



Clarke Caton Hintz
Architecture
Planning
Landscape Architecture

Fair Share Plan Appendices

Borough of Oceanport, Monmouth County, New Jersey

December 2008

Fair Share Plan Appendices

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Appendix A.

**Planning Board Resolution Adopting the
Amended Housing Element & Fair Share Plan**

PR-08-016
12-18-08

BOROUGH OF OCEANPORT PLANNING BOARD

RESOLUTION OF THE PLANNING BOARD
AMENDING THE BOROUGH MASTER PLAN
THIRD ROUND HOUSING ELEMENT AND FAIR SHARE PLAN
BOROUGH OF OCEANPORT
MONMOUTH COUNTY, NEW JERSEY
DECEMBER 18, 2008

WHEREAS, the Planning Board of the Borough of Oceanport (hereinafter also referred to as the "Planning Board" or the "Board") has been constituted as a Unified Planning Board by the Mayor and Council of the Borough of Oceanport; and

WHEREAS, pursuant to the Municipal Land Use Law the Planning Board is statutorily empowered with the authority to review and make Amendments to the Oceanport Master Plan; and

WHEREAS, the Planning Board adopted its current Master Plan pursuant to N.J.S.A. 40:55D-28 in November of 2005; and

WHEREAS, the Master Plan includes a Housing Element pursuant to N.J.S.A. 40:55D-28b (3); and

WHEREAS, N.J.A.C. 5:97-2.1(a) requires the adoption of the Housing Element by the Planning Board and endorsement by the Governing Body; and

WHEREAS, N.J.A.C. 5:97-3.1(a) requires the preparation of a Fair Share Plan to address the total 1987-2018 fair share obligation of the Borough of Oceanport; and

WHEREAS, N.J.A.C. 5:97-3.1(b) requires the adoption of the Fair Share Plan by the Planning Board and endorsement by the Governing Body; and

WHEREAS, the draft 2008 Amended Third Round Housing Element and Fair Share Plan Master Plan Amendment was prepared by the firm of Clarke Caton Hintz; and

WHEREAS, upon notice duly provided pursuant to N.J.S.A. 40:55D-13, the Planning Board of the Borough of Oceanport held a public hearing on the Amended Third Round Housing Element and Fair Share Plan on December 18, 2008; and

WHEREAS, the Planning Board has determined that the Housing Element and Fair Share Plan are consistent with the goals and objectives of the Oceanport Borough's 1974 Master Plan, 2004 Reexamination Report of the Master Plan and the 2008 Master Plan Amendment and that adoption and implementation of the Housing Element and Fair Share Plan are in the public interest, protect the public health and safety and promote the general welfare; and

WHEREAS, it is the intent of this amendment to the Borough Master Plan that this amendment shall supercede the 1974 Master Plan in the event of any inconsistencies; and

WHEREAS, the "Amended Third Round Housing Element & Fair Share Plan"" is to be appended in its entirety as an appendix to the Borough's Master Plan; and

WHEREAS, the Board carefully considered all comments presented to the Board at the public hearing of December 18, 2008; and

WHEREAS, the Planning Board has reviewed and considered the Borough of Oceanport "Amended Third Round Housing Element & Fair Share Plan" and the testimony and explanation presented by Clarke Caton Hintz as the drafters of the Draft 2008 Master Plan Amendment and makes the following findings of Facts and Conclusions of Law:

1. The Draft 2008 Master Plan Amendment "Amended Third Round Housing Element & Fair Share Plan" was prepared by the firm of Clarke Caton Hintz and said plan was filed with the Borough's Planning Board.

2. The Secretary of the Planning Board advertised the requisite statutory notice required by Law at least ten (10) days prior to the date scheduled for a public hearing on the Amendments to the Master Plan and provided notice to the County Planning Board.

3. A public hearing was held on the proposed draft Amendment to the Master Plan on December 18, 2008 at which time a member of the firm of Clarke Caton Hintz was present to review and answer questions.

4. The Board provided the public the opportunity to comment on the Amended Third Round Housing Element and Fair Share Plan and the Board's planning consultant was given the opportunity

to respond to any and all comments of the public concerning the 2008 Master Plan Amendment.

5. All members of the public who wished to comment were given a full opportunity to be heard at the public hearing and the Board considered all comments made by members of the public.

6. The Board considered the input provided at the public hearing by the planning firm of Clarke Caton Hintz and the responses provided to all questions and comments presented by the members of the public.

7. The Board finds that 2008 Master Plan Amendment "Amended Third Round Housing Element & Fair Share Plan" to the 1974 Oceanport Comprehensive Master Plan updates the Borough's Master Plan is in the public interest, protects the public health and safety, promotes the general welfare and is consistent with sound planning principals.

8. The Board finds that the statutory procedural requirements articulated in the Municipal Land Use Law with respect to effectuating the within Amendment to the 1974 Master Plan have been fully complied with.

NOW, THEREFORE, BE IT RESOLVED by the Borough of Oceanport Planning Board that the 2008 Master Plan Amendment "Amended Third Round Housing Element & Fair Share Plan" Draft 2008 Master Plan Amendment created by Clarke Caton Hintz as approved at the public meeting held by the Planning Board on December 18, 2008 is hereby adopted as and for the Master Plan of the Borough of Oceanport.

BE IT FURTHER RESOLVED, that the Secretary of the Board shall publish the notice of this decision in an official newspaper of the Borough of Oceanport as required by law and actual notice shall be given to the County Planning Board together with a copy of the amended plan as adopted.

BE IT FURTHER RESOLVED, that it is the intent of this amendment to the Borough Master Plan that this amendment shall supercede the 1974 Master plan and any subsequent amendments thereto and shall be deemed controlling in the event of any inconsistencies therewith.

RESOLUTION OF THE BOROUGH OF
OCEANPORT PLANNING BOARD
AMENDING THE MASTER PLAN
HOUSING ELEMENT FAIR SHARE PLAN
DECEMBER 18, 2008

This resolution was offered by Councilman Johnson,
seconded by MR. MCCARTHY, and adopted on roll
call by the following vote:

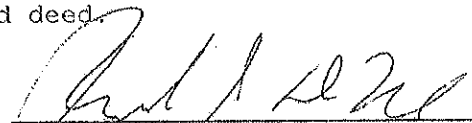
ROLL CALL	YES	NO	ABSTAIN	ABSENT	INELIGIBLE
Widdis	()	()	()	(✓)	()
Kleiberg	(✓)	()	()	()	()
McCarthy	(✓)	()	()	()	()
Johnson	(✓)	()	()	()	()
Savarese	()	()	()	(✓)	()
Lane	(✓)	()	()	()	()
Sullivan	()	()	()	(✓)	()
Whitson	(✓)	()	()	()	()
Wolf	(✓)	()	()	()	()
Chayes (Alt. 1)	(✓)	()	()	()	()
Gruskos (Alt. 2)	()	()	()	(✓)	()

I hereby certify that the foregoing Resolution was adopted
by the Planning Board of the Borough of Oceanport at its meeting
of December 18, 2008, 2008.

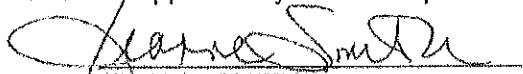

Jeanne Smith, Secretary

STATE OF NEW JERSEY :
SS.
COUNTY OF MONMOUTH :

I hereby certify that on December 18, 2008, 2008,
Jeanne Smith, personally came before me and
acknowledged under oath, to my satisfaction, that she: (a) is the
Secretary of the Borough of Oceanport Planning Board; and (b)
signed the Resolution as her act and deed.


Rick J. DeMoia, Jr. Esq.
Attorney at Law, State of NJ

I certify this to be a true copy of Resolution PR-08-016 approved by the Oceanport Planning
Board on December 18, 2008.


JEANNE SMITH
PLANNING BOARD SECRETARY

Appendix B.

**Governing Body Resolution Endorsing the
Amended Housing Element & Fair Share Plan**

R-08-175
12-18-08

**RESOLUTION OF THE COUNCIL OF THE BOROUGH OF
OCEANPORT ENDORSING THE BOROUGH'S AMENDED HOUSING
ELEMENT AND FAIR SHARE PLAN AND SEEKING COURT
APPROVAL OF SAME**

WHEREAS, the Planning Board of the Borough of Oceanport, County of Monmouth, State of New Jersey, adopted its amended Housing Element and Fair Share Plan on December 18, 2008; and

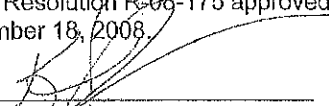
WHEREAS, a true copy of the resolution of the Planning Board adopting the amended Housing Element and Fair Share Plan is attached hereto; and

WHEREAS, the Borough of Oceanport wishes to endorse the amended Housing Element and Fair Share Plan and to seek approval of same from the Court.

**NOW THEREFORE BE IT RESOLVED BY THE COUNCIL OF THE
BOROUGH OF OCEANPORT:**

1. That it hereby endorses the amended Housing Element and Fair Share Plan as adopted by the Planning Board of the Borough of Oceanport on December 18, 2008; and
2. That it hereby authorizes and directs its professionals to file the amended Housing Element and Fair Share Plan with the Court and to seek Court approval of same subject to a potential settlement agreement with Oceanport Holdings, LLC; and
3. That it authorizes its professionals to submit a courtesy copy of the Housing Element to COAH; and
4. That it authorizes its professionals to seek to maintain the temporary immunity that currently exists in conjunction therewith so that the Court can review the plan and so that the Borough can respond to any judicial concerns free from unnecessary lawsuits brought on the basis of the Mount Laurel doctrine; and
5. That it authorizes its professionals to take any and all actions reasonable and necessary to secure a Judgment of Compliance and Repose from the Court; and
6. That notice of the application for approval of the Borough's plan shall be published in a newspaper of regional circulation and the Borough shall otherwise provide all the notice the Court deems appropriate of the date the Court sets a hearing on whether the Housing Element and Fair Share Plan satisfies the Borough's affordable housing responsibilities under applicable laws. Said notice shall give the public sufficient time to review the Borough's Housing Element and Fair Share Plan and offer any comments that individual or entity may deem appropriate.

I certify this to be a true copy of Resolution R-08-175 approved by the Mayor and Council of the Borough of Oceanport on December 18, 2008.


KIMBERLY A. JUNGFER, RMC
BOROUGH CLERK

Appendix C.
Workbook A

Workbook A: Growth Share Determination Using Published Data

(Using Appendix F(2), *Allocating Growth To Municipalities*)

COAH Growth Projections

Must be used in all submissions

Municipality Name:

Oceanport, Monmouth Co.

Enter the COAH generated growth projections from Appendix F(2) found at the back of N.J.A.C. 5:97-1 et seq. on Line 1 of this worksheet. Use the Tab at the bottom of this page to toggle to the exclusions portion of this worksheet. After entering all relevant exclusions, toggle back to this page to view the growth share obligation that has been calculated. Use these figures in the Application for Substantive Certification.

	Residential	Non-Residential
1 Enter Growth Projections From Appendix F(2) *	84	575
2 Subtract the following Residential Exclusions pursuant to 5:97-2.4(a) from "Exclusions" tab	Click Here to enter Prior Round Exclusions	
COs for prior round affordable units built or projected to be built post 1/1/04	9	
Inclusionary Development	0	
Supportive/Special Needs Housing	0	
Accessory Apartments	0	
Municipally Sponsored or 100% Affordable	0	
Assisted Living	0	
Other	0	
Market Units in Prior Round Inclusionary development built post 1/1/04	51	
3 Subtract the following Non-Residential Exclusions (5:97-2.4(b))		
Affordable units	0	
Associated Jobs		0
4 Net Growth Projection	24	575
5 Projected Growth Share (Conversion to Affordable Units Dividing Households by 5 and Jobs by 16)	4.79 Affordable Units	35.94 Affordable Units
6 Total Projected Growth Share Obligation		41 Affordable Units

* For residential growth, see Appendix F(2), Figure A.1, Housing Units by Municipality. For non-residential growth, see Appendix F(2), Figure A.2, Employment by Municipality.

Affordable and Market-Rate Units Excluded from Growth

Municipality Name: Oceanport, Monmouth Co.

Prior Round Affordable Units NOT included in Inclusionary Developments Built post 1/1/04

Development Type	Number of COs Issued and/or Projected
Supportive/Special Needs Housing	
Accessory Apartments	
Municipally Sponsored and 100% Affordable	
Assisted Living	
Other	
Total	0

Market and Affordable Units in Prior Round Inclusionary Development

Built post 1/1/04

N.J.A.C. 5:97-2.4(a)

(Enter Y for yes in Rental column if rental units resulted from N.J.A.C. 5:93-5.15(c)5 Incentives)

Development Name	Rentals? (Y/N)	Total Units	Market Units	Affordable Units	Market Units Excluded
Oceanport Village / Jockey Club	y	80	71	9	51
		0			0
		0			0
		0			0
		0			0
Total		80	71	9	51

Jobs and Affordable Units Built as a result of post 1/1/04 Non-Residential Development

N.J.A.C. 5:97-2.4(b)

Development Name	Affordable Units Provided	Permitted Jobs Exclusion
		0
		0
		0
		0
Total	0	0

[Return To Workbook A Summary](#)

Appendix D.
2005 Growth Share Ordinance

803
4/1/03

**AN ORDINANCE CREATING ARTICLE X OF CHAPTER 68 OF THE
CODE OF THE BOROUGH OF OCEANPORT TO FACILITATE
THE PROVISION OF AFFORDABLE HOUSING IN THE THIRD
HOUSING CYCLE IN CONNECTION WITH RESIDENTIAL AND NON-RESIDENTIAL
GROWTH AND DEVELOPMENT**

WHEREAS, the New Jersey Supreme Court and New Jersey Legislature have recognized in So. Burl. Co. NAACP v. Mount Laurel, 92 N.J. 158 (1983) ("Mount Laurel II") and the Fair Housing Act, N.J.S.A. 52:27D-301 et. seq. ("FHA") that New Jersey municipalities have responsibilities concerning the need to provide affordable housing for low and moderate income households; and

WHEREAS, the Legislature conferred upon the New Jersey Council on Affordable Housing ("COAH") "primary jurisdiction for the administration of housing obligations in accordance with sound regional planning considerations in this State" (N.J.S.A. 52:27D-304 (a)); and

WHEREAS, in Mount Laurel II, the New Jersey Supreme Court ruled that municipalities had the power to address the Mount Laurel responsibilities the Court had created through "inclusionary devices" and rejected the notion "that inclusionary measures amount to a taking without compensation" (see Mount Laurel II at 271); and

WHEREAS in Mount Laurel II, the Supreme Court also stated, "Zoning does not require that land be used for maximum profitability and, on occasion, the goals may require something less" (see Mount Laurel II at 274 n.34); and

WHEREAS, in the case entitled Holmdel Builders Association v. Township of Holmdel, 121 N.J. 550, 552 (1990), the Supreme Court referred to its Mount Laurel II decision and emphasized that in designing inclusionary ordinances, "no density bonuses, compensatory benefits, or subsidies were specifically required;" and

WHEREAS, in view of the principles established by the Supreme Court in these landmark decisions, COAH recently adopted substantive regulations that authorized municipalities to impose a set aside, without any density bonuses or other compensatory benefits, pursuant to which municipalities could require residential developers to construct one affordable residential unit for every eight market-rate residential units the developer constructed (N.J.A.C. 5:94-4.4 (a)); and

WHEREAS, COAH specifically stated that "a municipality may adopt a zoning ordinance requiring a maximum of one for every eight market-rate residential units be affordable to low and

moderate income households, as long as the zoning has not allowed an increase in density to accommodate affordable housing" (36 N.J.R. 5775); and

WHEREAS, similarly, COAH has also authorized municipalities to require nonresidential developers to produce affordable housing without any enhancement or compensatory offsetting benefit based upon a formula that would require the production of one affordable residential unit for every 25 jobs projected to be created by the non-residential development (N.J.A.C. 5:94-4.4 (a)); and

WHEREAS, the Borough of Oceanport wishes to ensure that as developers build residential and non-residential projects, they provide affordable housing consistent with COAH's regulations and policies described above;

and policies soundly rooted in Supreme Court precedent; and

WHEREAS, implementation of these policies will ensure that as the Borough grows with housing affordable to the middle and upper class, it will also grow with housing affordable to lower income households and that as nonresidential development occurs, it will also provide housing affordable for lower income workers (see Mount Laurel II at 211); and

NOW, THEREFORE, BE IT ORDAINED AND ESTABLISHED by the Borough Council of the Borough of Oceanport, County of Monmouth, and State of New Jersey that Chapter 68, Article X of the Zoning Code of the Borough of Oceanport is hereby amended as follows:

Section 1. -Legislative Intent.

The legislative intent set forth in the above preambles and recitals are hereby adopted and incorporated by reference herein as set forth herein at length.

Section 2. - The following new section is hereby added to Article (Affordable Housing) of the Oceanport Borough Zoning Ordinance:

Chapter 68 Article X Section 68-36, entitled Provision of Affordable Housing Pursuant to Cycle Three "Growth Share" Regulations

A. QUANTIFICATION OF AFFORDABLE HOUSING OBLIGATION FOR RESIDENTIAL DEVELOPERS

Except as otherwise provided below, in those circumstances where an applicant seeks to develop land for residential purposes and receives no right to increased density or other compensatory bonus, said applicant shall produce and develop on site one residential unit of housing affordable to low and moderate income households for every eight market rate residential

units constructed (11.11 percent). In the event 11.11 percent of the total units should result in a fraction equaling one half percent or greater, the affordable housing obligation shall be rounded to the next higher number. Affordable housing shall be as defined under the FHA and COAH's regulations. Nothing herein shall relieve applicants seeking to develop projects of eight or fewer units from the requirements of the Borough's Mount Laurel development fee ordinance in its current form or any future form.

**B. PERMISSIBLE MANNER OF SATISFACTION OF AFFORDABLE HOUSING
OBLIGATION OF RESIDENTIAL DEVELOPERS**

- (1) For all Residential Development, an applicant shall satisfy its affordable housing production obligations through on-site housing production in connection with the residential project, which is one of the mechanisms permitted pursuant to COAH's regulations.
- (2) The other alternative mechanisms permitted under COAH's regulations include (a) the purchase of an existing market-rate home at another location in the community and its conversion to an affordable price-restricted home in accordance with COAH's criteria, regulations and policies, (b) the funding of a Regional Contribution Agreement ("RCA"), (c) participation in reconstruction and/or buy-down/write-down, buy-down/rent-down programs and/or (d) contributing to the Housing Trust Fund at a rate of 1% of the equalized assessed value of the new construction of residential development. An applicant shall only be entitled to satisfy its affordable housing obligation via one or more of the alternative mechanisms set forth above if the applicant demonstrates to the Planning Board that the requirement to construct one affordable residential unit for every eight market rate residential units on site constitutes a taking of the applicant's property without just compensation pursuant the applicable legal standards.
- (3) Before the applicant's development application for final site plan or subdivision approval is deemed complete consistent with the Municipal Land Use Law and the Oceanport Zoning Ordinances, the applicant must secure written permission the Oceanport Borough Planning Board as to the exact

manner in which alternative mechanism(s) will be used to achieve the creation of one affordable residential unit for every eight market rate residential units.

- (4) Full and complete satisfaction of compliance with the affordable housing requirements of the development shall be a specific, automatic, essential and non-severable condition of all land use approvals. Pursuant to this condition, the applicant must demonstrate that it has satisfied the Planning Board's affordable housing condition of approval prior to obtaining the first building permit and compliance with the affordable housing condition shall be a continuing condition of all Planning Board approvals for development.

C. QUANTIFICATION OF AFFORDABLE HOUSING OBLIGATION FOR NON-RESIDENTIAL DEVELOPERS

Except as otherwise provided below, in those circumstances where an applicant seeks to develop for non-residential purposes and receives no right to an increased Floor Area Ratio, as defined by Chapter 68, Article X of the Borough's code, or other compensatory bonus, the developer shall provide one non-age-restricted affordable residential unit for every twenty five (25) jobs projected to be created by its development. The calculation of the number of jobs and employment opportunities shall be in accordance with Appendix E to N.J.A.C. 5:94-1, et. seq. entitled "UCC Use Groups for Projecting and Implementing Nonresidential Components of Growth Share."

D. PERMISSIBLE MANNER OF SATISFACTION OF AFFORDABLE HOUSING OBLIGATION OF NON-RESIDENTIAL DEVELOPERS

- (1) For all Nonresidential Development, the applicant may satisfy its affordable housing production obligation through the various mechanisms COAH regulations authorize including, (a) on-site housing production in connection with a residential component of the project, (b) the purchase of an existing market-rate home at another location in the community and its conversion to an affordable price-restricted home in accordance with COAH's criteria, regulations and policies, (c) the funding of a Regional Contribution Agreement ("RCA"), (d) participation in reconstruction and/or buy-down/write-down, buy-down/rent-down programs, and/or (e) contributing to the Housing Trust Fund at a rate of 2% of equalized assessed value of the new construction for Commercial development.

