

## SETTLEMENT AGREEMENT

This Settlement Agreement dated the 24<sup>th</sup> day of September, 2020 ("Agreement"), by and between;

**TOWNSHIP OF RANDOLPH**, a municipal corporation of the State of New Jersey, with offices located at the Municipal Building  
502 Millbrook Avenue  
Randolph, New Jersey 07869

("Township")

and: **CANOE BROOK DEVELOPMENT, LLC**  
A Limited Liability Company  
with offices located at  
75 Eisenhower Parkway, Suite 180, Roseland, NJ 07068

("Developer")

### WITNESSETH:

**WHEREAS**, the Developer is the contract purchaser of certain property located in the Township of Randolph, County of Morris, State of New Jersey, known and designated as Block 44, Lot 25 on the Official Tax Map of the Township of Randolph and commonly known as 134 Dover Chester Road, consisting of approximately 12.53 acres ("Property"); and

**WHEREAS**, the Property is located entirely within the Township's "Office Laboratory Zone", which provides for a variety of office and business uses; and

**WHEREAS**, the Developer intervened in the litigation in the New Jersey Superior Court captioned In the Matter of the Application of the Township of Randolph for Declaratory Judgment, Docket No. MRS-L-1640-15 ("DJ Litigation"), challenging the Township's satisfaction of its affordable housing obligation; and

WHEREAS, the parties have entered into discussions in an effort to resolve a portion of the DJ Litigation as related to the Property.

NOW, THEREFORE, IN CONSIDERATION OF the mutual promises and covenants herein set forth, the parties, for themselves, their successors and assigns, hereby agree as follows:

**I. INCORPORATION OF RECITALS.**

The foregoing prefatory statements, recitals and representations are incorporated herein and made a part hereof.

**II. PURPOSE OF AGREEMENT.**

The purpose and intent of this Agreement is (a) to resolve a portion of the DJ Litigation as it relates to the Developer and the Township upon the adoption of an Ordinance rezoning the Property consistent with the Ordinance attached as Exhibit A; (b) to resolve a portion of the DJ Litigation as it relates to the Developer and the Township by confirming that the Developer will support the Housing Element and Fair Share Plan ("HEFSP") adopted by the Township; (c) to resolve a portion of the DJ Litigation as it relates to the Developer and the Township by confirming that the Developer will support the Township's request in the DJ Litigation to obtain a Judgment of Compliance and Repose for a period of ten years beginning in 2015; and (d) to resolve a portion of the DJ Litigation as it relates to the Developer and the Township by providing for the construction of the Development substantially consistent with the Concept Plan attached as Exhibit B. The parties recognize that the Concept Plan is not a fully engineered site plan and the site plan may reflect different locations of buildings or structures due to the engineering of the site. The Developer shall have the flexibility to adjust the location of the footprints of the proposed buildings and the location of other structures; PROVIDED that the "Carriage House" direct-entry buildings shall be located along the north, northwest and

southwest sides of the Property, and the "Manor" elevator building shall be located on the eastern side of the Property as depicted on the Concept Plan. The Developer shall be entitled to seek relief for *de minimis* bulk variances and waivers resulting only from the detailed final engineering design of the Development, PROVIDED, HOWEVER, that the Developer shall not seek any variances from the Ordinance relative to the following: (i) permitted use or principal structure; (ii) permitted maximum building coverage (iii) aggregate number of units (199); and (iv) permitted maximum height and stories of a principal structure.

### **III. DEFINITIONS.**

**Affordable Housing Unit ("AHU").** An Affordable Housing Unit is a unit that is affordable to a very low income, low income or moderate income household consistent with the requirements of the New Jersey Fair Housing Act ("FHA"), N.J.S.A. 52:27D-301, et seq.; applicable regulations of the New Jersey Council on Affordable Housing ("COAH"); applicable requirements of the Courts of the State of New Jersey; and all applicable regulations on affordability controls and other regulations of the New Jersey Housing and Mortgage Finance Agency ("NJHMFA"), including, without limitation, the Uniform Housing Affordability Controls, N.J.A.C. 5:80-26.1 et seq. ("UHAC") except as to the very low income housing obligation, which shall be as required by the terms of this Agreement.

**Affordable Housing Requirement.** The Development shall have a twenty percent (20%) affordable housing set aside. Provided that 199 total residential units are approved by the Planning Board, a total of 40 AHU's will be provided in the Development (20% set-aside), 50% (20) of which will be available for very low income and low income households and the remainder of which (20) will be available to moderate income households as defined in the FHA and UHAC, and any other applicable regulations. A minimum of 13% (which shall be rounded

to 6 units) of the total of 40 AHU's will be made available to very low income households, defined as households earning 30% or less of the regional median income by household size. The Developer may provide a preference for very low, low and moderate households of which a member of that household is a veteran as permitted under N.J.S.A. 52:27D-311 for up to 50% of the AHU's. The Township agrees to adopt any ordinances or resolutions necessary to support this preference.

**Concept Plan.** The Concept Plan for the Property dated April 3, 2020 and attached hereto as Exhibit B.

**Developer.** Canoe Brook Development, LLC and/or its successors, transferees and/or assigns.

**Development.** The Developer will seek approvals for a residential rental development consistent with the Concept Plan dated April 3, 2020, which is attached hereto as Exhibit B and comprised of (a) 199 on-site, non age-restricted, rental apartment dwelling units in multiple buildings consisting of (i) 159 market rental units of which a minimum of 25 will be one bedroom units; no more than 20 will be three bedroom units; with the balance being two-bedroom units; and (ii) 40 on-site, non age-restricted rental AHU's of which 8 will be one bedroom units; 24 will be two bedroom units; and 8 will be three bedroom units; and (b) a sufficient number of parking spaces in compliance with the Residential Site Improvement Standards ("RSIS") of which at least 249 parking spaces shall consist of surface parking spaces; at least 50 parking spaces shall consist of private driveways; and at least 50 shall consist of private garages. Developer shall at its option be permitted to increase the number of private driveways and private garages provided that the amount of parking required under RSIS is met.

Tandem parking spaces in private driveways shall be permitted and shall count as 2 parking spaces.

**Residential Unit.** Any and all residential units constructed in the Development, including the AHU's therein.

**Ordinance.** The Ordinance to be adopted by the Township attached as Exhibit A, which rezones the Property as the new R-6 Multifamily Inclusionary Zone (R-6 Zone) District.

#### IV. TOWNSHIP OBLIGATIONS.

A. Within ninety (90) days of the date of the Court Order approving this Settlement Agreement, as set forth in Section VIII of this Agreement, the Township shall introduce and adopt the Ordinance attached hereto as Exhibit A, rezoning the Property as set forth therein. The Township shall comply with all legal requirements for the adoption of the Ordinance, including but not limited to adopting the Ordinance by an affirmative vote of the majority of the full authorized membership of the governing body and provide reasons for adopting the ordinance, if the Planning Board determines that the Ordinance is inconsistent with or is not designed to effectuate the land use plan element and the housing plan element. In addition, if required, the Township shall provide notice of the Ordinance pursuant to N.J.S.A. 40:55D-62.1 at the cost and expense of the Developer. If the Ordinance is not adopted by the Township within the time period set forth above, the parties shall contact the Special Master and make a reasonable effort to resolve the issues which caused the Township to not adopt the Ordinance within the requisite time period. If the parties are unsuccessful in resolving those issues, this Agreement shall be deemed terminated and shall be of no further force and effect and the parties shall return to their respective positions as if this Settlement Agreement had not been executed by the parties. If the Township does adopt the Ordinance in accordance with this Agreement, but

the same is challenged by a third party, the parties hereto agree to fully defend the Ordinance at their respective cost and expense.

B. In conjunction with the adoption of the Ordinance, the Township shall take all necessary actions to have the Planning Board adopt a HEFSP that will include the Property as rezoned in accordance with Ordinance (Exhibit A). The Township shall endorse such HEFSP or amendment thereto for the purposes of requesting a Judgment of Compliance and Repose for a period of ten years beginning in 2015 from the Court in the DJ Litigation.

C. The Township shall not oppose and shall cooperate with, and where necessary, endorse applications in connection with, the Developer's efforts to obtain all required governmental and utility approvals for the Development subject to the terms set forth in Section II, provided the Development proposed by the Developer is consistent with the Concept Plan (Exhibit B) and consistent with the Ordinance (Exhibit A) except for any *de minimis* variances or waivers from its provisions resulting only from the completion of detailed engineering of the site plans, PROVIDED, HOWEVER, that the Developer shall not seek any variances from the ordinance or otherwise relative to the following: (i) permitted use or principal structure; (ii) permitted maximum building coverage; (iii) aggregate number of units (199); and (iv) permitted maximum height and stories of a principal structure.

D. Upon the receipt by the Planning Board of a complete application, subject to any checklist waivers which are granted, from the Developer for site plan approval substantially consistent with the Concept Plan (Exhibit B) and consistent with the Ordinance (Exhibit A), subject to any granted variance relief or site plan exceptions (as limited by the terms of this Settlement Agreement), the Township shall take all appropriate actions to assist the Planning Board to expeditiously process the application, schedule the matter for public hearing and render

a decision thereon in accordance with the requirements of the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq. ("MLUL").

