

185

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT ("Agreement") made this 14th day of November, 2017, by and between:

BOROUGH OF MONTVALE, a municipal corporation of the State of New Jersey, County of Bergen, having an address at 12 Mercedes Drive, Montvale, NJ 07645 (hereinafter the "Borough" or "Montvale");

And

HORNROCK PROPERTIES MPR, LLC ("Hornrock" or "Developer"), with a business address of 1 Sony Drive #3a, Park Ridge, NJ 07656, (hereinafter "Hornrock");

Collectively, the Borough and Hornrock shall be referred to as the "Parties."

WHEREAS, in compliance with the New Jersey Supreme Court's decision in In re Adoption of N.J.A.C. 5:96 and 5:97 by N.J. Council on Affordable Housing, 221 N.J. 1 (2015), on or about July 6, 2015, the Borough filed an action with the Superior Court of New Jersey ("Court"), entitled In the Matter of the Application of the Borough of Montvale, County of Bergen, Docket No. BER-L-6141-15, seeking a Judgment of Compliance and Repose approving its Affordable Housing Plan (as defined herein), in addition to related reliefs (the "Compliance Action"); and

WHEREAS, Hornrock filed a Motion to Intervene in the Compliance Action ("Hornrock Intervention") and such intervention was granted by the Court on September 16, 2015; and

WHEREAS, Hornrock is the current owner of property that consists of a total of approximately thirty-seven (37) acres and which property formerly served as corporate headquarters for Sony, Inc. (the "Sony Campus");

WHEREAS, approximately thirty (30) of the thirty-seven (37) acres that comprise the Sony Campus are located in the Borough of Park Ridge on property that is identified on the tax maps of the Borough of Park Ridge as Block 301, Lot 1 (hereinafter, the "Park Ridge Property");

WHEREAS, the remaining approximately seven (7) acre portion of the Sony Campus is located on property within the Borough of Montvale, which property is identified on the tax maps of the Borough of Montvale as Block 3302, Lot 1 (the "Property"), and on a small piece of property within the Borough of Woodcliff Lake, which property is identified on the tax maps of the Borough of Woodcliff Lakes as Block 204, Lot 2 (the "Woodcliff Lake Parcel");

WHEREAS, in evaluating properties appropriate for inclusionary development, the Borough has determined that the Property presents a suitable opportunity for such development;

WHEREAS, subject to the adoption of an ordinance with terms specified herein and subject further to Court approval of this agreement, the Borough has determined to incorporate this agreement into its Housing Element and Fair Share Plan (hereinafter "Affordable Housing Plan");

WHEREAS, the Borough has determined that this site is specially and particularly appropriate for a higher residential density than is characteristic in the Borough substantially for the following reasons:

1. Sound planning supports a holistic approach to planning for affordable housing where inclusionary neighborhoods are located near services and enhanced transportation access. Sound planning also involves the conservation of neighborhood character, an objective achieved in part by maintaining the existing scale, density and character of the Borough's core single-family neighborhoods. This can be achieved in part through a gradation of density across the Borough, maintaining higher densities and greater building heights further away from the core single-family residential zones within the Borough, and requiring lower densities and lower permitted building heights as the properties approach core single-family districts within the Borough;
2. The location of the site next to the Garden State Parkway and Lifetime Fitness eliminates any concern for impacts on residential neighbors within the Borough located to the west and north. As a result, there will not be any detrimental impacts on light, air flow, viewshed, traffic and similar concerns are diminished or nonexistent;
3. A residential apartment development serves as an effective transitional use between the core single-family residences within the Borough and the Garden State Parkway and office uses to the north and east;
4. The location of the site next to an existing fitness complex will encourage healthy lifestyle and provide an important and easily accessible fitness opportunity for residents;
5. The site is part of an existing corporate campus and is located adjacent or nearby to existing structures with increased permitted heights, including the Sony office building, Lifetime Fitness, and the Park Ridge Marriott;
6. The site contains significant existing wooded areas and natural screening and berming that minimize the visual impact upon Lifetime Fitness to the north, and from vehicles traversing Sony Drive from the east;

WHEREAS, the "Sony Campus" of which the site is a part of is located on three parcels in three municipalities;

WHEREAS, after a determination as to its affordable housing obligation, the Planning Board of the Borough of Montvale intends to prepare an Affordable Housing Plan, that will be adopted by the Planning Board, endorsed by the Borough Committee, and submitted to the Court for review and approval;

WHEREAS, the Affordable Housing Plan will include the Property as an inclusionary development at a density that will permit 185 rental residential units, including a 20% set aside (37 affordable units if 185 approved) for units to be affordable to very low, low and moderate income households (the "Inclusionary Development");

WHEREAS, Hornrock is amenable to fully and finally resolving the Hornrock Intervention premised upon securing the right to construct the Inclusionary Development on the Property;

