

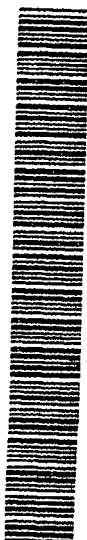
LITIGATION SETTLEMENT AGREEMENT

This Litigation Settlement Agreement made as of May 18, 2012 by and among Woodbury Heights Development, LLC ("WHD"), a limited liability company of the State of New Jersey, with a business address of 770 Township Line Road, Suite 150, Yardley, PA 19067; BOROUGH OF WOODBURY HEIGHTS ("BOROUGH"), a New Jersey municipal corporation with a principal address of 500 Elm Avenue, Woodbury Heights, NJ 08097; and PLANNING BOARD OF THE BOROUGH OF WOODBURY HEIGHTS ("PLANNING BOARD"), a New Jersey municipal planning board having an address of 500 Elm Avenue, Woodbury Heights, NJ 08097.

**WHEREAS (1st)**, WHD is the owner and developer of property within the Borough, which property is designated on the tax map of the Borough as Block 80, Lot 1 ("Property");

**WHEREAS (2nd)**, in or about 2006, WHD received approval for the development of a residential project that proposed two hundred seventy four (274) residential, age restricted units;

**WHEREAS (3rd)**, following that 2006 approval, but prior to proceeding with development, WHD filed a builder's remedy lawsuit against the BOROUGH and PLANNING BOARD alleging that the Borough had failed to comply within its constitutional obligations pursuant to the *Mount Laurel* Doctrine as expressed in *Southern Burl. Co. NAACP v. Tp. of Mount Laurel*, 92 N.J. 158 (1983) ("*Mount Laurel II*"), the New Jersey Fair Housing Act,



N.J.S.A. 52:27D-301, et seq. (the "FHA") and applicable regulations promulgated pursuant to the FHA (the "Regulation");

**WHEREAS (4th)**, the Litigation was captioned "*Woodbury Heights Development, LLC v. Borough of Woodbury Heights and the Planning Board of the Borough of Woodbury Heights*," filed in the Superior Court of New Jersey, Law Division - Gloucester County, as Docket No. GLO-L-1750-09 (the "Litigation");

**WHEREAS (5th)**, during the course of the Litigation, WHD filed a Motion for Summary Judgment that, if granted, may have approved a project consisting of two hundred seventy four (274) residential, non-age restricted units;

**WHEREAS (6th)**, during the pendency of WHD's Motion for Summary Judgment, the Parties began to discuss the potential for settlement;

**WHEREAS (7th)**, as a result of such settlement discussions, the Parties have reached an agreement so as to provide for a less intensive development of the Property that still provides for the production of affordable housing to assist the BOROUGH in meeting its affordable housing obligations under the *Mount Laurel Doctrine*;

**WHEREAS (8th)**, in fulfillment of its responsibilities under this Agreement, the Borough has adopted the Ordinance (hereinafter defined);

**WHEREAS** (9th), this Agreement is contingent upon Court approval of this Agreement following a Fairness Hearing, all in accordance with applicable legal requirements; and

**NOW, THEREFORE**, in consideration of the mutual covenants, promises and terms and conditions provided herein, it is agreed by and among WHD, BOROUGH and PLANNING BOARD as follows:

**1. PURPOSE**

1.1. This Agreement is reached after due deliberation by all PARTIES and upon the considered judgment of all PARTIES that it is in the best interest of the public good and welfare to settle all claims asserted by WHD in the Litigation upon the terms and conditions contained herein so as to advance affordable housing purposes and objectives in a manner consistent with sound land use planning principles.

1.2. The intent of this Agreement and the proposed Ordinance is to permit development on the WHD Property of a maximum of 234 multifamily units, including 34 units affordable to low and moderate income households consistent with the criteria in Section 5.11 (the "Project"). If fewer than 234-units are approved for development, the intent is to maintain a set-aside of at least 14.5 percent.

**2. COURT APPROVAL AND MOUNT LAUREL FAIRNESS HEARING**

2.1. The obligations of the PARTIES under this Agreement are contingent upon Court approval of this Agreement and the

Ordinance following a Fairness Hearing conducted in accord with applicable case law, including, but not limited to the procedures proscribed by the Appellate Division in *East/West Ventures v. Borough of Fort Lee*, 286 N.J. Super. 311 (App. Div. 1996) and associated case law.

2.2. Within ten (10) days after execution of this Agreement, the PARTIES shall make application to the Court for the scheduling of a Fairness Hearing for approval of this Agreement and the Ordinance (hereinafter defined). Following the scheduling of a Fairness Hearing date, BOROUGH shall comply with all notice requirements as may be directed by the Court.

2.3. The PARTIES agree to cooperate and participate in the defense of any challenge to or appeal of the contemplated Court approval, this Agreement, the Ordinance or any related implementing action.

2.4. Each PARTY shall be responsible for its own costs and expenses associated with seeking Court approval for and implementing this Agreement, including any litigation defense costs. This provision shall not be construed to preclude joint representation of BOROUGH and PLANNING BOARD in any litigation or other proceeding. All decisions as to strategy as to particular actions to be taken in defense of any litigation shall be within the sole discretion of each PARTY.