E. Within the same time periods and subject to the same terms and conditions as set forth in Section IV.A regarding the Ordinance, the Township shall introduce and adopt the Omnibus Ordinance in the form attached hereto as Exhibit C.

F. Concurrently with the adoption of the Ordinance rezoning the Property, the Township shall introduce and adopt an ordinance vacating the street dedicated and/or conveyed to the Township by Deed dated March 11, 1987 by 855 Route 10 Associates. The Township has not improved this land with a public street and has no intention of doing so. As a result, this vacation is in the public interest and the Township shall not retain any legal or equitable ownership in the interest in this parcel of land. After the adoption of the ordinance, the Township shall promptly execute and record a deed conveying the land back to the appropriate adjoining property owner.

#### **V. DEVELOPER'S OBLIGATIONS AND REPRESENTATIONS.**

A. The Developer agrees to file with the Township Planning Board an application for site plan approval for the Development (subject to the terms of Section II) consistent with the Concept Plan (Exhibit B) and consistent with the Ordinance (Exhibit A), except for any *de minimis* variances or waivers from its provisions resulting only from the detailed final engineering design of the Development as set forth above, within one hundred twenty (120) days of the final adoption of the Ordinance and agrees to diligently pursue said application before the Planning Board to its conclusion. Developer may request checklist waivers to the Planning Board, which may grant such waivers subject to the MLUL. The parties acknowledge that the aesthetic appearance and appeal of the Development from the adjoining streets and properties,

including specifically all facades, number of units, footprint and height of the buildings, constitute significant areas of concern for the Township and the neighborhood. Therefore, it is an essential and significant element of this Agreement that any development application presented to the Planning Board shall be consistent with the Concept Plan (Exhibit B) and consistent with the Ordinance (Exhibit A), except for any *de minimus* variances or waivers from its provisions resulting only from the detailed final engineering design of the Residential Development, PROVIDED, HOWEVER, that the Developer shall not seek any variances from the Ordinance relative to the following: (i) permitted use or principal structure; (ii) permitted maximum building coverage; (iii) aggregate number of units (199); and (iv) permitted maximum height and stories of a principal structure.

B. The Developer shall impose a Deed Restriction ("Affordability Controls") for all of the 40 AHU's comprising the Affordable Housing Component. The 40 AHU's in the Affordable Housing Component shall be subject to the Affordability Controls which shall run for a minimum of thirty (30) years, and until the Township elects to release the Affordability Controls. All AHU's shall be governed by the controls on affordability set forth in the UHAC and/or any successor statutes or regulations, except as to the requirement to make a minimum of 13% of the AHU's available to very low income households, which shall be as required by the terms of this Agreement and applicable New Jersey statutes. The Developer agrees to integrate the AHU's with the market-rate units in the Development and shall identify the location of the AHU's in the Development and by Unit Number in the Deed Restriction. The Developer shall also provide floor plans depicting the location and identifying the Unit Number of all of the AHU's in the Development. All deeds and restrictions regarding the affordability controls on the

40 non age-restricted, rental AHU's shall be reviewed and approved by the Township and its counsel for compliance with applicable legal requirements.

C. The Developer shall serve as or utilize an Administrative Agent approved by the State of New Jersey, Department of Community Affairs or COAH to affirmatively market the AHU's in accordance with this Agreement and UHAC, and/or any successor statutes or regulations, and ensure that current regulations are followed with regard to the marketing/leasing (including lease renewals) of the AHU's, all at the sole cost and expense of the Developer, irrespective of the ultimate provider of those services.

D. Provided 199 total residential units are approved by the Planning Board, the Developer shall construct the 40 AHU's pursuant to the following construction phasing schedule: (i) Prior to the issuance of a certificate of occupancy for the 40<sup>th</sup> market rate Residential Unit, certificates of occupancy must be issued for 4 AHU's; (ii) Prior to the issuance of a certificate of occupancy for the 79<sup>th</sup> market rate Residential Unit (50%), certificates of occupancy must be issued for a total of 20 AHU's (50%); (iii) Prior to the issuance of a certificate of occupancy for the 119<sup>th</sup> market rate Residential Unit (75%), certificates of occupancy must be issued for a total of 30 AHU's (75%); and (iv) Prior to the issuance of a certificate of occupancy for the 143<sup>rd</sup> market rate Residential Unit (90%), certificates of occupancy must be issued for a total of 40 AHU's (100%).

E. The Developer shall provide the Township and the Township Engineer individually with a copy of any application or "request for a letter of no jurisdiction" to the New Jersey Department of Transportation and/or the County of Morris ("Governmental Entities") simultaneously with the submission of the application and/or request to such entity. The Township reserves the right to request that the respective Governmental Entities require that the

Developer address the impacts of the Development on the road network and traffic circulation under the jurisdiction of the respective Governmental Entities by undertaking certain improvements (or contributing to the cost thereof in whole or in part) to ameliorate and mitigate such impacts in accordance with applicable regulations of the respective government entity.

F. To the extent necessary, to provide public water and public sanitary sewer service to the Development, the Developer shall extend existing public water and public sanitary sewer facilities to the Development at the Developer's sole cost and expense, including, without limitation, all hard costs and soft costs associated with such extensions. The engineering design for such extensions shall be approved by the Township Engineer. Except as set forth in the first sentence of this Article V, Section F and in Article VI Section G below, Developer shall make its pro rata contribution for any other off-tract improvements as set forth in the Municipal Land Use Law, N.J.S.A. 40:55D-42. For purposes of this section, the real property known and designated as Block 44, Lot 12 shall be considered "on-tract."

## **VI. POTABLE WATER AND SANITARY SEWER**

A. Public Water. To the extent necessary, to provide public water to the Development, the Developer shall extend existing public water to the Development at the Developer's sole cost and expense, including, without limitation, all hard costs and soft costs associated with such extensions. Township represents that as of the date of this agreement there is sufficient allocation available to serve the proposed development. Township shall endorse all applications for permits and approvals from all regulatory agencies as may be required for the water facility extensions. Township shall reserve such potable water supply on a priority basis for all inclusionary projects. Township shall not approve any new development that would deplete potable water supply to the detriment of the Development without the approval of the Special

Master in accordance with the Scarce Resource Order. The terms and provisions of this Agreement shall not impact the Township's ability to resolve the other issues in the pending declaratory judgment litigation regarding its affordable housing obligation and its potable water supply.

#### B. Sanitary Sewerage

1. To the extent necessary to provide sanitary sewer to the Development, the Developer shall extend existing sanitary sewer infrastructure to the Development at the Developer's sole cost and expense, including, without limitation, all hard costs and soft costs associated with such extensions. The treatment of sanitary sewage is provided by the Rockaway Valley Regional Sewerage Authority (RVRSA) who allocates such treatment capacity in accordance with RVRSA rules and policies. The Developer acknowledges that the Township has no specific sewage capacity allocated to it by the RVRSA and the RVRSA considers applications for sewage capacity on a first come, first serve basis. While the Township represents that as of the date of this agreement it has no knowledge of any RVRSA treatment or conveyance capacity limitations that would impact the Development, the Township does not monitor or control the RVRSA system and this could change without the knowledge of the Township. Township shall endorse all applications for permits and approvals from all regulatory agencies as may be required for the sanitary sewer facility extensions subject to the Township's conveyance system having adequate capacity to transmit the flow from the Development to the RVRSA collection and transmission system or, if the implementation of potential improvements to Arrowgate Pumping Station ("Arrowgate") and the Jackson Brook Interceptor ("JBI") as set forth herein are needed to create adequate conveyance capacity, the parties shall proceed as set forth in subparagraph VI.B.3 below.

2. The Township does not represent that there is adequate conveyance capacity (as defined in N.J.A.C. 7:14A-1.2) of the existing sanitary sewerage system between the Development and the RVRSA conveyance and transmission system. To provide adequate conveyance capacity, Township may require improvements to the Arrowgate and/or the JBI. The extent of any required improvements to both Arrowgate and JBI are unknown as of the execution date of this Agreement. Other than the possible improvements to Arrowgate and JBI, Township represents that there are no other improvements necessary to its existing sanitary sewer system to provide adequate conveyance capacity from the Development to the RVRSA conveyance and transmission system, and the Township will endorse an application for Treatment Works Approval (“TWA”) as set forth in subparagraph VI.B.3 below. The Township Planning Board shall permit an application for preliminary and final site plan approval to be deemed complete, and shall proceed to hear such application, with the determination of adequate conveyance capacity outstanding. Any approvals shall be conditioned upon compliance with the provisions of this Agreement related to Arrowgate/JBI Improvements as may be required.