WHEREAS, to ensure that the Inclusionary Development generates affordable housing credits to be applied to the Borough's affordable housing obligations, the affordable units within the Inclusionary Development shall comply with the Round 2 regulations of the New Jersey Council on Affordable Housing ("COAH"), the Uniform Housing Affordability Controls, N.J.A.C. 5:80-26.1 et seq. ("UHAC"), and all other applicable law, including a requirement that 13% of all affordable units are available to very low income households, and said Inclusionary Development shall be deed restricted for a period of at least 30 years pursuant to Paragraph 3.3.5 of this Agreement;

WHEREAS, all of the affordable units will be family rental units entitling the Borough to rental bonus credits up to the applicable rental bonus caps;

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

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

ARTICLE I - PURPOSE

- 1.1 The purpose of this agreement is (a) to create a realistic opportunity for up to 37 affordable family rental units; (b) to control the development of the Property as set forth herein; and (c) to resolve all issues amongst the parties.
- 1.2 The Inclusionary Development shall be substantially consistent with the concept site plans and elevations attached hereto and made a part hereof as **Exhibit A**, which has been reviewed and approved by the Borough and the Borough's professionals.
- 1.3 The Borough will also introduce and consider for a hearing an ordinance that includes the following essential terms, along those set forth in Section 4.1:
 - 1.3.1 Density. The Inclusionary Development on the Property shall be developed with 185 residential units, inclusive of an affordable housing component that is described in greater detail in Section 3.3 herein.

- 1.3.2 Height. The Inclusionary Development on the Property shall be included in buildings, which shall not exceed four (4) residential stories exclusive of a level of parking to be provided below the residential stories. Said parking level shall not be deemed a story. Hornrock shall take all reasonable steps consistent with Exhibit A to utilize site grade, existing and new berms, trees, and other landscaping features, to minimize the height and the perceived height of the building when viewed from the Borough of Montvale;
- 1.3.3 Amenities. The residential development of the Property shall be designed to include amenities of the Developer's choice typical for an inclusionary development such as a pool or a gym.
- 1.3.4 Parking. Developer acknowledges that it will need de minimis relief from the parking requirements of the Residential Site Improvement Standards ("RSIS") such that Developer will seek a parking ratio of 1.7 spaces per residential unit within the Inclusionary Development. The Planning Board has granted such relief in the past and shall not unreasonably withhold the granting of such relief for the Inclusionary Development.
- 1.3.5 Architectural Design. The Developer shall seek Site Plan approval together with any variances and/or waivers from the Planning Board with architectural elevations reasonably consistent with the elevations as depicted and collectively attached hereto as Exhibit A, unless the Borough, Planning Board and Developer mutually agree upon different architectural elevations.

ARTICLE II - BASIC TERMS AND CONDITIONS

2.1 This Agreement is subject to Court approval following a duly noticed "Fairness Hearing." Within five (5) days of the date this Agreement is fully executed, counsel for the Borough shall contact the Court and request that the Court schedule a Fairness Hearing on a date following the adoption of the Rezoning Ordinance (hereafter defined). The Borough is responsible for the preparation and cost of the notice of the Fairness Hearing. The Parties will work together to ensure that the Court approves the Agreement at the Fairness Hearing.

2.2 In the event of any legal challenges to the Court's approval of this Agreement or Approvals, including a challenge by any third party, the Parties must diligently defend any such challenge and shall cooperate with each other regarding said defense. In addition, if any such challenge results in a modification of this Agreement or of the Inclusionary Development, the Parties must negotiate in good faith with the intent to draft a mutually-acceptable amended Agreement, provided that no such modification requires an increase or decrease in density than that provided herein.

2.3 This Agreement does not purport to resolve all of the issues before the Court raised in the Compliance Action. In the event the Borough adopts the Rezoning Ordinance and the Court approves this Settlement Agreement but the Borough is unable to reach a settlement with Fair Share Housing Center ("FSHC") or any other person or entity, all of the Parties hereto

are obligated to comply with their obligations under this Agreement including but not limited to the obligation to defend this Agreement.

ARTICLE III - HORNROCK AND DEVELOPER OBLIGATIONS

3.1 Obligation To File Development Applications In Accordance With Rezoning Ordinance, Concept Plan And The Elevations: Developer shall file development applications in accordance with the Rezoning Ordinance (hereinafter defined). All such applications shall be substantially consistent with the Concept Plan and elevations, attached hereto as Exhibit A.

3.2 Obligation To Maintain 20 Percent Affordable Housing Set-Aside And To Comply With All Affordable Housing Laws. Developer, its successors and/or assigns shall have an obligation to deed-restrict twenty percent (20%) of the residential units in the Inclusionary Development (equivalent to 37 units if the Planning Board approves an application for 185-units) as very low, low or moderate income affordable units. In the event the required number of affordable units Developer is required to provide is an odd number, at least 50 percent of the affordable units shall be units rented to low-income households.

