

**TOWNSHIP OF CLINTON  
COUNTY OF HUNTERDON  
STATE OF NEW JERSEY**

**RESOLUTION  
2025 – 36**

**RESOLUTION OF THE MAYOR AND COUNCIL OF THE TOWNSHIP OF CLINTON  
COMMITTING TO COMPLY WITH 4<sup>TH</sup> ROUND AFFORDABLE HOUSING  
OBLIGATIONS**

**WHEREAS**, on March 20, 2024, Governor Murphy signed into law an Amendment to the Fair Housing Act (“FHA”) which is codified in N.J.S.A. 52:27D-301 et seq. (hereinafter the “Amended FHA”) which governs the Fourth Round (2025-2035) of affordable housing obligations of all municipalities in New Jersey; and

**WHEREAS**, the Amended FHA requires the Department of Community Affairs (“DCA”) to produce non-binding calculations of the fair share present need and prospective need obligations of all municipalities in New Jersey on or before October 20, 2024, and further provides that municipalities shall determine their fair share present need and prospective need obligations in accordance with the formulas established in the Amended FHA by adoption of a resolution which shall describe the basis for the municipality’s determination, and which resolution shall also commit the municipality to adopt a housing plan element and a fair share plan element (“HPFSP”) of the Master Plan based on the determination; and

**WHEREAS**, the Amended FHA also establishes the Affordable Housing Dispute Resolution Program (the “Program”) within the judiciary for the purposes of resolving disputes associated with complying with the Amended FHA and obtaining a certificate of compliance with the Amended FHA, which is the equivalent of a judgment of compliance and repose for the Fourth Round of affordable housing obligations; and

**WHEREAS**, the Administrative Director of the Administrative Office of the Courts (“AOC”) has established procedures for the Program’s operation as set forth in AOC Directive #14-24, which requires any municipality which wishes to participate in the Program to file a Declaratory Judgment action in the County in which the municipality is located and attach a copy of a resolution committing to the municipality’s fair share present need and prospective need numbers as calculated by the municipality after considering the DCA’s non-binding calculations of same;

**WHEREAS**, the DCA issued a report on October 18, 2024 (“DCA Report”) wherein it reported its non-binding calculations of the fair share obligations for all municipalities; and

**WHEREAS**, the DCA Report lists in an Appendix at the end of the DCA Report the Fourth Round fair share obligations of Clinton Township (the “Township”) as follows: a present need obligation of zero (0) units and a prospective need obligation for of 174 units; and

**WHEREAS**, the Township has reviewed the data utilized by DCA in accordance with the formulas set forth in the Amended FHA and concludes that modification of the DCA calculated prospective need number is appropriate based on the latest up to date data, specifically, a modification of the prospective need from 174 to 109, the basis of which is described in the January 17, 2025 memo (including appendices thereto) from Thomas Behrens, PP, AICP to the Township Mayor and Council (the “Planner’s memo”), a copy of which is attached hereto as **Exhibit A**; and

**WHEREAS**, the Amended FHA further provides that all parties shall be entitled to rely upon regulations on municipal credits, adjustments, and compliance mechanisms adopted by the former Council on Affordable Housing (“COAH”) unless those regulations are contradicted by statute, including the Amended FHA or binding court decisions (see N.J.S.A 52:27D-311 (m)); and

**WHEREAS**, based on the foregoing, the Township determines that: its present need number is zero (0) units in accordance with the DCA calculation as set forth in the DCA report; and its prospective need number is 109, as described in the Planner’s memo (including appendices) attached hereto as **Exhibit A**; and

**WHEREAS**, based on the foregoing, the Township commits to have adopted a HPFSP in accordance with the Amended FHA, which it will subsequently file with the Court for submission to the Program, and which will may include credits, adjustments, and compliance mechanisms adopted by COAH, and such other adjustments that may be available under the Amended FHA; and

**WHEREAS**, the Township reserves the right to comply with any additional amendments to the FHA that the Legislature may enact; and

**WHEREAS**, Township also reserves the right to adjust its position in the event of any rulings in the Montvale case (MER-L-1778-24) or any other such action that alters the deadlines and/or requirements of the Amended FHA; and


**WHEREAS**, in the event that a third party challenges the calculations of the Township’s fair share affordable housing obligations as determined in the within resolution, the Township reserves the right to take such position as it deems appropriate in response thereto, including that its Fourth-Round prospective need obligation should be lower than determined herein; and

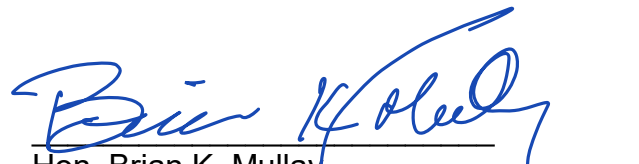
**WHEREAS**, in light of the above, the Township finds that it is in its best interest to determine its present need and prospective need fair share affordable housing obligations in the within resolution, to declare its commitment to have adopted a HPFSP to implement its fair share obligations subject to the reservations set forth herein, and to authorize and direct its affordable housing counsel to file a declaratory judgment action in accordance with AOC Directive #14-24 to seek a certification of compliance with the Amended FHA and/or a judgment of compliance and repose;

**NOW, THEREFORE, BE IT RESOLVED** by the Mayor and Council of the Township of Clinton, County of Hunterdon, State of New Jersey as follows:

1. All of the above Whereas Clauses are incorporated into the operative clauses of this resolution.
2. The Township hereby determines that its Fourth Round present need obligation is zero (0) units and prospective need is 109 units, subject to all reservations of rights set forth above.
3. The Township hereby further commits to have adopted a HPFSP to implement its fair share obligations which it will subsequently file with the Court for submission to the Program and may include credits, adjustments, and compliance mechanisms adopted by COAH, and such other adjustments that may be available under the Amended FHA, subject to all reservation of rights set forth above.
4. The Township hereby directs its affordable housing counsel to file a declaratory judgment complaint in Hunterdon County within 48 hours after adoption the within resolution, attaching the within resolution as an exhibit.
5. The Township authorizes its affordable housing counsel to submit and/or file this resolution with such other entities as may be determined to be appropriate.
6. This resolution shall take effect immediately, according to law.

ATTEST:

  
 Lindsay Heller  
 Acting Township Clerk

  
 Hon. Brian K. Mullaney  
 Mayor

ADOPTED: January 22, 2025

**CERTIFICATION**

I, Lindsay Heller, Acting Clerk of the Township of Clinton, County of Hunterdon, State of New Jersey, do hereby certify that the foregoing is a true copy of a resolution duly adopted by the Mayor and Council of the Township of Clinton at its regular meeting held on January 22, 2025.

  
 Lindsay Heller, Acting Township Clerk



COMMUNITY PLANNING  
LAND DEVELOPMENT AND DESIGN  
LANDSCAPE ARCHITECTURE

# EXHIBIT A

PRINCIPALS:  
Joseph H. Burgis PP, AICP  
Edward Snieckus, Jr. PP, LLA, ASLA  
David Novak PP, AICP

**B U R G I S**  
A S S O C I A T E S , I N C .

## MEMORANDUM

To: Township of Clinton Mayor and Council  
From: Thomas Behrens, Jr., PP, AICP  
Subject: Resolution of 4<sup>th</sup> Round Present and Prospective Need Analysis  
Date: January 17, 2025  
BA#: 4134.08

On March 20, 2024, Governor Murphy signed into law Bill A4/S50 amending the Fair Housing Act ("FHA"), abolishing the Council on Affordable Housing ("COAH") and establishing a new municipal affordable housing compliance program for the 4<sup>th</sup> Round extending from July 2025 to July 2035. This legislation includes the 4<sup>th</sup> Round compliance rules and procedures and prescribes the methodology by which the New Jersey Department of Community Affairs ("DCA") was directed to prepare Statewide, regional and municipal housing need numbers by October 20, 2024. The DCA subsequently released on October 18, 2024 its *"Affordable Housing Obligations for 2025-2035 (Fourth Round) Methodology and Background"* report which provides non-binding, advisory municipal housing need calculations based on a Statewide Prospective Need of 84,698 low and moderate-income units. The Land Capacity Factor data (mapping) component was released by the DCA on November 27, 2024, more than one month after the reporting deadline. While the DCA was required to calculate Statewide municipal affordable housing obligations, the legislation provides that the DCA's calculations are not binding and each municipality is required to determine its own 4<sup>th</sup> Round housing obligations through the adoption of a resolution by January 31, 2025.

The DCA's calculation of Clinton Township's 4<sup>th</sup> Round fair share affordable housing obligations are as follows: Present Need Obligation of 0 units and Prospective Need Obligation of 174 units. Our review of the DCA's October 2024 report concludes the methodology utilized in its calculations complies with the legislation. However, as described in greater detail herein, applying more up to date data based on local knowledge and records, including but not limited to land use approvals granted, building permits issued, conservation easements recorded, Clinton Township's determination of its Prospective Need obligation should be 109 units, which represents a modification of the DCA calculation of 174 units. Specifically, there are sites and acreage that should not be included in the Township's Land Capacity Factor and should therefore be excluded resulting in the modification of the Township's Prospective Need Obligation.

This memorandum provides a summary of Clinton Township's determination of its 4<sup>th</sup> Round Present Need and Prospective Need Obligations.

### Present Need Obligation

The DCA's October 2024 report assigns Clinton Township a 4<sup>th</sup> Round Present Need (Rehabilitation) Obligation is 0 units. Present Need refers to existing housing units occupied by low and moderate-income households deemed to be 50 years or older and be overcrowded or have a lack of adequate kitchen or plumbing facilities. Based on our review of the methodology and data utilized by the DCA to calculate Clinton Township's Present Need Obligation, we agree with this number, and it is our opinion that the Clinton Township should determine that its Present Need is zero (0) units.

### Prospective Need Obligation

The municipal Prospective Need Obligations in the DCA's October 2024 report are derived as a share of the prospective need of the region in which the municipality is located. Clinton Township is located in Region 3 which includes Hunterdon, Middlesex and Somerset Counties. The Region 3 Prospective Need is 11,604 units allocated to municipalities through the region, excluding designated Qualified Urban Aid Municipalities, which are exempt under the current legislation. Municipal prospective need obligations are calculated by averaging three factors: Equalized Nonresidential Valuation Factor, Income Capacity Factor, and Land Capacity Factor, as described below.

#### Equalized Nonresidential Valuation Factor

Pursuant to the 2024 FHA amendments, the municipal Equalized Nonresidential Valuation Factor shall be determined as follows: *"to determine this factor, the changes in nonresidential property valuations in the municipality, since the beginning of the round preceding the round being calculated, shall be calculated using data published by the Division of Local Government Services in the department. For the purposes of such, the beginning of the round of affordable housing obligations preceding the fourth round shall be the beginning of the gap period in 1999. The change in the municipality's nonresidential valuations shall be divided by the regional total change in the nonresidential valuations to determine the municipality's share of the regional change as the equalized nonresidential valuation factor."*

The DCA methodology determined the Township has a 0.38% share of Region 3's change in equalized nonresidential valuation from 1999 to 2023. Based on a review of the DCA's methodology and data as they pertain to Clinton Township's assigned Equalized Nonresidential Valuation Factor, we agree with the DCA's calculation of this factor.

#### Income Capacity Factor

In accordance with the 2024 FHA amendments, the municipal Income Capacity Factor shall be determined by calculating the average of the following measures: *"the municipal share of the regional sum of the differences between the median municipal household income, according to the most recent American Community Survey Five-Year Estimates, and an income floor of \$100 below the lowest median household income in the region; and the municipal share of the regional sum of the differences between the median municipal household incomes and an income floor of \$100 below the lowest median household income in the region, weighted by the number of the households in the municipality."*

The Income Capacity Factor is intended to compare a municipality's income to that of the lowest-income municipality in its housing region. The DCA's October 2024 report determined the Township has an Income Capacity Factor of 1.88%. Based on a review of the DCA methodology and data as they pertain to Clinton Township's assigned Income Capacity Factor, we agree with the DCA's calculation of this factor.

#### Land Capacity Factor

The Land Capacity Factor is intended to quantify the total developable acreage in a municipality as a proportion of the developable acreage in the Region. The DCA, in its November 2024 release of the Land Capacity Factor data, revealed that it relied on the 2020 Land Use / Land Cover (LULC) maps developed by the New Jersey Department of Environmental Protection (NJDEP) as well as the 2024 MOD-IV Property Tax List data from the Division of Taxation in the Department of Treasury, and construction permit dates from the DCA.

In accordance with the 2024 FHA amendments, the municipal Land Capacity Factor shall be determined by: *"estimating the area of developable land in the municipality's boundaries, and regional boundaries, that may accommodate development through the use of the 'land use / land cover data' most recently published by the Department of Environmental Protection, data from the American Community Survey and Comprehensive Housing Affordability Strategy dataset thereof, MOD-IV Property Tax List data from the Division of Taxation in the Department of the Treasury, and construction permit data from the Department of Community Affairs and weighing such land based on the planning area type in which such land is located. After the weighing factors are applied, the sum of the total developable land area that may accommodate development in the municipality and in the region shall be determined. The municipality's share of its region's developable land shall be its land capacity factor. Developable land that may accommodate development shall be weighted based on the planning area type in which such land is located."*

The legislation identifies the primary data sources and weighting factors to utilize in calculating a municipality's Land Capacity Factor but does not specify how to process the data. As directed, the DCA's October 2024 report establishes such a process for calculating the Land Capacity Factor, which includes the following steps:

1. Divide the weighting regions established by municipality in accordance with the 2024 FHA amendments.
2. Utilize land use/land cover data to identify vacant, developable lands. The DCA's October 2024 report identifies the codes and descriptions of the land use/land cover data used in this process. They include: cropland and pastureland; orchards/vineyards/nurseries/horticultural areas; deciduous forest areas; coniferous forest areas; plantations; mixed forest areas; old field areas; phragmites dominate old field areas; deciduous brush/shrubland; coniferous brush/shrubland; mixed deciduous/coniferous brush/shrubland; severe burned upland vegetation; and undifferentiated barren lands.
3. These lands initially deemed vacant were then further analyzed to remove rights-of-way as well as developed properties. For the latter, the DCA utilized MOD-IV tax data and selected underlying tax parcels with property class codes for residential, commercial, industrial, apartment, railroad, and school uses.
4. Construction permit data was then analyzed to capture more recent development activities that may not have otherwise been reflected in the land use/land cover or MOD-IV tax data.
5. Areas still deemed developable were then excluded based on other limiting factors including: open space, preserved farmland, category one waterways and wetlands (and associated buffers based on special area restrictions), steep slopes exceeding 15 percent, and open waters.
6. Due to limitations resulting from inconsistencies between data sources, the resulting mapping included instances of small land areas caused by an incongruous alignment of geospatial layers. To eliminate these "slivers" of leftover land, the DCA eliminated any feature part with an area less than 2,500 square feet or minimally 25 feet by 100 feet presumed to be a threshold for determining if an area of land is developable.

- Finally, all remaining lands deemed to be developable in the municipality were summed and divided by the Region 3 developable acreage to determine the Township’s share of developable land in the region referred to as its Land Capacity Factor.

Our review of the DCA’s Land Capacity Factor calculations for the Township concludes the DCA methodology is consistent with the FHA amendments but applying more up to date data based on local knowledge and records, including but not limited to land use approvals granted, building permits issued, conservation easements recorded, confirms certain sites and acreage should be eliminated from the calculation as detailed in Appendix A attached hereto.

Before describing our analysis, it must be emphasized that the data released by the DCA consisted of maps with areas of pink colored shapes (for lack of a better description) representing what appeared to be developable land. After inserting block and lot lines on the maps, we were able to analyze the areas. Our analysis utilized the following criteria and results in the exclusion of a number of lots from lands the DCA identified as developable:

- Parcels that were included as plan mechanisms in the Township’s 3<sup>rd</sup> Round Housing Element and Fair Share Plan (see Township’s Third Round Settlement Agreement with FSHC in Appendix B).
- Parcels with more than one property tax classification where the primary property tax classification (e.g. Property Class 2 – Residential, 3A – Farm, 4A – Commercial, 4B – Industrial, 15C – Public, 15D-Charitable, 15F-Other Exempt, etc.) renders the parcel exempt.
- Parcels subject to conservation easements.
- Areas that are entirely landlocked.
- Parcels that have building permits and/or vested development rights from recent Land Use Board Approvals (see applicable land use board resolutions in Appendix C1, C2 & C3).
- Properties under construction or recently developed.
- Parcels that are classified as “vacant” per the tax assessment but are developed with significant improvements or supporting infrastructure for adjacent, related uses (see applicable aerial images in Appendix D).
- Areas or portions of areas <25 feet wide (based on DCA developable threshold of minimally 25 ft by 100 ft).
- Areas with environmental constraints not captured in the DCA analysis.
- Parcels that are held by a homeowners association as common space.

Based on the above and as further detailed in Appendix A, the Township’s Land Capacity Factor should be refined based on local information from 2.24% to 0.56% as indicated in Table 1 below.

Table 1 – Land Capacity Factor Modification

	DCA	Clinton Township
Region 3 Developable Area	10,324 ac	10,149 ac
Township Developable Area	231.55 ac	56.35 ac
Township Land Capacity Factor	2.24%	0.56%

Prospective Need Summary

The averaging of the Township's Equalized Nonresidential Valuation Factor, Land Capacity Factor and Income Capacity Factor results in an Average Allocation of Factor of 0.94% applied to the regional Prospective Need which yields the Township's Fourth Round Prospective Need Obligation of 109 units as indicated in Table 2 below.

Table 2 – Prospective Need Obligation Summary

	DCA	Clinton Township
Household Change (Region 3)	29,009 units	29,009 units
Low & Moderate Home Estimate (Region 3)	11,604 units	11,604 units
Equalized Nonresidential Valuation Factor	0.38%	0.38%
Land Capacity Factor	2.24%	0.56%
Income Capacity Factor	1.88%	1.88%
Average Allocation Factor	1.50%	0.94%
Prospective Need	174 units	109 units

Recommendations

Our review of the DCA's October 2024 report and November Land Capacity Factor data and 2024 FHA amendments concludes that Clinton Township's Prospective Need Obligation of 174 units calculated by the DCA should be modified to 109 units for the reasons set forth above, and Clinton Township should determine that its fair share Prospective Need number is 109 units. We conclude that the DCA's calculation of Clinton Township's Present Need Obligation of zero (0) units is correct, and Clinton Township should determine that its fair share Present Need number is zero (0) units.



**TOWNSHIP OF CLINTON**  
**Land Capacity Factor Analysis & Refinements as of January 17, 2025**

**Appendix A**

Per DCA		Per Township Tax Records			Vacant Acres In Municipality by Block and Lot	Municipal Refinements				Refined Vacant Acres In Municipality by Block and Lot	Rationale for refinement
Object ID	Vacant Acres In Municipality	Block	Lot	Property Class Code		Remove constrained lands	Remove developed lands based on MOD IV	Remove other already developed lands	Remove lands with building permits or recently vested rights		
36058	7.37	87	19	3A	7.37	(7.37)			0.00	related parcel partially subject to conservation easement in favor of US Natural Resources Conservation Service; related parcel also already developed per primary property class code	
36059	0.55	21	2	4A	0.55	(0.55)			0.00	related parcel subject to conservation easement in favor of Hunterdon Land Trust; related parcel also already developed per primary property class code	
36060	0.89	87	6	3B	0.89				0.89		
36061	13.54	89	10	3B	11.07				11.07		
		89	10.03	15D	2.47		(2.47)		0.00	related parcel already developed per primary property class code	
36062	0.11	25	11	3A	0.11		(0.11)		0.00	related parcel already developed per primary property class code	
36063	1.32	88	3.01	1	0.42				0.42		
		88	3.04	1	0.90				0.90		
36064	0.34	88	3.04	1	0.34				0.34		
36065	0.08	25	11	3A	0.08		(0.08)		0.00	related parcel already developed per primary property class code	
36066	0.06	25	11	3A	0.06		(0.06)		0.00	related parcel already developed per primary property class code	
36067	0.62	28.01	26.02	1	0.62				0.62		
36068	3.59	82.02	15	3A	3.59		(3.59)		0.00	related parcel already developed per primary property class code	
36069	0.45	82.17	28	3A	0.45		(0.45)		0.00	related parcel already developed per primary property class code	
36070	0.28	82.17	28	3A	0.28		(0.28)		0.00	related parcel already developed per primary property class code	
36071	0.15	82.17	28	3A	0.15		(0.15)		0.00	related parcel already developed per primary property class code	
36072	0.93	82.17	28	3A	0.93		(0.93)		0.00	related parcel already developed per primary property class code	
36073	0.06	82.17	28	3A	0.06		(0.06)		0.00	related parcel already developed per primary property class code	
36074	0.39	7	6.01	1	0.39				0.39		
36075	0.08	7	5.02	1	0.08		(0.08)		0.00	related parcel entirely landlocked	
36076	0.12	30	30	4B	0.12		(0.12)		0.00	related parcel already developed per primary property class code	
36077	0.16	58	6.01	1	0.16				0.16		
36078	0.19	30	30	4B	0.19		(0.19)		0.00	related parcel already developed per primary property class code	
36079	0.69	58	5	1	0.69				0.69		
36080	0.08	30	35	15D	0.08		(0.08)		0.00	related parcel already developed per primary property class code	
36081	0.32	30	30	4B	0.32		(0.32)		0.00	related parcel already developed per primary property class code	
36082	0.30	30	30	4B	0.30		(0.30)		0.00	related parcel already developed per primary property class code	
36083	0.09	58	9	1	0.09				0.09		
36084	0.17	58	10	1	0.17				0.17		
36085	0.16	58	9	1	0.16				0.16		
36086	0.19	58	10	1	0.19				0.19		
36087	0.29	7	33	4B	0.25		(0.25)		0.00	related parcel already developed per primary property class code	
		7	34	15D	0.04		(0.04)		0.00	related parcel already developed per primary property class code	
36088	0.10	30	30	4B	0.10		(0.10)		0.00	related parcel already developed per primary property class code	

**TOWNSHIP OF CLINTON**

**Appendix A**

**Land Capacity Factor Analysis & Refinements as of January 17, 2025**

Per DCA		Per Township Tax Records			Vacant Acres In Municipality by Block and Lot	Municipal Refinements				Refined Vacant Acres In Municipality by Block and Lot	Rationale for refinement
Object ID	Vacant Acres In Municipality	Block	Lot	Property Class Code		Remove constrained lands	Remove developed lands based on MOD IV	Remove other already developed lands	Remove lands with building permits or recently vested rights		
36089	0.59	30	35	15D	0.59	(0.59)			0.00	related parcel already developed per primary property class code	
36090	0.06	30	30	4B	0.06	(0.06)			0.00	related parcel already developed per primary property class code	
36091	0.32	15	5	3A	0.32	(0.32)			0.00	related parcel already developed per primary property class code	
36092	0.20	30	35	15D	0.20	(0.20)			0.00	related parcel already developed per primary property class code	
36093	0.12	30	30	4B	0.12	(0.12)			0.00	related parcel already developed per primary property class code	
36094	0.07	56	1	1	0.07				0.07		
36095	0.34	15	5	3A	0.34	(0.34)			0.00	related parcel already developed per primary property class code	
36096	0.28	59	2	1	0.28				0.28		
36097	0.77	59	4	1	0.77				0.77		
36098	3.05	14	3	3A	2.74	(2.74)			0.00	related parcel already developed per primary property class code	
		14	4	3A	0.31	(0.31)			0.00	related parcel already developed per primary property class code	
36099	1.24	14	7	3B	1.24			(1.24)	0.00	Board of Adjustment Resolution 2021-09 (recently granted Clinton Agricultural Associates "BIFURCATED "D(I)" USE AND "C(I)" VARIANCES TO ALLOW MIXED COMMERCIAL DEVELOPMENT CONSISTING OF RETAIL, OFFICE, FLEX SPACE AND SELF-STORAGE"; Board of Adjustment Resolution 2024-03 for preliminary and final major site plan review to redevelop the property as outlined in Resolution No. 2021-09 was approved on 12-16-2024 meeting and pending memorialization. See Appendix C for Board of Adjustment Resolution 2021-09.	
36100	1.61	14	3	3A	1.61	(1.61)			0.00	related parcel already developed per primary property class code	
36101	0.09	14	5	3B	0.09				0.09		
36102	0.14	14	4	3A	0.08	(0.08)			0.00	related parcel already developed per primary property class code	
		14	3	3A	0.06	(0.06)			0.00	related parcel already developed per primary property class code	
36103	1.11	14	7	3B	0.32			(0.32)	0.00		
		14	9	4A	0.79	(0.79)			0.00	related parcel already developed per primary property class code	
36104	0.10	60	27	15C	0.10	(0.10)			0.00	related parcel already developed per primary property class code	
36105	0.37	30	30	4B	0.37	(0.37)			0.00	related parcel already developed per primary property class code	
36106	0.20	7	3	3A	0.20	(0.20)			0.00	related parcel already developed per primary property class code	
36107	0.11	30	30	4B	0.11	(0.11)			0.00	related parcel already developed per primary property class code	
36108	3.53	7	3	3A	3.53	(3.53)			0.00	related parcel already developed per primary property class code	
36109	5.50	7	3	3A	4.57				4.57		
		7	20	3B	0.93				0.93		
36110	0.19	60.03	26.08	15C	0.19	(0.19)			0.00	related parcel already developed per primary property class code	
36111	0.06	14	3	3A	0.06	(0.06)			0.00	related parcel already developed per primary property class code	

**TOWNSHIP OF CLINTON**

**Appendix A**

**Land Capacity Factor Analysis & Refinements as of January 17, 2025**

Per DCA		Per Township Tax Records			Vacant Acres In Municipality by Block and Lot	Municipal Refinements				Refined Vacant Acres In Municipality by Block and Lot	Rationale for refinement
Object ID	Vacant Acres In Municipality	Block	Lot	Property Class Code		Remove constrained lands	Remove developed lands based on MOD IV	Remove other already developed lands	Remove lands with building permits or recently vested rights		
36112	0.50	14	9	4A	0.50	(0.50)			0.00	related parcel already developed per primary property class code	
36113	0.34	14	9	4A	0.34	(0.34)			0.00	related parcel already developed per primary property class code	
36114	22.97	14	5	3B	17.94				17.94		
		14	4	3A	1.82	(1.82)			0.00	related parcel already developed per primary property class code	
		14	3	3A	3.21	(3.21)			0.00	related parcel already developed per primary property class code	
36115	0.96	4.03	28	3B	0.96				0.96		
36116	2.22	47.02	1	1	2.22			(2.22)	0.00	related parcel under active develop by Hanna Memorial Cancer Center, Inc. in accordance with Planning Board resolution 2014-19 "FINAL SITE PLAN APPROVAL FOR CANCER CLINIC" as modified and amended since that time most recently by Planning Board Resolution 2024-03 "MEMORIALIZING: 1) GRANT OF AMENDED PRELIMINARY AND FINAL SITE PLAN APPROVAL AND A LANDSCAPING EXCEPTION TO ALLOW THE ELIMINATION OF A MEMORIAL GARDEN, THE INSTALLATION OF A SIDEWALK AND NEW TREE PLANTING LOCATIONS, AND 2) A MODIFICATION OF CONDITION #11 OF RESOLUTION NO. 2014-09 TO GRANT AN EXTENSION OF THE TIME PERIOD IN WHICH TO OBTAIN A CERTIFICATE OF OCCUPANCY" See Appendix XX for current aerial view of parcel and Appendix C for Planning Board resolution 2024-03.	
36117	0.12	47.02	1	1	0.12			(0.12)	0.00	related parcel under active develop by Hanna Memorial Cancer Center, Inc. in accordance with Planning Board resolution 2014-19 "FINAL SITE PLAN APPROVAL FOR CANCER CLINIC" as modified and amended since that time most recently by Planning Board Resolution 2024-03 "MEMORIALIZING: 1) GRANT OF AMENDED PRELIMINARY AND FINAL SITE PLAN APPROVAL AND A LANDSCAPING EXCEPTION TO ALLOW THE ELIMINATION OF A MEMORIAL GARDEN, THE INSTALLATION OF A SIDEWALK AND NEW TREE PLANTING LOCATIONS, AND 2) A MODIFICATION OF CONDITION #11 OF RESOLUTION NO. 2014-09 TO GRANT AN EXTENSION OF THE TIME PERIOD IN WHICH TO OBTAIN A CERTIFICATE OF OCCUPANCY" See Appendix XX for current aerial view of parcel and Appendix C for Planning Board resolution 2024-03.	
36118	0.49	4.03	28	3B	0.49				0.49		

