

## SETTLEMENT AGREEMENT

**THIS SETTLEMENT AGREEMENT** ("Agreement") made this 4<sup>th</sup> day of October, 2018, by and between:

**BOROUGH OF CHESTER**, a municipal corporation of the State of New Jersey, County of Morris, having an address at 50 North Road, Chester, New Jersey 07930 (hereinafter the "**Borough**");

**LARISON'S CORNER LLC**, a New Jersey limited liability company, with an address at 2 North Road, Warren NJ 07059, (hereinafter "**LC**"), the owner of the Mill Ridge Tract

And

**TURKEY FARMS ACQUISITIONS, LLC**, a New Jersey limited liability company **AND** with an address at 237 South Street, Morristown NJ 07960 (hereinafter "**TF**"), the owner of the Turkey Farm Tract;

Collectively, Larison's Corner and Turkey Farms shall be referred to as "**Developer**", and the Borough and Developer shall be referred to as the "**Parties**."

**WHEREAS**, in response to the New Jersey Supreme Court's decision In re Adoption of N.J.A.C. 5:96 and 5:97 by N.J. Council on Affordable Housing, 221 N.J. 1 (2015), on or about July 2, 2015, the Borough filed an action with the Superior Court of New Jersey ("Court"), entitled In the Matter of the Application of the Borough of Chester, County of Morris, Docket No. MRS-1661-15, seeking a Judgment of Compliance and Repose approving its Affordable Housing Plan (as defined herein), in addition to related reliefs (the "Compliance Action"); and

**WHEREAS**, on or about August 14, 2015, LC and TF filed a Motion to Intervene in the Compliance Action ("**Developer Intervention**") and such intervention was granted by the Court on September 14, 2015; and

**WHEREAS**, TF is the owner of the real property located on the corner of Route 206 and West Main Street, with a street address of 2 West Main Street and designated as Block 101 Lots 13, 14, 15 & 16 on the Tax Map of the Borough of Chester (the "**TF Parcel**" or "**TF Site**"). LC is owner of vacant property located on Mill Ridge Lane and designated as Block 101, Lots 12.07, 12.08, 12.10 & 12.11 (the "**LC Parcel**" or "**MRL Site**") (Collectively the TF Parcel and the LC Parcel are referred to as the "**Property**"); and

**WHEREAS**, through mediation supervised by the Court Master, Mike Bolan, P.P., the Parties have reached an agreement that Developer will develop the Property to include commercial development and 36 affordable units on the TF Site and up to 20 market-rate townhouses on the MRL Site. All development on the TF Site will occur in the existing community zone as depicted on the Highlands Regional Master Plan. The development to occur on the Property is referred to in this agreement as the "**Project**".

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**WHEREAS**, LC and TF are amenable to fully and finally resolving the Developer Intervention and the Highlands Appeal A-38-16 T3, premised upon securing the right to construct the Project contemplated herein on the Property; and

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

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

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

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

**Definitions**

- i. Developer: Shall refer to Turkey Farms Acquisitions, LLC and Larison's Corner, LLC collectively.
- ii. The Project: Shall refer to the development of the Property substantially in accord with the concept plans attached hereto as Exhibits A and B and bulk standards set forth in Exhibits C and D and Townhome elevations set forth on Exhibit E.
- iii. Existing Community Zone (ECZ): Shall have the same meaning as is utilized in the Highlands Regional Master Plan (RMP) and the mapping of the ECZ shall be interpreted as the boundaries as they are currently drawn as of the date of this Settlement (as may be modified pursuant to this agreement and collaboration with the Highlands Council.
- iv. Under Construction: Shall mean the process of building of a structure or structures that are authorized in this agreement after all legally required approvals are obtained, all required guarantees are posted and all UCC construction permits are secured.

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## ARTICLE I – REDEVELOPMENT PLAN

- 1.1 Purpose: The purpose of this Agreement is to settle the Developer Intervention and to create a realistic opportunity for the construction of the Project, and to generate 36 affordable housing units, plus applicable bonus credits, for the Borough to apply to its Gap (1999-2015) and Prospective Need (2015-2025) affordable housing obligations. The Project shall be substantially consistent with the concept plan for the development of the TF Parcel attached hereto and made a part hereof as Exhibit A and the concept plan for the development of the LC Parcel attached hereto and made a part hereof as Exhibit B, as well as the zoning bulk standards attached hereto and made a part hereof as Exhibits C and D, and the Townhome elevations attached hereto and made part hereof as Exhibit E, which have generally been reviewed and approved by the Borough and the Borough's professionals. The TF Site shall be governed by the redevelopment plan that will be adopted as part of Borough Zoning Ordinances in accord with the timeframes and standards set forth herein. At the Borough's sole discretion, the Mill Ridge Lane Site may be investigated as an area in need of redevelopment. The Borough can achieve the zoning contemplated in this Agreement for MRL by rezoning the site or including it holistically in a redevelopment plan for both the MRL Site and the TF Site.
- 1.2 The Borough shall designate the TF Site and the LC Site as an area of need of redevelopment and adopt a redevelopment plan substantially consistent with Exhibits A, B, C and D to achieve a permitted Project as described herein.
- 1.3 Subject to approval from the Highlands Council, the Borough of Chester shall permit the following construction and uses on the TF Site in accordance with the development concept plan entitled "Turkey Farm Concept Development Plan" prepared by Bowman Engineering, dated September 17, 2018 prepared by Bowman Engineering, and attached hereto as Exhibit A, and the zoning bulk standards set forth in Exhibit C:
- 1.3.1 Affordable Housing: 36 Affordable units in two buildings, which buildings may be connected by a community room/resident services structure. A playground shall be provided and may be located behind the Affordable housing units, outside the ECZ.
- 1.3.2 Medical Facility: The building shall not exceed two (2) stories and 20,000 sq. feet and shall only be used for medical services, medical office and related medical purposes.
- 1.3.3 Office Building: 5,000 Square Foot and no more than two (2) stories with a maximum building footprint of 2,600 sq. ft.
- 1.3.4 Organic Farm: In lieu of constructing any structures on this portion of the property consistent with existing zoning, TF shall apply to the Morris County Agriculture Development Board for the sale of the existing development rights through the Farmland Preservation Program, and shall accept the award granted through that program. Until such time as that application is made and the property