3.3 Obligation To Comply With All Affordable Housing Laws And Maintain Creditworthiness of Units.

3.3.1 Developer shall be responsible for all costs associated with the initial rental of the affordable units, and for the continuing administration of the affordable units and the preservation of the creditworthiness of the units. In satisfaction of this obligation, Developer shall retain Piazza & Associates ("Piazza"), or such other qualified person or entity as agreed to between the Parties, as the Administrative Agent, to perform all the administrative tasks associated with the affordable units to be constructed including but not limited to all those set forth below. In the event Piazza is not available or unwilling to serve, then Developer and the Borough shall cooperate toward retaining a mutually agreeable Administrative Agent.

3.3.2 The administrative tasks include the affordable housing Administrative Agent performing its responsibilities pursuant to UHAC regulations, COAH's Round 2 regulations and of any other relevant agency and all other applicable laws related to affordable housing in New Jersey ("Affordable Housing Laws") to ensure that the affordable units remain creditworthy. Notwithstanding anything herein to the contrary, Developer directly or through the Administrative Agent shall take all necessary steps to make the affordable units provided for under this Agreement and in the approved site plan creditworthy and to maintain the creditworthiness of the units pursuant to applicable law. Such steps shall include, but not be limited to (i) complying with the bedroom distribution for the affordable units, (ii) the split of very low-income units, low-income units and moderate-income units, (iii) the phasing of the

market units with the affordable units in accordance with all applicable regulations; (iv) appropriately marketing the affordable units, (v) screening potential applicants for the units to ensure that they qualify as low or moderate households, (vi) pricing the units at affordable rates, (vii) ensuring that the affordable units are properly deed restricted, (viii) enforcing any and all other UHAC requirements and requirements of the COAH or a successor agency as to the affordability of the units; and (ix) addressing any monitoring requirements may be imposed on the Borough with respect to the affordable units. For purposes of this subparagraph, the Parties assume current UHAC regulations and COAH round two regulations (N.J.A.C. 5:93-1, et seq.) shall control. However, if COAH promulgates new applicable and lawful regulations prior to Developer securing preliminary site plan approval that impose different requirements to render the units creditworthy, then Developer shall comply with the new regulations. Upon written notice, Developer shall provide detailed information requested by the Borough or the Borough's Administrative Agent, within 30 days concerning Developer's compliance with UHAC and other applicable laws.

- 3.3.3 In the event the required number of affordable units Developer is required to provide is an odd number, at least 50 percent of the affordable units shall be units rented to low-income households.
- 3.3.4 Developer shall comply with the following distribution of very low, low and moderate income units: very low (at least 10%) / low (up to 40%) / moderate (50%). To illustrate the intent of this provision, if 185 units are approved and constructed, the breakdown will be 18 moderate; 15 low and 4 very low. Developer represents that UHAC regulations currently permit an overall affordability average of fifty two percent (52%) of median for all affordable units within the Inclusionary Development and Developer shall be permitted to comply with this standard or any other applicable standard subject to Developer's obligation to maintain the creditworthiness of all the affordable units contemplated by this agreement with the distribution of very low, low and moderate income households set forth herein.
- 3.3.5 Each restricted unit shall remain subject to the requirements of the 30 year control period provided that the Borough shall have the option to extend such restrictions, if permitted by applicable law, for such period as may be permitted therein.
- 3.3.6 The Parties agree that the affordable units are to be included in the Affordable Housing Plan to be approved and credited by the Court in the Compliance Action and treated as family affordable rental units, and that the credits will be applied as the Borough deems fit.

3.3.7 Upon written notice, Developer, its successors and/or assigns, shall provide detailed information requested by the Borough, or the Borough's Administrative Agent, within 30 days concerning Developer's compliance with UHAC and other applicable laws.

3.4 Obligation to post Escrows: Developer shall post escrows to cover the costs of the Borough's and Planning Board's professionals in conjunction with their review of Developer's development applications, which costs shall include, by way of example, the cost to review submissions of the applicant and other relevant documents and to testify about the reports reviewed. All such escrows shall be governed by the requirements of the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq. ("MLUL").

3.5 Obligation To Comply With Reasonable Conditions of Approval: Developer acknowledges that as a condition of preliminary and/or final site plan and/or subdivision approval, Planning Board may require on-site and off-site improvements only as permitted by N.J.S.A. 40:55D-42. Developer shall comply with all such reasonable conditions and shall confine any challenge to any condition of approval to an attempt to rectify the contested condition.

3.6 Developer shall perform, at its expense, any studies the Planning Board or other Borough Board, commission or other entity with jurisdiction may reasonably, and lawfully, require with respect to any infrastructure improvements necessitated by the Project.

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

3.8 Obligation Not To Oppose Borough's Application for Approval of its Affordable Housing Plan. Developer will cooperate with and support the Borough's subsequent request for entry of a judgment of compliance provided that the Borough's affordable housing plan includes the inclusion of the subject property consistent with this agreement and will support the settled upon fair share, including any vacant land analysis and/or realistic development potential analysis and will not otherwise challenge the validity of the Borough's affordable housing plan.