3. Unless the sanitary sewer system is constructed as outlined in paragraph 4 below that bypasses Arrowgate, Developer shall be required to install at its own cost and expense a sanitary sewer line to connect the Development to Arrowgate and thence the JBI. The Township and Developer agree that Arrowgate and JBI may require improvements to accommodate the wastewater flow from the Development and from the anticipated flows from the approximately 136-unit inclusionary project to be developed on the property known and designated as Block 44, Lot 4 (“LYS/Toll Development”). The Development and the LYS/Toll Development are collectively referred to as the “Inclusionary Projects.”

a. The Township is in the process of undertaking a sanitary sewer master plan. The first phase of that sewer master plan report is to complete an analysis of Arrowgate and JBI. That study will be completed no later than sixty (60) days of the award of the contract to the consultant for the study. The Township shall diligently pursue said award and the Developer shall have the right to seek assistance from the Special Master if the Developer reasonably believes that the Township is not diligently pursuing the award of such contract. The purpose of the study is to determine the available conveyance capacity in the system as relates to Arrowgate and JBI. For the purposes of this Agreement, studies with regard to the capacity of Arrowgate and JBI shall be based upon current actual flows, unused flows from previously approved connections (as set forth in Exhibit D attached hereto), and any unused sewage flow from Mine Hill pursuant to their contract with the Township of Randolph. The Parties recognize that due to the current COVID-19 public health emergency and the closure of some businesses pursuant to Executive Orders, estimates of wastewater flows from certain existing commercial buildings may be added to existing flows to account for usage of the system that is not captured by the existing observed flows. The engineers for the Township and Developer shall cooperate in good faith to determine appropriate and reasonable amounts of wastewater flows to be added, if any. To determine whether adequate conveyance capacity exists in Arrowgate, the Parties shall use a peak flow factor multiplier of 2.5 for each pump, in accordance with NJDEP regulations.

b. If the additional flow created by the Inclusionary Projects based on the NJDEP design standards, results in there not being adequate conveyance capacity, the developers of the Inclusionary Projects shall be responsible for all soft costs and hard costs associated with the improvements to the existing system as may be necessary to provide adequate conveyance

capacity (as defined in N.J.A.C. 7:14A-1.2) in Arrowgate and/or JBI; provided that the Developer shall not be obligated to pay or to reimburse the Township for any of the Township's hard and soft costs and expenses related to the obtaining of the Sewer Master Plan Report or any work performed by the Township that should be performed by the Developer under this Agreement. The developers of the Inclusionary Projects shall propose a conceptual plan for the improvements which will be subject to the review and approval of the Township. Such review shall be completed within 30 days of receipt and shall not be unreasonably withheld. Once the Township approves the plan, the developers of the Inclusionary Projects shall have their engineer(s) complete the necessary design documents for any necessary permits for the improvements and for the construction thereof. The design shall be in accordance with all requirements of the NJDEP and RVRSA. The final design of the improvements shall be subject to review and approval within 30 days by the Township Engineer whose approval shall not unreasonably be withheld.

c. The Township will promptly endorse any required permit applications associated with the improvements. Developer shall prepare and submit applications for Treatment Works Approval ("TWA"), which shall include a TWA application for the sanitary sewerage improvements necessary for the Inclusionary Development and shall include such other TWA applications as may be necessary for any required improvements to Arrowgate and JBI. If the improvements to Arrowgate and JBI require a TWA, Township shall endorse and Developer shall be permitted to submit multiple TWAs to NJDEP simultaneously. If the NJDEP does not accept the multiple simultaneous submissions of the TWA application, Township shall sign the TWA Application for the sanitary sewerage improvements for the inclusionary development and the Developer's title company shall hold same in escrow, which shall be

released from escrow and delivered to Developer when the necessary improvements to Arrowgate and JBI have been made and are approved by the Township Engineer, which approval shall not be unreasonably withheld. If a TWA is not needed for improvements to JBI and/or Arrowgate (such as for I&I reduction), Township shall endorse the TWA for the sanitary sewerage improvements necessary for the Inclusionary Projects and Developer shall be able to submit it to NJDEP prior to the improvements being made to JBI and Arrowgate; provided that Township shall be permitted to withhold the issuance of certificates of occupancy for the Inclusionary Projects until the improvements required for Arrowgate and/or JBI have been completed and approved by the Township Engineer, which approval shall not be unreasonably withheld and the necessary conveyance capacity has been created.

d. Developer shall make the necessary improvements to Arrowgate and JBI as set forth in this Agreement, no later than twelve (12) months after Developer's receipt of all necessary approvals and permits from the Township, its Planning Board, the County, the State, including any board, department, or agency of any of the foregoing required to construct the Development, with the exception of building permits under the Uniform Construction Code. In addition to the aforementioned twelve month period, Developer shall be entitled to a six (6) month extension to complete additional improvements if an initial set of improvements did not create sufficient capacity and additional improvements are necessary. Upon completion of the Arrowgate and JBI Improvements and their inspection and approval by the Township Engineer, the Township shall promptly accept same upon dedication. No certificates of occupancy will be issued for the Inclusionary Project until the Arrowgate and JBI improvements are satisfactorily completed.

e. The scope of the improvements shall be limited to those necessary to ensure Arrowgate and JBI have adequate capacity as defined above to accommodate the design sewer flows from the Inclusionary Projects. Developer shall not be obligated to create additional capacity in Arrowgate and JBI for any other property or user, including but not limited to Mine Hill Township. By way of illustration, the developers shall be entitled to reduce infiltration and inflow to provide sufficient capacity for both developments, provided that sufficient capacity is created to offset the calculated sewage demands generated by both developments.

f. Developer and the developer of the LYS/Toll Development shall enter into an agreement to construct the Arrowgate and JBI Improvements at the joint cost and expense of the developer of the LYS/Toll Development and Developer. The terms set forth in this subparagraph are conditioned upon a reciprocal provision being agreed to by the property owner and developer of the LYS/Toll Development at the time of the execution of this Agreement, which shall be incorporated into the Settlement Agreement between LYS/Toll and the Township. Upon receipt of any and all necessary permits, the Arrowgate and JBI improvements shall be constructed by the developers of the Inclusionary Projects subject to the terms of their cost sharing agreement.

4. As an alternative to making improvements to Arrowgate described above in subparagraph VI.B.3, Developer shall have the right, in its sole and absolute discretion and at its sole cost and expense, to construct a pump station on the Property and install a force main that travels eastbound along Route 10 and makes a connection to the existing sanitary sewerage system in the vicinity of the property located at 765 Route 10 East, Randolph, NJ. If this option is selected, the wastewater from the Development will not flow into Arrowgate and Developer shall have no obligations under subparagraph VI.B.3 of this Agreement with respect to

improvements to Arrowgate. The proposed pump station and force main for the Development shall be designed and constructed in accordance with NJDEP regulations. The new pump station and force main will be designed to accommodate the wastewater from the Development and shall not be dedicated to the Township. The pump station shall remain privately owned and maintained. In the event this alternative is selected by the Developer, the Developer shall still be responsible for improvements to the JBI to provide adequate conveyance capacity downstream of force main connection to the Township system as set forth in subparagraph VI.B.3 of this Agreement.

5. Notwithstanding the foregoing, if there is sufficient available conveyance capacity in JBI for the Inclusionary Developments, but Township decides to enter into an agreement to provide additional capacity to Mine Hill Township or any other municipality and such additional capacity exceeds the existing capacity of JBI, Developer shall have no obligation to make any contribution for the JBI Improvements.

6. Notwithstanding the study being prepared by the Township, the Developer may undertake its own study of Arrowgate and JBI at its sole cost and expense and present its findings to the Township. The Township shall within 30 days review and not unreasonably withhold approval of the report and the recommendations therein. Any improvements associated with providing additional capacity as outlined in the report shall be undertaken at the sole cost and expense of the Developer in accordance with subparagraph VI.B.3 above.

#### C. Connection Fees

1. The calculation of the amount of the water and sanitary sewerage connection fees shall be based upon the amounts set forth in the Township's ordinances as of the date this Agreement is fully executed; provided that the connection fees assessed for the affordable units

shall be 50% of the market rate units as set forth in P.L. 2018, c.74. The Township shall provide written notice to the Developer at the address set forth in this Agreement at least thirty (30) days in advance of the public hearing to be held to adopt an increase to the water and/or sanitary sewerage connection fees applicable to this Development, and such written notice shall specify the amount of the proposed new connection fees. No later than five (5) days after the adoption of the revised water and/or sanitary sewerage connection fees imposed by the Township, Developer shall have the right to prepay the aggregate amount of the connection fees at the rate in effect immediately prior to the increase or, alternatively, to provide the Township with a Payment Bond ("Bond") or Letter of Credit ("LOC") in favor of the Township in that same amount in a form acceptable to the Township Attorney. The Bond/LOC will be reduced in the amounts actually paid by the Developer for the connection fees (at the rate in effect immediately prior to the increase). The Bond/LOC shall remain in place, (albeit at reduced amounts as actual connection fees are paid), until the connection fee is paid for the final unit at which time any balance of the Bond/ LOC remaining shall be released and returned. If Developer elects not to provide the Township with a Bond/LOC, then Developer shall be obligated to pay the increased water and/or sanitary sewerage connection fee at the time that each certificate of occupancy is issued. Developer shall have the unilateral right in its sole and absolute discretion to withdraw and/or to terminate the Bond/LOC, and if the Bond/LOC is withdrawn and /or terminated, Developer or any subsequent developer shall pay the increased connection fee currently in effect in the Township before each building permit is issued.