is entered into the Farmland Preservation Program, the area described as the existing "Organic Farm" on Exhibit A shall remain in agricultural use. Consistent with TF's application, a non-severable exception area may be created on this portion of the property for the purpose of constructing a residence for the farm within the "Country Store". All existing agricultural structures, including the "Country Store" building, barn and farm equipment storage buildings shall be located on the Organic Farm, in substantially the location as shown on Exhibit A, consistent with the development restrictions that may be placed upon this land as part of any farmland preservation transaction.

- 1.3.5 Restaurant: A restaurant of not more than 6,500 square feet plus seasonal outdoor patio area shall be permitted and shall be developed in a manner consistent with the design and architectural standards of the existing Turkey Farm restaurant or as may be designated as historic design standards by ordinance; It is acknowledged that the existing restaurant building is not required to remain; however, the architectural design of the 6500 sq. ft. restaurant proposed on the Concept Plan shall be consistent with the Borough's ordinances.
- 1.3.6 CVS: The CVS shall not exceed 15,000 sq. feet, and shall include an attached drive through window situated at the west side of the building appropriately screened so as to preclude direct view from West Main Street.
- 1.3.7 On-site sewer package treatment facility in the location depicted in Exhibit A. In no event shall the sewer package treatment facility or its disposal fields be located outside the ECZ. A Utility easement no more than 50 feet in width shall be allowed in the forest protection zone to connect the sewer and water service from the MRL Site to the utilities and sewer treatment facility on the TF Site. The on-site sewer package treatment plant and collection facilities shall be designed to accommodate only the wastewater needs of the uses authorized in this agreement.
- 1.3.8 The above uses on the Turkey Farm Tract described in Article 1.2 shall be substantially consistent with the Concept Plan, which is attached hereto as Exhibit A.
- 1.3.9 Cell Tower: TF agrees to evaluate masking the cell tower in a silo, or similar stealth design feature, which evaluation and design options shall be documented in the redevelopment plan. In no event shall the stealth design include a pine tree branching stealth design. In the event that TF/Developer cannot achieve an acceptable stealth design solution for the existing cell tower, then there shall be no upgrades or replacements to the existing cellular antennas and/or transmission equipment or any other cellular antenna support facility without prior approval by the Land Use Board.
- 1.3.10 Existing Community Zone: All buildings associated with the Project as it relates to the TF Site shall be developed in the Existing Community Zone as currently constituted except to the extent the farming activities and related structures are

permitted in conjunction with the preservation of the Organic Farm pursuant to Article 1.3.4 above

**1.3.11** All improvements associated with the Project on the TF Site shall be connected to a centralized treatment facility, which shall be located in the ECZ as currently constituted. However, for the Parties agree that the CVS will be serviced, temporarily, by the temporary septic connection detailed in Article 3.1 below. The temporary septic connection shall be located in the ECZ as shown in Exhibit A.

**1.4** Subject to approval from the Highlands Council, the Borough of Chester shall permit the following construction and uses on the LC Parcel in accordance with the development concept plan entitled "Mill Ridge Lane Multi-family Townhouse Concept Development Plan", dated September 17, 2018 prepared by Bowman Engineering, and attached hereto as Exhibit B the zoning bulk standards attached hereto and made a part hereof as Exhibit D.

**1.4.1** Townhomes: A maximum of twenty (20) fee simple subdivided plots to be situated on Lots 12.07 & 12.08. Townhomes to be 3 BR with den and an option for master bedroom down (i.e. first floor of the units);

**1.4.2** Single Family: One (1) single family detached dwelling on Lot 12.10 and one detached single-family dwelling on Lot 12.11

**1.4.3** The above uses on the LC Parcel described in Article 1.4 shall be substantially consistent with the Concept Plan attached hereto as Exhibit B, the zoning bulk standards attached hereto and made a part hereof as Exhibit D, which may include minor modifications prior to adoption by the governing body, and the Townhome building elevations attached hereto as Exhibit E.

**1.4.4** The design and appearance of the Townhomes shall be subject to Borough approval in consultation and coordination with the "working group" identified in Article 1.5.1 below, and consistent with adopted ordinances/zoning standards for design, architectural, landscaping, elevations and related features in substantial conformity with Exhibits B, D and E.

**1.5** The Parties mutually agree that the following general standards shall apply to the Project:

**1.5.1** The Borough agrees to establish a working group to assist the developer in the site and building design process, and assist the Borough in the adoption of appropriate ordinances.

**1.5.2** The Project shall be developed in a manner substantially consistent with Exhibits A, B, C, D and E to this Settlement Agreement. Prior to the adoption of the Redevelopment Plan, the Developer and the Borough shall meet and consult with the working group established per Article 1.5.1, which may include consultation with the Borough's Historic Preservation Committee for consistency with the Borough's Historic Preservation and Architectural Review Ordinance, in order to coordinate building architecture and site design details. Design standards shall be

incorporated into the Redevelopment Plan. The Borough shall prepare and adopt a Redevelopment Plan that provides for the elements of development authorized for the TF and LC tracts under this Agreement.

