

In March of 2015, the New Jersey Supreme Court declared the Council on Affordable Housing (COAH) failing and transferred jurisdiction from COAH to New Jersey trial courts in order to adjudicate municipal compliance with their affordable housing obligations. The decision permitted municipalities to file Declaratory Judgment Actions (DJ Actions) with trial courts to seek approval of their Affordable Housing Plans, or risk being sued by a developer. As required, the Borough submitted a Declaratory Judgment to the courts by the prescribed deadline.

The obligation to provide a realistic opportunity for affordable housing stems all the way back to the Mt. Laurel decisions of 1975 and 1983. Those decisions declare that municipal land use regulations which prevent affordable housing opportunities for lower and middle income families are unconstitutional and ordered all New Jersey municipalities to plan, zone for, and take affirmative actions to provide realistic opportunities for their "fair share" of the region's need for affordable housing for low and moderate-income people. The decision to transfer the authority to the courts enabled many developers throughout the State to file for intervener status, effectively giving the developer a "seat at the table" with the municipality in the court. The premise of the intervener is that as a developer they have the land and resources to provide the municipality an opportunity to meet its affordable housing obligation.

The owners of Larison's Turkey Farm located at the intersection of Rt. 206 and Main Street have sought to redevelop their property since 2002. The adjoining vacant land on Mill Ridge Lane was purchased in 2008 and since that time the owners have actively tried to market single-family homes on the site. In August of 2015, the owners filed an objection to the Borough's DJ Action/Fair Share Housing plan and sought intervener status. The owners were granted intervener status over the Borough's objection. With this status, litigation proceedings began between the Borough and the owner as to how the property could be developed to assist the Borough in meeting its affordable housing obligation. Collateral to this litigation, the owner also appealed the decision of the Highlands Council to grant the Borough planning compliance status, which would limit the scope of disturbance on the Turkey Farm property.

The owners' original plan in the affordable housing litigation included a 144 unit apartment complex, 20% of which, or 28 units, would have been designated as affordable housing under Mt. Laurel. This plan was rejected by the Borough. After two and a half years, and expenditures by the Borough in excess of \$300,000 for professional fees, the negotiations between the Borough attorneys, planners and engineers, and with continued input from the Mayor and Council, the following proposal was prepared by the owner and is being considered by the governing body:

- 20 town homes on Mill Ridge
- A 6,500 square foot restaurant to be located at the site of the former Larison's Turkey Farm Restaurant. The restaurant would seat 225 patrons.
- A 14,698 square foot CVS with a drive through window
- A 5,000 square foot office building
- A 20,000 square foot medical office building, and
- 36 affordable housing units to be built and paid for by the developer

The owner would support the Borough's affordable housing plan, and satisfy the Borough's fair share obligation without the need for additional affordable housing units.

The most significant feature of this proposal is that the developer will build and manage the affordable housing units at no cost to the Borough and without any multiplier of market rate units. In almost every other settlement in the State, the number of affordable housing units built is limited to 15 or 20% of a total market rate residential development. For example, a developer seeking to build 100 apartment or townhome units would include 15-20 affordable housing units in the development. The market rate units associated with such projects have a major impact on those municipalities and their public resources. In this case, not only did the Borough avoid any significant increase in market rate units, as is typical in a Mt. Laurel case, but was also able to secure additional commercial tax ratable uses in the process.

It is also important to note that if a municipality does not have a developer to build affordable housing units, and if the municipality does not have adequate funding to meet its affordable housing obligation in its Affordable Housing Trust Fund, then the municipality is required by law to bond for the building of the affordable units. The bond obligation is paid by the taxpayers of the municipality.

Also of significance in the proposed terms is the appointment of an ad-hoc committee which will assist the developer in the site and design process. The Mayor and Council will appoint this committee at a later date should the terms of the agreement be accepted by the Borough.

The terms of the proposed plan are attached, as is a conceptual drawing of the development. Plans are also on display at the Borough Hall. The Mayor and Council will deliberate on this plan at the next regularly scheduled meeting on Tuesday, September 18 at 7:00 PM at the Borough Hall at 50 North Road. The public is welcome to attend.

Any comments regarding the plan may be directed to: [Development@ChesterBorough.org](mailto:Development@ChesterBorough.org). In order to be fully compliant with the New Jersey Open Public Records Act and the New Jersey Open Public Meetings Act, no responses will be provided to questions or comments received regarding this plan via email, personal contact with a public official, or social media, prior to the public meeting on September 18, 2018.

Respectfully,

BOROUGH OF CHESTER

A handwritten signature in black ink, appearing to read "Janet G. Hoven", written in a cursive style.