## **VII. TAX APPEALS.**

The Developer shall dismiss all pending tax appeals within 30 days of the adoption of the Ordinance pursuant to Section IV.A of this Agreement.

## **VIII. COST GENERATIVE REQUIREMENTS**

The Township shall not impose any undue cost generative requirements on the Development. The Developer acknowledges that the provisions of the Ordinance attached hereto as Exhibit A and other applicable development ordinances of the Township do not impose development standards and/or requirements that are "cost generative".

## **IX. DEVELOPER'S ENVIRONMENTAL OBLIGATIONS**

A. The Developer shall comply with all conditions of any and all permits issued in connection with any remediation of the Property and all applicable environmental laws, rules and regulations, including but not limited to, the Site Remediation Reform Act, N.J.S.A. 58:10C-1, et seq. ("SRRA"); Brownfield and Contaminated Sites Remediation Act, N.J.S.A. 58:10B-1, et seq. ("BCSRA"); Industrial Site Recovery Act, N.J.S.A. 13:1K-6, et seq. ("ISRA"); New Jersey Spill Compensation and Control Act, N.J.S.A. 58:10-23.11, et seq. (the "Spill Act"); Underground Storage of Hazardous Substances Act, N.J.S.A. 58:10A-21, et seq.; Solid Waste Management Act, N.J.S.A. 13:1E-1, et seq.; Administrative Requirements for the Remediation of Contaminated Sites ("ARRCS"), N.J.A.C. 7:26C; Remediation Standards Rules, N.J.A.C. 7:26D; and the Technical Requirements for Site Remediation ("Technical Rules"), N.J.A.C. 7:26E, and including with particular regard to the requisite disclosure of the existence of any engineering controls which are implemented upon the Property to any subsequent owners and lessees (collectively, "Environmental Laws").

B. As required by the Environmental Laws, the Developer shall undertake all site remediation activities, if necessary, in accordance with a Remedial Action Workplan (the "Workplan"), prepared by a Licensed Site Remediation Professional ("LSRP"). All such remediation activities shall be undertaken in full compliance with all applicable environmental

laws, rules and regulations, including with regard to applicable mandatory and regulatory timeframes. No construction activities or site disturbance shall commence on any Component of the Development until the entirety of the area where such Component will be constructed is fully remediated to residential standards in accordance with the Workplan. For any environmental contamination discovered during construction activities, Developer shall promptly remediate any contamination in accordance with NJDEP regulations and policies.

C. The Developer shall promptly submit to the Township a copy of all reports, including drafts, and data generated in connection with any environmental investigation and remediation of the Property as well as a copy of all written and/or electronic communications by and between the Developer and NJDEP, their employees, consultants, agents, and/or representatives.

D. The Township shall bear no responsibility or liability for costs of any remediation of environmental contamination on the Property.

#### **X. FAIRNESS AND COMPLIANCE HEARING.**

A. Prior to becoming effective, this Settlement Agreement must be approved by the Court at 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. Borough of Fort Lee, 286 N.J. Super. 311, 328-29 (App. Div. 1996). Upon the execution of this Settlement Agreement, the parties shall notify the Court and request that a fairness hearing be scheduled in approximately 45 days. The Township shall provide notice of the fairness hearing in accordance with the aforementioned caselaw at least 30 days in advance of the fairness hearing or as otherwise directed by the Court, at the cost and expense of the Developer. If this Settlement Agreement is not approved by the Court at the fairness hearing,

then this Agreement shall be deemed terminated and shall be of no further force and effect and the parties shall return to their respective positions as if this Settlement Agreement had not been executed by the parties. The Developer agrees to support the application for approval of this Settlement Agreement and the requests by the Township for approval of a HEFSP that includes the Development, as well the Township's requests to obtain a Judgment of Compliance and Repose for a period of ten years.

B. Developer or Owner shall remit 33% of any attorneys' fees negotiated to be paid to Fair Share Housing Center ("FSHC") in any settlement between the Township and FSHC within 10 days of the Court's approval of any such Settlement Agreement between the Township and FSHC, or such other time period as may be set forth in such Settlement Agreement. The Developer shall only be obligated to make this payment if the Township adopts the Ordinance attached hereto as Exhibit A and has otherwise fulfilled its obligations under this Settlement Agreement.

## XI. GENERAL PROVISIONS.

A. **Cooperation.** The parties shall cooperate with each other and act in good faith in order to carry out the provisions of this Agreement.

B. **Defense of Agreement.** The parties shall fully cooperate with each other to defend the terms and conditions of this Agreement against any legal challenges filed, at their sole cost and expense.

C. **Entire Agreement.** This Agreement contains the entire agreement between the parties. No additions, changes or modifications, renewals or extensions hereof shall be binding unless reduced to writing and signed by the parties hereto.

**D. Parties Bound.** This Agreement shall inure to the benefit of and be binding upon the parties, their successors and assigns.

**E. Validity.** In the event that one or more of the provisions of this Agreement are held invalid, void or unenforceable, or the Settlement Agreement is not approved by the Court at a fairness and compliance hearing, this Agreement shall become null and void and be of no legal effect.

**F. Recording.** Upon approval by the Court at a fairness and compliance hearing, the Township may record this Settlement Agreement in the office of the Morris County Clerk.

**G. Default and Remedies.** It shall be a default of this Agreement for any party to fail to perform any of its obligations as set forth in this Agreement unless another remedy or consequence is set forth herein.

a. Upon the occurrence of a Default, the adversely affected party shall provide written notice of said default to the defaulting party. The defaulting party shall have a reasonable opportunity to cure the default (“Cure Period”), but in no event shall said Cure Period exceed thirty (30) days or reasonable extension agreed to by the parties or as ordered by the Court. If the defaulting party has cured the default within the Cure Period, as may have been extended, there shall no longer be a Default.

b. Upon the occurrence of a Default, which has not been cured within the Cure Period, if any, the adversely affected party shall have the right to file a motion with the Court in aid of litigant’s rights pursuant to Rule 1:10-3 of the Rules Governing the Courts of the State of New Jersey.

c. If a Court determines that there has been a default by any party, which has not been cured within the Cure Period, if any, the defaulting party shall be responsible for the

reasonable expenses incurred by the adversely affected party or parties in seeking a remedy for the default, including, but not limited, to reasonable attorney's fees, any reasonably necessary professional costs and court costs.

## **XII. PREPARATION.**

The parties acknowledge that they each have been represented by legal counsel with regard to the negotiation and preparation of this Agreement and that this Agreement has been prepared jointly by attorneys representing each party as a means of furthering the purposes set forth and therefore any presumption for resolving ambiguities against the drafter or any party shall not apply.

## **XIII. NOTICE OF ACTIONS.**

The parties and their respective legal counsel agree to immediately 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 this Agreement or any specific provisions of this Agreement and/or any approvals and/or actions taken by the Parties pursuant to the terms and conditions of this Agreement

## **XIV. COUNTERPART SIGNATURES.**

This Agreement may be executed simultaneously or in one or more counterparts, each of which, when so executed and delivered, shall constitute an original, fully enforceable counterpart for all purposes. Facsimile counterparts shall be accepted and enforceable, provided that immediately following the delivery of a facsimile counterpart, the sending party shall deliver a counterpart with the original execution page.

## **XV. TIME PERIODS; EXTENSIONS OF TIME.**

The Parties hereby agree that they will cooperate to effectuate the terms and conditions of this Settlement Agreement and to fulfill the Township's and the Developer's obligations required pursuant to this Settlement Agreement. The parties agree that any time periods within which either party must perform its obligations or accomplish specific actions may be mutually extended by the parties with the consent of the Court where necessary. The parties acknowledge and agree that certain actions and obligations required under this Agreement are dependent on the actions of individuals and entities that are not a party to this Agreement.