(d) The applicant shall present its planned method of compliance to the Planning Board at the time of application filing and the Board shall, in its discretion, advise the applicant whether the proposed method of compliance is acceptable, or whether an alternative technique or combination of techniques permitted by COAH regulations would be acceptable.

(e) Full and complete satisfaction of compliance with the affordable housing requirements of the development shall be a specific, automatic, essential, and non-severable condition of all approvals. Pursuant to the condition, the applicant must demonstrate that it has satisfied the Planning Board's affordable housing condition of approval prior to obtaining the first building permit and compliance with the affordable housing condition shall be a continuing condition of all approvals for development.

B. PERMISSIBLE MANNER OF SATISFACTION OF AFFORDABLE HOUSING OBLIGATION OF MIXED-USE DEVELOPERS

For all projects which include a combination of both residential and non-residential development, the affordable housing obligation created by the residential portion of the project is set forth in Section A above. The permissible manner of satisfaction of the affordable housing obligation for the residential component is set forth in Section B above. The affordable housing obligation created by the non-residential portion of the project is set forth in Section C above. The permissible manner of satisfaction of the affordable housing obligation for the residential component is set forth in Section D above.

F. COMPLIANCE WITH COAH'S RULES

The affordable unit(s) to be produced pursuant to Paragraphs A, B, C, D and E (above) shall be available to a low income individual or household should only one affordable unit be required. Thereafter, each of the affordable units shall be divided evenly between low and moderate income individuals and households except in the event of the applicable formulas result in an odd number of affordable units; in which event the unit shall be a low income residential unit. All affordable units shall strictly comply with COAH's regulations and policies including, but not limited to, pricing, phasing, bedroom distribution, controls on affordability, range of affordability, affirmative marketing, and income qualification. It shall be the applicant's responsibility, at its sole cost and expense, to arrange for a COAH and Borough approved qualification service to ensure full COAH compliance and to file such certifications,

reports and/or monitoring forms as may be required by COAH or the Court to verify COAH compliance of each affordable unit.

G. EXEMPTIONS

(1) Any repair, reconstruction or improvement of a structure, the cost of which is less than 50% of the market value of the structure either before the improvement or repair is started or, if the structure has been damaged and is being restored, before the damage occurred. For purposes of this definition, "market value" shall mean the equalized assessed value of the existing improvement as established by the Borough Tax Assessor. The cost of the repair, reconstruction or improvements shall be determined by an itemized construction cost estimate prepared, signed and sealed by any architect or professional engineer licensed by the State of New Jersey and submitted to the Construction Official. "Substantial improvement" is considered to commence when the first alteration of any wall, floor or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure. The term does not, however, include either:

a. Any project for improvement of a structure to comply with existing state or local building, fire, health, sanitary or safety code specifications which are solely necessary to assure safe living conditions; or

b. Any alteration of a structure listed on the national Register of Historic Places or a State Inventory of Historic Places.

(2) Nonprofit organizations which have received tax exempt status pursuant to Section 501 © (3) of the Internal Revenue Code, providing current evidence of that status is submitted to the Municipal Clerk, together with a certification that services of the organization are provided at reduced rates to those who establish an inability to pay existing charges.

(3) Federal, state, county and local governments. In as much as the New Jersey Sports and Exposition Authority is an entity of the State beyond the control of a municipality's zoning ordinance, the Borough will attempt to enlist the cooperation of the Authority to help produce affordable housing.

(4) Public utilities under the jurisdiction of the New Jersey Board of Public Utilities to the extent that the construction for which approval is sought of a

facility which shall house equipment only and not to be occupied by any employees.

H. RIGHT TO GREATER SET-ASIDE IF COMPENSATORY BENEFIT

As to residential developers, nothing herein shall affect the Borough's ability to generate more affordable housing than the one for eight standard set forth above in the event that the developer secures a density bonus or other compensatory benefit through zoning or through a use variance. As to nonresidential developers, nothing herein shall affect the Borough's ability to generate more affordable housing than the one affordable residential unit for every 25 job standard set forth above in the event that the developer secures an increased FAR or other compensatory benefit through zoning or through a use variance.

Section 3. - Severability.

If any paragraph, section, subsection, sentence clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any Court or administrative agency of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining paragraphs or sections hereof.

Section 4. - Inconsistency.

All ordinances or parts of ordinances inconsistent with this Ordinance are hereby repealed to the extent of such inconsistency.

Section 5. - Effective Date.

This ordinance shall take effect upon final passage and publication according to law and filing with the County Planning Board in accordance with N.J.S.A. 40:55D-16.

BOROUGH OF OCEANPORT

Maria Gatta

MARIA GATTA, Mayor

Attest

[Signature]
Borough Clerk

Appendix E.
Oceanport Gardens Documentation

Certificate of Occupancy

BOROUGH OF OCEANPORT
MONMOUTH COUNTY
NEW JERSEYThis Certifies that the Building located at Blk 80 B
Lots 19, 20, 21 East Main St.conforms at this date to the requirements of the Building and Zoning Or-
dinances of the Borough of Oceanport, and that the owner

may occupy the

whole building

(State whether whole or part)

for use as

Senior Citizens multi
family dwelling

Date

Sept 4 1980

Building Inspector

Nº 1097

OCEANPORT ASSOCIATES

377 Oak Street, Suite 110
P.O. Box 739
Garden City, New York 11530

(516) 745-0150
FAX (516) 745-0189

June 11, 2008

Ms. Kimberly Jungfer
Borough Clerk
Borough of Oceanport
222 Monmouth Boulevard
Oceanport, NJ 07757

RE: Oceanport Gardens
Affordable Housing Information

Dear Ms. Jungfer:

Pursuant to our telephone conversation earlier today, I am providing you the following information regarding our affordable housing at Oceanport Gardens:

Oceanport Gardens is a 100 unit development subsidized by a Pre-81 Universe Project Based HAP Contract. The HAP Contract number is NJ390014058. The contract currently in place became effective on December 1, 2005 and runs for a period of 5 years, expiring on November 30, 2010. The current contract allows senior citizens and a limited number of non-seniors with disabilities, whose incomes at move in are at or below 80% of AMI.

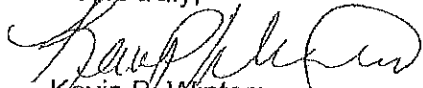
Applicants for Oceanport Gardens are selected from an existing waiting list. In the event that the waiting list needs to be replenished, Oceanport Gardens markets in accordance with the procedures outlined in our HUD Approved Fair Housing Marketing Agreement.

Contract rents at Oceanport Gardens are adjusted annually on the basis of a HUD approved OCAF adjustment. Currently 1-bedroom contract rents range from \$1,052.00 to \$1,059.00 and 2-Bedroom contract rents range from \$1,218.00 to \$1,298.00. Residents at Oceanport Gardens pay 30% of their adjusted gross income in accordance with HUD 4350.3 policies. The remainder of the contract rent is subsidized by the HUD Section 8 program.

Should you need further information, please feel free to contact me.

Thank you.

Yours truly,



Kevin P. Winters
Senior Ex. Director of Property Management

Appendix F.

Checkmate Documentation

To be provided.

Appendix G.
39 Elizabeth Drive Documentation

STATE OF NEW JERSEY - DEPARTMENT OF HUMAN SERVICES
STANDARD LANGUAGE
CAPITAL FUNDING AGREEMENT FOR RENOVATION, REMODELING,
EXTENSION OR OTHER IMPROVEMENTS TO AGENCY-OWNED OR LEASED
COMMUNITY FACILITIES

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AGREEMENT effective as of the date recorded on the signature page between the New Jersey Department of Human Services (the "Department") and the signatory agency (the "Agency") identified on the signature page.

WHEREAS the New Jersey Legislature has from time to time authorized the Department to expend such funds as are appropriated for renovating, remodeling, extending or otherwise improving Community-Based facilities for Department Clients; and

WHEREAS programs to award contracts for Community-Based facilities have been established by the Department to carry out such authorizations; and

WHEREAS the Agency, as a Community-Based private agency or a local government agency, is eligible to receive and desires assistance under the aforementioned appropriations.

THEREFORE the Department and the Agency agree as follows:

I. DEFINITIONS

For the purposes of this document, the following terms, when capitalized, shall have meaning as stated:

Agreement means this document, the Annex(es) and the Note, any additional attachments or appendices (including any approved assignments or subcontracts and any written amendments or modifications) and all supporting documents. The Agreement constitutes the entire agreement between the parties, and no amendments or modifications therefore will have any force or effect unless reduced to writing and signed by the parties' authorized agents identified in the Annex(es).

Agreement Ceiling means the amount so designated in the Annex(es) and reflects the total amount of Agreement Funds committed by the Department under this Agreement.

Agreement Funds means funds committed by the Department to the Agency pursuant to this Agreement.

Annex(es) means the attachment or attachments to this document containing at least the following information: a description of the Project; schedules for Project implementation and completion, Agency reporting of Project progress and Expenditures, and payment of Agreement Funds by the Department to the Agency; the commencement and expiration dates of the Agreement and the Project Period; the time period during which use of the Facility shall be

restricted pursuant to the terms of Section 3.05 Facility Restrictions; the names of the Project Director, the Agency officer authorized to sign this document and any other documents and papers under this Agreement, and the persons to whom Notices shall be directed; the title(s) of the Department officer(s) authorized to sign this document and any other documents and papers under this Agreement; the duties and responsibilities of the Project director; the Project budget, identifying both the Total Project Cost and the Agreement Ceiling; the sources and amounts of all funds supporting the Project; and a description of the services required to be provided in the Facility subsequent to its inspection and approval by the Department or Division and subsequent to any required licensure; A copy of the form of the Promissory Note to be executed pursuant to Section 5.01 Note Execution and the form of the statement of waiver required by Section 5.03 Waiver are appended to the Annex(es).

Community-Based means those service delivery programs or facilities which are not located on the grounds of or operated by a State institution.

Days means calendar days.

Department Client means, as appropriate clients of the Division of Youth and Family Services, the Division of Mental Retardation or the Division of Mental Health and Hospitals.

Division means as appropriate, the Division of Youth and Family Services, the Division of Mental Retardation or the Division of Mental Health and Hospitals.

Facility means the building constructed, renovated, remodeled, extended or otherwise improved in whole or in part under this Agreement. Such building is on land owned or leased by the Agency.

Note means the promissory note executed pursuant to Section 5.01 Note Execution.

Notice means an official written communication between the Department or the Division and the Agency. All Notices shall be delivered in person or by certified mail, return receipt requested, and shall be directed to the persons at the addresses specified for such purpose in the Annex(es) or to such other persons as either party may designate in writing.

Project means the project described in the Annex(es) for renovating, remodeling, extending or otherwise improving an already existing Community-Based facility owned or leased by the Agency.

The Project may also be for construction of a free-standing structure to augment the client capacity or otherwise to enhance the service delivery capabilities of any already-existing Community-Based facility owned or leased by the Agency. Unless otherwise expressly approved by the Commissioner of the Department, such free-standing structure shall be erected on Agency-owned or leased land occupied by the existing Community-Based facility, and the Total Project Cost may not exceed 50 percent of the appraised value of existing structures on such land. In no case may a Community-Based facility be purchased or leased for the purpose of securing Agreement Funds under this Agreement. The Project may be wholly or partially financed with Agreement Funds.

Project Expenditure (also Expenditures) means expenditures made by the Agency in accordance with the Project budget contained in the Annex(es).

Project Period means the period, specified in the Annex(es), which span the time from implementation to completion of the Project.

State means the State of New Jersey.

Total Project Cost means the amount so designated in the Annex(es) and reflects the total cost of the Project. If the Agency provides or obtains funding in addition to Agreement Funds to support the Project, the Total Project Cost will exceed the Agreement Ceiling by the amount of such additional funds.

II BASIC OBLIGATIONS OF THE DEPARTMENT

Section 2.01 Payment. Payment of Agreement Funds to the Agency shall be in accordance with Article VI of this document.

Section 2.02 Inspection and Monitoring. The Department or its designee shall inspect the Project site and shall monitor Project activities for conformity with the terms of this Agreement as well as with all other applicable Departmental specifications.

Section 2.03 Referenced Materials. Upon written request of the Agency, the Department or the Division shall make available to the Agency copies of federal and State regulations and other materials specifically referenced in this document.

III BASIC OBLIGATIONS OF THE AGENCY

Section 3.01 Project Implementation and Completion. The Agency shall implement and complete the Project in accordance with the schedule outlined in the Annex(es). The parties acknowledge that project has been completed.

Section 3.02 Expenditure of Agreement Funds. The Agency shall expend Agreement Funds for the Project in accordance with the budget contained in the Annex(es) and for no purpose other than as reflected therein. Salaries and travel expenses for Agency employees shall not be paid by Agreement Funds, except as may be specifically approved by the Department and budgeted in the Annex(es).

With exceptions only as expressly approved by the Department, the Agency may expend Agreement Funds only during the Project Period specified in the Annex(es). When circumstances force Agency expenditures for Project-related activities prior to the Project Period, such circumstances shall be documented by the Agency and forwarded in writing to the Department. At the discretion of the Department, part or all of such expenditures may be recoverable from Agreement Funds. The Department makes no assurance that it shall permit such recovery.

Section 3.03 Promissory Note. The Agency shall execute and satisfy a promissory note in accordance with Article V of this document.

Section 3.04 Matching Funds. The Department may require that the Agency provide or obtain matching funds for the Project. Any required Agency match shall be provided in accordance with Departmental specifications.

Section 3.05 Facility Restrictions. The Agency shall agree to maintain the Facility as an approved facility for Department Clients for a period of time stipulated by the Department in accordance with written Division policies. Such time period shall be 20 years from the date hereof. Unless otherwise stipulated in the Annex(es), the Agency shall agree to reserve 100 percent of the Facility's maximum client capacity for Division referrals, except during such times as the Division may determine that a lesser percent is adequate.

Section 3.06 Project Director. Under the direction of the Agency's governing body, the Project director named in the Annex(es) shall be responsible for all Project activities.

Section 3.07 Documents and Information. The Agency shall furnish the Department or the Division with all documents and information required by this Agreement, as well as with any additional material which may be considered necessary by the Department or the Division in support of the Agreement.

Section 3.08 Compliance with Laws. In fulfilling its commitment under this Agreement, the Agency shall comply with all applicable federal, State and local laws, rules and regulations (collectively, "laws"), including but not limited to the following: the federal Civil Rights Act of

1964, as amended, P. L. 1933, Chapter 277, of the State of New Jersey, as amended (N.J.S.A. 10:2-1 et seq.) and P.L. 1975, Chapter 127, of the State of New Jersey (N.J.S.A. 10:5-31 et seq.) pertaining to affirmative action and non-discrimination in public contracts; the federal Equal Employment Opportunity Act; Section 504 of the federal Rehabilitation Act of 1973 pertaining to non-discrimination on the basis of handicap; and the New Jersey Conflicts of Interest Law (N.J.S.A. 52:13D-12 et seq.), including but not limited to those sections pertaining to contracting, solicitation, and the provision of inducements to State legislators, officers or employees. In addition, the Agency shall comply with all applicable State and local laws relating to licensure, with standards specified by the Department as appropriate to the Facility, and with all applicable policies and procedures issued by the Department or the Division.

IV. SERVICE CONTRACT

The execution of this Agreement shall require execution of a separate contract or affiliation agreement for the provision of services in the Facility. The parties to such service contract shall be the Division and the Agency, or alternatively, the Division and another entity approved by the Division. The services to be provided in the Facility are described in the Annex(es).

V. PROMISSORY NOTE

Section 5.01 Note Execution. Immediately upon execution of this Agreement, the Agency shall execute and deliver to the Department a promissory note in the form appended hereto. Execution of such note shall be authorized by a resolution of the Agency's governing body. The amount of the note shall equal the amount of the Agreement Ceiling. At the conclusion of the Project Period, should the actual amount of Project Expenditures approved for payment by the Department differ from the Agreement Ceiling as reflected in the Annex(es), an amended note shall be executed by the Agency in the amount actually paid, or approved for payment, by the Department to the Agency. The amended note shall be delivered to the Department and shall replace the note originally delivered. Until such time as the amended note is executed, any funds paid by the Department to the Agency in excess of the amount of the original note shall be subject to repayment by the Agency or cancellation under the terms of this Agreement.

Section 5.02 Note Satisfaction. The amount of the Note shall be reduced according to the following formula for each full year credited toward satisfaction of the Agency's obligation to the Department:

$AR = 1/X$; where AR represents the rate of annual reduction in the Amount of the Note and X represents the number of years of the Agency's obligation to the Department as established pursuant to the terms of Section 3.05 Facility Restrictions and recorded in the Annex(es).

Section 5.03 Waiver. In cases where the Agency is a licensed health care facility classified by the Department of Health as an acute care hospital, the Department may waive the requirement of a Promissory Note.

The Agency shall request the waiver and document the hardship in writing. The final decision rests solely with the Department on the granting of a waiver. Any such waiver granted shall be documented by a written statement signed by the same Department official who signed the Agreement on the same date. A copy of this statement shall be appended to the Agreement.

VI PAYMENT

Section 6.01 General Payment Obligation. Except as otherwise limited or precluded in this Agreement, and contingent upon satisfactory fulfillment of the Agency's obligations as set forth in Section 3.01 Project Implementation and Completion, the Department shall pay the Agency the Agreement Ceiling of \$215,000.00.

Section 6.02 Method and Schedule of Payment. The Agency shall be paid under this Agreement in accordance with the method and schedule outlined upon completion of the project and execution of this Agreement together with the Note, Mortgage and related closing documents. Where applicable, the Department reserves the right to require written verification from the Project architect, contractor or other appropriate person, certifying the percentage of the Project completed to the date of Agency billing. In addition, the Department may require copies of statements from parties involved in Project activities.

Section 6.03 Payments Conditional. All payments by the Department under this Agreement shall be subject to revision on the basis of an audit conducted under Section 7.04 Audit.

VII BOOKS AND RECORDS; REPORTING REQUIREMENTS; VISITATION AND INSPECTION; AUDIT

Section 7.01 Books and Records. The Agency shall maintain such books, records and accounts as are considered necessary by the Department to ensure an accurate and adequate accounting of all receipts, expenditures and available funds, regardless of their source, relating to the Project.

All books, records and documents of any kind pertaining to this agreement shall be retained by the Agency for a minimum of four years after expiration or termination of the Agreement. Such requirement can be waived only by written authorization of the Department.

Section 7.02 Reporting Requirements. The Agency shall report Project progress and Expenditures to the Department in accordance with the schedule and procedures established in the Annex(es). The parties acknowledge that the project has been completed and that the funds will be used to partially reimburse the Agency's costs of acquiring and completing the project.

Section 7.03 Visitation and Inspection. The Agency's books, records and facilities, as well as the Project site itself, shall be available for inspection by authorized representatives of the Department, the Division and any other appropriate unit, agency or agent of State or local government. At the discretion of the Department, visitations and inspections may be at any time and may be announced or unannounced. The Agency's obligation to make available its books and records for on-site inspection, however, shall be limited to regular business hours.

Section 7.04 Audit. At any time during the Agreement term, the Agency's overall operations, its compliance with specific Agreement provisions, and the operations of any assignees or subcontractors engaged by the Agency under Section 10.01 Assignment and Subcontracts may be subject to audit by the Department, by any other appropriate unit or agency of State government, or by a private firm retained or approved by the Department for such purpose.

Whether or not such audits are conducted during the Agreement term, a final financial and compliance audit of Project operations, including the relevant operations of any assignees or subcontractors, shall be conducted. Generally such audit shall be initiated within two years after expiration of the Project Period. Should extraordinary circumstances prevent this from occurring, the final audit shall commence as soon as feasible thereafter. The final audit shall be performed by a unit or agency of State government or by a private firm retained for such purpose by the Department or the Agency and shall follow guidelines issued by the Department. Final financial settlement of this Agreement shall be contingent upon the findings of the final audit.

All provisions of Section 7.03 Visitation and Inspection shall apply to the Agency and to any assignees or subcontractors in the case of any visitations or inspections made for the purpose of audit. The Department reserves the right to have access to all written material, including but not limited to work papers, generated in connection with any audit conducted. Should the Agency retain a private audit firm, the Agency shall ensure that the instrument used to engage such firm contains express reference to the Department's right of access pursuant to this section.

VIII. AGREEMENT TERM; PROJECT PERIOD; AMENDMENTS AND MODIFICATIONS; CLOSEOUT.

Section 8.01 Agreement Term. This Agreement shall commence on the date of execution hereof and expire 20 years thereafter. The Agreement's expiration date shall coincide with the date on which the Agency shall have satisfied its obligation to the Department as established pursuant to the terms of Section 3.305 Facility Restrictions and recorded in the Annex(es).

