or as approved by the Special Master and the Court.

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

3.1.4 Pursuant to UHAC, at the end of the required minimum thirty (30) year control period, the Township must undertake any and all actions to release the affordability controls on the units by municipal ordinance. The Township must introduce and adopt such ordinance within thirty (30) years and one hundred and twenty days (120) days of the commencement of the control period.

3.1.5 The Parties agree that the affordable units are to be included in the Affordable Housing Plan to be approved and credited by the Court in the Compliance Action, and that the credits will be applied against the Township's gap (1999-2015) and Prospective Need (2015-2025) obligations.

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

3.2 Obligation Not To Oppose Township's Application for Approval of its Affordable Housing Plan. As it pertains to the Township's Application for Approval of its Affordable Housing Plan, BDC shall not directly or indirectly oppose or undertake any further action to interfere with the Court's adjudication of the Township's affordable housing obligations and compliance standards. BDC shall also not directly or indirectly oppose or undertake any further action to interfere with the Court's approval and/or implementation of the Affordable Housing Plan, as it may be amended in any form, unless the Affordable Housing Plan deprives BDC of any rights created hereunder, or unless any other defendants or interested parties undertake any action to obstruct or impede BDC from securing such approvals as it needs to develop the Inclusionary Development on the Property.

3.3 Obligation to Withdraw Objection To The Township's Affordable Housing Plan. BDC agrees that it will withdraw its current objection to the Township's Affordable Housing Plan, and that it will not object further to the Township's Affordable Housing Plan, as may be amended.

3.4 Obligation to pay Fair Share Housing Center ("FSHC") Fees. BDC shall be responsible for paying Two Thousand Five Hundred Dollars ($2500.00) upon the adoption of the

AH Ordinance pursuant to Article 4.1 below-toward the legal fees incurred by FSHC. BDC shall pay Two Thousand Five Hundred Dollars ($2500.00) to FSHC upon the closing of title to the developer of the residential project toward the legal fees incurred by FSHC. In the event that the AH Ordinance is not adopted within sixty (60) days, BDC shall have no obligation to pay FSHC's legal fees.

ARTICLE IV - OBLIGATIONS OF THE TOWNSHIP

4.1 Obligation To Adopt Zoning Ordinance. The Township shall adopt the AH Affordable Housing Zoning Ordinance (the "**AH Ordinance,**" attached hereto as "Exhibit B") within sixty (60) days following the court approval of this Settlement Agreement. The AH Ordinance shall be reasonably satisfactory to both the Township and BDC (or its successor). In connection with the above actions, the Township shall comply with all applicable procedural requirements set forth in the Municipal Land Use Law and the case law interpreting same, including, but not limited to, legal notice requirements. All of the time periods set forth in this Section 4.1 may be subject to extension of time, which shall be reasonably agreed upon by the Parties, if at no fault of either Party the required actions cannot be completed within the time periods established.

4.2 Obligation To Preserve The Zoning Ordinance. The AH Ordinance shall not be amended or rescinded except upon the application of BDC or by Order of the Court.

4.3 Representation regarding Sufficiency of Water and Sewer: The Township agrees to reasonably comply with BDC's investigation and inquiry into the sufficiency of portable water and sewer capacity to service the proposed Inclusionary Development. Any on-site water, sewer, or any other utility infrastructure or improvements required for the development of the proposed Inclusionary Development shall be at the sole cost and expense of BDC. In addition, BDC may be required to provide a pro rata contribution in accordance with N.J.S.A. 40:55D-42, as applicable, for any such improvements that are located off site or off tract.

4.4 Lot 41 WQMP Amendment The Parties acknowledge that Lot 41 is outside the existing WQMP sewer service area, but is otherwise suitable for possible future commercial development. The Township will execute and endorse an application by Zeiger Enterprises to modify the WQMP sewer service area to incorporate Lot 41 within the Township sewer service area. The WQMP map amendment shall conform to NJDEP regulations.