- 1.5.3 **Traffic Study:** At its own expense, TF shall retain a traffic expert acceptable to the Borough to study the need for a traffic signal and/or crosswalk at the Project Driveway and W. Main Street. In the event that the TF expert concludes that a traffic signal is required, and the applicable County permits are issued to design and install the signal and crosswalk, TF shall be solely responsible for the costs to install the traffic signal. The Borough may retain its own traffic engineer to review and advise the Board on the traffic study findings and recommendations prepared by TF's traffic expert, and provide the Board with a separate traffic study that may include corroborating or divergent recommendations with TF's expert report, as the case may be. The services of the Board's traffic expert shall be paid as part of the Escrow pursuant to Article 1.8 below.
- 1.6 **WQMP Amendment:** The Parties acknowledge that the Project will require a WQMP amendment from the NJDEP. At no cost to the Borough, the Borough will endorse an application by TF to the NJDEP to modify the WQMP sewer service area to facilitate the development of the Project. The WQMP map amendment shall conform to NJDEP regulations. The Developer shall be responsible to reimburse the Borough for any costs incurred by the Borough to provide its endorsement of an application by the Developer to NJDEP for the WQMP amendment.
- 1.7 **Highlands Approval of the Project:** The Parties acknowledge that the Project will require approval from the Highlands Council, which may require relief from the current RMP designations and mapping as it relates to the LC Parcel. At no cost to the Borough, it will endorse an application by Developer to the Highlands Council for approval of the Project contemplated in this Agreement and the exhibits attached hereto ("Highlands Approval"). It is acknowledged that Highlands Approval may be achieved by RMP Map Adjustment, RMP Map Amendment, Waiver, or other available mechanisms authorized under the RMP. The Parties acknowledge that the Highlands Council is not bound by this agreement and acknowledge that depending on the relief sought, the timeline for Highlands Council approval is variable. The Parties agree to work in good faith to resolve these issues as quickly as practical.
- 1.8 **Escrow:** To the extent that the Borough's engineering, planning and legal professionals may be required to assist the Developer in securing these approvals, the Borough shall make available the Borough's professionals with the cost of their services to be paid by TF and LC, through an escrow account to be established by the Developer in the amount of \$75,000.00.

## **ARTICLE II- DEVELOPER OBLIGATIONS**

2.1 **Affordable Housing:** TF shall have an obligation to deed-restrict thirty-six (36) of the residential units in the Project as very low, low and moderate-income affordable units. *MTB*

Any such affordable units shall comply with UHAC, applicable COAH affordable housing regulations, any applicable order of the Court, and other applicable laws, including the 13% very low income requirement (a minimum of 13% very low income units, very low income is defined as 30% or less of the regional income) embodied in the Fair Housing Act in lieu of the UHAC requirement as to low income.

2.2 In addition, the affordable units shall remain affordable rental units for a period of at least thirty (30) years from the date of their initial occupancy ("Deed-Restriction Period") and shall otherwise comply with UHAC in terms of duration of the controls, commencement of controls and all other requirements so that the Borough may count the units against its obligations to provide family rental affordable housing. This obligation includes, but is not limited to TF's obligation to comply with (1) bedroom distribution requirements (8 three bedroom units (2 very low, 2 low and 4 moderate), 21 two bedroom units (3 very low, 8 low and ten moderate) and 7 one bedroom units (1 very low, 3 low and 3 moderate), (2) income split requirements (5 very low income unit, 13 low income units and 18 moderate income units), (3) pricing requirements, (4) affirmative marketing requirements, (5) candidate qualification and screening requirements, (6) integrating the affordable units amongst the market rate units, and (7) deed restriction requirements. The Borough reserves the rights to extend controls for an additional 30-year period, subject to the then applicable requirements for extension of controls.

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

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

2.5 The Parties agree that the affordability controls, including duration, commencement and termination shall be governed by Uniform Housing Affordability Controls, N.J.A.C. 5:80-26.1 et seq. ("UHAC"). The Parties agree that the affordable units are to be included in the Affordable Housing Plan to be approved and credited by the Court in the Compliance Action, and that the credits will be applied against the Borough's gap (1999-2015) and Prospective Need (2015-2025) obligations.

2.6 The Parties acknowledge that Developer may seek public financing for the affordable units, including Low Income Housing Tax Credits ("LIHTC"), or other available financing for the construction of the affordable units. The Borough agrees that it shall cooperate with Developer in securing such financing, including approval of a Payment in Lieu of Taxes ("PILOT") for the affordable units in the form and amount required by HMFA (9% LIHTC) or 10% in the event of 4% LIHTC. Upon written notice, TF shall provide detailed information requested by the Borough, or the Borough's Administrative Agent, within 30 days concerning TF's compliance with UHAC and other applicable laws.

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

**2.8** Obligation to Withdraw Objection To And Support The Borough's Affordable Housing Plan. Developer agrees that they will withdraw the current objection to the Borough's Affordable Housing Plan, and that Developer will not object further to the Borough's Affordable Housing Plan, as may be amended including any challenges to the calculation of the obligations, RDP, RDP compliance mechanisms and unmet need mechanisms.

**2.9** Withdrawal of Intervention and Highlands Appeal. Developer agrees to withdraw its intervention in the Borough's Declaratory Judgment Action (MRS-L-1661-15) and will support the global settlement with FSHC, which will resolve the Borough's DJ Action and Round 3 affordable housing obligations subject to Court Approval of the Agreement and Subsequent HEFSP. Developer agrees to withdraw its Highlands Appeal (DOCKET A-0038-16T4) upon a final resolution with the Highlands Council and Borough pursuant to Article 1.7 of this Agreement.

**2.10** Attorney Fees: TF shall pay the Borough \$200,000.00 to reimburse the Borough for costs and attorney fees associated with the resolution of this case to date. The \$200,000 payment shall be made as follows: (i) TF to pay \$50,000 to the Borough upon entry of a final Judgment of Compliance; (ii) Upon the issuance of a TCO for the CVS pursuant to Section III below, Developer shall make payment to the Borough in the amount of \$50,000 and (iii) Upon closing on the farmland preservation of the Organic Farm, as provided in Article 1.3.4, TF shall pay to the Borough a final payment to the Borough of \$100,000.00.