Notwithstanding the foregoing, the Agency retains the right, during the Agreement term, to terminate this Agreement upon six months' notice to the Department. Should such termination occur, the Department may require that the Agency pay the Department an amount up to the balance remaining on the Promissory Note executed pursuant to Section 5.01 Note Execution. Such balance shall be calculated by (a) prorating the original amount of the Note over the number of years of the Agency's obligation to the Department as established pursuant to the terms of Section 3.05 Facility Restrictions, and (b) subtracting from the original amount of the Note the prorated annual figure multiplied by the number of full years elapsed between Agreement commencement and termination. If the requirement of a Promissory Note has been waived pursuant to Section 5.03 Waiver, the Department may require the Agency to pay liquidated damages equal to the amount which would have been due under a Promissory Note as calculated above.

The Department retains the right, during the Agreement term, to terminate this Agreement upon six months' Notice to the Agency. In the event the Department exercises this right and the Agency is not in default under Article IX Default, the Department shall not require any payment from the Agency either on the Promissory Note executed pursuant to Section 5.01 Note Execution or as liquidated damages.

Section 8.02 Projected Period. The Project Period shall commence on the same date as the Agreement and shall expire on the date specified in the Annex(es). The Project Period may be extended only upon written authorization of the Department.

Section 8.03 Amendments and Modifications. Except as may otherwise be provided for in this document, all amendments and modifications to the terms of this Agreement shall be consistent with Department or Division policies and shall be accomplished by means of a written agreement signed by the parties' authorized agents as set forth in the Annex(es). All written amendments and modifications shall become part of this Agreement and shall be appended to this document.

Section 8.04 Closeout. All financial accounts under this Agreement, with the except of the promissory note executed pursuant to Section 5.01 Note Execution, shall be settled as accurately as possible within 90 days after expiration of the Project Period and shall be settled finally based upon the results of the final audit conducted under Section 7.04 Audit. Any unexpended Agreement Funds in the possession of the Agency shall be returned to the Department within the 90 days closeout period. The Note shall be satisfied in accordance with Section 5.02 Note Satisfaction.

Except as may otherwise be provided for in this document, all non-financial obligations of both parties shall continue after the Project Period and shall cease on the effective date of expiration or termination of the Agreement.

IX. DEFAULT

Section 9.01 Causes. The occurrence of any of the following may be considered by the Department as Agency default of this Agreement:

- (a) Agency submission to the Department or the Division of reports or other documents that are inaccurate or incomplete in any material respect;
- (b) Agency refusal or failure to permit the Department, the Division or a designee of the Department to inspect the Agency's facilities, including the Project site, or to review and monitor Agency administrative records and operational practices;
- (c) Agency use of Agreement Funds to employ or otherwise compensate directly or indirectly any employee of the Department;
- (d) Department discovery, in the absence of Agency disclosure, of any pecuniary or personal interest by the Agency its officer, trustees, directors or employee in any

assignment or subcontract executed pursuant to Section 10.01 Assignment and Subcontracts:

- (e) conduct or acts, including but not limited to alleged or adjudged criminal activity, on the part of the Agency, its officer, trustees, directors or employees, which are detrimental to the reputation of the Agency or the Department;
- (f) Agency failure, judged to be substantial by the Department, to comply with the terms and conditions of this Agreement.

Section 9.02 Procedures. Upon occurrence of any of the events enumerated in Section 9.01 Causes, the Department may give Notice to the Agency that it is in default of this Agreement and may elect either to terminate the Agreement on a date of the Department's choosing or to invoke the remedy provision set forth in Section 9.03 Remedy. Should the Agreement be terminated pursuant to this section, the Department may require that the Agency pay the Department an amount up to the balance remaining on the promissory note executed pursuant to Section 5.01 Note Execution. Such balance shall be calculated in the manner specified in Section 8.01 Agreement Term. If the requirement of a Promissory Note has been waived pursuant to Section 5.03 Waiver, the Department may require the Agency to pay liquidated damages equal to the amount which would have been due under a Promissory Note calculated as specified in Section 8.01 Agreement Term.

Section 9.03 Remedy. In lieu of terminating this Agreement in the event of default, the Department may advise the Agency, in the Notice of default, of specific measures the Agency must undertake to remedy the default by a date of the Department's choosing. Such date shall be no more than six months from the date of the Notice of default and may be extended only at the discretion of the Department and upon Notice to the Agency. The Department's election of this provision shall in no way limit or preclude its right to terminate the Agreement upon Notice to the Agency should the Agency fail to adhere to the remedy measures or the time schedule specified in the Notice of default.

X. MISCELLANEOUS

Section 10.01 Assignment and Subcontracts. No rights or obligations of the Agency under this Agreement may be assigned or subcontracted by the Agency, except as may be provided for within the terms of this Agreement or with the prior written approval of the

Department. All approved assignments and subcontracts shall become part of this Agreement and shall be subject to its terms. The Agency shall bear full responsibility, without recourse to the State or any of its subdivisions, for performance under any approved assignment or subcontract. The Agency shall forward copies of all assignment and subcontract documents to the Department and shall retain copies of them on file together with this document.

Section 10.02 Procurement. The Agency shall bear full responsibility, without recourse to the State or any of its subdivision, for the settlement and satisfaction of any issues arising from any procurement arrangement entered into in support of this Agreement.

Section 10.03 Insurance. The Agency and any assignees or subcontractors engaged in construction, renovation, remodeling, extending or otherwise improving the Facility shall obtain the following types of insurance in coverage amounts judged adequate by the Department;

- (a) worker's compensation
- (b) general liability, including completed operations, broad form property damage and broad form contractual coverage;
- (c) fire insurance with extended coverage, such coverage to be equal to the to the replacement value of the Facility without any co-insurance; and
- (d) builder's risk, on an all-risk basis.

In addition, the Department may require the Agency and any assignees or subcontractors to obtain a completion bond and/or to maintain any other type of insurance coverage considered necessary by the Department. The State, which shall include the Department, shall be included as an additional named insured on any insurance policy applicable to the Project. The Department may require such proof of the required insurance and/or bond as it deems appropriate at any time during the Project Period.

Section 10.04 Indemnification. The Agency shall defend, indemnify and otherwise save harmless the State of New Jersey, its agencies, departments, bureaus, boards, officials and employees from any and all claims or actions at law, whether for personal injury, property damage or liabilities, including the costs of defense (a) which arise from the negligent acts or omissions of the Agency or its agents, employees, servants, subcontractors,

material suppliers or others working for the Agency, irrespective of whether such risks are within or beyond the control of the Agency, or (b) which arise from any failure to perform the Agency's obligations under this Agreement or any improper performance.

Notwithstanding the Agency's responsibilities outlined above in this section, the State reserves the right to provide its own attorney(s) to assist in the defense of any legal actions which may arise as a result of this Agreement.

Section 10.05 Insufficiency of Funds. The Agency and the Department recognize that this Agreement is dependent upon funding through State appropriations. The Department shall not be held responsible for any breach of this Agreement arising due to insufficiency of such appropriations.

Section 10.06 Exercise of Rights. A failure or a delay on the part of the Department or the Agency in exercising any right, power or privilege under this Agreement shall not waive that right, power or privilege. Moreover, a single or a partial exercise shall not prevent another or a further exercise of that or of any other right, power or privilege.

Section 10.06 Application of New Jersey Law. The parties to this Agreement hereby acknowledge that this Agreement is governed by New Jersey law, including the provisions of the New Jersey Contractual Liability Act (N.J.S.A. 59:1113-1 et. seq.) governing the Department's liability in any dispute that may arise under this Agreement.

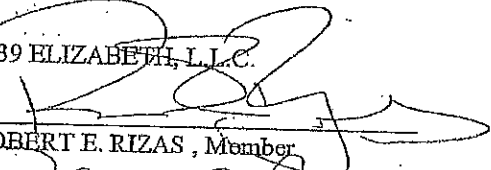
13

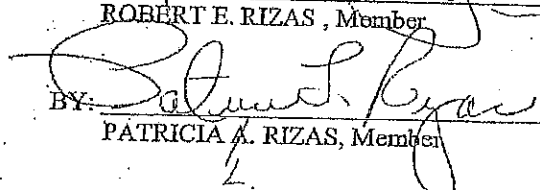
AGREEMENT SIGNATURES AND DATE

The terms of this Agreement have been read and understood by the persons whose signatures appear below. The parties agree to comply with the terms and conditions of the Agreement as set forth in Article I through Article X above.

By: _____
Director, Div. of Developmental Disabilities
Department of Human Services, State of New Jersey

S.S.A. 39 ELIZABETH, L.L.C.

BY: 
ROBERT E. RIZAS, Member

BY: 
PATRICIA A. RIZAS, Member

AGENCY: S.S.A. 39 ELIZABETH, L.L.C.

ADDRESS: 115 Tuttle Avenue
Spring Lake, NJ 07762

AGREEMENT DATED:

January 18, 2008

Sep 12 08 02:33p

P.3

note 12th McManus
609 - 883-4004

Date Issued 9/13/07
Contract # 07-060
Permit #

CERTIFICATE



CERTIFICATION

Block 139
Work Site Location 29 Elizabeth St
Owner In Fee/Occupant PAROS
Address
Tels. ()
Contractor Shaw Construction LLC
Address 703 Broad St
Shrewsbury NJ 07702
Tels. (732) 460 9191 Fax ()
Lic. No. or Bldg. Reg. No.
Federal Empl. No.

Home Warranty No.
Type of Warranty Plan: [] State [] Private
Use Group
Maximum Live Load
Construction Classification
Maximum Occupancy Load
Description of Work/Use:

ADDITION

CERTIFICATE OF OCCUPANCY

This serves notice that said building or structure has been constructed in accordance with the New Jersey Uniform Construction Code and is approved for occupancy.

CERTIFICATE OF APPROVAL

This serves notice that the work completed has been constructed or installed in accordance with the New Jersey Uniform Construction Code and is approved. If the permit was issued for minor work, this certificate was based upon what was visible at the time of inspection.

TEMPORARY CERTIFICATE OF OCCUPANCY/COMPLIANCE

If this is a temporary Certificate of Occupancy or Compliance, the following conditions must be met no later than 19 or the owner will be subject to fines or order to vacate:

CERTIFICATE OF CLEARANCE — LEAD ABATEMENT 5:17

This serves notice that based on written certification, lead abatement was performed as per NJAC 5:17, to the following extent:

[] Total removal of lead-based paint hazards in scope of work
[] Partial or limited time period (years); see file

CERTIFICATE OF CONTINUED OCCUPANCY

This serves notice that based on a general inspection of the visible parts of the building there are no imminent hazards and the building is approved for continued occupancy.

CERTIFICATE OF COMPLIANCE

This serves notice that said potentially hazardous equipment has been installed and/or maintained in accordance with the New Jersey Uniform Construction Code and is approved for use until.

Fee \$
Paid \$
Check No.
Collected by:

PAID - 3/13/07
1550 9/13/07

1 WHITE - APPLICANT 2 CANARY - OFFICE 3 PINK - TAX ASSESSOR

CONSTRUCTION OFFICIAL

U.S.C. F268
(REV. 3/95)

**GENERAL SERVICE CONTRACT
BETWEEN ALLIES, INC. ("SERVICE PROVIDER") AND
S.S.A. 39 ELIZABETH, L.L.C. ("OWNERS")
REGARDING THE PROPERTY LOCATED AT 39 ELIZABETH DRIVE,
OCEANPORT, NEW JERSEY ("THE PROPERTY")**

WHEREAS, the Owners desire for the Service Provider to provide staffing and general management and supervision of the tenants.

WHEREAS, the Service Provider agrees to provide twenty-four hour services in accordance with its Contract with the New Jersey Division of Developmental Disabilities ("DDD"), a copy of which is attached hereto, and which is hereby incorporated by reference into the terms of this Agreement.

WHEREAS, the Owners agree that when selecting Tenants for the Property, they agree to accept appropriate referrals from DDD who are compatible with Stacey Rizas.

WHEREAS, the Owners are responsible and liable for all maintenance and repairs of the Property, both inside and outside of the home, subject to maintenance agreement with the NJ Division of Developmental Disabilities.

WHEREAS, the Service Provider is responsible for the cost of all utilities serving the premises including gas, electric, water, sewer, telephone, television, computer and other services together with the cost of snow and ice removal, and lawn and grounds care and maintenance, in accordance with the Contract with the DDD.

WHEREAS, the Service Provider's duties and obligations to provide care, custody and control over the Property is addressed solely by its Contract with DDD.

WHEREAS, either the Owners or the Service Provider may, for any reason, elect to terminate this Contract by providing sixty (60) days written notice to the other party at the address listed in this Contract.

WHEREAS, all notices to the Owner shall be forwarded to 115 Tuttle Avenue, Spring Lake, New Jersey 07762, while all notices to the Service Provider shall be addressed to 1262 Whitehorse-Hamilton Square Road, Building 1A, Suite 101, Hamilton, New Jersey 08690, Attn: Krystal Odell, President.

S.S.A. 39 ELIZABETH, LLC
Owners

BY:

ROBERT E. RIZAS, Member

BY:

PATRICIA L. RIZAS, Member

ALLIES, INC.
Service Provider

BY:

KRYSTAL ODELL,
President

Council on Affordable Housing (COAH) Alternative Living Arrangement Survey

Municipality: Oceanport County: Monmouth
 Sponsor: DDD/Allies Inc. Developer: _____
 Block: 139 Lot: 23 Street Address: 39 Elizabeth Dr, Oceanport, NJ
 Facility Name: _____

Type of Facility:

- ☒ Group Home for developmentally disabled as licensed and/or regulated by the NJ Dept. of Human Services (Division of Developmental Disabilities (DDD))
- ☐ Group Home for mentally ill as licensed and/or regulated by the NJ Dept. of Human Services (Division of Mental Health Services) (DMHS))
- ☐ Transitional facility for the homeless
- ☐ Residential health care facility (licensed by NJ Dept. of Community Affairs)
- ☐ Congregate living arrangement
- ☐ Other - Please Specify: _____

Sources of funding committed to the project:

- ☐ Capital funding from State - Amount \$ _____
- ☐ Balanced Housing - Amount \$ _____
- ☐ HUD - Amount \$ _____
- ☐ Federal Home Loan Bank - Amount \$ _____
- ☐ Farmers Home Administration - Amount \$ _____
- ☐ Development fees - Amount \$ _____
- ☐ Bank financing - Amount \$ _____
- ☐ Other - Please specify: _____

☐ Please provide a pro forma for proposed projects

Total # of clients 4
 Total # of low-income clients 4
 Total # of moderate-income clients _____
 Total # of market-income clients _____

of total bedrooms 4
 # of low-income bedrooms 4
 # of moderate-income bedrooms _____
 # of market-income bedrooms _____

Length of Controls: 20 years

Effective Date of Controls: 1/1/

Expiration Date of Controls: 1/1/

Average Length of Stay: _____ months (transitional facilities only)

☒ CO Date: 11/19/07

Indicate licensing agency:

☒ DDD ☐ DMHS ☐ DHSS ☐ DCA

Initial License Date: 1/1/

Current License Date: 1/1/

The following verification is attached:

- ☐ Copy of deed restriction or mortgage and/or mortgage note with deed restriction (30-year minimum, HUD, FHA, FHLB, BHP deed restriction, etc.)
- ☐ Copy of capital Application Funding Unit (CAFU) or DHS Capital Application Letter (20 year minimum, no deed restriction required)
- ☐ Award letter/financing commitment (proposed new construction projects only)

Residents 18 yrs or older? ☒ Yes ☐ No

Age-restricted? ☐ Yes ☒ No

Population Served (describe): developmentally disabled

Accessible (in accordance with NJ Barrier Free Subcode)? ☒ Yes ☐ No

Affirmative Marketing Strategy (check all that apply):

☒ DDD/DMHS/DHSS waiting list

CERTIFICATIONS

I certify that the information provided is true and correct to the best of my knowledge and belief.

Certified by: Kristel Odell 11/10/08
Project Administrator Date

Certified by: _____
Municipal Housing Liaison Date

Appendix H.
Oceanport Manor Approving Resolution

BOROUGH OF OCEANPORT PLANNING BOARD

RESOLUTION MEMORIALIZATION OF THE
APPROVAL OF THE
PRELIMINARY AND FINAL MAJOR SITE PLAN WITH VARIANCES
TO MONMOUTH HOUSING ALLIANCE
BLOCK 110, LOT 18.01
25 MAIN STREET
AUGUST 13, 2008

WHEREAS, the Applicant, Monmouth Housing Alliance, a non-profit corporation of the State of New Jersey, doing business as Monmouth Housing Alliance, hereinafter referred to as the "Applicant" or "Monmouth Housing Alliance" is the owner of property known as Block 110, Lot 18.01 located at 25 Main Street as shown on the Official Tax Map of the Borough of Oceanport; and

WHEREAS, the Applicant seeks Preliminary and Final Major Site Plan approval and a "d" use variance to expand a non-conforming use and additional bulk variances with regard to the construction of six additional residential units on said lot together with variances as to maximum height in feet and stories for a structure and requisite parking; and

WHEREAS, the subject property is located in the R-5 Residential Single Family and Two Family Zone District and contains approximately 0.92 acres; and

WHEREAS, the property has 100.00 feet of frontage along the northerly side of Main Street; and

WHEREAS, there presently exists on the subject site an existing three story frame dwelling with six residential units and site improvements; and

WHEREAS, the Oceanport Creek runs along the northerly property line of the subject; and

WHEREAS, the subject property is subjected to a 150 foot CAFRA buffer along the northerly property line; and

WHEREAS, the Applicant proposes to construct a three story addition to the existing building containing six residential units for a total of twelve residential units on the subject site; and

WHEREAS, the Applicant proposes to improve the existing parking lot area, trash enclosure, drainage facilities, landscaping and lighting currently on site; and

WHEREAS, the existing multifamily use apartments are not a permitted use in the R-5 residential zone district; and

WHEREAS, the Applicant was represented by Hunt A. Parry, Esq. who presented the application along with the testimony of James W. Higgins, PP, of Ocean, New Jersey as a Professional Planner, Leonard V. Martelli, AIA, of Red Bank as a professional architect, John Buletza, PE of Nelson Engineering as a professional engineer and Mariann McDaniel, Director of Residence Services, from the Monmouth Housing Alliance at a meeting before the Board on July 9, 2008; and

WHEREAS, the Applicant introduced into evidence and the Board considered the following Exhibits:

- A-1 Maser Consulting Review letter dated July 10, 2007.
- A-2 Stormwater Management Facility Maintenance Manual, prepared by Nelson Engineering Associates, Inc., dated June 27, 2007.
- A-3 Traffic Impact Evaluation, prepared by Nelson Engineering Associates, Inc., dated June 25, 2007
- A-4 Architectural Plans for Proposed Addition, Sheets 1-2, prepared by Leonard V. Martelli, AIA, P.A., dated September 7, 2006.
- A-5 Preliminary and Final Site Plans, Sheets 1-11, prepared by Nelson Engineering Associates, Inc., dated August 24, 2006, last revised July 2, 2007.
- A-6 Preliminary and Final Site Plans ,Landscape Plan, color rendering, Sheet 5 of 11, prepared by Nelson Engineering Associates, Inc., dated August 24, 2006, last revised July 2, 2007.
- A-7 Architectural Plans for Proposed Addition, Sheets 1-3, prepared by Leonard V. Martelli, AIA, P.A., dated September 7, 2006.
- A-8 Survey Map of Property, color rendering, prepared by Yorkanis & White, Inc., dated April 11, 2006, last revised June 30, 2006.
- A-9 Preliminary and Final Site Plans ,Landscape Plan, color rendering, Sheet 5 of 11, prepared by Nelson

Engineering Associates, Inc., dated August 24, 2006,
last revised October 25, 2007.

A-10 Preliminary and Final Site Plans, Sheets 1-11,
prepared by Nelson Engineering Associates, Inc.,
dated August 24, 2006, last revised October 25, 2007.

A-11 Traffic Impact Evaluation, prepared by Nelson
Engineering Associates, Inc., dated June 25, 2007,
last revised August 31, 2007.

A-12 Drainage Study, Monmouth Housing Alliance, prepared
by Nelson Engineering Associates, Inc., dated
September 5, 2006, last revised August 31, 2007.

A-13 Correspondence dated September 5, 2007, Eatontown
Fire Prevention Bureau, prepared by Philip C. Payne,
Fire Marshal.

A-14 Architectural Plans for Proposed Addition, Sheets 1-
3, prepared by Leonard V. Martelli, AIA, P.A., dated
September 7, 2006, last revised May 29, 2008.

O-1 Photograph of dumpster at site, not dated.

O-2 Photographs of dumpster and deteriorated fence, not
dated

O-3 Photographs, Sheets 1-3, of Site conditions and
adjacent neighbor, not dated.