2.5. WHD acknowledges that BOROUGH and PLANNING BOARD intend to seek Court approval of the Borough's Housing Element and Fair Share Plan (the "Compliance Plan"), including possible amendments thereto, in continued proceedings directed at entry of a Compliance Judgment that will constitute a final adjudication of any and all affordable housing claims against BOROUGH and will entitle BOROUGH to 10 years of repose and related rights and protection from affordable housing litigation in accordance with principles set forth in the *Mount Laurel II* decision and the FHA. WHD agrees to cooperate with and support BOROUGH and PLANNING BOARD in connection with such continuing judicial proceedings. However, this matter shall proceed independent of the BOROUGH'S efforts to obtain a Compliance Judgment.

2.6. The obligations of the PARTIES under this Agreement are contingent on Court approval as contemplated by this Section 2. If this Agreement is not approved by the Court within ninety (90) days after execution, then each PARTY shall have the unilateral option of terminating this Agreement and continuing with the Litigation.

### **3. OBLIGATIONS OF THE BOROUGH**

3.1. BOROUGH has rezoned the WHD Property in fulfillment of its responsibilities under this Agreement for multifamily development subject to an affordable housing set-aside

requirement as set forth in Section 5.1 hereunder, consistent with the Ordinance attached hereto as Exhibit A (the "Ordinance").

3.2. BOROUGH has an obligation to maintain the rezoning for 10 years subsequent to the date of Court approval of this Agreement.

3.3 BOROUGH shall have an obligation to retain an Administrative Agent to perform administrative tasks. The administrative tasks shall include, but are not limited to promptly carrying out the following: (i) appropriately marketing the affordable units, (ii) screening potential applicants for the units to ensure that they qualify as low or moderate households, (iii) pricing the units at affordable rates, (iv) ensuring that the affordable units are properly deed restricted, (v) overseeing re-renting of the units to insure that subsequent renters qualify as affordable tenants and (vi) enforcing any and all other Uniform Housing Affordability Control ("UHAC") requirements and requirements of the Commissioner as to the affordability of the units.

3.4. BOROUGH shall contract with a properly-certified administrative agent within 120 days of a request by WHD. WHD shall serve notice of said request upon the Mayor and Council, the Borough solicitor, and Mount Laurel counsel for Woodbury Heights. Said Administrative Agent shall perform the necessary

services to establish and maintain the creditworthiness of the affordable units in the Project as required by applicable regulations.

3.5. BOROUGH represents that there are currently no restrictions on the ability of WHD to obtain public water and sewer service for the Property. Further, the BOROUGH agrees to cooperate with WHD in its efforts to obtain utility service for the Property, including but not limited to all necessary approvals from the Gloucester County Planning Board, New Jersey Department of Environmental Protection, Conrail and any other agencies having jurisdiction over the proposed development provided that such cooperation does not require the Borough to retain professionals or use professionals other than employees of the Borough.

3.6. BOROUGH shall have an obligation to fulfill the intent and purpose of this Agreement and the Ordinance.

#### **4. OBLIGATIONS OF PLANNING BOARD**

4.1 PLANNING BOARD acknowledges that as an inclusionary developer, WHD shall be entitled to expeditious review and processing of its development application(s), and PLANNING BOARD agrees to make a bona fide effort to expedite all requisite municipal development approvals, which may include the scheduling of special meetings and adjustments to meeting agendas, consistent with the intent of N.J.A.C. 5:97-10.3.

PLANNING BOARD agrees that at a minimum of at least one meeting per month will be devoted to WHD's development application(s).

4.2 PLANNING BOARD shall grant reasonable waivers and variances from the requirements of the Ordinance provided that the applicant satisfies the criteria set forth in the MLUL to warrant such relief.

4.3. In connection with development application review proceedings, PLANNING BOARD will offer WHD the option of either preparing expert reports itself or preparing traffic and environmental impact studies or, as to each such study, choosing a consultant from a list of at least six (6) professionals prepared by PLANNING BOARD to prepare the study or studies. If WHD chooses a consultant from the municipally prepared list, WHD and PLANNING BOARD will rely on the consultant's recommendations and no other study or studies, as applicable, will be prepared on such subject(s); consistent with N.J.A.C. 5:97-10.4. Nothing herein shall preclude the PLANNING BOARD from disagreeing with the recommendations of any of the consultants for good reason or from considering other testimony related to the areas of expertise of the experts it is required to rely upon.

4.4. PLANNING BOARD represents that it is aware of no restrictions on the ability of WHD to obtain public water and sewer service for the Property. Further, PLANNING BOARD agrees to cooperate with WHD in its efforts to obtain utility service



for the Property, including but not limited to all necessary approvals from the Gloucester County Planning Board, New Jersey Department of Environmental Protection, Conrail and any other agencies having jurisdiction over the proposed development provided that such cooperation does not require the Planning Board to retain professionals or use professionals other than employees of the Planning Board.

4.5. Neither the BOROUGH nor the PLANNING BOARD shall subject the residential development contemplated and authorized by the Ordinance and this Agreement to any affordable housing development fee requirement, since the development will constitute an inclusionary development.