**2.11** Escrow for Redevelopment Plan and Ordinances: TF agrees as part of this final settlement agreement to place \$35,000.00 into a separate escrow for the purposes of paying the costs for the Borough's professionals to prepare a Redevelopment Plan and ordinances implementing this Agreement.

### **ARTICLE III – SEWER AND PHASING**

**3.1** The Parties agree that a temporary septic system, to be constructed in the location shown on Exhibit A adjacent to the proposed CVS, will be permitted to facilitate the construction and use of the CVS until such time that the centralized treatment facility is complete, provided, however, that a Temporary Certificate of Occupancy (TCO) will be issued until the CVS is connected to and operating via the centralized treatment facility at which point a CO will be issued as long as Developer complies with the affordable housing and sewer treatment plant



phasing requirements in Article 3.4-3.8 of this Settlement. The temporary septic system shall be designed to accommodate only the needs of the CVS retail store and no other development shall be permitted to connect to the temporary septic system. The temporary septic system shall be abandoned once the CVS store is connected to the centralized treatment facility, at which time the area of the site utilized for the temporary septic system shall be restored, suitably landscaped and incorporated into final site design as open area to remain undeveloped.

**3.2** The Borough's primary consideration in exchange for this agreement is the production of affordable housing. To prevent the development of the CVS without additional development, including the affordable housing, Developer shall agree to post a performance bond for both the affordable housing units as contemplated in this Article and in an additional amount of One Million Two Hundred Thousand Dollars (\$1,200,000.00) for the sewer package treatment facility.

**3.3** There shall be no construction permit issued for construction of the CVS until the WQMP amendment for centralized wastewater collection and treatment is secured in final and unappealable form from NJDEP. As a condition precedent for the issuance of a TCO for the CVS, Developer shall post the aforesaid sewer package plant performance bond for the sewer package treatment facility.

**3.4** 18 of the affordable units must be completed within two (2) years of the issuance of the TCO issued for the CVS. The TCO may be extended in the event that TF is diligently proceeding with the development and construction of the affordable units.

**3.5** Prior to the completion of the first 18 affordable units, the Parties agree that Certificates of Occupancy (CO) for the first five (5) Townhomes on the LC Tract may be granted provided that the 18 affordable units are under construction as defined in this Settlement.

**3.6** Upon completion of the first 18 affordable units (50% of the total affordable units), Developer shall be entitled to final COs for 50% of the total market project, including ten (10) townhomes, the CVS and the office building.

**3.7** LC may secure COs for Townhomes 11-20 upon posting of a performance bond with the Borough, naming the Borough as the secured party, to pay the full cost of construction and delivery of the remaining 18 affordable units, which shall be posted in the amount of not less than \$2,250,000. (\$125,000 per unit), or in an amount that may be determined by the Borough Engineer and Tax Assessor, whichever is less; alternatively, in the event that the affordable units receive LIHTC financing or other State aid, that award shall govern completion of the affordable units provided such financing is provided in an amount sufficient to construct and deliver the remaining 18 affordable units.

**3.8** The remaining market development (medical office, building and the restaurant) will be completed upon 25% building completion of the remaining 18 affordable units, and if issuance of the COs for the remaining 18 affordable units has not been completed at time of completion of Townhomes 11-20, COs may be issued upon posting of a performance bond in the amount of \$2.25 million as described in Article 3.7 above.

3.9 No construction permit for any development contemplated in this agreement shall be issued for any building other than the CVS until the WQMP amendment for centralized wastewater collection and treatment is authorized in an unappealable NJDEP approval and the wastewater collection and treatment facilities are constructed at the sole expense to the Developer.

#### **ARTICLE IV - OBLIGATIONS OF THE BOROUGH**

4.1 **Obligation To Adopt Redevelopment Plan.** The Borough shall adopt the a Redevelopment Plan, which permits the development and zoning standards attached hereto as Exhibits A-D within thirty (30) days following the court approval of this Settlement Agreement or approval of the project from the Highlands Council, whichever is later. The Redevelopment Plan shall be reasonably satisfactory to both the Borough and Developer. In connection with the above actions, the Borough shall comply with all applicable procedural requirements set forth in the Municipal Land Use Law and the case law interpreting same, including, but not limited to, legal notice requirements. All of the time periods set forth in this Article 4.1 may be subject to extension of time, which shall be reasonably agreed upon by the Parties, if at no fault of either Party the required actions cannot be completed within the time periods established. In connection with the above actions, the Borough shall comply with all applicable procedural requirements set forth in the Redevelopment Law and the case law interpreting same, including, but not limited to, legal notice requirements.

4.2 **Obligation To Preserve The Zoning Standards.** The Redevelopment Plan shall not be amended or rescinded except upon the application or consent of the Developer or by Order of the Court for a period of at least 30 years. The Developer's consent of an amendment to the Redevelopment Plan shall not be unreasonably withheld if the general terms of development authorized by this agreement remain unchanged by a Redevelopment Plan amendment that is proposed by the Borough to address public health, safety and the general welfare.

4.3 **Obligation to Process Developer's Land Use Applications with Reasonable Diligence.** The Parties expect and agree that the Borough Land Use Board shall process Developer's development applications with reasonable diligence following Court approval of this Agreement following a duly noticed Fairness Hearing in accordance with N.J.A.C. 5:93-10.1(a) and within the time limits imposed by the MLUL. In the event of any appeal of the Redevelopment Approvals, or Court approval of this Agreement, the Land Use Board shall process and take action on any development application by Developer for the Project, which decision may be conditioned upon the outcome of any pending appeal. To the extent permitted under applicable law, while not a party to this Agreement, it is expected that the Land Use Board will support and endorse and, if possible, sign, any applications of the Developer that are in accordance with this Agreement and to seek expedited Board review of the development applications. It is expected that the Land Use Board will process the development application with reasonable diligence, along with applications for building permits and other municipal permits. The Borough shall take all reasonable steps to foster and facilitate development of the Project in accordance with this Agreement. The Borough shall cooperate in all efforts of

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developer to secure necessary municipal, county and state permits and approvals in an expeditious fashion.