O-4 Photographs, Sheets 1-2 of Chouinard Residence at 35
Main Street, not dated; and

WHEREAS, members of the public appeared and questioned the application and voiced concerns in opposition to the application in general and the parking variance in particular; and

WHEREAS, the Board carefully considered all testimony and comments presented to the Board at the public hearing; and

WHEREAS, the Board, reviewed and considered the Borough Engineering reports and Technical Engineering Reviews of William H.R. White, III PE, PP of Maser Consulting, PA ; and

WHEREAS, the Board, after hearing the presentation of the Applicant and such witnesses as appeared on his behalf as well as any other persons appearing and desiring to be heard, and after due consideration of the testimony and documents submitted, makes the following findings of fact and conclusions of law:

1. The Board has jurisdiction of this Application.
2. The Applicant is the owner of the property known as Block 110, Lot 18.01 located at 25 Main Street as shown on the Official Tax Map of the Borough of Oceanport.
3. The subject property is located in the R-5 Residential zone district and contains approximately 0.92 acres. The property has 100.00 feet of frontage along the northerly side of Main Street and a depth of approximately 360 feet.
4. The site is in an area of predominantly single family uses. It is bordered on each side by single family residences that are located forward of the existing structure. Other uses in the immediate area include a Firehouse located approximately 65

feet to the East, a church, Fort Monmouth approximately 100 feet to the west of the rear of the site and an approved four unit townhouse development located approximately 600 feet to the east of the site.

5. There presently exists on the subject site an existing three story frame dwelling with six residential units and related site improvements.

6. The Oceanport Creek runs along the northerly property line of the subject making property making it subjected to a 150 foot CAFRA buffer along the said northerly property line. All of the proposed development is located outside of the required CAFRA buffer.

7. The Applicant proposes to construct a three story addition to the existing building containing six residential units for a total of twelve residential units on the subject site.

8. The Applicant proposes as part of this application to improve the existing parking lot area, trash enclosure, drainage facilities, landscaping and lighting currently on site.

9. The existing multifamily use apartments are not a permitted use in the R-5 residential zone district.

10. The Applicant requires Preliminary and Final Major Site Plan approval and a "d" variance to expand a non-conforming use and additional bulk variances for the height of the proposed structure and the parking requirements of the Residential Site Improvement Standards.

11. The R-5 "Residential Single Family & Two Family Zone District" has a maximum height allowable of 2 stories and a maximum height in feet of 30 feet and the Applicant proposes a structure that is 3 stories and 33 feet in height.

12. The R-5 "Residential Single Family & Two Family Zone District" has a maximum dwelling per acre requirement of 4.5 and the applicant proposes 13.09 which requires a "d" variance.

13. The Applicant proposes the structure to contain 5 one bedroom units, 3 two bedroom units, 3 three bedroom units and 1 four bedroom unit. Pursuant to the requirements of the Residential Site Improvement Standards this bedroom unit configuration would require a minimum of 23.4 parking spaces and the applicant is providing 17 spaces.

14. The Board finds based on the credible testimony of James W. Higgins, PP that the site can accommodate the requested use and that special reasons exist for the granting the variances requested. The Housing Element of the current Master Plan of the Borough of Oceanport designates the site for 12 affordable housing units with the six existing units and the six proposed units to constitute the 12 units referred to therein. The construction of these 6 additional units not only addresses the established need for affordable housing in the Borough but is consistent with the expressed purpose of the Municipal Land Use Law to provide sufficient space in appropriate locations for a variety of uses including the residential needs of all New Jersey Citizens.

15. James W. Higgins, P.P. testified that the Housing Element of the Borough identifies this site as being particularly suited for the proposed development. It identifies the subject site as a site that will provide 6 existing affordable rental units and 6 new affordable housing rental units to help address the Borough's COAH affordable housing obligation. These units will have a substantial benefit to the Borough since they will count towards meeting the Borough's required affordable housing rental component and will count as 2 units for each actual unit because of the COAH policy that allows for 1 rental unit to count as 2 credits. By including this site as a designated affordable housing site the Borough has recognized that the site is particularly suited to the proposed use.

16. James W. Higgins, P.P. testified that the proposed development is an inherently beneficial use which further satisfies the special reason criteria to grant a "d" variance under the Municipal Land Use Law. He testified that the magnitude of the benefit of providing a significant portion of the Borough's affordable housing need in this location designated by the Borough for affordable housing in its Housing Element and Fair Share Plan has a significant beneficial use to the Borough and minimal if any detriment to the surrounding area.

17. The Board finds that the Applicant has taken adequate measures to mitigate any potential adverse impact to the surrounding area by providing significant landscaping along both

sides of the site from the front of the site to the rear of the proposed addition and by providing 6 green banked parking spaces for future need, if necessary. The Applicant relocated the dumpster and agreed to fencing and screening of the dumpster area.

18. Members of the public expressed concerns about a potential parking problem and the granting of the parking variance. Mariann McDaniel, Director of Resident Services of the Monmouth Housing Alliance testified that she is familiar with both other Monmouth Housing Alliance sites around the County and the subject site and that based on the limited financial resources of the tenants they tend to have a lesser numbers of automobiles than the average family. She further testified that to her observation the subject site has more than adequate parking and rarely even approaches the current parking capacity with empty spaces being available.

19. Leonard V. Martelli, AIA testified that that the roof on the new structure would be a flat roof and therefore in his opinion did not require a variance as to height but would still require a variance as to the number of stories of the structure but in any case, to align and synchronize the units, attached hallways and structures that the requested height variance or variances were necessary.

20. Based on all of the aforementioned, the Board finds that the proposed use is an inherently beneficial use, the benefits of the within approval far outweigh any detriment created by the

increased density and requisite height and parking variances and to grant the within approval is consistent with the intent of the Oceanport Zoning Ordinance and Master Plan and advances the intent and purpose of the Municipal Land Use Law.

NOW, THEREFORE, BE IT RESOLVED by the Board that the Applicant, Monmouth Housing Alliance, has satisfied the requirements of N.J.S.A. 40:55D-46 et. seq. and the Borough of Oceanport Development Regulations and local ordinances with respect to the requirements for Preliminary and Final Major Site Plan Approval.

BE IT FURTHER RESOLVED by the Borough of Oceanport Planning Board that the Application of Monmouth Housing Alliance for Preliminary and Final Major Site Plan Approval with the requested variances be and is hereby granted in accordance with the Plans filed herein and the presentation and representations of the Applicant and the Applicant's professionals and approval is conditioned and subject to the following:

1. The Applicants obtaining and providing to the Borough any and all approvals or permits required or letter of no jurisdiction from the following:
 - a) Monmouth County Planning Board
 - b) Freehold Soil Conservation District
 - c) New Jersey Department of Environmental Protection
 - d) Two Rivers Water Reclamation Authority
 - e) Utility serviceability letters

- f) New Jersey American Water Company
- g) Road Opening Permit
- h) All other approvals or permits as are required by law or by Ordinance.

2. Posting of all requisite performance bonds and guarantees in an amount and form as is required approved by the Planning Board Engineer.

3. Compliance with all the terms, conditions and requirements of the Planning Board Engineer Review Letter dated November 5, 2007.

4. The Applicant shall obtain any and all state, county and local government approvals required by law.

5. Subject to the implementation of a landscape plan for plantings along the lot lines that creates a sufficient buffer for the property along the side property lines to provide adequate screening for the adjacent residences and proper screening and fencing of the dumpster area subject to the approval of the Planning Board Engineer.

6. Subject to the provisions of the Borough of Oceanport Tax Map Revision Fee Ordinance, if applicable.

7. Receipt, approval and compliance with all terms and conditions, and requirements of the following:

- b) Oceanport Shade Tree Commission
- b) Oceanport Environmental Commission
- c) Oceanport Health Department

d) Oceanport Fire Bureau

8. The Applicant shall pay all fees and professional fees and post all bonds required by law and by ordinance.

9. All representations made by the Applicant or the Applicant's professionals at the time of any Board Hearing on this matter, or in any documents submitted pursuant to this application, are considered specific conditions of the approval. Any deviation or misrepresentation therefrom shall be considered a material breach of the facts upon which the conclusions of the Board were made and shall be considered a violation of this approval.

BE IT FURTHER RESOLVED, that the Chairman and the Secretary of the Borough of Oceanport Planning Board be and are hereby authorized to sign any all documents necessary to effectuate the purpose of this resolution, provided that the Applicant has complied with all of the above stated conditions.

BE IT FURTHER RESOLVED, that nothing shall be interpreted to excuse compliance by the Applicant with any and all other requirements of the Borough of Oceanport or any other governmental entity or subdivision as set forth in any laws, ordinance or regulations.

BE IT FURTHER RESOLVED, that the Applicant shall cause this resolution to be recorded in the records of the Monmouth County Clerk at the Applicant's expense and provide proof of said recording to the Secretary of Planning Board.

BE IT FURTHER RESOLVED, that nothing shall be interpreted to excuse compliance by the Applicant with any and all other requirements of the Borough of Oceanport or any other governmental entity or subdivision as set forth in any laws, ordinances, regulations or fee ordinances.

BE IT FURTHER RESOLVED, that a copy of this resolution, certified to be a true copy by the Secretary of the Planning Board be forwarded to the Borough Zoning Officer, Borough Construction Official, Borough Engineer, Borough Clerk, Borough Administrator, Borough Tax Assessor, Borough Tax Collector, Borough Attorney, Borough Finance Officer, Borough Shade Tree Committee, and the Applicant within ten (10) days from the date hereof.

APPLICATION FOR MAJOR PRELIMINARY AND FINAL SITE PLAN APPROVAL
WITH VARIANCES FOR MONMOUTH HOUSING ALLIANCE
25 MAIN STREET
BLOCK 110, LOT 18.01
AUGUST 13, 2008

This resolution memorializes an action taken at the regular meeting of the Oceanport Planning Board held on July 9, 2008 on roll call that evening by the following vote:

Offered by: _____

Seconded by: _____

ROLL CALL	YES	NO	ABSTAIN	ABSENT	INELIGIBLE
Widdis	()	()	()	()	()
Kleiberg	()	()	()	()	()
McCarthy	()	()	()	()	()
Johnson	()	()	()	()	()
Savarese	()	()	()	()	()
Lane	()	()	()	()	()
Sullivan	()	()	()	()	()
Whitson	()	()	()	()	()
Wolf	()	()	()	()	()
Chayes (Alt. 1)	()	()	()	()	()
Gruskos (Alt. 2)	()	()	()	()	()

I hereby certify that the foregoing Resolution memorializes an action adopted by the Planning Board of the Borough of Oceanport at its meeting of July 9, 2008.

Jeanne Smith, Secretary

STATE OF NEW JERSEY :
SS.

COUNTY OF MONMOUTH :

I hereby certify that on _____, 2008, _____, personally came before me and acknowledged under oath, to my satisfaction, that she: (a) is the Secretary of the Borough of Oceanport Planning Board; and (b) signed the Resolution as her act and deed.

Rick J. DeNoia, Jr. Esq.
Attorney at Law, State of NJ

APPLICATION FOR MAJOR PRELIMINARY AND FINAL SITE PLAN APPROVAL
WITH VARIANCES FOR MONMOUTH HOUSING ALLIANCE
25 MAIN STREET
BLOCK 110, LOT 18.01
AUGUST 13, 2008

This resolution was offered by _____,
seconded by _____, and adopted on roll
call by the following vote:

ROLL CALL	YES	NO	ABSTAIN	ABSENT	INELIGIBLE
Widdis	()	()	()	()	()
Kleiberg	()	()	()	()	()
McCarthy	()	()	()	()	()
Johnson	()	()	()	()	()
Savarese	()	()	()	()	()
Lane	()	()	()	()	()
Sullivan	()	()	()	()	()
Whitson	()	()	()	()	()
Wolf	()	()	()	()	()
Chayes (Alt. 1)	()	()	()	()	()
Gruskos (Alt. 2)	()	()	()	()	()

I hereby certify that the foregoing Resolution was adopted
by the Planning Board of the Borough of Oceanport at its meeting
of August 13, 2008.

Jeanne Smith, Secretary

STATE OF NEW JERSEY :
SS.
COUNTY OF MONMOUTH :

I hereby certify that on _____, 2008,
_____, personally came before me and
acknowledged under oath, to my satisfaction, that she: (a) is the
Secretary of the Borough of Oceanport Planning Board; and (b)
signed the Resolution as her act and deed.

Rick J. DeNoia, Jr. Esq.
Attorney at Law, State of NJ

Appendix I.
Oceanport Village Approving Resolution and Developer's Agreement

**DEVELOPER'S AGREEMENT BETWEEN THE BOROUGH OF
OCEANPORT AND THE NEW JERSEY SPORTS AND
EXPOSITION AUTHORITY**

THIS AGREEMENT entered into this _____ day of September, 2006 between the Borough of Oceanport, a municipal corporation, in the County of Monmouth, State of New Jersey, having its office at Borough of Oceanport, 222 Monmouth Blvd. Oceanport, NJ 07757 (hereinafter "Borough" or "Oceanport") and the New Jersey Sports and Exposition Authority, having an office at New Jersey Sports and Exhibition Authority, 50 State Route 120, East Rutherford, NJ 07073 (hereinafter "NJSEA" or "Developer").

WHEREAS, Southern Burlington County NAACP v. Twp. of Mount Laurel, 92 N.J. 158 (1983) (hereinafter "Mount Laurel II"), the Fair Housing Act, N.J.S.A. 52:27D-301 et seq., the regulations adopted by the Council On Affordable Housing (hereinafter "COAH"), and other applicable laws require all New Jersey municipalities to cure any defects in their zoning ordinances by adopting ordinances that create a realistic opportunity for the provision of low and moderate income housing (hereinafter "affordable housing"); and

WHEREAS, the Borough is committed to comply with its responsibilities under applicable laws; and

WHEREAS, notwithstanding the foregoing, applicable laws give the Borough no power to control the zoning of sites owned by the NJSEA; and

WHEREAS, accordingly, when the NJSEA sought to secure approvals to develop two projects known as Oceanport Village center and Jockey Club Estates, the Borough could not require the NJSEA to reserve any of the units for low and moderate households; and

WHEREAS, more specifically, the NJSEA has secured approvals to develop two projects: (1) a mixed-use project known as "Oceanport Village Center" consisting of a shopping center with 36 residential units over the shopping area; and (2) "Jockey Club Estates" consisting of 46 age-restricted single family units or fewer if required as a result of the necessary approvals to be received from the New Jersey Department of Environmental Protection; and

WHEREAS, the Borough did not have the right to adopt an ordinance that required the NJSEA to reserve a percentage of the units in the projects for low and moderate households; and

WHEREAS, notwithstanding the foregoing, the NJSEA (a) acknowledges that its projects will generate a responsibility of the Borough to create affordable housing based upon new regulations of the New Jersey Council on Affordable Housing (hereinafter

"COAH") adopted in November of 2004, and (b) wishes to voluntarily satisfy the responsibility its projects create; and

WHEREAS, NJSEA has volunteered to satisfy its affordable housing obligation on these two properties by constructing an affordable housing component equal to 11.11% of the total number of units in both developments and payment of an appropriate developer's fee for the nonresidential development.

WHEREAS, NJSEA has proposed to construct and administer 9 affordable units as follows:

(i) NJSEA will reserve 9 of the 36 units included in Oceanport Village Center for low and moderate households (5 low and 4 moderate);

(ii) NJSEA will pay a Mount Laurel fee of 2 percent of equalized assessed value for all non-residential development in Oceanport Village Center; and

(iii) Since all of NJSEA's affordable housing obligations for Oceanport Village Center and Jockey Club Estates will be satisfied by the development discussed in Sections (i) and (ii) above, there will be no affordable housing set aside in the Jockey Club Estates project.

WHEREAS, NJSEA will assure that the one and two bedroom affordable units comply with all applicable regulations of COAH including but not limited to those regulations concerning pricing, bedroom mix, low/moderate income split, affirmative marketing, and all other applicable COAH regulations; and

WHEREAS, nothing herein prevents or obligates Borough or Developer from attempting to work together to make 2 of the 9 affordable units, 3 bedroom units.

NOW, THEREFORE, be it agreed as follows:

I. Purpose of Agreement

The purpose of this agreement is (a) to create a realistic opportunity for the construction of nine non age-restricted rental units affordable to low and moderate income households plus whatever bonus credits the Borough may be entitled under applicable COAH regulations; and (b) to generate a Mount Laurel fee for the non-residential development in the Oceanport Village Center project to facilitate the Borough's ability to provide affordable housing.

II. Obligations of Developer

A. Developer will reserve 9 of the 36 units included in Oceanport Village Center for low and moderate households (5 low and 4 moderate).

B. Developer will pay a Mount Laurel fee of 2 percent of equalized assessed value for all non-residential development in Oceanport Village Center.

C. Since all of NJSEA's affordable housing units for Oceanport Village Center and Jockey Club Estates will be satisfied by the development discussed in Sections (i) and (ii) above, there will be no affordable housing set aside in the Jockey Club Estates project.

D. Developer shall take all necessary steps to provide and maintain the creditworthiness of the affordable units against any present or future Mount Laurel obligation. Towards that end, NJSEA will assure that the affordable units comply with all applicable regulations of COAH, including but not limited to those regulations concerning pricing, bedroom mix (except that NJSEA shall provide only one and two bedroom units), low/moderate income split, affirmative marketing, and all other applicable COAH regulations.

E. Developer agrees to record deed restrictions on all applicable units in conformance with all relevant COAH regulations and the Uniform Housing Affordability Controls set forth at N.J.A.C. 5:80-26 et. seq. Said controls on affordability shall be in effect for a period not less than 30 years.

F. Developer shall pay any reasonable, pro rata share of applicable administrative fee associated with the Borough's designation of an affordable housing administrator, which shall be responsible for administering the rental controls and other associated duties consistent with Subchapter 7 of COAH's Cycle III regulations.

G. Developer agrees to maintain the aesthetics of the units in keeping with the character neighborhood including, but not limited to, landscaping and building maintenance.

H. Developer hereby makes a firm commitment to provide the affordable rental units within the period of protection created by the judgment of compliance and repose that the Borough anticipates will be entered in the case entitled, Oceanport Holding Company, L.L.C. vs. Borough of Oceanport et al. Docket No. L-2349-05 P.W.

III. Obligations of Borough

A. Borough shall collect the fee referenced in Section II. B. in accordance with the Mount Laurel fee ordinance previously approved by the Court in the case of Oceanport Holding Company, L.L.C. vs. Borough of Oceanport et al. Docket No. L-2349-05 P.W.

B. Borough shall deposit all monies collected in the Borough's Mount Laurel trust account.

C. Borough shall spend all monies collected in accordance with a Spending Plan approved by the Court.

F. Borough shall designate an affordable housing administrator in conjunction with its housing element and fair share plan and shall pass on to Developer only those costs the Borough incurs with respect to the affordable units contemplated hereby.

IV. General Conditions

A. Parties Bound/Assignment: 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 hereto, 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 hereto, and their successors and assigns, as herein set forth.

B. Entire Agreement: This agreement and the prefatory statement, which hereby are incorporated herein and made a part hereof, contain the entire agreement between the parties. No representative, agent or employee of any of the parties has been authorized to make any representations or promises with reference to this agreement or to vary, alter or modify the terms hereof except as stated herein. No additions, changes or modifications, renewals or extensions hereof, shall be binding unless reduced to writing and signed by the parties hereto.

C. Preparation: 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 persons executing it.

D. Waiver: 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.

E. 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 party/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 such a default, the non-defaulting party shall provide notice of the default and the defaulting party shall have a reasonable opportunity to cure. In the event the defaulting party fails to cure within a reasonable period of time, the party/parties 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 enforcement of litigant's rights.

F. Cooperation: The parties agree to fully cooperate with each other in order to carry out the provisions of this Agreement.

G. 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.

H. 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 conflict of laws. Jurisdiction of any litigation ensuing with regard to this agreement exclusively shall be in the Superior Court of New Jersey, with venue in Monmouth County. Service of any complaint may be effected consistent with the terms hereof for the delivery of "Notices", hereinafter defined.