4.6. PLANNING BOARD shall have an obligation to fulfill the intent and purpose of this Agreement and the Ordinance.

#### **5. OBLIGATIONS OF WHD**

5.1. If PLANNING BOARD approves an application for 234-units, WHD shall reserve and restrict 34 of the units for low and moderate income households. If PLANNING BOARD approves an application for fewer than 234-units, WHD shall have the right to reduce the number of affordable units provided that the developer maintain a set aside of at least 14.5%.

5.2. If PLANNING BOARD approves an application for 234 units, WHD agrees to limit the total number of bedrooms in the market rate units within the Project to no more than three

hundred twenty (320) total bedrooms. If the Board approves an application for fewer than 234 units, then the limit on the number of bedrooms on market rate units shall be reduced commensurately.

5.3. WHD shall not provide any three (3) bedroom market rate units within the Project.

5.4. WHD shall rent the affordable units.

5.5. Notwithstanding anything herein to the contrary, WHD shall take all necessary steps to make the affordable units provided for under the Settlement Agreement and in the approved site plan creditworthy under UHAC regulations, the regulations of the DCA Commissioner, as the successor to COAH, and all other applicable laws. WHD shall also maintain the creditworthiness of the affordable units over the 30-year period of restriction. Such steps shall include, but not be limited to complying with the bedroom distribution for the affordable units, integrating the affordable units in accordance with the approved site plan provided that the project is a rental project and otherwise cooperating with the Administrative Agent who shall be responsible for performing all administrative tasks.

5.6. All costs related to the administrative tasks associated with the affordable units in the Project shall be borne by WHD.

5.7. In the event that BOROUGH does not contract with a properly-certified administrative agent as set forth at §3.3, WHD shall be free to retain a certified Administrative Agent at its cost to perform the administrative tasks set forth above and to otherwise maintain the creditworthiness of the units. If WHD retains an administrative agent, WHD shall be responsible for all duties associated with the administrative agent that would otherwise be the responsibility of the BOROUGH. The duties of such an administrative agent retained by WHD would be limited to the tasks associated with the Project only.

5.8. If the PLANNING BOARD approves an application for 234-units and if WHD accordingly provides 34 affordable units, as required hereby, the bedroom distribution of the affordable units required by applicable regulations shall be as follows:

7 one-bedroom units

20 two-bedroom units

7 three-bedroom units

5.9. WHD shall disburse the affordable units throughout the development and shall not concentrate the affordable units in a single building provided that the market units are primarily rental units. If the market units are for-sale, WHD shall be permitted to concentrate the affordable units at its discretion for ease in administration of those units.

5.10. WHD shall present a development application consistent with the terms of the Ordinance and shall not seek modifications to the zoning applicable to the subject property.

5.11. WHD shall present a development application substantially consistent with a certain plan entitled "Sketch Plan Multi-Family - Academy Pointe", prepared by Glackin Thomas Panzak, last dated August 31, 2011 and attached hereto as Exhibit B(the "Concept Plan").

5.12. WHD shall present a development application subject to the design criteria and related requirements set forth below:

a. To facilitate prohibition of utilizing the den in one-bedroom units as a bedroom, WHD agrees to the following restrictive measures:

(i) The inclusion of a provision within all lease agreements, and the enforcement of such a provision, prohibiting the den to be used as a bedroom or sleeping area; and

(ii) The design of any den area may include either a closet or a door, but shall not include both design features.

b. There shall be at least a minimum of three points of vehicular ingress and egress access to the site, two of which shall be located on Academy Avenue and one on Chestnut Avenue; WHD agrees, if determined to be needed by

a traffic engineering study acceptable to the Board, to add one or more accesses if so recommended.

c. The building design shall incorporate a combination of exterior elevation materials and the buildings shall include breaks in the building facades. Roofs shall either be pitched or, if flat, incorporate design techniques to shield any equipment to be located on the roofs of buildings within the Project. The exterior finishes for the buildings shall include stone, stucco or other combinations of materials.

d. The Project shall consist of no more than nine buildings, each of which shall not exceed three stories in height.

e. WHD shall comply with all RSIS requirements.

f. WHD shall provide at least the following amenities: a Community Center with a minimum of a 5,000 square foot community activity room, a swimming pool, and two tot lots.

g. WHD shall construct the Community Center in the first phase of development.

5.13. The proposed development of the Property shall be governed by the provisions of the Ordinance and current BOROUGH land use and zoning regulations and shall require preparation of detailed conforming development plans and subdivision and/or site plan approval proceedings, as applicable, in accordance

with procedural requirements of the MLUL and the provisions of this Agreement.

5.14. WHD acknowledges that as a condition of preliminary and/or final site plan and/or subdivision approval, PLANNING BOARD may require on-site and off-site improvements as appropriate consistent with the MLUL. WHD shall comply with all such conditions.

5.15. In addition to those conditions that may lawfully be imposed on the Project, WHD agrees to accept a condition of approval for the Project that requires WHD to provide sidewalks and appropriate lighting for these sidewalks, both on tract and off tract, to allow sidewalk access to the Woodbury Heights Elementary School. All off tract sidewalks to be installed shall be installed on property either owned by the Borough or on property located within the Borough's right-of-way. WHD shall be responsible for the costs of any permits and/or fees, including inspection fees, incurred in connection with the construction of the off tract sidewalks and related lighting. WHD further agrees to cooperate with PLANNING BOARD professionals to ensure that the aforementioned sidewalks and lighting are appropriately provided by WHD.