**4.4 Obligation to Refrain From Imposing Cost-Generative Requirements.** The Borough recognizes that the required land use approvals and this Agreement all contemplate the development of an inclusionary affordable housing development within the meaning of the Mount Laurel doctrine. Developer shall be entitled to any benefits, protections, and obligations afforded to developers of affordable developments, in addition to what Developer has agreed to in this Agreement. Therefore, the Borough will not impose development standards and/or requirements that have not been agreed to by the Parties, and would otherwise be considered to be "cost generative." Nothing shall prevent Developer from applying for a waiver or bulk variance from any standard imposed by the Redevelopment Plan and/or the Borough's Zoning and Development Ordinance, as applicable, and the standards set forth in the MLUL and/or the Redevelopment Law, as applicable, shall determine if Developer is entitled to this relief or to a waiver or *de minimus* exception to any standard or requirement of the Residential Site Improvement Standards under the applicable regulations. Notwithstanding the above, the Borough Council and the Land Use Board are under no obligation to grant or approve any request for a variance, waiver or *de minimus* exception. This provision shall not apply to the non-residential components of development that are authorized in this Agreement or by the redevelopment plan to be adopted.

**4.5 COAH Development Fees.** The parties agree that the residential components of the redevelopment plan Agreement shall be exempt from COAH developer fees in accordance with the law, unless Developer receives 9% tax credits, in which case the fees associated with the townhome element of the project shall be non-exempt. The non-residential components of the redevelopment plan as permitted by this Agreement shall not be exempt from COAH developer fees. The Borough acknowledges that TF has requested the Borough to consider utilizing COAH trust fund dollars for funding a portion of the waste water treatment plant which will service the affordable units. The Borough will not agree to an allocation of such fees as part of this Agreement, nor does the Borough concede that the same is required by law. However, TF agrees to provide a *pro forma* demonstrating whether such funding is required in order to create a realistic opportunity for the development to the Borough and the Borough agrees to work with TF in good faith to evaluate a *pro forma*, the need for additional funding for the construction of the sewer plant and the impact of such funding on the Borough's HEFSP and Spending Plan. The Borough reserves the right to retain its own expert to evaluate the *pro forma* and TF agrees that it will be solely responsible for costs associated with that review, outside any escrow created in this Agreement. TF has represented that 31% (8,100 gpd/ 26125 gpd) of the flow from the waste water treatment plant will be utilized by the affordable units. In no event shall any allocation of trust fund dollars from those paid from non-exempt fees from this project exceed the lesser of the following: a) fifty percent (50%) of the trust fund monies that are generated by that portion of the subject project which is not exempt from affordability assistance requirements under COAH's second round regulations (N.J.A.C. 5:93); or b) 50% of the portion of the waste water treatment plan associated with the affordable units (15.5% of the total flow). Nothing contained in this provision shall be interpreted as an acknowledgement that any sewer connection fee law in New

Jersey requires this any expenditure from the Borough's trust fund contemplated herein including the 15.5% figure of the total flow as cited above, which serves as a cap and not an acknowledgment of any legal obligation.

**4.6 Support for Farmland Preservation.** The Borough agrees to adopt a resolution of support for any farmland preservation application made by TF to the Morris County Agricultural Development Board or to the State of New Jersey's Agricultural Development Board, as may be required.

**4.7 Demolition Permit for Sunnyside.** The Borough agrees that TF shall be issued a demolition permit for the building known as Sunnyside from the Construction Official, upon payment of the appropriate fee, without further application to the Land Use Board, subject to all other ordinances of the Borough.

#### **ARTICLE V – MUTUAL OBLIGATIONS**

5.1 Escrow Agreements. Within thirty (30) days of the fairness hearing pursuant to Article 7.2, the Borough and Developer shall enter into escrow agreements for the deposit of escrow amounts required in Sections 1.8 and 2.11 with the Borough to be utilized to tender payment of reasonable fees for professional services, including legal, engineering, planning services and construction inspection, being provided in conjunction with implementation of this Agreement. These escrows are independent of Developer's obligations in connection with subdivisions and site plan applications in accordance with the MLUL. The Borough may transfer funds between the escrow accounts required by this Agreement as needed, and the Borough may sweep any unused escrow funds into the Borough's Affordable Housing Trust Fund without credit to the Developer, which shall be exempt from Section 4.5, above.

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

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

5.4 Failure to Adopt Redevelopment Plan. If the Borough fails to adopt the Redevelopment Plan within the time frames set forth in Section 4.1, then, at the option of Developer, in its sole discretion and by prior written notice to the Borough in accordance with Article VIII of this Agreement, the Parties shall be restored to the status quo ante to the date

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

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

## **ARTICLE VI - COOPERATION AND COMPLIANCE**

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

## **ARTICLE VII: FAIRNESS AND COMPLIANCE HEARING**

7.1 Global Resolution: This Agreement is conditioned upon a global resolution of the Borough's DJ Action with FSHC, which will provide the basis for a HEFSP and eventual Judgment of Compliance and Repose.

7.2 Fairness and/or Compliance Hearing: The final Settlement will be conditioned Court approval at a duly noticed fairness and/or compliance hearing.