3.9 Obligation To Furnish Documentation Concerning Creditworthiness of Units: Upon written notice, Developer shall supply the Borough and the Borough's Administrative Agent, all documents within 30 days within its possession that may be reasonably necessary to demonstrate the creditworthiness of the affordable units.

3.10 Obligation to Cooperate: Developer shall have the obligation to cooperate with Borough to advance the intent and purposes of this Agreement.

ARTICLE IV - OBLIGATIONS OF THE BOROUGH

4.1 The Rezoning Ordinance: Within fifteen (15) days of the execution of this Agreement, the Borough shall introduce an ordinance (hereinafter the "Rezoning Ordinance") that will permit the development of the Property consistent with the Rezoning Ordinance, and reasonably consistent with the attached concept site plans and elevations (collectively attached as **Exhibit A**) that allows for the development of the Property and the construction of 185 total units, of which twenty percent (20%) shall be set aside for affordable housing. The Rezoning Ordinance will require a twenty percent (20%) set-aside and will require all units to be constructed in accordance with all applicable UHAC and COAH regulations. The Rezoning Ordinance will include the provisions set forth in Section 1.3 and those set forth below.

The Rezoning Ordinance shall also include revised bulk standards and development requirements, including, but not limited to, the following provisions or standards to implement the following development aspects of the Inclusionary Development: (i) all set backs shall be measured from the property lines of the entire Sony Campus and not from zoning or lot lines that are established by municipal boundaries. By way of example and not limitation, there shall be no setback at the border between Park Ridge and Montvale because it occurs within the interior of the Sony Campus; (ii) the minimum building set back line shall be forty feet (40') from the Sony Property line which is the boundary with the right of way for the Garden State Parkway; (iii) the minimum building set back line shall be thirty feet (30') from all remaining property lines of the Sony Property; (iv) "Height" for buildings within the Inclusionary Development shall be measured as be the vertical distance between the average Ground Elevation around the foundation of the building and the elevation of the highest point of the roof deck if the building is flat, or, in the case of sloping roofs, to a point $\frac{1}{2}$ the distance between the rafter plate and the uppermost point of the roof deck. It is understood by the Parties that exclusions from the definition of Height shall include, but not be limited, to the following exclusions: any parapet, structure, apparatus, amenities, and/or or equipment; (v) "Ground Elevation" shall be the elevation of the property in its final/finished grade at building wall; (vi) "Story" shall be that portion of a building included between the surface of any floor and the surface of the floor above it or, if there be no floor above it, then the space between the floor and the ceiling next above it. Notwithstanding anything to the contrary, the Parties agree that the Inclusionary Development intends to provide a level of parking that shall be partially below finished grade ("Parking Level"). The intention of the Parties in drafting the Rezoning Ordinance shall be to exclude the Parking Level from being characterized as a Story, Basement or Cellar (within the meaning of the Borough Code) or the Parking Level otherwise being included in the height calculation intended for the habitable portion of the Inclusionary Development. The Parties further agree, notwithstanding anything to the contrary, that the Inclusionary Development intends to include certain structures, apparatus, utilities, amenities, and equipment on its roof ("Roof"). The intention of the Parties in drafting the Rezoning Ordinance shall be to exclude the Roof from being characterized as a Story or otherwise being included in the height calculation intended for the habitable portion of the Inclusionary Development; (vii) the maximum building Height for the buildings within the Inclusionary Development shall be limited to 59 feet; and (ix) the maximum building Stories within the Inclusionary Development shall be limited to four (4) Stories.

4.2 Upon introduction of the Rezoning Ordinance, the Borough shall refer the

Rezoning Ordinance to the Planning Board for review and recommendation at the Planning Board's next regularly scheduled meeting, or such special meeting as may be required.

4.3 At the next regularly scheduled Borough Council meeting after a recommendation has been made by the Planning Board regarding the Rezoning Ordinance, or after the expiration of the thirty-five (35) day referral period, whichever is earlier, the Borough will vote on the approval of the Rezoning Ordinance.

4.4 In no event shall the vote on the Rezoning Ordinance occur after December 28, 2017 and the Borough agrees to schedule such special meeting(s) as necessary to act on the Rezoning Ordinance on or before December 28, 2017.

4.5 The adoption of the Rezoning Ordinance shall not await the adoption of the Affordable Housing Plan. In the event that the Rezoning Ordinance shall not be adopted as aforesaid, then the Parties to this agreement shall be restored, *status quo ante*, to their respective positions prior to the execution of this Agreement and no party shall be entitled to use this Agreement to the disadvantage of the other in any future litigation.

4.6 Obligation To Include Project Into Borough's Affordable Housing Plan. The Borough shall incorporate this Inclusionary Development, this Agreement and the Rezoning Ordinance into the Affordable Housing Plan for which it seeks the Court's approval. The Borough agrees that, absent written consent of Hornrock, the Rezoning Ordinance shall remain applicable to the Property until, at minimum, the conclusion of the Third Round compliance period (June 30, 2025).