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

4.6 Obligation to Refrain From Imposing Cost-Generative Requirements. The Township recognizes that the Required Approvals and this Agreement all contemplate the development of an "inclusionary development" within the meaning of the Mount Laurel doctrine, and BDC shall be entitled to any benefits, protections, and obligations afforded to developers of inclusionary developments, in addition to what BDC has agreed to in this Agreement. Therefore, the Township will not impose development standards and/or requirements that have not been agreed to by the parties, and would otherwise be considered to be "cost generative."

ARTICLE V – OBLIGATIONS OF THE PLANNING BOARD

5.1 Obligation to Process BDC's Development Applications with Reasonable Diligence. Notwithstanding any other provision of Article V, the Parties understand that the Planning Board is not a party to this Agreement, but the Parties anticipate that the Planning Board will honor the provisions set forth herein. The Planning Board shall expedite the processing of BDC's development applications following Court approval of this Agreement following a duly noticed Fairness Hearing in accordance with N.J.A.C. 5:93-10.1(a) and within the time limits imposed by the MLUL. In the event of any appeal of the Required Approvals, or Court approval of this Agreement, the Board shall process and take action on any development application by BDC for the Property which decision may be conditioned upon the outcome of any pending appeal.

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

ARTICLE VI – MUTUAL OBLIGATIONS

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

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

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

6.4 Failure to Adopt AH Ordinance. If the Township fails to adopt the AH Ordinance within the time frames set forth in Section 4.1, then, at the option of BDC, in its sole discretion and by prior written notice to the Township in accordance with Article IX of this Agreement, the Parties shall be restored to the status quo ante to the date hereof and all claims and defenses available now shall be available to the Parties:

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

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

ARTICLE VII - AFFORDABLE HOUSING CREDITS

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

ARTICLE VIII - COOPERATION AND COMPLIANCE

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

ARTICLE IX - NOTICES

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

TO BDC:

Bordentown Development Co., LLC
Attention: Jeffrey Zeiger
1 West Walnut Avenue
Moorestown, NJ 08057
Email: jeffz1@msn.com

WITH COPIES TO:

Fox Rothschild, LLP
Attention: Henry L. Kent-Smith, Esq.
997 Lenox Drive, Building 3
Lawrenceville, NJ 08648
Fax: 609-482-8901
Email: hkent-smith@foxrothschild.com

TO THE TOWNSHIP OF BORDENTOWN:

Township of Bordentown
One Municipal Drive
Bordentown NJ 08505
Attn: Colleen Eckert, Clerk
PH:
Email: C.eckert@bordentowntwp.org

WITH COPIES TO:

Jeffrey R. Surenian and Associates, LLC
Attention: Michael Edwards, Esq.
707 Union Avenue, Suite 301
Brielle, NJ 08730
PH (732) 612-3100

Fax: (732) 612-3101
Email MJE@Surenian.com

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

ARTICLE X - MISCELLANEOUS

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

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

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

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

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

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

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

10.8 Necessity of Required Approvals: The Parties recognize that the site plans required to implement the Inclusionary Development provided in this Agreement, and such other actions as may be required of the Planning Board or Township under this Agreement, cannot be

approved except on the basis of the independent reasonable judgment by the Planning Board and the Township Council, as appropriate, and in accordance with the procedures established by law. Nothing in this Agreement is intended to constrain that judgment or to authorize any action not taken in accordance with procedures established by law. Similarly, nothing herein is intended to preclude BDC from appealing any denials of or conditions imposed by the Planning Board in accordance with the MLUL or taking any other action permitted by law.

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

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

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

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

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

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

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

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

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

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

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

THE REMAINDER OF THIS PAGE IS PURPOSEFULLY BLANK

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

Witness/Attest:

Name:
Title: Henry Kent Smith

Dated: 9.7.2017

BORDENTOWN DEVELOPMENT CO. LLC

By:
Name: Jeffrey M. Zeiger
Title: Authorized Signator

Witness/Attest:

Name:
Title: Henry Kent-Smith

Dated: 9.7.2017

ZB PROPERTIES, LLC

By:
Name: Jeffrey M. Zeiger
Title: Authorized Signator

Witness/Attest:

Name:
Title: Henry Kent-Smith

Dated: 9.7.2017

ZEIGER ENTERPRISES, INC.