Janet G. Hoven  
Mayor

## Term Sheet

### Preamble

This Term Sheet is intended to serve as an agreement in principle to serve as the foundation for a future settlement agreement. The term sheet contains only major terms that are mutually agreeable between the parties at this time with the understanding that there are additional details and issues which must be resolved in a comprehensive Settlement Agreement and which may impact ancillary terms contained in this document.

### Definitions

TF: Shall refer to Turkey Farm Acquisitions, LLC with an address of 237 South Street, Morristown NJ 07960 ("TF"), the owner of the Turkey Farm Tract.

LC: Shall refer to Larison's Corner LLC with an address at 2 North Road, Warren NJ 07059, the owner of the Mill Ridge Tract

Developer: Shall refer to TF and LC collectively.

The Borough: Shall refer to the 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.

The Parties: Collectively the Developer and the Borough shall be referred to as the Parties.

Turkey Farm Tract: The TF Tract is real property located at Block 101, Lots 13, 14, 15 & 16, with a street address of 2 West Main Street, Chester.

Mill Ridge Tract: The Mill Ridge Tract is real property located at Block 101, Lots 12.07, 12.08, 12.10 & 12.11.

The Site: Collectively, the Mill Ridge Tract and the Turkey Farm Tract shall be referred to as the Site.

The Project: Shall refer to the development of the Site.

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 Term Sheet (as may be modified pursuant to this agreement and collaboration with the Highlands Council.

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.

## **Basic Terms and Conditions**

### **Article I – Redevelopment Plan**

- 1.1 The Borough shall designate the Site as an area of need of redevelopment and adopt a redevelopment plan for the purposes of achieving zoning to achieve the Project described herein as may be modified or supplemented through the negotiations of a final Settlement Agreement.
- 1.2 The Borough of Chester shall permit the following construction and uses on the Turkey Farm Tract in accordance with the development concept plan entitled “Turkey Farm Concept Development Plan” prepared by Bowman Engineering, dated , and attached hereto as Exhibit A:
  - 1.2.1 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.
  - 1.2.2 Medical Facility: The building shall not exceed two stories and 20,000 sq. feet and shall only be used medical services, medical office and related purposes.
  - 1.2.3 5,000 Square Foot Office Building.
  - 1.2.4 Organic Farm: The organic farm shall not exceed the present farmed area unless TF secures all required permits from the Highlands Council and Morris County Agriculture Development Board to expand farming area to ten (10) acres for purpose of Farmland Preservation, and all farming activities shall be permitted outside the ECZ.
  - 1.2.5 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
  - 1.2.6 CVS: The CVS shall not exceed 15,000 sq. feet
  - 1.2.7 On-site sewer package treatment facility
  - 1.2.8 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 The Borough of Chester shall permit the following construction and uses on the Mill Ridge Tract in accordance with the development concept plan entitled “Mill Ridge Lane Multi-family Townhouse Concept Development Plan”, dated , and attached hereto as Exhibit B:
  - 1.3.1 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;
  - 1.3.2 Single Family: One (1) single family detached dwelling on Lot 12.10 and one detached single-family dwelling on Lot 12.11
  - 1.3.3 The above uses on the Mill Ridge Tract described in Article 1.3 shall be substantially consistent with the Concept Plan, which is attached hereto as Exhibit B
  - 1.3.4 The design and appearance of the Townhomes shall be subject to Borough approval or consistent with adopted ordinances/zoning standard.

1.4 Design, Architectural, Landscaping, Elevations and Related Features for the Site:

1.4.1 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.

1.4.2 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.

1.4.3 The Site shall be developed in a manner substantially consistent with Exhibits A and B to this Term Sheet as may be further revised, amended, supplemented or refined in a final Settlement Agreement;

1.4.4 The Parties mutually agree that the following general standards shall apply:

1.4.4.A Parking: The Concept Development Plan shall be revised to reduce the number of parking stalls at the CVS to reduce the overall number of spaces for the CVS to 63 spaces;

1.4.4.B Cell Tower: TF agrees to research the feasibility of masking the cell tower in a silo, or similar stealth design feature prior to signing the settlement agreement between Chester Borough and the Developer, the outcome of which shall be documented in the settlement agreement. In no event shall the stealth design include a pine tree branching stealth design. In the event that TF 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.

1.4.4.C Existing Community Zone: All buildings associated with the Project as it relates to the Turkey Farm Tract shall be developed in the Existing Community Zone as currently constituted;

1.4.5 WQMP Amendment: The Parties acknowledge that the Project will require a WQMP amendment from the NJDEP. At no cost to the Borough, it will endorse an application by Developer 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.