**TOWNSHIP OF CLINTON**

**Appendix A**

**Land Capacity Factor Analysis & Refinements as of January 17, 2025**

Per DCA		Per Township Tax Records			Vacant Acres In Municipality by Block and Lot	Municipal Refinements				Refined Vacant Acres In Municipality by Block and Lot	Rationale for refinement
Object ID	Vacant Acres In Municipality	Block	Lot	Property Class Code		Remove constrained lands	Remove developed lands based on MOD IV	Remove other already developed lands	Remove lands with building permits or recently vested rights		
36119	0.20	13.01	8.02	15F	0.20		(0.20)			0.00	related parcel already developed per primary property class code
36120	1.55	47.02	1	1	1.55				(1.55)	0.00	related parcel zoned for 400 unit Headley Farms inclusionary development as part of 3rd Round AH plan. See Appendix B for signed and filed Third Round Settlement Agreement with FSHC
36121	0.31	4.03	28	3B	0.31					0.31	
36122	0.84	13.01	1	3B	0.84					0.84	
36123	0.65	46	33	3B	0.65	(0.65)				0.00	related parcel zoned for 400 unit Headley Farms inclusionary development as part of 3rd Round AH plan. See Appendix B for signed and filed Third Round Settlement Agreement with FSHC
36124	0.11	46	33	3B	0.11	(0.11)				0.00	related parcel zoned for 400 unit Headley Farms inclusionary development as part of 3rd Round AH plan. See Appendix B for signed and filed Third Round Settlement Agreement with FSHC
36125	0.19	46	33	3B	0.19	(0.19)				0.00	related parcel zoned for 400 unit Headley Farms inclusionary development as part of 3rd Round AH plan. See Appendix B for signed and filed Third Round Settlement Agreement with FSHC
36126	17.87	13.01	7	3A	7.37		(7.37)			0.00	related parcel already developed per primary property class code
		13.01	8.02	15F	10.50		(10.50)			0.00	related parcel already developed per primary property class code
36127	3.43	4.03	36	1	3.43					3.43	
36128	19.44	13.01	8	3A	10.55		(10.55)			0.00	related parcel already developed per primary property class code
		13.01	8.02	15F	8.89		(8.89)			0.00	related parcel already developed per primary property class code
36129	0.43	3.03	8	1	0.43	(0.43)				0.00	related parcel entirely landlocked
36130	0.07	60.03	99	1	0.07	(0.07)				0.00	related parcel entirely landlocked
36131	0.08	3	26	1	0.08			(0.08)		0.00	secondary NY Life parcel fronting Cokesbury Rd which includes various improvements (electrical substation, access road, parking lots, part of one building) related to overall development; the value of all improvements are taxed as part of adjacent 77.69 ac NY Life parcel, B3 L30, classed 4A. See Appendix C for aerial photo B3 L26.
36132	0.24	4	5	1	0.24					0.24	
36133	0.37	61	4	15C	0.37		(0.37)			0.00	related parcel already developed per primary property class code
36134	0.10	46	33	3B	0.10	(0.10)				0.00	related parcel included in 3rd round AH plan (400 unit Headley Farms inclusionary development)
36135	0.22	61	4	15C	0.22		(0.22)			0.00	related parcel already developed per primary property class code

**TOWNSHIP OF CLINTON**

**Appendix A**

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Per DCA		Per Township Tax Records			Vacant Acres In Municipality by Block and Lot	Municipal Refinements				Refined Vacant Acres In Municipality by Block and Lot	Rationale for refinement	
Object ID	Vacant Acres In Municipality	Block	Lot	Property Class Code		Remove constrained lands	Remove developed lands based on MOD IV	Remove other already developed lands	Remove lands with building permits or recently vested rights			
36136	2.76	3	26	1	0.99			(0.99)		0.00	secondary NY Life parcel fronting Cokesbury Rd which includes various improvements (electrical substation, access road, parking lots, part of one building) related to overall development; the value of all improvements are taxed as part of adjacent 77.69 ac NY Life parcel, B3 L30, classed 4A. See Appendix C for aerial photo B3 L26.	
		3	27	1	1.06							1.06
		3	28	1	0.71							0.71
36137	1.20	3	26	1	1.20			(1.20)		0.00	secondary NY Life parcel fronting Cokesbury Rd which includes various improvements (electrical substation, access road, parking lots, part of one building) related to overall development; the value of all improvements are taxed as part of adjacent 77.69 ac NY Life parcel, B3 L30, classed 4A. See Appendix C for aerial photo B3 L26.	
36138	2.41	3	26	1	2.41			(2.41)		0.00	secondary NY Life parcel fronting Cokesbury Rd which includes various improvements (electrical substation, access road, parking lots, part of one building) related to overall development; the value of all improvements are taxed as part of adjacent 77.69 ac NY Life parcel, B3 L30, classed 4A. See Appendix C for aerial photo B3 L26.	
36139	50.73	46	33	3B	50.58	(50.58)				0.00	related parcel zoned for 400 unit Headley Farms inclusionary development as part of 3rd Round AH plan. See Appendix B for signed and filed Third Round Settlement Agreement with FSHC	
		46	33.01	3B	0.15	(0.15)				0.00	related parcel zoned for 400 unit Headley Farms inclusionary development as part of 3rd Round AH plan. See Appendix B for signed and filed Third Round Settlement Agreement with FSHC	
36140	0.45	3	13	15D	0.45			(0.45)		0.00	related parcel already developed per primary property class code	
36141	23.66	4	20	3A	18.29			(18.29)		0.00	related parcel already developed per primary property class code	
		4	21	3B	3.61					3.61		
		4	21.01	15D	0.84			(0.84)		0.00	related parcel already developed per primary property class code	
		4	5	1	0.92					0.92		
36142	0.32	3	13	15D	0.32			(0.32)		0.00	related parcel already developed per primary property class code	

**TOWNSHIP OF CLINTON**

**Appendix A**

**Land Capacity Factor Analysis & Refinements as of January 17, 2025**

Per DCA		Per Township Tax Records			Vacant Acres In Municipality by Block and Lot	Municipal Refinements				Refined Vacant Acres In Municipality by Block and Lot	Rationale for refinement
Object ID	Vacant Acres In Municipality	Block	Lot	Property Class Code		Remove constrained lands	Remove developed lands based on MOD IV	Remove other already developed lands	Remove lands with building permits or recently vested rights		
36143	5.21	68	9.02	1	5.21				(5.21)	0.00	Board of Adjustment Resolution 2024-08 recently granted Storage Developers LLC "BIFURCATED PRELIMINARY AND FINAL SITE PLAN APPROVAL WITH VARIOUS "C" VARIANCES AND EXCEPTIONS TO ALLOW THE CONSTRUCTION OF A TWO-STORY, CLIMATE CONTROLLED, SELF-STORAGE FACILITY IN THE C-1 COMMERCIAL ZONE". See Appendix for Board of Adjustment Resolution 2024-08.
36144	0.06				0.06					0.06	
36145	0.12	62	1	1	0.12	(0.12)				0.00	related parcel owned by Hilltop at High Bridge Homeowners Association and held as common open space; Tax Records show no current assessment as value is assessed to related homeowners.
36146	0.10	62	1	1	0.10	(0.10)				0.00	related parcel owned by Hilltop at High Bridge Homeowners Association and held as common open space; Tax Records show no current assessment as value is assessed to related homeowners.
36147	0.80	70	20	15C	0.80		(0.80)			0.00	related parcel already developed per primary property class code
36148	6.11	1	25	3A	6.11		(6.11)			0.00	related parcel already developed per primary property class code
36149	1.15	33	9.01	1	1.15					1.15	
36150	0.08	2	8	1	0.08	(0.08)				0.00	related parcel entirely landlocked
36151	0.19	44	3	1	0.19					0.19	
36152	4.68	68	9.01	15C	3.34		(3.34)			0.00	related parcel already developed per primary property class code
		68	24	1	1.34					1.34	
36153	0.21	46	29	1	0.21	(0.21)				0.00	related parcel entirely landlocked
36154	0.30	3	11.16	1	0.30					0.30	
36155	0.18	46	29	1	0.18	(0.18)				0.00	related parcel entirely landlocked
36156	1.62	66	14	3A	1.56		(1.56)			0.00	related parcel already developed per primary property class code
		66	12	3B	0.06	(0.06)				0.00	related parcel entirely landlocked
36157	0.90	66	14	3A	0.90		(0.90)			0.00	related parcel already developed per primary property class code
36158	0.89	66	14	3A	0.89		(0.89)			0.00	related parcel already developed per primary property class code
<b>Total</b>	<b>231.55</b>				<b>231.55</b>	<b>(61.03)</b>	<b>(98.84)</b>	<b>(4.67)</b>	<b>(10.65)</b>	<b>56.35</b>	



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February 5, 2018

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**Re: In the Matter of the Application of the Township of Clinton, County of Hunterdon, Docket No. HNT-L-315-15**

Dear Mr. Drill:

This letter memorializes the terms of an amended agreement reached between the Township of Clinton (the Township or "Clinton"), the declaratory judgment plaintiff, and Fair Share Housing Center (FSHC), a Supreme Court-designated interested party in this matter in accordance with In re N.J.A.C. 5:96 and 5:97, 221 N.J. 1, 30 (2015) (Mount Laurel IV) and, through this settlement, a defendant in this proceeding. This amended agreement replaces in its entirety the agreement reached between the Township and FSHC dated December 12, 2017 (the "initial agreement"). The primary difference between the agreements is that the "Windy Acres" project that was included as a durational adjustment site in the initial agreement has been eliminated and replaced with the "LeCompte" project as a durational adjustment site in this amended agreement. The remaining differences between the agreements flow from the replacement of the Windy Acres project with the LeCompte project and address sewer and water capacity issues.

#### **Background**

Clinton filed the above-captioned matter on July 2, 2015 seeking a declaration of its compliance with the Mount Laurel doctrine and Fair Housing Act of 1985, N.J.S.A. 52:27D-301 et seq. in accordance with In re N.J.A.C. 5:96 and 5:97, supra. Through the declaratory judgment process, the Township and FSHC agreed to settle the litigation and to present that settlement to the trial court with jurisdiction over this matter to review, recognizing that the settlement of Mount Laurel litigation is favored because it avoids delays and the expense of trial and results more quickly in the construction of homes for lower-income households.

#### **Settlement terms**

The Township and FSHC hereby agree to the following terms:

1. FSHC agrees that the Township, through the adoption of a Housing Element and Fair Share Plan conforming with the terms of this Agreement (hereafter "the Plan") and through the implementation of the Plan and this Agreement, satisfies its obligations under the Mount Laurel doctrine and Fair Housing Act of 1985, N.J.S.A. 52:27D-301 et seq., for the Prior Round (1987-1999) and Third Round (1999-2025).
2. At this time and at this particular point in the process resulting from the Supreme Court's Mount Laurel IV decision, when Third Round fair share obligations have yet to be definitively determined, it is appropriate for the parties to arrive at a settlement regarding

a municipality's Third Round present and prospective need instead of doing so through plenary adjudication of the present and prospective need.

3. FSHC and Clinton hereby agree that Clinton's affordable housing obligations are as follows:

Rehabilitation Obligation	10
Prior Round Obligation (pursuant to <u>N.J.A.C. 5:93</u> )	335
Third Round (1999-2025) Prospective Need (per Kinsey Report <sup>1</sup> , as adjusted through this Agreement to account for the municipality's decision to conform to the Highlands Regional Master Plan)	337

4. For purposes of this Agreement, the Third Round Prospective Need shall be deemed to include the Gap Period Present Need, which is a measure of households formed from 1999-2015 that need affordable housing, that was recognized by the Supreme Court in In re Declaratory Judgment Actions Filed By Various Municipalities, 227 N.J. 508 (2017).
5. The Township conducted a structural conditions survey of the community's housing stock on November 3, 2017 through which 10 units were identified as "substandard housing" in accordance with N.J.A.C. 5:93-5.2. The Township's rehabilitation obligation is therefore reduced to no more than 10 units, subject to the Special Master's review at least 60 days prior to the compliance hearing on this matter. The Township shall demonstrate at the compliance hearing how its rehabilitation obligation will be satisfied in accordance with applicable law.
6. As noted above, the Township has a Prior Round prospective need of 335 units, which is met through the following compliance mechanisms:

Site/Program	Units	Bonuses	
<b>Prior Cycle Credits</b>			
Existing Group Home, Block 4.03, Lot 40	5		Located at 4 Wayside Lane, this facility is operated by Venice Avenue Community Residence, Inc. It is a five bedroom group home for individuals with developmental disabilities who have no income. The non-profit organization receives funding from the State to operate the facility. During the compliance phase of the litigation, the Township agrees to provide the following for each of these credits: 1) A copy of the deed restriction on the project; 2) The Supportive and Special Needs Housing Survey Form used by the Council on Affordable Housing; 3) A copy of the facility license, if applicable
Credits Without Controls	13		Clinton Township initiated the Credits without Controls process in May 1999, in accordance with <u>N.J.A.C. 5:93-3.2</u> . 200 hundred surveys were submitted, 80 of which were returned to COAH. Ultimately, COAH found 28 units were found to

<sup>1</sup> David N. Kinsey, PhD, PP, FAICP, NEW JERSEY LOW AND MODERATE INCOME HOUSING OBLIGATIONS FOR 1999-2025 CALCULATED USING THE NJ COAH PRIOR ROUND (1987-1999) METHODOLOGY, May 2016.



			represent income-eligible households. All surveys received were from the Beaver Brook (Block 79.02) and Oak Knoll (Block 82.13) developments. COAH calculated the affordability factors of these developments and granted the Township eligibility for 13 credits without controls units. See attached Exh. A.
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<b>RCA</b>			
RCA with City of New Brunswick	108		The Township entered into an agreement with the City of New Brunswick to transfer funds for 108 affordable housing units. This agreement was approved by COAH. The Township's final payment toward this transfer was made on August 26, 2002. In total, the Township paid \$2,265,000 towards the RCA with the city. During the compliance phase of this litigation, the Township will demonstrate that the City of New Brunswick created or rehabilitated 108 creditworthy units in accordance with applicable law and the agreement between the Township and the City.
<b>Existing Rentals</b>			
Village Green at Annandale, Block 49, Lot 25	4		Village Green at Annandale is a mixed use development consisting of 4 affordable housing units. The development received amended plan approval in February 2015 and is now developed and occupied.
The Mews (Senior Housing), Block 47, Lot 3	35	3	The Mews is an existing inclusionary development project consists of 35 low- and moderate-income rental housing units. The 43 acre property was developed as a 221 unit residential development approved in 2001. During the compliance phase of the litigation, the municipality will provide the deed restriction(s) for this development.
<b>Planned Projects</b>			
CRC Longview - Group Homes, Block 10, Lots 1, 9.01	4	4	CRC obtained preliminary subdivision approval from the Planning Board memorialized in Resolution No. 2009-17 to create a 15-lot major subdivision, and the resolution contains a condition which requires that the applicant purchase four (4) qualified group home bedrooms. The developer agreed to provide the group home bedrooms. The subdivision is thus far unbuilt by virtue of the downturn in the economy but the subdivision, including the proposed four (4) qualified group home bedrooms creates a realistic opportunity because it is effectively a 6-percent set-aside (one home with four bedrooms out of 16 total homes) . During the compliance phase of the litigation, the Township agrees to provide evidence of the approvals to date.
Fox/Seals, Block 53, Lot 3, family rental	1		The Fox/Seals (Old Municipal Building) site is located in the heart of historic Annandale Village within walking distance to the Annandale Train Station. It is developed with a large structure deemed to have some historic significance with associated paved areas. A redevelopment plan for the site was adopted in August 2016 which proposes to restore a portion of the historic structure for residential and commercial use with the development of a second structure for multifamily use for a site total of 12 units. Given the expense of the historic restoration and past difficulty of realizing a viable development plan for the site, the project will create only one (1) unit of affordable housing. Water and sewer capacity have been secured to accommodate the redevelopment plan. A realistic opportunity is provided as the Township has selected a developer and entered into a redevelopment agreement for the site on October 26, 2017. The Township anticipates

			executing a developer's agreement for the redevelopment project by March 31, 2018. The Township agrees to enter into an agreement to transfer the property to a developer within one year of the date of this amended agreement. The Township anticipates the development of the site to begin in 2018.
<b>100% Affordable Planned Projects</b>			
Beaver Brook Homestead, 100% affordable family rental housing, Block 60.03, Lot 26	66	66	Clinton Township adopted a redevelopment plan for the Beaver Brook Homestead site in January 2016 for a 100% affordable housing project, after which the Planning Board approved a preliminary site plan for the property as memorialized in Resolution No. 2016-08. In August 2017, the developer, Ingerman, was awarded the competitive NJHFMA 9% funding. Water and sewer capacity have been secured to accommodate the 66-unit development. An application for final site plan approval is pending before the Planning Board and it is anticipated that it will be heard in February, 2018. The receipt of funding for this development and pending final site plan application demonstrates that it provides a realistic opportunity for the development of affordable housing.
Marookian, Block 82, Lots 4, 4.03, family rental	26		<p>The Marookian site, which will include 84 total affordable family rental units, is Township-owned property located at the southwest corner of the Route 31 and Regional Road intersection. The majority of the 139-acre site is not developable due to both environmental constraints and because it was purchased with open space funding. The Township maintains the rights to develop 6 acres of the property. Through site analysis, a 19-acre area has been identified at the southeast corner of the site that abuts Route 31 as being appropriate for development. Within this area 6 acres may be selected for the development of the contemplated 100% affordable housing project at a density of approximately 13 units per acre. The Township currently envisions a flag lot configuration that sets the developable portion of the site in a cleared area behind an existing row of mature trees. Sewer capacity has been secured for the proposed development. The Town of Clinton has designated the required amount of water to accommodate the project. The court entered an order on February 2, 2018 approving the Marookian project as part of the Township's compliance plan and the Township will apply for a water reservation from the Town of Clinton for the project within 30 days of the date of the within amended agreement.</p> <p>The Township intends to initiate an RFP process in selecting a developer for the site. During the compliance phase of this matter, the Township will provide a schedule for the development of this site in accordance with the terms in this agreement. Also, during the compliance phase of this matter, the municipality will provide all information necessary to demonstrate a realistic opportunity in accordance with the terms of this agreement.</p>
<b>Total</b>	262	73	262+73=335

7. The Township has implemented or will implement the following mechanisms to address its Third Round prospective need of 337 units:

Site – Block/Lot	Units	Bonuses	
Marookian, Block 82, Lots 4, 4.03, family rental	58	58	See Prior Round chart above. Bonuses are provided for this site because it has immediate access to water and sewer.
LeCompte, Block 29, Lot 4, family rental – Durational Adjustment Project	89		The LeCompte project would be on a 10-acre portion (the "site") of an approximately 40-acre tract of farmland which fronts on Valley Crest Road and Route 31. The LeCompte lot is across Route 31 from the Township's Marookian project. The Township is seeking a durational adjustment for the inclusion of this site in its fair share plan as there currently is not enough water and sewer capacity available to accommodate the development of the site. The site is anticipated to receive water and sewer access based on its location when those utilities become available. The site's location across Route 31 from the Marookian site makes the extension of utilities easier than if this project was proposed in some other area of the Township. CIS, a developer of 100% affordable housing projects, has expressed an interest in purchasing the 10-acre site from LeCompte. The Township will rezone a 10-acre portion of the site for affordable housing and will include the site in a proposed Highlands Center.
Headley Farm Estate – Block 46, Lot 33, 33.01, family rental – Durational Adjustment Project	104		The Headley Farm Estate is located immediately north of Annandale Village and the Annandale Train Station. The site was previously granted approval for a 21 lot subdivision for which the road infrastructure was developed. The developer of the site now proposes a mix of townhouses and multifamily development given changes in area residential market conditions. The portion of the site contemplated for development is cleared and is without environmental constraints. The New Jersey Highlands Council has indicated the site could be included in a Highlands Center to allow for the proposed density and required site improvements. The site totals 155.02 acres, of which 86.96 are unconstrained. 400 total units will be developed at a density of 4.6 units per acre, resulting in 400 units, which at a 26% set aside would be 104 units, all of which will be rented and available to lower-income families. This density is below the presumptive densities required by COAH rules, but the developer has agreed this density provides a sufficient compensatory benefit and has agreed to accept a higher than normal set-aside obligation. Based on its location relative to existing sewer service areas, required infrastructure improvements, substantial set-aside of 26%, developer support, and proximity to public transportation, the Township will prioritize this

			<p>site over all other inclusionary development sites in the municipality when water and sewer access and capacity are available. However, the developer may choose to install, and the Township agrees to support applications for, a package sewer plant and private water system/new public well. The Township will use its best efforts to help the developer purchase the available sewer capacity. However, the developer is responsible for purchasing its sewer capacity. The Township is seeking a durational adjustment for the inclusion of this site in its fair share plan as there is not enough water and sewer capacity available to accommodate the development of the site. The site is anticipated to receive water and sewer access based on its location when those utilities become available. The Township will agree to propose Headley Farms to be in a Highlands Center and to amend the sewer service area to include it in a SSA and to take all reasonable and necessary steps to obtain those designations. During the compliance phase of this litigation, the Township will provide a letter from the developer supporting the terms of this Agreement and otherwise demonstrate this site, with the exception of the availability of public utilities, presents a realistic opportunity for the development of affordable housing in accordance with applicable law.</p>
Alton Place- Block 79.07, Lot 1, family rental – Durational Adjustment Project	28		<p>This 16.17 acre site of which 13.84-acres are developable will be rezoned at a density of 10-units per acre with a 20% set-aside. The Township is seeking a durational adjustment for the inclusion of this site in its fair share plan as there is not enough water and sewer capacity available to accommodate the development of the site. The site is anticipated to receive water and sewer access based on its location when those utilities become available.</p>
<b>Total</b>	279	58	279+58=337

8. The Township intends to provide a realistic opportunity for the development of affordable housing through the adoption of inclusionary zoning on the following sites:

Development/Compliance Mechanism	Units
Headley Farm Estate – Block 46, Lot 33, 33.01, family rental	104
Alton Place- 79.07/1, family rental	28

9. The Township will provide a realistic opportunity for the development of additional affordable housing that will be developed or created through means other than inclusionary zoning in the following ways:

Development/Compliance Mechanism	Units
Beaver Brook Homestead, 100% affordable family rental housing, Block 60.03, Lot 26 (funding received in 2017)	66
Marookian, Block 82, Lots 4, 4.03, family rental	84
LeCompte, Block 29, Lot 4, family rental	89

In accordance with N.J.A.C. 5:93-5.5, the Township recognizes that it must provide evidence that the municipality has adequate and stable funding for any non-inclusionary affordable housing developments. The municipality is required to provide a pro forma of both total development costs and sources of funds and documentation of the funding available to the municipality and/or project sponsor, and any applications still pending. Subject to paragraph 10 below, in the case where an application for outside funding is still pending, the municipality shall provide a stable alternative source, such as municipal bonding, in the event that the funding request is not approved.

In accordance with N.J.A.C. 5:93-5.5, for non-inclusionary developments, a construction or implementation schedule, or timetable, shall be submitted for each step in the development process: including preparation of a site plan, granting of municipal approvals, applications for State and Federal permits, selection of a contractor and construction. The Beaver Brook Homestead project has been fully funded and is expected to begin construction shortly. The schedule for construction of the Beaver Brook Homestead project shall nevertheless provide for construction to begin within two years of court approval of this settlement at the latest. The schedule shall provide for construction of the Marookian project and the LeCompte project consistent with the terms of paragraph 10 below. The Township shall indicate the entity responsible for undertaking and monitoring the construction and overall development activity. The Township shall address how it satisfies the requirements of this paragraph through a filing with the court at least 60 days prior to the compliance hearing in this matter.

10. The parties recognize that the Marookian and LeCompte developments may not be the subject of funding applications for the total number of units planned for each development in this settlement agreement; may not receive sufficient funding to develop at the number of units proposed in this settlement agreement; and may not receive funding enabling construction to begin within two years of court approval of this settlement. In view of these possibilities, the parties agree as follows:
- It is anticipated that the Marookian and LeCompte sites will apply for Low Income Housing Tax Credits. In the event that the funding applications for these sites is submitted for a number of units that is less than the number of units provided for in this Agreement, the municipality shall, within 3 months of the submission of the application or within 3 months of the decision on the application that provides for less than the number of units provided for in this Agreement, whichever comes first, make up the difference between the number of units in this Agreement and the number of units included in the application by funding the difference, increasing the density on an inclusionary site identified in this Agreement, rezoning a site

within the municipality that is most likely to receive water and sewer utilities for inclusionary development at a density equal to or exceeding 10 units per acre net density, or using some combination of these three approaches. The municipality recognizes that it has the obligation to demonstrate a realistic opportunity exists for the approach(es) employed to meet the difference.

- b. In the event for any reason that the Marookian site is not under construction within two years of court approval of this settlement at a fairness hearing, as required by applicable law, the municipality shall, within 30 months of court approval of this settlement, take all necessary steps to provide and demonstrate the provision of a realistic opportunity for the units identified for development on the Marookian site. The Township shall do this by funding the development using municipal funds; increasing the density on an inclusionary site identified in this Agreement; rezoning a site that is most likely to receive water and sewer utilities within the municipality for inclusionary development at a density equal to or exceeding 10 units per acre net density; or using some combination of these approaches. The municipality recognizes that it has the obligation to demonstrate a realistic opportunity exists for the approach(es) employed to meet the obligations that have been allocated in this Agreement to be satisfied on the Marookian site.
- c. The Township agrees to take all reasonable efforts to obtain water and sewer access for the LeCompte site as soon as possible. In the event for any reason that the LeCompte development is not under construction for any reason within 48 months of the of the court's approval of this Agreement at a fairness hearing, the municipality shall take all necessary steps to provide and demonstrate the provision of a realistic opportunity for the units identified for development on the site. The Township shall do this by funding the development using municipal funds; increasing the density on an inclusionary site identified in this Agreement; rezoning a site that is most likely to receive water and sewer utilities within the municipality for inclusionary development at a density equal to or exceeding 10 units per acre net density; or using some combination of these three approaches. The municipality recognizes that it has the obligation to demonstrate a realistic opportunity exists for the approach(es) employed to meet the obligations that have been allocated in this Agreement to be satisfied on the LeCompte site.
- d. In the event that the LeCompte project either does not have access to water or sewer utilities or is not under construction within four years of the court's approval of this Agreement at a fairness hearing, and in the event the municipality has not provided a realistic opportunity for a sufficient number of affordable units through other means, such as inclusionary zoning without a durational adjustment, without further order of court, the Township agrees that it will be required to comply with N.J.A.C. 5:93-4.3(c)3 and 4 with regard to the inclusion in a fair share plan when the DEP or its designated agent approves a proposal to provide water and/or sewer to a site other than those designated for the development of low and moderate income housing in a housing element and fair share plan because the municipality would be deemed to not have sufficient sites to address the municipal housing obligation within the substantive certification period.
- e. The Township and FSHC agree that Marookian and LeCompte developments present opportunities for shared amenities, including for persons with disabilities. The Township agrees that agrees that it will fund and/or obtain funding for a large

public playground that will accommodate disabled children, which playground will be sited either on the Marookian property or the adjacent Kaufelt property. The playground will exceed requirements imposed by the Americans with Disabilities Act and include use of unitary surfacing in all areas of the playground to allow the maximum possible access to the playground for people using wheeled mobility devices. A path will be provided from the Marookian and LeCompte sites to the site of the playground to allow pedestrian. The Township further agrees to require the developers of the Marookian and LeCompte sites to provide a minimum of 20% of all units as barrier free wheelchair accessible units. The Township further agrees to propose and apply to the NJDOT for a signaled cross-walk across Route 31 to provide a pedestrian connection between the two developments and to fund and construct the cross-walk within one year of approval of the cross-walk by the NJDOT.