4.7 Obligation To Cooperate: The Borough acknowledges that in order for Hornrock to construct its Inclusionary Development, Hornrock will be required to obtain any and all approvals and permits from (1) entities, boards or agencies which are under the jurisdiction of the Parties to this Agreement, and from (2) all relevant public entities and utilities; such as, by way of example only, the Borough, the Planning Board, the County of Bergen, the Bergen County Planning Board, the New Jersey Department of Environmental Protection, and the New Jersey Department of Transportation (collectively, "Required Approvals"). The Borough agrees to use all reasonable efforts to assist Hornrock in its undertakings to obtain the Required Approvals on an expedited basis provided that the taxes on the subject property are current. Hornrock and the Borough further agree that certain underground utility easements may be required across the Property to facilitate the efficient development of the Inclusionary Development. The Borough and Hornrock agree to execute any such easements in a manner which minimizes the impact upon the development potential of the Property.

The Parties cooperation shall also include the acknowledgement and agreement that the Sony Campus extends beyond the Borough's municipal boundaries, and as such, parking, stormwater and other supportive aspects of the Inclusionary Development may be physically located outside the municipal boundaries of the Borough.

4.8 Developer shall be responsible for all costs that the Borough may reasonably incur in conjunction with providing cooperation.

4.9 Obligation to Maintain Proposed Re-Zoning of Property: The Borough agrees that if a decision of a court of competent jurisdiction in Bergen 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 affordable housing obligation for the Borough for the period 1987-2025 that would lower the Borough's affordable housing obligation beyond that established by COAH for the period 1987-1999 and/or this Court for the period 1999-2025, the Borough shall nonetheless implement the Rezoning Ordinance contemplated by this Agreement and take all steps necessary to support the development of the Inclusionary Development contemplated by this Agreement.

ARTICLE V – OBLIGATIONS OF THE PLANNING BOARD.

5.1 After the Borough introduces the Rezoning Ordinance and refers the ordinance to the Board for comment and a Master Plan consistency review, the Planning Board shall (a) entertain a resolution authorizing the execution of this agreement, (b) entertain an amendment to the Borough's Master Plan that would render the ordinance consistent with the Master Plan; and (c) refer the ordinance back to the Borough for a hearing.

5.2 Obligation to Process Developer's Development Applications with Reasonable Diligence. The Planning Board shall expedite the processing of Developer's application, development applications following Court approval of this Agreement following a duly noticed Fairness Hearing in accordance with N.J.A.C. 5:93-10.1(a) and within the time limits imposed by the MLUL. In the event of any appeal of the Court approval of this Agreement, the Board shall process and take action on any development application by Developer for the Property which decision may be conditioned upon the outcome of any pending appeal. If necessary, the Planning Board shall schedule special meetings to process Developer's applications provided that Developer shall be responsible for such costs as the Borough may incur in conjunction with such meetings..

5.3 Obligation to Refrain From Imposing Cost-Generative Requirements. The Planning Board recognizes that any Approvals and this Agreement all contemplate the development of an "inclusionary development" within the meaning of the Mount Laurel doctrine. That means that Hornrock may apply for a waiver or bulk variance from any standard imposed by the Borough's Land Use and Development Ordinance, as applicable, and a de minimis exception from RSIS as related to parking, and that the standards set forth in the MLUL shall determine if Hornrock is entitled to this relief.

ARTICLE VI – MUTUAL OBLIGATIONS

6.1 Obligations Regarding Master's Costs:

Except as set forth herein, each Party shall be responsible for its own costs and expenses associated with seeking Court approval for and implementing this Agreement. The foregoing provision shall not be construed to preclude joint representation of Borough and Planning Board in any litigation or other proceeding. In addition to its own costs, Developer shall be responsible for one half the expenses generated by the Special Master from the date of the Special Master's appointment through the point at which the Master reviews this agreement,

submits a report on this agreement, testifies about this agreement and otherwise assists the Court in making a decision about this agreement. For this period up to the Master's review of this agreement, he has indicated that his bills through October 31, 2017 do not exceed \$25,000. The Hekemian Group (hereinafter "Hekemian") shall be responsible for the remaining 50 percent of the master's fees incurred prior to the review of its agreement by the Master. It is unknown what expenses the Master will generate from the review of this agreement through the Fairness Hearing.

6.2 Obligation to Reimburse Borough for Fees Required to be Paid to FSHC.

It is anticipated that the Borough will enter into a settlement agreement with FSHC, which will call for the payment of a \$25,000 fee; Hornrock agrees to pay to FSHC the sum of \$12,500, representing attorneys' fees and costs incurred by FSHC in this matter. The \$12,500 shall be remitted to Rick Hoff, Esq. as escrow agent within 10 days of the signing of this Agreement, and before the fairness hearing in this matter. Rick Hoff shall deposit the funds into his firm's escrow account. Within 10 days after the entry of an order approving the settlement between FSHC and Montvale, Mr. Hoff shall cause the \$12,500 to be remitted to FSHC. Payment of said sum can be enforced by a motion in aid of litigant's rights brought by FSHC against Hornrock.