By:
Name: Jeffrey M. Zeiger
Title: Authorized Signator

Witness/Attest:

Dated: 10-2-17

TOWNSHIP OF BORDENTOWN
By:
as its MAYOR

By: Stephen Bencaz
, Mayor

EXHIBIT A

CONCEPT PLAN FOR INCLUSIONARY DEVELOPMENT

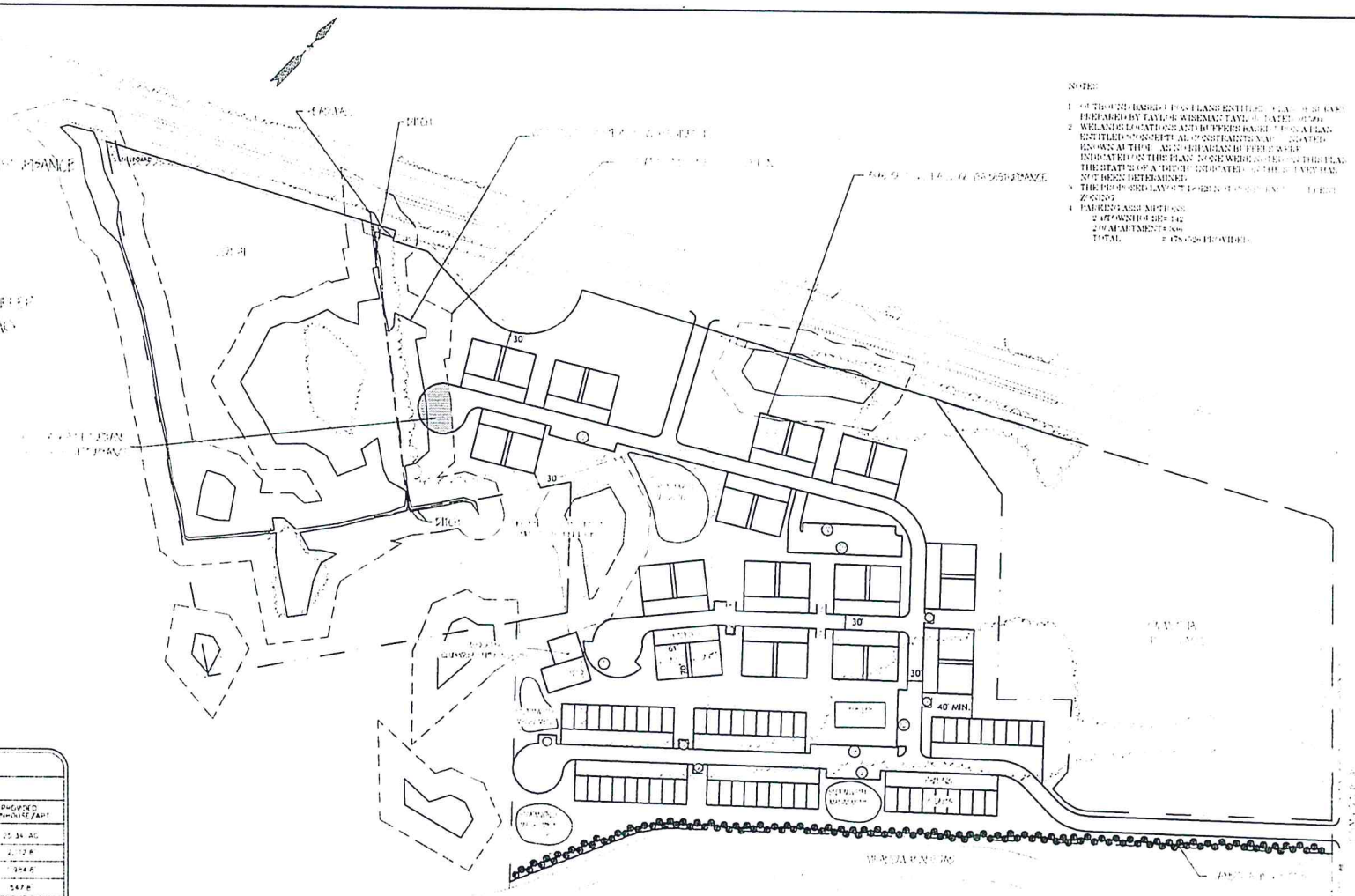
EXHIBIT B

AH ZONING ORDINANCE STANDARDS

TOTAL WETLANDS & WETLANDS BUFFER DISTURBANCE
GP 6 = 0.02 ACRES
GP 6A = 0.11 ACRES

TOTAL = 0.13 ACRES

* IT IS ASSUMED THAT ALL WETLAND & BUFFER ENCROACHMENTS OCCUR TO NON-TRIBUTARY WETLANDS ELIGIBLE FOR GP 6 & GP 6A



NOTES:

1. OUTBOUND BASED UPON PLANS ENTITLED [illegible] PREPARED BY TAYLOR WISEMAN TAYLOR DATED [illegible]
2. WETLANDS LOCATIONS AND BUFFERS BASED UPON A PLAN ENTITLED CONCEPTUAL CONSTRAINTS MAP INDICATED KNOWN AUTHOR AS NO RIPARIAN BUFFERS WERE INDICATED ON THIS PLAN. NONE WERE NOTED ON THIS PLAN. THE STATUS OF A DITCH INDICATED ON THE SURVEY HAS NOT BEEN DETERMINED.
3. THE PROPOSED LAYOUT DOES NOT CONFORM TO CURRENT ZONING.
4. PARKING ASSUMPTIONS:
   2.0 TOWNHOUSE = 142
   2.0 APARTMENT = 306
   TOTAL = 478 (526 PROVIDED)

ZONING TABLE		
A/T DISTRICT		
	REQUIRED TOWNHOUSE/APT	PROVIDED TOWNHOUSE/APT
MIN. LOT AREA	10 AC	25.34 AC
MIN. LOT FRONTAGE	300'	2,112.8'
MIN. LOT WIDTH	300'	1,984.8'
MIN. LOT DEPTH	300	547.8'
MIN. FRONT YARD SETBACK	40'	50.0