11. The parties agree that the municipality may address its Third Round prospective need obligation in part through a durational adjustment.
  - a. As demonstrated by the following facts, the Township does not have sufficient capacity for water or sewer to support certain of its affordable housing projects and thus is entitled to a durational adjustment in accordance with N.J.A.C. 5:93-4.3:
    - i. The Township has secured 38,925 gallons of sewer capacity from the Town of Clinton Sewerage Authority ("CTSA") sufficient to accommodate the development of the Beaver Brook Homestead, Fox/Seals and Marookian projects in full. Private entities / individuals have rights to the remaining available capacity, but that capacity is not sufficient to accommodate all of the inclusionary and 100% affordable developments included in the settlement plan. As such, there is presently not enough sewer capacity to accommodate the LeCompte, Headley Farms, and 108 Alton Place developments as prescribed herein, requiring the support of a durational adjustment. The Township agrees to make all reasonable efforts to obtain sewer capacity from the Clinton Township Sewer Authority and/or the individuals who have rights to the remaining capacity. Robert and Kevin Benbrook along with Chuck Urban were the principals of Country Club Drive Associates (CCDA), the entity that has rights to the remaining sewer capacity but, on information and belief, it appears that there has been a reorganization of CCDA and the sewer capacity has been divided between CCDA and Robert and Kevin Benbrook. While there presently is no available sewer capacity for the LeCompte project, The Township, with the assistance of the special master, will make all reasonable efforts to obtain sewer capacity for the LeCompte project from the CTSA and/or the Benbrooks..
    - ii. The allocation of sewer capacity has been prioritized based on several factors, including anticipated time of project completion, number of affordable units generated, location relative to existing SSA's, and required infrastructure improvements, among other factors. The Beaver Brook Homestead and Fox/Seals sites are redevelopment projects within an existing SSA which are anticipated to begin sitework within the next year. The Marookian site, located along Route 31, is also within an existing SSA, the development of which requires the installation of a lift station and/or forced main to connect to the existing lift station approximately half-mile

north of the property at North Hunterdon High School. Headley Farm Estate abuts the SSA serving the Village of Annandale with a readily available lift station and main to facilitate connectivity. Alternatively, the Headley site may install an advanced septic treatment plant which has been determined to be acceptable by the Highlands Council once the site has been included in a designated Highlands Center. The development of the Headley site remains a priority over the 108 Alton Place site as it will generate the most affordable housing units with the available sewer capacity. 108 Alton Place is located within an existing SSA requiring the installation of a forced main to convey discharge to the nearby lift station with connectivity available on two sides of the site. While the LeCompte site is a 100% affordable site and is located across Route 31 from the Marookian site and in the same SSA as the Marookian site, it is unlikely that it will be approved for tax credit financing in the same round as the Marookian site, so the Marookian site has priority over the LeCompte site.

- iii. With regard to water capacity, the Beaver Brook Homestead development has a water reservation agreement with the Town of Clinton. Fox/Seals and Marookian have 'will serve' letters from the Town of Clinton which are anticipated to be renewed. All three of these sites have the requisite infrastructure readily available. The Township has obtained court approval of the Marookian project as part of its compliance plan (similar to what the Township obtained for the Beaver Brook Homestead site). As such, the Township will request prior to the Fairness Hearing a water reservation for the Marookian site from the Town of Clinton which it should be entitled to under the terms of the Town of Clinton ordinance governing water reservation agreements. Beyond this water capacity, there is presently not enough water to supply the development of the Headley Farm Estate, 108 Alton Place, and LeCompte sites. However, any remaining capacity will be requested from the Town of Clinton and allocated to the LeCompte project first and then to the Headley project to be supplemented with the installation of an onsite well providing a community or production water supply which may be incorporated into the existing Town of Clinton system which abuts the property. The Headley site is being given priority with regard to water capacity over the 108 Alton Place project as the Headley project will yield more affordable housing units than the 108 Alton Place and water infrastructure has already been installed on site. Water infrastructure is adjacent to both the Marookian, 108 Alton Place, and LeCompte sites making water readily available once capacity becomes available. The special master will assist the Township in attempting to obtain water for the affordable housing projects included in the settlement plan, with the LeCompte project having first priority, the Headley project having second priority, and the 108 Alton Place project having third priority.
- b. In view of its request for a durational adjustment, the municipality agrees to comply with N.J.A.C. 5:93-4.3 as follows:
    - i. The Township will seek court approval for, and FSHC will support, a durational adjustment of 221 units and address the requirements of N.J.A.C. 5:93-4.3 through the following:



1. In accordance with N.J.A.C. 5:93-4.3(c), and the requirement to address Third Round prospective need obligation of 337 units, 221 units of which shall be deferred until adequate water and/or sewer are made available. The Township shall reserve and set aside new water and/or sewer capacity, when it becomes available, for low and moderate income housing, on a priority basis. Municipal officials shall endorse all applications to the Department of Environmental Protection (DEP) or its agent to provide water and/or sewer capacity for the sites set forth above and otherwise in accordance with paragraph 10d of this Agreement if the waiver provided by this paragraph no longer applies.
2. The Township has designated and will rezone the following sites as necessary for low and moderate income housing that lack adequate water and/or sewer as addressed more fully above:

	Units
LeCompte, Block 29, Lot 4, family rental	89
Headley Farm Estate – Block 46, Lot 33, 33.01, family rental	104
Alton Place- Block 79.07, Lot 1, family rental	28
Total:	221

3. The basis for inclusion of the LeCompte and 108 Alton Place sites as plan mechanisms to satisfy a portion of the Township's Third Round obligation, which require the support of a durational adjustment, are as follows:
  - a) LeCompte: The LeCompte project will be on a 10-acre portion (the "site") of an approximately 40-acre tract of farmland which fronts on Valley Crest Road and Route 31. The LeCompte lot is across Route 31 from the Township's Marookian project. The Township is seeking a durational adjustment for the inclusion of this site in its fair share plan as there is currently not enough water and sewer capacity available to accommodate the development of the site. The site is anticipated to receive water and sewer access based on its location when those utilities become available. The site's location across Route 31 from the Marookian site makes the extension of utilities easier than if this project was proposed in some other area of the Township. CIS, a developer of 100% affordable housing projects, has expressed an interest in purchasing the 10-

acre site from LeCompte. The Township will rezone a 10-acre portion of the site for affordable housing and will include the site in a proposed Highlands Center.

- b) 108 Alton Place: 108 Alton Place is located between two existing townhouse developments in the Township's Planned Unit Development Overlay District. The majority of the site is developable with areas of steep slopes and Highlands water protection buffers. The site is well positioned between Routes 78 and 22 to the north, Route 31 to the east and the Town of Clinton's commercial center to the west. It is anticipated that the proposed development of the site at the proposed density will result in minimal local traffic impacts. In addition, appropriate buffers and open space will be required of any future development of the site. The Township is seeking a durational adjustment for the inclusion of this site in the municipality's Fair Share Plan as there is not enough water and sewer capacity available at present to accommodate the development of the site.
4. All proposed plan mechanisms include sites within established neighborhoods of the Township with good regional access, some in close proximity to public transportation access mitigating traffic congestion and parking demand. The densities and development proposed at each site of ample size and shape take into consideration their unique property characteristics as well as surrounding development.
5. Sites identified herein are not impacted by environmental constraints to such a degree that would inhibit the proposed creation of affordable housing. Water and sewer capacity have been secured for some sites while there is not enough presently available to accommodate others. Hence, the Township is seeking a durational adjustment for sites which do not have adequate water and/or sewer supplies, though they have determined to be in appropriate locations to receive such when capacity becomes available.
6. The requirements included in N.J.A.C. 5:93-4.3(c)3 and 4 related to inclusion in a fair share plan when the DEP or its designated agent approves a proposal to provide water and/or sewer to a site other than those designated for the development of low and moderate income housing in the housing element are hereby waived in accordance with N.J.A.C. 5:93-4.3(c)4, which permits waiver of such requirements when a municipality has a plan that will provide water and/or sewer to sufficient sites to address the municipal housing obligation within the substantive certification period.
12. The Township agrees to request that the Court continue the appointment of the Special Master in this matter for the purpose of assisting the municipality and advising the court

regarding the municipality's efforts to obtain approvals from state and local agencies required by this Agreement. The parties agree to recommend to the Court that the master, whose services shall be paid for by the Township, be directed to issue reports semi-annually to the court, with copies to the parties. The Township further agrees to respond to reasonable inquiries from the special master and FSHC regarding its efforts to obtain approvals required by this Agreement.

13. The Township agrees to require 13% of all units referenced in this Agreement, excepting those units that were constructed or granted preliminary or final site plan approval prior to July 1, 2008, to be very low income units, with half of the very low income units being available to families. The municipality will comply with those requirements as follows:

Development/Compliance Mechanism	Very low income units
Beaver Brook Homestead, 100% affordable family rental housing, Block 60.03, Lot 26	9
Fox/Seals, Block 53, Lot 3, family rental	0
Marookian, Block 82, Lots 4, 4.03, family rental	11
Headley Farm Estate – Block 46, Lot 33, 33.01, family rental	14
Alton Place- Block 79.07, Lot 1, family rental	4
LeCompte, Block 29, Lot 4, family rental	12
<b>Total:</b>	<b>50</b>

14. The Township shall meet its Third Round Prospective Need in accordance with the following standards as agreed to by the Parties and reflected in the table in paragraph 7 above:

- a. Third Round bonuses will be applied in accordance with N.J.A.C. 5:93-5.15(d), provided that the municipality agrees to not use bonuses to reduce the actual number of units for which a realistic opportunity must be provided, even if subject to a durational adjustment, below 279 units.
- b. At least 50 percent of the units addressing the Third Round Prospective Need shall be affordable to very-low-income and low-income households with the remainder affordable to moderate-income households.
- c. At least twenty-five percent of the Third Round Prospective Need shall be met through rental units, including at least half in rental units available to families.
- d. At least half of the units addressing the Third Round Prospective Need in total must be available to families.
- e. The Township agrees to comply with an age-restricted cap of 25% and to not request a waiver of that requirement. This shall be understood to mean that in no circumstance may the municipality claim credit toward its fair share obligation for age-restricted units that exceed 25% of all units developed or planned to meet its cumulative prior round and third round fair share obligation.

15. The Township shall add to the list of community and regional organizations in its affirmative marketing plan, pursuant to N.J.A.C. 5:80-26.15(f)(5), Fair Share Housing Center, the New Jersey State Conference of the NAACP, the Latino Action Network,

NORWESCAP, the Supportive Housing Association, and the Central Jersey Housing Resource Center, and shall, as part of its regional affirmative marketing strategies during its implementation of the affirmative marketing plan, provide notice to those organizations of all available affordable housing units. The Township also agrees to require any other entities, including developers or persons or companies retained to do affirmative marketing, to comply with this paragraph.

16. All units shall include the required bedroom distribution, be governed by controls on affordability and affirmatively marketed in conformance with the Uniform Housing Affordability Controls, N.J.A.C. 5:80-26.1 et. seq. or any successor regulation, with the exception that in lieu of 10 percent of affordable units in rental projects being required to be at 35 percent of median income, 13 percent of affordable units in such projects shall be required to be at 30 percent of median income, and all other applicable law. The Township as part of its HEFSP shall adopt and/or update appropriate implementing ordinances in conformance with standard ordinances and guidelines developed by COAH to ensure that this provision is satisfied. Income limits for all units that are part of the Plan required by this Agreement and for which income limits are not already established through a federal program exempted from the Uniform Housing Affordability Controls pursuant to N.J.A.C. 5:80-26.1 shall be updated by the Township annually within 30 days of the publication of determinations of median income by HUD as follows:
  - a. Regional income limits shall be established for the region that the Township is located within (i.e. Region 3) based on the median income by household size, which shall be established by a regional weighted average of the uncapped Section 8 income limits published by HUD. To compute this regional income limit, the HUD determination of median county income for a family of four is multiplied by the estimated households within the county according to the most recent decennial Census. The resulting product for each county within the housing region is summed. The sum is divided by the estimated total households from the most recent decennial Census in the Township's housing region. This quotient represents the regional weighted average of median income for a household of four. The income limit for a moderate-income unit for a household of four shall be 80 percent of the regional weighted average median income for a family of four. The income limit for a low-income unit for a household of four shall be 50 percent of the HUD determination of the regional weighted average median income for a family of four. The income limit for a very low income unit for a household of four shall be 30 percent of the regional weighted average median income for a family of four. These income limits shall be adjusted by household size based on multipliers used by HUD to adjust median income by household size. In no event shall the income limits be less than those for the previous year.
  - b. The income limits attached hereto as Exhibit B are the result of applying the percentages set forth in paragraph (a) above to HUD's determination of median income for FY 2017, and shall be utilized until the Township updates the income limits after HUD has published revised determinations of median income for the next fiscal year.
  - c. The Regional Asset Limit used in determining an applicant's eligibility for affordable housing pursuant to N.J.A.C. 5:80-26.16(b)3 shall be calculated by the Township annually by taking the percentage increase of the income limits calculated pursuant to paragraph (a) above over the previous year's income limits, and

applying the same percentage increase to the Regional Asset Limit from the prior year. In no event shall the Regional Asset Limit be less than that for the previous year.

17. All new construction units shall be adaptable in conformance with P.L.2005, c.350/N.J.S.A. 52:27D-311a and -311b and all other applicable law.
18. As an essential term of this Agreement, within ninety (90) days of Court's approval of this Agreement after a Fairness Hearing, the Township shall adopt a Housing Element and Fair Share Plan and Spending Plan in conformance with the terms of this Agreement. As another essential term of this Agreement, within ninety (90) days of Court's approval of the Township's compliance plan after a Compliance Hearing, the Township shall introduce and adopt an ordinance or ordinances providing for the amendment of the Township's Affordable Housing Ordinance and Zoning Ordinance to implement the terms of this Agreement and the zoning contemplated herein.
19. The parties agree that if a decision of a court of competent jurisdiction in Hunterdon County, or a determination by an administrative agency responsible for implementing the Fair Housing Act, or an action by the New Jersey Legislature, would result in a calculation of an obligation for the Township for the period 1999-2025 that would be lower by more than ten (10%) percent than the total prospective Third Round need obligation established in this Agreement, and if that calculation is memorialized in an unappealable final judgment, the Township may seek to amend the judgment in this matter to reduce its fair share obligation accordingly. Notwithstanding any such reduction, the Township shall be obligated to adopt a Housing Element and Fair Share Plan that conforms to the terms of this Agreement and to implement all compliance mechanisms included in this Agreement, including by adopting or leaving in place any site specific zoning adopted or relied upon in connection with the Plan adopted pursuant to this Agreement; taking all steps necessary to support the development of any 100% affordable developments referenced herein; and otherwise fulfilling fully the fair share obligations as established herein. In the event alternative sites are required in accordance with the terms of this Agreement, in no circumstance may the municipality provide less than 279 units of affordable housing, not including bonuses. The reduction of the Township's obligation below that established in this Agreement does not provide a basis for seeking leave to amend this Agreement, seeking leave to amend an order or judgment pursuant to R. 4:50-1, or seeking leave to provide less than 279 units of affordable housing, not including bonuses. If the Township prevails in reducing its prospective need for the Third Round, the Township may carry over any resulting extra credits to future rounds in conformance with the then-applicable law.
20. The Township shall prepare a Spending Plan within the period referenced above, subject to the review of FSHC and approval of the Court, and reserves the right to seek approval from the Court that the expenditures of funds contemplated under the Spending Plan constitute "commitment" for expenditure pursuant to N.J.S.A. 52:27D-329.2 and -329.3, with the four-year time period for expenditure designated pursuant to those provisions beginning to run with the entry of a final judgment approving this settlement in accordance with the provisions of In re Tp. Of Monroe, 442 N.J. Super. 565 (Law Div. 2015) (aff'd 442 N.J. Super. 563). On the first anniversary of the execution of this Agreement, which shall be established by the date on which it is executed by a representative of the Township, and on every anniversary of that date thereafter through the end of the period of protection from litigation referenced in this Agreement, the Township agrees to provide annual

- reporting of trust fund activity to the New Jersey Department of Community Affairs, Council on Affordable Housing, or Local Government Services, or other entity designated by the State of New Jersey, with a copy provided to Fair Share Housing Center and posted on the municipal website, using forms developed for this purpose by the New Jersey Department of Community Affairs, Council on Affordable Housing, or Local Government Services. The reporting shall include an accounting of all housing trust fund activity, including the source and amount of funds collected and the amount and purpose for which any funds have been expended.
21. On the first anniversary of the execution of this Agreement, and every anniversary thereafter through the end of this Agreement, the Township agrees to provide annual reporting of the status of all affordable housing activity within the municipality through posting on the municipal website with a copy of such posting provided to Fair Share Housing Center, using forms previously developed for this purpose by the Council on Affordable Housing or any other forms endorsed by the Special Master and FSHC.
  22. The Fair Housing Act includes two provisions regarding action to be taken by the Township during the ten-year period of protection provided in this Agreement. The Township agrees to comply with those provisions as follows:
    - a. For the midpoint realistic opportunity review due on July 1, 2020, as required pursuant to N.J.S.A. 52:27D-313, the Township will post on its municipal website, with a copy provided to Fair Share Housing Center, a status report as to its implementation of the Plan and an analysis of whether any unbuilt sites or unfulfilled mechanisms continue to present a realistic opportunity and whether any mechanisms to meet unmet need should be revised or supplemented. Such posting shall invite any interested party to submit comments to the municipality, with a copy to Fair Share Housing Center, regarding whether any sites no longer present a realistic opportunity and should be replaced and whether any mechanisms to meet unmet need should be revised or supplemented. Any interested party may by motion request a hearing before the court regarding these issues.
    - b. For the review of very low income housing requirements required by N.J.S.A. 52:27D-329.1, within 30 days of the third anniversary of this Agreement, and every third year thereafter, the Township will post on its municipal website, with a copy provided to Fair Share Housing Center, a status report as to its satisfaction of its very low income requirements, including the family very low income requirements referenced herein. Such posting shall invite any interested party to submit comments to the municipality and Fair Share Housing Center on the issue of whether the municipality has complied with its very low income housing obligation under the terms of this settlement.
  23. FSHC is hereby deemed to have party status in this matter and to have intervened in this matter as a defendant without the need to file a motion to intervene or an answer or other pleading. The parties to this Agreement agree to request the Court to enter an order declaring FSHC is an intervenor, but the absence of such an order shall not impact FSHC's rights.
  24. This Agreement must be approved by the Court following a fairness hearing as required by Morris Cty. Fair Hous. Council v. Boonton Twp., 197 N.J. Super. 359, 367-69 (Law Div. 1984), aff'd o.b., 209 N.J. Super. 108 (App. Div. 1986); East/West Venture v. Township of Fort Lee, 286 N.J. Super. 311, 328-29 (App. Div. 1996). The Township shall present its

- planner as a witness at this hearing. FSHC agrees to support this Agreement at the fairness hearing. In the event the Court approves this proposed settlement, the parties contemplate the municipality will receive "the judicial equivalent of substantive certification and accompanying protection as provided under the FHA," as addressed in the Supreme Court's decision in In re N.J.A.C. 5:96 & 5:97, 221 N.J. 1, 36 (2015). The "accompanying protection" shall remain in effect through July 1, 2025. If this Agreement is rejected by the Court at a fairness hearing it shall be null and void.
25. The Township agrees to make a \$30,000 donation to FSHC to be used for the advancement of affordable housing. The payment shall be made within ten (10) days of the Court's approval of this Agreement after a Fairness Hearing.
  26. If an appeal is filed of the Court's approval or rejection of this Agreement, the Parties agree to defend the Agreement on appeal, including in proceedings before the Superior Court, Appellate Division and New Jersey Supreme Court, and to continue to implement the terms of this Agreement if the Agreement is approved before the trial court unless and until an appeal of the trial court's approval is successful, at which point the Parties reserve their right to rescind any action taken in anticipation of the trial court's approval. All Parties shall have an obligation to fulfill the intent and purpose of this Agreement.
  27. This Agreement may be enforced by either party through a motion to enforce litigant's rights or a separate action filed in Superior Court, Hunterdon County. The prevailing party in such a motion or separate action shall be entitled to reasonable attorney's fees.
  28. Unless otherwise specified, it is intended that the provisions of this Agreement are to be severable. The validity of any article, section, clause or provision 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.
  29. This Agreement shall be governed by and construed by the laws of the State of New Jersey.
  30. This Agreement may not be modified, amended or altered in any way except by a writing signed by each of the Parties.
  31. This Agreement may be executed in any number of counterparts, each of which shall be an original and all of which together shall constitute but one and the same Agreement.
  32. 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 possess 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.
  33. 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: (i) it has been represented by counsel in connection with negotiating the terms of this Agreement; and (ii) it has conferred due authority for execution of this Agreement upon the persons executing it.

34. 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.
35. 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.
36. No member, official or employee of the Township 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.
37. Anything herein contained to the contrary notwithstanding, the effective date of this Agreement shall be the date upon which all of the Parties hereto have executed and delivered this Agreement.
38. All notices required under this Agreement ("Notice[s]") shall be written and shall be served upon the respective Parties by certified mail, return receipt requested, or by a recognized overnight or by a personal carrier. In addition, where feasible (for example, transmittals of less than fifty pages) shall be served by facsimile or e-mail. All Notices shall be deemed received upon the date of delivery. Delivery shall be affected as follows, subject to change as to the person(s) to be notified and/or their respective addresses upon ten (10) days notice as provided herein:

**TO FSHC:**

Kevin D. Walsh, Esq.  
Fair Share Housing Center  
510 Park Boulevard  
Cherry Hill, NJ 08002  
Phone: (856) 665-5444  
Telecopier: (856) 663-8182  
E-mail: kevinwalsh@fairsharehousing.org

**TO THE TOWNSHIP:**

Jonathan Drill, Esq.  
Stickel, Koenig & Sullivan  
571 Pompton Avenue  
Cedar Grove, New Jersey 07009

Telecopier: (973) 239-0369  
Email: jdrill@sksdllaw.com

**WITH A COPY TO THE  
MUNICIPAL CLERK:**

Carla Conner, Municipal Clerk  
1225 Route 31 South, Suite 411  
Lebanon, New Jersey 08833

Telecopier: (908) 735-8156  
Email: cconner@clintontwpnj.com



February 6, 2018  
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Please sign below if these terms are acceptable.

Sincerely,



Kevin D. Walsh, Esq.  
Counsel for Interested Party  
Fair Share Housing Center

On behalf of the Township of Clinton, with the authorization  
of the governing body:

  
\_\_\_\_\_  
Mayor John Higgins

Dated: February 7, 2018

**EXHIBIT B: 2017 INCOME LIMITS**

Prepared by Affordable Housing Professionals of New Jersey (AHPNJ) - August 2017  
**2017 AFFORDABLE HOUSING REGIONAL INCOME LIMITS BY HOUSEHOLD SIZE**  
 Income limits not officially adopted by the State of New Jersey. Contact your municipality to see if applicable in your jurisdiction. Additional information about AHPNJ income limits is posted on AHPNJ.org

	1 Person	*1.5 Person	2 Person	*3 Person	4 Person	*4.5 Person	5 Person	6 Person	7 Person	8+ Person	Max Increase Rents** Soles***	Regional Asset Limit****
<b>Region 1</b>												
Median	\$60,271	\$64,576	\$68,882	\$77,492	\$86,102	\$89,546	\$92,990	\$99,878	\$106,766	\$113,655		
Moderate	\$48,217	\$51,561	\$55,105	\$61,993	\$68,882	\$71,637	\$74,392	\$79,903	\$85,413	\$90,924	1.7%	\$166,493
Low	\$30,136	\$32,288	\$34,441	\$38,746	\$43,051	\$44,773	\$46,495	\$49,939	\$53,383	\$56,827	1.99%	
Passaic and Sussex	\$18,081	\$19,373	\$20,664	\$23,248	\$25,831	\$26,864	\$27,897	\$29,963	\$32,030	\$34,096		
<b>Region 2</b>												
Median	\$65,953	\$70,663	\$75,374	\$84,218	\$93,062	\$97,807	\$102,552	\$110,923	\$116,830	\$124,368		
Moderate	\$52,762	\$56,531	\$60,299	\$67,857	\$75,374	\$78,389	\$81,404	\$87,434	\$93,464	\$99,494	1.7%	\$180,756
Low	\$32,976	\$35,332	\$37,687	\$42,308	\$47,109	\$48,993	\$50,878	\$54,646	\$58,415	\$62,184	3.25%	
Union and Warren	\$19,786	\$21,199	\$22,612	\$25,439	\$28,265	\$29,396	\$30,527	\$32,788	\$35,049	\$37,310		
<b>Region 3</b>												
Median	\$73,780	\$79,050	\$84,320	\$94,868	\$105,400	\$109,616	\$113,832	\$122,264	\$130,696	\$139,128		
Moderate	\$59,024	\$63,240	\$67,456	\$75,888	\$84,320	\$87,693	\$91,066	\$97,811	\$104,557	\$111,302	1.7%	\$200,698
Low	\$36,890	\$39,525	\$42,160	\$47,430	\$52,700	\$54,808	\$56,916	\$61,132	\$65,348	\$69,564	0.58%	
Somerset	\$22,134	\$23,715	\$25,296	\$28,458	\$31,620	\$32,885	\$34,150	\$36,679	\$39,209	\$41,738		
<b>Region 4</b>												
Median	\$66,022	\$70,738	\$75,454	\$84,885	\$94,317	\$98,090	\$101,862	\$109,408	\$116,953	\$124,498		
Moderate	\$52,817	\$56,590	\$60,363	\$67,908	\$75,454	\$78,472	\$81,490	\$87,526	\$93,562	\$99,599	1.7%	\$177,413
Low	\$33,011	\$35,369	\$37,727	\$42,443	\$47,158	\$49,045	\$50,931	\$54,704	\$58,476	\$62,249	1.53%	
Ocean	\$19,807	\$21,221	\$22,635	\$25,466	\$28,295	\$29,427	\$30,559	\$32,822	\$35,086	\$37,349		
<b>Region 5</b>												
Median	\$58,240	\$62,400	\$66,560	\$74,880	\$83,200	\$86,528	\$89,856	\$96,512	\$103,168	\$109,824		
Moderate	\$46,592	\$49,520	\$52,448	\$59,904	\$66,560	\$69,222	\$71,885	\$77,210	\$82,534	\$87,859	1.7%	\$154,194
Low	\$29,120	\$31,200	\$33,280	\$37,440	\$41,600	\$43,264	\$44,928	\$48,256	\$51,584	\$54,912	2.09%	
Gloucester	\$17,472	\$18,720	\$19,968	\$22,464	\$24,960	\$25,958	\$26,957	\$28,954	\$30,950	\$32,947		
<b>Region 6</b>												
Median	\$51,085	\$54,734	\$58,383	\$65,681	\$72,979	\$75,898	\$78,817	\$84,635	\$90,453	\$96,271		
Moderate	\$40,868	\$43,787	\$46,706	\$52,545	\$58,383	\$60,718	\$63,054	\$67,724	\$72,395	\$77,066	1.7%	\$136,680
Low	\$25,543	\$27,367	\$29,192	\$32,840	\$36,489	\$37,949	\$39,409	\$42,328	\$45,247	\$48,166	0.00%	
Very Low	\$15,326	\$16,420	\$17,515	\$19,704	\$21,894	\$22,769	\$23,645	\$25,397	\$27,148	\$28,900		

Moderate income is between 80 and 50 percent of the median income. Low income is 50 percent or less of median income. Very low income is 30 percent or less of median income.

\* These columns are for calculating the pricing for one, two and three bedroom sale and rental units as per N.J.A.C. 5:80-26.4(a).

\*\* This column is used for calculating the pricing for rent increases for units as per N.J.A.C. 5:97-9.3. The increase for 2015 was 2.3%, the increase for 2016 was 1.1% and the increase for 2017 is 1.7% (Consumer price index for All Urban Consumers (CPI-U); Regions by expenditure category and commodity and service group). Landlords who did not increase rents in 2015 or 2016 may increase rent by up to the applicable combined percentage from their last rental increase for that unit. In no case can rent for any particular apartment be increased more than one time per year.

\*\*\* This column is used for calculating the pricing for resale increases for units as per N.J.A.C. 5:97-9.3. As per 5:97-9.3(b), The price of owner-occupied low and moderate income units may increase annually based on the percentage increase in the regional median income limit for each housing region. In no event shall the maximum resale price established by the administrative agent be lower than the last recorded purchase price.

Low income tax credit developments may increase based on the low income tax credit regulations.

\*\*\*\* The Regional Asset Limit is used in determining an applicant's eligibility for affordable housing pursuant to N.J.A.C. 5:80-26.16(b)3.

Note: Since the Regional Income Limits for Region 6 in 2016 were higher than the 2017 calculations, the 2016 income limits will remain in force for 2017. See N.J.A.C. 5:97-9.2(c).