I. Notices: Any notice or transmittal of any document required, permitted or appropriate hereunder and/or any transmittal between the parties relating to the projects referenced above (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 effected 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 NJSEA:

Arthur Winlder, Chief Operating Officer
New Jersey Sports and Exposition
50 State Highway 120
East Rutherford, NJ 07073

WITH A COPY TO:

Edward J. McKenna Jr., Esq.
P.O. Box 610
229 Broad Street
Red Bank, NJ 07701

TO THE CITY OF OCEANPORT:

To Kimberley Jungfer, Municipal Clerk
Borough of Oceanport
222 Monmouth Blvd.
Oceanport, NJ 07757

WITH COPIES TO:

Jeffrey R. Surenian, Esq.
Jeffrey R. Surenian and Associates, LLC
2052 Route 35 North
Suite 201
Wall Township, New Jersey 07719
Telecopier No: (732) 449-8822

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

BOROUGH OF OCEANPORT

by: Lucille R. Chaump
LUCILLE CHAUMP, MAYOR

ATTEST

by: Kimberley Jungfer
KIMBERLEY JUNGFER, CLERK

OCEANPORT CENTER, L.L.C
~~NEW JERSEY SPORTS AND~~
~~EXPOSITION AUTHORITY~~

by: Arthur Winkler
Arthur Winkler, Chief Operating
Officer

ATTEST

by: Richard E. Tilton
Richard E. Tilton, SECRETARY
Attorney at Law

PR-04-19
8-25-04

**MEMORIALIZATION OF THE PLANNING BOARD
OF THE BOROUGH OF OCEANPORT, MONMOUTH COUNTY**

**In Re Application of The New Jersey Sports and Exposition Authority
"Oceanport Village Center"
Preliminary and Final Site Plan Approval
Block 88 Lot 26.01**

Handwritten signature

WHEREAS, the applicant, NJSEA has made an application to the Planning Board of the Borough of Oceanport with respect to Preliminary and Final Major Site Plan Approval for property known and designated as Block 88 Lot 26.01 on the Tax Map of the Borough of Oceanport; and,

WHEREAS, the applicant is an authority of the State of New Jersey and the owner of the property; and,

WHEREAS, the applicant has presented an application, and the following documents:

1. The Application. [A-1]
2. Site Plan dated September 12, 2003 prepared by Schoor & DePalma consisting of 12 sheets last revised June 9, 2004 [A-3]
3. The Borough Engineer's review letter dated December 16, 2003, June 21, and July 12, 2004.
4. Architectural Plans prepared by Tomaino, Tomaino, Iamello & Associates dated September 12, 2003 revised through June 1, 2004 consisting of 5 sheets. [A-2]
5. Storm water Management Plan dated September 12, 2003 prepared by Daphne E. Galvin, PE.
8. Geological Investigation Report dated July 15, 2003 prepared by William Mercurio, PE.
9. Coastal Zone Management compliance report prepared by Schoor and DePalma dated October 2003.

10. Applicant documents for purposes of comparison dated February 23, 2004. [A-12]
13. Aerial photograph dated March 23, 2004. [A-13]
14. Schoor & DePalma letters of March 24, 2004 regarding DEP determination with waterway category. [A-14];
15. NJ DEP data sheet; and,

WHEREAS, as a result of the filed application, the applicant is requesting the following VARIANCES:

- [1] The minimum area for a shopping center is 5 acres and the applicant has 4.70 acres before the road widening and 4.55 acres after the widening.
- [2] The zone requires a maximum height of 2 stories and 30' for flat roofs or 2 stories and 35' for all other roof types; whereas the applicant is proposing 3 stories and a maximum height of 41' due to the architectural designs.
- [3] Ord. 68-21E requires an off street loading space and the applicant is not providing same.
- [4] A parking variance is required for 19 parking spaces that will be adjacent on street parking to the shopping center instead of the parking area on the site.

WHEREAS, the applicant proposes to construct a shopping center with residential units over the shopping area limited to two and ~~three~~ ^{one} bedroom units; an approved use in the zone; and, (B)

WHEREAS, the applicant has submitted an application, same has been reviewed by the Board's professionals, public notice has been served upon all affected individuals, and the Board, having acquired jurisdiction, held public hearings on April 28th, June 23th and July 14th 2004 at which all affected parties had an opportunity to be heard. As a result of the hearings, the Board makes the following findings of fact:

1. The property is vacant land owned by the NJSEA in the VC Zone of the Borough.
2. The applicant wishes to receive approval for a shopping center and residential component of 20 one bedroom flats and 16 two bedroom units for a total of 36 residential units.
3. The plans are properly before the Board.

4. The residential units are permitted in the zones in question.
5. The applicant indicated that the application will serve the needs of providing housing and retail in the village center zone of Oceanport, a use that had been envisioned over many years through various Master Plans adopted by the municipality.
6. The applicant will not build the project but will transfer the approvals and any successor in interest shall inherit the approvals and be bound by the provisions of the application and approvals granted.
7. The applicant introduced Daphne A. Galvin, PE, who testified that the site was slightly under 5 acres as required in the zone for a shopping center due to a previous subdivision of the property that involved the Borough of Oceanport. Sidewalks would be installed subject to the approval of the Monmouth County Planning Board. The applicant will also agree to a Developers' Agreement with the Borough, binding on the applicant's successors in interest with respect to any and all off site improvements to be effectuated. She introduced as A-3, the site plan with latest revisions to September 12, 2003. A-4 was one page of the plans dated June 9, 2004. A-5 was introduced as a peg board overlay and plan of the relationship between the two sites of Jockey Club Estates and the Village Center project. She agreed to site conditions on behalf of the applicant subject to review by the Borough Engineer. She also introduced A-6 as the egress and ingress display. She testified that the drainage system was designed to not increase any runoff in a standard 25 year storm calculation criteria.
8. Nicholas Verderese, PE, a traffic expert testified on behalf of the applicant. He introduced the Traffic Study as A-7 dated October 23, 2003. He testified that the traffic that would be generated from the site was minimal and is less than alternate forms of development and further that the roadway had the capacity and the ability to handle the increase in traffic. He further introduced as A-8 a County traffic suggestion with respect to flow of traffic subject to approval of Mayor and Council of Oceanport. He stated that the 228 parking spaces both on site and adjacent curb parking was sufficient for the site.
9. The applicant introduced Mr. Frank Tomaino, AIA, the applicant's principal architect who prepared the plans introduced as A-2 consisting of 4 pages with a latest revision date of June 1, 2004. He testified concerning the height variance and that it was part of an architectural plan to make the buildings look more appealing than having a box-like structure. He described the design and layout features of the residential units in detail as well as the reason for the design specifications. There will be a total of 20 one bedroom units and 16 two bedroom units in addition to the retail space on the first floor. He introduced the revised height plans as A-9.

10. Mr. Gary Fox, Esq. Appeared on behalf of an interested neighbor, Mrs. Teicher, and expressed concerns regarding the access to the property that is adjacent to his neighbor's driveway. He did not see the need for on street parking. He asked for additional shrubbery by way of buffering.
11. Ms. Helen Paeff expressed concern about traffic and the environmental aspect of the additional development. She questioned whether the development of the site was a benefit instead of a detriment.
12. Joe Henderson had concerns about the trash pickup and parking.
13. Karen D'Agostino had concerns about the park area and the safety of the pavers.
14. Judy Luger questioned whether the units could be owner occupied instead of rentals and was advised that such a restriction was unenforceable.
15. Michael Tober thought that too many units were contemplated and was concerned about the impact on the school system.

And, WHEREAS, the Board finds that the Site Plan presented by the applicant does not deviate from the intent of the Zoning Ordinance and that the applicant has shown that the development of the property does not negatively impact upon the land use plan and the Zoning Ordinance of the Borough of Oceanport and that the prevention of the application would result in exceptional practical difficulties and hardships due to the nature of the applicant's property. The Use advanced by the applicant is one of retail and residential which is earnestly desired and needed in the Borough of Oceanport. Further, the current zoning permits the applicant to utilize the property in such a fashion. The traffic and drainage concerns have been satisfactorily addressed by the applicant. The parking on site is sufficient and the applicant may use the additional curb side parking since it is anticipated that the design of the project will lend to the utilization of same for quick visits.

NOW THEREFORE, Be it RESOLVED by the PLANNING BOARD OF THE BOROUGH OF OCEANPORT that the applicant's request for Preliminary and Final Site Plan Approval and Variances be GRANTED subject to the following conditions:

1. The applicant shall publish a notice of the approval in abbreviated fashion in a newspaper of general circulation within 30 days of the date of the within memorialization and provide a proof of publication to the Planning Board Secretary within 10 days of said publication.

2. The applicant shall pay all escrow fees, taxes and costs due the Borough of Oceanport.
3. The Site Plan approval and the architectural plan adopted is binding on the applicant and any and all successors in interest.
4. The applicant or successor shall seek NJ/DEP and CAFRA approval if necessary.
5. Approval Letter from the Monmouth County Planning Board.
6. Permit from Freehold Conservation District.
7. Approvals of any type and fashion that may be needed by any other state or federal agency including but not limited to the NJDEP or CAFRA if applicable.
8. The applicant shall comply with any outstanding terms and conditions contained in the Borough Engineer's letter of December 16, 2003, June 21st and July 12, 2004 that have not been already addressed as a result of the revisions in the applicant's plans.
9. The park on both sides of the shopping center may be dedicated to the Borough of Oceanport if acceptable to Mayor and Council; and if not, shall be the responsibility of the applicant and successors to maintain.
10. The applicant shall clean the down street drainage system to the satisfaction of the Borough Engineer.
11. The sanitary system will be run through on Riverview and the applicant and successors shall be responsible for the re paving of Riverview from curb to curb.
12. The approval is subject to the applicant entering into a Developer's Agreement with Mayor and Council of the Borough Of Oceanport, which shall be approved as to form by the Borough Attorney for the accomplishments of the within approvals and the off site improvements relating thereto.
13. The landscaping plan shall be subject to the approval of the Borough Engineer and the Shade Tree Commission.
14. The applicant shall place a pedestrian walkway to the park in the rear of the property to the satisfaction of the Borough Engineer.

15. The applicant and successors shall be responsible for private trash pick up.
16. The applicant shall pave the municipal right of way that shall provide access to the soccer fields.

MOVED BY: Mr. Newmark

SECONDED BY: Mr. Whitson

ADOPTED BY THE FOLLOWING AFFIRMATIVE VOTES: Whitson, Newmark,
Munoz, Widdis, Kelly

NAYS: None

ABSTENTION: Mayor Gatta and Councilman Briscione, Mr. Gruskos

ABSENT: Broage, Gruskos, Sullivan, Wolfe

The Oceanport Planning Board adopted the foregoing resolution on the 25th day of August 2004.

1st


Kimberly Jungfer, Secretary of the Board.

PR -04-08

5.12.04

**MEMORIALIZATION OF THE PLANNING BOARD
OF THE BOROUGH OF OCEANPORT, MONMOUTH COUNTY**

**In Re Application of The New Jersey Sports and Exposition Authority
"Jockey Club Estates"**

**Preliminary Major Subdivision and Site Plan Approval
Block 121 Lots 6,7,8,9 and 11**

WHEREAS, the applicant, NJSEA has made an application to the Planning Board of the Borough of Oceanport with respect to Preliminary Major Subdivision and Site Plan Approval for property known and designated as Block 121 Lots 6,7,8,9 and 11 on the Tax Map of the Borough of Oceanport; and,

WHEREAS, the applicant is an authority of the State of New Jersey and the owner of the property; and,

WHEREAS, the applicant has presented an application, and the following documents:

1. An Application. [A-1]
2. Site Plan dated September 18, 2003 prepared by Schoor & DePalma consisting of 14 sheets [A-2]
3. The Borough Engineer's review letter dated December 15, 2003. [A-3]
4. An Environmental Impact Statement prepared by Schoor & DePalma dated January 2003. [A-4]
5. Police Department Review by Traffic Safety dated December 15, 2003. [A-5]
6. Traffic Study performed by Schoor & DePalma dated October 23, 2003. [A-6]
7. Stormwater Management Plan dated September 18, 2003. [A-7]
8. Geological Investigation Report dated September 15, 2003. [A-8]
9. Coastal Zone Management Plan dated October 2003. [A-9]
10. Freshwater Wetlands Application dated March 5, 2003 with attachments. [A-10]
11. Freshwater Wetlands Application dated October 27, 2003 with attachments. [A-11]
12. Schoor and DePalma alignment documents for purposes of comparison dated February 23, 2004. [A-12]
13. Aerial photograph dated March 23, 2004. [A-13]

14. Schoor & DePalma letters of March 24, 2004 regarding DEP determination with waterway category. [A-14];
15. NJ DEP data sheet; and,

WHEREAS, as a result of the filed application, the applicant is requesting a USE VARIANCE since single family units are not permitted uses in either the VC Zone or the RMO Zones of the Borough of Oceanport; and,

WHEREAS, due to the request for the Use Variance, the existing bulk requirements for single family units required by the applicant do not exist in either zone; and,

WHEREAS, the applicant has submitted an application, same has been reviewed by the Board's professionals, public notice has been served upon all affected individuals, and the Board, having acquired jurisdiction, held public hearings on January 28th, and February 25th and March 26, 2004 at which all affected parties had an opportunity to be heard. As a result of the hearings, the Board makes the following findings of fact:

1. The property is vacant land owned by the NJSEA in the RMO and VC Zone of the Borough.
2. Most of the applicant's property is in the RMO Zone and only a slight portion of the land is in the VC Zone.
3. The plans are properly before the Board inasmuch as the Board is a unified board that has assumed the functions of the Zoning Board of Adjustment.
4. The Multiple units are permitted in the zones in question but less intense age restricted single-family residential units are not currently permitted under existing regulations.
5. The applicant indicated that the application will serve the needs of providing senior housing and also preserve a substantial part of the site in its natural habitat.
6. The applicant proposes to receive approvals for 46 age restricted single family units on the site.
7. The applicant introduced Daphne A. Galvin, PE, who testified that the site was a thirty acre site that included buffer areas for wetlands. The typical lot would be approximately 60' x 120' for the homes but varied in consideration of the location and topography. Two roadways would be built that would adhere to RSIS. The applicant proposes a detention basin that would discharge to Oceanport Creek and would have an aerator system. The detention basin, pond and conservation

easement would be the responsibility of the Condominium Association once approved and transferred to a developer of the site and the applicant would consent to enshrine those covenants in the deeds to the subsequent purchasers of the property. The roadways would be dedicated to the municipality. Sidewalks would be installed subject to the approval of the Monmouth County Planning Board. The lighting fixtures on the interior roadways of the development would match as closely as possible in style the lighting fixtures that will be contemplated on Main Street. Shrubbery and landscaping will be installed along Port au Peck and New Oceanport Avenue. The applicant will also agree to a Developers' Agreement with the Borough, binding on the applicant's successors in interest with respect to a stipulation in said agreement concerning the maintenance of the detention basin and the regularity of the maintenance of same that shall be subject to the recommendations of the Borough Engineer. The engineer indicated that there would be approximately 17 acres of the site that would be a dedicated conservation easement with the only disturbance on the site being the pipe.

8. Nicholas Verderese, PE, a traffic expert testified on behalf of the applicant. He introduced the Traffic Study as A-6. He testified that the traffic that would be generated from the site was minimal and is less than alternate forms of development and further that the roadway had the capacity and the ability to handle the increase in traffic. He also introduced A-12, which was the analysis of the comparison of the entrance in juxtaposition to the development of the property in the Village Center zone.
9. The applicant introduced Steven Ewing, an environmental consultant from Schoor and DePalma, who testified concerning the EIS and performed an environmental assessment of the property and identified the environmental restrictions which would be applicable to the site. He testified concerning the LOI issued by NJDEP and wetlands delineation report issued July 30, 2003 as part of A-4, the EIS. He testified that he met with State and Federal officials due to the possible presence of endangered species on the site and walked the site to identify environmental constraints. He also met with Fish and Wildlife officials and representatives of CAFRA. As a result of those meetings, the property owner reduced the number of contemplated units from 54 to 46 units. He stated that there was no bald eagle nest located on the property.
10. Christine Cofone, PP, testified as a planning consultant for the applicant. A Use Variance is necessary since the property is in a split zone and single family restricted housing is not a permitted use in the zone. Elderly housing is permitted in the RMO Zone but at a density of 6 units/acre. The applicant is proposing single family age restricted units at 1.5 units/acre. The applicant's proposal is therefore less dense than that which is permitted in the predominant RMO Zone. The planner proffered that the inherent beneficial aspects of the MLUL would be met by the following criteria and factors: the appropriate use of space due to the changing demographics and the need for senior housing; the

need for increase in the type of senior housing envisioned by the project; light, air and open space would be preserved by the maintenance of at least 700' of linear open space; the project is of an appropriate density; advances senior housing needs;

11. Mr. George Moffett, a neighbor had expressed concerns regarding drainage and water run off unto his property as a result of the construction and development; and the impact of the development on the wildlife in the conservation areas and open space. The applicant replied that the site was being developed in an environmentally conscious way. He also had a concern regarding the impact that the additional traffic would have in the area.
12. Andy Judkas expressed concern regarding the detention basin and its look in the area.
13. Brian Ungar, an environmental activist and resident of Long Branch indicated his concern for the impact that the development would have on the Shrewsbury River which classified a C-1 waterway. He took issue with the NJDEP determination of the LOI. He spoke passionately about open space preservation and the need to be concerned about the wildlife and vegetation.
14. Ray Madison was concerned about the detention basin and its ability to be maintained.
15. Arthur Smith was concerned about the detention basin and the water table in the area.
16. Dorothy Shutz thought that the project was needed in the area and was a good idea.
17. Meg Bedell was concerned about traffic stacking out of the residential areas.
18. Richard Turpee questioned the impact that the additional traffic would have in the area and thought it a negative aspect of the plan.
19. Steven Knowlton, a representative of the Sierra Club was concerned about the environmental impact of the proposed development. He thought that the waterways were improperly classified by NJDEP. He expressed concern about the outfall of the pipe from the detention basin and had concerns about the basin's lining. He also took issue with the LOI. In addition to his comments on the application bearing on the merits of the plan, the objector introduced the following exhibits into evidence: 0-1: his analysis of the waterway classification; 0-2: DEP map and 0-3: photographs. He questions the engineering classifications and statistical data on the storm water management plan and the ability of the system to work effectively given the environmental characteristics of the site.

20. Jeanne Potter had concerns over the detention basin and its fencing.
21. Gary Fox, Esq. Represented an adjacent property owner who addressed some site plan concerns and was not opposed to the application in general.
22. Helen Heff introduced photographs of drainage problems as 0-4 but the site was in Wall Township.

And, WHEREAS, the Board finds that the Site Plan presented by the applicant does not deviate from the intent of the Zoning Ordinance and that the applicant has shown that the development of the property does not negatively impact upon the land use plan and the Zoning Ordinance of the Borough of Oceanport and that the prevention of the application would result in exceptional practical difficulties and hardships due to the nature of the applicant's property. The Use advanced by the applicant is one of Age restricted housing which is earnestly desired and needed in the Borough of Oceanport. Further, the current zoning permits the applicant to utilize the property in a much more dense fashion for PUD and age restricted housing that is are not individual fee units; it is therefore more advantageous to the zoning plan to develop the property in a much less intense fashion as is envisioned by the applicant and permit a Use Variance to advance individual fee simple units that are age restricted.

NOW THEREFORE, Be it RESOLVED by the PLANNING BOARD OF THE BOROUGH OF OCEANPORT that the applicant's request for Site Plan Approval and USE Variance be GRANTED subject to the following conditions:

1. The applicant shall publish a notice of the approval in abbreviated fashion in a newspaper of general circulation within 30 days of the date of the within memorialization and provide a proof of publication to the Planning Board Secretary within 10 days of said publication.
2. The applicant shall pay all escrow fees, taxes and costs due the Borough of Oceanport.
3. The Site Plan approval granted is for age restricted housing only subject to the definition of said housing pursuant to applicable Federal regulations and this determination is binding on the applicant and any and all successors in interest.

4. The applicant or successor shall seek NJ/DCA approval for a condominium association to be formed for the future residences on said site.
5. Approval Letter or a Letter of No Interest from the Monmouth County Planning Board.
6. Permit from Freehold Conservation District. HAY BALES SHALL BE REQUIRED FOR STABILIZATION.
7. Approvals of any type and fashion that may be needed by any other state or federal agency including but not limited to the NJDEP or CAFRA if applicable.
8. The applicant shall comply with any outstanding terms and conditions contained in the Borough Engineer's letter of December 15, 2003 that have not been already addressed as a result of the revisions in the applicant's plans.
9. Sidewalks will be constructed on Port au Peck.
10. Sidewalks will be constructed on Oceanport Avenue.
11. Sidewalks will be constructed on East Main Street.
12. Lighting fixtures to be placed in the condominium areas shall be approved by the Borough Engineer and shall be substantially similar that those that will be erected in the VC Zone.
13. ^{Fencing and} The landscaping in the detention basin shall be subject to the approval of the Borough Engineer.
14. The aeration equipment in the detention basin shall be subject to the approval of the Borough Engineer.
15. The applicant and successor shall create a conservation easement on the property that is designated on the plans and shall provide the elements and the description of that easement on the individual deeds to the properties affected by the easement and such language shall be subject to the approval of the Boprough Engineer and Planning Board Attorney prior to filing same.
16. The individual lot deeds shall specify that the units to be created shall be age restricted housing in perpetuity.
17. Subject to DCA approval of the Homeowners Association and Borough Attorney approval of the elements of the said association

as it concerns the responsibility for the maintenance of the common areas.