#### **XVI. NOTICE.**

All notices required under this Agreement shall be in writing and shall be given by Certified Mail, return receipt requested, or by recognized overnight personal carriers, such as Federal Express, with a proof of receipt, and in addition thereto, and not in lieu of written notice as provided above, where feasible, the party delivering the Notice shall provide the same by either a facsimile version/delivery or an e-mail attachment. All notices shall be deemed received upon the date of delivery, which is set forth in such certified proof and at all times for performance based upon notice shall be from the date set forth in such proof of delivery. The persons and entities to receive notice shall be as follows:

If to Developers:

Canoe Brook Development, LLC  
Attn: Mr. Jack Tycher  
75 Eisenhower Parkway  
Suite 180  
Roseland, NJ 07068

With a Required Copy to:

Richard J. Hoff, Jr., Esq.  
Bisgaier Hoff LLC

25 Chestnut Street, Suite 3  
Haddonfield, New Jersey 08033  
Email: [rhoff@bisgaierhoff.com](mailto:rhoff@bisgaierhoff.com)  
Phone: (856) 795-1050

If to the Township of Randolph:

Township of Randolph  
Municipal Building  
502 Millbrook Avenue  
Randolph, New Jersey 07869  
Attn: Stephen Mountain, Township Manager  
Email: [smountain@randolphNJ.org](mailto:smountain@randolphNJ.org)  
Phone: (973) 989-7060

With a Required Copy to:

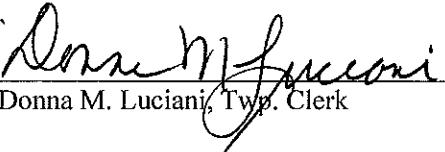
Edward J. Buzak, Esq.  
The Buzak Law Group, LLC  
150 River Road, Suite N-4  
Montville, NJ 07045  
Email [ejbuzak@buzaklawgroup.com](mailto:ejbuzak@buzaklawgroup.com)  
Phone (973) 335-0600

[SIGNATURES ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties have executed this Agreement consistent with applicable law on the day and year written below their names:

ATTEST:

TOWNSHIP OF RANDOLPH

  
\_\_\_\_\_  
Donna M. Luciani, Twp. Clerk

By

  
\_\_\_\_\_  
Christine Carey, Mayor

Dated: 9/30/20

ATTEST:

CANOE BROOK DEVELOPMENT, LLC

By

  
\_\_\_\_\_  
Jack Tycher

Managing Member

Dated: 8/31/2020

EXHIBIT A – ORDINANCE Page 8 ½ x 11

EXHIBIT B – CONCEPT PLAN Page 8 ½ x 11

EXHIBIT C – OMNIBUS ORDINANCE Page 8 ½ x 11

EXHIBIT D – SEWAGE DEMANDS - OTHER PROJECTS

## ACKNOWLEDGEMENT

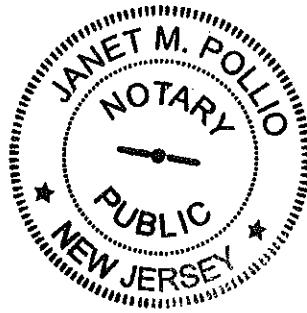
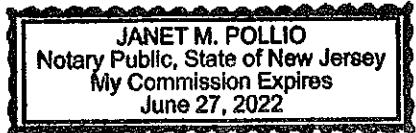
STATE OF NEW JERSEY | SS.:  
COUNTY OF MORRIS |

BE IT REMEMBERED, that on this 30th day of September, in the year of our Lord, Two Thousand Twenty, before me, the subscriber, personally appeared DONNA M. LUCIANI, who, being by me duly sworn on her oath, doth depose and make proof to my satisfaction that she is the CLERK of the TOWNSHIP OF RANDOLPH, a municipal corporation, the corporation named in the within instrument; that CHRISTINE CAREY is the MAYOR of said municipality; that the execution as well as making of this instrument has been duly authorized by proper action of the Township Council; that deponent well and truly knows the corporate seal of said municipality; and the seal affixed to said instrument is such seal and was thereto affixed to said instrument signed and delivered by said MAYOR CAREY as and for the voluntary act and deed of said municipality, in the presence of deponent, who thereupon subscribed her name thereto as witness.

Donna M. Luciani  
Donna M. Luciani, Township Clerk

Sworn and subscribed to before  
me on the date aforesaid.

Janet M. Pollio  
[Print Name and Title Below Signature]  
Janet M. Pollio, Notary



STATE OF NEW JERSEY )  
                         : SS:  
COUNTY OF MORRIS )

I CERTIFY that on the 31<sup>st</sup> day of August, 2020, Jack Tycher personally came before me, and this person acknowledged under oath to my satisfaction that:

(a) this person is the Managing Member of Canoe Brook Development, LLC, the entity named in this document.

(b) this document was signed and delivered by Jack Tycher, as Managing Member and on behalf of Canoe Brook Development, LLC as its voluntary act and deed duly authorized by its members; and

(c) this person signed this proof to attest to the truth of the facts.

Karyn Rosamilla

Signed and sworn to before me  
on the 31<sup>st</sup> day of August, 2020

Notary Public of New Jersey  
My Commission Expires:  
(Affix Seal)

**Karyn L Rosamilla**  
Comm. NO:2450694  
**Notary Public of New Jersey**  
**My Commission Expires November 3, 2024**

EXHIBIT A – ORDINANCE Page 8 ½ x 11

## **15-\_\_\_. - R-6 MULTIFAMILY INCLUSIONARY ZONE (R-6 Zone)**

### **15-\_\_\_.1 - Purpose.**

This zone district and its regulations are intended to provide a realistic opportunity for the construction of 199 multifamily dwelling units as part of an inclusionary development with a twenty percent (20%) but not less than 40 affordable units set aside for affordable housing.

### **15-\_\_\_.2. - Permitted uses.**

#### *A. Principal uses.*

1. Multifamily dwelling units, including but not limited to buildings with apartment flats with common stairways, buildings with direct entry to individual units, stacked townhouse buildings, and buildings with flats with a central corridor or any combination of the foregoing within a building.
2. There may be multiple principal buildings on a lot.

#### *B. Accessory uses and structures.* The following accessory uses and structures shall be permitted:

1. Parking spaces, driveways, attached individual parking garages, and detached parking structures/garages with a capacity of no more than 8 vehicles each;
2. Leasing office;
3. Maintenance office;
4. Refuse and recycling buildings and structures;
5. Clubhouse for use by residents and their guests, such as but not limited to a club room, fitness room, conference / work areas, a child play area and pet wash / grooming;
6. Active and passive recreation areas, which shall include but shall not be limited to a pool, grilling / barbecue areas, a tot lot, a dog run and a walking trail or sidewalks.
7. Any use or structure that is customarily incidental and subordinate to the principal use of land or building located on the same lot.

### **15-\_\_\_.3. - Area and bulk requirements.**

#### *A. Minimum gross lot area:* 12 acres.

#### *B. Maximum density:* 17 dwelling units per gross acre provided that the maximum number of residential units shall not exceed 199.

- C. *Units per building:* No more than 110 residences and a clubhouse shall be permitted within a mid-rise residential building. No more than 20 dwelling units shall be permitted within the other multifamily residential buildings, such as a direct-entry flats or stacked townhomes.
- D. *Maximum height:*
  - 1. Midrise Multifamily Building - There shall be permitted one midrise multifamily building, which shall not exceed 4 stories and fifty-five (55) feet if a flat roof or sixty (60) feet if a pitched roof.
  - 2. Multi-family Flats and Stacked Townhomes - There shall be permitted multiple smaller multifamily buildings, which shall not exceed three stories and forty-nine (49) feet in building height as measured.
  - 3. Accessory Buildings - All accessory buildings and structures shall comply with the height requirements under Township Land Development Code Section 15-41.A.2, "Accessory Buildings or Structures".
- E. *Maximum impervious coverage:* Sixty percent (60%) of total lot area, including any areas subject to a conservation easement.
- F. *Maximum building coverage:* thirty percent (30%) of total lot area, including any areas subject to a conservation easement.
- G. *Site access:*
  - 1. The site shall not require usable frontage upon a street or streets for access as required under Township Land Development Code Section 15-70.1.A.3.i, due to the existing conservation easement encumbering the portion of the property fronting along Dover-Chester Road.
  - 2. Vehicular access to and from the development shall be via State Route 10 with an easement with the adjoining property known as Block 44, Lot 12 on the Official Tax Map of the Township of Randolph ("Adjacent Lot"). Such vehicular access shall provide adequate access for firefighting equipment, ambulances, and other emergency vehicles necessary for the protection of health and safety, and shall protect any future street layout shown on the official map or on a general circulation plan element of the municipal master plan.
  - 3. Such vehicular access to and from this development is a permitted use on the Adjacent Lot per the provisions under Section 15-30 for the OL Zone.
  - 4. Any improvements on the Adjacent Lot are subject to the requirements under Section 15-30.4 "Area and Bulk Requirements" of the OL Office-Laboratory District. Any amended site plan or bulk variance relief required as a result of such improvements on the Adjacent Lot shall be requested at time of Planning Board

approval and authorized by the consent of the owner of the Adjacent Lot. Pre-existing non-conforming bulk conditions shall not require any variance relief, unless such conditions are further modified.

H. *Minimum building setback:*

1. Midrise Multifamily Building Setbacks – Measured from the building wall, inclusive of patios, balconies, or other similar building design elements, a minimum setback of fifty (50) feet from the northern property line and a minimum setback of eighty (80) feet from all other property lines shall be required.
2. Multi-family Flats and Stacked Townhomes Setbacks – Measured from the building wall, inclusive of patios, balconies, or other similar building design elements, a minimum setback of twenty (20) feet from any property line shall be required.
3. Accessory Building Setbacks – A minimum setback of fifteen (15) feet from any property line shall be required.