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**CLINTON AGRICULTURAL ASSOCIATES  
1461 ROUTE 22 EAST  
BLOCK 14, LOTS 6 & 7**

**APPLICATION NO. BOA-2020-07**

**RESOLUTION MEMORIALIZING GRANT OF BIFURCATED “D(1)” USE AND  
“C(1)” VARIANCES TO ALLOW MIXED COMMERCIAL DEVELOPMENT  
CONSISTING OF RETAIL, OFFICE, FLEX SPACE AND SELF-STORAGE**

**RESOLUTION NO. 2021-09**

**WHEREAS**, Clinton Agricultural Associates (the “**applicant**”) is the owner of property located at 1461 Route 22 East and designated on the Township tax maps as Block 14, Lots 6 & 7 (the “**property**”), which property is operated as a garden and tree nursery (the “**nursery**”) and is comprised of two “L” shaped parcels – Lot 6 (“**Lot 6**”), presently developed with a two-story frame building and shed with outdoor areas designated for nursery stock storage, and Lot 7 (“**Lot 7**”), presently developed with two sheds and eight green houses and also containing outdoor areas for nursery stock storage (the “**existing improvements**”) – and the two lots totaling approximately 22.4 acres;

**WHEREAS**, the applicant made application to the Clinton Township Board of Adjustment (the “**Board**”) for bifurcated “d(1)” use variance relief to allow self-storage and flex space uses on the property, “d(6)” height variance relief, and “c(1)” and “c(2)” variance relief (the “**application**”) to allow construction of a number of buildings and associated site improvements to accommodate mixed use office and retail uses on the front portion of Lot 6 and Lot 7 and several self-storage buildings and flex space uses on the rear of Lot 7 (the “**proposed development**”);

**WHEREAS**, at the time the application was submitted to the Board, the property was in the C-2 Commercial zoning district (“**C-2 zone**”) and, although the property was subsequently re-zoned to the new C-ROM - Research, Office and Manufacturing zoning district (the “**C-ROM zone**”), the C-2 zone regulations govern the application pursuant to the “Time of Application Rule”, N.J.S.A. 40:55d-10.5;

**WHEREAS**, neither the C-ROM zone nor the C-2 zone permit self-storage or flex space uses so “d(1)” use variances are still required and the “c” variances are also still required, and the “d” variances confer exclusive subject matter jurisdiction over the application with the Board pursuant to N.J.S.A. 40:55D--20 by virtue of N.J.S.A. 40:55D-70d and -76b;

**WHEREAS**, a number of documents were submitted by the applicant as well as the Board experts with regard to the application, all of which documents are on file with the Board, are part of the record in this matter, and the following are the latest versions of the plans, drawings and documents submitted by the applicant for which

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Board approval is sought, which plans, drawings and documents have been on file and available for public inspection for at least 10 days prior to the hearing on the application in accordance with N.J.S.A. 40:55D-10b:

1. Variance Plans prepared by E&LP, last revised December 14, 2020, consisting of three sheets (the “**variance plans**”),
2. Representative architectural images (the “**images**”), and
3. Architectural plans, prepared by Jeffrey A. Fleisher Architects dated November 23, 2020 (the “**architectural plans**”);

**WHEREAS**, the application was deemed to be complete;

**WHEREAS**, a duly noticed public hearing was held on the application, commencing March 22, 2021, continuing on April 26, 2021 and on June 28, 2021, and concluding on August 23, 2021, with affidavits of service and publication of notices of the hearing being submitted to and being on file with the Board, thereby conferring procedural jurisdiction over the application with the Board, during which hearing the applicant was represented by Tony Koester, Esq. and the Board was represented by Jonathan E. Drill, Esq.;

**WHEREAS**, the following individuals testified during the hearing and were subject to cross examination and questioning, and the testimony is part of the record in this matter:

1. Chris Nusser, PE (applicant’s engineering expert),
2. Keith Chambers, RA, AIA (applicant’s architectural expert),
3. Jim Kyle, PP, AICP (applicant’s planning expert),
4. Larry Plevier, PE (Board engineering expert),
5. Tom Behrens, PP, AICP (Board planning expert),
6. Edward Snieckus, PP, AICP (Board planning expert), and
7. Harold Wilbert (applicant’s and owner’s principal);

**WHEREAS**, no exhibits were into the record during the hearing on the application:

**WHEREAS, AFTER CONSIDERING THE APPLICATION, DOCUMENTS, AND TESTIMONY REFERENCED ABOVE, AND GIVING APPROPRIATE WEIGHT TO SAME, AND BASED ON ITS UNDERSTANDING**

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**OF THE APPLICABLE LAW, THE BOARD MAKES THE FOLLOWING FACTUAL FINDINGS AND LEGAL CONCLUSIONS FOR THE PURPOSE OF MEMORIALIZING IN A WRITTEN RESOLUTION IN ACCORDANCE WITH N.J.S.A. 40:55D-10g(2) ITS ACTION IN GRANTING THE APPLICATION SUBJECT TO CONDITIONS AS SET FORTH BELOW:**

**A. FACTUAL FINDINGS**

1. **The Property, Zoning, Existing Improvements, Surrounding Uses and Zoning.** As set forth above, the 22.4-acre property is comprised of two “L” shaped lots, Lot 6 and Lot 7, and the property is currently is operated as a nursery. The property has frontages along Route 22 East with access provided via single two-way gravel driveways on each lot as well as on the Round Valley Reservoir access road to the east of the property. As set forth above, there are existing improvements on both lots. There are areas of steep slopes towards the rear half of the property, along with a JCP&L transmission line right-of-way that traverses the property. Development surrounding the property consists the Hunterdon County YMCA on the other side of Route 22 and agricultural uses to the north, State Park office and agricultural uses to the east, rail corridor, residential development and open space to the south and a landscape contractor office and yard to the west. Certain retail and office uses are permitted in the C-2 zone as well as the C-ROM zone but, as set forth above, neither zone permits self-storage or flex space use.

2. **The Proposed Development.** As set forth above, the proposed development includes construction of a number of buildings and associated site improvements to accommodate mixed use office and retail uses on the front portion of Lot 6 and Lot 7 and several self-storage buildings and flex space uses on the rear of Lot 7. More specifically, the retail and office components are to be oriented toward the front of the property totaling 39,000 square feet and are to be distributed between four (4) two-story buildings. The retail and office components of the proposed development are permitted principal uses in the C-2 zone (as well as in the C-ROM zone). The rear of the property will contain a separate self-storage development totaling 41,000 square feet in five buildings with a 1,000 square foot office building, and 30,000 square feet of flex use building space.

3. **The Application and Specific Relief Required and Requested.** The following specific relief is required and the applicant has requested same on a bifurcated basis in accordance with N.J.S.A. 40:55D-76b, meaning the applicant seeks certain of the variances required to approve the proposed development at this time with site plan approval and possible other relief being applied for subsequently if the bifurcated relief requested is granted. First, the applicant seeks bifurcated “d(1)” use variances from ordinance section 165-161 to allow the flex space and self-storage uses as both uses are not permitted in the C-2 zone or in the C-ROM zone, so are prohibited by virtue of ordinance section 165-93 which provides there where “a use is not specifically permitted in a zone district, it is prohibited.”. Second, the applicant seeks on a bifurcated basis several “c(1)” variances to maintain certain existing nonconforming conditions

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including as follows: a “c(1)” variance from the Schedule of Zoning Requirements (the “**Schedule**”) as to minimum lot width at the street for Lot 6 where 344.98 feet exists and is proposed, where 350 feet is required, a “c(1)” variance from the Schedule for Lot 7 as to minimum lot width at the street where 343.01 feet exists and is proposed, where 350 feet is required, and a “c(1)” variance from the Schedule as to minimum side yard setback where 55.63 feet exists to an existing structure on Lot 6 and 75 feet is required. During the course of the hearing on the application, the applicant eliminated and withdrew the request for “d(6)” height variance relief, as well as the request for the “c(2)” bulk variance relief relative to minimum side yard and minimum lot width at building.

4. **Findings as to the “D(1)” Variances to Allow the Flex Space and Self-Storage Uses.** The Board’s findings as to the positive and negative criteria of the requested “d(1)” use variances from ordinance section 165-161 to allow the flex space and self-storage uses are as follows.

a. **Positive Criteria of the “D(1)” Use Variances.** The Board’s findings as to the positive criteria of the “d(1)” use variances are as follows. First, the Board finds that the proposed development promotes the general welfare purposes of the Municipal Land Use Law (“**MLUL**”) set forth in N.J.S.A. 40:55D-2a (to encourage municipal action to guide the appropriate use or development in a manner which will promote the public health, safety, morals, and general welfare) and -2g (to provide sufficient space in appropriate locations for a variety of uses) by providing additional storage options to area residents and flex space options for contract workers working from home to move into appropriate facilities. Second, the Board finds that the property is particularly suited for the prohibited uses proposed since those uses are compatible with the permitted uses in the zone and those that exist in proximity to the property. Further, the Board finds that the property is located within a more commercial area of the Township that is appropriate for the development proposed and, moreover, the rear of the property where the prohibited uses are proposed has limited visibility from surrounding lots and streets. Given the property’s location and the fact that the rear of the property is well-shielded with significant screening already in place at the rear and side of the property along County Route 621, combined with the existing berm along 621, the Board finds that the property is particularly well-suited for the proposed prohibited uses and that the positive criteria has been met, provided the conditions below are imposed.

b. **Negative Criteria of the “D(1)” Use Variances.** As to the negative criteria of the “d(1)” use variances, the Board finds that, on balance, but provided that the conditions set forth below are imposed and complied with, the “d(1)” use variances can be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of the master plan and zoning ordinance. The Board’s specific findings on these issues are as follows. As to the first prong of the negative criteria, provided that the conditions set forth below are imposed and complied with, the Board finds that the proposed development will not create any significant negative impacts on the surrounding lots and streets in light of the nature of the property and the fact that it is not readily visible from the road. More specifically, from Route 22,

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there is approximately 40 feet in elevation change which eliminates the potential for visibility. As to the view from the County Route 621, the Board notes and finds that there is room on this side of the property for additional buffering to address potential views. Further, the Board notes and finds that the closest residential home to property is about 550 feet away to the south from the flex use building. For all of these reasons, the Board finds that granting the requested “d(1)” use variances subject to the conditions set forth below will not negatively impact surrounding properties. As to the second prong of the negative criteria, the Board finds that the proposed prohibited uses are compatible with existing surrounding development and that the proposed development is consistent with the purposes of the new C-ROM zone as well as several goals of the 2020 Reexamination Report, including providing a reasonable balance among various land uses and providing for desirable non-residential development in appropriate areas of the Township. As such, the Board finds that the proposed prohibited uses are reconcilable with the ordinance omission of those uses from the list of permitted uses.

5. **Findings as to the “C(1)” Variances to Allow the Pre-Existing Nonconforming Conditions to Remain.** As set forth above, there exist several nonconforming conditions on the property which are: (a) lot width at the street of 344.98-feet for Lot 6 where the Schedule requires a minimum lot width at the street required of 350 feet; (b) lot width at the street of 343.02-feet for Lot 7 where the Schedule requires a minimum lot width at the street of 350-feet; and (c) side yard setback to one of the existing structures on Lot 6 of 55.53-feet where and the Schedule requires a minimum side yard setback of 75 feet. As the applicant seeks to maintain these nonconforming conditions as part of the application, “c” variances are required and the applicant has requested “c(1)” or so-called “hardship” variances. The Board’s findings as to the positive and negative criteria of the requested “c(1)” variances are as follows.

a. **Positive Criteria of the “C(1)” Variances.** As to the positive criteria of the lot width and setback variances, the Board finds as follows. First, the Board finds that the lot width and setback deviations currently exist on the property which the Board finds constitutes an extraordinary and exceptional situation uniquely affecting the property and the structure which is lawfully existing thereon because the existing deviations are lawfully created pre-existing nonconformities that the applicant’s re-purposing of the site will not impact or change. Second, Board finds that the strict application of the ordinance regulations at issue will inhibit the extent to which the property can be used by, in effect, prohibiting the property from being used at all since any further development would require such relief.

b. **Negative Criteria of the “C(1)” Variances.** As to the first prong of the negative criteria of the lot width and setback variances, the Board finds that, provided the conditions set forth below are imposed and complied with, the variances can be granted without substantial detriment to the public good because no change is proposed to these conditions and there exists substantial buffering and potential for additional buffering to shield the proposed development. As to the second prong of the negative criteria, the Board finds that the variances can be granted without substantial impairment of the intent and purpose of the master plan and zoning ordinance because the

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uses that are proposed as part of the application are consistent with the uses permitted in the zone and with neighboring properties.

## B. CONCLUSIONS OF LAW

1. **Bifurcation of the “D(1)” and “C(1)” Variances.** N.J.S.A. 40:55D-76b provides that a developer may bifurcate a “d” variance application by first submitting the “d” variance application and then, if the “d” variance is granted, subsequently submitting a separate application for any required approval of a subdivision, site plan or conditional use. While N.J.S.A. 40:55D-76b references bifurcation of “d” variances only (the statute is silent as to bifurcation of “c” variances), the Board concludes, however, that it has the implicit authority to determine whether to permit bifurcation of a “c” variance in a particular application before it. Further, even though the statute uses language stating that a developer “may elect” to bifurcate a “d” variance application – with the implication being that the applicant has the “right” to so bifurcate – case law holds that the Board has the implicit authority to determine whether or not to permit such bifurcation in a particular application before it. Scholastic Bus Co. v. Fair Lawn Zoning Board of Adj., 326 N.J. Super. 49, 58 (App. Div. 1999). As the Scholastic Bus court held, negative criteria concerns can be “so intertwined” in the variance and subsequent subdivision, site plan or conditional use application “as to render bifurcation improvident.” Id. Expanding on this, the Appellate Division subsequently held in Meridian Quality Care v. Wall Twp. Board of Adj., 355 N.J. Super. 328, 340 (App. Div. 2002) that, “while the statute appears to allow the developer to bifurcate without the Board’s consent, such a procedure may not be appropriate if the Board considers the use variance and site plan issues so interrelated that both applications should be considered in a single administrative proceeding, at which the Board would decide the negative criteria based on the entire plan submitted.” Significantly, the Meridian court explained that site plan details relating to “on-site and even off-site factors such as traffic flow, buffers, ingress and egress, traffic congestion, drainage, building orientation, the nature of the surrounding properties, and other factors may be significant in deciding whether the variance may be granted without substantial detriment to the surrounding neighborhood and public good, and without substantially impairing the intent and purpose of the zone plan and zoning ordinance.” (emphasis added) Id. at 340-341. The Board concludes that it is appropriate in this particular application to bifurcate the “d(1)” and “c(1)” variances referenced above.

2. **The “D(1)” Use Variances to Allow the Proposed Development.**  
The Board’s conclusions as to the requested “d(1)” use variances are as follows:

a. **Standards for Considering the “D(1)” Use Variances.**  
The Board has the power to grant “d(1)” variances to permit non-permitted uses and/or non-permitted principal structures pursuant to N.J.S.A. 40:55D-70(1) “in particular cases and for special reasons.” This is the so-called positive criteria of a “d(1)” variance. Our courts have held that the promotion of the general welfare is the zoning purpose that most clearly amplifies the meaning of “special reasons.” Medici v. BPR Co., 107 N.J. 1 (1987). Our courts have held that certain uses are deemed “inherently beneficial” which



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essentially means that, by definition, the use per se promotes the general welfare. *Id.* The benefit to the general welfare from a typical non-inherently beneficial use, however, derives not from the use itself but from the development of a site in the community that is particularly suited for the very enterprise proposed. *Id.* Thus, in a typical non-inherently beneficial use application – and the application here is a typical non-inherently beneficial use application – the standard the Board must employ to determine whether special reasons have been proven is whether the property is particularly suited for the very use proposed. *Id.* Our courts held that proof that a site is particularly suited for a proposed use does not require a demonstration that there are no other viable locations for the project. *Price v. Himeji*, 214 N.J. 263, 292-293 (2013). All that said, the Board may not exercise its power to grant a “d(1)” variance otherwise warranted, however, unless the so-called “negative criteria” has been satisfied. Pursuant to the last unlettered paragraph of N.J.S.A. 40:55D-70: “No variance or other relief may be granted . . . without a showing that such variance or other relief can be granted without substantial detriment to the public good and will not substantially impair the intent and purpose of the zone plan and zoning ordinance.” The phrase “zone plan” as used in the N.J.S.A. 40:55D-70 means master plan. *Medici v. BPR Co.*, 107 N.J. 1, 4, 21 (1987). As to the zone plan (the master plan) and zoning ordinance, the *Medici* court held that the applicant must prove and the Board must find by an “enhanced quality or proof” that there will be no substantial impairment. The applicant must “reconcile” the use proposed with the ordinance’s omission of the use from those permitted in the zone. *Id.*

b. **Grant of the “D(1)” Variances.** As set forth in the factual findings above, the Board found that the proposed development promotes the general welfare purposes of the MLUL and that the property is particularly suited for the proposed prohibited flex space and self-storage uses, provided that the conditions set forth below are imposed and complied with. As also set forth in the factual findings above, the Board found that the “d(1)” use variances can be granted in this particular case without substantial detriment to the public good and without substantial impairment of the intent and purpose of the master plan and zoning ordinance, provided that the conditions set forth below are imposed and complied with. As such, the Board concludes that the requested “d(1)” use variances can and should be granted subject to the conditions set forth below.

3. **The “C(1)” Variances.** The Board’s conclusions as to the “c(1)” variances are as follows:

a. **Positive Criteria of “C(1)” or “Hardship” Variances.** The Board may grant “c(1)” or so-called “hardship” variances pursuant to N.J.S.A. 40:55D-70c(1) where: (1) “(a) by reason of exceptional narrowness, shallowness or shape of a specific piece property, (b) or by reason of exceptional topographic conditions or physical features uniquely affecting a specific piece of property, or (c) by reason of extraordinary and exceptional situation uniquely affecting a specific piece of property or the structure lawfully existing thereon; (2) the strict application of any regulation . . . would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardship upon the developer of such property.” This is the so-called “positive” criteria of

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a “c(1)” variance. The “hardship” that the applicant must prove is not that the zoning regulation at issue has zoned the property into inutility. While inutility caused by a zoning regulation would require a variance to avoid an /unconstitutional taking of the property, the Board may (but is not required to) grant a variance where the hardship at issue may inhibit “the extent” to which the property can be used. Lang v. North Caldwell Board of Adjustment, 160 N.J. 41, 54-55 (1999). A hardship variance is not available to relieve “personal hardship” of the owner, financial or otherwise. Jock v. Wall Township Zoning Board of Adj., 184 N.J. 562, 590 (2005). A hardship variance is also not available to relieve hardship caused by a mistake, Deer-Glen Estates v. Borough of Fort Lee, 39 N.J. Super. 380, 386 (App. Div. 1956), and/or for an intentionally created situation, which is referred to as a “self-created” hardship. Commons v. Westwood Board of Adj., 81 N.J. 597, 606 (1980); Chirichello v. Monmouth Park Board of Adj., 78 N.J. 544, 553 (1979).

b. **Negative Criteria of “C(1)” Variances.** Even if an applicant proves the “positive” criteria of a “c(1)”, the Board may not exercise its power to grant the variance unless the so-called “negative criteria” has been satisfied. Pursuant to the last unlettered paragraph of N.J.S.A. 40:55D-70, “no variance or other relief ... may be granted ... unless such variance or other relief ... can be granted without substantial detriment to the public good and will not substantially impair the intent and purpose of the zone plan and zoning ordinance.” The phrase “zone plan” as used in the N.J.S.A. 40:55D-70 means the Township “master plan.” Medici v. BPR Co., 107 N.J. 1, 4, 21 (1987).

c. **Conclusions to Grant the “C(1)” Variances.** As set forth above, the Board found that the lot width and setback deviations currently exist on the property which the Board found constitutes an extraordinary and exceptional situation uniquely affecting the property and the structure which is lawfully existing thereon because the existing deviations are lawfully created pre-existing nonconformities that the applicant’s re-purposing of the site will not impact or change. As also set forth above, the Board further found that the strict application of the ordinance regulations at issue will inhibit the extent to which the property can be used by, in effect, prohibiting the property from being used at all since any further development would require such relief. The Board concludes that this constitutes the sort of hardship that N.J.S.A. 40:55D-70c(1) was intended to relieve. As also set forth above, the Board found that the “c(1)” variances could be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of the master plan and zoning ordinance provided that the conditions set forth below are imposed and complied iwth. As such, the Board concludes that it can and should grant the “c(1)” variances subject to the conditions set forth below.

4. **Imposition of Conditions.** Boards have inherent authority to impose conditions on any approval it grants. North Plainfield v. Perone, 54 N.J. Super. 1, 8-9 (App. Div. 1959), certif. denied, 29 N.J. 507 (1959). Further, conditions may be imposed where they are required in order for a board to find that the requirements necessary for approval of the application have been met. See, Alperin v. Mayor and Tp.

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Committee of Middletown Tp., 91 N.J. Super. 190 (Ch. Div. 1966) (holding that a board is required to impose conditions to ensure that the positive criteria is satisfied); Eagle Group v. Zoning Board, 274 N.J. Super. 551, 564-565 (App. Div. 1994) (holding that a board is required to impose conditions to ensure that the negative criteria is satisfied). Moreover, N.J.S.A. 40:55D-49a authorizes a board to impose conditions on a preliminary approval, even where the proposed development fully conforms to all ordinance requirements, and such conditions may include but are not limited to issues such as use, layout and design standards for streets, sidewalks and curbs, lot size, yard dimensions, off-tract improvements, and public health and safety. Pizzo Mantin Group v. Township of Randolph, 137 N.J. 216, 232-233 (1994). See, Urban v. Manasquan Planning Board, 124 N.J. 651, 661 (1991) (explaining that “aesthetics, access, landscaping or safety improvements might all be appropriate conditions for approval of a subdivision with variances” and citing with approval Orloski v. Ship Bottom Planning Board, 226 N.J. Super. 666 (Law Div. 1988), aff’d o.b., 234 N.J. Super. 1 (App. Div. 1989) as to the validity of such conditions.); Stop & Shop Supermarket Co. v. Springfield Board of Adj., 162 N.J. 418, 438-439 (2000) (explaining that site plan review “typically encompasses such issues as location of structures, vehicular and pedestrian circulation, parking, loading and unloading, lighting, screening and landscaping” and that a board may impose appropriate conditions and restrictions based on those issues to minimize possible intrusions or inconvenience to the continued use and enjoyment of the neighboring residential properties). Further, municipal ordinances and Board rules also provide a source of authority for a board to impose conditions upon a developmental approval. See, Cox and Koenig, New Jersey Zoning and Land Use Administration (Gann 2021), sections 28-2.2 and 28-2.3 (discussing conditions limiting the life of a variance being imposed on the basis of the Board’s implicit authority versus by virtue of Board rule or municipal ordinance). Finally, boards have authority to condition approval on review and approval of changes to the plans by Board’s experts so long as the delegation of authority for review and approval is not a grant of unbridled power to the expert to approve or deny approval. Lionel Appliance Center, Inc. v. Citta, 156 N.J. Super. 257, 270 (Law Div. 1978). As held by the court in Shakoor Supermarkets, Inc. v. Old Bridge Tp. Planning Board, 420 N.J. Super. 193, 205-206 (App. Div. 2011): “The MLUL contemplates that a land use board will retain professional consultants to assist in reviewing and evaluating development applications” and using such professional consultants to review and evaluate revised plans “was well within the scope of service anticipated by the applicable statutes. It was the Board, and not any consultant, that exercised the authority to approve the application.” The Board concludes that the conditions set forth below are warranted and should be imposed on all of the above-mentioned bases.

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD, BY MOTION DULY MADE AND SECONDED ON AUGUST 23, 2021, AS FOLLOWS:**

**C. RELIEF GRANTED**

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1. **Bifurcated “D(1)” Use Variance for Flex Space Use.** Subject to the conditions set forth below, a bifurcated “d(1)” use variance is hereby granted from ordinance section 165-161 to allow the proposed flex space use as part of the proposed development where flex space is not permitted in the C-2 or C-ROM zones so is prohibited by virtue of ordinance section 165-93 which provides there where “a use is not specifically permitted in a zone district, it is prohibited.”
2. **Bifurcated “D(1)” Use Variance for Self-Storage Use.** Subject to the conditions set forth below, a bifurcated “d(1)” use variance is hereby granted from ordinance section 165-161 to allow the proposed self-storage use as part of the proposed development where self-storage is not permitted in the C-2 or C-ROM zones so is prohibited by virtue of ordinance section 165-93 which provides there where “a use is not specifically permitted in a zone district, it is prohibited.”
3. **Bifurcated “C(1)” Variances to Allow Existing Non-Conforming Lot Width Conditions To Continue.** Subject to the conditions set forth below, bifurcated “c(1)” variances are hereby granted from the Schedule to allow the nonconforming lot widths at the street of 344.98 feet for Lot 6 and 341.65 feet for Lot 7, where 350 feet is the minimum lot width at the street required.
4. **Bifurcated “C(1)” Variance to Allow Existing Non-Conforming Side Yard Setback To Continue.** Subject to the conditions set forth below, a bifurcated “c(1)” variance is hereby granted from the Schedule to allow the nonconforming side yard setback to an existing structure on Lot 6 of 55.53 feet, where 75 feet is minimum side yard setback required.

#### D. **CONDITIONS**

1. **Subject to Preliminary and Final Site Plan Review and Approval.** The grant of the within bifurcated “d(1)” and “c(1)” variances are subject to the applicant applying for and obtaining from the Board preliminary and final site plan approval of the proposed development no later than January 24, 2023 (which is within one (1) year of the adoption of the within resolution on January 24, 2022) and in accordance with the conditions set forth below and any and all conditions that may be imposed on the grant of preliminary and final site plan approval.
2. **Variance Plans and Architectural Plan Not Approved Until and Unless Site Plan Approval is Granted.** The within bifurcated “d(1)” and “c(1)” variance approvals have not approved and do not approve the variance plans or architectural plans referenced above. Additionally, the layout of the proposed improvements set forth in the variance plans has not been approved. That said, see condition #4 below.
3. **Subsequently Submitted Site Plans to Include, at Minimum, Certain Revisions from that Shown on the Variance Plans and Architectural Plans.** The site plans that are subsequently submitted to the Board for review and approval shall, at minimum, incorporate revisions to satisfy the following comments emanating in the

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memos and/or letters from the following Board experts, as modified and/or supplemented by the Board members during the hearing on the application:

a. **Comments Emanating in the Memo to the Board from Tom Behrens, PP, AICP (Board planning) dated March 17, 2021** (Intentionally omitted if not listed herein):

(3) **Design Standards for Non-Residential Buildings.**

The two buildings proposed to be located in the front of the property and to contain principally permitted retail uses shall comply in all respects with ordinance section 165-75 (the design standards for non-residential buildings), without exception. While the applicant may apply for exceptions from ordinance section 165-75 for the two buildings proposed to be located to the rear of the property and to contain the prohibited self-storage and flex space uses, the applicant shall be required to prove entitlement to any such exceptions at the time of site plan review and the applicant shall strive to avoid having to request any such exceptions.) The Board offers the following suggestions: The applicant can design the rear flex building to look more like a barn and the self-storage building in the rear could be designed more like a chicken coop/ farm structure.

(5) **Additional Stormwater Management Facilities.**

Revise the site plans to reflect the locations of additional stormwater management facilities.

(6) **Steep Slope Disturbance.** The applicant shall endeavor to minimize steep slope disturbance. The site plans shall reflect the extent of the steep slope disturbance.

(9) **Tree Removal.** The applicant shall endeavor to minimize tree removal. The site plans shall reflect the extent of the proposed tree removal.

b. **Comments from Board Members:**

(1) **Building Height Compliance.** All of the proposed buildings shall comply with the zoning ordinance regulations as to maximum building height. The architectural plans shall reflect all buildings' heights which shall comply with the ordinance regulations. The applicant shall not seek any height variances.

(2) **Parking.** The site plans shall reflect parking for all of the proposed uses and the parking requirements for each use shall be established at the time of site plan review and approval. The applicant shall address banked spaces at the time of site plan review if it wishes to propose same.

(3) **Additional Buffering.** The site plans shall include additional buffering and include details of same.

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4. **Layout and Size of Buildings.** While the within approvals have not approved and do not approve the variance plan, the variance plans show, and the within approvals contemplate, the location of the proposed two permitted retail buildings in the front of the property and the location of the two buildings proposed to contain the prohibited self-storage use and the prohibited flex space use in the rear of the property. Additionally, the size of the buildings as reflected on the variance plan has not been and is not approved. That said, in no event shall the total square footage of each type of use exceed the following: prohibited flex space: 30,000 square feet total; prohibited self-storage: 41,000 square feet total, which includes up to 1,000 square feet of office; principally permitted retail with office: 29,188 square feet total. Additionally, the applicant shall review shifting the lot line to eliminate or reduce the required setback variances.

5. **Cross-Access Easements.** The applicant shall provide and record cross access easements for Lots 6 and 7, the forms of which shall be subject to approval by the Board at the time of site plan review.

6. **Flex Space Use Restrictions.** The following use restrictions shall apply to the flex space:

(a) All uses shall be permitted uses in the C-ROM zone, along with contractor storage.

(b) No site contractors or heavy equipment (as defined by weight and size) shall be permitted (meaning nothing larger than a 15,000-pound rubber tire backhoe).

(c) No warehousing or distribution as defined in the Township zoning ordinance shall be permitted.

(d) No childcare shall be permitted.

(e) No outdoor storage of vehicles or material shall be permitted.

(f) No breweries shall be permitted.

(g) No movie theaters shall be permitted.

7. **Limitation of Hours of Operation of Flex Space and Self-Storage Uses.** The hours of operation for the flex space and self-storage shall be limited to between 8 am to 10 pm.