18. The applicant and successors in interest shall dedicate the roadway to the borough.
19. No sheds or accessory structures will be permitted on the individual lots once created.
20. The Applicant or Successors shall enter into a Developer's Agreement with the Borough concerning the representations of the applicant concerning the on site conditions and the maintenance of same, which agreement will be binding on the Homeowners Association that will be created in the future.
21. The applicant or Homeowners Association shall maintain the detention basin in perpetuity. The basin shall be cleaned 2 to 4 times a year at the direction of the Borough Engineer.
22. The homes may have the decks but may not project more than 10' from the rear of the set back of the house.
23. The sidewalks on the interior of the project may be less than the standard size required by the ordinance. The sidewalk required on East Main Street may be 8' instead of 12'.
24. The landscaping plan along Port au Peck and New Oceanport Avenue shall be subject to the approval of the Borough Engineer.

25. Applicant shall remove all debris from wetland area.

MOVED BY: Mr. Broege

SECONDED BY: Mr. Whitson

ADOPTED BY THE FOLLOWING AFFIRMATIVE VOTES: Whitson, Broege, Sullivan Kelly, Widdis, Wolfe.

NAYS: None

ABSTENTION: Briscione and Gatta as they recused themselves from the application

ABSENT: Newmark, Munoz, Gruskos

The Oceanport Planning Board adopted the foregoing resolution on the 12th day of May 2004.

/s/


Kimberly Jungler, Secretary of the Board.

Appendix J.
Fair Share Ordinance

DRAFT THIRD ROUND FAIR SHARE ORDINANCE

Borough of Oceanport, Monmouth County

To be revised per the impending update of COAH's rules and the update to the UHAC

To be adopted within 45 days of the municipality's receipt of a Judgment of Compliance and Repose from the Superior Court.

_____. Intent

This section of the Borough Code sets forth regulations regarding the low and moderate income housing units in the Borough consistent with the provisions known as the "Substantive Rules of the New Jersey Council on Affordable Housing for the period beginning June 2, 2008 with amendments through October 20, 2008", N.J.A.C. 5:97 et seq., the Uniform Housing Affordability Controls ("UHAC"), N.J.A.C. 5:80-26.1 et seq. and the Borough's constitutional obligation to provide a fair share of affordable housing for low and moderate income households. In addition, this section applies requirements for very low income housing as established in P.L. 2008, c.46 (the Roberts bill). These regulations are also intended to provide assurances that low and moderate income units (the "affordable units") are created with controls on affordability over time and that low and moderate income people occupy these units. These regulations shall apply except where inconsistent with applicable law.

_____. Proportion of Low and Moderate Income Units by Sale, Rental and by Number of Bedrooms

Except for affordable housing developments constructed pursuant to low income tax credit regulations:

- (1) At least half of the "for sale" affordable units within each affordable housing development shall be affordable to low income households.
- (2) At least half of the "rental" affordable units within each affordable housing development shall be affordable to low income households. Of the total number of affordable rental units, 13% shall be affordable to very low income households.
- (3) At least half of the affordable units in each bedroom distribution within each affordable housing development shall be affordable to low income households.

_____. Bedroom Distribution of Affordable Units

- (1) Affordable housing developments which are not limited to age-restricted households shall be structured in conjunction with realistic market demands so that:

- (a) The combination of efficiency and one-bedroom units is no greater than 20 percent of the total number of affordable units;
 - (b) At least 30 percent of all affordable units shall be two-bedroom units.
 - (c) At least 20 percent of all affordable units shall be three-bedroom units.
- (2) Affordable housing developments that are limited to age-restricted households shall at a minimum have a total number of bedrooms equal to the number of age-restricted affordable units within the affordable housing development. The standard may be met by creating all one-bedroom units or by creating a two-bedroom unit for each efficiency unit.

_____. Establishment of Rents and Prices of Units as Related to Household Size and Number of Units

- (1) In conjunction with realistic market information the following shall be used to determine maximum rents and sales prices of the affordable units:
- (a) Efficiency units shall be affordable to one-person households.
 - (b) A one-bedroom unit shall be affordable to a one- and one-half person household.
 - (c) A two-bedroom unit shall be affordable to a three-person household.
 - (d) A three-bedroom unit shall be affordable to a four- and one-half person household.
 - (e) A four-bedroom unit shall be affordable to a six-person household.
- (2) For assisted living facilities the following standards shall be used:
- (a) A studio shall be affordable to a one-person household.
 - (b) A one-bedroom unit shall be affordable to a one- and one-half person household.
 - (c) A two-bedroom unit shall be affordable to a two-person household or to two, one-person households.
- (3) In referring certified households to specific restricted units, to the extent feasible, and without causing an undue delay in occupying the unit, the administrative agent shall strive to:
- (a) provide an occupant for each unit bedroom;
 - (b) provide children of different sex with separate bedrooms; and
 - (c) prevent more than two persons from occupying a single bedroom.

_____. Establishing Median Income by Household Size

- (1) Median income by household size shall be established using a regional weighted average of the uncapped Section 8 income limits published by HUD computed as set forth in N.J.A.C. 5:97-9.2.

_____. **Establishing Average Rents of Affordable Units**

- (1) The maximum rent of affordable units within each affordable housing development shall be affordable to households earning no more than 60 percent of median income. The average rent for low and moderate income units shall be affordable to households earning no more than 52 percent of median income. Restricted rental units shall establish at least one rent for each bedroom type for all low and moderate income units provided at least 13 percent of all low and moderate income units are affordable to households earning no more than 30 percent of median income. For low-income rental units established in a Market to Affordable Rental Program only – the maximum rent for a low-income unit shall be affordable to households earning no more than 44 percent of median income.
- (2) Low and moderate income units shall utilize the same heating source as market units within an inclusionary development.
- (3) Gross rents including an allowance for utilities shall be established for the various size affordable units at a rate not to exceed 30 percent of the gross monthly income of the appropriate household size as set forth in subsection _____ above. The allowance for utilities shall be consistent with the utility allowance approved by NJDCA for use in its Section 8 Program.
- (4) No affordable rental units included in the COAH requirement shall be subject to a rent control ordinance which may be adopted or in place in the Borough of Oceanport during the time period in which affordable housing COAH controls are effective.

_____. **Establishing Average Sales Prices of Affordable Units**

- (1) The maximum sales price of restricted ownership units within each affordable development shall be affordable to households earning no more than 70 percent of median income. Each affordable development must achieve an affordability average of 55 percent for restricted ownership units. Moderate income ownership units must be available for at least three different prices for each bedroom type and low income ownership units must be available for at least two different prices for each bedroom type. For low-income sale units established in a Market to Affordable Sales Program only – the maximum sales for a low-income unit shall be affordable to households earning no more than 40 percent of median income.
- (2) Low and moderate income units shall utilize the same heating source as market units within an inclusionary development.
- (3) The initial purchase price for all restricted ownership units shall be calculated so that the monthly carrying costs of the unit, including principal and interest (based on a mortgage loan equal to 95 percent of the purchase price and the Federal Reserve H.15 rate of interest), taxes, homeowner and private mortgage insurance and condominium or homeowner association fees do not exceed 28 percent of the eligible monthly income of an appropriate household size as determined under N.J.A.C. 5:80-26.4; provided, however, that the price shall be subject to the affordability average requirement of N.J.A.C. 5:80-26.3.

_____. **Affordable Housing Units: Condominium or Homeowners Association Fees.**

- (1) If an affordable housing unit is part of a condominium association or homeowner's association, the Master Deed shall reflect that the assessed affordable homeowner's fee be established at one hundred percent of the market rate fee. This percentage assessment shall be recorded in the Master Deed.

_____. **Reservation of Units**

- (1) Low income housing units shall be reserved for households with a gross household income equal to or less than 50 percent of the median income approved by COAH.
- (2) *Pending release of COAH's rules implementing P.L. 2008, c.46...* Very low income housing units shall be reserved for households with a gross household income equal to or less than 35 percent of the median income approved by COAH.
- (2) Moderate income housing units shall be reserved for households with a gross household income in excess of 50 percent but less than 80 percent of the median income approved by COAH.

_____. **Reoccupancy Certificates**

- (1) Upon resale of an affordable unit, a certificate of reoccupancy shall be required in accordance with N.J.A.C. 5:80-26.10

_____. **Phasing Of Construction**

- (1) Final site plan or subdivision approval shall be contingent upon the affordable housing development meeting the following phasing schedule for low and moderate income units whether developed in one stage or in two or more stages:

<u>Minimum Percentage of Low & Moderate Income Units Completed</u>	<u>Percentage of Market Housing Units Completed</u>
0	25
10	25 + 1 unit
50	50
75	75
100	90

_____. **Control Period for Affordable Housing**

- (1) Any conveyance of a newly constructed low or moderate income sales unit shall contain the restrictive covenants and liens that are set forth in N.J.A.C. 5:80-26 et seq.

____. **Administration of Affordable Housing Program**

- (1) Oceanport Borough is ultimately responsible for administering the affordable housing program, including affordability controls and the Affirmative Marketing Plan in accordance with the regulations of COAH pursuant to N.J.A.C. 5:97 et seq. and the UHAC pursuant to N.J.A.C. 5:80-26 et seq.
- (2) Oceanport Borough has delegated to the Municipal Housing Liaison, this responsibility for administering the affordable housing program, including administering and enforcing the affordability controls and the Affirmative Marketing Plan of Oceanport Borough in accordance with the provisions of this sub-chapter, the regulations of COAH pursuant to N.J.A.C. 5:96 and 5:97 et seq. and the UHAC pursuant to N.J.A.C. 5:80-26 et seq. Oceanport Borough shall by resolution appoint the Borough Administrator as the Municipal Housing Liaison.
- (3) Subject to COAH approval, Oceanport Borough may contract with one or more administrative agents to administer some or all of the affordability controls and/or the Affirmative Marketing Plan in accordance with this sub-chapter, the regulations of COAH pursuant to N.J.A.C. 5:97 and 5:96 et seq. and the UHAC pursuant to N.J.A.C. 5:80-26 et seq. If Oceanport Borough enters into such a contract, the Municipal Housing Liaison shall supervise the contracting administrative agent(s) and shall serve as liaison to the contracting administrative agent(s).
- (4) The Borough of Oceanport intends to contract with an experienced affordable housing administrator to be the administrator of the sale and rental of all new affordable housing. The experienced affordable housing administrator will also oversee and administer income qualification of low and moderate income households; place income eligible households in low and moderate income units upon initial occupancy; place income eligible households in low and moderate income units as they become available during the period of affordability controls and enforce the terms of the required deed restrictions and mortgage loans. The experienced affordable housing administrator will specifically administer and implement:
 - (a) An administrative plan and program, and related monitoring and reporting requirements as outlined in N.J.A.C. 5:80-26.15 et seq. and Chapter ____ of the Land Development Ordinances of the Borough of Oceanport.
 - (b) A plan for certifying and verifying the income of low and moderate income households as per N.J.A.C. 5:80-26.16
 - (c) Procedures to assure that low and moderate income units are initially sold or rented to eligible households and are thereafter similarly re-sold and re-rented during the period while there are affordability controls as per N.J.A.C. 5:80-26 et seq.
 - (d) The requirement that all newly constructed low and moderate income sales or rental units contain deed restrictions with appropriate mortgage liens as set forth in Appendices in N.J.A.C. 5:80-26 et seq.
 - (e) The several sales/purchase options authorized under N.J.A.C. 5:80-26 et seq. except that the Borough retains the right to determine by resolution whether or not to prohibit, as authorized under N.J.A.C. 5:80-26 et seq., the exercise of the repayment option.

- (f) The regulations determining 1) whether installed capital improvements will authorize an increase in the maximum sales price; and 2) which items of property may be included in the sales price as per N.J.A.C.5:80-26.9.
- (5) The developers/owners of any inclusionary site shall be responsible for the experienced affordable housing administrator's administrative fee, affirmative marketing and advertising and such shall be a condition of Planning or Zoning Board approval. Subsequent to the initial sale of an affordable sale unit, the seller of an affordable sale unit shall be responsible for the experienced affordable housing administrator's administrative fee, affirmative marketing and advertising and such shall be a condition of any affordable housing deed restriction governing the affordable unit.
- (6) Oceanport Borough reserves the right to replace the experienced affordable housing administrator with another municipal authority or other agency authorized by COAH or the Superior Court to carry out the administrative processes outlined above.

Time Period For Controls

- (1) Newly constructed low and moderate income "rental" units shall remain affordable to low and moderate income households for a period of 30 years.
- (2) Newly constructed low and moderate income "for sale" units shall remain affordable to low and moderate income households for a period of 30 years.
- (3) Rehabilitated owner-occupied single family housing units that are improved to code standard shall be subject to affordability controls for 10 years.
- (4) Rehabilitated renter-occupied housing units that are improved to code standard shall be subject to affordability controls for at least 10 years.
- (5) Housing units created through conversion of a non-residential structure shall be considered a new housing unit and shall be subject to affordability controls for new housing units as designated in items 1 and 2 above.
- (6) Affordability controls on accessory apartments shall be for a period of 10 years.
- (7) Affordability controls for units in alternative living arrangements shall be for a period of 30 years.
- (8) Affordability controls on market to affordable units shall be for a period of 30 years.

Selection of Occupants of Affordable Units

- (1) The administrative agent shall use a random selection process to select occupants of low- and moderate-income housing.
- (2) A waiting list of all eligible candidates will be maintained in accordance with the provisions contained in N.J.A.C. 5:80-26 et seq.

____. **Affirmative Marketing Plan**

- (1) In accordance with the regulations of COAH pursuant to N.J.A.C. 5:96 and 5:97 et seq. and the New Jersey UHAC pursuant to N.J.A.C. 5:80-26 et seq., Oceanport Borough adopted an Affirmative Marketing Plan.
- (2) All affordable housing units shall be marketed in accordance with the provisions therein.
- (3) The Borough of Oceanport has a Third Round Growth Share obligation. This subsection shall apply to all developments that contain proposed low and moderate income units and any future developments that may occur.
- (4) In implementing the marketing program, the administrative agent shall undertake all of the following strategies:
 - Publication of one advertisement in a newspaper of general circulation within the housing region.
 - Broadcast of one advertisement by a radio or television station broadcasting throughout the housing region
 - At least one additional regional marketing strategy using one of the other sources listed below.
- (5) The affirmative marketing plan is a regional marketing strategy designed to attract buyers and/or renters of all majority and minority groups, regardless of race, creed, color, national origin, ancestry, marital or familial status, gender, affectional or sexual orientation, disability, age or number of children to housing units which are being marketed by a developer or sponsor of affordable housing. The affirmative marketing plan is also intended to target those potentially eligible persons who are least likely to apply for affordable units in that region. It is a continuing program that directs all marketing activities toward the COAH Housing Region in which the municipality is located and covers the period of deed restriction. The Borough of Oceanport is in the housing region consisting of Monmouth, Mercer and Ocean counties. The affirmative marketing program is a continuing program and shall meet the following requirements:
 - (a) All newspaper articles, announcements and requests for applications for low and moderate income units shall appear in the following daily regional newspaper/publication:
 - i. Asbury Park Press
 - ii. Star Ledger
 - (b) The primary marketing shall take the form of at least one press release sent to the above publication and a paid display advertisement in the above newspaper. Additional advertising and publicity shall be on an "as needed" basis. The advertisement shall include a description of the:
 - i. Location of the units;
 - ii. Direction to the units;
 - iii. Range of prices for the units;

- iv. Size, as measured in bedrooms, of units;
 - v. Maximum income permitted to qualify for the units;
 - vi. Location of applications;
 - vii. Business hours when interested households may obtain an application; and
 - viii. Application fees, if any.
- (c) All newspaper articles, announcements and requests for applications for low and moderate income housing shall appear in the following neighborhood oriented weekly newspaper within the region:
- i. The Link News and/or
 - ii. Atlanticville
- (d) The following regional cable television station shall be used:
- i. None.
- (e) The following is the location of applications, brochure(s), sign(s) and/or poster(s) used as part of the affirmative marketing program:
- i. Oceanport Borough Website
 - ii. Oceanport Borough Municipal Building
- (f) The following is a listing of community contact person(s) and/or organizations(s) in Monmouth, Mercer and Ocean counties that will aid in the affirmative marketing program with particular emphasis on contracts that will reach out to groups that are least likely to apply for housing within the region:
- i. Affordable Housing Alliance
 - ii. Family Promise
- (g) Quarterly flyers and applications.
- i. Quarterly flyers and applications shall be sent to each of the following agencies for publication in their journals and for circulation among their members:
 - i. Monmouth County Board of Realtors
 - ii. Mercer County Board of Realtors
 - iii. Ocean County Board of Realtors
 - ii. Applications shall be mailed to prospective applicants upon request.
 - iii. Additionally, quarterly informational circulars and applications shall be sent to the chief administrative employees of each of the following agencies in the counties of Monmouth, Mercer and Ocean:
 - i. Welfare or Social Service Board
 - ii. Rental Assistance Office (local office of DCA)
 - iii. Office on Aging

- iv. Housing Agency or Authority
 - v. Library
 - vi. Area Community Action Agencies
- (h) A random selection method to select occupants of low and moderate income housing will be used by the experienced affordable housing administrator in conformance with N.J.A.C.5:80-26.16 (l).
- i. An experienced affordable housing administrator will be selected to administer the program. The experienced affordable housing administrator has the responsibility to income qualify low and moderate income households; to place income eligible households in low and moderate income units upon initial occupancy; to provide for the initial occupancy of low and moderate income units which income qualified households; to continue to qualify households, for re-occupancy of units as they become vacant during the period of affordability controls; to assist with outreach to low and moderate income households; and to enforce the terms of the deed restriction and mortgage loan as per N.J.A.C. 5:80-26. The Borough Administrator within the Borough of Oceanport is the designated municipal housing liaison to act as liaison to the experienced affordable housing administrator. The experienced affordable housing administrator shall provide counseling services to low and moderate income applicants on subject such as budgeting, credit issues, mortgage qualifications, rental lease requirements and landlord/tenant law.
 - ii. All developers of low and moderate income housing units shall be required to assist in the marketing of the affordable units in their respective developments.
 - iii. The marketing program shall commence at least 120 days before the issuance of either temporary or permanent certificates of occupancy. The marketing program shall continue until all low income housing units are initially occupied and for as long as affordable units are deed restricted and occupancy or reoccupancy of units continues to be necessary.
 - iv. The experienced affordable housing administrator will comply with monitoring and reporting requirements as per N.J.A.C.5:80-26.

— Adaptable and Accessible Units (per N.J.A.C. 5:97-3.14)

- (1) The first floor of all townhouse dwelling units and of all other multistory dwelling units which are affordable to low or moderate households shall be subject to the technical design standards of the Barrier Free Subcode (N.J.A.C. 5:23-7).
- (2) Each affordable townhouse unit or other affordable multistory dwelling unit that is attached to at least one other dwelling unit shall have the following features:
 - i. An adaptable toilet and bathing facility on the first floor;
 - ii. An adaptable kitchen on the first floor;

- ii. An accessible route of travel;
 - (a) An interior accessible route of travel shall not be required between stories.
- iv. An adaptable room that can be used as a bedroom, with a door or the casing for the installation of a door, on the first floor; and
- v. Accessible entranceways.
 - (a) The developer shall provide an accessible entranceway as set forth at N.J.A.C. 5:97-3.14 for each affordable townhouse unit or other affordable multistory dwelling unit and is attached to at least one other dwelling unit; or
 - (b) The developer shall provide funds sufficient to make 10% of the adaptable entrances in the development accessible as set forth at N.J.A.C. 5:97-3.14.
- vi. The developer of the project shall submit a conversion plan indicating the steps necessary to convert the unit from being adaptable to accessible. Said plan shall be submitted at the time of issuance of a building permit.
- vii. Where the developer will provide funds sufficient to make 10% of the adaptable entrances in the development accessible, the developer of the project shall submit the following to the Borough, at the time of issuance of the building permit, in order to determine the required funds:
 - (a) Funds sufficient to make 10% of the adaptable entrances in the development accessible; and
 - (b) A cost estimate for conversion of 10% of the adaptable entrances in the development to accessible.
- viii. In the case of an affordable unit or units which are constructed with an adaptable entrance, upon the request of a disabled person who is purchasing or will reside in the dwelling unit, an accessible entrance shall be installed by the Borough.

Appendix K. Spending Plan



Clarke Caton Hintz

Third Round Spending Plan

Borough of Oceanport, Monmouth County, New Jersey

December 2008

Introduction

Oceanport Borough has prepared a Housing Element and Fair Share plan that addresses its regional fair share of the affordable housing need in accordance with the Municipal Land Use Law (N.J.S.A. 40:55D-1 et seq.), the Fair Housing Act (N.J.S.A. 52:27D-301) and the regulations of the Council on Affordable Housing (COAH) (N.J.A.C. 5:97-1 et seq. and N.J.A.C. 5:96-1 et seq.). A development fee ordinance creating a dedicated revenue source for affordable housing was originally adopted by Oceanport Borough in March 2008 and approved by COAH in April 2008. The ordinance establishes Oceanport Borough's affordable housing trust fund for which this spending plan is prepared.