1.4.6 Highlands RMP Adjustment: The Parties acknowledge that the Project will require an adjustment to the mapping of the protection zone on the Mill Ridge Tract. At no cost to the Borough will endorse an application by Developer to modify the RMP mapping as it relates to the Mill Ridge Tract only to facilitate the development envisioned herein.

1.4.7 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 Developer, through an

escrow account to be established by the developer in an amount not to exceed \$25,000.00, unless agreed to increased amount by the Developer in advance of exhausting the \$25,000.00.

## **Article II – Affordable Housing**

2.1 Affordable Housing: TF Agrees to produce 36 family rental affordable units plus any applicable bonus credits and further agrees to deed restrict those units in accordance with the following:

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

2.1.2 In addition, the affordable units shall remain affordable rental units for a period of thirty (30) years from the date of their initial occupancy (“Deed-Restriction Period”) so that the Borough may count the units against its obligations to provide family rental affordable housing. This obligation includes, but is not limited to Developer’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 such that the rent charged for all units do not exceed 52% affordability average for rent prescribed in UHAC (N.J.A.C. 5:80-26.3(d), (4) affirmative marketing requirements, (5) candidate qualification and screening requirements, tenant placement and annual tenant income recertification, (and (6) deed restriction requirements. 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.

2.2 Phasing: The Project shall be phased to ensure sufficient incentive for a) the development of the affordable units and b) the development of a full-scale waste water treatment facility to serve all development authorized in this agreement.

2.2.1 All improvements associated with the Project on the Turkey Farm tract shall be connected to a centralized treatment facility, which shall be located in the ECZ as currently constituted.

2.2.2 The Parties agree that a temporary septic solution 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 the phasing requirements in this Term Sheet, as may be modified in a final Settlement, are complied with.

- 2.2.3 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 Sections 2.2.8 and 2.2.9 below and in an additional amount for the sewer package treatment facility to be negotiated as part of the final Settlement Agreement.
- 2.2.4 There shall be no construction permit issued for construction of the CVS until the WQMP amendment for centralized wastewater collection and treatment is authorized in an unappealable NJDEP approval.
- 2.2.5 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 Developer is diligently proceeding with the development and construction of the affordable units.
- 2.2.6 Prior to the completion of the first 18 affordable units, the Parties agree that COs for the first five Town Homes on the Mill Ridge Tract may be granted provided that the 18 affordable units are under construction as defined in this Term Sheet, as may be modified in a final Settlement.
- 2.2.7 Upon completion of the first 18 affordable units (50% of the total affordable units) Developer will be entitled to COs for 50% of the total market project, including 10 townhomes, the CVS and the office building.
- 2.2.8 TF and Mill Ridge 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 second 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; \_\_ or 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 second 18 affordable units.
- 2.2.9 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 2.2.7 above.
- 2.2.10 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 under construction, all at the sole expense to the Developer.

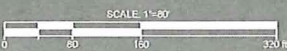
### **Article III – Miscellaneous**

- 3.1 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. Developer agrees to withdraw its Highlands Appeal (DOCKET) upon a final resolution with the Highlands Council and Borough pursuant to Article 1.4.6 and 1.4.7 of this Term Sheet as may be modified.
- 3.2 Attorney Fees: Subject to a resolution of this agreement, Developer agrees to pay a sum to be determined for the Borough's attorney's fees and approval of its HEFSP through the resolution of the DJ Action.
- 3.3 Global Resolution: The final Settlement will be conditioned upon a global resolution of the Borough's DJ Action with FSHC.
- 3.4 Fairness and/or Compliance Hearing: The final Settlement will be conditioned on Court approval at a duly noticed fairness and/or compliance hearing.
- 3.5 Escrow for Development Plan and Ordinances: Developer agrees as part of a final settlement agree to place funds into escrow for the purposes of paying the costs for the Borough's professionals to prepare a Redevelopment Plan and ordinances implementing this Agreement. The initial escrow deposit shall be an amount determined prior to the Borough signing the final development agreement with Developer.
- 3.6 Traffic Light: Developer shall retain its own expert to study the need for a traffic signal, at Developers expense. However, the Borough shall retain the right to have its own expert review Developer's Expert's Conclusion at the expense of Developer.





DATE: 08/14/2018  
PROJ.: 080024-00-001



**CHESTER TURKEY FARM  
SITE PLAN RENDERING**  
BLOCK 1, LOTS 9, 10, 10.01, 11, 12.07, 12.08, 12.10 & 12.11  
BOROUGH OF CHESTER, MORRIS COUNTY, NEW JERSEY

**Bowman**  
CONSULTING

**EXHIBIT A AND B**