MIN. REAR YARD SETBACK	50'	30.0*
MIN. SIDE YARD SETBACK	50 150 AGGREGATE	50.0 140 AGGREGATE*
ACCESSORY BLDG. MIN. DISTANCE TO SIDE LINE	50'	N/A
ACCESSORY BLDG. MIN. DISTANCE TO REAR LINE	50	N/A
ACCESSORY BLDG. MIN. DISTANCE TO OTHER BLDG	10	N/A
MAXIMUM BUILDING HEIGHT	35' (3 STORIES)	ARCH. TO CONFIRM
MAXIMUM BUILDING COVERAGE	2%	10.1%*
MAXIMUM IMPERVIOUS SURFACE RATIO	0.55	0.27
MAXIMUM DENSITY	8 UNITS/ACRE	9 UNITS/ACRE

* PROPOSED NON CONFORMITY

10.00- ACRE COMMERCIAL LOT
59- TOWNHOUSES (49 MARKET RATE, 10 AFFORDABLE)
168- MIXED 1-3 BR APARTMENTS W/ GARAGES

SCALE (1 inch = 100 Feet)
100 0 100 200 300

NO.	DATE	REVISION DESCRIPTION	CHK'D	APP'D

CONCEPT PLAN #15
OF
BLOCK 138.01, LOTS 42 & 43

BORDENTOWN TOWNSHIP BURLINGTON COUNTY NEW JERSEY

WH ENGINEERING

WALTER JOSEPH HOPKIN
N.J. PROFESSIONAL ENGINEER, LIC. No. 40673

SCALE	DATE	JOB No.	SHEET No.
1" = 100'	6/29/17	13162	1 OF 1

ZONING TABLE	
RISING SUN MEADOWS PROJECT	
	Provided
Minimum lot area	10 ac.
Minimum lot frontage	300'
Minimum lot width	300'
Minimum lot depth	300'
Minimum front yard setback	40'
Minimum rear yard setback	25'
Minimum side yard setback	40'
Maximum building height	55'
Maximum building coverage	25%
Maximum impervious surface ratio	.55
Maximum density	9.5 units/acre
Minimum distance – building to building	40'