As of July 17, 2008, Oceanport Borough has collected \$3,875 and has expended \$0 resulting in a balance of \$3,875. All development fees, payments in lieu of constructing affordable units on site, funds from the sale of units with extinguished controls, and interest generated by the fees are deposited in a separate interest-bearing affordable housing trust fund in Bank of America for the purposes of affordable housing. These funds shall be spent in accordance with *N.J.A.C. 5:97-8.7-8.9* as described in the sections that follow.

The Planning Board adopted a third round housing element and fair share plan in October 2005 and submitted it to Superior Court as part of a request for a Judgment of Compliance and an Order of Repose. The Borough first received approval to maintain an affordable housing trust in 2008. As of December 31, 2004, the prior round balance remaining in the affordable housing trust fund was \$0. From January 1, 2005 through July 17, 2008, Oceanport Borough collected an additional \$3,875 in development fees, payments in lieu of construction, other funds, and/or interest. Oceanport Borough has not expended any funds as it awaits approval of its Third Round Spending Plan.

Revenues for Certification Period

To project revenue anticipated during the period of third round substantive certification, Oceanport Borough considered the following:

- (a) Development fees: \$56,000
 - 1. Residential and nonresidential projects which have had development fees imposed upon them at the time of preliminary or final development approvals;
 - 2. All projects currently before the planning and zoning boards for development approvals that may apply for building permits and certificates of occupancy; and
 - 3. Future development that is likely to occur based on historical rates of development.
- (b) Payments in lieu of Construction (PIL): \$0

Actual and committed payments in lieu (PIL) of construction from developers as follows:

No payments-in-lieu are anticipated.
- (c) Other funding sources: \$0

Oceanport Borough is not anticipating collecting money from other funding sources at this time. Funds from other sources, include, but are not limited to the sale of units with extinguished controls, repayment of affordable housing program loans, rental income, and proceeds from the sale of affordable units. All monies in the Affordable Housing Trust fund are anticipated to come from development fees and interest.
- (d) Projected interest:

Based on the current average interest rate, Oceanport Borough anticipates collecting \$4,500 in interest through 2018.

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Source of Funds – Housing Trust Fund 2008 through 2018

Source of Funds	7/18/08 through 12/31/08	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	Total
Development fees:												
Approved/ Pending/ Projected Development	\$5,000	\$6,000	\$5,000	\$5,000	\$5,000	\$5,000	\$5,000	\$5,000	\$5,000	\$5,000	\$5,000	\$56,000
Payments in Lieu of Construction	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Other Funds (Unit Sales)	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Interest	\$100	\$200	\$300	\$400	\$500	\$500	\$500	\$500	\$500	\$500	\$500	\$4,500
Total	\$5,100	\$6,200	\$5,300	\$5,400	\$5,500	\$5,500	\$5,500	\$5,500	\$5,500	\$5,500	\$5,500	\$60,500

OCEANPORT BOROUGH | SPENDING PLAN

Clarke Caton Hintz Oceanport Borough projects a total of \$60,500 in revenue to be collected between July 18, 2008 and December 31, 2018. All interest earned on the account shall accrue to the account to be used only for the purposes of affordable housing.

Administrative Mechanism to Collect and Distribute Funds

The following procedural sequence for the collection and distribution of development fee revenues shall be followed by Oceanport Borough:

(a) Collection of development fee revenues:

Collection of development fee revenues shall be consistent with Oceanport Borough's development fee ordinance for both residential and non-residential developments in accordance with COAH's rules and P.L.2008, c.46, sections 8 (C. 52:27D-329.2) and 32-38 (C. 40:55D-8.1 through 8.7).

(b) Distribution of development fee revenues:

The Planning Board adopts and forwards a resolution to the governing body recommending the expenditure of development fee revenues as set forth in this spending plan. The governing body reviews the request for consistency with the spending plan and adopts the recommendation by resolution.

The release of funds requires the adoption of the governing body resolution in accordance with the COAH-approved spending plan. Once a request is approved by resolution, the Chief Financial Officer releases the requested revenue from the trust fund for the specific use approved in the governing body's resolution.

Description of Anticipated Use of Affordable Housing Funds

(a) Rehabilitation and new construction programs and projects (N.J.A.C. 5:97-8.7)

Oceanport Borough will dedicate \$4,282,539 to rehabilitation, new construction, and accessory apartment programs. (see detailed descriptions in Fair Share Plan) as follows:

Rehabilitation program: \$0

COAH has determined that Oceanport has a 0 unit rehabilitation obligation. As such, the Borough will not operate or participate in a rehabilitation program.

Municipally Sponsored Construction: \$4,282,539

The Borough will convert 4 of the 6 buildings at Barker's Circle to affordable housing. Barker's Circle is a 6 building cluster on the Fort Monmouth base. The Borough will partner with an affordable housing developer to convert 4 of the existing buildings to multi-family housing units. One building will be converted to 21 senior rental units and the three remaining buildings will be converted to inclusionary housing consisting of at least 36 units, of which at least 9 units will be family sale units. The cost for this program is anticipated to be \$3,369,177. Please see the Housing Element and Fair Share Plan and the Pro Forma for this project for additional information.

The Borough will also construct a 6 unit municipally sponsored construction project. The implementation schedule anticipates the need for these affordable units in 2013. Using the COAH figures for the subsidy required for an affordable unit in N.J.A.C. 5:97-6.4(c)4 for Region 4 of \$152,227, Oceanport Borough anticipates that this program will cost \$913,362 (6 units x \$152,227).

The cost of the municipally sponsored construction programs will be offset by the development fees which the Borough will collect during the third round. Additionally, and as a practical matter, the Borough anticipates that funding will come from one or more outside sources to substantially reduce the cost of the program. These sources include, but are not limited to, governmental sources such as the Federal Low Income Housing Tax Credits, New Jersey Balanced Housing funds, County HOME funds, Federal Home Loan Bank Board financing, HMFA bond financing, the New Jersey Affordable Housing Trust Fund and Small Cities CDBG funds.

(b) Affordability Assistance (N.J.A.C. 5:97-8.8)

Oceanport Borough is required to spend a minimum of 30 percent of development fee revenue to render existing affordable units more affordable and one-third of that amount must be dedicated to very low-income households (i.e. households earning less than 30 percent of the regional median income). The actual affordability assistance minimums are calculated on an ongoing basis in the CTM system based on actual revenues.

Projected minimum affordability assistance requirement

Actual development fees through 7/17/2008		\$3,875
Actual interest earned through 7/17/2008	+	\$1.43
Development fees projected* 2008-2018	+	\$56,000
Interest projected* 2008-2018	+	\$4,500
Less housing activity expenditures through 6/2/2008	-	\$0
Total	=	\$64,376
30 percent requirement	x 0.30 =	\$19,313
Less Affordability assistance expenditures through 12/31/2004	-	\$0
<i>PROJECTED MINIMUM Affordability Assistance Requirement 1/1/2005 through 12/31/2018</i>	=	\$19,313
<i>PROJECTED MINIMUM Very Low-Income Affordability Assistance Requirement 1/1/2005 through 12/31/2018</i>	÷ 3 =	\$6,438

* Note: The 2008 portion of this projection reflects 2008 subsequent to July 17 as the remainder of 2008 is included in the actual figure reported above.

Oceanport Borough will dedicate \$19,313 from the affordable housing trust fund to render units more affordable, including \$6,438 to render units more affordable to households earning 30 percent or less of median income by region, as follows:

- Down-payment assistance;
- Rental assistance;
- Security deposit assistance
- Low interest loans
- Assistance with homeowners association or condominium fees and special assessments; and/or
- Converting low-income units to very-low-income units, etc.

(c) Administrative Expenses (N.J.A.C. 5:97-8.9)

Oceanport Borough may use affordable housing trust fund revenue for related administrative costs up to a 20 percent limitation pending funding availability after programmatic and affordability assistance expenditures. The actual administrative expense maximum is calculated on an ongoing basis in the CTM system based on actual revenues.

Projected Administrative Expenses Requirement

Actual development fees through 7/17/2008		\$3,875
Actual interest earned through 7/17/2008	+	\$1.43
Development fees projected/payments-in-lieu* 2008-2018	+	\$56,000
Interest projected* 2008-2018	+	\$4,500
Less housing activity expenditures through 6/2/08	-	\$0
Total	=	\$64,376
20 percent maximum permitted administrative expenses	x 0.20 =	\$12,875
Less administrative expenditures through 12/31/2004	-	\$0
Projected allowed administrative expenditures	=	\$12,875

* - Note: The 2008 portion of this projection reflects 2008 after July 17 as the first portion of 2008 is included in the actual figure reported above.

Oceanport Borough projects that \$12,875 will be available from the affordable housing trust fund to be used for administrative purposes. Projected administrative expenditures, subject to the 20 percent cap, are as follows:

- Borough Attorney, Engineer, and Planner fees related to preparing the Housing Element and Fair Share Plan and obtaining substantive certification;
- Administration fees related to rehabilitation, extension of expiring controls, and municipally sponsored construction programs.
- Affirmative Marketing
- Income qualification of households



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- Compliance with COAH Monitoring
- Administration of Borough's Affordable Housing Units

Expenditure Schedule

Oceanport Borough intends to use affordable housing trust fund revenues for the creation and/or rehabilitation of housing units. Where applicable, the creation/rehabilitation funding schedule below parallels the implementation schedule set forth in the Housing Element and Fair Share Plan and is summarized as follows.

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Projected Expenditure Schedule 2009 Through 2018

Program	Number of Units Projected	Funds Expended and/or Dedicated (thousands)												
		2005 through 7/18/08	7/18/08 through 12/31/08	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	Total
Municipally Sponsored Construction	6	\$0	\$0	\$0	\$0	\$0	\$3,369	\$913	\$0	\$0	\$0	\$0	\$0	\$4,283
Total Programs	6	\$0	\$0	\$0	\$0	\$0	\$0	\$913	\$0	\$0	\$0	\$1,685	\$1,685	\$4,283
Affordability Assistance		\$0	\$0	\$1.94	\$1.94	\$1.94	\$1.94	\$1.94	\$1.94	\$1.94	\$1.94	\$1.94	\$1.94	\$19.4
Administration		\$0	\$0	\$0.5	\$0.5	\$0.5	\$0.5	\$0.5	\$0.5	\$0.5	\$0.5	\$0.5	\$0.5	\$5
Total	6	\$0	\$0	\$2.44	\$2.44	\$2.44	\$2.44	\$915.44	\$2.44	\$2.44	\$2.44	\$1,687.44	\$1,687.44	\$4,307.4

Excess or Shortfall of Funds

Pursuant to the Housing Element and Fair Share Plan, the governing body of Oceanport Borough has adopted a resolution agreeing to fund any shortfall of funds required for implementing the rehabilitation or market to affordable programs. In the event that a shortfall of anticipated revenues occurs, Oceanport Borough will bond to satisfy the gap in funding. A copy of the adopted resolution is attached.

Barrier Free Escrow

Collection and distribution of barrier free funds shall be consistent with Oceanport Borough's Affordable Housing Ordinance in accordance with N.J.A.C. 5:97-8.5.

Summary

Oceanport Borough intends to spend affordable housing trust fund revenues pursuant to N.J.A.C. 5:97-8.7 through 8.9 and consistent with the housing programs outlined in the housing element and fair share plan dated November 2008.

Oceanport Borough has a balance of \$3,876 as of July 17, 2008 and anticipates an additional \$60,500 in revenues before the expiration of substantive certification for a total of \$64,376. The municipality will dedicate a maximum of \$4,282,539 towards new construction programs. Additionally, up to \$19,313 will be spent to render units more affordable if a balance remains, and up to \$12,875 could be spent on administrative costs. Any shortfall of funds will be offset by bonding.

Spending Plan Summary

Revenues	
Balance as of July 17, 2008	\$3,876
Projected Revenue from July 18, 2008 through 2018:	
Development fees/Payments in lieu/ Other Funds	+ \$56,000
Interest	+ \$4,500
Total Projected Revenue	= \$64,376
Expenditures	
Funds used for Rehabilitation	- \$0
Funds used for New Construction	
1. Barker's Circle	- \$3,369,177 (up to)
2. 6 Unit Municipal Project	- \$913,362
Affordability Assistance	- \$19,400
Administration	- \$5,000
Excess Funds for Additional Housing Activity	= \$0
1. Rehabilitation, if applicable	-
Total Projected Expenditures	= \$4,306,939
POTENTIAL SHORTFALL	= (\$4,242,563)

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Oceanport Spending Plan-12-8-08.doc

Appendix L.
Barker's Circle Senior Rental Pro Forma

PRO FORMA
BARKER'S CIRCLE SENIOR RENTALS

The Borough proposes the creation of 21 senior rental units at Barker's Circle at the Fort Monmouth Base. The Borough will partner with an affordable housing developer to have the 21 senior rental affordable units created. The land and building shall be donated to the developer. Please see the Housing Element and Fair Share Plan for additional information.

Unit Cost

Unit Type	Number of Units	Cost per Unit ¹	Subtotal
Senior Rental	21	\$140,697	\$2,954,637
Total			\$2,954,637

Income/Expense Analysis

Annual Income

21 units at \$791 per month	\$199,332
Anticipated Annual Rental Income	\$199,332

Annual Expenses

Administrative (total)	\$15,750
<i>Unit Administration</i>	
Salaries	\$21,000
Maintenance	\$21,000
Condominium fee	\$0
Utilities	\$26,250
Management fees	\$21,000
Real Estate taxes	\$5,250
Insurance	\$21,000
Replacement reserve	\$18,900
Vacancy/Uncollected	\$21,000
Mortgage Payment and Debt Service	\$42,000
Subtotal	\$213,750
Annual Program Deficit	\$13,818

Program Cost: \$3,369,177
(\$2,954,637 + [\$13,818 x 30 years])

¹ Source: Region 4 construction cost, pursuant to N.J.A.C. 5:97-6.4(c)3. (payments in lieu of construction)

Appendix M.
Resolution of Intent to Fund Spending Plan Shortfall

R-08-176
12-18-08

RESOLUTION NO:

**BOROUGH OF OCEANPORT
COUNTY OF MONMOUTH, STATE OF NEW JERSEY
RESOLUTION OF INTENT TO FUND SPENDING PLAN SHORTFALL FOR
AFFORDABLE HOUSING PROGRAMS IN THE BOROUGH'S FAIR SHARE PLAN**

WHEREAS, pursuant to the substantive regulations of the New Jersey Council On Affordable Housing (COAH), certain portions of the Borough's amended Housing Plan Element and Fair Share Plan as adopted by the Oceanport Borough Planning Board on December 18, 2008 and endorsed by the Governing Body of the Township of Middletown on December 18, 2008 may require a financial commitment by the Borough; and

WHEREAS, N.J.A.C. 5:97-6.7(d)6 requires a municipality to resolve to address any shortfall in the funding of its affordable housing programs as set forth in the Spending Plan and the Fair Share Plan, including its willingness to incur bonded indebtedness, if necessary, to provide the funds required for the timely implementation of the Fair Share Plan;

NOW THEREFORE BE IT RESOLVED, by the Governing Body of the Borough of Oceanport, in the County of Monmouth, New Jersey, as follows:

1. To the degree that the funds required for the implementation of the Borough's Fair Share Plan, as will be more particularly set forth in the Borough's approved Spending Plan, are not available at the time they are needed from all available affordable housing funding sources, the Borough will provide the funding needed to cover any shortfall through appropriations in the Borough's annual budget, bonding, or any other legal means, with the understanding that any future affordable housing funding which becomes available may be used to reimburse the Township for the costs incurred.

I certify this to be a true copy of Resolution R-08-176 approved by the Mayor and Council of the Borough of Oceanport on December 18, 2008


KIMBERLY A. JUNGFER, RMC
BOROUGH CLERK

Appendix N.
Draft Amended Development Fee Ordinance
and Supporting Documents

Jeffrey R. Surenian, Esq.

Jeffrey R. Surenian and Associates, LLC

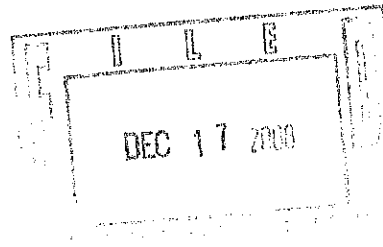
Brielle Galleria

707 Union Avenue, Suite 301

Brielle, New Jersey 08730

Telephone 732-612-3100

Attorneys for Defendants, Borough of Oceanport and Planning Board for the Borough of Oceanport



OCEANPORT HOLDING, L.L.C.,	SUPERIOR COURT OF NEW JERSEY
Plaintiff,	LAW DIVISION: MONMOUTH COUNTY
vs.	DOCKET NO. L-2349-05
BOROUGH OF OCEANPORT,	CIVIL CASE - MOUNT LAUREL
PLANNING BOARD OF THE BOROUGH	ORDER APPROVING THE BOROUGH'S
OF OCEANPORT AND ZONING BOARD	AMENDED MOUNT LAUREL
OF THE BOROUGH OF OCEANPORT	DEVELOPMENT FEE ORDINANCE
Defendants.	

THIS MATTER having been opened to the Court by Jeffrey R. Surenian and Associates, LLC, Michael A. Jedziniak, Esq. appearing on behalf of defendants, Borough of Oceanport and the Planning Board of the Borough of Oceanport; and, on September 19, 2005, the Court having approved the Borough's initial Affordable Housing Development Fee Ordinance ("Fee Ordinance"); and on July 17, 2008, the Governor having signed into law P.L. 2008, Ch. 46 ("A-500") which, *inter alia*, amended the Fair Housing Act and imposed statewide mandatory development fees on all non-residential development subject to limited enumerated exceptions; and on September 12, 2008, COAH having directed all towns wishing to continue to collect and retain development fees to adopt a resolution seeking either judicial or administrative review and approval of a new Fee Ordinance; and COAH having provided a model resolution and model Fee Ordinance which incorporated the relevant provision associated with A-500; and on October 16, 2008, the Borough having adopted a resolution requesting the Court to review and approve its

draft Fee Ordinance; and the resolution and draft Fee Ordinance both being directly consistent with COAH's models; and the Court having reviewed said draft Fee Ordinance; and good cause appearing,

It is on this 17 day of DEC, 2008, **ORDERED** as follows:

1. The Court hereby approves the Oceanport Borough Affordable Housing Development Fee Ordinance attached hereto as Exhibit A.
2. The Borough is hereby authorized to impose and collect development fees upon adoption and publication of notice of the adoption of Borough's Affordable Housing Development Fee Ordinance attached hereto as Exhibit A.

SEE ATTACHED RIDER


DENNIS R. O'BRIEN, J.S.C.

RIDER to ORDER

The Borough of Oceanport may not expend any development fee revenues without first obtaining the Court's approval of a Spending Plan and that the Borough must execute, within seven (7) days of the Court's approval of the Ordinance, three (3) originals of a three-way escrow agreement between the bank that is the repository for Affordable Housing Trust Fund, the Borough and COAH. The transmission of the executed escrow agreement to COAH should be accompanied by a copy of the approved Development Fee Ordinance and the Order entered by the Court approving it.

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A Limited Liability Company

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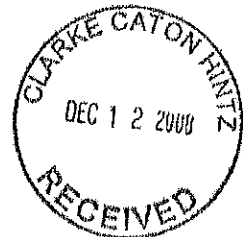
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December 8, 2008

VIA UPS OVERNIGHT MAIL

The Honorable Dennis R. O'Brien, J.S.C.

Superior Court of New Jersey
Monmouth County Courthouse
71 Monument Park
Freehold, NJ 07728



Re: Oceanport Holding, L.L.C. vs. Borough of Oceanport, Planning Board of the Borough of Oceanport and the Zoning Board of the Borough of Oceanport - Docket No. L 2349-05

Dear Judge O'Brien:

This firm represents the Borough of Oceanport and the Planning Board of the Borough of Oceanport (hereinafter collectively referred to as "the Borough") as Special Mount Laurel Counsel. I am writing to request this Court's review and approval of the Borough's draft amended Development Fee Ordinance pursuant to recent changes in the law and COAH's policies regarding same.

Background

By way of background, on September 1, 2005, the Borough of Oceanport adopted Ordinance 802, an amended development fee ordinance establishing the standards for the collection, maintenance, and expenditure of affordable housing development fees in Oceanport. On September 19, 2005, the Borough secured an Order pursuant to N.J.A.C. 5:94-6.2(b) approving Ordinance 802, thereby authorizing the Borough of Oceanport to impose and collect development fees to be utilized for the creation of affordable housing. See Exhibit A.