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

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

6.5 Defense of Agreement. Each Party exclusively shall be responsible for all costs which they may incur in obtaining Court approval of this Agreement and any appeal therefrom, or from obtaining Development Approvals or the approval of the Affordable Housing Plan or any part thereof. The Parties shall diligently defend any such challenge.

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

therein. Delivery shall be affected as follows, subject to change as to the person(s) to be notified and/or their respective addresses upon ten (10) days' notice as provided herein:

To Hornrock: Hornrock Properties MPR, LLC
1 Sony Drive #3a
Park Ridge, NJ 07656

Richard J. Hoff, Jr., Esquire
Bisgaier Hoff, LLC
25 Chestnut Street, Suite 3
Haddonfield, NJ 08033
rhoff@bisgaierhoff.com

To the Borough: Maureen Iarossi-Alwan
Borough Clerk
Borough of Montvale
12 Mercedes Drive
Montvale, New Jersey 07645

Boggia & Boggia, LLC
71 Mt. Vernon Street
Ridgefield Park, New Jersey 07660

WITH COPIES TO:

AND TO: Jeffrey R. Surenian and Associates, LLC
Attention: Jeffrey R. Surenian, Esq.
707 Union Avenue, Suite 301
Brielle, NJ 08730
Fax: (732) 612-3101
JRS@Surenian.com

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

ARTICLE VII - MISCELLANEOUS

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

7.2 Successors Bound: The provisions of this Agreement shall run with the land, and the obligations and benefits hereunder shall be binding upon and inure to the benefit of the Parties, their successors and assigns, including any person, corporation, partnership or other legal

entity which at any particular time may have a fee title interest in the Property which is the subject of this Agreement. This Agreement may be enforced by any of the Parties, and their successors and assigns, as herein set forth.

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

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

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

7.6 Voluntary Agreement: The Parties acknowledge that each has entered into this Agreement on its own volition without coercion or duress after consulting with its counsel, that each party is the proper person and 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.

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

7.8 Necessity of Required Approvals: The Parties recognize that the site plans required to implement the Inclusionary Development provided in this Agreement, and such other actions as may be required of the Planning Board or Borough under this Agreement, cannot be approved except on the basis of the independent reasonable judgment by the Planning Board and the Borough Council, as appropriate, and in accordance with the procedures established by law. Nothing in this Agreement is intended to constrain that judgment or to authorize any action not taken in accordance with procedures established by law, however, in accordance with procedures established by law, the Planning Board's judgment must not be arbitrary, capricious, or unreasonable in its consideration of the application. Similarly, nothing herein is intended to preclude Developer from appealing any denials of or conditions imposed by the Planning Board in accordance with the MLUL or, subject to Paragraph 3.5, taking any other action permitted by law.

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

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

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

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

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

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

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

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

7.17 Construction, Resolution of Disputes. This Agreement has been entered into and shall be construed, governed and enforced in accordance with the laws of the State of New Jersey without giving effect to provisions relating to the conflicts of law. Jurisdiction of any litigation ensuing with regard to this Agreement exclusively shall be in the Superior Court of New Jersey, with venue in Bergen County. Service of any complaint may be effected consistent

with the terms hereof for the delivery of "Notices," hereinafter defined. The Parties waive formal service of process. The Parties expressly waive trial by jury in any such litigation.

7.18 Conflicts. The Parties acknowledge that this Agreement cannot be affected by the Compliance Action or any amendments to the Borough's Affordable Housing Plan or Land Use and Development Ordinances and this Agreement shall control with respect to those matters as applied to the Property. Upon the entry of a Judgment of Compliance and Repose in the Borough's Compliance Action, and after the Compliance Action is concluded, the Court shall retain jurisdiction to ensure compliance with the terms and conditions of this Agreement. As to any inconsistencies between the Approvals and this Agreement, the Approvals shall control. Any expenses of the master to resolve conflicts that may arise subsequent to the entry of this Agreement shall be split evenly between The Borough and Developer.

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

THE REMAINDER OF THIS PAGE IS PURPOSEFULLY BLANK

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

Attest:

Hornrock Properties MPR, LLC



By: 

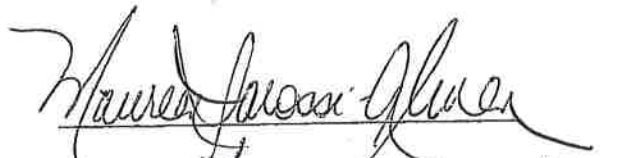
Print Name: Kim Russo

Print Name: Maurice Hornbluss

Date: 11/14, 2017

Attest:

BOROUGH OF MONTVALE,
A Municipal Corporation of the
State of New Jersey


Print Name: MAUREAN ROSSI-ALVAR

By: 