I. *Screening and Buffer Landscaping Requirements:*

1. Pursuant to Section 15-51.4.B, “Buffer dimensional requirements”, proposed multi-family uses abutting any residential zone shall contain a transition buffer twenty (20) feet in width. The buffer area is a portion of the minimum building setback area described above in subsection H.
2. The buffer shall be vegetated with existing and/or proposed landscaping and may be supplemented by berms. Retaining walls may be placed within the buffer if they face a non-residential zone or use.
3. Notwithstanding the forgoing, entrance driveways, storm water basins, and utilities shall be permitted within the buffer area.
4. The provisions of Section 15-51, “Screening and Buffer Landscaping Requirements” of the Township Land Development Code shall apply. Reverse frontage buffer requirements pursuant to Section 15-51.5 of the Township Land Development Code shall not be applicable to unimproved rights-of-ways, or “paper streets”.

J. *Distance between buildings:* Entrance porticos and rear porches shall be included in the measurement between buildings. The above distances may be reduced by up to one-quarter if there is an angle of 20 degrees or more between the buildings and if extensive landscaping or buffers are placed between buildings.

The minimum distance between buildings shall be as follows:

1. Mid-Rise Building Wall to Wall (Single Building) – Minimum 60 feet
2. Mid-Rise Building to Multi-family Flats and Stacked Townhomes Buildings—Minimum 45 feet
3. Multi-family Flat and Stacked Townhomes Buildings Front to Front – 40 feet
4. Multi-family Flats and Stacked Townhomes Buildings Side to Side – 30 feet
5. Multi-family Flats and Stacked Townhomes Buildings Front to Side – 45 feet
6. Any Building to Accessory Building – 20 feet
7. Accessory Building to Accessory Building – 10 feet

K. *Minimum Open Space and Amenity Requirement.* Open space and amenity areas shall conform to the provisions of Township Code Section 15-78, “Open Space and Recreation”, and Section 15-79, “Site Amenities”, except as specifically provided below:

1. The requirement for common open space for passive recreation shall be satisfied by no fewer than two (2) contiguous areas set aside for open space as follows:
  - a. A passive recreation, outdoor area of no less than 2,500 square feet shall be provided.
  - b. A passive recreation, outdoor area of no less than 3,500 square feet shall be provided, inclusive of amenities such as an open lawn area, playground, dog run, walking paths, and/or landscaping.
2. The requirement for developed active recreation facilities shall be satisfied by the following:
  - a. An outdoor amenity area of no less than 3,000 square feet, inclusive of amenities such as an outdoor pool lounge area, hardscape patio, and/or grilling area.
  - b. An indoor amenity package of no less than 4,500 square feet shall be provided, inclusive of amenities such as a lobby area, a leasing office, a fitness room, club or common room, yoga studio, and/or co-working space.

L. *Signage Requirements*

1. One (1) freestanding sign shall be permitted on the lot where the development is located.
  - a. *Sign Area.* Maximum of 32 square feet in sign area

- b. *Sign Setback*. Minimum setback of 10 feet from a property line.
  - c. *Sign Height*. Maximum height of 6 feet.
- 2. *Façade Signs*. Façade signs shall be permitted on each residential building as regulated in Township Code Section 15-43.5.
- 3. *Internal Directional Signs*. Any signs reasonably necessary to direct residents, visitors and guests within the development and on the Adjacent Parcel shall be permitted as set forth in the site plan approval. Directional signs shall have a uniform appearance. Directional signs shall not exceed 10 square feet in sign area and shall not exceed 4.5 feet in height.
- 4. The provisions of Section 15-43.2., “General provisions” of the Township Land Development Code Section 15-43. “Signs” shall apply.

M. *Off-street parking and parking design requirements:*

- 1. Parking shall comply with Residential Site Improvement Standards (“RSIS”). Parking spaces may be provided in standalone parking structures/garages with a capacity of no more than 8 vehicles, individual garages, driveways, or surface lots or any combination thereof.
- 2. All common off-street surface parking shall be located within 300 feet of the dwelling units served.
- 3. Parking may be permitted in all required minimum yard areas, but shall not be permitted in the minimum buffer area.
- 4. All garages shall conform architecturally to, and be of similar materials as the principal buildings in the development
- 5. All off-street parking areas shall conform to the provisions of Township Code Section 15-50, “Parking and Loading”, except as specifically provided below:
  - a. Each off-street parking area hereinafter created within the Township of Randolph shall be subject to the approval of the Planning Board or Zoning Board to insure its adequacy to provide for traffic safety, to provide ingress and egress for emergency vehicles, to protect adjacent properties, and to further ascertain that all requirements of this Article are complied with.
  - b. Off-street parking shall be provided and maintained as specified herein and shall be surfaced with an asphalt, bituminous or cement binder pavement which shall be graded and drained to dispose of all surface water as required by the Township's Stormwater Management Ordinance and the RSIS.

- c. For multi-family developments, parking areas and access drives shall have granite block curbing installed in accordance with the specifications set forth in the RSIS or poured concrete curb of a minimum 6" x 10" x 20" dimension and installed true to the lines, grades and dimensions shown on the approved site plan.
- d. Multiple detached garages are permitted as an accessory use, provided that each detached garage shall not provide parking for more than 8 motor vehicles.
- e. All off-street parking shall be provided as indicated herein unless otherwise noted or approved by the Planning Board.
- f. A one-car garage and driveway combination shall count as 2 off-street parking spaces, provided the driveway measures a minimum of 23 feet in length between the face of the garage door and the extended curbline. A two-car garage and driveway combination shall count as 4 off-street parking spaces provided minimum width of the driveway is 20 feet and its minimum length is as specified above for a one-car garage.
- g. Parking in multi-family developments shall be set back at least 50 feet from any peripheral public street. This shall not be applicable to unimproved rights-of-ways, or "paper streets".

6. Parking Setbacks

- a. Mid-rise or multi-family building face to interior street curb - 10 feet
- b. Any principal building face to boulevard street curb - 20 feet
- c. Any principal building face to common parking area - 10 feet

N. *Market Rate and Affordable Housing Requirements*

- 1. There shall be a minimum set-aside of 20% of the total units as affordable units, but not less than 40 affordable units.
- 2. The developer shall have an obligation to deed restrict the Affordable Units as very low-, low-, or moderate-income affordable units for a period of at least thirty (30) years, until such time and under conditions as the Township elects to release the deed restriction, so that the Township may count the Affordable Units against its affordable housing obligation. The deed restrictions shall be recorded with the County Clerk, and a copy of the recorded deed shall be forwarded to the Township Municipal Housing Liaison and Administrative Agent. Any sale of the property or units shall not affect the length or terms of the deed restriction.

3. The bedroom distribution of the affordable units shall be in accordance with the Uniform Housing Affordability Controls, N.J.A.C. 5:80-26.3.
4. The income distribution of the affordable units shall be in accordance with the Uniform Housing Affordability Controls, N.J.A.C. 5:80-26.3, and shall also provide for a 13% set-aside of very-low income units as part of the income distribution.
5. The market rate units shall have the following bedroom distribution requirements:
  - a. There shall be a minimum of twenty-five (25) one bedroom market rate units.
  - b. There shall be a maximum of twenty (20) three bedroom market rate units.
  - c. The remainder of the market rate units may be two bedroom units.
6. The affordable housing units shall be located in buildings containing market rate units. At least sixteen (16) affordable units shall be located within the mid-rise residential building. Up to twenty-four (24) affordable units may be distributed within the three-story multifamily buildings and shall be within modules containing no more than eight (8) affordable units each with a central, common stairway for the affordable units. The modules shall be located within buildings containing market rate units.

O. *Retaining Walls.* Retaining walls shall be permitted up to a height of 15 feet and shall comply with the provisions listed under Section 15-79.2.L, “Retaining Walls” of the Township Land Development Code. P. *Tree Removal.*

1. Tree removal shall be subject to the Average Tree Density application requirements under Section 15-48, “Tree Removal and Protection”, of the Township Land Development Code.

P. *Tree Removal.*

1. Tree removal shall be subject to the Average Tree Density application requirements under Section 15-48, “Tree Removal and Protection”, of the Township Land Development Code.

Q. *Site Plan and Building Design Standards.* Site plan and building design standards shall conform to the provisions of Township Code Section 15-60.6 “Multi-family residential site and building design standards”, except as specifically provided below:

- a) Allow for buildings to contain up to 110 residences within a mid-rise residential building and up to 20 dwelling units within the other multifamily residential buildings, such as a direct-entry flats or stacked townhomes.

- b) There shall be no additional requirement for tenant storage in a centrally located area.
- c) Allow for flat roof structures.

#### **15-4 – Use and Structures on Adjacent Lot**

The Adjacent Lot may be utilized for improvements restricted to 1) vehicular and pedestrian access, 2) signage, 3) landscaping, and 4) utilities and stormwater management - including basins. Such improvements are a permitted use on such Adjacent Lot, provided that the owner or developer of the property within the R-6 Zone District obtains the necessary easement(s) or other property rights for such usage, installation, and maintenance of such structures. Any improvements on the Adjacent Lot are subject to the requirements under Section 15-30.4 “Area and Bulk Requirements” of the OL Office-Laboratory District. Any amended site plan or bulk variance relief required as a result of such improvements on the Adjacent Lot shall be requested at time of Planning Board approval and authorized by the consent of the owner of the Adjacent Lot. Pre-existing non-conforming bulk conditions shall not require any variance relief, unless such conditions are further modified.