5.16. WHD agrees that if the market units in the Project are operated as rental units, certain measures should be taken to ensure that occupancy levels within such units of the

Project are maintained at a safe and reasonable level. Accordingly, in the event that WHD, and or its successors and/or assigns, own and/or manage any of the market units in the Project as rental units, such rental units shall be restricted by occupancy to two (2) persons per bedroom. For purposes of such a restriction, a "person" shall not include those children under the age of two. WHD agrees to provide for such a restriction within its lease and/or rental agreements and take all reasonable measures permissible under New Jersey law to enforce such a restriction. There shall be no occupancy restrictions imposed on units within the Project if such units are sold for fee-simple ownership.

5.17. WHD accepts and will comply with the requirement that any development approval granted by PLANNING BOARD for the Property shall incorporate by reference this Agreement, shall be consistent with all terms and provisions of this Agreement, and shall include an express condition requiring compliance by WHD with all obligations under this Agreement.

5.18. WHD shall have an obligation to fulfill the intent and purpose of this Agreement and the Ordinance.

5.19 WHD shall take no direct or indirect action to interfere with implementation of BOROUGH'S Compliance Plan or any subsequent amendment thereto, provided that any amendment does not deprive WHD of any express rights created hereunder.

6. NOTICES

6.1. The PARTIES and their respective counsel agree to promptly provide each other with notice of any lawsuits, actions, governmental proceedings or administrative proceedings, whether threatened or pending, which could have a material adverse impact on implementation of this Agreement.

6.2. All notices required under this Agreement shall be in writing and shall be given by facsimile, certified mail return receipt requested or same-day or overnight delivery service providing delivery confirmation. All notices shall be deemed received upon the date of delivery. Unless notice of a change in name or address has been provided to the other PARTIES, the persons and entities entitled to receive notice shall be as follows:

TO WHD:

Woodbury Heights Development, LLC  
770 Township Line Road, Suite 150  
Yardley, PA 19067  
Attn: Andrew Brookman, Esquire  
Steve Spaeder  
Telecopier: (610) 355-1871 and (215) 575-2434

Richard J. Hoff, Esq.  
Bisgaier/Hoff  
21 Tanner Street  
Haddonfield, NJ 08033  
Telecopier: 856.784.7407

TO BOROUGH:

Borough Clerk



Borough of Woodbury Heights  
Borough Hall  
500 Elm Avenue  
Woodbury Heights, NJ 08097  
Telecopier: (856) 848-2381

Barry Lozuke, Esquire  
Zane & Lozuke  
131 Delaware St.  
Woodbury, NJ, 08096  
Telecopier: (856) 845-6121

Jeffrey R. Surenian and Associates, LLC  
707 Union Avenue, Suite 301  
Brielle, New Jersey 08731  
Telecopier: 732 612 3101

TO PLANNING BOARD:

Borough of Woodbury Heights Planning Board  
Borough Hall  
500 Elm Avenue  
Woodbury Heights, NJ 08097  
Telecopier: (856) 848-1763

Gerald Sinclair, Esquire  
Gerald A. Sinclair, P.C.  
38 Cooper Street  
Woodbury, NJ 08096  
Telecopier: 856-848-7772

**7. MISCELLANEOUS PROVISIONS**

7.1. The terms and conditions set forth in this Agreement shall bind and inure to the benefit of and/or be the responsibility of the current Parties and any successor in interest of any PARTY to this Agreement and may be enforced by any such PARTY. WHD shall record this Agreement within 14 days of approval by the Court.

7.2. This Agreement is the entire agreement between the PARTIES concerning all matters referred to herein and supersedes all prior oral and written promises, conditions, representations, undertakings, and interpretations of any nature whatsoever that are not incorporated within this document.

7.3. This Agreement may be executed simultaneously in one or more counterparts, each of which shall be deemed an original

7.4. The preamble to this Agreement is hereby incorporated as if contained in the body of same.

7.5. The PARTIES acknowledge that this Agreement was not drafted by any one PARTY, but was drafted, negotiated and reviewed by all PARTIES and, therefore, the presumption of resolving ambiguities against the drafter shall not apply.

7.6. Each PARTY expressly represents 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.

7.7. Each PARTY waives all rights to challenge the validity or enforceability of this Agreement.

IN WITNESS WHEREOF, the PARTIES' authorized representatives have signed this Agreement.

ATTEST:

BOROUGH OF WOODBURY HEIGHTS

By: Harry W. Elton, Jr.  
Mayor Harry W. Elton, Jr.