## **ARTICLE VIII – NOTICES**

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

MTB

HW

**TO LARISON'S CORNER LLC:**

**Larison's Corner**  
2 North Road,  
Warren NJ 07059  
**Attention Mitchell Berlant**  
Email: [smyers@firstnjrealty.com](mailto:smyers@firstnjrealty.com)

**To TURKEY FARMS ACQUISITIONS, LLC, Turkey Farms Acquisitions**  
237 South Street,  
Morristown NJ 07960  
**Attention Harold Wachtel**  
Email: [halwachtel@aol.com](mailto:halwachtel@aol.com)

**WITH COPIES TO:**

**Fox Rothschild, LLP**  
Attention: Henry L. Kent-Smith, Esq.  
997 Lenox Drive, Building 3  
Lawrenceville, NJ 08648  
Tele: 609- 896-3600  
Fax: 609-482-8901  
Email: [hkent-smith@foxrothschild.com](mailto:hkent-smith@foxrothschild.com)

**TO THE BOROUGH OF CHESTER:**

**Borough of Chester**  
50 North Road  
Chester, NJ 07930  
Attn: Denean Probasco  
Tele: 908 879-3660  
Email: [clerk@chesterborough.org](mailto:clerk@chesterborough.org)

**WITH COPIES TO:**

**Jeffrey R. Surenian and Associates, LLC**  
Attention: Michael Edwards, Esq.  
707 Union Avenue, Suite 301  
Brielle, NJ 08730  
Tele: 732-612-3100  
Fax: (732) 612-3101  
Email [MJE@Surenian.com](mailto:MJE@Surenian.com)

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

**ARTICLE IX – MISCELLANEOUS**

*MTB*

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

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

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

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

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

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

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

**10.8 Necessity of Required Approvals:** The Parties recognize that the site plans required to implement the Project provided in this Agreement, and such other actions as may be required of the Planning Board or Borough under this Agreement, cannot be approved except on the basis of the independent reasonable judgment by the Planning Board and the Borough Council, as appropriate, and in accordance with the procedures established by law. Nothing in this Agreement is intended to constrain that judgment or to authorize any action not taken in accordance with procedures established by law. Similarly, nothing herein is intended to preclude TF from appealing any denials of or conditions imposed by the Planning Board in accordance with the MLUL or taking any other action permitted by law.

MTB

HM

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

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

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

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

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

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

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

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

WLB

HN



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

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

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

**THE REMAINDER OF THIS PAGE IS PURPOSEFULLY BLANK**

WFB

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

Witness/Attest:

*Laurie A. LaVorgna*

**Laurie A. LaVorgna**  
**Notary Public of New Jersey**  
**My Commission Expires**  
**February 27, 2021**

**TURKEY FARMS ACQUISITIONS, LLC**

By: *Harold Natchel*

Name:

Title: *managing partner*

Dated: *10-4-18*

Witness/Attest:

*Laurie A. LaVorgna*

**Laurie A. LaVorgna**  
**Notary Public of New Jersey**  
**My Commission Expires**  
**February 27, 2021**

**LARISON'S CORNER, LLC**

By: *Mitchell T. Berdant*

Name:

Title: *MANAGING PARTNER*

Dated: *OCTOBER 4th 2018*

Witness/Attest:

**BOROUGH OF CHESTER**

By: Janet Hoven  
as its MAYOR

By: \_\_\_\_\_

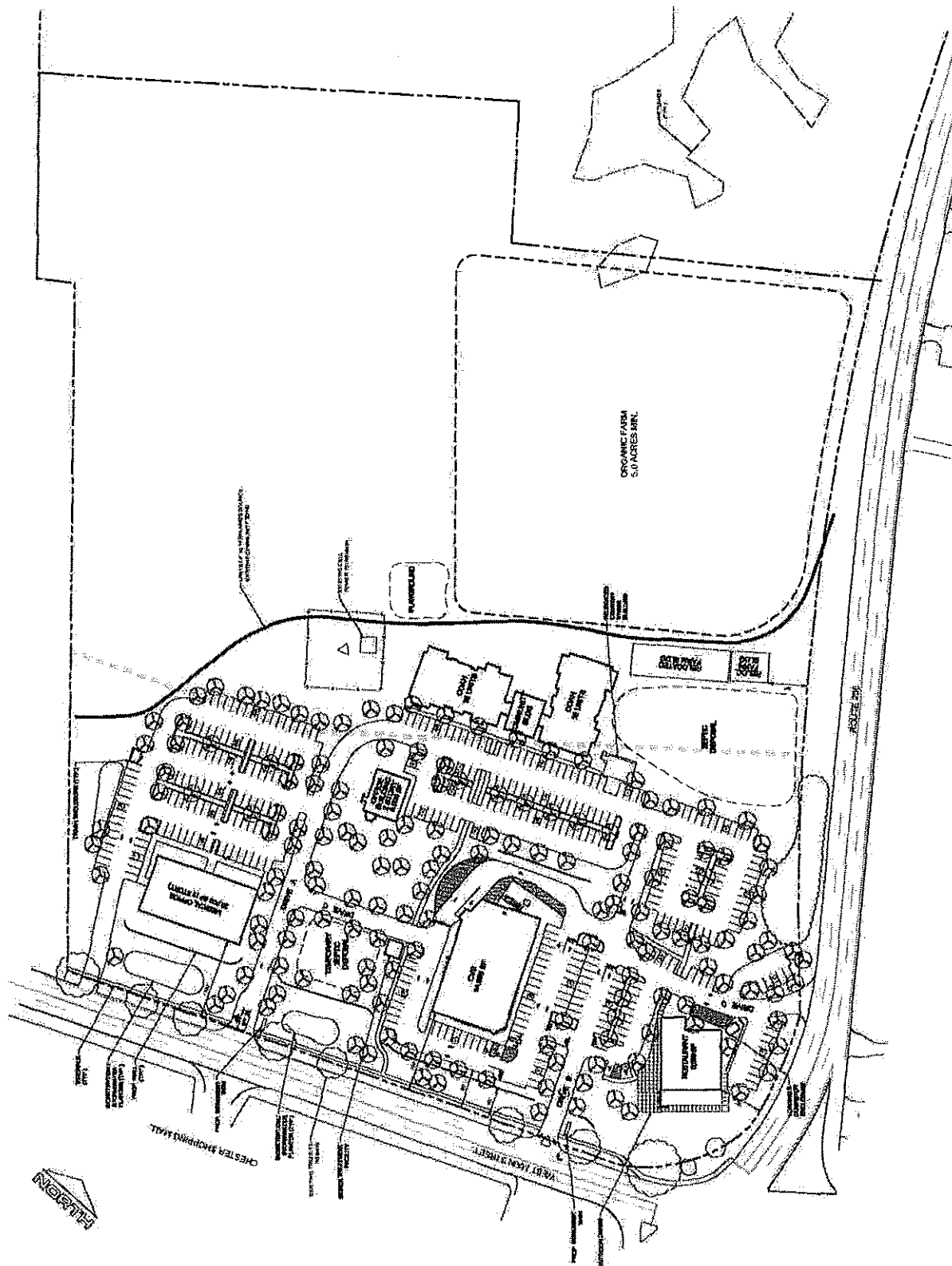
Janet Hoven, Mayor

Dated: \_\_\_\_\_

**EXHIBIT A**

**CONCEPT PLAN FOR TF SITE**

MTB



**ZONE: TURKEY FARM REDEVELOPMENT ZONE**

**EXHIBIT B**

**CONCEPT PLAN FOR MRL SITE**

MTB



# **EXHIBIT C**

## **AH ZONING ORDINANCE STANDARDS FOR TF SITE**

*MTB*

## **ZONE: TURKEY FARM REDEVELOPMENT ZONE**

BLOCK 1, LOT 9, 10, 10.01, 11  
AREA = 1,156,739 S.F. (26.6 AC.)

EXISTING USE: TURKEY FARM / RESTAURANT / FARM  
PROPOSED USE: OFFICE, MEDICAL, RETAIL, RESTAURANT & RESIDENTIAL  
MEDICAL OFFICE - 2 STORY (20,000 SF)  
OFFICE - 2 STORY (5,000 SF)  
CVS - 15,000 SF  
COAH - 36 UNITS TOTAL  
RESTAURANT - 6,500 SF

### **BULK REQUIREMENTS**

<u>ITEM</u>	<u>PROPOSED</u>
MIN. LOT AREA	25 ACRES

### **PRINCIPAL STRUCTURE SETBACKS**

MIN. FRONT YARD SETBACK (WEST MAIN STREET)	75 FT
MIN. FRONT YARD SETBACK (ROUTE 206)	40 FT
MIN. SIDE YARD SETBACK	50 FT
MIN. REAR YARD SETBACK	50 FT
MAX. BUILDING COVERAGE (%)	10%
MAX. IMPERVIOUS COVERAGE (%)	30%
MAX. BUILDING HEIGHT	2 STORIES - 35 FT

### **PARKING REQUIREMENTS \***

MEDICAL - 111 REQUIRED SPACES @ 1 SPACE PER 180 SF	111 SPACES PROPOSED
OFFICE - 20 REQUIRED SPACES @ 1 SPACE PER 250 SF	20 SPACES PROPOSED
COAH - 72 REQUIRED SPACES @ 2 SPACES PER 1 UNIT	72 SPACES PROPOSED
CVS - 84 REQUIRED SPACES @ 1 SPACES PER 180 SF	84 SPACES PROPOSED
RESTAURANT - 75 REQUIRED SPACES @ 1 SPACE PER 3 SEATS	225 SEATS 75 SPACES PROPOSED
COUNTRY STORE - 5 REQUIRED SPACES @ 1 SPACE PER 180 SF	5 SPACES PROPOSED

\* PARKING REQUIREMENTS FROM BOROUGH CODE ARE USED FOR ALL NON-RESIDENTIAL USES. RSIS STANDARDS IS USED FOR RESIDENTIAL USES.

BOROUGH MAY REQUIRE "BANKED PARKING" IF, IN THE JUDGMENT OF THE BOARD OR ITS PROFESSIONALS, IT IS DETERMINED THAT SPECIFIC USES DO NOT NEED THE FULL PARKING REQUIREMENT.

### **NOTES:**

1. PORCHES, DECKS, AND PATIOS ARE NOT INCLUDED IN MINIMUM SETBACK REQUIREMENTS.
2. THE REQUIREMENTS FOR THE TURKEY FARM REDEVELOPMENT ZONE SHALL NOT BE CONSTRUED TO PROHIBIT SUBDIVISION AND NO BULK STANDARDS WILL APPLY TO THE SUBDIVISION.

## **EXHIBIT C (TURKEY FARM)**



# **EXHIBIT D**

## **AH ZONING ORDINANCE STANDARDS FOR MRL SITE**

*MTB*

## ZONE: MILL RIDGE LANE MULTI-FAMILY TOWNHOUSE REDEVELOPMENT ZONE

BLOCK 1, LOT 12.07 & 12.08

AREA = 192,935.6 S.F. (4.43 AC.)

EXISTING USE: VACANT LOT

PROPOSED USE: 20 TOWNHOME RESIDENTIAL UNITS

### BULK REQUIREMENTS

<u>ITEM</u>	<u>PROPOSED</u>
DENSITY OF DEVELOPMENT	4.5 DU/ACRE
MIN. LOT AREA	4.0 ACRES

### PRINCIPAL STRUCTURE SETBACKS

MIN. FRONT YARD SETBACK	50 FT
MIN. SIDE YARD SETBACK	25 FT
MIN. REAR YARD SETBACK	25 FT <sup>3</sup>
MAX. BUILDING COVERAGE (%)	30%
MAX. IMPERVIOUS COVERAGE (%)	50%
MAX. BUILDING HEIGHT (FT)	35 FT
MAX. NUMBER OF STORIES	2 STORIES