#### **15-5 – Submission Requirements**

- A. Any application made to the Township shall be subject to the provisions under Article VI, “Development Application Review Procedures”, and Article VII, “Administration, Enforcement and Fees”, of the Township Land Development Code.

**EXHIBIT B – CONCEPT PLAN Page 8 ½ x 11**

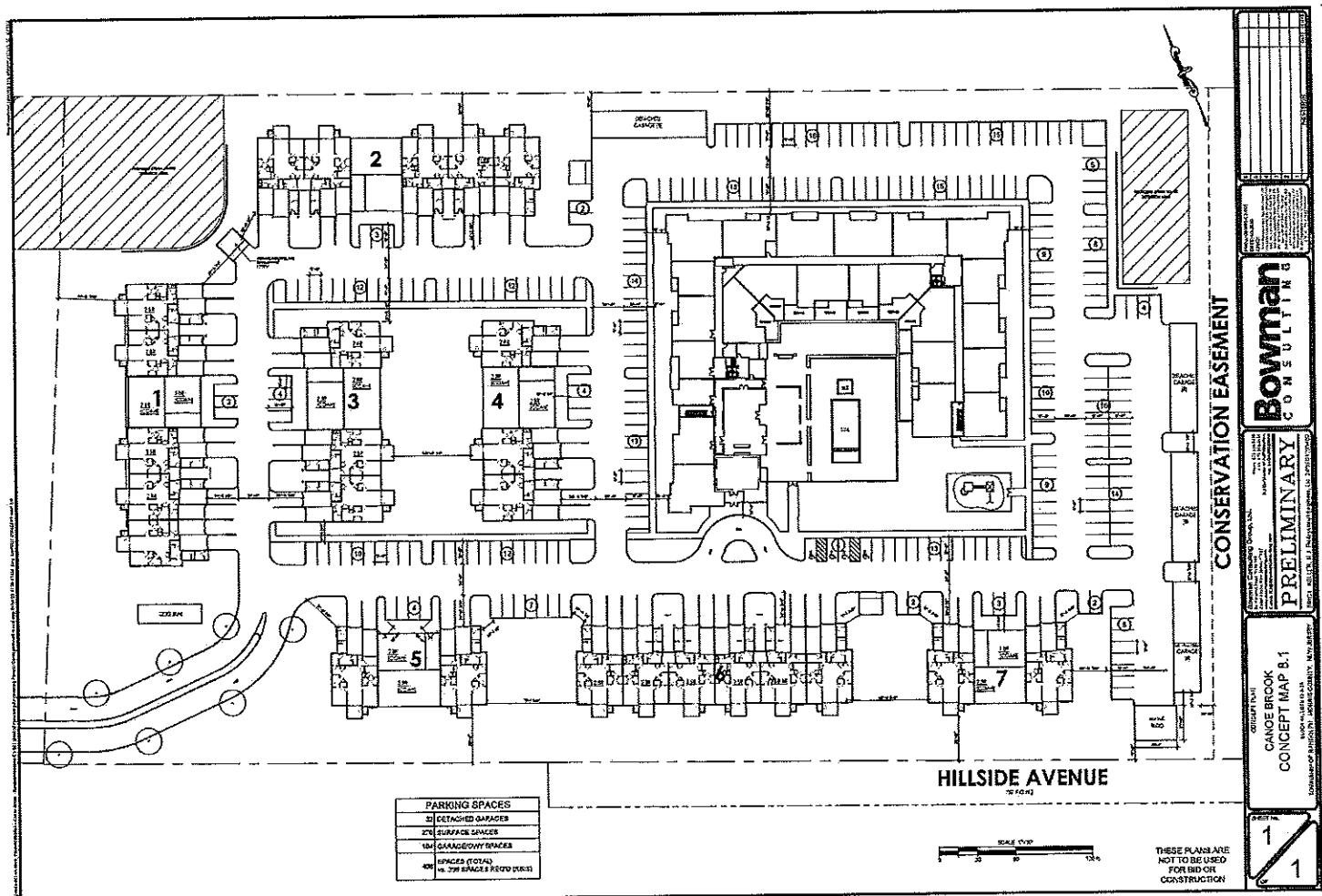


EXHIBIT C – OMNIBUS ORDINANCE Page 8 ½ x 11

EXHIBIT D

TOWNSHIP OF RANDOLPH  
COUNTY OF MORRIS  
STATE OF NEW JERSEY

DRAFT ORDINANCE #XX-XX

**AN OMNIBUS ORDINANCE OF THE TOWNSHIP OF RANDOLPH TO CERTAIN SECTIONS OF  
ARTICLE III (ZONING) OF THE ORDINANCES OF THE TOWNSHIP OF RANDOLPH**

**WHEREAS**, the Township Council deems it appropriate to amend the Township Code with respect to certain elements of Article III, Zoning;

**NOW, THEREFORE, BE IT ORDAINED** by the Township Council of the Township of Randolph, County of Morris, State of New Jersey, as follows:

**SECTION 1.** Section 15-48 (Tree Removal and Protection), Subsection 2 (Definitions) of Article III (Zoning) of the Code of the Township of Randolph is hereby amended to include the following new definition:

**AVERAGE TREE DENSITY**

For sites in excess of 3 acres of trees to be removed or cleared, a selective inventory, by size and species, of all trees having a DBH of eight (8) inches or greater within the proposed limit of disturbance shall be conducted using a minimum of nominal quarter acre plots (100 feet by 100 feet) which shall be staked or visibly marked to allow for inspection. The location of the inventory plots shall be determined by the applicant, subject to Township approval, by using a grid overlay drawn to the same scale as the site plan submitted with the application. A representative five (5%) percent of the wooded area proposed to be cleared shall be inventoried.

**SECTION 2.** Section 15-48 (Tree Removal and Protection), Subsection "6" (Tree removal/protection requirements for major and minor subdivisions and site plans), Subsection "1" (Application review procedure) of Article III (Zoning) of the Code of the Township of Randolph is hereby amended to include a new Item "6", to read as follows:

6. Average Tree Density calculation shall apply for sites in excess of 3 acres of trees to be removed or cleared.

**SECTION 3.** Section 15-48 (Tree Removal and Protection), Subsection "6" (Tree removal/protection requirements for major and minor subdivisions and site plans), Subsection "2" (Permit application procedure), Subsection A (Application Form), Item "4" of Article III (Zoning) of the Code of the Township of Randolph is hereby amended to read as follows:

4. A list of all trees, deciduous or coniferous, to be removed with a DPM equal to or greater than eight (8) inches identified by size and species, including total number of each species to be removed. Exceptions are listed under Section 15-48.6.2.A.9.

**SECTION 4.** Section 15-48 (Tree Removal and Protection), Subsection "6" (Tree removal/protection requirements for major and minor subdivisions and site plans), Subsection "2" (Permit application

procedure), Subsection A (Application Form) of Article III (Zoning) of the Code of the Township of Randolph is hereby amended to include a new Item "9", to read as follows:

9. For sites utilizing Average Tree Density calculation, the following procedure shall be followed:
  - a. The Average Tree Density shall utilize nominal quarter acre (100'x100') sample areas. Sample areas are to be staked out in the field and verified by the Township that they are representative of the site.
  - b. The number of sample areas must be a total an area that comprises 5% of the wooded areas to be cleared. To calculate the number of required samples, 5% of the wooded areas to be cleared (in square feet) shall be divided by 10,000. Any resulting fractional number shall be rounded up to the nearest whole number. The representative 5% shall be determined by agreement between the Township and the applicant. Unless otherwise determined by the Township, where less than three acres is proposed to be cleared, all trees to be removed shall be inventoried;
  - c. A list of all trees, deciduous or coniferous, to be removed within the sample area with a DPM equal to or greater than eight (8) inches shall be identified by size and species, including total number of each species to be removed;
  - d. Tree replacement is based on 2 replacement trees for every tree between 12" and 24" inclusive that are removed.
  - e. The number of trees to be removed is estimated based on applying the average density of the samples proportionally to the area to be cleared.

**SECTION 5.** Section 15-48 (Tree Removal and Protection), Subsection "6" (Tree removal/protection requirements for major and minor subdivisions and site plans), Subsection "2" (Permit application procedure), Subsection B (Landscape Plan), Item "2" of Article III (Zoning) of the Code of the Township of Randolph is hereby amended to read as follows:

2. Location and identification by size and species of individual trees as listed in Sec. 15-48.6.2.A.4 or 15-48.6.2.A.9 for removal, plus those trees of DPM of eight (8) inches or greater within the area of development/limit of disturbance which are to be preserved.

**SECTION 6.** Section 15-48 (Tree Removal and Protection), Subsection "6" (Tree removal/protection requirements for major and minor subdivisions and site plans), Subsection "2" (Permit application procedure), Subsection B (Landscape Plan), Item "3" of Article III (Zoning) of the Code of the Township of Randolph is hereby amended to read as follows:

3. Location of individual trees with a DPM equal to or greater than eighteen (18) inches identified by size and species thirty feet beyond a delineated limit of disturbance line. This requirement does not apply to a minor subdivision or sites utilizing Average Tree Density calculation.