8. **Escrow Fees.** Any and all outstanding escrow fees shall be paid in full and the escrow account replenished to the level required by ordinance within 30 days of the adoption of the within resolution, within 30 days of written notice that a deficiency exists in the escrow account, prior to the grant of site plan approval, prior to the issuance

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of a zoning permit, prior to the issuance of construction permits, and prior to the issuance of a certificate of use. Failure to abide by this condition shall result in the relief granted herein automatically terminating and becoming null and void.

9. **Outside Agency Approvals and Permits.** The within approvals are conditioned upon and subject to the applicant obtaining permits and/or approvals from all applicable outside agencies and/or departments.

10. **Subject to Other Laws, Regulations and Approvals.** The within approval and the use of all property subject to the within approval are conditioned upon and made subject to any and all laws, ordinances, requirements, and/or regulations of and/or by any and all municipal, county, State and/or Federal governments and their agencies and/or departments having jurisdiction over any aspect of the property and/or use of the property. The within approval and the use of all property subject to the within approval are also conditioned upon and made subject to any and all approvals by and/or required by any and all municipal, county, State and/or Federal governments and their agencies and/or departments having jurisdiction over any aspect of the property and/or the use of the property. In the event of any inconsistency(ies) between the terms and/or condition of the within approval and any approval(s) required by the above, the terms and conditions of the within approval shall prevail unless and until changed by the Board upon proper application.

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**VOTE ON MOTION DULY MADE AND SECONDED ON AUGUST 23, 2021:**

**THOSE IN FAVOR: LEWIS, McTIERNAN, PFEFFER, STEVENS & YAGER.**

**THOSE OPPOSED: RHORBACH.**

\*\*\*\*\*

The above memorializing resolution was adopted on January 24, 2022 by the following vote of eligible Board members:

<b><u>Members</u></b>	<b><u>Yes</u></b>	<b><u>No</u></b>	<b><u>Abstain</u></b>	<b><u>Absent</u></b>
<b>LEWIS</b>	<b>X</b>			
<b>McTIERNAN</b>	<b>X</b>			
<b>PFEFFER</b>	<b>X</b>			
<b>STEVENS</b>	<b>X</b>			
<b>YAGER</b>	<b>X</b>			

**ATTEST:**  
**\_\_\_\_\_**  
**DENISE FILARDO**  
**Board Secretary**

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CLINTON TOWNSHIP PLANNING BOARD

HANNA MEMORIAL CANCER CLINIC, INC.  
 BLOCK 47.02, LOT 1  
 1510 ROUTE 22

APPLICATION NO. PB-2024-05

RESOLUTION MEMORIALIZING: 1) GRANT OF AMENDED PRELIMINARY AND FINAL SITE PLAN APPROVAL AND A LANDSCAPING EXCEPTION TO ALLOW THE ELIMINATION OF A MEMORIAL GARDEN, THE INSTALLATION OF A SIDEWALK AND NEW TREE PLANTING LOCATIONS, AND 2) A MODIFICATION OF CONDITION OF RESOLUTION NO. 2014-09 TO GRANT AN EXTENSION OF THE TIME PERIOD IN WHICH TO OBTAIN A CERTIFICATE OF OCCUPANCY

RESOLUTION NO. 2024-03

WHEREAS, The Janet Hanna Revocable Trust (the "owner") is the owner of a 12.5 acre lot located at 1510 Route 22 and designated on the Clinton Township (the "Township") tax maps as Block 47.02, Lot 1, having frontage on Route 22, Route 78 and Petticoat Lane (the "property"), which property is surrounded by commercial uses to the north and south and vacant land to the east and west, is situated in the C-ROM research, office and manufacturing zoning district (the "C-ROM Zone"), and is partially developed with a previously approved principally permitted medical facility, the "Hanna Memorial Cancer Clinic" (the "cancer clinic");

WHEREAS, Hanna Memorial Cancer Clinic, Inc. (the "applicant") applied for and obtained from the Clinton Township Planning Board (the "Board") preliminary site plan approval memorialized in Board Resolution No. 2013-13 adopted on August 19, 2013 ("Resolution No. 2013-13") and final site plan approval memorialized in Board Resolution No. 2014-09 adopted on October 6, 2014 ("Resolution No. 2014-09") for the construction of the medical facility to include a 12,000 square foot building (the "primary structure") to house the principally permitted cancer clinic, along with associated improvements including an access driveway on Petticoat Lane, parking and circulation, landscaping, lighting and stormwater management (the "associated improvements") as well as a memorial garden (the "proposed memorial garden") (with the primary structure, the associated improvements, and the proposed memorial garden together referred to as the "proposed development");

WHEREAS, Resolution No. 2014-09 contains a number of conditions and the applicant applied to and obtained from the Board a modification of condition #2 of Resolution No. 2014-09 to extend the time within which the site plans were required to be signed from April 6, 2015 to



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December 31, 2025, as memorialized in Board Resolution No. 2015-14 adopted on October 19, 2015 ("Resolution No. 2015-14");

WHEREAS, condition #11 of Resolution No. 2014-09 provides as follows:

11. Time to Obtain Construction Permits and Commence and Complete Construction.

The applicant shall apply for and obtain construction permits for the proposed development and a certificate of occupancy for the building by October 6, 2019. If during said period, the applicant fails to obtain all construction permits for the proposed development and a permanent certificate of occupancy for the building, the within final approval shall automatically expire and become null and void. (The aforementioned time limitations affect the life of the within final approval and run concurrently with the final approval protection period against zoning ordinance changes which is governed by N.J.S.A. 40:55D-52a and c . . .);

WHEREAS, with the consent of the owner, the applicant made application (the "application") to the Board for the following relief: (1) a modification of condition #11 of Resolution No. 2014-09 to provide for an extension of the time within which to obtain a certificate of occupancy, (2) amended final major site plan approval to allow the elimination of the proposed memorial garden, the addition of a walkway along the west side of the primary structure connecting the front sidewalk to the side entrance door (the "proposed walkway"), and a change in tree planting locations (the "revised tree planting locations"), as well as an exception from the tree replacement ordinance (with the elimination of the proposed memorial garden, the addition of the proposed walkway and the revised tree planting locations together referred to as the "proposed site plan amendments" which modify the proposed development and which shall be referred to as the "proposed amended development" );

WHEREAS, the Board has exclusive subject matter jurisdiction over the application by virtue of N.J.S.A. 40:55D-20 by application of N.J.S.A. 40:55D-48b (as to amended site plan approval), -50 (as to amended final site plan approval), -51b (as to the exception(s)), and -12a (as to the modification of conditions);

WHEREAS, a number of documents were submitted by the applicant, Board and Township experts and officials with regard to the application, all of which documents are on file with the Board and are part of the record in this matter, and the following are the latest versions of the plans, drawings and documents for which Board approval is sought, which plans, drawings and documents have been on file and available for public inspection for at least 10 days prior to the hearing on the application in accordance with N.J.S.A. 40:55D-10b:

1. "Amended Preliminary and Final Site Plans", prepared by French & Perrello Associates, dated July 18, 2024, consisting of 2 sheets (the "amended site plan");

WHEREAS, the application was deemed to be complete;

WHEREAS, the Board considered the application at a duly noticed public hearing, commencing on September 16, 2024 and continuing and concluding on October 7, 2024, with affidavits of publication and service of notice being submitted to the Board and being on file with the Board, thereby conferring procedural jurisdiction over the application with the Board, and the

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applicant was represented during the September 16, 2024 hearing session by Alan Lowcher, Esq. and during the October 7, 2024 hearing session by Steve Gruenberg, Esq. and the Board was represented during all hearing sessions by Jonathan E. Drill, Esq. (of Stickel, Koenig, Sullivan & Drill, LLC);

WHEREAS, the following individuals testified under oath during the hearing, were subject to cross-examination, and their testimony is part of the record in this matter:

1. Benjamin Hannallah (managing member of applicant),
2. Wayne Ingram, PE, (applicant's engineering expert),
3. Larry Plevier, PE, CME (Board's engineering expert),
4. Jim Mazzucco, LLA (Board's landscape architectural expert), and
5. Tom Behrens, PP, AICP (Board's planning expert);

WHEREAS, the following exhibit was submitted into evidence during the hearing, is on file with the Board, and is part of the record in this matter;

A-I "Site Plan Exhibit", prepared by French & Perrello Associates, dated August 29, 2024, consisting of 1 sheet (the "site plan exhibit");

WHEREAS, AFTER CONSIDERING THE APPLICATION, DOCUMENTS, TESTIMONY AND EXHIBIT REFERENCED ABOVE, AND GIVING APPROPRIATE WEIGHT TO SAME, AND BASED ON ITS UNDERSTANDING OF THE APPLICABLE LAW, THE BOARD MAKES THE FOLLOWING FACTUAL FINDINGS AND LEGAL CONCLUSIONS FOR THE PURPOSE OF MEMORIALIZING IN A WRITTEN RESOLUTION IN ACCORDANCE WITH N.J.S.A. 40:55D-10g(2) ITS ACTION IN GRANTING THE APPLICATION SUBJECT TO CONDITIONS AS SET FORTH BELOW:

#### A. FACTUAL FINDINGS AND LEGAL CONCLUSIONS

1. The Property, Zoning and Prior Approvals. The property is a "pie piece" shaped lot, approximately 12.49 acres in size, which is surrounded on three sides by roads: Interstate Route 78 to the north, Petticoat Lane to the east, and State Route 22 to the south. The property is bounded to the west along the point of the "pie piece" by the Conrail railroad line. Forest areas are located along the northern and western perimeters of the property and a line of mature trees existed along the eastern and southern property lines. Surrounding land uses include commercial (a Honda automobile dealership is located across Route 22 to the south), governmental (a county trash transfer station and a municipal water storage facility — consisting of two large water tanks — are located across 1-78 to the north), undeveloped lands to the east of the property, and a long

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"sliver" lot located to the west of the railroad line (which is undeveloped). Wetlands are present in the western corner of the property. The property is situated in the C-2 zone. As set forth above, the Board granted preliminary site plan approval memorialized in Resolution No. 2013-13 and final site plan approval memorialized in Resolution No. 2014-09 for the previously approved proposed development, consisting of the 12,000 square foot building to house the principally permitted cancer clinic along with the associated improvements. As also set forth above, the previously approved proposed development is partially constructed with the primary structure being substantially complete and site work remaining unfinished.

2. The Application and Requested Relief. As set forth above, the application requests amended preliminary and final site plan approval to: 1) eliminate the proposed memorial garden, 2) add the proposed walkway, and 3) allow revised tree planting locations. The applicant additionally requests an exception from the tree replacement requirements established in site plan ordinance section 165-77.D.(5) to allow tree replacement by planting 115 trees where the ordinance requires the planting of 217 3-inch caliper trees based on a 2-to-1 ratio. Finally, the applicant requests a modification of condition #11 of Resolution No. 2014-09 to provide for an extension of the time within which to obtain a certificate of occupancy.

3. Standards for Considering the Exception. N.J.S.A. 40:55D-51b provides that the Board, "when acting upon applications for . . . site plan approval, shall have the power to grant such exceptions from the requirements for site plan approval as may be reasonable and within the general purpose and intent of the provisions for site plan review and approval if the literal enforcement of one or more provisions of the ordinance is impracticable or will exact undue hardship because of peculiar conditions pertaining to the land in question." While neither "impracticable" nor "hardship" is defined in the MLUL, "hardship" has been defined in numerous land use and zoning cases in New Jersey. As established in New Jersey case law, the "hardship" necessary to warrant the grant of a "c(1)" variance does not have to rise to the level of confiscation. If the ordinance provisions at issue "inhibit the extent" to which the property can be used, our courts have held that "hardship" to warrant a "c(1)" variance exists. Lang v. North Caldwell Board of Adjustment, 160 N.J. 41, 54-55 (1999). The Board thus concludes that the hardship necessary to warrant the grant of an exception does not have to rise to the level of confiscation. If the ordinance provisions at issue "inhibit . . . the extent" to which the property can be used, such "hardship" is sufficient to warrant the grant of an exception. Unlike "hardship," however, "impracticable" has not been defined in any land use or zoning case of which the Board is aware. Following the basic rule of construction that legislative language should be given its plain and ordinary meaning, Pennsauken v. Schad, 160 N.J. 156, 170 (1999); DiProspero v. Penn, 183 N.J. 477, 492 (2005), the Board concludes that "impracticability" is derived from the root word "impractical," which is defined as "not wise to put into or keep in practice or effect"; an inability to deal "sensibly or prudently with practical matters." See, Merriam-Webster's Collegiate Dictionary (1 Ith Ed. 2004). The Board thus concludes that impracticability to warrant the grant of an exception includes situations where requiring literal enforcement of the ordinance requirements at issue would be imprudent and/or not sensible.

4. Findings and Conclusions as to the Tree Planting Exception. During the course of the hearing, the applicant and the Board, along with all the professionals, discussed the tree replacement requirements established in ordinance section 165-77.D.(5) and agreed on the

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following, which the Board finds is determinative of the amount of replacement trees required. First, 325 caliper inches of trees have been removed from the property, with some removed as part of the construction of the proposed development, but approximately 20 other large mature trees removed by a landscaping subcontractor without authorization by the owner or the applicant. Nevertheless, the owner and applicant are responsible for tree replacement for the unauthorized removals as well as the planned removals. Ordinance section 165-77.D(5) requires tree replacement at a 2-to-1 ratio which totals 650 caliper inches of replacement trees (325 caliper inches X 2 = 650 caliper inches), which equates to 217 3-inch caliper trees. As such, the Board finds that 217 trees are required to be planted to replace all of the trees that have been removed. The Board's findings and conclusions as to the exception from the tree replacement requirement to allow the planting of 115 replacement trees instead of the 217 trees required to be planted — leaving a deficit of 102 trees — are as follows. First, as to the extent of the requested exception and whether it is reasonable to grant it, the Board finds that there simply is not enough room on the site to plant all the required trees without causing the trees that would be planted to die by overcrowding so that granting the requested exception is reasonable under the circumstances in that it will prevent planted trees from dying. Second, for this same reason, the Board finds that granting the requested exception is within the general intent and purpose of the provisions for site plan review and approval because the trees that are proposed to be planted are likely to thrive. Third, the Board finds that literally enforcing the tree replacement requirements of the ordinance is impractical in this particular application because of the limited amount of space and likelihood that if all of the required trees are planted, trees will not survive. Fourth, the Board will impose a condition on the grant of the exception (pursuant to the Tree Replacement Requirements Table set forth in ordinance section 246-3 .B) that the applicant shall pay \$10,000 into the Township Tree Replacement Fund, representing 20 trees removed at \$500 per tree (20 X \$500 = \$10,000), so that trees may be planted in another part of the Township and in order to mitigate the loss of trees caused by the unauthorized removal of 20 trees. For all of the forgoing reasons, the Board concludes that the requested exception from the tree planting requirement can and should be granted subject to the conditions below being imposed and complied with. 5.

6. Standards for Modification or Elimination of Conditions. Our courts have held that land use boards have the power to modify and/or eliminate prior approval conditions if "enforcement of the restrictions would frustrate an appropriate purpose", upon a "proper showing of changed circumstances", or upon "other good cause" warranting modification and/or amendment. Allied Realty v. Upper Saddle River, 221 N.J. Super. 407, 414 (App. Div. 1987), cert. denied 110 N.J. 304 (1988); Sherman v. Harvey Cedars Board of Adjustment, 242 N.J. Super. 421, 429 (App. Div. 1990). As to the "good cause" grounds, our courts have held that a board should consider what its intent was in imposing the condition in the first instance and whether the proposal to modify or eliminate the condition is consistent with or contrary to that intent. See, Sherman, 242 N.J. Super. at 430.

7. Standards for Extensions of Time Limitation Conditions. While there is no express provision in the MLUL authorizing a limitation on the time within which an applicant must apply for and obtain a certificate of occupancy, the New Jersey Supreme Court held in D.L. Real Estate Holdings v. Point Pleasant Beach Planning Board, 176 N.J. 126, 133-36 (2003), that it is permissible for boards to impose a "life" on an approval. Board Rule 2:4-9 requires that an

## Appendix C

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applicant make revisions to plans within a specified time period as well as commence and complete construction and obtain permits and certificates of occupancy within the specified time periods and provides that failure to obtain such permits and certificates of occupancy within the time periods result in the granted approvals becoming null and void. While the D.L. Real Estate

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Holdings Court did not provide standards for Board's to follow in applications for modification of conditions and extensions of such time periods, the Board concludes that it should follow the standards applicable to a board's consideration of applications for extensions of the preliminary and/or final protection periods, which require a board to engage in a balancing test in which it must consider factors that weigh in favor of the extension and factors that weigh against the extension and then balance the factors to determine whether or not to grant the extensions. Jordan Developers v. Brigantine Planning Board, 256 N.J. Super. 676, 679-680 (App. Div. 1992). While the Jordan court upheld the board's denial of an extension request in that case on the basis of an intervening zoning change, the court held that the intervening zone change did not require denial of the extension but was a factor the board should weigh as against an extension when it balanced the positive and negative factors in determining whether or not to grant the extension. The Jordan court specifically held that the board must weigh "the public interest in the implementation of [any ordinance] change, the applicant's interest in extended protection, and the circumstances in which the need for the extension arose." Id. at 680. The Board further concludes that the required balancing test is not an "all or nothing" proposition. Certain factors may weigh against granting an extension except that, if conditions are imposed on the extension, the balance may then be tipped in the direction of granting the extension. Conditions may have to be imposed in the event the Board finds that same are necessary in order to strike the proper balance. In conclusion, in determining whether or not to grant the application at issue here, the Board must engage in a balancing test in which it must consider factors that weigh in favor of the modification of the condition and the requested extension and factors that weigh against the modification of the condition and the requested extension and then balance the factors to determine whether or not to grant the application.

#### 8. Good Cause and Balancing the Factors in Favor of and Against the Application Warrant Modifying the Condition and Granting the Extension Request.

Turning first to the issue of whether good cause exists to warrant modification of the condition at issue and whether there are any factors that weigh in favor of extending the time period in which to obtain a construction permit, the Board finds that, despite construction delays, the primary structure is substantially complete, with site works remaining unfinished. The Board notes and finds that granting the extension request is more efficient than requiring the applicant to proceed anew at this juncture. Finally, the Board finds that there are no factors that weigh against granting the extension request. Having considered these factors, the Board finds that good cause exists to modify the condition and that factors weigh in favor of granting the extension request (efficiency) and no factors that weigh against granting the extension request (because no Township zoning ordinance change applies to the proposed development).<sup>1</sup> For these reasons, the Board finds and concludes that it should grant the extension request, thereby extending the

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<sup>1</sup> One ordinance change does apply to the development, but it is not a zoning ordinance change, and in any event, the applicant has agreed to comply with it to avoid the expiration of the approvals, especially considering that the final site plan protection period against ordinance changes has expired unless the requested condition modification and extension are granted. Specifically, Ordinance #1196-2024, effective May 15, 2024, adopted Chapter 246 of the Township Ordinance entitled "Tree Removal and Replacement" which establishes requirements for tree removal and replacement in the Township and includes in ordinance section 246-3.B a Tree Replacement Requirements Table. It is based on the requirements of this ordinance that the Board imposed as a condition on of the grant of the tree replacement exception that the applicant pay \$10,000 into the Township Tree Replacement Fund.

deadline for the applicant to obtain a certificate of occupancy to six (6) months of the adoption of the within resolution, instead of the original deadline of October 6, 2019.

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9. Standards for Amended Preliminary and Final Site Plan Review. N.J.S.A. 40:55D-46b and -50a are the focal points for consideration of amended preliminary and final site plan applications. N.J.S.A. 40:55D-46b provides that if "any substantial amendment in the layout of improvements proposed by the developer that have been subject of a hearing" is proposed, "an amended application for development shall be submitted and proceeded upon, as in the case of the original application for development." N.J.S.A. 40:55D-46b further provides that the Board "shall" grant amended preliminary site plan approval if the proposed development complies with all provisions of the applicable ordinances. Similarly, N.J.S.A. 40:55D-50a provides that final site plan approval "shall" be granted if the detailed drawings, specifications, and estimates of the application conform to the standards of all applicable ordinances and the conditions of preliminary approval. As such, if the application complies with all ordinance requirements, the Board must grant approval. Conversely, if the application does not comply with all ordinance requirements, the Board must deny approval. However, there are two exceptions: The first exception is where an application does not comply with all ordinance regulations and requirements but the Board grants relief in terms of variances or exceptions. In that case, the Board then must review the application against all remaining ordinance regulations and requirements and grant approval if the application complies with all such remaining regulations and requirements. The second exception is where the application does not comply with all ordinance regulations and requirements, but a condition can be imposed requiring a change that will satisfy the ordinance provisions. In that case, the Board can either grant approval on the condition that the application be revised prior to signing the plan to comply with the ordinance provisions or the Board can adjourn the hearing to permit the applicant the opportunity to revise the plans to comply with the ordinance requirement prior to the Board granting approval. Additionally, even if an application complies with all ordinance regulations and requirements, the Board cannot grant initial preliminary approval or amended preliminary approval unless matters vital to the public health and welfare such as stormwater management and drainage, sewage disposal, water supply, and traffic circulation safety are addressed. D' Anna v. Washington Twp. Planning Board, 256 N.J. Super. 78, 84 (App. Div.), certif. denied, 130 N.J. 18 (1992); Field v. Franklin Twp., 190 N.J. super. 326 (App. Div.), certif. denied, 95 N.J. 183 (1983). Further, if information and/or plans related to such essential elements of the development plan have not been submitted to the Board in sufficient detail for review and approval as part of the site plan review process, approval must be denied. *Id.* In this regard, the Board cannot grant amended final approval subject to later submission of the required detailed drawings and specifications because they are required to be submitted ahead of time pursuant to N.J.S.A. 40:55D-50a. See also, N.J.S.A. 40:55D-4 which defines "final approval" as the action of the Board taken "after all conditions, engineering plans and other requirements have been completed or fulfilled. . ."

10. Findings and Conclusions as to Amended Preliminary and Final Site Plan Approval. The Board's findings as to amended preliminary and final site plan review are as follows. In as much as the Board has concluded that the exception from the tree planting ordinance requested in the application should be granted, and provided that the conditions set

forth below are imposed and complied with, the Board finds that the application to eliminate the proposed memorial garden, construct the proposed walkway, and change the proposed tree planting locations pursuant to the amended site plan and site plan exhibit referenced above will

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comply with all remaining applicable zoning ordinance regulations and all site plan ordinance requirements. Provided that the conditions set forth below are imposed and complied with, the Board further finds that all matters vital to the public health (water supply, sewage disposal, stormwater drainage, and traffic circulation) will be adequately provided for and appropriately designed as part of the proposed development. For all of the foregoing reasons, the Board concludes that it can and should grant amended preliminary and final site plan approval to the amended site plan and site plan exhibit referenced above to allow the elimination of the proposed memorial garden, construction of the proposed walkway, and new tree planting locations, provided that the conditions set forth below are imposed and complied with.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD BY MOTION DULY MADE AND SECONDED ON OCTOBER 7, 2024 THAT THE FOLLOWING RELIEF IS GRANTED SUBJECT TO THE CONDITIONS SET FORTH BELOW:

B. RELIEF GRANTED

1. Exception from Ordinance Tree Replacement Requirement. Subject to the conditions set forth below, an exception from ordinance section 165-77.D(5) is hereby granted to allow 115 replacement trees to be planted where 217 trees are required to be planted to replace all of the trees that have been removed.

2. Modification of Condition #11 of Resolution No. 2014-09. Subject to the conditions set forth below, the Board hereby modifies condition #11 of Resolution No. 2014-09 to grant the extension request, thereby extending the deadline for the applicant to obtain a certificate of occupancy for the primary structure from October 6, 2019 to six (6) months of the adoption of the within resolution.

3. Grant of Amended Preliminary and Final Site Plan Approval. Subject to the conditions set forth below, the Board hereby grants amended preliminary and final site plan approval to the amended site plan and site plan exhibit referenced above to allow the elimination of the proposed memorial garden, construction of the proposed walkway, and new tree planting locations as part of the proposed amended development.

c. CONDITIONS

1. Condition #11 of Resolution No. 2014-09 Modified. Condition #11 of Resolution No. 2014-09 is hereby revised to provide as follows:

11. Time to Obtain Certificate of Occupancy. The applicant shall apply for and obtain a permanent certificate of occupancy for the proposed amended development within six (6) months of the adoption of the within resolution. If during said six (6) month period, the



# Appendix C

applicant fails to obtain permanent certificate of occupancy for the primary structure, the within amended preliminary and final site plan approval shall automatically expire and become null and void.

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2. Tree Replacement Fund. The applicant shall pay \$10,000 into the Township Tree Replacement Fund pursuant to the Tree Replacement Requirements Table set forth in ordinance section 246-3.B, representing 20 trees removed at \$500 per tree (20 X \$500 = \$10,000).

3. Remaining Conditions of Resolution No. 2014-09 Remain in Full Force and Effect. Other than condition #11 of Resolution No. 2014-09, all other remaining conditions set forth in Resolution No. 2014-09 shall remain in full force and effect.

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VOTE ON MOTION MADE AND SECONDED ON OCTOBER 7 2024:


THOSE IN FAVOR: AVERSA, CIMEI, HIGGINS, KLEINHANS, GLASER & MCCAFFREY.

THOSE OPPOSED: NONE.

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The above memorializing resolution was adopted on November 18, 2024 by the following vote of eligible Board members:

<u>Member</u>	<u>Yes</u>	<u>No</u>	<u>Abstain</u>	<u>Absent</u>
AVERSA	x			
CIMEI	x			
HIGGINS	x			
KLEINHANS	x			
GLASER	x			
MCCAFFREY	x			

  
 \_\_\_\_\_  
 TAYLOR GRIBBIN, Board Secretary

ATTEST:

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CLINTON TOWNSHIP BOARD OF ADJUSTMENT

STORAGE DEVELOPERS, LLC  
1755 ROUTE 31 SOUTH  
BLOCK 68, LOT 9.02

APPLICATION BOA-2022-10

RESOLUTION MEMORIALIZING GRANT OF BIFURCATED PRELIMINARY AND FINAL SITE PLAN APPROVAL WITH VARIOUS "C" VARIANCES AND EXCEPTIONS TO ALLOW THE CONSTRUCTION OF A TWO-STORY, CLIMATE CONTROLLED, SELF-STORAGE FACILITY IN THE C-1 COMMERCIAL ZONE

RESOLUTION NO. 2024-08

WHEREAS, Ganga, LLC (the "owner") owns certain property designated on the Clinton Township (the "Township") tax maps as Block 68, Lot 9.02, located on Route 31 South, south of West Main Street, and having a current post office address of 1755 Route 31 South (the "property"), which property is approximately 5.4 acres in size and is situated in the C-1 Commercial Zone (the "C-1 Zone");

WHEREAS, Landowner Marketing, LLC (the "applicant") is the contract purchaser of the property and, with the consent of the owner, the applicant made application to the Clinton Township Board of Adjustment (the "Board") for preliminary and final site plan approval (the "application") after having previously applied to and received from the Board a bifurcated "d(1)" use variance and "d(4)" floor area ratio ("FAR") variance (the "prior approvals") to allow the self-storage use and the development of the property with a self-storage building (the "proposed building") along with associated site improvements (the "proposed site improvements") (the proposed building and the proposed site improvements are together referred to as the "proposed development") which approvals are memorialized in Board Resolution No. 2023-03 adopted on November 27, 2023 ("Resolution No. 2023-03");

WHEREAS, the "d" variances previously granted confer exclusive subject matter jurisdiction over the application with the Board pursuant to N.J.S.A. 40:55D-20 by application of N.J.S.A. 40:55D-70d, -76b, -70% -46, -50 and -51;

WHEREAS, a number of documents were submitted by the applicant, Board and Township experts and officials with regard to the application, all of which documents are on file with the Board and are part of the record in this matter, and the following are the latest versions of the plans, drawings and documents for which Board approval is sought, which plans, drawings and documents have been on file and available for public inspection for at least 10 days prior to the hearing on the application in accordance with N.J.S.A. 40:55D-10b:

1. Preliminary and Final Major Site Plan, prepared by Colliers Engineering & Design, Inc., dated February 21, 2024, consisting of 16 sheets (the "site plans"),

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2. Architectural Drawings, prepared by Heal Architect, LLC, dated November 1, 2023, consisting of 3 sheets (the "architectural drawings"),

3. Environmental Impact Statement, prepared by Colliers Engineering & Design, Inc., dated February 21, 2024, consisting of 48 pages (the "EIS"),

4. Operations and Maintenance Manual, prepared by Colliers Engineering & Design, Inc., dated February 21, 2024, consisting of 39 pages (the "Stormwater Manual"),

5. Stormwater Management Report, prepared by Colliers Engineering & Design, Inc. February 21, 2024, consisting of 373 pages (the "Stormwater Management Report"),

6. Traffic Statement, prepared by Colliers Engineering & Design, Inc., dated February 21, 2024, consisting of 4 pages (the "traffic statement"), and

7. Soils and Foundation Investigation Report, prepared by GZA GeoEnvironmental, Inc., dated January 20, 2023, consisting of 136 pages (the "soil and foundation report");

WHEREAS, the application was deemed to be complete;

WHEREAS, a duly noticed public hearing was held on the application, commencing on July 22, 2024, continuing to and concluding on August 26, 2024, with affidavits of service and publication of notices of the hearing being submitted to and being on file with the Board, thereby conferring procedural jurisdiction over the application with the Board, during which hearing the applicant was represented by Tim Arch, Esq. (of Bob Smith & Associates) and the Board was represented by Joseph Tauriello, Esq. (of Stickel, Koenig, Sullivan & Drill, LLC) on July 22, 2024 and Jonathan E. Drill, Esq. (of Stickel, Koenig, Sullivan & Drill, LLC) on August 26, 2024;

WHEREAS, the following individuals testified during the hearing, were subject to cross examination and questioning, and the testimony is part of the record in this matter:

1. Jered Duke (applicant's development partner),
2. Daniel Bloch, PP (applicant's planning expert),
3. Mark Janiszewski, PE (applicant's engineering expert),
4. Alec Zukowski, PE (applicant's engineering expert),

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5. Larry Plevier, PE (Board's engineering expert),
6. Jim Mazzucco, LLA (Board's landscape architectural expert),
7. Steven Lydon, PP, AICP (Board's planning expert), and
8. Tom Behrens, PP, AICP (Board planning expert);

WHEREAS, the following exhibits were submitted into evidence during the hearing and are part of the record in this matter:

A-1 "Clinton Self Storage, Clinton NJ: Aerial" dated July 22, 2024, and

A-2 "Site Plan Exhibit" dated July 22, 2024;

WHEREAS, one member of the public appeared at the hearing to request a slight increase in landscaping along a western drive aisle, and the applicant agreed to same, otherwise no other interested parties or members of the public appeared at the hearing to cross examine witnesses, testify or otherwise submit evidence;

WHEREAS, AFTER CONSIDERING THE APPLICATION, DOCUMENTS, EXHIBITS AND TESTIMONY REFERENCED ABOVE, AND GIVING APPROPRIATE WEIGHT TO SAME, AND BASED ON ITS UNDERSTANDING OF THE APPLICABLE LAW, THE BOARD MAKES THE FOLLOWING FACTUAL FINDINGS AND LEGAL CONCLUSIONS FOR THE PURPOSE OF MEMORIALIZING IN A WRITTEN RESOLUTION IN ACCORDANCE WITH N.J.S.A. 40:55D-10g(2) ITS ACTION IN GRANTING THE APPLICATION SUBJECT TO CONDITIONS AS SET FORTH BELOW:

A. FACTUAL FINDINGS AND LEGAL CONCLUSIONS

1. The Property, Surrounding Development, and Zoning. The property is a 5.4 acre irregularly shaped lot with 426 feet of frontage on Route 31 South located south of West Main Street. The property is generally undeveloped and wooded and slopes upward significantly from the front of the property to the rear. There is a 75-foot-wide easement located along the rear property line owned by the State of New Jersey. Development surrounding the site consists of commercial uses to the north and east, with residential development to the northwest. The property is situated in the C-1 zone and also the Route 31 North Highway Corridor District. The Schedule of Requirements (the "Schedule"), which is incorporated by reference by and into ordinance section 165-86, establishes the bulk requirements for lots in the C-1 Zone.