WOODBURY HEIGHTS PLANNING BOARD

By: Richard Phalines  
Richard Phalines

WOODBURY HEIGHTS DEVELOPMENT, LLC

By: Stephen M. Spaeder  
Stephen M. Spaeder  
Senior Vice President

[Signature]  
[Signature]

[Signature]

ACKNOWLEDGEMENTS

STATE OF NEW JERSEY

SS:

COUNTY OF GLOUCESTER:

BE IT REMEMBERED that on MAY, 18, 2012,<sup>aka</sup> personally came before me and acknowledged under oath, to my satisfaction, that: (a) She/He ~~is~~ <sup>HARRY W. ELTON, JR.</sup> the MAYOR of the Borough of Woodbury Heights, the municipal corporation named in this Litigation Settlement Agreement; (b) ~~She/He~~ <sup>she</sup> is the attesting witness to the signing of this Litigation Settlement Agreement by the proper municipal official, JANET PIZZI, who is the CLERK of the Borough of Woodbury Heights; and (c) this Litigation Settlement Agreement was signed and delivered by the Borough of Woodbury Heights as its voluntary act duly authorized by a proper resolution of the Borough Council.

[Signature]  
Notary Public of the State of New Jersey  
**ANNE L. DEECK**  
**NOTARY PUBLIC OF NEW JERSEY**  
My Commission Expires July 19, 2014

STATE OF NEW JERSEY

SS:

COUNTY OF GLOUCESTER:

BE IT REMEMBERED that on MAY 18, , 2012,<sup>JP</sup> personally came before me and acknowledged under oath, to my

satisfaction, that: (a) She/He <sup>Richard PHALINGS JP</sup> is the ~~Chairman~~ of the Borough of Woodbury Heights Planning Board, the municipal corporation named in this Litigation Settlement Agreement; (b) She/He is the attesting witness to the signing of this Litigation Settlement Agreement by the proper municipal official, ANNE L. DEECK, who is the ~~secretary~~ of the Planning Board of the Borough of Woodbury Heights; and (c) this Litigation Settlement Agreement was signed and delivered by the Borough of Woodbury Heights as its voluntary act duly authorized by a proper resolution of the Planning Board.

Janet Logan Pizzi  
Notary Public of the State of New Jersey

**JANET LOGAN PIZZI**  
**NOTARY PUBLIC OF NEW JERSEY**  
My Commission Expires September 1, 2014

Notary Public of the State of New Jersey

STATE OF PENNSYLVANIA

SS:

COUNTY OF PHILADELPHIA:

BE IT REMEMBERED that on MAY 10, 2012, Stephen M. Spaeder, Senior Vice President of Woodbury Heights Development, LLC ("WHD") personally came before me and acknowledged under oath, to my satisfaction, that WHD is named in this Litigation Settlement Agreement and that this Litigation Settlement Agreement was signed by him on behalf of WHD as its voluntary and duly authorized act.

Notary Public of the State of Pennsylvania  
Mary E Lord

COMMONWEALTH OF PENNSYLVANIA  
NOTARIAL SEAL  
MARY E. LORD, Notary Public  
City of Philadelphia, Phila. County  
My Commission Expires April 26, 2015

List of Exhibits

Exhibit A - Ordinance 6 - 2012

Exhibit B - "Sketch Plan Multi-Family - Academy Pointe",  
prepared by Glackin Thomas Panzak, last dated August 31, 2011.

EXHIBIT "A"

ORDINANCE 6 - 2012

**ORDINANCE OF THE BOROUGH OF WOODBURY HEIGHTS, COUNTY OF GLOUCESTER, AND STATE OF NEW JERSEY AMENDING AND SUPPLEMENTING THE LAND DEVELOPMENT ORDINANCES AND THE WOODBURY HEIGHTS CODE TO CODIFY AND IMPLEMENT THE PROVISIONS OF THE HOUSING ELEMENT AND FAIR SHARE PLAN AMENDMENT OF THE MASTER PLAN**

**SECTION 1:**

**WHEREAS**, the Borough Council of the Borough of Woodbury Heights, County of Gloucester, and State of New Jersey (the "Borough") has reviewed the "Housing Element and Fair Share Plan Amendment" to the Master Plan adopted by the Planning Board on March 19, 2012; and

**WHEREAS**, the Borough Council has deemed it in the best interest of the public health, safety and welfare to implement the aforesaid amendment to the Master Plan as set forth above; and

**WHEREAS**, in order to facilitate the consistency of the Woodbury Heights Master Plan with the Land Use Code and Ordinances of the Borough of Woodbury Heights, the Borough Council desires to codify and implement the recommendations contained in the aforesaid Housing Element and Fair Share Plan Amendment; and

**WHEREAS**, this Ordinance was referred to the Planning Board of the Borough of Woodbury Heights pursuant to the New Jersey Municipal Land Use Law; and

**WHEREAS**, the Planning Board of the Borough of Woodbury Heights has recommended the adoption of this Ordinance and has determined that it is consistent with the Master Plan and the 2012 amendment to the Housing Element and Fair Share Plan thereof.

**NOW, THEREFORE**, be it Ordained by the Borough Council of the Borough of Woodbury Heights, County of Gloucester, State of New Jersey that the Land Use Ordinances and Code of the Borough of Woodbury Heights be supplemented and amended as follows:

**Section 70-13.2 RM Residential Multifamily District**

- A. The purpose of the RM District is to provide for the construction of multifamily dwellings, and to create a realistic opportunity for the construction of a portion of the low and moderate income housing obligation of the Borough of Woodbury Heights under New Jersey's Fair Housing Act, N.J.S.A. 52:27D-301 et seq., the rules of the New Jersey Council on Affordable Housing, N.J.A.C. 5:93-1 et seq., and the Mount Laurel doctrine.