On July 17, 2008, Governor Corzine signed P.L. 2008, Ch. 46 (commonly referred to as the "Roberts Bill" or "A-500") which, among other things, significantly amended the affordable housing policies in New Jersey. Within this legislation, the Legislature enacted the "Statewide Mandatory Non-Residential Development Fee Act" (hereinafter the "Act") which amended the Municipal Land Use Law to mandate the imposition of a 2.5% development fee upon all non-residential developments receiving final certificates of occupancy after the effective date of the statute, subject to certain express exemptions.

Although the non-residential fees imposed pursuant to the Act are statutorily mandated and controlled, COAH has taken the position that municipalities must adopt Development Fee Ordinances reflecting these changes to the law. On September 12, 2008, COAH issued a letter to all New Jersey mayors expressing this policy. See Exhibit B. Included in this letter, COAH included an internet link to its new model development fee ordinance, which includes COAH's interpretation of the provisions of A-500 and certain policy decisions on issues not express in the new statute. Id. at page 2. I have attached a copy of COAH's model fee ordinance for ease of reference. See Exhibit C. COAH also provided on its website a model resolution requesting COAH or the Court to review and approve the new development fee ordinance. See Exhibit D.

Consistent With Prior Decisions Of The Court, Oceanport Borough Seeks This Court's Approval of its Draft Development Fee Ordinance

On October 16, 2008, the Oceanport Borough Council adopted Resolution 08-148 which, in relevant part, "requests that the Court review and approve Oceanport's development fee ordinance." See Exhibit E. A comparison demonstrates that this resolution closely resembles the COAH model resolution. Compare Exhibit D with Exhibit E. Enclosed hereto as Exhibit F is the Borough's draft amended Development Fee Ordinance, which is also consistent with COAH's model. Compare Exhibit C with Exhibit F. Finally, I have attached as Exhibit G a copy of the proposed Order approving the Borough's Development Fee Ordinance.

If the proposed form of order is acceptable to the Court, kindly execute same and forward back to me at your convenience. Of course, I am available any time to discuss any questions or issues Your Honor may have.

Thank you for your attention to this matter.

Respectfully submitted,


Michael A. Jedziniak

Enclosures

cc: Kim Jungfer, Borough Clerk (with enclosures)
John O. Bennett, Esq. (with enclosures)
Elizabeth C. McKenzie, P.P., A.I.C.P. (with enclosures)
Elizabeth K. McManus, P.P., A.I.C.P. (with enclosures) ✓
David Oberlander, Esq. (with enclosures)

RESOLUTION NO. _____

**RESOLUTION OF THE BOROUGH COUNCIL OF THE BOROUGH OF
OCEANPORT REQUESTING THE COURT TO REVIEW AND
APPROVE THE BOROUGH'S AMENDED DEVELOPMENT FEE
ORDINANCE**

WHEREAS, in November of 2005, the Borough of Oceanport submitted its duly adopted and endorsed Housing Element and Fair Share Plan to the Court and requested the Court to review and ultimately approve the Borough's affordable housing plan; and

WHEREAS, P.L.2008, c.46 section 8 (C. 52:27D-329.2) and the Statewide Non-Residential Development Fee Act (C. 40:55D-8.1 through 8.7), permits municipalities that are under the jurisdiction of a court of competent jurisdiction to impose and retain fees on residential and non-residential development; and

WHEREAS, subject to P.L.2008, c.46 section 8 (C. 52:27D-329.2) and the Statewide Non-Residential Development Fee Act (C. 40:55D-8.1 through 8.7), N.J.A.C. 5:97-8.3 permits a municipality to prepare and submit a development fee ordinance for review and approval by the Court that is accompanied by and includes the following:

1. A description of the types of developments that will be subject to fees per N.J.A.C. 5:97-8.3(c) and (d);
2. A description of the types of developments that are exempted per N.J.A.C. 5:97-8.3(e);
3. A description of the amount and nature of the fees imposed per N.J.A.C. 5:97-8.3(c) and (d);
4. A description of collection procedures per N.J.A.C. 5:97-8.3(f);
5. A description of development fee appeals per N.J.A.C. 5:97-8.3(g); and
6. A provision authorizing COAH to direct trust funds in case of non-compliance per N.J.A.C. 5:97-8.3(h).

WHEREAS, the Borough of Oceanport has prepared a draft development fee ordinance that establishes standards for the collection, maintenance, and expenditure of development fees consistent with COAH's regulations at N.J.A.C. 5:97-8 and in accordance with P.L.2008, c.46, Sections 8 (C. 52:27D-329.2) and 32-38 (C. 40:55D-8.1 through 8.7).

NOW THEREFORE BE IT RESOLVED that the Governing Body of the Borough of Oceanport, County of Monmouth requests that the Court review and approve Oceanport's development fee ordinance.

Kim Jungfer, Borough Clerk

ORDINANCE NO.: _____

**DEVELOPMENT FEE ORDINANCE
OF THE
BOROUGH OF OCEANPORT**

1. Purpose

- (a) In Holmdel Builder's Association v. Holmdel Township, 121 N.J. 550 (1990), the New Jersey Supreme Court determined that mandatory development fees are authorized by the Fair Housing Act of 1985, N.J.S.A. 52:27d-301 et seq., and the State Constitution, subject to the rules adopted by the New Jersey Council on Affordable Housing's (COAH).
- (b) Pursuant to P.L. 2008, c. 46 section 8 (C. 52:27D-329.2) and the Statewide Non-Residential Development Fee Act (C. 40:55D-8.1 through 8.7), COAH is authorized to adopt and promulgate regulations necessary for the establishment, implementation, review, monitoring and enforcement of municipal affordable housing trust funds and corresponding spending plans. Municipalities that are under the jurisdiction of the Council or court of competent jurisdiction and have an approved spending plan may retain fees collected from non-residential development.
- (c) This ordinance establishes standards for the collection, maintenance, and expenditure of development fees pursuant to COAH's regulations and in accordance with P.L. 2008, c. 46, Sections 8 and 32-38. Fees collected pursuant to this ordinance shall be used for the sole purpose of providing low- and moderate-income housing. This ordinance shall be interpreted within the framework of COAH's rules on development fees, codified at N.J.A.C. 5:97-8.

2. Basic Requirements

- (a) The Borough of Oceanport shall not impose development fees on any applicant pursuant to this ordinance until COAH or a Court has approved the Development Fee Ordinance pursuant to N.J.A.C. 5:96-5.1.
- (b) The Borough of Oceanport shall not spend development fees until COAH or a Court has approved a plan for spending such fees in conformance with N.J.A.C. 5:97-8.10 and N.J.A.C. 5:96-5.3.

3. Definitions

- (a) The following terms, as used in this ordinance, shall have the following meanings:
 - i. "Affordable housing development" means a development included in the Housing Element and Fair Share Plan, and includes, but is not limited to, an inclusionary development, a municipal construction project, or a 100 percent affordable development.
 - ii. "COAH" or the "Council" means the New Jersey Council on Affordable Housing established under the Act which has primary jurisdiction for the administration of housing obligations in accordance with sound regional planning considerations in the State.
 - iii. "Development fee" means money paid by a developer for the improvement of property as permitted under N.J.A.C. 5:97-8.3.
 - iv. "Developer" means the legal or beneficial owner or owners of a lot or of any land proposed to be included in a proposed development, including the holder of an option or contract to purchase, or other person having an enforceable proprietary interest in such land.

- v. "Equalized assessed value" means the assessed value of a property divided by the current average ratio of assessed to true value for the municipality in which the property is situated, as determined in accordance with sections 1, 5, and 6 of P.L. 1973, c.123 (C. 54:1-35a through C. 54:1-35c).
- vi. "Green building strategies" means those strategies that minimize the impact of development on the environment, and enhance health, safety and well-being of residents by producing durable, low-maintenance, resource-efficient housing while making optimum use of existing infrastructure and community services.

4. Residential Development Fees

(a) Imposed Fees

- i. Within the Borough of Oceanport zoning districts, residential developers, except for developers of the types of development specifically exempted below, shall pay a fee of 1.5 percent of the equalized assessed value for residential development, provided no increased density is permitted.
- ii. When an increase in residential density pursuant to N.J.S.A. 40:55D-70d(5) (known as a "d" variance) has been permitted, developers may be required to pay a development fee of six (6) percent of the equalized assessed value for each additional unit that may be realized. However, if the zoning on a site has changed during the two-year period preceding the filing of such a variance application, the base density for the purposes of calculating the bonus development fee shall be the highest density permitted by right during the two-year period preceding the filing of the variance application.

(b) Eligible exactions, ineligible exactions and exemptions for residential development

- i. Affordable housing developments and developments where the developer has made a payment in lieu of on-site construction of affordable units shall be exempt from development fees.
- ii. Developments that have received preliminary or final site plan approval prior to the adoption of a municipal development fee ordinance shall be exempt from development fees, unless the developer seeks a substantial change in the approval. Where a site plan approval does not apply, a zoning and/or building permit shall be synonymous with preliminary or final site plan approval for this purpose. The fee percentage shall be vested on the date that the building permit is issued.
- iii. Development fees shall be imposed and collected when an existing structure undergoes a change to a more intense use, is demolished and replaced, or is expanded, if the expansion is not otherwise exempt from the development fee requirement. The development fee shall be calculated on the increase in the equalized assessed value of the improved structure.
- iv. Structural alterations that do not increase gross floor area of a building or structure or increase the equalized assessed value of a property shall be exempted from paying a development fee.
- v. Nonprofit organizations constructing residential projects which have received tax exempt status pursuant to Section 501(c)(3) of the Internal Revenue Code, providing current evidence of that status is submitted to the Municipal Clerk, together with a certification that services of the organization are provided at reduced rates to those who establish an

inability to pay existing charges, shall be exempted from paying a development fee.

- vi. Federal, state, county and local governments constructing residential housing shall be exempted from paying a development fee.
- vii. Residential reconstruction projects resulting from fire, flood, or natural disaster.

5. Non-Residential Development Fees

(a) Imposed fees

- i. Within all zoning districts, non-residential developers, except for developers of the types of development specifically exempted, shall pay a fee equal to two and one-half (2.5) percent of the equalized assessed value of the land and improvements, for all new non-residential construction on an unimproved lot or lots.
- ii. Non-residential developers, except for developers of the types of development specifically exempted, shall also pay a fee equal to two and one-half (2.5) percent of the increase in equalized assessed value resulting from any additions to existing structures to be used for non-residential purposes.
- iii. Development fees shall be imposed and collected when an existing structure is demolished and replaced. The development fee of two and one-half percent (2.5%) shall be calculated on the difference between the equalized assessed value of the pre-existing land and improvement and the equalized assessed value of the newly-improved structure, i.e. land and improvement, at the time final certificate of occupancy is issued. If the calculation required under this section results in a negative number, the non-residential development fee shall be zero.

(b) Eligible exactions, ineligible exactions and exemptions for non-residential development

- i. The non-residential portion of a mixed-use inclusionary or market rate development shall be subject to the two and one-half (2.5) percent development fee, unless otherwise exempted below.
- ii. The 2.5 percent fee shall not apply to an increase in equalized assessed value resulting from alterations, change in use within existing footprint, reconstruction, renovations and repairs.
- iii. Non-residential developments shall be exempt from payment of non-residential development fees in accordance with the exemptions required pursuant to P.L. 2008, c.46, as specified in the Form N-RDF "State of New Jersey Non-Residential Development Certification/Exemption" Form. Any exemption claimed by a developer shall be substantiated by that developer.
- iv. A developer of a non-residential development exempted from the non-residential development fee pursuant to P.L.2008, c.46 shall be subject to it at such time the basis for the exemption no longer applies, and shall make the payment of the non-residential development fee, in that event, within three years after that event or after the issuance of the final certificate of occupancy of the non-residential development, whichever is later.
- v. If a property which was exempted from the collection of a non-residential development fee thereafter ceases to be exempt from property taxation, the

owner of the property shall remit the fees required pursuant to this section within 45 days of the termination of the property tax exemption. Unpaid non-residential development fees under these circumstances may be enforceable by the Borough of Oceanport as a lien against the real property of the owner.

vi. Federal, state, county and local governments constructing non-residential housing shall be exempted from paying a development fee.

6. Collection procedure

- (a) Upon the granting of a preliminary, final or other applicable approval, for a development, the applicable approving authority shall direct its staff to notify the Borough's Construction Official responsible for the issuance of a building permit.
- (b) For non-residential developments only, the developer shall also be provided with a copy of Form N-RDF "State of New Jersey Non-Residential Development Certification/Exemption" to be completed as per the instructions provided. The Developer of a non-residential development shall complete Form N-RDF as per the instructions provided. The construction official shall verify the information submitted by the non-residential developer as per the instructions provided in the Form N-RDF. The Tax assessor shall verify exemptions and prepare estimated and final assessments as per the instructions provided in Form N-RDF.
- (c) The construction official responsible for the issuance of a building permit shall notify the local tax assessor of the issuance of the first building permit for a development which is subject to a development fee.
- (d) Within 90 days of receipt of that notice, the municipal tax assessor, based on the plans filed, shall provide an estimate of the equalized assessed value of the development.
- (e) The construction official responsible for the issuance of a final certificate of occupancy notifies the local assessor of any and all requests for the scheduling of a final inspection on property which is subject to a development fee.
- (f) Within 10 business days of a request for the scheduling of a final inspection, the municipal assessor shall confirm or modify the previously estimated equalized assessed value of the improvements of the development; calculate the development fee; and thereafter notify the developer of the amount of the fee.
- (g) Should the Borough of Oceanport fail to determine or notify the developer of the amount of the development fee within 10 business days of the request for final inspection, the developer may estimate the amount due and pay that estimated amount consistent with the dispute process set forth in subsection b. of section 37 of P.L.2008, c.46 (C.40:55D-8.6).
- (h) Fifty percent of the development fee shall be collected at the time of issuance of the building permit. The remaining portion shall be collected at the issuance of the certificate of occupancy. The developer shall be responsible for paying the difference between the fee calculated at building permit and that determined at issuance of certificate of occupancy.
- i) **Appeal of development fees**
 - 1) A developer may challenge residential development fees imposed by filing a challenge with the County Board of Taxation. Pending a review and determination by the Board, collected fees shall be placed in an interest bearing escrow account by the Borough of Oceanport. Appeals from a determination of the Board may be made to the tax court in accordance with the provisions of the State Tax Uniform Procedure Law, R.S.54:48-1

et seq., within 90 days after the date of such determination. Interest earned on amounts escrowed shall be credited to the prevailing party.

- 2) A developer may challenge non-residential development fees imposed by filing a challenge with the Director of the Division of Taxation. Pending a review and determination by the Director, which shall be made within 45 days of receipt of the challenge, collected fees shall be placed in an interest bearing escrow account by the Borough of Oceanport. Appeals from a determination of the Director may be made to the tax court in accordance with the provisions of the State Tax Uniform Procedure Law, R.S.54:48-1 et seq., within 90 days after the date of such determination. Interest earned on amounts escrowed shall be credited to the prevailing party.

7. Affordable Housing Trust Fund

- (a) There is hereby created a separate, interest-bearing housing trust fund to be maintained by the Borough's Chief Financial Officer for the purpose of depositing development fees collected from residential and non-residential developers and proceeds from the sale of units with extinguished controls.
- (b) The following additional funds shall be deposited in the Affordable Housing Trust Fund and shall at all times be identifiable by source and amount:
 1. Payments in lieu of on-site construction of affordable units;
 2. Developer-contributed funds to make ten percent (10%) of the affordable entrances in a townhouse or other multistory attached development accessible;
 3. Rental income from municipally-operated units;
 4. Repayments from affordable housing program loans;
 5. Recapture funds;
 6. Proceeds from the sale of affordable units; and
 7. Any other funds collected in connection with the Borough of Oceanport's affordable housing program.
- (c) Within seven days from the opening of the trust fund account, the Borough of Oceanport shall provide COAH with written authorization, in the form of a three-party escrow agreement between the municipality, the Borough's banking institution, and COAH to permit COAH to direct the disbursement of the funds as provided for in N.J.A.C. 5:97-8.13(b).
- (c) No funds shall be expended from the affordable housing trust fund unless the expenditure conforms to a spending plan approved by COAH or the Court. All interest accrued in the housing trust fund shall only be used on eligible affordable housing activities approved by COAH or the Court.

8. Use of Funds

- (a) The expenditure of all funds shall conform to a spending plan approved by COAH or the Court. Funds deposited in the housing trust fund may be used for any activity approved by COAH or the Court to address the Borough of Oceanport's fair share obligation and may be set up as a grant or revolving loan program. Such activities include, but are not limited to: preservation or purchase of housing for the purpose of maintaining or implementing affordability controls, rehabilitation, new construction of affordable housing units and related costs, accessory apartment, market to affordable, or regional housing partnership programs, conversion of existing non-residential buildings to create new affordable units, green building strategies designed to be cost saving and in accordance with accepted national or state standards, purchase of land for affordable housing, improvement of land to be used for affordable housing, extensions or improvements of roads and infrastructure to affordable housing sites, financial assistance designed to increase affordability, administration

necessary for implementation of the Housing Element and Fair Share Plan, or any other activity as permitted pursuant to N.J.A.C. 5:97-8.7 through 8.9 and specified in the approved spending plan.

- (b) Funds shall not be expended to reimburse the Borough of Oceanport for past housing activities.
- (c) At least 30 percent of all development fees collected and interest earned shall be used to provide affordability assistance to low- and moderate-income households in affordable units included in the municipal Fair Share Plan. One-third of the affordability assistance portion of development fees collected shall be used to provide affordability assistance to those households earning 30 percent or less of median income by region.
 - i. Affordability assistance programs may include down payment assistance, security deposit assistance, low interest loans, rental assistance, assistance with homeowners association or condominium fees and special assessments, and assistance with emergency repairs.
 - ii. Affordability assistance to households earning 30 percent or less of median income may include buying down the cost of low or moderate income units in the municipal Fair Share Plan to make them affordable to households earning 30 percent or less of median income. The use of development fees in this manner shall entitle the Borough of Oceanport to bonus credits pursuant to N.J.A.C. 5:97-3.7.
 - iii. Payments in lieu of constructing affordable units on site and funds from the sale of units with extinguished controls shall be exempt from the affordability assistance requirement.
- (d) The Borough of Oceanport may contract with a private or public entity to administer any part of its Housing Element and Fair Share Plan, including the requirement for affordability assistance, in accordance with N.J.A.C. 5:96-18.
- (e) No more than 20 percent of all revenues collected from development fees, maybe expended on administration, including, but not limited to, salaries and benefits for municipal employees or consultant fees necessary to develop or implement a new construction program, a Housing Element and Fair Share Plan, and/or an affirmative marketing program. In the case of a rehabilitation program, no more than 20 percent of the revenues collected from development fees shall be expended for such administrative expenses. Administrative funds may be used for income qualification of households, monitoring the turnover of sale and rental units, and compliance with COAH's monitoring requirements. Legal or other fees related to litigation opposing affordable housing sites or objecting to the Council's regulations and/or action are not eligible uses of the affordable housing trust fund.

9. Monitoring

- (a) The Borough of Oceanport shall complete and return to COAH all monitoring forms included in the annual monitoring report related to the collection of development fees from residential and non-residential developers, payments in lieu of constructing affordable units on site, and funds from the sale of units with extinguished controls barrier free escrow funds, rental income, repayments from affordable housing program loans, and any other funds collected in connection with the Borough of Oceanport's housing program, as well as to the expenditure of revenues and implementation of the plan approved by the court. All monitoring reports shall be completed on forms designed by COAH.

10. Ongoing Collection of Fees

- (a) The ability of the Borough of Oceanport to impose, collect and expend development fees shall expire with its judgment of compliance unless the Borough of Oceanport has filed an adopted Housing Element and Fair Share Plan with COAH, has petitioned COAH for substantive certification, or brought a declaratory relief action in Court pursuant to N.J.S.A. 52:27D-313 and has received approval of its development fee ordinance by COAH or a Court. If the Borough of Oceanport fails to renew its ability to impose and collect development fees prior to the expiration of its judgment of compliance, it may be subject to forfeiture of any or all funds remaining within its municipal trust fund. Any funds so forfeited shall be deposited into the "New Jersey Affordable Housing Trust Fund" established pursuant to section 20 of P.L. 1985, c.222 (C.52:27D-320). The Borough of Oceanport shall not impose a residential development fee on a development that receives preliminary or final site plan approval after the expiration of its judgment of compliance, nor shall the Borough of Oceanport retroactively impose a development fee on such a development. The Borough of Oceanport shall not expend development fees after the expiration of its judgment of compliance.

NOW, THEREFORE, BE IT ORDAINED, by the Borough Council and the Borough of Oceanport, this Ordinance shall become effective upon final passage and publication as provided by law.

BOROUGH OF OCEANPORT

By: _____
Michael Mahon, Mayor

Attest:

Kim Jungfer, Municipal Clerk