### PARKING REQUIREMENTS

RESIDENTIAL PARKING - PER RSIS	70 SPACES PLUS
2.3 PARKING SPACES PER UNIT = 46 SPACES	12 GUEST SPACES

#### NOTE:

1. SETBACKS APPLY TO DECKS, PATIOS AND PORCHES.
2. THE REQUIREMENTS FOR THE MILL RIDGE LANE MULTI-FAMILY TOWNHOUSE REDEVELOPMENT SHALL NOT BE CONSTRUED TO PROHIBIT SUBDIVISION AND NO BULK STANDARDS WILL APPLY TO THE SUBDIVISION.
3. THERE SHALL BE MAINTAINED A 40' SIDE YARD SETBACK INCLUDING A 25' WIDE LANDSCAPED BUFFER COMPRISED OF A DENSE, STAGGERED ROW OF A MIX OF EVERGREEN AND DECIDUOUS TREES AND UNDERSTORY SHRUBS ALONG THE COMMON LOT LINE WITH LOT 12.09. A MINIMUM SETBACK OF 40' SHALL BE MAINTAINED BETWEEN ALL MULTI-FAMILY RESIDENTIAL DEVELOPMENT, INCLUDING PATIOS, DECKS AND PORCHES, AND THE COMMON PROPERTY LINE WITH LOT 12.09.

## EXHIBIT D (MILL RIDGE)

# **EXHIBIT E**

## **TOWNHOME ELEVATIONS**

MTB



ZAROUK & ASSOCIATES  
ARCHITECTS  
P.C. 1111 E. 11th St.  
Tulsa, Oklahoma 74103  
Phone: (918) 438-1111  
Fax: (918) 438-1112

PROJECT: WHIPPANY ROAD  
SHEET: A-5

DATE: 11/11/01  
BY: [Signature]  
CHECKED: [Signature]

SCALE: 1/4" = 1'-0"

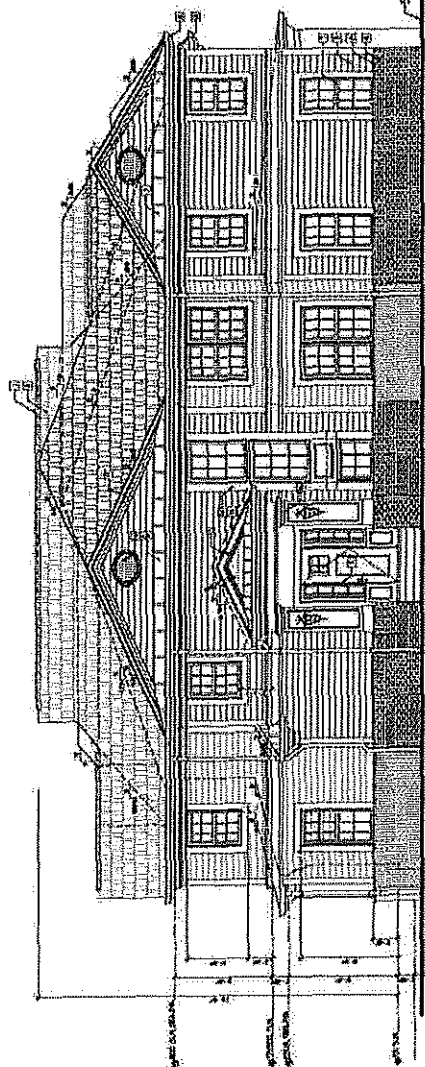
PROPOSED TOWNHOME  
PROJECT FOR  
WHIPPANY ROAD  
DEVELOPERS

ELEVATIONS

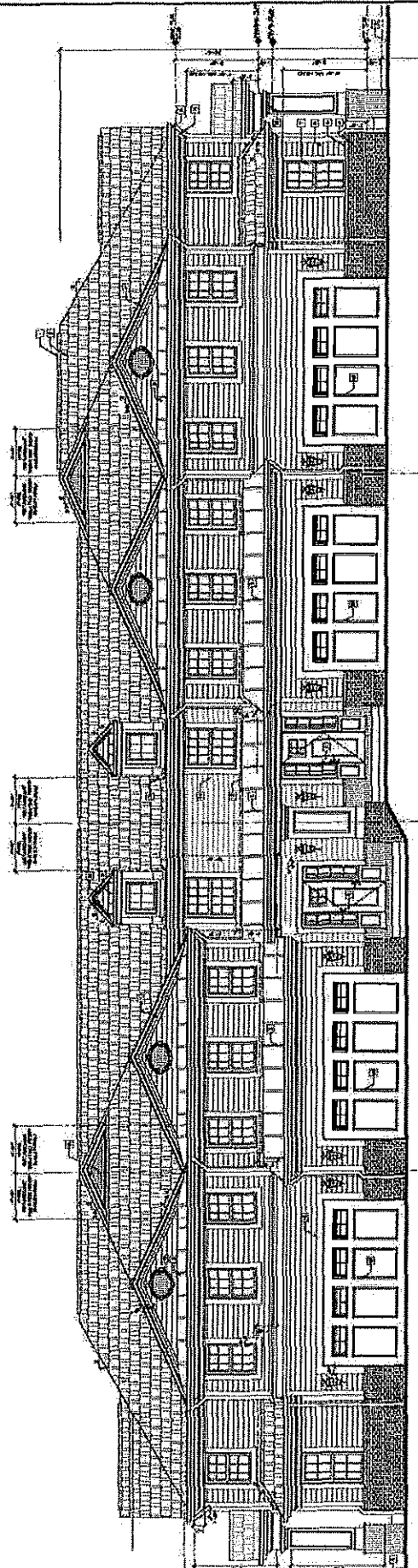
A-5

ELEVATION NOTES:

1. All exterior walls shall be finished with stucco.
2. All exterior walls shall be finished with stucco.
3. All exterior walls shall be finished with stucco.
4. All exterior walls shall be finished with stucco.
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16. All exterior walls shall be finished with stucco.
17. All exterior walls shall be finished with stucco.
18. All exterior walls shall be finished with stucco.
19. All exterior walls shall be finished with stucco.
20. All exterior walls shall be finished with stucco.



RIGHT SIDE ELEVATION  
SCALE: 1/4" = 1'-0"



FRONT ELEVATION  
SCALE: 1/4" = 1'-0"