The Residential Multifamily District will result in a set-aside of at least 14.5% affordable housing units.

B. Principal Permitted Uses.

- (1) Multi-family residential units

C. Accessory Uses Permitted.

- (1) Recycling and solid waste collection facilities
- (2) Recreation facilities and buildings
- (3) Fences, walls and signs
- (4) Other customary incidental uses

D. A maximum density of 13.4 units per acre in no more than 9 separate buildings shall be permitted.

E. Maximum Building Height of 3 stories/45 feet if the following conditions are satisfied:

- (1) The building is designed to conform to the applicable building codes.
- (2) Additional requirements are provided under Section 70-34.

F. Area and Yard Requirements.

- (1) Minimum Lot Frontage: 200 feet
- (2) Minimum Lot Depth: 200 feet
- (3) Minimum Side Yard Setback: 50 feet
- (4) Minimum Front Yard Setback: 60 feet
- (5) Minimum Rear Yard Setback: 50 feet
- (6) Maximum Building Coverage: 25%
- (7) Maximum Impervious Coverage: 45%
- (8) A minimum building separation of 35 feet shall be provided.
- (9) Accessory structures shall be subject to the same setback requirements as principal buildings, as provided above.

G. Landscaping, buffers, street/shade trees and landscaping in parking facilities shall be provided in accordance with Section 79-49.14 and as follows:

- (1) All rear, front and side yards shall include a minimum 25-foot wide landscape buffer. The buffer width may be reduced to accommodate sidewalks provided that the material included in the buffer is sufficient to screen the development from the adjoining single-family residential area. Berms may be appropriate where the buffer width is reduced.
- (2) The landscaping in the buffer shall consist of a combination of trees, shrubs and planting beds. The use of landscape berms and decorative fencing are encouraged. In addition to this section, the plans shall conform to the buffer requirements under Section 79-49.14F in order to ensure adequate screening between the multifamily development and surrounding single-family residential development.

- (3) Existing vegetation should be preserved to the extent possible and be supplemented with additional screening.
  - (4) Within required landscape buffers, where existing vegetation is to remain, the plans shall identify the remaining material including size and type. The plans shall generally define the remaining vegetation in all other areas.
  - (5) Tree protection measures shall be provided on the plans for areas where existing vegetation will remain.
  - (6) Landscaping around stormwater management areas shall be provided in accordance with Section 70-49.6G.
- H. Off-street parking shall be provided in accordance with the Residential Site Improvement Standards and Section 70-23. Parking shall not be permitted along drive aisles and shall be within designated parking areas.
- I. A minimum of three site access points shall be provided to the site. Two of the access points shall be provided on Academy Avenue and one on Chestnut Avenue.
- J. Curbs and sidewalks shall be provided along the entire length of street frontage and throughout the development connecting the residential units to the parking areas.
- K. **Building Design.** The design of the buildings shall be consistent with the surrounding single-family neighborhood so that the appearance remains residential and not institutional.
- (1) Architectural elevations and floor plans shall be provided for each of the buildings.
  - (2) The building design shall incorporate a combination stone, stucco or other combination of building materials.
  - (3) The buildings shall include breaks in the facades to break up the building lengths.
  - (4) Rooflines shall be pitched. If flat roofs are provided they shall incorporate design techniques to shield any roof mounted equipment.
  - (5) No more than two-bedrooms per unit shall be provided. This shall not apply to the affordable housing units, which shall meet the requirements of the Uniform Housing Affordability requirements.
  - (6) All HVAC and mechanical equipment shall be incorporated into the building design and not visible except where such equipment shall be placed at ground level, in which case such equipment shall be appropriately screened from public view.
- L. **Bedroom Distribution (excluding the affordable housing units).**
- (1) No more than two bedrooms shall be provided per unit.
  - (2) The number of two-bedroom units shall not exceed 60% of the total market rate units.
  - (3) Dens are permitted in a one-bedroom unit subject to the following:
    - i. The inclusion of a provision within the lease agreements, and the enforcement of such a provision, prohibiting the den to be used as a bedroom or sleeping area.
    - ii. The design of any den area may include either a closet or a door, but shall not include both design features.
    - iii. Dens are not permitted in a two-bedroom unit.



M. Common recreation shall be provided as follows:

- (1) A clubhouse or community building with a minimum size of 5,000 square feet and a swimming pool shall be provided.
- (2) A playground area for children shall be provided. The playground shall include equipment appropriate for different age groups. The playground may be separated into two areas. Seating shall be provided around all playground areas. The plans shall include details of the proposed equipment, surface area and any other improvements.
- (3) Additional recreation areas may be appropriate consisting of picnic areas, sitting areas, walkways or other similar areas.
- (4) All such common uses shall be subordinated to the residential character of the development, and no commercial advertising shall be permitted.
- (5) Architectural elevations and floor plans shall be provided for the clubhouse.
- (6) The completion of the common recreation areas shall be tied to the completion of the units so that at no time shall there exist residential units without any recreational amenities. The clubhouse area shall be considered a recreational amenity provided that areas for recreational use are included within the building. A plan shall be submitted addressing the timing of the completion of the common recreation areas.