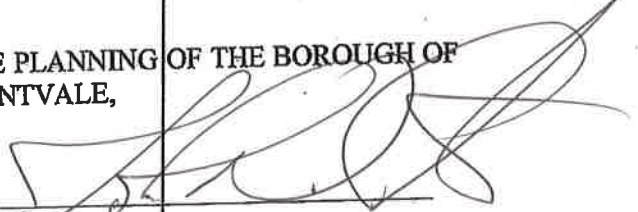
Print Name: Michael Abassali

Date: 11/14, 2017

R. Doname Hutter

Print Name: R. Doname Hutter

THE PLANNING OF THE BOROUGH OF
MONTVALE,

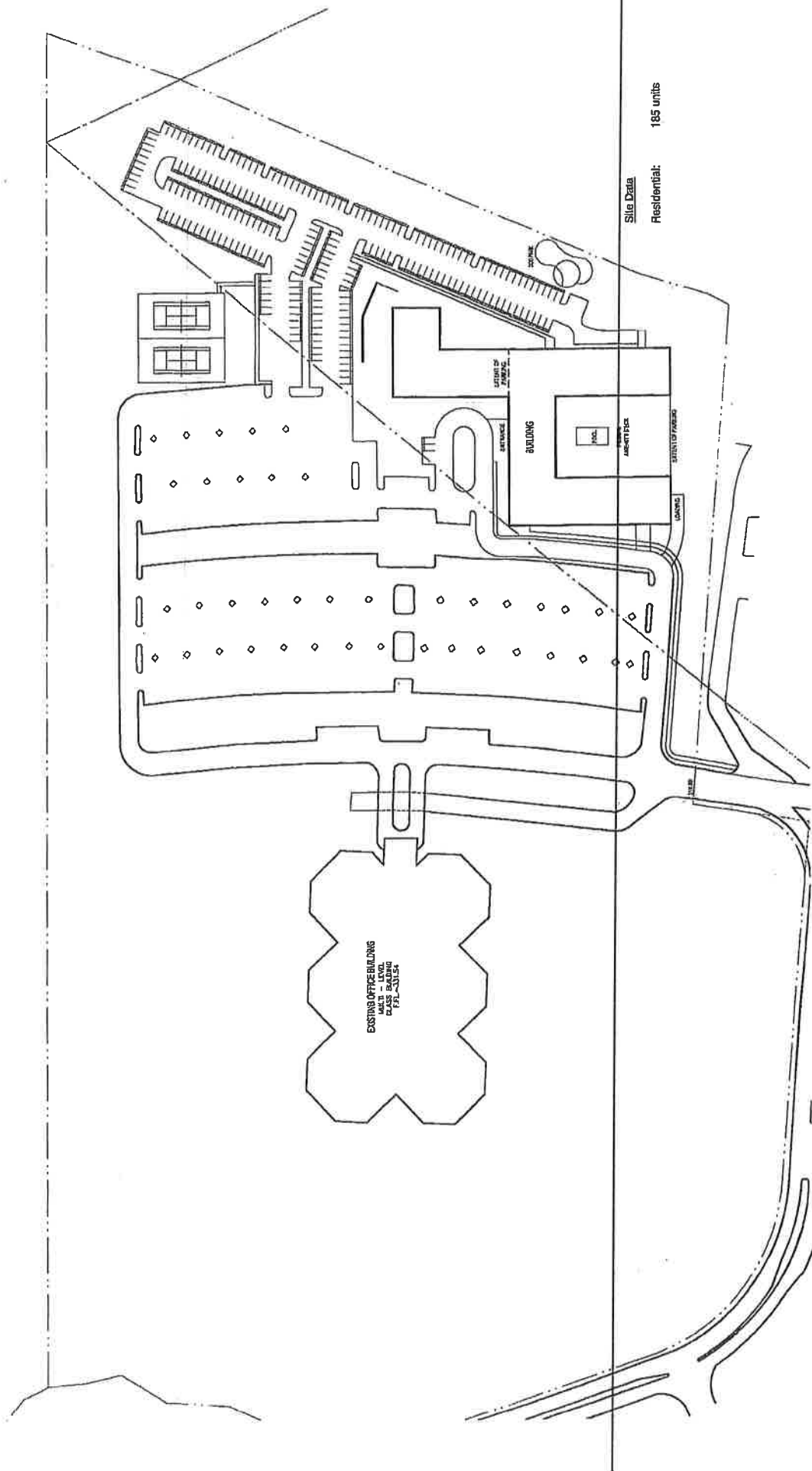
By: 