**SECTION 7.** Section 15-48 (Tree Removal and Protection), Subsection "6" (Tree removal/protection requirements for major and minor subdivisions and site plans), Subsection "3" (Clearing requirements), Subsection A (Design Requirements), Item "2" of Article III (Zoning) of the Code of the Township of Randolph is hereby amended to read as follows:

2. For site in excess of 20 acres, no more than sixty (60) percent of existing tree canopy within the property boundaries shall be removed. Existing tree canopy comprised of the forty (40) percent minimum shall be noted for preservation. Steep slope limits of disturbance shall supersede this section when appropriate.

**SECTION 8.** Section 15-48 (Tree Removal and Protection), Subsection "6" (Tree removal/protection requirements for major and minor subdivisions and site plans), Subsection "4" (Tree care and plantings), Item E of Article III (Zoning) of the Code of the Township of Randolph is hereby amended to read as follows:

- E. Applicant Option. If an applicant should decide not to replace required trees on his site, the applicant shall contribute \$200 per tree not replaced, which monies shall be deposited into the Tree Bank Fund of Sec. 15-48.8.B. Where the number of trees not replaced exceeds 250 the contribution shall be \$115 per tree not replaced.

**SECTION 9.** Section 15-48 (Tree Removal and Protection), Subsection "6" (Tree removal/protection requirements for major and minor subdivisions and site plans), Subsection "4" (Tree care and plantings), Item A (Tree Replacement and Reforestation) of Article III (Zoning) of the Code of the Township of Randolph is hereby amended hereby amended to include a new Item "5", to read as follows:

5. Replacement trees planted in excess of 3.5" caliper shall be entitled to 2 replacement credits for each tree.

**SECTION 10.** Section 15-44 (Regulations for Development within Steep Slope Areas), Subsection "4" (Steep slope disturbance application contents.), Subsection B, Item "1" of Article III (Zoning) of the Code of the Township of Randolph is hereby amended to read as follows:

1. For the purpose of determining the area of regulated steep slopes on a property, the existing topography shall be analyzed based on a ten foot (10') contour intervals. The 10' contours shall be used to delineate all of the slope categories outlined in this ordinance. For the purpose of showing the limit of disturbance for the clearing and/or construction as described above, existing and proposed contour lines using a two foot (2') contour interval shall be shown on the steep slope analysis plan.

**SECTION 11.** Section 15-44 (Regulations for Development within Steep Slope Areas), Subsection "8" (Minor steep slope areas), of Article III (Zoning) of the Code of the Township of Randolph is hereby amended to read and to include a new Item "C" as follows:

#### 15-44.8. – Exemptions

- A. Additions to and maintenance of existing single-family homes including pools, patios, garages, sheds and gardens, located on lots in residential zones not exceeding 1.75 times the minimum lot size for the zone, are exempt from the steep slope disturbance plan requirements, except where the proposed disturbance exceeds 2,000 square feet within a slope area of 15% or greater. Such determination shall be made by the Engineering Department using the aerial topography maps having a 5 foot contour interval.

- B. All commercially zoned lots shall be exempt from the steep slope disturbance requirements, except where disturbance exceeds 3,000 square feet for lots less than 5 acres, and 5,000 square feet for lots greater than 5 acres.
- C. Residentially zoned lots greater than 10 acres shall be exempt from the regulation of slopes less than 15%. These lots shall also be permitted disturbance of steep slopes in the following amounts for each steep slope category:

15-19.99% - 10,000 square feet  
20-24.99% - 5,000 square feet  
25%+ - 3,000 square feet

**SECTION 12.** Section 15-30 (OL Office-Laboratory District), Subsection "2" (Permitted uses) of Article III (Zoning) of the Code of the Township of Randolph is hereby amended to include a new Item "5", to read as follows:

- 5. For lots with frontage on major arterial roadways, shared or common driveways to access any adjacent, neighboring, or rear lots are permitted to minimize the number of curb cuts.

**SECTION 13.** Section 15-30 (OL Office-Laboratory District), Subsection "4" (Area and bulk requirements), Item "F" of Article III (Zoning) of the Code of the Township of Randolph is hereby amended to read as follows:

- F. Maximum impervious surface coverage: 65 percent of the lot area.

**SECTION 14.** Section 15-30 (OL Office-Laboratory District), Subsection "4" (Area and bulk requirements), Item "C" of Article III (Zoning) of the Code of the Township of Randolph is hereby amended to read as follows:

- C. Minimum setback: No part of any structure shall be closer than 100 feet to any property line nor closer than 200 feet to any public road or street nor closer than 300 feet to any single-family residential zone district or use. Parking areas, as required by this chapter, shall be permitted in any yard provided said parking area is at no point closer than 50 feet to any property line nor closer than 100 feet to any single-family residential zone district or township boundary line. The building setback requirements of this paragraph shall not apply to structures having a floor area of less than 200 square feet and used solely to provide shelter for personnel concerned with the control of access to the premises.

**Section 15.** Section 15-43 (Signs), Subsection "4" (Freestanding Signs), of Article III (Zoning) of the Code of the Township of Randolph is hereby amended to include a new Item "I", to read as follows:

- I. For lots with frontage on major arterial roadways, shared or common freestanding signage with adjacent, neighboring, or rear lots are permitted to minimize the number of signs along the roadway.

EXHIBIT D – SEWAGE DEMANDS - OTHER PROJECTS

**EXHIBIT D**  
**SEWAGE DEMANDS – OTHER PROJECTS**

The projects listed below are to be included in the analysis of available conveyance capacity of the Arrowgate Pump Station and the Jackson Brook Interceptor (JBI). Both of these projects have paid for connection fees; and in the case of the two buildings on Block 44, Lot 14, the day care is under construction.

**Arrowgate Pump Station/JBI**

Block 44, Lot 12

56,500 sf office

Sewage Demand - 5,650 gpd

Fees in lieu of constructing sewer paid to Randolph MUA in mid 1980's

**Connects into to JBI at Randolph Avenue**

Block 44, Lot 14

9,900 sf daycare (157 students, 27 adult staff) and 3,680 sf bank

Sewage Demand – 1,938 gpd

**RESOLUTION NO. 264-20**

**AUTHORIZING THE EXECUTION OF A SETTLEMENT  
AGREEMENT WITH CANOE BROOK DEVELOPMENT, LLC**

**WHEREAS**, on July 1, 2015, the Township of Randolph (“Township”) filed a Complaint in the matter captioned In the Matter of the Application of the Township of Randolph, Docket No. MRS-L-1640-15 (“DJ Litigation”), seeking a declaration from the New Jersey Superior Court that its Housing Element and Fair Share Plan (“HEFSP”) is constitutionally compliant; and

**WHEREAS**, Canoe Brook Development, LLC (“Developer”) is the contract purchaser of real property located in the Township of Randolph, Morris County, State of New Jersey, known and designated as Block 44, Lot 25 on the Official Tax Map of the Township of Randolph (“Property”), and desires to construct a residential development with an affordable housing component on the Property; and

**WHEREAS**, the Developer intervened in the DJ Litigation challenging the Township’s satisfaction of its affordable housing obligation, among other things; and

**WHEREAS**, the Township and the Developer have engaged in settlement negotiations and have come to an agreement resolving all of the differences between them with regard to the DJ Litigation including the development of the Property with an affordable housing component; and

**WHEREAS**, the terms and conditions of said agreement are set forth in a certain Settlement Agreement dated September 24, 2020; and

**WHEREAS**, the Township desires to resolve the issues between the Township and the Developer with regard to the DJ Litigation as set forth in the Settlement Agreement.

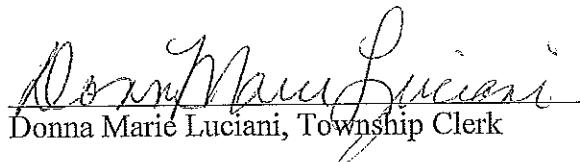
**NOW, THEREFORE, BE IT RESOLVED** by the Township Council of the Township of Randolph, County of Morris, State of New Jersey as follows:

1. All the terms and conditions of a certain Settlement Agreement by and between the Township of Randolph and Canoe Brook Development, LLC dated September 24, 2020, be and the same are hereby approved, ratified and confirmed by the Township.
2. The Mayor and Clerk are hereby authorized to execute said Settlement Agreement subsequent to the execution by Canoe Brook Development, LLC and, together with other appropriate officers and employees of the Township, are hereby authorized to take all steps necessary to effectuate the purposes of this Resolution.
3. The Township hereby authorizes and approves any non-substantive modifications to the Settlement Agreement as may be recommended and approved by the Township Manager and Township Attorney prior to execution.
4. This Resolution shall take effect immediately.

#### **C E R T I F I C A T I O N**

I, Donna Marie Luciani, Township Clerk of the Township of Randolph hereby certify the foregoing to be a true copy of a Resolution adopted by the Township Council of the Township of Randolph at a duly convened meeting held on September 24, 2020.

9/24/20  
Date

  
Donna Marie Luciani, Township Clerk