2. The Prior Approvals and the Proposed Development. As set forth above, the applicant applied to and obtained from the Board the prior approvals as memorialized in Resolution No. 2023-03. Also as set forth above, the prior approvals consisted of a bifurcated

"d(1)" use variance and "d(4)" FAR variance to allow: (a) the self-storage use; (b) the proposed building to contain the self-storage units; and (c) the proposed site improvements. The proposed development consists of the proposed building and the proposed site improvements, with the proposed building being a two-story, 100,000 square foot climate-controlled facility featuring a drive-thru loading / unloading area situated at the front of the property. The proposed site improvements include a stormwater management basin, freestanding lighting fixtures and the septic system (the stormwater management basin, freestanding lighting fixtures and the septic system are referred to together as the "proposed accessory structures"), a driveway (the "proposed driveway"), retaining walls (the "proposed retaining walls") and a parking area (the

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"proposed parking area"). The applicant also proposes signage including a pylon sign to be located at the entrance to the property (the "proposed freestanding sign") and three (3) wall signs (the "proposed wall signs"). The rear of the property will remain undeveloped, and, in fact, the applicant has proposed a conservation easement over a 2-acre portion of the rear of the property which will prohibit any and all development of the rear of the property.

3. The Required and Requested Relief. In order to construct the proposed development, the applicant requires and has requested "c" variances from various zoning ordinance regulations, exceptions from various site plan ordinance requirements, and preliminary and final site plan approval. The specific relief requested is as follows:

a. A "c(1)" side yard setback variance from the Schedule to allow the southerly side yard to be setback 45.6 feet from the property line where the minimum side yard setback required is 50 feet,

b. A "c(1)" variance from ordinance section 165-77.K(7)(a)[1] to allow a buffer of 3 canopy trees, 5 ornamental evergreen trees and 117 shrubs in the front yard where 51 canopy trees, 85 ornamental evergreen trees and 341 shrubs are required,

c. A "c(1)" variance from ordinance section 165-77.K(7)(a)[1] to allow a buffer of 3 canopy trees, 4 ornamental evergreen trees and 56 shrubs in the northerly side yard where 50 canopy shade trees, 83 ornamental evergreen trees and 332 shrubs are required,

d. A "c(1)" variance from ordinance section 165-77.K(7)(a)[1] to allow a buffer of 6 canopy trees, 17 ornamental evergreen trees and 81 shrubs in the southerly side yard where 43 canopy trees, 71 ornamental evergreen trees and 286 shrubs are required,

e. A "c(1)" variance from ordinance section 165-77.K(7)(a)[1] to allow no planting in the rear yard buffer where 19 canopy trees, 31 ornamental evergreen trees and 124 shrubs are required,

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f. A "c(2)" variance from ordinance section 165-109.N(1)(d)[1] to allow the proposed freestanding sign to be setback five feet from the front lot line where a minimum setback of 15 feet is required,

g. A "c(2)" variance from ordinance section 165-71 .A(I O)(a) to allow 9 parking spaces where a self-storage use requires 1 parking space for each 1,000 square feet of floor area or 100 parking spaces in this case,

h. A "c(2)" variance from ordinance section 165-98.E to allow the proposed stormwater basin to be located in the front yard where accessory structures are prohibited within yard setback areas,

i. A "c(2)" variance from ordinance section 165-98.E to allow the proposed freestanding lighting fixtures to be located in the front yard where accessory structures are prohibited within yard setback areas,

j. A "c(2)" variance from ordinance section 165-98.E to allow the proposed septic system to be located in the front yard where accessory structures are prohibited within yard setback areas,

k. "C(2)" variances from ordinance section ordinance section 165-98.E to allow the proposed retaining walls to sit within the north and south side yard setback areas where retaining walls are prohibited within yard setback areas,

l. A "c(2)" variance from ordinance section 165-109.N(2)(a) to allow three wall signs, where a maximum of two wall signs is permitted per facade that faces a street,

m. A "c(2)" variance from ordinance section 165-109.N(2)(a) to allow two wall signs on the south side facade which does not face a street, where a maximum of two wall signs is permitted per facade that faces a street,

n. An exception from ordinance section 165-77.F to allow a portion of the proposed parking area to extend into the front yard where parking in the Route 31 North Highway Corridor District must be located in side and rear yards only,

o. An exception from ordinance section 165-71A(7) to allow the parking area to be set back 6 feet from the proposed building where a minimum setback of 12 feet from a principal building is required,

P. An exception from ordinance section 165-71.A(7) to allow the driveway to be setback 5 feet from the proposed building where the minimum required setback is 12 feet,

Q. An exception from ordinance section 165-75E(4)(a)[2] as referenced by ordinance section 165-751(4) to allow the northerly retaining wall to be 7.67 feet high where the

maximum retaining wall height permitted in the Route 31 North Highway Corridor District is 6 feet,

r. An exception from ordinance section 165-75E(4)(a)[2] as referenced by ordinance section 165-751(4) to allow the driveway to be located within 7 feet of the bottom of both the north and south retaining walls where no roads or parking areas shall be constructed within seven (7) feet of the bottom of a retaining wall,

s. An exception from 165-77D(5) from the Township's tree replacement requirements, and

t. Preliminary and final site plan approval.

4. Standards for Consideration of the "C" Variances. The Board has the power to grant "c" variances under two sets of criteria: the "c(1)" or so-called "hardship" criteria and/or "c(2)" or so-called "benefits v. burdens" criteria. The Board's conclusions as to the standards it must employ to consider the "co)" and "c(2)" variances are as follows:

a. Standards for Consideration of "C(1)" Variances. The Board has the power to grant "c(1)" variances from zoning ordinance regulations pursuant to N.J.S.A. 40:55D70c(1) where: (1) by reason of exceptional narrowness, shallowness or shape of a specific piece of property, (2) or by reason of exceptional topographic conditions or physical features uniquely affecting a specific piece of property, or (3) by reason of an extraordinary and exceptional situation uniquely affecting a specific piece of property or the structure lawfully existing thereon, "the strict application of any regulations...would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardship upon the developer of such property." This is the so-called "positive criteria of a "c(1)" variance. Significantly, the hardship that the applicant must prove is not inutility — that without the variance the property would be zoned into inutility. While inutility caused by a zoning regulation would require a variance to avoid an unconstitutional taking of the property, the Board may (but is not required to) grant a variance where the hardship at issue may inhibit "the extent" to which the property can be used. Lang v. North Caldwell Board of Adjustment, 160 N.J. 41, 54-55 (1999). A hardship variance is not available for intentionally created situations as constituting "self-created" hardship. Commons v.

Westwood Board of Adj., 81 N.J. 597, 606 (1980); Chirichello v. Monmouth Park Board of Adj., 78 N.J. 544, 553 (1979). Neither is a hardship variance available to accommodate mistakes. Deer-Glen Estates v. Borough of Fort Lee, 39 N.J. Super. 380, 386 (App. Div. 1956). Neither is a hardship variance available to relieve "personal hardship" of the owner, financial or otherwise. Jock v. Wall Township Zoning Board of Adj., 184 N.J. 562, 590 (2005). Finally, the Board may not exercise its power to grant a "c(1)" variance otherwise warranted, however, unless the so-called "negative criteria" has been satisfied. Pursuant to the last unlettered paragraph of N.J.S.A. 40:55D-70: "No variance or other relief may be granted ... without a showing that such variance or other relief can be granted without substantial detriment to the public good and will not substantially impair the intent and purpose of the zone plan and zoning ordinance." The phrase "zone plan" as used in N.J.S.A. 40:55D-70 means the master plan. Medici v. BPR Co., 107 N.J. 1, 4, 21 (1987).

b. Standards for Consideration of "C(2)" Variances. The Board has the power to grant "c(2)" variances from zoning ordinance regulations pursuant to N.J.S.A. 40:55D70c(2) where "in an application or appeal relating to a specific piece of property the purposes of [the MLUL] would be advanced by a deviation from the zoning ordinance requirements and the benefits of the deviation from the zoning ordinance requirements would substantially outweigh any detriment." This is the so-called "positive" criteria of a "c(2)" variance. The zoning benefits resulting from permitting the deviation(s) must be for the community ("improved zoning and planning that will benefit the community") and not merely for the private purposes of the owner.

Kaufmann v. Warren Township Planning Board, 110 N.J. 551, 563 (1988). The Appellate Division has held that the zoning benefits resulting from permitting the deviation(s) are not restricted to those directly obtained from permitting the deviation(s) at issue; the benefits of



permitting the deviation can be considered in light of benefits resulting from the entire development proposed. Pullen v. South Plainfield Planning Board, 291 N.J. Super. 1,9 (App. Div. 1996). However, the Supreme Court has cautioned boards to consider only those purposes of zoning that are actually implicated by the variance relief sought. Ten Stary Dom v. Mauro, 216 N.J. 16, 32-33 (2013). Finally, the Board may not exercise its power to grant a "c(2)" variance otherwise warranted, however, unless the so-called "negative criteria" has been satisfied,

Pursuant to the last unlettered paragraph of N.J.S.A. 40:55D-70: "No variance or other relief may be granted ... without a showing that such variance or other relief can be granted without substantial detriment to the public good and will not substantially impair the intent and purpose of the zone plan and zoning ordinance." Again, the phrase "zone plan" as used in N.J.S.A. 40:55D-70 means the master plan. Medici v. BPR co., 107 N.J. (1987).

5. Findings and Conclusions as to the "C(I)" Side Yard Setback Variance. As set forth above, the applicant has requested a "C(I)" variance from the Schedule to allow the southerly side yard to be setback 45.6 feet where the minimum side yard setback required is 50 feet. The Board's findings and conclusions as to the positive and negative criteria of the requested "c(l)" side yard setback variance are as follows:

a. Positive Criteria of the Side Yard Setback Variance. As to the positive criteria, the Board finds as follows. First, only the southwest corner of the proposed building encroaches into the side yard setback area and, to be even more specific, just 54 square feet of the proposed building is encroaching into the setback area. This is due to the irregular shape of the property which, while oversized, is irregularly shaped. The Board finds that the irregular shape of the property is a unique characteristic of this specific property and that the strict application of the Township ordinances regarding side yard setback would result in exceptional and undue hardship upon the applicant as the applicant would be unable to develop the property in any meaningful way. For the foregoing reasons, the Board finds and concludes that the "c(l)" side yard setback variance is warranted to relieve such hardship and that the applicant has proven the positive criteria of the requested "c(l)" side yard setback variance.

b. Negative Criteria of the Side Yard Setback Variance. As to the negative criteria, the Board finds that granting a variance for the side yard setback deviation will not result in substantial detriment to the public good because, due to the topography of the property which includes an upward slope from the front to the rear of the property, the encroaching corner of the proposed building will not be visible from the surrounding lots or streets. Provided that the conditions set forth below are imposed and complied with, the Board further finds that the requested "c(l)" side yard setback variance can be granted without substantially impairing the intent and purpose of the master plan and zoning

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ordinance. As such, the Board finds and concludes that the applicant has proven the negative criteria of the requested "c(1) side yard setback variance.

6. Findings and Conclusions as to the "C(I)" Landscape Buffer Variances. As set forth above, the applicant has requested "c(1)" variances from ordinance section 165-77.K(7) to allow 1) a buffer of 3 shade trees, 5 ornamental evergreen trees and 117 shrubs in the front yard where 51 shade trees, 85 ornamental evergreen trees and 341 shrubs are required, 2) a buffer of 3 shade trees, 4 ornamental evergreen trees and 56 shrubs in the northerly side yard where 50 shade trees, 83 ornamental evergreen trees and 332 shrubs are required, 3) a buffer of 6 shade trees, 17 ornamental evergreen trees and 81 shrubs in the southerly side yard where 43 shade trees, 71 ornamental evergreen trees and 286 shrubs are required, and 4) no planting in the rear yard where 19 shade trees, 31 ornamental evergreen trees and 124 shrubs are required. The Board's findings and conclusions as to the positive and negative criteria of the requested "c(1)" buffer variances are as follows:

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a. Positive Criteria of the Landscape Buffer Variances. As to the positive criteria, the Board finds as follows. First, the property's extreme slope makes planting extremely challenging. In addition, the property's irregular shape means that adhering to the side yard buffer requirements would push the proposed building closer to the neighboring residents to the rear of the property. As such, constructing a commercial use on the property while meeting the buffer requirements is not feasible. The intent of the buffering requirements is to screen a commercial development from outside view. In that regard, the Board will impose two conditions on any approval it grants: 1) the applicant shall work with the Board's landscape architect to develop buffering in the front and side yards to screen the proposed building and, 2) the existed wooded area to the rear of the property must be preserved in a conservation area. The Board finds that the irregular shape and topography of the property are unique characteristics of this specific property and that the strict application of the Township ordinances regarding buffering would result in exceptional and undue hardship upon the applicant as the applicant is unable to develop the property in any meaningful way while leaving the required buffers. For the foregoing reasons, the Board finds and concludes that the "c(1)" landscape buffer variances are warranted to relieve such hardship and that the applicant has proven the positive criteria of the requested "c(1)" landscape buffer variances.

b. Negative Criteria of the Landscape Buffer Variances. As to the negative criteria, the Board finds that granting variances for the landscape buffer deviations will not result in substantial detriment to the public good. This is because, as set forth above, the Board will impose a condition on any approval it grants that the applicant work with the Board's landscape architect to develop buffering in the front and side yards to screen the proposed building and because the existing wooded area to the rear of the property will be preserved in a

conservation area. As such, the development will not be aesthetically displeasing. Provided that the conditions set forth below are imposed and complied with, the Board further finds that the requested "c(1)" landscape buffer variances can be granted without substantially impairing the intent and purpose of the master plan and zoning ordinance. As such, the Board finds and concludes that the applicant has proven the negative criteria of the requested "c(1)" landscape buffer variances.

7. Findings and Conclusions as to the "C(2)" Freestanding Sign Setback Variance.

As set forth above, the applicant has requested a "C(2)" variance from ordinance section 165-109.N(1)(d)[1] to allow the proposed freestanding sign to be setback five (5) feet from the front lot line where a minimum setback of 15 feet is required. As a preliminary matter, the Board finds that the applicant was correct in applying for a "c(2)" freestanding sign setback variance, and not a "c(1)" variance, because a "c(1)" variance is not available in this case because there is no hardship that prevents or inhibits compliance with the freestanding sign setback ordinance requirement. In this regard, the Board notes that there is no evidence to suggest that the proposed freestanding sign cannot be placed in a compliant location. That said, the Board finds and concludes that a "c(2)" variance is warranted to allow the freestanding sign setback deviation, and the Board's findings and conclusions as to the positive and negative criteria of the requested "c(2)" freestanding sign setback variance are as follows:

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a. Positive Criteria of the Freestanding Sign Setback

Variance. As to the positive criteria the Board finds as follows. First, the purpose of the proposed freestanding sign is to alert passing motorists to the entrance to the proposed development, making visibility crucial. The Board finds that placing the sign five (5) feet from the highway is necessary for visibility from Route 31. The Board finds that the proposed sign placement will promote safety by providing drivers with timely notice to slow down and prepare for the turn into the property. Next, the Board finds that granting the requested freestanding sign setback variance will promote the safety purposes of zoning set forth in the MLUL, N.J.S.A. 40:55D-2a (promoting the public health, safety, and general welfare). Finally, in light of the benefits to the Township and the surrounding region that the applicant's business will provide, the Board finds that the zoning benefits arising from the grant of the requested variance are community wide public benefits and not simply a private benefit to the applicant. Provided that the conditions set forth below are imposed and complied with, the Board finds that the zoning benefits resulting from the grant of the "c(2)" freestanding sign setback variance will substantially outweigh any detriment. For all of the foregoing reasons, the Board finds and concludes that the that applicant has proven the positive criteria of the requested "c(2)" freestanding sign setback variance.

b. Negative Criteria of the Freestanding Sign Setback

Variance. Provided that the conditions set forth below are imposed and complied with, the Board finds that the requested "c(2)" freestanding sign setback variance can be granted without substantial detriment to the public good and without substantial impairment of the intent and purpose of the master plan and zoning ordinance for the following reasons. First, the Board finds that there will be no negative impacts to the surrounding neighborhood resulting from the freestanding sign setback deviation. The Board finds that the deviation at issue will not result in detriment, let alone substantial detriment to the public good and, in fact, will benefit the public good by enhancing the safety along Route 31 at the entrance to the property. Second, provided that the conditions set forth below are imposed and complied with, the Board finds that the grant of the variance will not impair the intent or purpose of the master plan and zoning ordinances. For all of the foregoing reasons, the Board finds and concludes that the applicant has proven the negative criteria of the requested "c(2)" freestanding sign setback variance.

8. Findings and Conclusions as to the "C(2)" Parking Space Variance. As set forth above, the applicant has requested a "C(2)" variance from the ordinance section 16571 .A(IO) to allow 9 parking spaces where a self-storage use requires 1 parking space for each 1 ,000 square feet of floor area or 102 parking spaces in this case. As a preliminary matter, the Board finds that the applicant was correct in applying for a "c(2)" parking space variance, and not a "c(1)" variance, because a "c(1)" variance is not available in this case because there is no hardship that prevents or inhibits compliance with the parking space ordinance requirement. In

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this regard, the Board notes that there is no evidence to suggest that the required 102 parking spaces could not be provided. That said, the Board finds and concludes that a "c(2)" variance is warranted to allow the parking space deviation, and the Board's findings and conclusions as to the positive and negative criteria of the requested "c(2)" parking space variance are as follows:

a. Positive Criteria of the Parking Space Variance. As to the positive criteria, the Board finds as follows. First, based on the testimony of the applicant's witnesses, the Board finds that the self-storage use does not create a high parking demand. Moreover, in this particular case, the tenants do not require parking spaces at all. Rather, the design of the proposed development allows them to pull into the drive-thru loading / unloading area and gain direct and convenient access to their storage unit. The 9 proposed parking spaces are meant to be used by the occasional visitor who requires the services of office personnel. As such, the Board finds that the proposed 9 parking spaces will adequately serve the proposed development. Second, the Board finds that requiring unnecessary additional parking spaces would do nothing but add to the impervious coverage on the site and increase the area of disturbance, which is not a good alternative for the property in terms of the environment. In this regard, the Board finds that the elimination of the unnecessary parking spaces will eliminate unnecessary impervious pavement on the property which benefits the community by decreasing excess stormwater and allowing for improved stormwater draining. In addition, reducing the amount of parking spaces will make the property feel less congested and will afford more space for landscaping. The Board finds that granting the "c(2)" variance to allow 9 parking spaces as proposed will promote the environmental purposes of the MLUL as enunciated in N.J.S.A. 40:55D-2g (providing sufficient space in appropriate locations for commercial uses according to their environmental requirements in order to meet the needs of all New Jersey citizens) and -2j (preventing degradation of the environment through improper use of land). Finally, provided that the conditions set forth below are imposed and complied with, the Board finds that the aforesaid zoning benefits will substantially outweigh any detriments. For all of the foregoing reasons, the Board finds and concludes that the applicant has proved the positive criteria of the requested "c(2)" variance.

b. Negative Criteria of the Parking Space Variance. As to the negative criteria of the "c(2)" parking space variance, the Board finds that, provided the conditions set forth below are imposed and complied with, the requested "c(2)" parking space variance can be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of the master plan and zoning ordinance. The Board finds and concludes that the applicant has proved the negative criteria of the requested "c(2)" parking space variance.

9. Findings and Conclusions as to the "C(2)" Accessory Structures Variances. As set forth above, the applicant requests three "c(2)" variances from ordinance section 165-98.E to allow the proposed accessory structures (the stormwater basin, freestanding lighting fixtures and

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septic system) to be located in the front yard where accessory structures are prohibited within yard setback areas. As a preliminary matter, the Board finds that the applicant was correct in applying for "c(2)" accessory structures variances to allow the proposed accessory structures to be located in the front yard, and not "c(1)" variances, because "c(1)" variances are not available in this case because there is no hardship that prevents or inhibits compliance with the accessory structure setback ordinance requirement. There is no evidence to suggest that the proposed accessory structures could not be located in a compliant location. That said, the Board finds and concludes that "c(2)" variances are warranted to allow the proposed accessory structures to be located in the front yard, and the Board's findings and conclusions as to the positive and negative criteria of the requested "c(2)" accessory structure variances are as follows:

a. Positive Criteria of the Accessory Structures Variances. As to the positive criteria, the Board finds as follows. First, while the proposed accessory structures could technically be installed in compliant locations, the Board finds that each piece of equipment will function in a more effective manner if placed in front of the building. To be specific, the lighting fixtures are necessary in front of the building in order to provide optimal safety lighting. Similarly, the topography of the property dictates that the stormwater basin and septic system function best when placed in the front yard setback area. Importantly, these will not be visible from Route 31. Thus, the Board finds that granting the "c(2)" variances to allow the proposed accessory structures to be installed as proposed will enhance the efficiency of the self-storage use as previously approved in Resolution No. 2023-03. Second, the Board finds that granting the "c(2)" variances to allow the proposed accessory structures to be installed as proposed in the front yard area will promote purposes of the MLUL as enunciated in N.J.S.A. 40:55D-2a (to promote the public safety and general welfare) and -2g (to provide sufficient space in appropriate locations according to environmental requirements) by providing a safe space for the self-storage use while also supporting effective stormwater management on the property. Finally, the Board finds that the foregoing zoning benefits are community-wide benefits and, provided that the conditions set forth below are imposed and complied with, the aforesaid zoning benefits will substantially outweigh any detriments. For all of the foregoing reasons, the Board finds and concludes that the applicant has proven the positive criteria of the requested "c(2)" accessory structures variances.

b. Negative Criteria of the Accessory Structures Variances. As to the negative criteria of the requested "c(2)" accessory structures variances, provided that the conditions set forth below are imposed and complied with, the Board finds that granting the requested "c(2)" variances will not result in substantial detriment to the public good as there will be no substantial detriment on the surrounding lots because the proposed accessory structures will not be visible due to the topography of the property which includes an upward slope from the front to the rear of the property. Provided that the conditions set forth below are imposed and complied with, the Board further finds that the requested "c(2)" accessory structures variances can be granted without substantially impairing the intent and purpose of the master plan and zoning ordinance. As

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such, the Board finds and concludes that the applicant has proven the negative criteria of the requested "c(2)" accessory structures variances.

10. Findings and Conclusions as to the "C(2)" Retaining Wall Setback Variances. As set forth above, the applicant requests a "c(2)" variances from ordinance section 165-98.E to allow the proposed retaining walls to sit within the north and south side yard setback areas where retaining walls are prohibited within yard setback areas. As a preliminary matter, the Board finds that the applicant was correct in applying for "c(2)" retaining wall setback variances, and not a "c(1)" variance, because a "c(1)" variance is not available in this case because there is no hardship that prevents or inhibits compliance with the retaining wall setback ordinance requirement. There is no evidence to suggest that the retaining walls could not be built in a compliant location. That said, the Board finds and concludes that "c(2)" variances is warranted to allow the retaining wall setback deviations, and the Board's findings and conclusions as to the positive and negative criteria of the requested "c(2)" retaining wall setback variances are as follows:

a. Positive Criteria of the Retaining Wall Setback Variances.

As to the positive criteria, the Board finds as follows. First, the Board finds that granting the requested "c(2)" variances to allow the retaining walls to be located in the side yard setback areas will allow the applicant to minimize grading and the area of disturbance which the Board finds will promote the environmental purposes of the MLUL as enunciated in N.J.S.A. 40:55D-2e (promoting the establishment of appropriate concentrations that will contribute to the well-being of persons and preservation of the environment), -2g (providing sufficient space in appropriate locations for commercial uses according to their environmental requirements in order to meet the needs of all New Jersey citizens) and -2j (preventing degradation of the environment through improper use of land). Finally, provided that the conditions set forth below are imposed and complied with, the Board finds that the aforesaid zoning benefits will substantially outweigh any detriments. The Board finds and concludes that the applicant has proved the positive criteria of the "c(2)" retaining wall setback variances.

b. Negative Criteria of the Retaining Wall Setback Variances.

As to the negative criteria of the "c(2)" retaining wall variances, the Board finds that, provided the conditions set forth below are imposed and complied with, the requested "c(2)" retaining wall variances can be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of the master plan and zoning ordinance. The Board finds and concludes that the applicant has proved the negative criteria of the "c(2)" variances.