N. Permitted Signs.

- (1) A site identification sign shall be permitted on each street entry.
- (2) The maximum sign area shall not exceed 26 square feet.
- (3) The maximum height shall not exceed 8 feet.
- (4) All signs shall be located in a landscaped island.
- (5) Signs shall be located outside all sight triangles.
- (6) Subject to additional sign regulations as provided under Section 70-28.

O. Refuse storage.

- (1) The refuse storage area shall be suitably located and screened and arranged for access and ease of collection and shall not be part of, restrict or occupy any parking aisle.
- (2) All refuse storage areas shall be within a solid enclosed structure. Fencing is not considered a solid structure for the purposes of this section. The enclosure shall either include a landscaping screen or decorative finish. The intent is to ensure that the enclosure is sturdy and screened from view either with an appropriate finish in more visible areas, or landscaping in more remote areas.
- (3) The gate on the refuse storage enclosure shall consist of a solid material and be self-closing.
- (4) A side entry shall be provided to the trash enclosure so that residents can easily access the containers.
- (5) Landscaping shall be provided around the exterior of the refuse storage enclosure as needed to provide appropriate screening from public view.

P. Subject to developer's right to seek variances and waivers in accordance with the Municipal Land Use Law Standards, all development shall conform to the Residential

Site Improvement Standards and other provisions of the local land use ordinance not specifically referenced in this subsection.

**Q. Affordable Housing Requirements.**

- (1) A set-aside of at least 14.5% of the total units shall be provided as affordable housing units. The affordable housing units shall be constructed as either sale or rental units.
- (2) The developer is responsible for preparing and implementing an Affirmative Marketing Plan in accordance with the requirements of Section 70-32.2 of the ordinance. The developer shall enter into a contract with the Borough to act as the Municipal Housing Liaison and be responsible for administering the affordable housing program pursuant to standards and requirements provided in Section 70-32.2.M of this ordinance.
- (3) Affordable Housing Regulations: The affordable housing units shall be developed and sold or rented in accordance with the current applicable Uniform Housing and Affordability regulations (N.J.A.C. 5:80-26 et seq.), including requirements on: split between low and moderate income housing, bedroom distribution, range of affordability, pricing and rent of units, affirmative marketing, affordability controls, and construction phasing with the market-rate units developed on the tract. Developer shall not be required to provide "very low" income units as such units are defined at *N.J.S.A. 52:27D-304(m)*.
- (4) Design and Location of Affordable Housing: The affordable housing units shall be dispersed throughout the development in various buildings. If the affordable housing units are rental units and the market rate units are sale units then the affordable units may be located in a single structure for the purposes of management and maintenance. The facade of an affordable housing structure shall be indistinguishable from the facade of the market-rate structures.

**SECTION 2:**

If any section, paragraph, subsection, clause or provision of this Ordinance shall be adjudged by a Court to be invalid, such adjudication shall apply only to that section, paragraph, subsection, clause or provision so adjudged and the remainder of the Ordinance shall be deemed valid and effective.

**SECTION 3:**

All Ordinances of the Borough of Woodbury Heights inconsistent with the provisions of this Ordinance be and are hereby repealed to the extent of any such inconsistency.

**SECTION 4:**

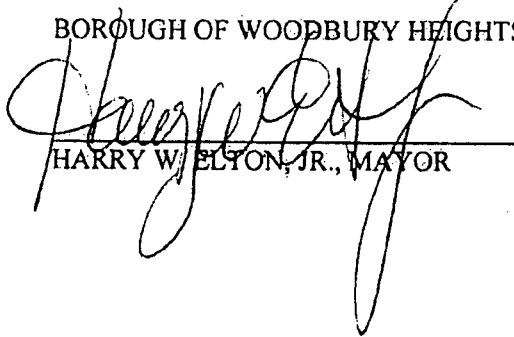
All Ordinances not inconsistent with the provisions of this Ordinance are hereby saved from repeal.

**SECTION 5:**

This Ordinance shall take effect immediately upon approval of a Settlement Agreement in the case entitled Woodbury Heights Development, LLC vs. Borough of Woodbury Heights

and the Planning Board of the Borough of Woodbury Heights, bearing Docket No. GLO-L-1750-09 pending in the Superior Court of New Jersey and after a duly noticed fairness hearing conducted by the Court and upon publication and as otherwise according to law.

BOROUGH OF WOODBURY HEIGHTS

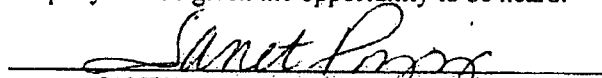
  
HARRY W. ELTON, JR., MAYOR

ATTEST:

  
JANET PIZZI, BOROUGH CLERK

NOTICE

Notice is hereby given that the foregoing Ordinance was introduced and passed on first reading at a meeting of the Borough Council of the Borough of Woodbury Heights, held on the 21st day of March, 2012 and will be considered for final passage at a meeting of the Borough Council of the Borough of Woodbury Heights, to be held on the 18<sup>th</sup> day of April, 2012 at 7:30 P.M. at which time and place any interested party will be given the opportunity to be heard.