Print Name: John DePinto

Date: 11/21, 2017

EXHIBIT A

CONCEPT SITE PLANS AND ELEVATIONS FOR INCLUSIONARY DEVELOPMENT

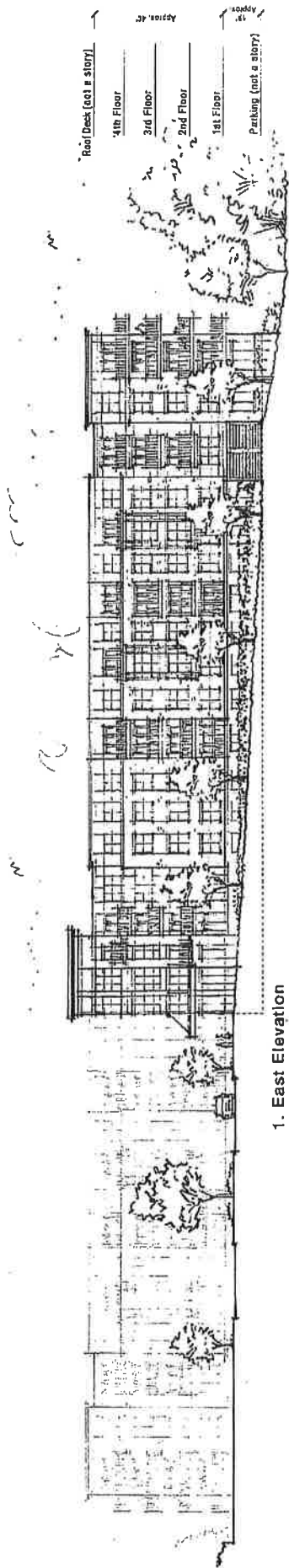


OCT. 23, 2017
 REVISED
 SONY DEVELOPMENT
 BERGEN COUNTY, NJ
 HORNROCK PROPERTIES
 A.10
 SCALE: 1" = 25'
 0' 20' 40'

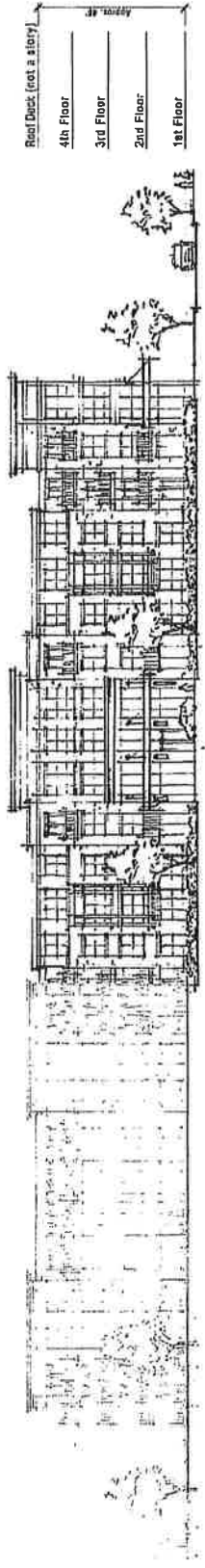
CONCEPT PLAN
 MONTVALE

lessard
 DESIGN
 1000 WEST 17TH AVENUE
 SUITE 100
 DENVER, CO 80202
 (303) 733-1100
 WWW.LESSARDDESIGN.COM

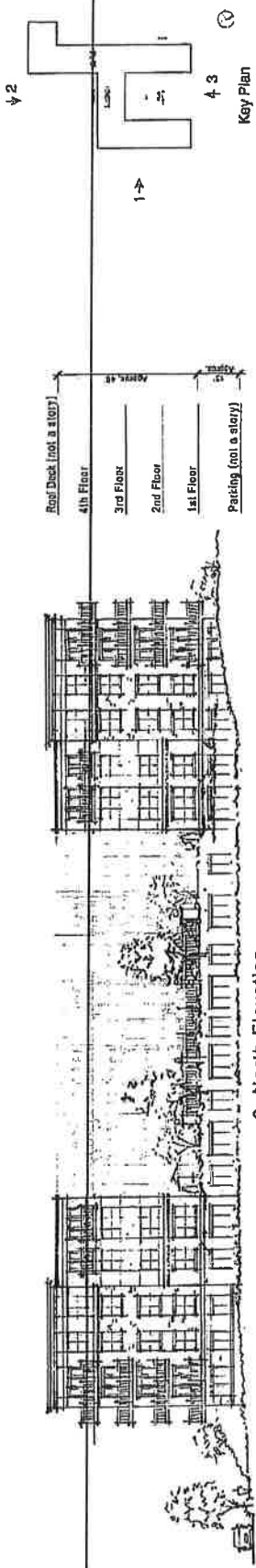
THIS PLAN IS A CONCEPTUAL DESIGN AND IS NOT TO BE USED FOR CONSTRUCTION. IT IS THE PROPERTY OF LESSARD DESIGN AND IS NOT TO BE REPRODUCED OR TRANSMITTED IN ANY FORM OR BY ANY MEANS, ELECTRONIC OR MECHANICAL, INCLUDING PHOTOCOPYING, RECORDING, OR BY ANY INFORMATION STORAGE AND RETRIEVAL SYSTEM, WITHOUT THE WRITTEN PERMISSION OF LESSARD DESIGN.



1. East Elevation



2. South Elevation (Main Entry)



3. North Elevation

Measurements subject to a determination of finished grade at building wall