11. Findings and Conclusions as to the "C(2)" Wall Sign Variances. As set forth above, the applicant has requested "c(2)" variances from ordinance section 165-109.N(2)(a) to allow three (3) wall signs on the facade where a maximum of two wall signs is permitted per facade that faces a street. The applicant proposes the following wall signs: 1) a building mounted "Extra Space Storage Drive-Thru" sign (the "primary sign") on the front building elevation not to exceed 200 square feet, 2) a building mounted "Office" sign (the "Office sign") on the southerly side elevation, and 3) a building mounted "Drive-Thru" sign (the "Drive-Thru sign")

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on the southerly side elevation. The southerly side elevation does not face a street. Thus, the applicant requires two variances from ordinance section 165-109.N(2)(a) as follows: 1) to allow the Office sign and the Drive-Thru sign on a non-street facing facade, and 2) to allow three (3) wall signs where only two (2) wall signs are permitted. As a preliminary matter, the Board finds that the applicant was correct in applying for "c(2)", and not "c(1)" variances, because "c(1)" variances are not available to allow the proposed wall signs because there is no "hardship" that prevents the applicant from complying with the wall sign requirements. That said, the Board finds and concludes that "c(2)" wall sign variances are warranted. The Board's findings and conclusions as to the positive and negative criteria of the requested "c(2)" wall sign variances are as follows:

a. Positive Criteria of the Wall Sign Variances. The Board finds that the positive criteria of the requested "c(2)" wall sign variances has been proven for the following reasons. First, the Office and Drive-Thru signs are wayfinding signs that the Board finds are essential for efficient vehicular movement around the property. Second, as to the placement of the Office and Drive-Thru signs on a non-street facing facade, the Board finds that they will only be effective if placed as proposed. As such, the Board finds that granting the requested wall sign variances will promote the safety purposes of zoning set forth in the MLUL, N.J.S.A. 40:55D-2a (promoting the public health, safety, and general welfare). Finally, in light of the benefits to the Township and the surrounding region that the applicant's business will provide, the Board finds



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that the zoning benefits arising from the grant of the requested variances are community wide public benefits and not simply a private benefit to the applicant. As such, provided that the conditions set forth below are imposed and complied with, the Board finds that the zoning benefits resulting from the grant of the "c(2)" wall sign variances will substantially outweigh any detriment. For all of the foregoing reasons, the Board finds and concludes that the that applicant has proven the positive criteria of the requested "c(2)" wall sign variances.

b. Negative Criteria of the Wall Sign Variances. Provided that the conditions set forth below are imposed and complied with, the Board finds that "c(2)" variances allowing three wall signs in total and two wall signs on a non-street facing facade can be granted without substantial detriment to the public good and without substantial impairment of the intent and purpose of the master plan and zoning ordinance for the following reasons. First, the Board finds that there will be no negative impacts resulting from the proposed number or placement of wall signs. The Board finds that the deviation will have no negative aesthetic impact on the community because the wall signs are relatively small in size and will only be seen by people on the property and will not be visible to passing motorists. The Board finds and concludes that the requested "c(2)" wall sign variances can and should be granted subject to the conditions set forth below.

12. Conclusion to Grant all of the Requested "C" Variances. For all of the forgoing reasons, the Board concludes that all of the requested "c" variances can and should be granted subject to the conditions below being imposed and complied with.

13. Standards for Considering the Exceptions. N.J.S.A. 40:55D-51b provides that the Board, "when acting upon applications for . . . site plan approval, shall have the power to grant such exceptions from the requirements for . . . site plan approval as may be reasonable and within the general purpose and intent of the provisions for site plan review and approval . . . if the literal enforcement of one or more provisions of the ordinance is impracticable or will exact undue hardship because of peculiar conditions pertaining to the land in question." While neither "impracticable" nor "hardship" is defined in the MLUL, "hardship" has been defined in numerous land use and zoning cases in New Jersey. As established in New Jersey case law, the "hardship" necessary to warrant the grant of a "c(1)" variance does not have to rise to the level of confiscation. If the ordinance provisions at issue "inhibit . . . the extent" to which the property can be used, our courts have held that "hardship" to warrant a "c(1)" variance exists. Lang v. North Caldwell Board of Adjustment, 160 N.J. 41, 54-55 (1999). The Board thus concludes that the hardship necessary to warrant the grant of an exception does not have to rise to the level of confiscation. If the ordinance provisions at issue "inhibit . . . the extent" to which the property can be used, such "hardship" is sufficient to warrant the grant of an exception. Unlike "hardship," however, "impracticable" has not been defined in any land use or zoning case of which the Board is aware. Following the basic rule of construction that legislative language should be given its plain and ordinary meaning, Pennsauken v. Schad, 160 N.J. 156, 170 (1999); DiProspero v. Penn, 183 N.J. 477, 492 (2005), the Board concludes that "impracticability" is derived from the root word "impractical," which is defined as "not wise to put into or keep in practice or effect"; an inability to deal "sensibly or prudently with practical

matters." See, Merriam-Webster's Collegiate Dictionary (1 Ith Ed. 2004). The Board thus concludes that impracticability to warrant the grant of an exception includes situations where requiring literal

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enforcement of the ordinance requirements at issue would be imprudent and/or not sensible. Because the exceptions in this application are connected to a "d" variance, any exception otherwise warranted cannot be granted pursuant to N.J.S.A. 40:55D-76b "unless such approval can be granted without substantial detriment to the public good and without substantial impairment of the intent and purpose of the zone plan and zoning ordinance." The phrase "zone plan" as used in the N.J.S.A. 40:55D-70 means master plan. Medici v. BPR Co., 107 N.J. 1, 4, 21 (1987).

14. Findings and Conclusions as to the Exceptions From Site Plan Ordinance Requirements Regarding the Parking Area. As set forth above, the applicant is requesting several exceptions from site plan ordinance requirements regarding the parking area as follows: (1) an exception from ordinance section 165-77.F to allow a portion of the proposed parking area to extend into the front yard where parking in the Route 31 North Highway Corridor District must be located in side and rear yards only, and (2) an exception from ordinance section 16571A(7) to allow the parking area to be set back 5 feet from the proposed building where the required setback is 12 feet.. The Board's findings and conclusions as to the positive and negative criteria as to the parking exceptions are as follows:

a. Positive Criteria of the Parking Area Exceptions. As to the positive criteria of the requested parking exceptions, the Board's findings are as follows. First, the size and dimensions of the property make it difficult to create a turn-around area unless part of the parking area extends into the front yard and is situated five (5) feet from the proposed building. The Board finds that, especially given the needs of the self-storage use as approved by Resolution No. 2023-03, an appropriate turn around area is necessary for safety. As such, the Board finds that it is reasonable to grant the requested parking area exceptions so that an appropriate turn-around area can be constructed on the property. Second, the Board finds that granting the requested parking area exceptions is within the general intent and purpose of the provisions for site plan review and approval provided that the conditions set forth below are imposed and complied with. For all of the foregoing reasons, provided that the conditions set forth below are imposed and complied with, the Board finds and concludes that the applicant proved the positive criteria of the requested parking area exceptions.

b. Negative Criteria of the Parking Area Exceptions. As to the negative criteria of the requested parking area exceptions, the Board finds that, provided the conditions set forth below are imposed and complied with, the exceptions from the site plan ordinance regarding the parking area can be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of the master plan and zoning ordinance. As

such, the Board finds and concludes that the applicant proved the negative criteria of the requested parking area exceptions.

15. Findings and Conclusions as to the Exception From Site Plan Ordinance Requirements Regarding the Retaining Wall Height. As set forth above, the applicant is requesting an exception from ordinance section 165-75E(4)(a)[2] as referenced by ordinance section 165-751(4) to allow the northerly retaining wall to be 7.67 feet high where the maximum retaining wall height permitted in the Route 31 North Highway Corridor District is 6 feet. The

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Board's findings and conclusions as to the positive and negative criteria as to the parking exceptions are as follows:

a. Positive Criteria of the Retaining Wall Height Exception.

As to the positive criteria of the requested retaining wall height exception, the Board's findings are as follows. First, the property slopes significantly upward from front to back, meaning the retaining wall's height deviation will be noticeable from inside the property, not outside. Second, the Board finds that it would be impractical to require the applicant to construct the retaining wall at a compliant height because it will be more effective at the proposed height of 7.67 feet. Third, the Board finds that granting the requested retaining wall height exception is within the general intent and purpose of the provisions for site plan review and approval provided that the conditions set forth below are imposed and complied with. For all of the foregoing reasons, provided that the conditions set forth below are imposed and complied with, the Board finds and concludes that the applicant proved the positive criteria of the requested retaining wall height exception.

b. Negative Criteria of the Retaining Wall Height Exception.

As to the negative criteria of the requested retaining wall height exception, the Board finds that, provided the conditions set forth below are imposed and complied with, the exception can be granted without substantial detriment to the public good because the height deviation will only be visible to people on the property and will not be visible from outside of the property. The Board further finds that the retaining wall height exception can be granted without substantially impairing the intent and purpose of the master plan and zoning ordinance. As such, the Board finds and concludes that the applicant proved the negative criteria of the requested retaining wall height exception.

16. Findings and Conclusions as to the Retaining Wall Setback from Driveway Exception. As set forth above, the applicant is requesting an exception from ordinance section 165-75E(4)(a)[2] as referenced by ordinance section 165-751(4) to allow the driveway to be located within 7 feet of the bottom of both the north and south retaining walls where no roads or parking areas shall be constructed within seven (7) feet of the bottom of a retaining wall. The

Board's findings and conclusions as to the positive and negative criteria as to the retaining wall setback exception are as follows:

a. Positive Criteria of the Retaining Wall Setback from

Driveway

Exception. As to the positive criteria of the requested retaining wall setback exception, the Board's findings are as follows. First, as set forth above, the property slopes significantly upward from front to back. The Board finds that the proposed retaining wall placement is necessary in order to promote efficient site design and to minimize grading and disturbance. Second, the Board finds that it would be impractical to require the applicant to construct the retaining walls or the driveway in a different location which would be less efficient and create more disturbance simply for the sake of ordinance compliance. Third, the Board finds that granting the requested retaining wall setback exception is within the general intent and purpose of the provisions for site plan review and approval provided that the conditions set forth below are imposed and complied with. For all of the foregoing reasons, provided that the conditions set forth below are imposed

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and complied with, the Board finds and concludes that the applicant proved the positive criteria of the requested retaining wall setback exception.

b. Negative Criteria of the Retaining Wall Driveway Setback from Driveway Exception. As to the negative criteria of the requested retaining wall setback exception, the Board finds that, provided the conditions set forth below are imposed and complied with, the exception can be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of the master plan and zoning ordinance. As such, the Board finds and concludes that the applicant proved the negative criteria of the requested retaining wall setback exception.

17. Findings as to the Exception From Site Plan Ordinance Requirements Regarding Tree Replacement. As set forth above, the applicant requests an exception from ordinance section 165-77.D(5) to allow less trees to be replaced than is required. The Board's findings and conclusions as to the positive and negative criteria as to the exception from the tree replacement requirement are as follows:

a. Positive Criteria of the Tree Replacement Exception. As to the positive criteria of the requested exception from the tree replacement requirement, the Board's findings are as follows. First, as to the extent of the requested exception and whether it is reasonable to grant it, the Board finds that there simply is not enough room on the site to plant all the required trees without causing the trees that would be planted to die. As such, the Board finds that granting the requested exception is reasonable in that it will prevent planted trees from dying. Second, for this same reason, the Board finds that granting the requested exception is within the general intent and purpose of the provisions for site plan review and approval because the trees that are proposed to be planted are likely to thrive. Third, the Board finds that literally enforcing the tree replacement requirements of the ordinance is impractical in this particular application because of the limited amount of space and likelihood that if all of the required trees are planted, trees will not survive. The Board finds and concludes that the applicant proved the positive criteria of the requested exception.

b. Negative Criteria of the Tree Replacement Exception. As to the negative criteria of the requested exception, the Board finds that, provided the conditions set forth below are imposed and complied with, the exception from ordinance section 165-77.D(5) regarding tree replacement can be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of the master plan and zoning ordinance. The Board finds and concludes that the applicant proved the negative criteria of the requested exception.

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18. Conclusion to Grant all of the Requested Exceptions. For all of the forgoing reasons, the Board concludes that all of the requested exceptions can and should be granted subject to the conditions below being imposed and complied with.

19. Standards for Considering Preliminary and Final Site Plan Review. N.J.S.A. 40:55D-46b and 50a are the focal points for consideration of preliminary and final site plan applications. N.J.S.A. 40:55D-46b provides that the Board "shall" grant preliminary site plan approval if the proposed development complies with all provisions of the applicable ordinances. Similarly, N.J.S.A. 40:55D-50a provides that final site plan approval "shall" be granted if the detailed drawings, specifications, and estimates of the application conform to the standards of all applicable ordinances and the conditions of preliminary approval. As such, if the application complies with all ordinance provisions, the Board must grant approval. Pizzo Mantin Group v. Twp. of Randolph, 137 N.J. 219, 232 (1994). If the application does not comply with all ordinance requirements, the Board must engage in the following analysis.

a. First, where a site plan application does not comply with all ordinance provisions but the Board grants relief in terms of variances or exceptions, the Board then must review the application and site plan against all remaining ordinance provisions and grant approval if there is compliance with all such remaining provisions. If the application complies with all remaining zoning ordinance regulations and site plan ordinance requirements, the Board must grant preliminary and final site plan approval.

b. Second, where a site plan application does not comply with all ordinance provisions, but a condition can be imposed requiring a change that will satisfy the ordinance provisions, the Board can either (a) grant site plan approval on the condition that the application and/or plans are revised prior to signing the plans to comply with the ordinance provisions, or (b) adjourn the hearing to permit the applicant the opportunity to revise the application or plans to comply with the ordinance provisions prior to the Board granting preliminary approval.

C. As the application requires "c" variances from certain zoning ordinance regulations, and exceptions from various site plan ordinance requirements, the Board is not able to find that the application and site plan comply with all zoning ordinance regulations and site plan ordinance requirements, so the applicant is not entitled to preliminary and final site plan approval. However, the Board must determine, after any variances have been granted from the ordinance regulations at issue and after any exceptions have been granted from the site plan ordinance requirements, whether the application and site plans comply with all remaining applicable zoning ordinance regulations and remaining application site plan ordinance requirements. If the application and site plans comply with all remaining ordinance provisions, then preliminary and final approval should be granted, subject to the imposition of conditions as will be discussed below. Conversely, if the application and site plans do not comply with all remaining ordinance provisions, the Board must then determine whether any conditions can be

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imposed to bring the application and site plans into ordinance conformance. Only if the Board determines that no conditions can be imposed to bring the application and site plan into ordinance compliance should the Board deny preliminary and final approval.

d. Finally, even if all ordinance requirements are complied with by the site plans as submitted, or as will be revised in accordance with conditions, the Board cannot grant site plan approval unless the four essential elements of a development are determined to be feasible, which are the following matters vital to the public health and welfare: stormwater management and drainage, sewage disposal, water supply, and traffic circulation safety. D'Anna v. Washington Twp. Planning Board, 256 N.J. Super. 78, 84 (App. Div.), certif. denied, 130 N.J. 18 (1992); Field v. Franklin N.J. super. 326, 332-333 (App. Div.), certif. denied, 95 N.J. 183 (1983), subsequently cited with approval in Ten Stary Dom v. Mauro, 216 N.J. 16, 32 (2013). If information and/or plans related to such essential elements of the development plan have not been submitted to the Board in sufficient detail for review and approval as part of the site plan review process, approval must be denied. Field; Ten Stau Dom.

16. Findings and Conclusions as to Preliminary and Final Site Plan Review. The Board's findings and conclusions as to preliminary and final site plan review for the proposed development are as follows. First, because the Board has concluded that the requested and "c(1 and "c(2)" variances from the zoning ordinance regulations at issue as well as the requested exceptions from the site plan ordinance requirements at issue should be granted, and provided that the conditions set forth below are imposed and complied with, the Board finds that the application and site plans will comply with all applicable remaining zoning ordinance regulations and all applicable remaining site plan ordinance requirements. Second, provided that the conditions set forth below are imposed and complied with, the Board finds that all matters vital to the public health (water supply, sewage disposal, stormwater drainage and management, and traffic circulation) will be adequately provided for and are appropriately designed as part of the proposed development. As such, the Board concludes that preliminary and final site plan approval can and should be granted subject to the conditions below being imposed and complied with.

17. Imposition of Conditions. Boards have inherent authority to impose conditions on any approval they grant. North Plainfield v. Perone, 54 N.J. Super. 1, 8-9 (App. Div. 1959), certif. denied, 29 N.J. 507 (1959). Further, conditions may be imposed where they are required in order for a board to find that the requirements necessary for approval of the application have been met. See, Alperin v. Mayor and Tp. Committee of Middletown Tp., 91 N.J. Super. 190 (Ch. Div. 1966) (holding that a board is required to impose conditions to ensure that the positive criteria is satisfied); Eagle Group v. Zoning Board, 274 N.J. Super. 551, 564-565 (App. Div. 1994) (holding that a board is required to impose conditions to ensure that the negative criteria is satisfied). See also, Urban v. Manasquan Planning Board, 124 N.J. 651, 661 (1991) (explaining that "aesthetics, access, landscaping or safety improvements might all be appropriate conditions for approval of a subdivision with variances" and citing with approval Orloski v. Ship Bottom Planning Board, 226 N.J. Super. 666 (Law Div. 1988), aff'd o.b., 234 N.J. Super. 1 (App. Div. 1989) as to the validity of such conditions.); Stop & Shop Supermarket Co. v. Springfield Board of Adj., 162 N.J. 418, 438-439 (2000) (explaining that site plan review

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"typically encompasses such issues as location of structures, vehicular and pedestrian circulation, parking, loading and unloading, lighting, screening and landscaping" and that a board may impose appropriate conditions and restrictions based on those issues to minimize possible intrusions or inconvenience to the continued use and enjoyment of the neighboring residential properties). Moreover, N.J.S.A. 40:55D-49a authorizes a board to impose conditions on a preliminary approval, even where the proposed development fully conforms to all ordinance requirements, and such conditions may include but are not limited to issues such as use, layout and design standards for streets, sidewalks and curbs, lot size, yard dimensions, off-tract improvements, and public health and safety. Pizzo Mantin Group v. Township of Randolph, 137 N.J. 216, 232-233 (1994). Further, municipal ordinances and Board rules also provide a source of authority for a board to impose conditions upon a developmental approval. See, Cox and Koenig, New Jersey Zoning and Land Use Administration (Gann 2024), sections 28-2.2 and 28-2.3 (discussing conditions limiting the life of a variance being imposed on the basis of the Board's implicit authority versus by virtue of Board rule or municipal ordinance). Finally, boards have authority to condition site plan and subdivision approval on review and approval of changes to the plans by Board's experts so long as the delegation of authority for review and approval is not a grant of unbridled power to the expert to approve or deny approval. Lionel Appliance Center, Inc. v. Citta, 156 N.J. Super. 257, 270 (Law Div. 1978). As held by the court in Shakoor Supermarkets, Inc. v. Old Bridge Tp. Planning Board, 420 N.J. super. 193, 205-206 (App. Div. 2011): "The MLUL contemplates that a land use board will retain professional consultants to assist in reviewing and evaluating development applications" and using such professional consultants to review and evaluate revised plans "was well within the scope of service anticipated by the applicable statutes. It was the Board, and not any consultant, that exercised the authority to approve the application." The conditions set forth below have been imposed on all of the above bases.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD, BY MOTION DULY MADE AND SECONDED ON AUGUST 26, 2024, AS FOLLOWS:

B. RELIEF GRANTED

1. Grant of Requested "C(I)" Side Yard Setback Variance. Subject to the conditions set forth below, a "c(I)" variance from the Schedule is hereby granted to allow a southerly side yard setback of 45.6 feet where the minimum side yard setback required is 50 feet.
2. Grant of Requested "C(I)" Front Yard Buffer Variance. Subject to the conditions set forth below, a "c(I)" variance from ordinance section 165-77.K(7)(a)[1] is hereby granted to allow a buffer of 3 shade trees, 5 ornamental evergreen trees and 117 shrubs in the front yard where 51 shade trees, 85 ornamental evergreen trees and 341 shrubs are required.
3. Grant of Requested "C(I)" North Side Yard Buffer Variance. Subject to the conditions set forth below, a "c(I)" variance from ordinance section 165-77.K(7)(b) is hereby granted to allow a buffer of 3 shade trees, 4 ornamental evergreen trees and 56 shrubs in the



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northerly side yard where 50 shade trees, 83 ornamental evergreen trees and 332 shrubs are required.

4. Grant of Requested "C(1)" South Side Yard Buffer Variance. Subject to the conditions set forth below, a "c(1)" variance from ordinance section 165-77.K(7)(b) is hereby granted to allow a buffer of 6 shade trees, 17 ornamental evergreen trees and 81 shrubs in the southerly side yard where 43 shade trees, 71 ornamental evergreen trees and 286 shrubs are required.

5. Grant of Requested "C(1)" Rear Yard Buffer Variance. Subject to the conditions set forth below, a "c(1)" variance from ordinance section 165-77.K(7)(b) is hereby granted to allow no planting in the rear yard where 19 shade trees, 31 ornamental evergreen trees and 124 shrubs are required.

6. Grant of Requested "C(1)" Freestanding Sign Variance. Subject to the conditions set forth below, a "c(1)" variance from ordinance section 165-109.N(1)(d)[1] is hereby granted to allow the proposed freestanding sign to be setback five feet from the front lot line where a minimum setback of 15 feet is required.

7. Grant of Requested "C(2)" Parking Space Variance. Subject to the conditions set forth below, a "c(2)" variance from ordinance section 165-71.A(10) is hereby granted to allow 9 parking spaces where a self-storage use requires 1 parking space for each 1,000 square feet of floor area or 100 parking spaces in this case.

8. Grant of Requested "C(2)" Stormwater Basin Variance. Subject to the conditions set forth below, a "c(2)" variance from ordinance section 165-98.E is hereby granted to allow to be located in the front yard where accessory structures are prohibited within front yard setback areas.

9. Grant of Requested "C(2)" Freestanding Lighting Fixtures Variance. Subject to the conditions set forth below, a "c(2)" variance from ordinance section 165-98.E is hereby granted to allow the proposed freestanding lighting fixtures to be located in the front yard where accessory structures are prohibited within front yard setback areas.

10. Grant of Requested "C(2)" Septic System Variance. Subject to the conditions set forth below, a "c(2)" variance from ordinance section 165-98.E is hereby granted to allow the septic system to be located in the front yard where accessory structures are prohibited within front yard setback areas.

11. Grant of Requested "C(2)" Retaining Wall Setback Variances. Subject to the conditions set forth below, "c(2)" variances from ordinance section 165-98.E are hereby granted to allow the proposed retaining walls to be located within the north and south side yard setback areas where retaining walls are required to comply with the minimum side yard setbacks.

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12. Grant of Requested "C(2)" Wall Sign Number Variance. Subject to the conditions set forth below, a "c(2)" variance from ordinance section 165-109.N(2)(a) is hereby granted to allow three wall signs where a maximum of two wall sign is permitted per facade that faces a street.

13. Grant of Requested "C(2)" Street Facing Wall Sign Variance. Subject to the conditions set forth below, a "c(2)" variance from ordinance section 165-109.N(2)(a) is hereby granted to allow two wall signs on the south side facade which does not face a street, where a maximum of two wall signs are permitted per fagades that face a street.

14. Grant of Requested Exception Regarding the Front Yard Parking Area. Subject to the conditions set forth below, an exception from ordinance section 165-77.F is hereby granted to allow a portion of the proposed parking area to extend into the front yard where parking in the Route 31 North Highway Corridor District must be located in side and rear yards only.

15. Grant of Requested Exception Regarding the Parking Area Setback from Building. Subject to the conditions set forth below, an exception from ordinance section 16571A(7) is hereby granted to allow the parking area to be set back 6 feet from the proposed building where the required setback is 12 feet.

16. Grant of Exception with Regard to the Driveway Setback from Building. Subject to the conditions set forth below, an exception from ordinance section 165-71A(7) is hereby granted to allow the driveway to be set back 5 feet from the proposed building where the minimum required setback is 12 feet.

17. Grant of Retaining Wall Height Exception. Subject to the conditions set forth below, an exception from ordinance section <sup>165-75E(4)(a)[2]</sup> as referenced by ordinance section 165-751(4) is hereby granted to allow the northerly retaining wall to be 7.67 feet high where the maximum retaining wall height permitted in the Route 3 1 North Highway Corridor District is 6 feet.

18. Grant of Exception with Regard to the Retaining Walls Setback from Driveway. Subject to the conditions set forth below, an exception from ordinance section 16575E(4)(a)[2] as referenced by ordinance section 165-751(4) is hereby granted to allow the driveway to be located within 7 feet of the bottom of both the north and south retaining walls where no roads or parking areas shall be constructed within seven (7) feet of the bottom of a retaining wall.

19. Grant of Tree Replacement Exception. Subject to the conditions set forth below, an exception from ordinance section 165-77D(5) is hereby granted to allow the applicant to plant the trees as proposed.

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20. Grant of Preliminary and Final Site Plan Approval. Subject to the conditions set forth below, the Board hereby grants preliminary and final site plan approval to the site plans listed and referenced above to allow the construction of the proposed development.

c. CONDITIONS

1. Revisions to the Plans. The applicant shall revise the site plans and other plans and documents referenced below by drawings and/or notes to the satisfaction of the Board engineer, Board planner and Board landscape architect to incorporate the following comments emanating in the memos and/or letters from the following Board experts, as modified and/or supplemented by the Board members during the hearing on the application, and the applicant shall have until May 18, 2024 (which is within 6 months from the date the within resolution is adopted on November 18, 2025) to revise the site plans and obtain sign-off on the plans. In the event that the applicant fails to revise the site plans within said time period, or extension thereof as granted by the Board, the within approval shall expire and become automatically null and void. (The Board notes that, in the absence of the within time limitation condition, it would decline to grant conditional approvals and, instead, would continue the hearing on an application for no more than a six month period to provide the applicant with the opportunity to revise the plans and documents and, failure by the applicant to resubmit same to the Board within that period or submission within that period but failure of the applicant to make all the required

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revisions, would result in denial of the application.) The required revisions to the site plans and other plans and documents referenced below are as follows:

a. Comments Emanating in the Memo to the Board from Thomas Behrens, Jr., P P, AICP (Board planning expert) dated July 19, 2024.

(only those numbered items that require revisions to the plans are set forth below):

2. Architectural Plans. A roof plan shall be added to the architectural plans to confirm the extent to which the proposed mansard roof will screen rooftop equipment.

3. Parking. Circulation and Loading. Based on the architectural plans, the building will have a gross floor area of 101 ,942 square feet which requires 102 parking spaces (1/1,000 sf) where the site plans indicate a gross floor area of 100,000 square feet requiring 100 spaces. This discrepancy shall be clarified with either the architectural plans or the site plans being revised accordingly.

7. Signage. Details for all proposed signs shall be provided on the site plans, including the size and illumination of all proposed signs.

9. Landscaping. The parking area shall be sufficiently screened as required in the Route 31 North Campus District and the site plans shall be revised accordingly.

10. Lighting. The lighting plan includes the installation of freestanding and wall mounted lights around the driveway area with compliant mounting heights of 16 feet. The color temperature of each lighting fixture shall be capped at 3,000 Kelvin. The applicant shall confirm the proposed hours of the exterior lighting as well as the interior lighting that illuminates the front storage units displayed in the windows. Section 165-74E(1) requires that all outdoor lighting not essential for safety and security purposes or to illustrate changes in grade or material shall be turned off during non-operating hours.

11. Equipment. The location of any proposed ground mounted equipment shall be confirmed and added to the site plans. Any such equipment shall be appropriately screened, and such screening shall be added to the site plans.

b. Comments Emanating in the Memo to the Board from Larry P levier, PE, CME (Board engineering expert) dated July 19, 2024.

(only those numbered items that require revisions to the plans are set forth below):

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B. Policy Issues

2. Other:

g. A note shall be included on the site plans indicating: "The Stormwater Operations and Maintenance Manual shall be recorded as a deed restriction for the subject lot. Evidence of said recording shall be provided to the Township Engineer prior to any recommendation for the issuance of the final certificate of occupancy."

c. Technical Comments

1. Preliminary and Final Major Site Plan, prepared by Colliers, Inc., dated 2-21-24:

a. Cover — Sheet 1 of 16

1. A list of all outside agency approvals shall be added to sheet 1, including the Hunterdon County Soil Conservation District, Hunterdon County Health Department, Hunterdon County Planning Board, and the NJDOT.

b. Site Demolition Plan — Sheet 2 of 16

1. The existing site conditions appear to potentially have two (2) existing onsite wells. Sheet 2 shall be revised to indicate that any existing wells shall be properly decommissioned in accordance with the applicable NJDEP requirements by a licensed well driller.

2. The adjoining property to the north shall be revised to Lot 9.03, and the lot designation of 9.03 for the adjoining property shall be revised on all applicable drawing sheets.

3. Any existing monitoring wells which have been installed on the subject site shall be decommissioned if necessary for the proposed improvements. If the existing monitoring wells require decommissioning, sheet 2 shall be revised accordingly. As stated above, all wells to be decommissioned shall be done in accordance with the applicable NJDEP requirements by a licensed well driller.

c. Dimension Plan — Sheet 3 of 16

1. In accordance with section 165-71.A.(7) of the Clinton Township code, all parking spaces in the C-1 zone shall be located a minimum of 12 feet from the building. Revise sheet 3 accordingly.