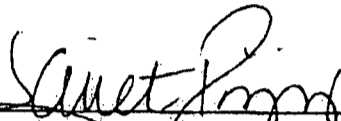
  
JANET PIZZI, BOROUGH CLERK

PUBLIC NOTICE

ORDINANCE 6-2012

ORDINANCE OF THE BOROUGH OF WOODBURY HEIGHTS, COUNTY OF GLOUCESTER AND  
STATE OF NEW JERSEY AMENDING AND SUPPLEMENTING THE LAND DEVELOPMENT ORDINANCES  
AND THE WOODBURY HEIGHTS CODE TO CODIFY AND IMPLEMENT THE PROVISIONS OF THE HOUSING  
ELEMENT AND FAIR SHARE PLAN AMENDMENT OF THE MASTER PLAN

I, Janet Pizzi, Clerk of the Borough of Woodbury Heights, hereby certify that the above Ordinance was  
duly adopted by the Borough Council of the Borough of Woodbury Heights at the Regular meeting of  
Mayor and Borough Council held on the 18<sup>th</sup> day of April, 2012

  
\_\_\_\_\_  
JANET PIZZI, BOROUGH CLERK



**RESOLUTION 66 – 2012  
RESOLUTION APPROVING LITIGATION  
SETTLEMENT AGREEMENT**

**WHEREAS**, Woodbury Heights Development, LLC heretofore filed a builder's remedy law suit against the Borough and the Planning Board alleging that the Borough had failed to comply with its constitutional obligations pursuant to the "Mt. Laurel" Doctrine as expressed in Southern Burlington County NAACP v. Township of Mt. Laurel, 92 N.J. 158 (1983), the New Jersey Fair Housing Act, N.J.S.A. 52:27D-301, et. seq. and applicable regulations pursuant to the Fair Housing Act; and

**WHEREAS**, the aforesaid litigation was captioned in the Superior Court as Woodbury Heights Development, LLC v. Borough of Woodbury Heights and the Planning Board of the Borough of Woodbury Heights under Docket No. GLO-L-1750-09; and

**WHEREAS**, during the course of the litigation, Plaintiff filed a Motion for Summary Judgment that, if granted, may have resulted in a project consisting of 274 or more residential, non-age restricted units; and

**WHEREAS**, the Borough, Planning Board and Plaintiff engaged in settlement discussions during the pendency of Plaintiff's Motion for Summary Judgment and, as a result of such discussions, the parties have reached an agreement to provide for a less intensive development of the subject property that will still provide for the production of affordable housing to assist the Borough in meeting its affordable housing obligations; and

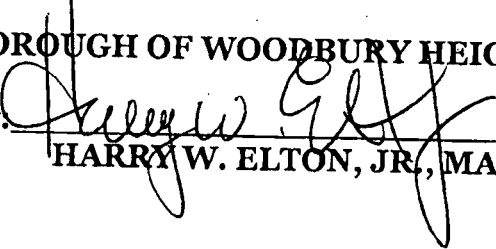
**WHEREAS**, the Planning Board has adopted amendments to the "Housing Element and Fair Share Plan" to the Master Plan which is intended to address the Borough's affordable housing obligations under the Mt. Laurel Doctrine; and

**WHEREAS**, the Litigation Settlement Agreement will limit the number of residential units that may be constructed on Plaintiff's property to a total of 234 or less residential units while providing for at least 14.5% of such units to be restricted as affordable; and

**WHEREAS**, the Borough has received advice and recommendations from Special Counsel, the Borough Solicitor, Borough Engineer and the Borough Planner with respect to the attached Litigation Settlement Agreement and hereby finds and determines that approval of the Agreement is in the best public interest of the Borough;

NOW, THEREFORE, BE IT RESOLVED by the Borough Council of the Borough of Woodbury Heights that the attached Litigation Settlement Agreement is hereby approved and authorized subject to and conditioned upon approval of the Court resulting from a "Fairness Hearing."

BOROUGH OF WOODBURY HEIGHTS

By:   
HARRY W. ELTON, JR., MAYOR

ATTEST:

  
JANET PIZZI, BOROUGH CLERK

The foregoing Resolution was duly adopted by the Borough Council of the Borough of Woodbury Heights at the Regular Meeting held on the 16<sup>th</sup> day of May, 2012.

  
JANET PIZZI, BOROUGH CLERK

CERTIFICATION

I, JANET PIZZI, CLERK of the Borough of Woodbury Heights, do hereby certify that I am the duly appointed and qualified Clerk of the Borough of Woodbury Heights and that I am the keeper of record and corporate seal of said corporation and that the foregoing Resolution is a correct copy of a Resolution duly adopted at the Regular Meeting of the Borough Council of the Borough of Woodbury Heights held on the 16 day of May, 2012.

IN WITNESS WHEREOF, I have hereunto set my hand and seal of the Borough of Woodbury Heights this 17 day of May, 2012

  
\_\_\_\_\_  
JANET PIZZI, BOROUGH CLERK