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2. The proposed stop bar shall be provided and shown on sheet 3.
3. The proposed three (3) striped islands, which are not the ADA access aisle, shall be identified on sheet 3, including the striping material, color, and line widths.
4. The proposed support columns and the second-floor overhang shall be shown on sheet 3 at the drive-thru location.
5. If the keypads have bollards for protection, the construction note with leaders shall be revised to identify the concrete filled bollards.
6. If the keypads have protective bollards, a construction detail shall be provided for the bollards.
7. The proposed fence color shall be provided on sheet 3 or on the Galvanized Steel Chain Link Fence Detail.
8. A 4' x 4' concrete exterior landing shall be provided at the egress door at the northwest corner of the building, and the landing shall be shown and identified on sheet 3.
9. Parking stalls with an 18' depth need to accommodate a two (2) foot vehicle overhang. Therefore, the sidewalk adjacent to the proposed 18' deep parking stalls shall be revised to a six (6) foot wide sidewalk.
10. The applicant shall verify that the existing overhead cable and telephone lines along Route 31 would not conflict with large vehicles, including rental trucks, that would be entering and exiting the site.

d. Grading Plan — Sheet 4 of 16

1. The proposed retaining wall near the southwest corner of adjoining Lot 9.03 exceeds seven (7) in height, and the proposed wall is five (5) feet from the property line. The applicant shall verify that the required geogrid reinforcement for the modular block wall will not encroach onto and/or construction will not undermine the adjoining property (Lot 9.03).

e. Utilities Plan— Sheet 5 of 16

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1. Information for the proposed sanitary sewer lateral from the building to the septic tank shall be provided on sheet 5, including pipe size, material, slope, invert elevations, and length.
2. In accordance with Table 4.3 in N.J.A.C. 7:9A-4.3, the proposed stormwater infiltration BMPs, including the subsurface basin and porous pavement system, shall be fifty (50) feet from the proposed septic disposal field. Sheet 5 shall be revised accordingly.
3. For compliance with Table 4.3 in N.J.A.C. 7:9A-4.3, the applicant shall identify any existing potable wells and septic disposal fields on adjoining Lot 9.03 to ensure that the proposed stormwater infiltration BMP has a minimum separation of fifty (50) feet.
4. The 15" HDPE storm sewer from Inlet S-28 to Inlet S-27 passes under the proposed retaining wall. The top of pipe is just below the leveling pad for the retaining wall at a location with a wall height of approximately 7.5'. Therefore, the subject storm sewer pipe run shall be revised to a rigid pipe material of either RCP or DIP.
5. A note shall be added to sheet 5 indicating that a minimum horizontal separation of 10 feet shall be provided for any water service line and the septic disposal field.

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6. The applicant shall verify that a single water line will be provided to the sprinkler room within the building for both fire suppression and potable service. If the project requires a separate dedicated fire suppression line, sheet 5 shall be revised to depict the separate water lines with any associated gate valves.

7. The gate valve symbol shall be rotated on sheet 5 to demarcate a new valve on the service branch.

8. The proposed driveway grades will create a cut of approximately four (4) feet above the existing water main within the NJDOT right-of-way. The applicant shall verify that the existing water main will have sufficient cover for the proposed driveway construction, or sheet 5 shall be revised to identify any required water main relocation.

9. The applicant shall also verify that the cut of approximately four (4) feet for the proposed driveway will not impact the existing subsurface tele-communication lines. If the existing duct bank or underground cables require relocation for the proposed driveway, sheet 5 shall be revised accordingly.

10. The proposed grading along the Route 31 embankment within the NJDOT right-of-way has a cut of approximately two (2) feet at the base of the existing utility poles just north of the new driveway. The applicant shall verify that the grading at the base of the poles are acceptable by the electric company, as the two (2) poles contain an utility platform with three (3) existing transformers.

11. Other than the gutter downspouts, the applicant shall identify the method for connecting the flat roof drainage area, which is the majority of the building roof, to the infiltration BMP.

12. The two (2) proposed manufactured treatment devices shall be identified on sheet 5 with the type, model, and manufacturer information.

f. Profiles — Sheet 6 of 16

1. A profile shall be provided for the proposed storm sewer pipe runs from the Basin A outlet structure to MH S-33 and then to the proposed interconnection with the NJDOT storm inlet.

2. The Profile of Undisturbed Stormwater shall be extended to fully depict the pipe run from MH S-24 to downstream MH S-33.



## g. Construction Details — Sheet 14 of 16

1. A note shall be added to the Standard Asphalt Pavement (RSIS) Detail for performing and witnessing a proof roll as stated above in review comment B.2.e of this report.

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2. A note shall be added to the Typical Reinforced Wall Section (Near Vertical Setback) Detail indicating that the applicant or contractor shall procure a permit from the Clinton Township Construction Department prior to construction for any retaining wall 4ft or greater in height.

3. The toe drain and daylight pipe on the Typical Reinforced Wall Section (Near Vertical Setback) Detail shall be revised to use an impermeable backfill layer for the lower buried block courses, raise the toe drain, and daylight the drainage pipe at the face of the wall with a rodent screen.

4. A standard breakaway sign post detail shall be provided for all proposed signage not installed within a bollard.

5. The two (2) ADA parking details depict signage behind the curb, but the plan depicts a bollard mounted ADA sign within the parking stall. The discrepancy shall be addressed.

6. The Typical Accessible Parking Layout (With Sidewalk) Detail identifies a wheel stop in the ADA parking stall, but the plan depicts a bollard mounted sign within the ADA parking stall. The discrepancy shall be addressed.

7. The Typical Accessible Parking Layout (With Sidewalk) Detail identifies a five (5) foot wide sidewalk. As indicated in the above review comments, the sidewalk adjacent to the 18' deep parking stalls shall be six (6) feet wide to accommodate a two (2) foot vehicle overhang. The detail shall be revised accordingly.

8. The fence heights on the two (2) retaining wall details shall be revised to six (6) feet high to correspond with the plan and fence detail.

9. The barb wire note and the graphic depiction on the 6' High Lift Gate Detail shall both be removed from the detail.

10. Note 4 on the Galvanized Steel Chain Link Fence Detail references the plan for a color of the wire mesh, but the plan does not identify a mesh color for the fence. The discrepancy shall be addressed.

## h. Construction Details — Sheet 15 of 16

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1. The Bollard Mounted Sign Detail shall be revised to show and identify a domed or crowned concrete cap to slope the concrete away from the top of the bollard for drainage.

2. If the project requires bollards to protect the proposed keypads or any other improvements, a detail shall be provided for a standard protective bollard.

i. Construction Details — Sheet 16 of 16

1. The Porous Asphalt Pavement Detail shall be revised to identify a traffic rated access box for the inspection ports.

2. The Porous Asphalt Pavement Detail shall be revised to identify a slotted or perforated pvc inspection port.

3. The references to Appendix E: Soil Testing Criteria in the Permeability Testing Requirements notes on the Underground Infiltration & Detention Basin (Stormtrap System) Detail shall be revised to indicate Chapter 12 — Soil Testing Criteria of the NJ Stormwater BMP Manual.

4. A Type A Inlet detail shall be provided for proposed storm structure S-27.

5. Construction details shall be provided for the two (2) proposed manufactured treatment devices (MTD).

6. The outlet structure discharge pipe is labeled as RCP on the Underground Infiltration & Detention Basin (Stormtrap System) Detail and labeled as HDPE pipe on the grading plan. The discrepancy shall be addressed.

7. The Underground Infiltration & Detention Basin (Stormtrap System) Detail shall be revised to provide information for the proposed storm sewer pipe connections to the storm chambers.

8. The Porous Asphalt Pavement Detail shall be revised to provide information for the proposed connection between the stone field for the porous pavement to the outlet control structure.

9. The Underground Infiltration & Detention Basin (Stormtrap System) Detail shall be revised to provide information for the proposed chambers, including manufacturer, model/type, joint sealant tape, splash pads, end panels, etc.

2. Stormwater Operations and Maintenance Manual, prepared by Colliers, Inc., dated 2-21-24:

a. A telephone number and email address shall be provided for the responsible party.

b. The Manual contains language, forms, and requirements for grass mowing, seeding, snow removal, etc. which are typically for surface detention basins. The Manual shall be revised to specifically address the maintenance and inspection measures for the stormwater BMPs proposed for the project, including the subsurface infiltration/storage basin.

c. If the proposed stormwater BMPs are revised based on review comments contained in this report or any other reports from the Board Professionals, the Manual shall also be revised and resubmitted, accordingly.

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3. Stormwater Management Report, prepared by Colliers, Inc., dated 2-21-24:

a. The size of all the subdrainage areas shall be provided on all three (3) of the drainage area maps in Appendix F of the Report.

b. A separate time of concentration (Tc) path shall be provided on the Existing Drainage Map in Appendix F for the DA I Disturbed drainage area, and the Tc path shall be the most hydraulically distance path to the point of study at the existing NJDOT inlet along Route 31.

c. The proposed stormwater management design has incorporated porous pavement and an infiltration subsurface basin for the project for compliance with N.J.A.C. 7:8. However, the Soils and Foundation Investigation Report for the project recommends the use of basin liners to eliminate the potential impacts from infiltration as the site is located within a karst landscape. The applicant shall provide testimony on the use of infiltration BMPs which contradicts the recommendations in the Soils and Foundation Investigation Report.

C. Comments Emanating in the Memo to the Board from Jim Mazzucco, LLA (Board landscape architecture expert) dated July 19, 2024.

(only those numbered items that require revisions to the plans are set forth below):

B. Site Plan Comments:

1. The Site Demolition Plan, sheet 2, indicates all trees within the limit of disturbance will be removed. The quantity of all trees greater than six (6) inches DBH to be

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removed shall be noted on the plan listing each tree's size, species, and condition. The plan shall also include the calculation for tree replacements per ordinance section 165-77.D.(5). No replacement trees are currently proposed. There are areas to the rear of the property where some replacement trees shall be located to provide additional buffering from the neighboring properties to the North.

3. Three (3) additional *Quercus palustris* trees shall be added to the northeast corner of the building to soften the appearance of the building from Rt 31 South.

4. Sight triangles shall be added to the landscape plan.

5. The landscape plan indicates a single row of 51 *Prunus laurocerasus* 'Otto Luyken' across the entire frontage of the building. This long row of continuous planting shall be broken to create more diversity across the large front facade of the building. A different and taller planting across the center of the building would create plant and height diversity.

6. *Hydrangea quercifolia* 'Snow Queen' is susceptible to deer browsing and shall be substituted with a different plant species.

7. There is currently an extreme slope along the frontage of Rt. 31. The slope is proposed to remain and the area is indicated as lawn. Considering a slope of this severity is dangerous to maintain with conventional mowers, the area shall be planted with an alternative ground cover other than lawn,

8. There is a conflict between the plantings and the fence on the north side of the building. This conflict shall be resolved.

9. The lawn seeding specification on sheet 11 conflicts with the Soil Erosion & Sedimentation Control Notes permanent lawn seeding specifications on sheet 8. This shall be corrected.

10. Separate soil bed preparation specifications shall be provided for the Earnst seed mix area.

11. A drought-tolerant grass seed mix shall be specified for the grass paver area.

12. The plan does not indicate the location of any AC condensers, electrical transformers, or generators. A note shall be added to the plans that all utilities will be adequately screened if visible to the public or neighboring properties.

13. The applicant is requesting a design waiver from all the required buffers. The buffer calculation chart on sheet 11 incorrectly lists the

buffer depths. The correct depths are 50 feet for the front yard and 25 feet for the sides and rear yard depths. The chart and all associated calculations shall be updated.

14. The calculations for the length of the side property lines related to the buffer calculations appear to be inaccurate. Plans shall be clarified.

15. The plan proposes the installation of a six (6) feet tall, galvanized chain link fence. The fence shall be constructed of black vinyl-coated material.

16. The automated gate is proposed to be constructed of the same material and we offer the same suggestion for the material change (see item #15). The top portion of the automated gate is proposed to be barbed wire which is prohibited by Ord. 165-117.B.(3). Eliminate the barbed wire for this detail.

17. The automated gate detail does not provide a dimension for the overall height of the gate. There is a note indicating a five (5) foot-style gate but also indicates the height may vary. Clarification of the gate height shall be provided.

18. The planting details shall be replaced with the township planting specifications and details. These may be downloaded from the Township website at: <https://www.clintontwpnj.com/images/forms/planning/planting-details.pdf>

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## C. Architectural Plan Comments:

1. A personal door is indicated in the northeast corner of the building on the elevation plan, but none on the floor plans. This shall be resolved.

2. On the front elevation, there are several false lime green doors indicated.

These doors have no function and are not in keeping with the Highway Zone Architectural Guidelines outlined in the Community Design Guidelines for Clinton Township. Although the proposed plan appears to be using traditional materials for the roof and siding, the lime green doors contradict the other materials. However, the false doors do create variation and a visual alteration breaking up a large facade. This could also be achieved using false windows that are more architecturally consistent with the rural character of Clinton Township. Lime green colors shall be eliminated.

d. Comments Emanating in the Memo to the Board from Jason R. Harkings, LLA (Board lighting expert) dated July 22, 2024.

(only those numbered items that require revisions to the plans are set forth below):

1.1 The applicant has provided a lighting plan (Sheet 12 of 16) depicting photometric values for four (4) proposed wall mounted lighting fixtures and eight (8) pole mounted fixtures. All fixtures are indicated to have a mounting height of 16 ft. The photometric calculations provided depict maintained light levels, however statistics for the initial lighting levels have not been provided in accordance with Ordinance section 165- 74F(2). Applicant shall provide calculations depicting the initial lighting levels for the proposed fixtures on the plan.

1.3 Hours of operation/method of control: Note 11 (Sheet 12 of 16) indicates sensors, timers, or manufacturer's control system and specific fixtures may have extended operation hours. The applicant shall provide specific hours of operation for the proposed lighting and the specific manner(s) of control for the proposed fixtures in accordance with ordinance section 165-74F(2).

e. Comments Emanating in the Memo to the Board from Christopher Sorrentino of the Office of the Township Fire Marshal.

Accessibility for Fire Department:

Building Access e Fire Apparatus access roads/access ways shall be provided around the premises.

Provide an apparatus turn radius plan that meets the requirements for Annandale Hose Company's apparatus to gain access around the building. Plans shall be verified and certified.

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**Fire Department Personnel Access [Knox Box]**

- Install in compliance with municipal code 133-15 Location. The rapid entry key lock box shall be located at or near the main entrance to the building or property. The key lock box shall be mounted at a minimum height of five feet and a maximum of six feet above final grade.

**Fire Lanes**

- Fire Lanes shall be established in accordance with the Municipal Ordinance signs and striping ordinance section 133-20. Install fire lanes around the building. Install Fire Lane signage and striping adjacent to parking spaces for apparatus access/staging through the office building complex.

**Roof Access**

- Revise the plans to provide the location of roof access.

**Fire Protection Systems:****Fire Alarm System**

- Provide Fire Alarm Plans

**Fire Department Connection [FDC]**

- Provide the location of where FDC will be located.
- FDC to be 5" Storz - 30-degree elbow with a blind cap.

**Fire Hydrant**

- Provide the location and information of hydrant(s)
- Will these be hydrants off the same feed as the sprinkler system o Ensure outlets are National Standard Thread

**Fire Pump e** Provide hydraulic data information for a pump if or if not needed.

**Fire Sprinkler**

- Provide Fire Sprinkler Plans

**Fire Standpipe**

- Provide Fire Standpipe Plans
- Ensure outlets are National Standard Thread

**Water Supply**

- An adequate water supply for fire suppression efforts shall be provided in accordance with NFPA 1142 and Municipal Ordinance 165-61 Water Supply. Underground water tanks shall be installed where city water cannot be brought

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in. The location shall not exceed 400ft from the structure. The location is to be determined and shall be approved by the fire official. Provide fire suppression water details.

### Fire Rating:

Material List o A separate copy shall be provided outside of the plans for integrity and future maintenance of fire- resistant-rated construction.

### Occupancy:

Building Management o Provide a contact number for the designee responsible for maintenance in case of emergency and immediately submit updates upon change of designee. Fill out the registration form upon building completion/Certificate of Occupancy.

### Occupancy Load of the Building

- Provide occupancy load number for the site.

### Utilities:

Stairwell o Label Stairwell o Can be alphabetical or numerical [Confirm with Fire Marshall o Label the stairwell with roof access on the interior and exterior.

### Utility Rooms

- All rooms shall be properly labeled to identify what they house, for example: o Fire Sprinkler Room o Water Supply Room o Fire Alarm Room

### Outside

- Any and all gas or electric service to the buildings that faces a road, parking area, and/or vehicle access shall be protected with appropriate code compliance bollards.
- Will solar panels be installed on this site.

f. Comments Emanating in the Memo to the Board from Thomas W. Long (Township Fire Chief) dated July 24, 2024

### Requests

- Large reflective and glow in the dark exit signs on the lower part of all interior exit doors.
- KNOX box location to be determined by the Division of Fire? o Grandmaster key in box for all doors and units. ■ One key fits all doors and unit doors.



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- Alarm system o System addressable
  - Identifiable by storage unit.
- Add two fire hydrants to plot, locations are to be approved by the Division of Fire.

e Entrance and exit overhead door control from inside and outside of the building.

#### Apparatus Highlights

- Driveway
  - o Width 25'
    - Apparatus● 8' 5" wide o Add for 5" hose and operator- 6' = 14'. ■ Need enough clearance for additional apparatus to pass by. o Turning radius■ Tower Ladder-
- 8' 5" wx46' 9" L
- Width with outrigger extended- 20' wide.
- Turning radiuso Inner- 29' 1" o Outer- 46' 11"
  - Vehicle clearance- 47'

#### f. Comments Emanating from Board Members During the Course of the Hearing.

1. Applicant shall relocate the power lines located at the entranceway at the sole cost and expense of the applicant if it is determined that the power lines need to be higher.
2. The color of the proposed building shall not be lime green and shall be an earthtone color.
3. The applicant shall work with the Board's Landscape Architect to create a buffer on all sides of the property.
4. The applicant shall work with the Board's Landscape Architect to add landscaping on the northeast corner of the property as well as to add evergreens to the plantings and to add additional plantings on the west side of the retaining wall.
5. The applicant shall work with the Board's landscape architect to develop buffering in the front and side yards to screen the proposed building.
6. Add a note to the plan stating that the existing wooded area to the rear of the property shall be preserved in a conservation easement.

3. Design, Construction and location of Improvements. The applicant shall be required to design, construct and locate the proposed development to be substantially similar to the plans approved by the Board and signed off on by the Board Chair and Board Secretary.

4. Landscaping. All landscaping, as installed, shall be substantially similar to and in accordance with the landscaping plan approved by the Township Engineer and Township Planner after consultation with and approval by the Board landscape architectural expert, and

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which landscape plan shall include any and all the landscaping changes required by condition #1 above. Prior to a permanent certificate of occupancy, completion or compliance (whichever is applicable), the landscaping shall be installed and a two (2) year maintenance bond in a form acceptable to the Township Attorney and in an amount acceptable to the Township Engineer, shall be posted with the Township. If the applicant applies for a certificate of occupancy during a non-planting season, the applicant may obtain a temporary certificate of occupancy without installation of the landscaping but if and only if the applicant posts a performance bond in a form acceptable to the Township Attorney and in an amount acceptable to the Township Engineer guaranteeing installation of the landscaping during the next planting season and further guaranteeing the subsequent posting of a two (2) year maintenance bond.

5. Lighting. Exterior lights shall turn on at dusk and turn off 30 minutes after closing.

6. Night-Light Test. There shall be a night-light test conducted by the Township Engineer prior to the issuance of a certificate of occupancy, compliance or completion (whichever is applicable) and the applicant shall correct any lighting problems which are exposed as a result of the test prior to the issuance of said certificate. The purpose of the nightlight test is to assure adequate lighting throughout the site for safety purposes while safeguarding neighboring property owners and the traveling public from glare, unnecessary brightness and glow.

7. Geologic Conditions. The following geologic conditions shall be complied with:

1. The Colliers Engineering & Design's February 21, 2024 site plans shall be reviewed by GZA with respect to the data and information from their prior site investigations to assess potential solution cavities beneath or in proximity to the planned infrastructure as it differs from the previous site plans. As necessary, GZA shall provide an update to their January 20, 2023 report indicating that the measures and recommendations provided in their January 20, 2023 report are sufficient for the newly proposed site plans and that their data/information are sufficient for evaluating potential solution cavities and/or sinkhole formation beneath infrastructure as depicted on the Colliers Engineering & Design's February 21, 2024 site plans.

2. Prior to commencement of construction, the contractor shall be thoroughly familiar with all geotechnical reports including but not limited to the GZA September 14, 2022 report entitled "Report, Phase 1 Geologic Checklist, Proposed Self-Storage Facility, Clinton Township, Hunterdon County, New Jersey, HT Capital Corporation" and the GZA January 20, 2023 report entitled "Soils and Foundation Investigation, Proposed Self-Storage Facility, Midwest Storage Developers, LLC, Clinton Township, Hunterdon County, New Jersey" and any additional reports prepared by GZA. The provisions and recommendations of these reports shall be followed in construction activities at the site.

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3. Representatives of the Township including the engineer and geologist shall be invited to attend the pre-construction meeting with the contractor.

4. The construction measures included in GZA's January 20, 2023 report and any subsequent reports shall be implemented. It would be of great assistance to the contractor, applicant, and inspectors if GZA could compile the recommendations made in the narrative sections of the report into a list with appropriate details. Some of the recommendations may be lost such as the one on Page 17 indicating that structural support to span a 10-foot sinkhole shall be included in foundation designs to ensure the foundation remains supportive in the event a sinkhole forms beneath or near the building.

5. Plate 6 of the January 20, 2023 report GZA report shall be included in the final set of site plans used for construction.

6. The New Jersey State Plane Coordinates of all sinkholes or solution cavities encountered during construction must be determined and shown on final or as-built site plans and these plans and coordinates must be submitted to the Township construction official and Planning Board.

7. During construction and for a minimum of 2 years subsequent to construction, regular inspections of all facilities where water will be discharged including but not limited to septic system components; stormwater control measures including basins, pervious pavement, conveyance systems or other associated structures; and along the foundation of the building, should be conducted by a qualified geologist or engineer experienced with construction in areas underlain by carbonate bedrock. Indicators of potential sinkholes and/or subsurface erosion shall be identified during these inspections and the Township should be notified. The frequency of inspections are likely daily or weekly during construction and at least once per month after construction is complete.

8. Any sinkhole encountered during construction and/or during post construction monitoring shall be remediated as per the recommendations provided by GZA in their January 20, 2023 report or any subsequent report.

8. Proof Roll. A proof roll shall be performed and witnessed by the Township Engineering Department prior to any paving activities to verify and confirm structurally stable subgrades for areas of conventional or standard pavement areas.

9. Stormwater Operations and Maintenance. The applicant shall be required to submit any maintenance logs, repair logs, and/or inspection reports to the Township Engineer annually for the on-site stormwater facilities in accordance with the approved Stormwater Operations & Maintenance Manual for the project.

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10. Easements, Dedications and Conveyances. Any and all easements dedications and/or conveyances running to and in favor of the Township which are proposed on the site plan and/or subdivision and/or required as a condition of the approval resolution shall, in addition to being identified on the applicant's plans, maps and/or plats, be contained in a separate document to be prepared by the applicant and approved by both the Board of Adjustment Attorney and the Township Attorney after the metes and bounds description has been reviewed and approved by the Township Engineer. Said document shall specifically outline the grant of the easement, dedication and/or conveyance and its purpose and shall contain a metes and bounds description of the easement, dedication and/or conveyance area. Any such document shall then be recorded and, upon completion of the recording process, be transmitted to the Township Clerk for maintenance with other title documents of the Township.

11. Conservation Easement. A copy of the filed deed shall be provided to the Township for the proposed conservation easement.

12. Performance Guarantees. The applicant shall post any required performance guarantees as required by municipal ordinance and/or by the Municipal Land Use Law.

13. Shop Drawings and Asphalt Mixed Designs. Shop drawings and asphalt mixed designs, stamped approved by the engineer of record, shall be provided to the Township engineer for all proposed storm sewer structures, including the trash racks for the outlet control structures, and for the porous pavement.

14. Geological/Geotechnical Experts to Be On-Site. As stipulated in the Soils and Foundation Investigation Report, the Township's and applicant's geological/geotechnical experts shall be on site during certain construction activities to inspect the subsurface conditions, and the applicant shall address any potential sinkholes with the recommendations as outlined in the Soils and Foundation Investigation Report.

15. Escrow Fees. Any and all outstanding escrow fees shall be paid in full and the escrow account replenished to the level required by ordinance within 30 days of the adoption of a resolution, within 30 days of written notice that a deficiency exists in the escrow account, prior to signing the site plan and/or subdivision plat, prior to the issuance of a zoning permit, prior to the issuance of construction permits, and prior to the issuance of a temporary and/or permanent certificate of occupancy, completion or compliance (whichever is applicable). Failure to abide by this condition shall result in the relief granted, as well as any and all underlying relief for the property, automatically terminating and becoming null and void.

16. Final As-Built Plan. A final as-built plan signed and sealed by a New Jersey professional licensed surveyor shall be required as a condition precedent to the issuance of a certificate of occupancy, which shall reflect the proposed building, the proposed improvements, final grading, water service and storm and sanitary sewer. The final as-built shall also be provided prior to recommendation for project completion and the release of any unspent escrow fees.

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17. Conditions of Resolution No. 2023-03 Remain in Full Force and Effect. All conditions set forth in Resolution No. 2023-03 shall remain in full force and effect. See pages 10 through 12 of Resolution No. 2023-03.

18. Time Within Which to Commence and Complete Construction and Obtain Certificates of Occupancy or Completion. The applicant shall apply for and obtain a zoning permit and a construction permit for the proposed development by November 18, 2026 (which is within two (2) years of the date the within resolution is adopted). If during said two (2) year period, or extension thereof as granted by the Board, the applicant fails to obtain a construction permit, the within final approval shall automatically expire and become null and void. The applicant shall also have two (2) years from the date of issuance of the construction permit to commence construction and obtain a permanent certificate of occupancy of the proposed development. If during said two (2) year period, or extension thereof as granted by the Board, work is not commenced and/or a permanent certificate of occupancy is not obtained, the within final approval shall automatically expire and become null and void.

19. Subject to Outside Agency Approvals and Permits. The within approvals shall be conditioned upon the applicant obtaining permits and/or approvals from all applicable agencies and/or departments including but not necessarily limited to the following municipal, county and/or state agencies and/or departments:

- a. Township Board of Health approval of any aspect of the development within its jurisdiction,
- b. Hunterdon County Department of Health approval of any aspect of the development within its jurisdiction,
- c. Hunterdon County Soil Conservation Service approval of any aspect of the development within its jurisdiction,
- d. Hunterdon County Planning Board approval to construct,
- e. Clinton Township Construction Department building permit for the retaining walls,
- f. NJDOT highway access permit and approval for the proposed direct storm sewer pipe connection to the existing NJDOT storm inlet within Route 3 1, and
- g. NJDEP approval of any aspect of the proposed development within its jurisdiction.

20. Subject to Other Laws, Regulations and Approvals. The within approval and the use of all property subject to the within approval are conditioned upon and made subject to any and all laws, ordinances, requirements, and/or regulations of and/or by any and all municipal, county, State and/or Federal governments and their agencies and/or departments having

# Appendix C

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jurisdiction over any aspect of the property and/or use of the property. The within approval and the use of all property subject to the within approval are also conditioned upon and made subject to any and all approvals by and/or required by any and all municipal, county, State and/or federal governments and their agencies and/or departments having jurisdiction over any aspect of the property and/or the use of the property. In the event of any inconsistency(ies) between the terms and/or condition of the within approval and any approval(s) required by the above, the terms and conditions of the within approval shall prevail unless and until changed by the Board upon proper application

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VOTE ON MOTION DULY MADE AND SECONDED ON AUGUST 26 2024:

THOSE IN FAVOR: BAYLY, LYTE, MCTIERNAN, NAYLOR, PFEFFER, RYAN & STEVENS.

THOSE OPPOSED: NONE.

The above memorializing resolution was adopted on November 18, 2024 by the following vote of eligible Board members:

<u>Member</u>	Yes	<u>Abstain</u>	<u>Absent</u>
BAYLY	X		
LYTE			X
MCTIERNAN	X		
NAYLOR	X		
PFEFFER	X		
RYAN			X
STEVENS	X		

ATTEST:   
T LO GRIBBIN  
Board Secretary



Source: NJ Map, Rowan University, Mapbox Satellite Image.

Dwg Title <b>Aerial Map of Block 3 Lot 26</b>		Project No. 4134.08	Date 01.16.25	Drawn By TB
Project Title <b>4th Round Land Capacity Factor Analysis</b>		Scale N.T.S.	Dwg. No. 1	
BURGIS ASSOCIATES, INC. COMMUNITY PLANNING   LAND DEVELOPMENT AND DESIGN   LANDSCAPE ARCHITECTURE 25 Westwood Avenue Westwood, New Jersey 07675 p: 201.666.1811 f: 201.666.2599		TOWNSHIP OF CLINTON   HUNTERDON COUNTY, NEW JERSEY 2025 COPYRIGHT BA - NOT TO BE REPRODUCED		